



# Small Cell Pole Attachments

## Model Ordinance & Standardized Agreements



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## **NOTES ON USE**

### **FOR MPOA MODEL SMALL CELL DEPLOYMENT AGREEMENT AND MODEL SMALL CELL WIRELESS ORDINANCE**

#### **1. Model Agreement and Model Ordinance Disclaimer**

The intent of the draft of the model agreement and model ordinance was to produce samples that give local municipalities a great deal of operational and fiscal flexibility. However, the model agreement and model ordinance are provided here only for review, reference, and example purposes. Neither document constitutes a legal document or the provision of legal advice. For the model agreement and model ordinance to be valid and legally enforceable they must be modified, reviewed, and approved by the appropriate local municipal council and the local municipal attorney or other legal counsel. Some of the provisions in these documents are required under state and federal laws while others are optional. All applicable state and federal laws must be considered when implementing either the model agreement and/or the model ordinance.

The model agreement and model ordinance assumes that the local municipality has adopted local comprehensive plans, zoning ordinances, land development regulations and other regulatory plans in accordance with applicable state laws.

Local municipalities seeking assistance in developing and drafting ordinances, policies, permitting procedures, resolutions and/or risk management policies should contact their local municipal attorney.

**The Model Small Cell Deployment Agreement and Model Small Cell Wireless Ordinance are provided for reference and example purposes only and do not constitute the provision of legal advice. By accepting a copy of the model agreement and model ordinance, you acknowledge having read and understood this Disclaimer.**

#### **2. Primary Legal Sources For Model Agreement and Model Ordinance**

The primary legal sources for development of the model agreement and model ordinance were: (a) *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order*, WT Docket No. 17-79, WC Docket No. 17-84, WL 4678555 (released Sept. 27, 2018) (“2018 Small Cell Order” or “2018 FCC Order”); (b) *City of Portland v. United States*, 969 F.3d 1020 (9<sup>th</sup> Cir. 2020); (c) Sections 67.5090 through 67.5104, RSMo., Missouri’s Uniform Wireless Communications Infrastructure Deployment Act; (d) Sections 67.5110 through 67.5125, RSMo., Missouri’s



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Uniform Small Wireless Facility Deployment Act; (e) 47 U.S.C. § 224 and 47 U.S.C. §253 of the Communications Act of 1934; and (f) American Public Power Association Issue Brief entitled, “*Preserving the Municipal Exemption from Federal Pole Attachment Regulations.*”

### **3. Federal and State Municipal Exemption**

Pursuant to Section 224 of the Federal Communications Act, local municipalities are exempt from the federal FCC regulations as they pertain to pole attachments. Section 253 of the Federal Communications Act and the ruling in *City of Portland v. United States*, 969 F.3d 1020 (9<sup>th</sup> Cir. 2020), local municipalities are restricted from creating barriers that inhibit the deployment of infrastructure for broadband deployment but does not prohibit reasonable regulation by local municipalities. Section 67.5111(5), RSMo., expressly exempts municipal utilities from the Missouri statutes regulating small cell wireless deployments. Finally, based on the foregoing and in accordance with the American Public Power Association’s position on municipal immunity, it is the opinion of the drafter of the model agreement and model ordinance that both the federal and state municipal exemptions remain in effect.

Consequently, Missouri municipalities are not restricted from reasonable regulation of the entities seeking to access their municipal utility poles and right-of-way. The model agreement and model ordinance utilized the federal and state statutory and regulatory limitations as “safe harbors” and industry standards that have been found to be reasonable. The rates, fees, charges, and shot clocks recommended in the model agreement and model ordinance are those from either the federal or state statutes and regulations that the drafter of these documents viewed as most favorable to the city, but still deemed reasonable and utilized as industry standards. These are merely recommendations, because they are industry standards, and are not required or mandated either by federal or state statutes or regulations. However, it is important to note, that municipalities may charge higher rates, fees, and miscellaneous other charges. But it is recommended if they choose to do so, that they have a cost study conducted so that if challenged they have evidence to support the position that their actual costs exceed the industry standards provided in the model agreement and model ordinance.

### **4. National Electric Safety Code Amendments**

The National Electric Safety Code (“NESC”) was amended in 2022 to allow pole attachments in the electrical supply space on utility poles. What previously had been prohibited by the NESC, is now permitted. However, it still remains in the NESC “best practices” that attachments are not in the supply space on a utility pole. Pursuant to the current state of federal and state laws, a municipality cannot prohibit access to the supply space or access to their right-of-way. However, for local municipalities seeking to limit their potential liability and risk, there are three (3) options that may be utilized which may facilitate keeping attachments out of the supply space but



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not inhibit the deployment of telecommunication or broadband services. Those options are: (a) for the city to assist in finding an alternative location for the small cell wireless device other than on the utility pole top, provided such an alternative location does not result in a substantial increase in the deployment of the device; (b) for the city to place a separate pole in close proximity to the location sought for the small cell wireless device; or (c) if neither option 'a' or option 'b' are viable alternatives, then the city may choose to allow the pole top attachment, but require that all work in the supply space be conducted only by city approved workers who are trained and qualified to work in the supply space. The model agreement and model ordinance were developed to implement these alternatives.

## **5. Additional Recommendations For Municipalities**

The following are recommendations regarding the development of regulations for small cell wireless facilities in the public rights-of-way. The additional recommendations are as follows:

- A. Municipalities should develop comprehensive plans, zoning ordinances, land development regulations and other regulatory plans in accordance with applicable state laws, which contemplate the placement of small cell wireless devices.
- B. Municipalities should have written applicable standards for both wireline pole attachments and wireless pole attachments, preferably including detailed drawings of each.
- C. Municipalities should develop and publish, preferably on their webpage, small cell aesthetic design standards regarding the siting of these facilities in the public rights-of-way. These will be unique to each Municipality. Ensure the published aesthetic standards match the aesthetic standards and requirements in the Small Cell Deployment Agreement.
- D. Finally, municipalities should develop a detailed permitting process that encompasses review in accordance with their planning and zoning regulations, established small cell aesthetic design standards, future reserved planning and capacity, and final approval or denial of each permit application. Also, important is to have a single, designated point of contact for all providers that preferably is specifically noted on the municipality's webpage.

## **6. Useful Resources Regarding RF Exposure and Safety Issues**

FCC OET Bulletin 65 Edition 97-01. This was developed in 1997 and there have been supplements to it. It and all of the supplements are currently under review. However, until new



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standards and recommendations are developed it is the best resource. See also Supplement A, Supplement B and KDB Publication 447498 D03 to the FCC OET Bulletin 65.

447498 D04 Interim General RF Exposure Guidance.

OSHA Regulations 1910.97, 1910.268 and 1926.967.

#### **7. National Joint Utilities Notification System (NJUNS)**

For cities interested in joining NJUNS, there is no membership fee for cities. It is paid for by the providers. For access and training information see [www.njuns.com](http://www.njuns.com). Angie Weaver is the Operations Manager and contact person for questions by calling 818-485-2765.

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE AMENDING THE CITY CODE BY ADDING A NEW ARTICLE \_\_\_\_ TO CHAPTER \_\_\_\_, TO ESTABLISH STANDARDS FOR THE COLLOCATION, MAINTENANCE, AND MODIFICATION OF SMALL CELL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY.

**BE IT ORDAINED** by the Governing Body of the City of \_\_\_\_\_, Missouri:

**Section 1.** Article \_\_\_\_ of Chapter \_\_\_\_ of the \_\_\_\_\_ Code is hereby established to read as follows:

**Article \_\_\_\_ . SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES IN THE PUBLIC RIGHT-OF-WAY.**

**Sec. \_\_\_\_ . Purposes and intent.**

The standards of this article are intended to accommodate wireless communications and broadband facilities while promoting the general purposes of this ordinance. Other specific purposes are to:

- a. Enhance the ability of the providers of telecommunications and broadband services to provide such services to the community quickly, effectively, and efficiently;
- b. Assure the highest degree of coordination between residents of the city and the telecommunications and broadband industry in achieving the desired objections of the industry and the general public;
- c. Minimize any adverse impacts of support structures and antennas on residential areas and land uses;
- d. Encourage the location of support structures in nonresidential areas;
- e. Minimize the total number of support structures throughout the city;
- f. Encourage support structures that are not taller than reasonably necessary and that they are, to the maximum extent possible, integrated into the landscape and architecture of the surrounding environment;
- g. Encourage users of support structures and antennas to configure them in a way that minimizes any adverse visual impact of the support structures and antennas through

careful design, siting landscape screening, and innovative camouflaging techniques, consistent with federal and state requirements;

- h. Avoid potential damage to adjacent properties from support structures; and
- i. Comply with all other regulatory requirements imposed by the federal and state government.
- j. It is the city's intent that all other terms and conditions for collocation of wireless facilities and support structures will be set out in a fully executed small cell deployment agreement between the city and any providers.

**Sec. \_\_\_\_\_. Definitions.**

Whenever used in this article, the following terms and their derivations shall be defined as follows:

- a. *Abandon* means any attachment, accessory equipment, ground equipment, facility, pole, or portion thereof that has been left by licensee in an unused or non-functioning condition for more than twelve (12) consecutive months; unless, after notice to licensee, licensee has established to the reasonable satisfaction of the city that the attachment, accessory equipment, ground equipment, facility, pole, or portion thereof has the ability to provide communications or broadband services.
- b. *Accessory Equipment* means any equipment serving or being used in conjunction with a wireless facility or wireless support structure including, but not limited to, utility or transmission equipment, switches, wiring, power supplies, generators, batteries, cables, equipment buildings, cabinets, storage sheds, shelters or similar structures associated with an antenna located at the same fixed location as the antenna.
- c. *Annual Rate, Attachment Rate, or Rate* means the rate for placement of attachment(s), Facilities, accessory equipment, and/or ground equipment on and around city poles or in the right-of-way payable on an annual basis, as specified in the small cell deployment agreement.
- d. *Antenna or pole top attachment* means communications or broadband equipment that transmits or receives electromagnetic radio signals used in the provision of wireless services, to include the antenna, coax, support masts, grounding or bonding wires, power supply, nuts washers and through bolts used by licensee to provide licensee services that are owned or controlled by licensee and attached to city poles or facilities pursuant to a small cell deployment agreement.
- e. *Applicable standards* means all applicable engineering and safety standards, to include best practices, governing the installation, maintenance, and operation of wireless facilities and the performance of all work in or around facilities and includes the most current versions of National Electric Safety Codes, the National

Electrical Code, and the regulations of the Occupational Safety and Health Administration, each of which is incorporated by reference in this ordinance, these codes' best practices, and other reasonable safety and engineering requirements of the city, provided such requirements of the city are applied on a non-discriminatory basis to attaching and all other users, and provided further that such requirements of the city are consistent with this ordinance. All future updates or revisions of said applicable standards are hereby incorporated by reference herein.

- f. *Applicant* means any person or entity that submits an application to the city requesting a permit for authorization of the deployment or collocation of a wireless facility and/or licensee pole for placement of such wireless facility and/or licensee pole and the agents, employees and contractors of such person or entity.
- g. *Application* means a written submission of the form and information submitted by applicant to the city to obtain permission from the city for the placement, attachment, collocation, modification, or removal of licensee's wireless facility, accessory equipment, and/or licensee pole at a specified location. The form of the application, application fee and information required shall be prescribed by the city in the small cell deployment agreement.
- h. *Attaching entity* means any public or private entity, including licensee, which pursuant to a license, joint use, joint ownership, or other attachment agreement with city, places an attachment on city's pole(s).
- i. *Attachment(s)* means any wireless facility or equipment that is placed directly on city poles and may, upon written approval from the city, include an antenna attachment made on the pole top, pursuant to an executed small cell deployment agreement. All such attachments are subject to the requirements in this ordinance and the small cell deployment agreement.
- j. *Broadband* means relatively high-speed internet access to include several high-speed transmission technologies such as cable modems, fiber, satellite and wireless.
- k. *Cable or Fiber* means a single aerial cable, wire or fiber optic strand used by licensee to provide licensee service(s) and any hardware or equipment thereto, owned or controlled by licensee and attached to city poles pursuant to a small cell deployment agreement. A cable or fiber is "placed on" or "attached to" a city pole if any portion of it is physically located on the city pole. All applicants shall provide a detailed description of applicant's cable or fiber in its application.
- l. *Camouflaged Facility* means any attachment, facility, accessory ground equipment or ground equipment that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that it blends into the surrounding environment and is visually unobtrusive as approved by the city and may include, but is not limited to one that is hidden beneath a façade, blended with surrounding area design, painted to match the supporting area or disguised with artificial tree branches.

- m. *Collocate or Collocation* means to install, attach, construct, mount, maintain, modify, operate, or replace wireless facilities on or immediately adjacent to a wireless support structure or pole for the purpose of transmitting and/or receiving radio frequency signals whether or not there is an existing antenna or other attachment on the wireless support structure or pole, and/or to modify an existing wireless support structure for the purpose of installing, attaching, or mounting an antenna or other attachment on such structure all in compliance with applicable standards and laws
- n. *Communication space* means that space located above the common space on the pole, and below the communication worker safety zone. No communication or broadband facilities shall be located in the common space or the communications worker safety zone.
- o. *Communication worker safety zone* means that dedicated space on a pole that separates the city's supply space from the communication space. No power supply facilities or wireless facilities shall be allowed in the communication worker safety zone.
- p. *Communications service(s)* means, without limitation, services performed consisting of the dissemination or interchange of audio, visual or data content using cable, telecommunications, data communications, and includes Broadband.
- q. *Electric poles* means electrical distribution poles owned or maintained by the city.
- r. *Electrical supply space or supply space* means that portion of a pole which is determined to be usable for electric power supply and that is located between the topmost location of the communication worker safety zone and the top of the pole.
- s. *Facilities* means all poles and equipment of the city, along with all approved licensee poles and equipment used by licensee in providing electrical power and/or wireless communications and/or broadband service(s), including but not limited to, electric supply equipment, cable or fiber, fiber optic, copper, and/or axial cables, supporting strands, service drops utilized to provide electric supply service, communication or broadband services.
- t. *FCC* means the Federal Communications Commission of the United States.
- u. *Ground Equipment* means all parts of a wireless facility that are located on the surface of the ground and, if included in an approved Application or otherwise approved by the city in writing, to include an incidental structure to support metering devices.
- v. *Historic District* means a building, property, or site, or group of buildings, properties, or sites that are either (i) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual

who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i through Section VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C.

- w. *Law* or *laws* means a federal or state statute, common law, code, rule, regulation, order, or local ordinance, regulation, or resolution.
- x. *Licensee* means any wireless services provider or wireless infrastructure provider who has an executed small cell deployment agreement on file with the city.
- y. *Licensee pole* means any pole or support structure owned and maintained by a licensee.
- z. *Licensee service(s)* means the wireless communications and/or broadband service(s) provided or intended to be provided by licensee to its customers using its facilities.
- aa. *Make-Ready* or *Make-Ready Work* means all work that the city reasonably determines to be required prior to attachment by the applicant to accommodate the wireless facilities and to comply with all applicable standards. Such work includes, but is not limited to, rearrangement and/or transfer of existing attachments and/or facilities, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), pole replacement and construction but does not include routine maintenance.
- bb. *Modification* or *Modify* means any change or alteration affecting wireless facilities or licensee's poles including without limitation any change in the number, type, ownership, or use of, which causes the information provided by licensee in the prior application(s) to be incorrect or incomplete in any respect.
- cc. *Permit* means the approved application issued by the city after all reviews are completed by the appropriate city departments in response to a permit application being granted. A permit, after all make-ready work is completed, provides permission to licensee for the collocation on or from the city's pole, support structure and/or placement of licensee poles in the right-of-way of the specific wireless facility or licensee pole identified in the application. The form of the permit application shall be prescribed by the city in the small cell deployment agreement.
- dd. *Pole(s)* means both electrical poles and roadway poles, to include other poles and similar structure that are used in whole or in part for electric distribution, lighting, traffic control, or a similar function; that the city owns or maintains. It shall not include electric transmission structures/primary pole(s), or any other structure(s) owned and/or maintained by the city. It also shall not include licensee poles.

- ee. *Pole Loading Study/Analysis* means the engineering calculations and analysis of the existing and proposed loads on a pole.
- ff. *Radio Frequency* or *RF* means the radio waves and microwaves emitted by transmitting Antennas and all equipment or devices contained in electronic-electrical products that are capable of emitting Radio Frequency energy by radiation, conduction, or other means,
- gg. *Right-of-way* means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use. Right-of-way does not include any city owned aerial lines.
- hh. *Riser* means metallic or plastic encasement materials placed vertically on the pole to guide and protect wires and cables.
- ii. *Roadway poles* means City owned light poles, decorative poles, traffic light poles, pedestrian poles, sign poles, and similar structures, but excludes electric poles.
- jj. *Service drop* means cables, wires, fiber, and strands that serve to connect a customer to the service provider's distribution network in order to provide service to said customer.
- kk. *Small cell facility* means a Wireless Facility that meets each of the following qualifications:
- i. Each antenna is located inside an enclosure of no 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 no more than six (6) cubic feet in volume; and
  - ii. Accessory equipment enclosures that are no larger than seventeen (17) cubic feet in volume, provided that no single piece of equipment on the pole shall exceed nine (9) cubic feet in volume; and no single piece of ground equipment shall exceed fifteen (15) cubic feet in volume; and
  - iii. Wireless facilities are mounted on structures no more than ten (10) feet taller than the tallest existing pole or other structure within five hundred (500) feet of the new pole, and do not extend existing structures on which they are located by more than 10 percent.
  - iv. The facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified by the FCC or NESC, whichever is least.

- ll. *Supply Space* means that portion of city poles which is determined to be usable for electric power supply distributed by the city, and that is located between the topmost location of the communication worker safety zone and the top of the pole.
- mm. *Wireless Facility* means equipment at a fixed location that enables wireless communication and broadband services between user equipment and a communication and/or broadband network, including: Equipment associated with wireless communications or broadband; and radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facilities include small cell facilities. However, wireless facility does not include wireline backhaul facilities, coaxial or fiber optic cable 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.
- nn. *Wireless infrastructure provider* means any person or entity that builds or installs wireless communication or broadband transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider or Applicant for the application submitted to the city.
- oo. *Wireless services* means any services, including without limitation telecommunication and broadband, provided to the general public, including a particular class of customers, and made available using licensed or unlicensed spectrum, whether at a fixed location or mobile, using Wireless Facilities.
- pp. *Wireless services provider* means a person or entity who provides wireless services.
- qq. *Wireless support structure* or *support structure* means a pole, tower, base station, or other structure, whether or not it has an existing antenna facility, that is used or to be used for the provision of wireless service(s).
- rr. *Wireline backhaul* means a physical transmission path, all, or part of which is within the right-of-way, used for the transport of communications and/or broadband data by wire from a wireless facility to a network.

**Sec. \_\_\_\_\_. Applicability.**

- a. This article applies to the placement of wireless facilities and wireless services providers' poles in the right-of-way which are otherwise authorized by a small cell deployment agreement and applicable laws.
- b. Nothing herein shall be construed to exempt an applicant from any other applicable ordinances, rules, regulations, or other requirements of the city, including but not limited to building code, electrical codes, and the city's right-of-way management code.

- c. If any other applicable law, regulation, or provision of this code imposes a more restrictive structural design or construction requirement, the most restrictive requirement will control, except for roadway poles which shall be governed by Sections 67. 67.5111 through 67.5122, RSMo. and more specifically the small cell deployment agreement.

**Sec. \_\_\_\_ . Application and permit required.**

- a. No person shall collocate, install, structurally modify, or change in height, dimension, or number of antennas on a wireless facility or pole in the right-of-way without having first entered into a small cell deployment agreement and obtained a permit from the city authorizing such activity.
- b. Unless expressly stated otherwise in the small cell deployment agreement, maintenance or repair of existing permitted wireless facilities or poles shall only require written notification in advance of the maintenance or repair and are excluded from the permitting requirement of this section.

**Sec. \_\_\_\_ . Application fee.**

Each applicant seeking to obtain a permit pursuant to this article shall pay a non-refundable fee to the city, for each application, in the amount specified in the Small Cell Deployment Agreement, and which amount may be changed from time to time without amendment to this ordinance.

**Sec. \_\_\_\_ . Application requirements.**

Each application for a permit shall be filed with the city's \_\_\_\_\_ and shall include the following information:

- a. Licensee shall provide the following information to the city, together with the city's small cell facilities permit application and/or the city's licensee pole permit application as a condition of placing any facilities on a city pole or city wireless support structure, or of placing any licensee pole within the right-of-way:
  - 1. A copy of the small cell deployment agreement between the city and applicant;
  - 2. Site specific structural integrity calculations established by pole loading studies, wind bearing studies, make-ready analysis prepared by a professional engineer;

3. The location where each proposed licensee facility or licensee pole would be installed and photographs of the location and its immediate surroundings depicting the licensee facilities, licensee poles, and the poles or structures on which each proposed licensee facility will be mounted or location where licensee poles or structures will be installed. This should include a depiction of the completed facilities;
4. Specifications (to include physical dimension of height, width, depth, volume and weight with mounts and other necessary hardware), and drawings for each proposed licensee facility covered by the application as it is proposed to be installed;
5. The equipment type and model numbers for the antennas and all other equipment associated with the facility;
6. A proposed schedule for the installation and completion of each facility covered by the application, if approved;
7. Certification that the collocation complies with the collocation requirements and conditions contained in this ordinance and the small cell deployment agreement, to the best of licensee's knowledge;
8. In the event that the proposed facility is to be attached to an existing pole owned by an entity other than the city, licensee shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation; and
9. Each application shall be accompanied by licensee's payment of applicable fees, rates, and charges as set out in the small cell deployment agreement.

**Sec. \_\_\_\_\_. Issuance or denial of permit.**

- a. *Application Processing.* City will process applications for permit(s) as promptly as is reasonable and will make best efforts to comply with the following timeframes, but such timeframes shall not be binding on the city:
  1. The time period for approval of applications will begin when the application is submitted and may be tolled within the first thirty (30) days after the submission of the application if the city notifies applicant city needs additional time to review the application, or that such application is incomplete and identifies all missing information that is required for the application to be complete.

2. The processing deadline tolled from the time the city sends the notice of incompleteness to the time applicant provides the missing information. That processing deadline may also be tolled by mutual agreement of the parties.
  3. An application to collocate a wireless facility on an existing pole or an existing wireless support structure will be processed on a nondiscriminatory basis within sixty (60) days after submission of a completed application.
  4. An application to collocate a wireless facility that includes the installation or replacement of a new pole or a new wireless support structure will be processed on a nondiscriminatory basis within ninety (90) days.
  5. All deadlines applicable to city shall be tolled during any period in which delay is the result of Applicant's or third parties' actions or inactions (i.e., delays in payment of fees, rates, or other charges, failure to rearrange or transfer attachments, etc.).
- b. *Consolidated Applications.* Unless otherwise mutually agreed by the Parties, each application seeking a permit within the jurisdiction of the city may file a consolidated application for the collocation of up to five (5) small cell facilities provided all such facilities involve substantially the same type of small cell facility, substantially the same type of support structures and do not require the construction or installation of a new support structure.
1. Such consolidated applications shall be reviewed and processed within sixty (60) days of receipt of the complete consolidated application. If an application includes multiple small cell facilities, the city may remove small cell facility collocations from the application and treat separately Facilities for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. At the city's discretion, the city may issue separate permits for each collocation that is approved in a consolidated application or a single permit encompassing all facilities approved in a consolidated application.
  2. In the event consolidated applications are submitted for fifty (50) separate facilities, city shall have an additional thirty (30) days to review and process such applications, or longer if mutually agreed to by the parties.

**Sec. \_\_\_\_ . General safety and siting criteria.**

Wireless providers shall:

- a. At their sole cost and expense, install, maintain, repair, modify and remove their facilities and poles in a safe manner in accordance with good utility practice and keep them in good condition and good repair in accordance with all applicable standards, laws, and specifications;
- b. For all small cell facilities and attachments outside the Supply Space, or on secondary or roadway poles indemnify and hold city harmless from all liability, except if such liability results from the negligence or willful misconduct of the city, city employee, or city agent;
- c. For all small cell facilities and attachments inside the supply space, indemnify and hold city harmless from all liability, except if such liability results from willful misconduct of the city, city employee, or city agent;
- d. Install all antennas on poles that are bucket truck accessible and only on roadway poles.
- e. Limit the height of all new or replacement poles or wireless support structures so as not to exceed 50 feet in height including the antennas and no more than 10 percent taller than other adjacent structures. The antenna shall not extend existing structures on which the small cell facility is located to a height of more than 50 feet or more than 10 percent, unless expressly authorized by city;
- f. Limit wireless facilities to no greater than 36x24x12 inches in size (whether a receiver, transmitter, or combination unit), Only one will be permitted per pole and only one wireless provider is permitted on a single pole subject to pole loading and wind bearing studies;
- g. Install antenna coax cable with a maximum size of two (2) inch diameter schedule 40 PVC conduit, unless the city consents otherwise. Conduit supports must be installed every five (5) feet;
- h. Install two RF warning signs – one near pole top level where the safe approach level ends (for FCC general population/uncontrolled power levels) and one near the base of the pole. These signs shall indicate the safe approach distance. Each sign shall also indicate the wireless facility's owner's name and contact number where a representative may be reached twenty-four (24) hours per day, seven (7) days per week. All such signage shall be kept accurate and current;
- i. Collocate all wireless facilities and antennas which require electrical power with disconnects/shutoffs allowing the city to disconnect power (including both ac and dc battery power) to avoid RF exposure to its employees when working around such facilities. However, such shutoffs shall only be performed in coordination with the wireless provider's lockout and/or tagout procedures which are required with all wireless facility collocations;

- j. Be placed so as not to create an adverse obstruction to pedestrian and vehicular sight lines along a street or alley;
- k. Be placed in such a manner as to avoid material interference with existing utilities and infrastructure;
- l. Comply, and not interfere, with the requirements of the Americans with Disabilities Act (ADA) and not obstruct, impede, or hinder usual pedestrian, bicycle, or vehicular travel, or interfere with the operation or maintenance of signal lights, signage, streetlights, street furniture, fire hydrants, trees and landscaping, underground utilities, or business district maintenance;
- m. Unless city consents otherwise, only one wireless device may be attached to a streetlight bracket, no more than 3 feet and no less than 6 inches from the roadway pole. Maximum weight of the device shall not exceed 15 pounds when installed on a streetlight arm;
- n. For safety, no work shall be completed in the supply space on electric poles without written approval of the city;
- o. A driven pole ground is required for each antenna installation and installed in accordance with city construction standards; and
- p. All facilities shall be designed, constructed, operated, and maintained in compliance with all generally applicable health and safety standards, regulations, and laws, including without limitation all applicable regulations for human exposure to RF emission.
- q. *Siting Guidelines*. Preferred locations and configurations for licensee facilities within the city, provided that nothing herein shall be construed to permit a wireless facility in any location that is otherwise prohibited by the applicable standards or laws.
  - i. *Order of Preference – Location*, from most preferred to least preferred is: (a) industrial zone; (b) commercial zone; (c) Mixed commercial and residential zone; and (d) residential zone:
  - ii. *Discouraged Locations*: (a) medium and high-density residential areas; (b) schools, daycare facilities, playgrounds, and similar facilities; (c) areas that adversely impact view corridors; (d) locations directly in front of doors, windows, balconies, or residential frontages; and (e) community gathering places such as community halls, churches, commercial eating and drinking establishments.
  - iii. *Setbacks for Discouraged Locations*. In the event a discouraged

location is the only feasible location, then collocation of wireless facilities shall ensure a five hundred (500') feet setback from the discouraged location.

**Sec. \_\_\_\_\_. General aesthetic criteria.**

Unless city expressly authorizes otherwise, wireless providers shall:

- a. In residential areas, place wireless facilities between properties at the common property line and not in front a house; in commercial and industrial areas, be placed at the common property line between properties whenever possible;
- b. If placed on a new wireless support structure, be placed equidistant from any adjacent poles or wireless support structures;
- c. Be located out of the drip-zone of street trees to prevent disturbance within the critical root zone;
- d. Not cause or result in the removal of any existing street furniture, street tree, or other city infrastructure, without the express written permission of and compensation to the city;
- e. Wireless facilities may be permitted on decorative roadway poles, or the decorative roadway pole may be replaced by a licensee, when necessary, but any replacement pole shall reasonably conform to the design aesthetics of the decorative roadway pole being replaced. The term “reasonably conform” means that the design aesthetics of the replacement pole shall be as nearly identical to the decorative roadway poles replaced as is feasible. The city is authorized to determine whether the replacement pole reasonably conforms, based upon the reasonable objective design standards published in advance by the city;
- f. Only with city’s consent may a wireless facility be collocated on an electric pole. If consent is granted, the same aesthetic standards as apply to roadway poles will apply to electric poles;
- g. all primary and accessory equipment enclosures shall be no larger than 17 cubic feet in volume;
- h. Installation of devices and antennas should be visually obscure, which means any facility must be covered, blended, painted, disguised, camouflaged, or otherwise concealed to blend with the surrounding environment;
- i. All wireless providers shall comply with and observe all applicable city, state and federal historic site or district preservation laws and requirements;

- j. All new poles shall be predesigned, and approved stealth poles, such that all equipment, including any wiring, can be concealed inside the pole. Replacement poles must match adjacent poles in style and form (round, octagonal, fluted, tapered, etc.);
- k. In situations where attachment will be made to existing poles and/or support structures, the color of all attachments associated with the small cell facility will, as closely as possible, match the existing pole color and conceal all equipment, cabling, and conduit through the use of approved shrouding or camouflaging equipment;
- l. Antennas that are to be top-mounted and concealed within a radome that also conceals the cable connections, antenna mount and other hardware. GPS antennas are to be placed within the radome or directly above the radome not to exceed six inches. The radome or side-mounted antenna and GPS antenna are to be non-reflective and painted or otherwise colored to match the existing pole or support structure;
- m. When pole-mounted equipment has been consented to by city, all equipment other than the antenna(s), electric meter and disconnect switch must be concealed within an equipment shroud not to exceed seventeen cubic feet in total volume. The equipment must be installed no lower than fifteen feet above ground level. The equipment shroud must be non-reflective and painted, wrapped, or otherwise colored to match the existing pole. Unless the city consents otherwise, equipment shrouds are to be mounted flush to the pole, standoff mounts for the equipment shroud may not exceed six inches and must include metal flaps to conceal the space between the shroud and the pole; and
- o. All new utility service lines are to be undergrounded whenever possible to avoid additional overhead lines. When possible, the wires are to transition directly into the pole base without any external junction box.

**Sec. \_\_\_\_\_. Maintenance and repair.**

A provider shall maintain all personal property and accessory equipment in the right-of-way associated with its wireless facilities, including, but not limited to , wireless support structures, accessory equipment, and all other components of its network, in a condition that conforms to the requirements of this article and the small cell deployment agreement. This responsibility includes, as applicable, regular maintenance, periodic re-painting, and timely repairs or equipment replacement in the event of damage. Upon notice from the city of provider's noncompliance with this section, the provider must remedy the violations within the time specified in the small cell deployment agreement, or the city may repair or remove the damaged equipment at provider's expense.

**Sec. \_\_\_\_\_. Abandonment.**

Any wireless facility that is not operated for a continuous period of twelve (12) days after completion of initial installation, excluding nonoperation due to a natural disaster or other unforeseeable circumstance or temporary equipment failure, shall be considered abandoned. If a wireless facility is abandoned, the provider shall notify the city within thirty (30) days of the abandoned status of such facility. No later than ninety (90) days after any wireless facility is abandoned, a provider shall remove the abandoned facility at the provider's sole cost and expense.

**Sec. \_\_\_\_\_. New and replacement poles.**

- a. *Pole material and style.* Unless city consents otherwise, new wireless support structures shall not be constructed of wood unless located in alleys. New wireless support structures shall be hollow metal, fiberglass or a similar composite material that is structurally designed and certified for the intended use, and generally round or octagonal, and designed for internal cabling. Providers placing new wireless support structures in designated development or redevelopment areas that have an established streetscape style and color for light poles and other poles shall coordinate with the city to match the established character, style, height, and color, as is reasonably feasible.
- b. *Height Limitations.* Unless the city consents otherwise, new or replacement poles or wireless support structures on which wireless facilities are collocated may not exceed fifty (50) feet in height including the antennas and may not be more than ten (10) percent taller than other adjacent structures.
  1. The use of pole top extensions is discouraged and shall not be utilized unless the city agrees to the use of such extensions.
  2. *Height Exceptions or Variances.* If Applicant proposes a height for a new or replacement pole or support structure in excess of the above height limitations, on which the wireless facility is proposed for collocation, Applicant must apply for a special use permit in conformance with procedures, terms, and conditions set forth in the city ordinances.

**Sec. \_\_\_\_\_. Roadway Poles Exception.**

Notwithstanding any provision herein to the contrary, roadway poles, pursuant to Sections 67.5111 through 67.5122, RSMo. are excepted from this ordinance so long as Sections 67.5111 through 67.5122, RSMo. are in effect. Requirements for roadway poles shall be subject to the specific provisions of the small cell deployment agreement applicable to roadway poles and in compliance with the applicable Missouri statutes. However, upon the expiration or repeal of Sections 67.5111 through 67.5122, RSMo., the roadway pole exception shall cease to be

applicable, except that the annual rate for collocations on roadway poles shall remain unchanged so long as the permit authorizing the collocation on the roadway pole remains in effect.

**Sec. \_\_\_\_\_. Summary of ordinance for publication.**

This ordinance shall be published by the following summary:

Ordinance No. \_\_\_\_\_ Summary

On \_\_\_\_\_, \_\_\_\_, 20\_\_ , the City of \_\_\_\_\_, Missouri, passed Ordinance No. \_\_\_\_\_. The ordinance amends the City of \_\_\_\_\_ Code by adding a new Article \_\_\_ to Chapter \_\_\_ to establish standards for the construction, maintenance, and modification of small cell wireless facilities in the public right-of-way. A complete copy of the ordinance is available at [www.\\_\\_\\_\\_\\_](http://www._____.), or in the office of the city clerk, [insert address], free of charge. This summary is certified by the city attorney.

**Sec. \_\_\_\_\_. Effective date.**

This ordinance shall be in full force and effect from and after its adoption and publication by summary once in the official city newspaper.

Introduced:

Adopted:

Mayor: \_\_\_\_\_

[Seal]

Attest:

\_\_\_\_\_, City Clerk

Certification of Publication Summary:

\_\_\_\_\_, City Attorney

# SMALL CELL DEPLOYMENT AGREEMENT

**Between**

**THE CITY OF** \_\_\_\_\_

**and**

\_\_\_\_\_

SAMPLE

THIS SMALL CELL DEPLOYMENT AGREEMENT (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”), by and between the City of \_\_\_\_\_ (“City”) and \_\_\_\_\_, (“Licensee,” which term shall include its wholly-owned subsidiaries).

## RECITALS

City is a \_\_\_\_\_ City created and existing pursuant to Missouri law. City is the owner of a municipal utility performing the essential public service of distributing electric power; and

City is responsible for safeguarding the integrity of its electric system, obtaining fair compensation for the use of its infrastructure through collection of fees and other charges, ensuring compliance with all applicable federal, state, and local laws, rules and regulations, ordinances, standards, and policies and permitting fair and reasonable access to City’s Right of Way, Electric Poles, Roadway Poles and Facilities; and

Licensee proposes to locate certain of its Small Cell Facilities (“Attachments”) on City’s Poles and/or Facilities that are owned and managed by the City. Licensee further proposes to locate certain of its Poles (“Licensee Poles”) within the Right-of-Way, which is owned and/or managed by the City, for placement of Small Cell Facilities to provide communication and Broadband services; and

The Parties intend that this Agreement shall replace and supersede all previous Small Cell Deployment Agreements or infrastructure used for small cell deployment agreements between the Parties upon the Effective Date of this Agreement.

Therefore, in consideration of the mutual covenants, terms, and conditions set out below, the Parties agree as follows:

### 1.0 SCOPE OF AGREEMENT

- 1.1 Grant of License. Subject to the provisions of this Agreement, City grants Licensee, via lawfully obtained Permit(s), a revocable, nonexclusive license authorizing Licensee to Collocate Small Cell Facilities on City Poles and Licensee Poles within the City’s Right of Way for the placement of Small Cell Facilities within the Right-of-Way owned and/or maintained by the City, provided City may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient capacity or for reasons relating to safety and reliability, unless Licensee will resolve the issue
- 1.2 Transmission Structures. Unless otherwise agreed, this Agreement does not authorize the use of City transmission structures, which are those structures used to support electric circuits of 34 kilovolts and higher.
- 1.3 Strand Mounted Micro Wireless Facilities. This Agreement does not apply to Strand Mounted Micro Wireless Facilities. Such devices will only be allowed pursuant to a separately negotiated rider or addendum to this Agreement.

- 1.4 Parties Bound by Agreement. Licensee and City agree to be bound by all provisions of this Agreement.
- 1.5 Permit Issuance Conditions. City will issue one or more Permit(s) to Licensee only when City determines, in its sole judgment, exercised reasonably and on a non-discriminatory basis, that it has sufficient Capacity to accommodate the requested Attachment(s), that there are no issues of safety or reliability, taking into account (i) the Licensee's willingness to resolve any sufficiency issue through Make-Ready, and (ii) such Permit(s) comply with all Applicable Standards.
- 1.6 Reserved Capacity. Access to space on City Poles will be made available to Licensee with the understanding that certain Poles may be subject to Reserve Capacity for future City use. At the time of Permit issuance, City shall notify Licensee if Capacity on particular poles is being reserved pursuant to a plan for reasonably foreseeable future City use.
- 1.6.1 Reclaimed Capacity. For Attachments made with notice of such a Reservation of Capacity, on giving Licensee at least sixty (60) days prior notice, City may reclaim such Reserved Capacity at any time following the installation of Licensee's Attachment if required for City's future use. City shall reclaim Reserved Capacity from the Attaching Entity(s) in order of the most recent one to have attached its Facilities or Equipment to the Pole upon which the City needs the Reserved Capacity. If reclaimed for City's use, City may at such time also install associated Facilities. City shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the Cost of any Make-Ready Work needed to expand Capacity for City's use, so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the Cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 7. Licensee shall not be required to bear any of the Costs of rearranging or replacing its Attachment(s), if such rearrangement or replacement is required as a result of an additional Attachment or the Modification of an existing Attachment sought by any other entity or if City installs Facilities that will be used for commercial communications or Broadband purposes.
- 1.7 No Interest in Property. No use, however lengthy, of any City Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of City's rights to City Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a Licensee only.
- 1.8 Licensee's Right to Attach. Nothing in this Agreement, other than a Permit issued pursuant to Article 6, shall be construed as granting Licensee any right to attach

Licensee's Facilities to any specific Pole or place Licensee's Poles within the City's Right-of-Way.

- 1.9 City's Rights over Poles and Right of Way. The Parties agree that this Agreement does not in any way limit City's right to locate, operate, maintain, or remove its Poles or utilize its Right-of-Way in the manner that will best enable it to fulfill its service requirements or to comply with any federal, state, or local legal requirement.
- 1.10 Expansion of Capacity. City will take reasonable steps to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. It shall not be considered reasonable for City to refuse to expand Pole Capacity, including Pole replacement, if the Licensee agrees to bear the Cost for resolving the Capacity issue, unless other safety or reliability concerns are implicated. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require City to install, retain, extend, or maintain any Pole for use when such Pole is not needed for City's own service requirements.
- 1.11 Other Agreements. Except as expressly provided in this Agreement, nothing in this Agreement shall limit, restrict, or prohibit City from fulfilling any agreement or arrangement regarding its Poles or Right-of-Way into which City has previously entered with others not party to this Agreement. Further, City reserves the right to grant permission to use its Poles, Facilities and Right-of-Way for the same or similar purposes to other parties.
- 1.12 Permitted Uses. Nothing in this Agreement shall be construed to require City to allow Licensee to use City's Poles or Right-of-Way after the termination of this Agreement.
- 1.13 Overlapping. The following provisions apply to Overlapping:
- 1.13.1 Licensee shall Overlap, in accordance with the requirements of Article 6 and this Section 1.13. Overlapping will be limited to fiber, coaxial cables, and only on a permanent basis. Absent such authorization, Overlapping constitutes an Unauthorized Attachment under Section 2.56.
- 1.13.2 Overlapping by Licensee will be allowed by City if such Overlapping can be done consistent with Applicable Standards, subject to any notice regarding Reserve Capacity pursuant to Article 1.6. Overlapped Wireless Facilities shall pay the Annual Attachment Rate pursuant to Appendix A, and Licensee shall be responsible for all Make-Ready Work and other charges associated with the Overlapping.
- 1.13.3 Make-Ready Work procedures set forth in Article 7 shall apply, as necessary, to all Overlapping.

1.13.4 Licensee shall provide notice to City prior to installation and again within thirty(30) days following the installation of Overlashing.

1.14 Enclosures. Licensee shall not place Pedestals, Vaults, and/or other Enclosures within four (4) feet of any Pole or other City Facilities without City’s prior written permission. If permission is granted, all such installations shall be per the Applicable Standards. Such permission shall not be unreasonably withheld. Licensee shall also notify City upon completion of the installation of Enclosures.

1.15 Other Parties. This Agreement does not confer any other rights not described herein nor does it permit Licensee, or parties contracted to use Licensee’s Attachments and/or Licensee Poles, to use City’s Right-of-Way. Such Other Parties will be required to obtain authorization from the City for use of the Right-of-Way.

1.16 Use of Right-of-Way. This Agreement does not authorize the Licensee to install Attachments, Ground Equipment, Facilities, or any type of Licensee Pole, wireless towers, or Support Structures in the Right-of-Way. Any requests to install Attachments, Ground Equipment, Facilities, or any type of Licensee Pole, wireless towers, or Support Structures in the Right-of-Way requires the approval of the City through the Permitting process described herein.

1.17 The words “shall” and “will” are always mandatory and not merely permissive.

## 2 DEFINITIONS

As used in this Agreement, the following terms, when initially capitalized, shall have the meanings specified in this Section 2.

2.1 “Abandon” means any Attachment, Ground Equipment, Facility, Pole, or portion thereof that has been left by Licensee in an unused or non-functioning condition for more than one hundred twenty (120) consecutive days; unless, after notice to Licensee, Licensee has established to the reasonable satisfaction of the City that the Attachment, Ground Equipment, Facility, Pole, or portion thereof has the ability to provide Communications Services.

2.2 “Accessory Equipment” means any equipment serving or being used in conjunction with a Wireless Facility or Wireless Support Structure including, but not limited to, utility or transmission equipment, switches, wiring, power supplies, generators, batteries, Cables, equipment buildings, cabinets, storage sheds, shelters or similar structures associated with an Antenna located at the same fixed location as the Antenna.

2.3 “Affiliate” when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee,

2.4 “Annual Rate” or “Attachment Rate” or “Rate” means the rate for placement of Attachment(s), Facilities and/or Ground Equipment on and around City Poles or in the Right-of-Way payable on an annual basis, as specified in this Agreement.

- 2.5 “Antenna” or “Pole Top Attachment” means Communications equipment that transmits or receives electromagnetic radio signals used in the provision of Wireless Services, to include the Antenna, coax, support masts, grounding or bonding wires, power supply, nuts washers and through bolts used by Licensee to provide Licensee Services that are owned or controlled by Licensee and attached to City Poles or City Facilities pursuant to this Agreement.
- 2.6 "Applicable Standards" means all applicable engineering and safety standards, to include best practices, governing the installation, maintenance, and operation of Small Cell Facilities and the performance of all work in or around Facilities and includes the most current versions of National Electric Safety Codes ("NESC"), the National Electrical Code ("NEC"), and the regulations of the Occupational Safety and Health Administration ("OSHA"), each of which is incorporated by reference in this Agreement, these codes best practices, and other reasonable safety and engineering requirements of the City, provided such requirements of the City are applied on a nondiscriminatory basis to Attaching Entities and all other users and provided further that such requirements of the City are consistent with this Agreement. All future updates or revisions of said Applicable Standards are hereby incorporated by reference herein.
- 2.7 “Applicant” means any person or entity that submits an Application to the City requesting a Permit for authorization of the deployment or Collocation of a Small Wireless Facility and/or Licensee Pole for placement of such Small Wireless Facility and the agents, employees, and contractors of such person or entity.
- 2.8 “Application” means a written submission of the form and information submitted by Licensee to the City to obtain permission from the City for the Collocation, or removal of Licensee’s Small Wireless Facility, Accessory Equipment, Ground Equipment and/or Licensee Pole at a specified location. The form of the Application, Application fee, and information required shall be prescribed by the City and is incorporated in this Agreement. See Appendix B.
- 2.9 “Approved Contractor” or Approved Employee” means a contractor or Licensee employee approved in writing by the City and who shall be trained, certified, licensed, pre-qualified, bonded, and insured to work within the Supply Space in compliance with all Applicable Standards and Laws. All such workers shall have successfully completed the OSHA training programs for working within a ten (10) foot safety-working clearance zone over, under, and around energized primary, secondary, and services lines. RF safety training is mandatory for all Approved Contractors and Approved Employees that access the area in or above the Supply Space to maintain and operate Licensee’s Facilities. In addition, all such workers shall undergo continuing training to maintain current skills and certifications in electric line safety methods and equipment and must be certified by the State of Missouri.
- 2.10 “Attaching Entity” means any public or private entity, including Licensee, which pursuant to a license, joint use, joint ownership, or other attachment agreement with City, places an Attachment on City’s Pole(s).

- 2.11 "Attachment(s)" means any Wireless Facility or equipment that is placed directly on City Poles or City Support Structures, and may, upon written approval from the City, include an Antenna Attachment made on the Pole top, pursuant to this Agreement. Attachments in the Supply Space and Pole Top Attachments will be defined in the permitting process and will only be on Poles with street access and which are mutually agreed to by the City and Licensee. All such Attachments are subject to the requirements in the City Ordinance and this Agreement.
- 2.12 "Broadband" means relatively high-speed internet access to include several high-speed transmission technologies such as cable modems, fiber, satellite, and wireless.
- 2.13 "Cable" or "Fiber" means a single aerial cable, wire, or fiber optic strand used by Licensee to provide Licensee Service(s) and any hardware or equipment thereto, owned or controlled by Licensee and attached to City Poles pursuant to this Agreement. A Cable or Fiber is "placed on" or "Attached to" a City Pole if any portion of it is physically located on the City Pole. Licensee shall provide a detailed description of Licensee's Cable or Fiber in its Application.
- 2.14 "Camouflaged Facility" means any Attachment, Facility, Accessory Equipment, or Ground Equipment that is covered, blended, painted, disguised, camouflaged, or otherwise concealed such that it blends into the surrounding environment and is visually unobtrusive as approved by the City and may include, but is not limited to one that is hidden beneath a façade, blended with surrounding area design, painted to match the supporting area or disguised with artificial tree branches.
- 2.15 "Capacity" means the ability of a Pole to accommodate an additional Attachment based on Applicable Standards, including space, and loading considerations.
- 2.16 "Carrier" means a provider of Wireless Services authorized by the Licensee to utilize the Licensee's Facilities.
- 2.17 "Climbing Space" means that portion of a Pole's surface and surrounding space that is free from encumbrances to enable each Party's employees and contractors to safely climb, access and work on Facilities and equipment.
- 2.18 "Collocate or Collocation" means to install, mount, maintain, Modify, operate, or replace Small Cell Facilities on or immediately adjacent to a Wireless Support Structure or Pole for the purpose of transmitting and/or receiving radio frequency signals whether or not there is an existing Antenna or other Attachment on the Wireless Support Structure or Pole, and/or to Modify an existing Wireless Support Structure for the purpose of installing or mounting an Antenna or other Attachment on such structure all in compliance with Applicable Standards and Laws.
- 2.19 "Communications Service(s)" means, without limitation, services performed consisting of the dissemination or interchange of audio, visual, or data content using cable, telecommunications, data communications, and includes Broadband.
- 2.20 "Communication Space" means that space located above the Common Space on the Pole,

and below the Communication Worker Safety Zone. No Communication Facilities shall be located in the Common Space or the Communications Worker Safety Zone under this Agreement.

- 2.21 "Communication Worker Safety Zone" means that dedicated space on a Pole that separates the City's Supply Space from the Communication Space. No power supply facilities or Small Cell Wireless Facilities shall be allowed in the Communication Worker Safety Zone.
- 2.22 "Correct" means to perform work to bring an Attachment, Accessory Equipment, or Ground Equipment into compliance with Applicable Standards and Laws.
- 2.23 "Costs" means the City's fully allocated Costs, including without limitation all direct Costs for labor, time, services, material, contractors, and related engineering and administrative expense, as determined by the City in accordance with its standard and applicable engineering, construction, accounting, and billing practices and procedures.
- 2.24 "Effective Date" means the date this Agreement was signed by all Parties.
- 2.25 "Electric Service Request" means a request to receive billable electric service that meets all of the requirements of the electric service standards of the City.
- 2.26 "Electric Poles" means electrical distribution poles owned or maintained by the City.
- 2.27 "Electrical Supply Space" or "Supply Space" means that portion of a Pole which is determined to be usable for electric power supply and that is located between the topmost location of the Communication Worker Safety Zone and the top of the Pole.
- 2.28 "Emergency" means a situation exists which, in the reasonable discretion of the City or Licensee, if not remedied immediately, poses an imminent threat to public health, life, safety, damage to property, or an electric service outage.
- 2.29 "Environmental Laws" means all federal, state, county, and local statutes, and all regulations or ordinances of any federal, state, county, or local regulatory agency, relating to the protection of health, safety, or the environment including all similar state and local laws and/or regulations now or hereinafter enacted or amended.
- 2.30 "Facilities" means all Poles and equipment of the City, along with all approved Licensee Poles and equipment used by Licensee in providing electrical power and/or wireless telecommunication and/or Broadband service(s), including but not limited to, electric supply equipment, Cable or Fiber, fiber optic, copper, and/or axial cables, supporting strands, service drops utilized to provide Electric Supply Service, or Communications Services. All Facilities must be Tagged.
- 2.31 "FCC" means the Federal Communications Commission of the United States.

- 2.32 “Ground Equipment” means all parts of a Wireless Facility that are located on the surface of the ground and, if included in an approved Application or otherwise approved by the City in writing, to include an incidental structure to support metering devices.
- 2.33 “Hazardous Materials” means any waste, pollutant, toxic substance or hazardous substance, contaminant or materials regulated by any Environmental Laws including, without limitation, petroleum or petroleum-based substances or wastes, asbestos, and polychlorinated biphenyls.
- 2.34 “Historic District” or “Historic Landmark” means a building, property, or site, or group of buildings, properties, or sites that are either (i) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i through Section VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C.
- 2.35 “Law” or “Laws” means a federal or State statute, common law, code, rule, regulation, order, or local ordinance, regulation, or resolution, which includes, without limitation, all Laws related to maximum permissible exposure to RF emissions on or about Licensee’s Facilities, which includes all applicable FCC Standards, whether such RF emissions or exposure results from Licensee’s Facilities alone or from the cumulative effect of Licensee’s Facilities added to any other sources of RF emissions on or near Licensee’s Facilities.
- 2.36 “Licensee Pole” means any pole or Support Structure owned by Licensee.
- 2.37 “Licensee Service(s)” means the small cell wireless telecommunications and/or Broadband service(s) provided or intended to be provided by Licensee to its customers using its Facilities.
- 2.38 “Make-Ready” or “Make-Ready Work” means all work that the City reasonably determines to be required prior to Attachment by the Applicant/Licensee to accommodate the Small Cell Facilities and to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement and/or transfer of existing Attachments and/or facilities, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), restoration of the ROW, Pole replacement and construction but does not include routine maintenance.
- 2.39 “Marked-Up Application” means the Application as reviewed and completed by the City to identify any Make-Ready work and/or any special conditions governing Attachment, Collocation, or removal of any Attachments, Facilities, Accessory Equipment, Ground Equipment and/or Pole.
- 2.40 “Modification” or “Modify” means any change or alteration affecting Wireless Facilities or Licensee’s Poles including without limitation any change in the number, type, ownership, or use of, which causes the information provided by Licensee in the prior

Application(s) to be incorrect or incomplete in any respect.

- 2.41 “Other Party” means any entity, party, or service provider who is not a Party to this Agreement.
- 2.42 “Overlash” means to place an additional Fiber, wire, Cable, or Facility onto an existing Attachment.
- 2.43 “Parties” or “Party” means signatories to this Agreement referred to as the City and Licensee herein.
- 2.44 “Pedestals/Vaults/Enclosures” means above- or below-ground housings that are not attached to Poles but are used to enclose a Fiber/Cable/wire splice, power supplies, amplifiers, passive devices, and/or to provide a service connection point.
- 2.45 "Permit" means the approved Application issued by the City after all reviews are completed by the appropriate City departments in response to a Permit Application being granted. A Permit, after all Make-Ready Work is completed, provides permission to Licensee for the Attachment, Collocation, Modification, or removal on or from the City’s Pole, Support Structure and/or placement of Licensee Poles in the Right-of-Way of the specific Small Cell Facility or Licensee Pole identified in the Application. The form of the Permit Application shall be prescribed by the City and incorporated into the City’s Standards and Specifications. See Appendix B (Permit Application) and Appendix C (Standards and Specifications).
- 2.46 “Pole(s)” means both Electric Poles and Roadway Poles, to include other poles and similar structures that are used in whole or in part for electric distribution, lighting, traffic control, or a similar function; that the City owns or maintains. It shall not include electric transmission structures/primary pole(s), or any other structure(s) owned and/or maintained by the City. Nor shall it include Licensee Poles.
- 2.47 “Pole Loading Study/Analysis” means the engineering analysis of the existing and proposed loads on a Pole. The study shall be done utilizing the following pole loading programs, O-Calc-Pro or PLS Pole using linear analysis, Grade C Construction, and current City Pole Attachment Standards in Appendix C.
- 2.48 “Post-Installation Inspection” means the inspection by the City or in combination with Licensee to verify that the Attachment(s), Accessory Equipment, Ground Equipment and/or Licensee Pole have been made and/or placed in accordance with Applicable Standards and the Permit.
- 2.49 “Pre-Construction Survey” means all work or operations required by Applicable Standards and/or the City to determine the Make-Ready Work necessary to accommodate Licensee’s Small Cell Facilities and/or Licensee’s Poles. Such work includes, but is not limited to, a Pole Loading Study, field inspection, and administrative processing.
- 2.50 “Radio Frequency “ or “RF” means the radio waves and microwaves emitted by transmitting Antennas and all equipment or devices contained in electronic-electrical

products that are capable of emitting Radio Frequency energy by radiation, conduction, or other means,

- 2.51 “Reserved Capacity” means Capacity or space on a City Pole or City Support Structure that the City has identified and reserved for its own future requirements at the time of the Permit grant.
- 2.52 “Right-of-Way” means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use. Right-of-Way does not include any City-owned aerial lines.
- 2.53 “Riser” means metallic or plastic encasement materials placed vertically on the Pole to guide and protect wires and cables.
- 2.54 “Roadway Poles” means City-owned light poles, decorative poles, traffic light poles, pedestrian poles, sign poles, and similar structures, but excludes Electric Poles.
- 2.55 “Service Drop” means Cables, wires, Fiber, and strands that serve to connect a customer to the service providers distribution network in order to provide Wireless Service(s) to said customer.
- 2.56 “Small Cell Facility” means a Wireless Facility that meets each of the following qualifications:
- 2.56.1 Each Antenna is located inside an enclosure of no 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 no more than six (6) cubic feet in volume; and
- 2.56.2 Accessory Equipment Enclosures that are no larger than seventeen (17) cubic feet in volume, provided that no single piece of equipment on the Pole shall exceed nine (9) cubic feet in volume; and no single piece of Ground Equipment shall exceed fifteen (15) cubic feet in volume; and
- 2.56.2.1 The Wireless Facilities are mounted on structures no more than ten (10) feet taller than the tallest existing Pole or other structure within five hundred (500) feet of the new Pole, and
- 2.56.2.2 do not extend existing Support Structures on which they are located by more than 10 percent.
- 2.56.2.3 The Facilities do not result in human exposure to RF radiation in excess of the applicable safety standards specified by the FCC or NESC, whichever is least.
- 2.57 “Supply Space” means that portion of City Poles which is determined to be usable for electric power supply distributed by City, and that is located between the topmost location of the Communication Worker Safety Zone and the top of the Pole.

- 2.58 “Tag” means to place distinct markers on wires, conduit, Cables, coded by color or other means specified by City and/or as applicable by federal, state, or local regulations that will readily identify the type of Attachment (e.g., cable TV, telecommunication, high-speed Broadband data, public safety, etc.) and its owner.
- 2.59 "Unauthorized Attachment" means any Attachment or Facility of any kind placed on or around a City Pole(s), including Overlashes without a Permit or such authorization as is required by City Ordinance and this Agreement.
- 2.60 “Wireless Facility” means equipment at a fixed location that enables Wireless Communications between user equipment and a Communications and/or Broadband network, including:
- 2.60.1 Equipment associated with wireless Communications; and
- 2.60.2 Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.
- Wireless Facility includes Small Cell Facilities.
- Wireless Facility does not include Wireline Backhaul Facilities, coaxial or fiber optic cable that is between Wireless Support Structures or poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an Antenna.
- 2.61 “Wireless Infrastructure Provider” means any person or entity that builds or installs wireless Communications transmission equipment, Wireless Facilities, Wireless Support Structures, or poles and that is not a Wireless Services Provider but is acting as an agent or a contractor for a Wireless Services Provider or Licensee for the Application submitted to the City.
- 2.62 “Wireless Provider” means a Wireless Infrastructure Provider or a Wireless Services Provider.
- 2.63 “Wireless Services” means any services, including without limitation telecommunications and Broadband, provided to the general public, including a particular class of customers, and made available using licensed or unlicensed spectrum, whether at a fixed location or mobile, using Wireless Facilities.
- 2.64 “Wireless Services Provider” means a person or entity who provides Wireless Services.
- 2.65 “Wireless Support Structure” or “Support Structure” means a pole or Pole, tower, base station, or other structure, whether or not it has an existing Antenna facility, which is used or to be used for the provision of Wireless Service(s).

- 2.66 “Wireline Backhaul Facility” means a physical transmission path, all, or part of which is within the Right-of-Way, used for the transport of Communications or Broadband data by wire from a Wireless Facility to a network.

### **3.0 ANNUAL ATTACHMENT RATES, FEES, AND CHARGES**

- 3.1 Payment of Rates, Fees, and Charges. Licensee shall pay to City the Rates, fees, and charges specified in Appendix A and shall comply with the terms and conditions specified in this Agreement.
- 3.2 Payment Period. Unless otherwise expressly provided, Licensee shall pay any invoice it receives from City pursuant to this Agreement within thirty (30) days of receipt of invoice.
- 3.3 Application Fee. Licensee shall be charged a non-refundable Application Fee pursuant to Appendix A.
- 3.4 Annual Attachment and Licensee Pole Rates. Licensee shall be charged an Annual Attachment Rate (“Attachment Rate”) per year, per Wireless Facility Attached to Poles as set out in Appendix A. Licensee shall also be charged an Annual Licensee Pole Rate (“Licensee Pole Rate”) per year, per Licensee Pole located within the Right-of-Way.
- 3.5 Billing of Attachment and Licensee Pole Rates. City shall invoice Licensee for each Attachment Rate, per Wireless Attachment, per Pole, and each Licensee Pole Rate, per Licensee Pole within the Right-of-Way, annually in advance (“Rate Period”). City will submit to Licensee an invoice for the annual Rate Period not later than January 30<sup>th</sup> of each year. Each subsequent annual Rate Period shall commence on the following January 1<sup>st</sup> and conclude on December 31<sup>st</sup> of that year. The invoice shall set forth the total number of City Poles on which Licensee was issued Permit(s) for Small Cell Wireless Attachments and for Licensee Poles during such annual Rate Period, including any previously authorized and valid Permits.
- 3.5.1 Contesting Fee. Licensee shall have thirty (30) days from receipt of invoice to contest the number of Small Cell Wireless Attachments and/or Licensee Poles and/or the Attachment Rate and/or Licensee Pole Rate. Failure to contest or otherwise dispute the invoice within thirty(30) days of receipt shall be deemed to be acceptance by Licensee. In the event Licensee does contest within thirty (30) days either the number of Wireless Attachments, number of Licensee Poles, or the Attachment or Licensee Pole Rates, Licensee shall pay an amount equivalent to the previous year’s billing within the initial thirty (30) days. Upon resolution of the disagreement regarding the then-current year’s bill, either Licensee shall pay the

difference, if the agreed amount is greater than Licensee's initial payment, or City shall refund the difference to Licensee, if the agreed amount is less than Licensee's initial payment.

- 3.6 Refunds. No Rates, fees or charges specified in Appendix A shall be refunded on account of any surrender of a Permit granted under this Agreement.
- 3.7 Late Charge(s). If City does not receive payment for any undisputed Rate, fee, or other amount owed within thirty (30) days after it becomes due, Licensee, upon receipt of ten (10) business days' written notice shall pay interest to City at the rate of one and one half percent (1.5%) per month, or the maximum interest allowed by law, whichever is lesser, on the amount due from the date payment was due.
- 3.8 Charges and Expenses. Licensee shall reimburse City and any other Attaching Entity for those actual and documented Costs incurred for facilitating Collocation of Licensee's Attachments and placement of Licensee's Poles or for which Licensee is otherwise responsible under this Agreement.
- 3.8.1 Such Costs and reimbursements shall include, but not necessarily be limited to, all design, engineering, administration, supervision, payments, labor, overhead, materials, equipment and applicable transportation used for work on, or in relation to Licensee's Attachments and Licensee's Poles as set out in this Agreement or as requested by Licensee in writing.
- 3.9 Advance Payment. City in its sole discretion will determine the extent to which Licensee will be required to pay in advance estimated Costs of City, including, but not limited to, administrative, construction, inspections, and Make-Ready Work Costs, in connection with the initial installation or rearrangement of Licensee's Attachments or Licensee's Poles pursuant to the procedures set forth in Articles 6 and 7 below.
- 3.10 True-Up/True-Down. Whenever City, in its discretion, requires advance payment of its estimated expenses prior to undertaking an activity on behalf of Licensee and the actual Cost of the activity exceeds the advance payment of estimated expenses, Licensee agrees to pay City for the difference in Cost, provided that City documents such Costs with sufficient detail to enable Licensee to verify the charges. To the extent that City's actual Cost of the activity is less than the estimated Cost, City shall refund to Licensee the difference in Cost.
- 3.11 Determination of Charges. Wherever this Agreement requires Licensee to pay for work done or contracted by City, the charge for such work shall include all reasonable material, labor, engineering, administrative, and applicable overhead Costs. City shall bill its services based upon actual Costs, and such Costs will be determined in accordance with City's Cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor Costs per hour, persons employed, and Costs of materials used. Labor Costs shall be the fully

loaded Costs of the labor title performing the work consistent with Article 7. If Licensee was required to perform work and fails to perform such work within the specified timeframe, and City performs such work, City may charge Licensee an additional twenty-five percent (25%) of its actual and documented Costs for completing such work.

- 3.12 Work Performed by City. Wherever this Agreement does not require City to perform any work, City, at its sole discretion, may utilize its employees or contractors, or any combination of the two, to perform such work.
- 3.13 Charges for Incomplete Work. In the event that an Application is submitted by Licensee and then steps are taken by City to carry out the review of the Application by performing necessary engineering and administrative work and the Application is subsequently cancelled, Licensee shall reimburse City for all of the actual and documented Costs incurred by City through the date of cancellation, including engineering, clerical, administrative and Make-Ready construction Costs.

#### **4.0 SPECIFICATIONS**

- 4.1 Installation and Collocation. When a Permit is issued pursuant to this Agreement, Licensee's Facilities or Licensee's Poles shall be Collocated and maintained in accordance with all Applicable Standards and this Agreement. Licensee shall be responsible for the Collocation and maintenance of Licensee's Facilities and Licensee's Poles.
- 4.2 Maintenance of Licensee Facilities and Licensee Poles. Licensee shall, at its own expense, make and maintain its Wireless Facilities and Licensee Poles in safe condition and good repair, in accordance with all Applicable Standards, with this Section and Section 8.1.1 herein. Notwithstanding anything in this Agreement to the contrary, Licensee shall not be required to update or upgrade its Wireless Facilities or Licensee Poles, if they met Applicable Standards at the time they were installed or Collocated, unless such updates or upgrades are needed because there is an imminent danger to the public, the City, or any workers or employees of the Parties or any Other Party. Licensee will bring into conformity with the current Applicable Standards any such Attachments at the time of their normal replacement, rebuilding, or reconstruction; unless applicable Law requires that the changes must be implemented sooner.
- 4.3 NJUNS. Unless the Parties agree otherwise, Licensee shall become a participating member of the National Joint Utility Notification System ("NJUNS"), to facilitate required notices, including, but not limited to, any need to rearrange or transfer Licensee's Attachments. City will determine the extent to which notifications via NJUNS will be utilized for Attachments, transfers, rearrangements, Pole or Attachment Abandonment and removal, as well as the extent to which such use will satisfy the notification requirements of this Agreement and provide notice thereof to Licensee. To the extent that City determines to

use NJUNS, Licensee and City agree to perform their respective tasks set forth in NJUNS tickets in a commercially reasonable and timely manner and in accordance with the timeframes specified in this Agreement.

- 4.4 Tagging. Licensee shall Tag all of its Facilities and Licensee Poles as specified in Appendix C and/or applicable Laws upon Collocation of such Facilities or Licensee Poles. Failure to provide proper Tagging will be considered a violation of the Applicable Standards.
- 4.5 Interference. Licensee shall not allow its Facilities or Licensee Poles to impair the ability of the City or any Other Party with superior rights to use City's Poles, nor shall Licensee allow its Facilities or Licensee Poles to interfere with the lawful operation of any City Facilities or Other Parties' facilities. "Superior Rights" means the Other Party was attached or associated with City's Pole before Licensee.
- 4.6 Protective Equipment. Licensee and its employees and Approved Contractors shall utilize and install adequate Protective Equipment to ensure the safety of people and Facilities. Licensee shall, at its own expense, install protective devices designed to handle the electric voltage and current carried by City's Facilities in the event of a contact with such Facilities. In addition, Licensee shall require all Approved Contractors and Licensee employees to wear Personal Protective Equipment ("PPE") suited for the specific task to be performed to include, without limitation, protective clothing (i.e., helmet, gloves, boots, safety glasses, safety harness, shock absorbing lanyards and fall protection equipment). In addition to the PPE, Licensee shall ensure all Approved Contractors and Licensee employees wear an RF monitor, worn outside the protective clothing, which tracks exposure levels. City shall bear no liability for Licensee's failure to utilize and install adequate Protective Equipment or PPE.
- 4.7 Violation of Specifications. If Licensee's Facilities or Licensee Poles, are Collocated or maintained in violation of this Agreement, and Licensee has not Corrected the violation(s) within forty-five (45) days from receipt of written notice of the violation(s) from City, the provisions of Article 8 shall apply. When City believes, however, that such violation(s) pose an imminent threat to the safety of any person, interfere with the performance of City's service obligations, or present an imminent threat to the physical integrity of City Poles or Facilities, City may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable afterward, City shall advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and documented Costs incurred by City in taking action pursuant to this Section 4.7.
- 4.8 Emergency Restoration of City Service. City's emergency service restoration requirements shall take precedence over any and all work operations of Licensee on City's Poles.

- 4.9 Effect of Failure to Exercise Access Rights. If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within one hundred twenty (120) days of the effective date of such right and any extension to such Permit(s), City may, but shall have no obligation to, use the space scheduled for Licensee's Attachment(s) for its own needs or make the space available to other Attaching Entities. In such instances, City shall endeavor to make other space available to Licensee, upon written Application under Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions. If City uses the space for its own needs or makes it available to Other Parties, then from the date that City or a third party begins to use such space, Licensee may obtain a refund on the portion of any Attachment Rates that it has paid in advance for that space. For purposes of this paragraph, Licensee's access rights shall not be deemed effective until any necessary Make-Ready Work has been performed.
- 4.10 Removal of Licensee's Nonfunctional Facilities. At its sole expense, Licensee shall remove any of its Facilities or any part thereof that becomes nonfunctional and no longer fit for service ("Nonfunctional Facilities") as provided in this Section 4.10. Nonfunctional Facilities that Licensee has failed to remove as required in this paragraph shall constitute an Unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Facilities within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written notice from City that removal is necessary to accommodate City's or another Attaching Entity's use of the affected Pole(s), in which case Licensee shall remove the Nonfunctional Facilities within sixty (60) days of receiving the notice. If Licensee contests whether the Facilities are nonfunctional, provisions of Article 18 shall apply. Where Licensee has received a Permit to Overlash what prior to Collocation is determined to be Nonfunctional Facilities, such Nonfunctional Facilities must first be removed after which the Licensee will apply for an Attachment. In such case, no additional Attachment Rate will be charged assuming the Licensee was already paying for the Nonfunctional Facilities.

## **5.0 PRIVATE AND REGULATORY COMPLIANCE**

- 5.1 Necessary Authorizations. Before Licensee occupies any of City's Poles or Right-of-Way, Licensee shall obtain from the appropriate public or private authority, or from any property owner or other appropriate person, any required authorization to Collocate its Facilities or Licensee Poles on public or private property. Licensee's obligations under this Article 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private right-of-way and easements and all necessary licenses and authorizations to provide the services that it provides over its Facilities. Licensee shall defend, indemnify, and reimburse City for all losses, Costs, and expenses, including reasonable attorney's fees that City incurs as a result of claims by governmental bodies, owners of private

property, or other persons, that Licensee does not have sufficient rights or authority to Attach or Collocate Licensee's Facilities or Licensee's Poles on City's Poles or in the Right-of-Way to provide particular services.

- 5.2 Lawful Purpose and Use. Licensee's Facilities and Licensee's Poles must at all times serve a lawful purpose, and the Licensee's use of such Licensee Facilities and Licensee Poles must comply with all Applicable Standards and Laws.
- 5.3 Forfeiture of City's Rights. No Permit granted under this Agreement shall extend, or be deemed to extend, to any of City's Poles, to the extent that Licensee's Facilities or Licensee Poles would result in a forfeiture of City's rights. Any Permit that would result in forfeiture of City's rights shall be deemed invalid as of the date that City granted it. Further, if any of Licensee's existing Licensee Facilities or Licensee Poles, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove Licensee Facilities and Licensee Poles upon receipt of written notice from City. If Licensee does not remove the Licensee Facilities and Licensee Poles, City may at its option perform such removal at Licensee's expense. Notwithstanding the forgoing, Licensee shall have the right to contest any such forfeiture before any of its rights are terminated, provided that Licensee shall indemnify City for liability, Costs, and expenses, including reasonable attorney's fees, which may accrue during Licensee's challenge.
- 5.4 Construction Standards. Disconnect/shut-offs, meters, and Antenna equipment must be installed to comply with the City's construction standards, and driven pole grounds shall be required for each Antenna installation and Collocated pursuant to Applicable Standards at a distance of four (4) feet from the Pole.
- 5.5 Historic Districts. Licensee shall also comply with all Historic District preservation Laws and requirements.
- 5.6 Effect of Consent on Collocation or Maintenance. Consent by City to Collocation or maintenance of any Facilities by Licensee shall not be deemed consent, authorization, or acknowledgment that Licensee has obtained all required Authorizations with respect to such Facilities.

## 6.0 **PERMIT APPLICATION FOR COLLOCATIONS**

- 6.1 Permit Required. Before making any Collocations of Licensee Facilities to Licensee Poles, (excluding Service Drops, Anchors and Riser Attachments where there is an existing Permitted Wireless Facility) or Licensee Poles in the Right-of-Way, Licensee shall submit an Application and receive a Permit, therefor, with respect to each Licensee Facility or Licensee Pole. See Appendix B for Application for Collocations.

- 6.1.1 Notwithstanding the foregoing, Modifications which do not require lane closures, traffic control issues and which do not implicate non-Attaching Entities or Other Parties, shall not be subject to an additional Application and Permit to the extent that:
- 6.1.1.1 Such Modification to the Attachment involves only substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of the Attachment or corresponding Facilities, as approved by the City; or
  - 6.1.1.2 Such Modification involves replacement of any part of the Attachment with a part that is the same, or smaller in weight and dimensions as the Permitted Attachment.
- 6.1.2 However, to be clear, submission of a new Application and issuance of a new Permit is required for Modifications involving placement or Attachment of any Wireless Facilities at a new or different position/location on any Pole or Right-of-Way where such placement or Attachment makes the information provided on the initial Application inaccurate.
- 6.1.2.1 This does not apply in circumstances where Licensee is transferring or rearranging its Wireless Facilities at the request of another Attaching Entity as part of that Attaching Entity's Make-Ready Work necessary to Attach its facilities to the Pole.
- 6.2 City Use of Poles. City may accept or reject an Application for placement of a Licensee Pole or for Attachment to a Pole, provided such decision is made on a non-discriminatory basis. Licensee is subject to City's right to use Poles and Right-of-Way for its own purposes, including the reservation of Capacity, as well as safety purposes in accordance with best practices, and/or reliability reasons. In the event an Application is rejected, the City shall work with Licensee to determine a suitable alternative location.
- 6.2.1 City Use of Poles. The City's use of Poles shall take precedence over all other uses and City may, in its sole discretion, determine the use of City Poles.
- 6.3 Service Drop. Licensee may attach a Service Drop, without Application, from one Pole with an existing Permitted Attachment to connect directly to Licensee's customer's building, premise, or location, and attached to no more than one additional Pole where the additional Pole does not support voltage greater than 600V. For Service Drops where there is no existing Permitted Attachment, Licensee may make the Attachment and shall submit the Permit Application within thirty (30) days after the Attachment is made.

- 6.3.1 It is Licensee's responsibility to verify that the Pole on which it proposes to make a Service Drop meets all Applicable Standards before attaching the Service Drop. If an existing Applicable Standards issue is identified, it is the responsibility of the Licensee to notify City of the issue(s). Licensee shall not be allowed to Attach the Service Drop until the Applicable Standards issue is resolved.
- 6.3.2 If it is determined that Licensee has attached a Service Drop on a Pole with a pre-existing violation of Applicable Standards, Licensee shall be required to bring the Service Drop into compliance with Applicable Standards to the extent that it is Licensee's existing Attachment that is non-compliant. Subject to the provisions of Article 8, City will provide written notice to Licensee and Licensee will have forty-five (45) days from receipt of such notice to Correct the existing Applicable Standards issue, otherwise the provisions of Article 18 shall apply. If the Attachment that is non-compliant belongs to another Attaching Entity, then Licensee shall coordinate with City and the other Attaching Entity concerning any necessary rearrangement of Licensee's Service Drop in conjunction with the Correction of the non-compliant Attachment.
- 6.3.3 For Service Drops where there is no existing Permitted Attachment, Licensee shall submit an Attachment Permit request within thirty (30) days of installation. Any such Service Drop Attachment without a Permit will be considered an Unauthorized Attachment subject to the fee provisions of Appendix A.
- 6.4 Permit Certification. Unless otherwise waived in writing by City, as part of the Permit Application process and at Licensee's sole expense, an Approved Contractor or Approved Employee, must participate in the Pre-Construction Survey, conduct the Post-Installation Inspection, and certify that the Licensee Facilities and Licensee Pole can be and were Collocated on the specific Pole and/or location in the Right-of-Way, in compliance with the Applicable Standards, Laws, and in accordance with the Permit.
- 6.5 Submission and Review of Permit Application. An Application submitted and Permits issued shall be subject to the following conditions and requirements:
- 6.5.1 *Application Requirements.* Licensee shall provide the following information to the City, together with the City's Small Cell Facilities Permit Application and/or the City's Licensee Pole Permit Application as a condition of placing any Facilities on a Pole or City Wireless Support Structure, or any Licensee Pole within the Right-of-Way:
- 6.5.1.1 A copy of the Small Cell Deployment Agreement between the City and Licensee;

- 6.5.1.2 Site specific structural integrity established by Pole Loading Studies and wind bearing studies and Make-Ready analysis prepared by a professional engineer;
- 6.5.1.3 The location where each proposed Licensee Facility or Licensee Pole would be installed and photographs of the location and its immediate surroundings depicting the Licensee Facilities, Licensee Poles, and the Poles or structures on which each proposed Licensee Facility will be mounted or location where Licensee Poles or structures will be installed. This should include a depiction of the completed Facility;
- 6.5.1.4 Specifications and drawings for each proposed Licensee Facility covered by the Application as it is proposed to be Collocated;
- 6.5.1.5 The equipment type and model numbers for the Antennas and all other equipment associated with the Facility;
- 6.5.1.6 A proposed schedule for the installation and completion of each Facility covered by the Application, if approved;
- 6.5.1.7 Certification that the Collocation complies with the Collocation requirements and conditions contained herein, to the best of Licensee's knowledge;
- 6.5.1.8 In the event that the proposed Facility is to be Attached to an existing pole or structure owned by an entity other than the City, Licensee shall provide legally competent evidence of the consent of the owner of such pole or structure to the proposed Collocation; and
- 6.5.1.9 Each Application shall be accompanied by Licensee's payment of applicable fees, Rates, and charges as set out in Appendix A.

6.6 Application Process. City will process Applications to Collocate Wireless Facilities as promptly as is reasonable and will make best efforts to comply with the following timeframes, except for Article 11 herein, such timeframes shall not be binding on the City:

- 6.6.1 The first completed Application shall have priority over Applications received by different Applications for Collocation on the same Pole or Wireless Support Structure.

- 6.6.2 The time period for approval of Applications will begin when the Application is submitted and may be tolled within the first thirty (30) days after the submission of the Application if the City notifies Licensee City needs additional time to review the Application, or that such Application is incomplete and identifies all missing information that is required for the Application to be complete.
- 6.6.3 The processing deadline in the below subdivision is tolled from the time the City sends the notice of incompleteness to the time Licensee provides the missing information. That processing deadline may also be tolled by mutual agreement of the Parties.
- 6.6.4 An Application to Collocate a Wireless Facility on an existing Pole or an existing Wireless Support Structure will be processed on a nondiscriminatory basis within sixty (60) days after submission of a completed Application.
- 6.6.5 An Application to Collocate a Wireless Facility that includes the installation or replacement of a new Pole or a new Wireless Support Structure will be processed on a nondiscriminatory basis within ninety (90) days.
- 6.6.6 All deadlines applicable to City shall be tolled during any period in which delay is the result of Licensee's or third parties' actions or inactions (i.e., delays in payment of fees, Rates, or other charges, failure to rearrange or transfer Attachments, etc.).
- 6.7 Application Denial. City will deny an Application if the proposed action in the Application could reasonably be expected to affect the safety, quality or reliability of City's electrical services, or the safety of employees or citizens. Such effects would be reasonably expected in the following circumstances, but this shall not be an exhaustive list:
- 6.7.1 Interfere with the safe operation of traffic control equipment or City-owned Communications equipment;
- 6.7.2 Interfere with sight lines or clear zones for transportation, pedestrians, or non-motorized vehicles;
- 6.7.3 Interfere with compliance with the Americans with Disabilities Act, 42 U.S.C. Sections 12101 through 12213, or similar federal or state standards regarding pedestrian access or movement;
- 6.7.4 Obstruct or hinder the usual travel or public safety in the Right-of-Way;
- 6.7.5 Obstruct the legal use of the Right-of-Way by the City or Other Parties;

- 6.7.6 Fail to comply with reasonable and nondiscriminatory spacing requirements of general application promulgated by the State Highways and Transportation Commission that concern the location of Ground Equipment and Licensee Poles;
- 6.7.7 Fail to comply with the Applicable Standards;
- 6.7.8 Fail to comply with the City’s aesthetic standards for Small Cell Facilities, Licensee’s use of decorative Poles, or Licensee does not agree to pay to match the applicable decorative elements;
- 6.7.9 Fail to comply with the zoning regulations of the City;
- 6.7.10 Fail to comply with undergrounding requirements of the City that Facilities in the area to be placed underground and prohibit the installation of new or the Modification of existing Poles or other Wireless Support Structures in the Right-of-Way; or
- 6.7.11 If the City determines that Applicable Standards or Laws require that the Pole or Wireless Support Structure be replaced before the requested Collocation or Modification unless Licensee agrees to replace the Pole or Wireless Support Structure at Licensee’s Cost.
- 6.8 Revised Application. City shall document the basis for a denial and send such documentation to Licensee. Licensee may cure the deficiencies identified by the City and resubmit the revised Application once within thirty (30) days after notice of denial is sent to Licensee without paying an additional Application Fee. The City will approve or deny the revised Application within thirty (30) days after Licensee resubmits the Application. Failure to resubmit the revised Application within thirty (30) days of denial shall require Licensee to submit a new Application with applicable fees, and recommencement of the City’s review period.
- 6.9 Tolling. All time periods for Applications may be further tolled by an express written agreement by the Parties (See Appendix B); or by a local, state, or federal disaster declaration or similar emergency that causes the delay.
- 6.10 Consolidated Applications. Unless otherwise mutually agreed by the Parties, each Application seeking a Permit to Collocate Wireless Facilities within the jurisdiction of the City may be submitted for the Collocation of up to five (5) Small Cell Facilities (a “Consolidated Application”) provided all such Facilities involve substantially the same type of Small Cell Facility, substantially the same type of Support Structures and do not require the construction or installation of a new Support Structure.

6.10.1 Such Consolidated Applications shall be reviewed and processed within sixty (60) days of receipt of the complete Consolidated Application. If an Application includes multiple Small Cell Facilities, the City may remove Small Cell Facility Collocations from the Application and treat separately Small Cell Facility Collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. At the City's discretion, the City may issue separate Permits for each Collocation that is approved in a Consolidated Application or a single Permit encompassing all Facilities approved in a Consolidated Application.

6.10.2 In the event Consolidated Applications are submitted for up to fifty (50) separate Facilities, City shall have an additional sixty (60) days to review and process such Applications, or longer if mutually agreed to by the Parties.

6.11 Duration of Permits. The duration of a Permit shall be for a period of not less than five (5) years, and the Permit shall be renewed for equivalent durations unless the City makes a finding that the Wireless Facilities or the new or Modified Support Structures do not comply with the Applicable Standards, Laws, or any provision, condition or requirement contained in this Agreement.

6.11.1 The provision of 6.11 shall be subject to the right of the City to require, upon adequate notice and at Licensee's own expense, relocation of Facilities as may be needed in the interest of public safety and convenience, and the Licensee's right to terminate with proper notice at any time.

6.12 Means of Submitting Applications. Licensee shall submit Applications, supporting information and notices to the City by personal delivery at the City's designated place of business, or by regular mail with return receipt, or overnight courier mail with return receipt, and electronic submittal and all specified time periods shall start upon receipt of the Application by the City.

## **7.0 MAKE-READY WORK**

7.1 After City receives the Application for Wireless Attachments, Modifications, or Collocations, or Placement of a Licensee Pole, Licensee shall accompany the City, or a City designated contractor, on all site inspections scheduled by the City to determine the nature and extent of required Make-Ready Work related to the proposed Attachment, Modification, Collocation, or placement of a Licensee Wireless Facility and/or Licensee Pole. The City shall provide Licensee with sufficient notice of any such Pre-Construction Inspection.

7.2 The City will indicate with the Marked-Up Application the Make-Ready Work necessary to accommodate Licensee's proposed Attachment, Modification, or Collocation of Licensee Wireless Facilities, and/or placement of a Licensee Pole, as well as the Cost of such Make-Ready Work. The City will, within sixty (60)

days of receipt of a complete Application, also specify on the Marked-Up Application any special conditions that will govern the proposed Attachment, Modification, Collocation, or placement of Licensee's Wireless Facilities or Licensee's Pole(s), unless mutually agreed to otherwise by the Parties.

- 7.3 If, after receiving the Marked-Up Application, Licensee still desires to have its Wireless Facilities placed on a City Pole to implement the proposed Modifications or Collocation; and/or place a Licensee Pole under the terms and conditions indicated on the Marked-Up Application, Licensee shall accept such terms and conditions by signing the Marked-Up Application and returning the same to the City within fourteen (14) business days after delivery to the City, together with payment in full.
- 7.3.1 All Make-Ready Cost, as such Cost is identified by the City, shall be paid prior to issuance of any Permit. After receipt of such payment and issuance of a Permit by the City, the City will cause the Make-Ready Work to be performed in accordance with this Section and pursuant to a schedule that avoids conflict or interference with the City's prior work commitments and regular business operations. The Make-Ready Work will be completed within ninety (90) days of the completed Application being submitted to the City, allowing for reasonable unforeseen delays or in the event of a Force Majeure, unless otherwise mutually agreed to by the Parties.
- 7.3.2 Licensee shall pay for engineering work performed by the City, which includes, but is not limited to, analysis, field survey or inspection of the proposed Licensee Wireless Facilities or Licensee Pole. In addition, Licensee will pay all actual and documented Costs (to the extent not paid pursuant to this Article 7), when incurred and billed, for the preparation of engineering documentation or work orders and drawings, that may be necessary to accommodate the Licensee Wireless Facilities, whether occurring prior to the placement of any Facilities on City Poles or Support Structures, or occurring subsequent to the placement of any Facilities on City Poles or Support Structures in connection with any Post-Construction Inspection(s) to determine whether the Wireless Facilities have been attached properly, in accordance with the Application, all applicable Permits and Applicable Standards. The City shall provide Licensee with an invoice for all actual and documented Costs incurred for such additional work.
- 7.3.3 Parties agree that it will be Licensee's responsibility to arrange, with any Attaching Entities currently on City Poles, for the transfer or rearrangement of existing Other Parties' Attachments and for reimbursement to those Attaching Entities for any costs that they incur in rearranging or transferring their facilities to accommodate Licensee's Attachments and Facilities.
- 7.3.4 All deadlines imposed on the City shall be tolled during any period

in which delay is the result of Licensee's or third parties' action(s) or inaction(s) (i.e., delays in payment of fees or Rates, failure to rearrange or transfer Attachments or delay in acceptance of Marked-Up Application).

7.3.5 Upon notification by the City of the completed Make-Ready Work, Licensee may then Attach to the designated Pole or Support Structure.

7.3.5.1 Within thirty (30) days of completing the installation of an Attachment (including Overlash, Riser Attachments, and/or Service Drops) Licensee shall provide written notice to City.

7.4 Unless the Parties mutually agree otherwise, Licensee will pay the actual and documented Costs incurred by the City to upgrade or replace Poles or Support Structures to which Licensee's Facilities are Attached if the upgrade or replacement is required solely due to the addition or Modification of Licensee's Facilities or equipment, and to pay the proportionate share of the Costs incurred by the City to upgrade or replace Poles or Support Structures if the upgrades or replacements directly benefit the Licensee and other users to such Poles or Support Structures and are made to meet the City's service needs, are made at the request of Licensee or an additional Attaching Entity, or are made as a result of governmental order or regulation.

7.4.1 In the event Licensee opts to place a Licensee Pole for the attachment of Licensee's Facilities, the City, at Licensee's request, may (but is under no obligation to do so) accept ownership and maintenance responsibilities of such Pole.

## **8.0 COLLOCATION REQUIREMENTS AND CONDITIONS**

8.1 The following represent requirements and conditions applicable to the placement of Small Cell Facilities and Licensee Poles under this Agreement:

8.1.1 Licensee shall, at its sole cost and expense, install, maintain, repair, Modify and remove its Facilities and Poles in a safe manner in accordance with good utility practice and keep them in good condition and good repair in accordance with all Applicable Standards, Laws, and Specifications.

8.1.2 In the event the City provides maintenance, transfer, removal, replacement and/or relocation services to Licensee as a result of Licensee's failure to perform such services after notice given, then Licensee shall pay to the City all actual and documented Costs incurred as a result of the maintenance, transfer, removal, replacement, and/or relocation of Licensee's Attachments, Facilities, Accessory Equipment, Ground Equipment, or Licensee Pole and an additional fee pursuant to Appendix A.

8.1.3 Licensee, its agents, contractors, employees, Carriers, invitees, customers, and others shall not, under any circumstances whatsoever, touch, handle, tamper with or contact, directly or indirectly, any of the City's Facilities other than

the City's Pole, without the express written consent of the City, which consent the City may not unreasonably withhold.

8.1.3.1 For Poles with Attachments located outside the Supply Space, or Attachments on secondary poles, the City shall not be held responsible for, and Licensee expressly relieves the City from all liability by reason of injury, including death, or damage of any nature whatsoever to Licensee or its agents, contractors, subcontractors, Carriers, employees, invitees, customers and others who touch or are on the City Poles, except if such liability results from the negligence or willful misconduct of the City.

8.1.3.2 For Poles with Attachments located inside the Supply Space, the City shall not be held responsible for, and Licensee expressly relieves the City from all liability by reason of injury, including death, or damage of any nature whatsoever to Licensee or its agents, contractors, subcontractors, Carriers, employees, invitees, customers, and others who touch or are on the City Poles, except if such liability results from willful misconduct of the City.

8.1.3.3 In the event of a casualty or loss which results in the damage or destruction of the City's Facilities to which Licensee's Facilities are Attached or located, the City shall have no obligation hereunder to rebuild or restore the City Facilities; provided that in the event the City elects not to rebuild or restore the City's Facilities, the Permit in question shall immediately terminate. In such event, the City shall work in good faith to allow Licensee's Wireless Facilities to be Attached on a reasonable alternative Pole or Support Structure.

8.1.4 *Inspections and Corrections.* The City reserves the right to make periodic inspections of Licensee's Wireless Facilities located on or about City Poles or City Support Structures, or a portion of same, as well as Licensee's Poles located within the Right-of-Way as often as conditions warrant. In the event any of Licensee's Facilities or Licensee Poles are found to be in violation of the Applicable Standards and such violation poses a potential Emergency situation; Licensee shall use all reasonable efforts to Correct such violation immediately. Should Licensee fail or be unable to Correct such Emergency situation immediately, City may Correct the Emergency and bill licensee for one hundred twenty-five percent (125%) of the actual and documented Costs incurred. If any of Licensee's Facilities are in violation of the Applicable Standards and such violation does not pose an Emergency, City shall, consistent with this Section 8.1.4, give Licensee notice, whereupon Licensee shall have thirty (30) days from receipt of notice to Correct any such violation, or within a longer, mutually agreed to time frame if Correction of the violation is not possible within thirty (30) days, such extended time to be not more than an additional sixty (60) days Notwithstanding the foregoing

grace periods, in the event City or another Attaching Entity prevents Licensee from Correcting a Non-Emergency violation, the timeframe for Correcting such violation shall be extended to account for the time during which Licensee was unable to Correct the violation due to action (or failure to act) by City or another Attaching Entity. Licensee will not be responsible for the Costs associated with violations caused by others that are not affiliated or acting under the direction of Licensee. In all circumstances, all of the Attaching Entities on the Pole and City will work together to maximize safety while minimizing the Cost of Correcting any such deficiencies, but the Licensee shall be responsible for the actual and documented Cost of any necessary or appropriate Corrective measures associated with violations caused by Licensee, including removal and replacement of the Pole and all transfers or other work incident thereto. If Licensee fails to Correct a non-Emergency violation within the specified time period, including any agreed upon extensions, the provisions of Article 16 shall apply.

8.1.4.1 If any City Facilities or City Poles are found to be in violation of the Applicable Standards and City has caused the violation, then the Parties will work together to minimize the Cost of Correcting any such deficiencies, but City shall be responsible for the full cost of any necessary or appropriate Corrective measures, including removal and replacement of the Pole, provided, however, City shall not be responsible for Licensee's own costs.

8.1.4.2 If one or more third-party Attaching Entity's Attachment caused the violation, then such Attaching Entities shall pay the Corrective costs incurred by all who have Attachments on the Pole, including the Licensee.

8.1.4.3 If there exists a violation of Applicable Standards and it cannot be determined which Attaching Entity on the Pole caused such violation or there is a mixture of the Attaching Entities causing the violation, then the Parties will work together to minimize the cost of Correcting any such deficiencies, and all Attaching Entities who may have caused such violation will share equally in such costs.

8.1.5 Unless stated otherwise herein, work performed on City Poles shall be performed by the City. Licensee shall pay the actual and documented Costs for all work performed by the City at the request or necessitated by the presence of an Attachment or any portion of Licensee's Wireless Facility or Licensee's Pole.

8.1.5.1 If the City is unable to perform work resulting from the request of Licensee or necessitated from the presence of a Licensee Attachment or a Licensee Pole, on a case-by-case basis, then an Approved Contractor or Approved Employee may perform the work in connection with Licensee's Small Cell Facilities and Licensee's Poles. All work performed within the Supply Space requires City's written authorization.

8.1.5.2 Only Approved Contractors or Approved Employees shall work within the Supply Space on the City's Poles or City's Facilities.

8.1.6 Due to safety concerns, all Poles where Antennas are to be installed must be bucket truck accessible and only on distribution or Roadway Poles.

8.1.7 Licensee shall discuss design and mounting of all Antennas with City prior to installation.

8.1.8 *No interference.* Upon receipt of any notice from the City, any court or governmental entity that Licensee's operation of the Wireless Facilities are interfering with or endangering any persons, equipment, property or Facilities of the City or any Other Party including the general public, Licensee will, at its sole Cost and expense, immediately take all necessary steps to Correct or stop such danger or interference.

8.1.8.1 Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency.

8.1.8.2 If a Wireless Facility causes such interference, and Licensee has been given written notice of the interference by the City, any court or governmental entity including a public safety agency, Licensee, at Licensee's sole expense, shall remedy the interference in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

8.1.8.3 The City may terminate a Permit for a Wireless Facility based on such interference if Licensee is not in compliance with the Code of Federal Regulations cited in the previous paragraph. Failure to remedy the interference as required herein shall constitute a public nuisance.

8.1.9 The uninterrupted operation of the City's Facilities and the provision of electricity to its customers are of paramount importance hereunder and, therefore, any mitigating interference that may be caused to Licensee's Wireless Facilities by the City's Facilities, existing or future, shall be solely the Licensee's responsibility and accomplished solely at the expense of Licensee. Licensee shall eliminate such interference by adjustment to its Wireless Facilities or by termination of the applicable Permit.

8.1.9.1 Under no circumstances shall the City be required to interrupt, suspend, or alter its uses of the City's Poles, Support Structures or Facilities in order to accommodate Licensee or its rights granted hereunder, unless such interruption, suspension or alteration will not

materially affect the City's operations.

8.1.9.2 The City may interrupt, suspend, or stop Licensee's transmission during any periods in which the City or City authorized worker is working on a City Pole or Support Structure in which Licensee has a Wireless Attachment or Wireless Facility.

8.1.10 *Notice of Interruption.* Except in an Emergency, the City will provide Licensee twenty-four (24) hours-notice prior to any such interruption. In cases of an Emergency, the City will provide notice to Licensee as soon as practicable after the Emergency work has either been initiated or completed.

8.1.11 *Safety Zones.* Licensee shall not Collocate Small Cell Facilities on City Poles that are part of an electric distribution or transmission system within the Communication Worker Safety Space of the Pole.

8.1.11.1 For any Attachment in the electric Supply Space of the Pole, specific written approval is required by the City to Attach in the Supply Space, and notwithstanding anything in this Agreement to the contrary, City approval is required for all work to be conducted in the Supply Space. Licensee shall comply with the Applicable Standards for work involving the Supply Space.

8.1.11.2 Likewise, amplifiers and equipment other than Antennas will not be permitted in the Supply Space or the Communication Worker Safety Space.

8.1.12 *Height Limitations.* Unless the Parties mutually agree otherwise, new or replacement Poles or Wireless Support Structures on which Wireless Facilities are Collocated may not exceed 50 feet in height including the Antennas and may not be more than 10 percent taller than other adjacent structures. The Antenna cannot extend existing structures on which the Small Cell Facility is located to a height of more than 50 feet or more than 10 percent.

8.1.12.1 The use of pole top extensions is discouraged and shall not be utilized unless the City agrees to the use of such extensions.

8.1.12.2 *Height Exceptions or Variances.* If Licensee proposes a height for a new or replacement Pole or Support Structure in excess of the above height limitations, on which the Wireless Facility is proposed for Collocation, Licensee shall apply for a Special Use Permit in conformance with procedures, terms, and conditions set forth in the City ordinances.

8.1.13 *Contractual Design Requirements.* Unless the City, Licensee and the private property owner agree otherwise, Licensee shall comply with requirements that are imposed by a contract between the City and a private property owner that concern design or construction standards applicable to Poles, Support Structures, Accessory Equipment and Ground Equipment located in the Right-of-Way.

- 8.1.14 *Ground Equipment Spacing.* Licensee shall comply with applicable spacing requirements in the Applicable Standards, and ordinances concerning the location of Ground Equipment located in the Right-of-Way. Notwithstanding the foregoing all Ground Equipment shall be no less than four (4) feet from the Pole.
- 8.1.15 *Use of Tangent Poles.* Licensee should seek to place Antennas on tangent poles and not Poles with utility equipment such as transformers, capacitors, reclosers or underground risers for primary conductors.
- 8.1.16 *Sizing.* Unless mutually agreed by the Parties otherwise, only one Wireless Facility no greater than 36x24x12 inches in size (whether a receiver, transmitter, or combination unit) will be permitted per Pole and only one Wireless Provider is permitted on a single Pole. Such placement shall be subject to Pole Loading and wind bearing Studies.
- 8.1.17 *Roadway Pole Placement.* Unless mutually agreed by the Parties otherwise, only one Wireless Facility may be attached to a streetlight bracket and may be no more than three (3) feet and no less than six (6) inches from the Roadway Pole. Placement on such Roadway Poles shall be subject to Pole Loading and wind bearing Studies. The maximum weight for any such device shall not exceed fifteen (15) pounds when installed on a streetlight arm.
- 8.1.18 *Antenna Coax Cable.* Antenna coax cable, unless mutually agreed by the Parties otherwise, shall be installed with a maximum size of two (2) inch diameter schedule 40 PVC conduit. Conduit supports must be installed every five (5) feet. All such Antenna coax cable shall be installed in accordance with the NESC.
- 8.1.19 *RF Warning Signs.* Two RF warning signs must be installed – one near Pole top level where the safe approach level ends (for FCC general population/uncontrolled power levels) and one near the base of the Pole. These signs shall indicate the safe approach distance. Each sign shall also indicate the Wireless Facility's owner's name and contact number where a representative may be reached twenty-four (24) hours per day, seven (7) days per week. All such signage shall be kept accurate and current.
- 8.1.20 *Disconnects/Shutoffs.* All Wireless Facilities and Antennas pursuant to this Agreement, which require electrical power, shall have disconnects/shutoffs allowing the City to disconnect power to avoid RF exposure to its employees when working around any such Facilities. The City and its employees shall be permitted to cut power to any such Facilities as is reasonable when working in or around any such Wireless Facility or Antenna for purposes of employee safety. However, such shutoffs shall only be performed in coordination with Licensee's Lockout and/or Tagout procedures pursuant to Section 15.8 of this Agreement.
- 8.1.21 *No Logos.* Licensee shall not, and will ensure all its Carriers will not, place any logos, brand name identifiers or illumination on any Poles or Facilities without the City's approval documented on the Permit Application.

8.1.22 *Notification to City.* Once the work has been completed and before leaving the work site, the contractor will notify the City that the work has been completed and they will be leaving the site.

8.1.22 *Reports.* Licensee's Facilities shall be clearly Tagged and labeled on each Pole location with Licensee's name and a telephone number where a representative of Licensee can be reached twenty-four (24) hours a day, seven (7) days a week to receive reports of problems with the Facilities. All labels shall be kept accurate and current.

8.1.22.1 Licensee shall investigate all such reports in a timely manner and perform all necessary repair and maintenance to remedy such Problems.

8.1.22.2 "Timely Manner" means a remote response is made within four (4) hours of the initial report and an on-site response is made within twenty-four (24) hours of the initial report if an Emergency, and within thirty (30) days if not an Emergency.

8.1.23 *Siting Guidelines.* Preferred locations and configurations for Licensee's Facilities within the City, provided that nothing herein shall be construed to permit a Wireless Facility in any location that is otherwise prohibited by the Applicable Standards or Laws.

8.1.23.1 *Order of Preference – Location,* from most preferred to least preferred is: (a) industrial zone; (b) commercial zone; (c) Mixed commercial and residential zone; and (d) residential zone:

8.1.23.2 *Discouraged Locations:* (a) medium and high density residential areas; (b) schools, daycare facilities, playgrounds and similar facilities; (c) areas that adversely impact view corridors; (d) locations directly in front of doors, windows, balconies or residential frontages; and (e) community gathering places such as community halls, churches, commercial eating and drinking establishments.

8.1.23.3 *Setbacks for Discouraged Locations.* In the event a Discouraged Location is the only feasible location, then Collocation of Wireless Facilities shall ensure a five hundred (500') feet setback from the Discouraged Location.

## **9.0 AESTHETIC REQUIREMENTS**

9.1 The City will review and approve all equipment installation designs and may require changes to conform to City ordinances, regulations, or codes and to reasonably provide an aesthetically pleasing installation. All installation designs must be approved prior to installation.

9.2 Licensee agrees its Wireless Facilities will be concealed or enclosed as much as possible in an equipment box, cabinet or other unit that may include ventilation openings.

External cables and wires hanging off a pole will be sheathed, or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible.

9.3 Licensee agrees all Attachments, including Antenna Attachments, Facilities, Accessory Equipment, and Ground Equipment shall, at Licensee's cost, be made as visually obscure as reasonably possible.

9.4 To minimize negative visual impact to the surrounding area, the City may deny a request for a Permit, if the location where Licensee seeks to install Wireless Facilities, is within 100 cubic feet of a Wireless Facility that already exists at that time.

9.5 If the location Licensee has Wireless Facilities becomes a location where the City has placed utilities underground during the Term of this Agreement, City will provide Licensee with sixty (60) days written notice prior to placing the utilities underground and Licensee's Permit for use of City Poles will be automatically revoked upon removal of said Poles. If Licensee obtains Permits to install or re-install Wireless Facilities in the area where the Poles at issue were removed, Licensee agrees to install visually obscure Wireless Facilities, at Licensee's cost, as authorized by the City and in compliance with City's aesthetic standards, unless otherwise approved by the City.

9.6 Any Permits for installation of Wireless Facilities in any locations where utilities are already underground shall require said Wireless Facilities to be visually obscure as directed by the City.

## **10.0 AUDITS/LIST OF ATTACHMENTS/FACILITIES/POLES AND LOCATIONS**

10.1 Licensee shall install its Wireless Facilities and Licensee Poles only in the locations authorized and Permitted by the City.

10.2 The City may revoke Licensee's Permit to place a Licensee Pole or to use a City Pole or Support Structure for non-compliance with a term or terms of this Agreement, subject to the notice and right to cure procedures for a default in this Agreement.

10.3 Upon request of either Party, but not more often than once every five (5) years, an official audit will be conducted to determine the number, type and locations of all Wireless Facilities located on or about City Poles, City Support Structures, and the locations of non-City owned Poles. The Cost of said audit shall be split proportionally between all the Wireless Services Providers and Attaching Entities.

10.4 Licensee shall maintain a list of its Wireless Facilities and Licensee Poles with locations and shall provide such annually updated list to the City on December 31<sup>st</sup> of each year.

### **10.5 Leasing and Subleasing**

10.5.1 No later than ninety (90) days from the Effective Date, Licensee shall provide in writing a list of each of its Wireless Facilities and Licensee Poles along with the

names of each Carrier that utilizes each of the Wireless Facilities and Licensee Poles. Licensee will then annually on December 31<sup>st</sup> of each year provide a current list of said Carriers to City.

10.5.2 Licensee may lease use of its Wireless Facilities and Licensee Poles to Carriers for provision of Wireless Services only if the use strictly complies with this Agreement.

## 11.0 EXCEPTIONS TO APPLICABILITY

11.1 Nothing in this Agreement authorizes a person to Collocate Wireless Facilities as follows:

11.1.1 Unless otherwise mutually agreed, this Agreement does not authorize the use of the City's transmission structures.

11.1.2 On property owned by a private party or property owned or controlled by the City or another unit of local government that is not located within Right-of-Way, or a privately-owned pole or Wireless Support Structure without the consent of the property owner.

11.1.3 On property owned, leased, or controlled by a park district, forest preserve district, or conservation district for public park, recreation, or conservation purposes without the consent of the affected district.

11.2 Roadway Poles. Notwithstanding any provision herein to the contrary, Roadway Poles, pursuant to Sections 67.5111 through 67.5122, RSMo. shall be subject to the following provisions of this Agreement:

11.2.1 *Permitting for Roadway Poles.*

11.2.1.1. Collocation of Small Wireless Facilities is not subject to zoning review or approval, unless the Roadway Pole is located in an area zoned sign-family residential or as historic.

11.2.1.2 Placement of a new or replacement Roadway Pole shall not be subject to zoning review or approval provided the new or replacement Roadway Pole is within the height restrictions set out in Section 8.1.12 of this Agreement.

11.2.1.3 An Applicant shall be permitted to replace Decorative Roadway Poles when necessary to Collocate a Small Wireless Facility, but any replacement pole shall reasonably conform to the design aesthetics of the Decorative Roadway Poles being replaced. The term "Reasonably Conform" means that the design aesthetics of the replacement pole shall be as nearly identical to the Decorative Roadway Poles replaced as is feasible. The City is authorized to determine whether the replacement pole reasonably conforms,

based upon the reasonable objective design standards published in advance by the City.

11.2.1.4 For Collocation of Small Wireless Facilities, outside the Right-of-Way, in or on property not zoned primarily for single-family residential use, is not subject to zoning review or approval.

11.2.1.5 City shall not enter into an exclusive agreement with a Wireless Provider concerning Roadway Poles or Wireless Support Structures that are located on City property outside the Right-of-Way, including stadiums and enclosed arenas, unless the agreement meets the following requirements: (a) The Wireless Provider provides Services using a shared network of Wireless Facilities that it makes available for access by other Wireless Providers on reasonable and nondiscriminatory rates and terms that shall include use of the entire shared network, as to itself, an affiliate, or any other entity; or, (b) The Wireless Provider allows other Wireless Providers to collocate Small Wireless Facilities on reasonable and nondiscriminatory rates and terms, as to itself, an affiliate, or any other entity.

11.2.2 *Fees and Rates for Roadway Poles.* Each Application for Collocation of a Wireless Facility on a Roadway Pole shall be accompanied by payment of fees and Rates as designated in Appendix A.

11.2.3 *Timing for Processing Applications for Collocations on Roadway Poles.* Unless the Parties mutually agree otherwise, the following processing times will apply for Applications applying to Roadway Poles:

11.2.3.1 City will notify Applicant in writing within fifteen (15) days of receiving the Application whether it is complete. If incomplete, City will specifically identify the missing information in writing. If the Application is incomplete, the processing time limits are tolled until such time as the Application is resubmitted.

11.2.3.2 City will process and approve or deny an Application for Collocation on a Roadway Pole within forty-five (45) days of receipt of the Application. The Application is deemed approved if not approved or denied within this forty-five (45) day period.

11.2.3.3 In situations where a new Roadway Pole must be installed or an old Roadway Pole requires replacement, City will process and approve or deny such Application associated with a Small Wireless Facility within sixty (60) days of receipt of the Application. The Application is deemed approved if not approved or denied within this sixty (60) days period.

#### 11.2.4 *Consolidated Applications for Collocations on Roadway Poles*

- 11.2.4.1 An Applicant may file a Consolidated Application and receive a single Permit for the Collocation of up to twenty (20) Small Wireless Facilities.
- 11.2.4.2 Consolidated Applications shall be for the same or materially same design of Wireless Facilities being Collocated on the same or materially the same type of Roadway Poles or Wireless Support Structures, and geographically proximate. Such Application shall provide sufficient information on the face of the Application for the City to determine whether the Applicant has met the requirements of this Section 11.2.4.2. City shall have authority to determine whether the Application meets the requirements of this Section 11.2.4.2.
- 11.2.4.3 If the City received individual Applications for more than fifty (50) Wireless Facilities or Consolidated Applications for more than seventy-five (75) Wireless Facilities within a fourteen (14) day period, whether from a single or multiple Applicants, City may upon request have an automatic thirty (30) day extension for any additional Application submitted during that fourteen (14) day period or in the fourteen (14) day period immediately following the prior fourteen (14) day period. City will promptly communicate its request all affected Applicants.
- 11.2.4.4 Denial of one or more Wireless Facilities in a Consolidated Application shall not delay processing or constitute a basis for denial of any other Wireless Facilities in the same Consolidated Application or the Consolidated Application as a whole.

11.2.5 *Make Ready Work for Roadway Poles.* City will provide a good faith estimate for all Make-Ready Work necessary to enable a Roadway Pole to support the requested Collocation by a Wireless Provider, including Roadway Pole replacement, if necessary, within sixty (60) days after receipt of a complete Application.

- 11.2.5.1 All such Make Ready Work, including Roadway Pole replacement, will be completed within sixty (60) days of written acceptance by Applicant of the good faith estimate and advance payment, if required, by the Applicant.

11.2.6 *Denied Applications for Collocation on Roadway Poles.* For any Application for collocation on Roadway Poles that is denied:

- 11.2.6.1 City will document the complete basis for a denial in writing, and send the documentation to the Applicant on or before the date the City denies the Application.

- 11.2.6.2 Applicant has thirty (30) days to cure the deficiencies identified by City and to resubmit the Application without a new Application fee being applied.
- 11.2.6.3 City then has thirty (30) days to either approve or deny the resubmitted Application. Any subsequent review after the initial denial is limited to the deficiencies cited in the initial written denial.
- 11.2.7 *Temporary Moratorium on Application Processing for Collocation on Roadway Poles.* City may institute a temporary moratorium on Applications for Collocation of Wireless Facilities on Roadway Poles only in the event of a major and protracted staffing shortage that reduces the number of personnel necessary to receive, review, process, and approve or deny such Application by more than fifty (50) percent. Such temporary moratorium may be for no more than thirty (30) days.
- 11.2.8 *Term for Permits authorizing Collocation of Wireless Facilities on Roadway Poles* shall be for no less than ten (10) years, which will be renewed for equivalent durations so long as the Licensee remains in compliance with the Applicable Standards and Laws.
- 11.2.9 *No Application Required for Work on Roadway Poles.* No Application is required for:
- 11.2.9.1 Routine maintenance on previously permitted Wireless Facilities on Roadway Poles; or
- 11.2.9.2 Replacement of Wireless Facilities on Roadway Poles with Wireless Facilities that are the same or smaller in size, weight, and height.
- 11.2.9.3 Licensee performing the permitted acts under this Section 11.2.9 shall provide the City with a description of all new equipment installed so City may maintain an accurate inventory of the Wireless Facilities on each Roadway Pole.
- 11.2.10 *Performance Bonds for Wireless Facilities on Roadway Poles.*
- 11.2.10.1 Licensee shall post a performance bond in an amount set by the City for each Small Cell Facility. Such performance bond for each Small Cell Facility shall not exceed Fifteen Hundred (\$1,500.00) Dollars and the total bond amount across all Roadway Poles shall not exceed Seventy-Five Thousand (\$75,000.00) Dollars, which may be combined into one bond instrument.
- 11.2.10.2 The purpose of the performance bond is to: (a) Provide for the removal of abandoned or improperly maintained Wireless

Facilities, including those that the City determines need to be removed to protect public health, safety, or welfare; (b) restore the Right-of-Way in connection with removals of Wireless Facilities from the Right-of-Way; and (c) recoup rates or fees that have not been paid by a Wireless Provider or Wireless Infrastructure Provider in over twelve (12) months, provided the Wireless Provider or Wireless Infrastructure Provider has been provided reasonable notice from the City and has been given the opportunity to cure.

11.2.10.3 Recovery by the City of any amounts under the performance bond or otherwise does not limit Licensee's duty to indemnify the City in any way, nor shall such recovery relieve Licensee of its obligations under a Permit or reduce the amounts owed to the City other than by the amounts recovered by the City under the performance bond, or in any respect prevent the City from exercising any other right or remedy it may have.

11.2.10.4 *Exemption.* Applicants that have at least Twenty-Five Million (\$25,000,000.00) Dollars in assets in the State of Missouri do not have a history of permitting noncompliance within the City's jurisdiction shall be exempt from the insurance and bonding requirements otherwise required by this Article 11. City may require Applicant to provide proof by affidavit that its assets meet or exceed this requirement at the time of filing the Application.

11.2.11 *Expiration of Sections.* Sections 67.5111 through 67.5122, RSMo., are scheduled to expire or sunset on January 1, 2025, Section 11.2 of this Agreement shall be applicable only so long as Sections 67.5111 through 67.5122, RSMo. are in effect.

11.2.11.1 All Wireless Facilities already permitted and Collocated on City Roadway Poles pursuant to this Section 11.2 herein shall be subject to the same annual Rate set at the time permitted for the duration of the Permit authorizing the Collocation on Roadway Poles.

11.2.11.2 Upon the expiration, sunseting, or repeal of Sections 67.5111 through 67.5122, RSMo., all provisions of Section 11.2 shall cease to be applicable, except as to the annual Rate as noted in Section 11.2.11.1 above.

## 12.0 ABANDONMENT

12.1 Any of Licensee's Wireless Facilities or Licensee Poles that are not operational or utilized for a continuous period of twelve (12) months shall be considered Abandoned. Licensee shall remove the Wireless Facility or Licensee Pole within ninety (90) days after receipt of written notice from the City notifying Licensee of the Abandonment.

12.1.1 The notice shall be sent by certified or registered mail, return receipt requested, by the City to Licensee at the last known address of Licensee.

12.1.2 If the Wireless Facility or Licensee Pole is not removed within ninety (90) days of such notice, the City may remove or cause the removal of such Wireless Facility or Licensee Pole pursuant to the terms of this Agreement at the sole Cost of Licensee and without any liability to the City arising therefrom.

12.2 Licensee shall not sell or transfer Wireless Facilities or Licensee Poles within the jurisdiction of the City without the consent of the City, which shall not unreasonably be withheld.

### **13.0 INDEMNIFICATION**

13.1 Licensee agrees to defend and hold harmless the City, its directors, officers, employees, shareholders, agents, contractors, subcontractors, successors and assigns (the "City Indemnitees") from and against any and all third-party claims, including any claims by its Carriers, demands, actions, causes of action, liabilities, judgments, obligations, costs or expenses for any damage to property, or for injury to or death of any person or persons, or any other costs or expenses, including without limitation reasonable attorneys' fees and costs, related to, arising out of or connected with the placement, Collocation, use, operation, repair, Modification or removal of any of Licensee's Wireless Facilities or Licensee's Poles pursuant to this Agreement; provided, however, that Licensee shall have no obligation hereunder to indemnify any City Indemnitees for their own negligence or misconduct on Poles. Licensee shall immediately notify the City of any such claims, demands, damages, injuries, or deaths, and shall provide a written report, or other pertinent material or information, if requested.

13.2 Notwithstanding the foregoing, but pursuant to Section 8.1.11.3, on Poles with Attachments in the Supply Space, Licensee agrees to defend and hold harmless the City and the City Indemnitees from and against any and all third party claims, including any claims by its Carriers, for any damage to property, or for injury to or death of any person or persons, or any other costs or expenses, including without limitation reasonable attorneys' fees and costs, related to, arising out of or connected with the placement, Collocation, use, operation, repair, Modification or removal of any of Licensee's Wireless Facilities or Licensee's Poles pursuant to this Agreement. Licensee shall immediately notify the City of any such claims, demands, damages, injuries, or deaths, and shall provide a written report, or other pertinent material or information, if requested.

13.3 In no event will the City be liable for any noise, induced voltages, currents, or other interference affecting any of Licensee's Wireless Facilities and/or Licensee's Poles, unless caused by the City's willful misconduct. Except for the Make-Ready Work expressly required by the City, City shall not agree to undertake any alterations or improvements to make City Poles, Support Structures, or the Right-of-Way suitable for Licensee's Wireless Facilities or Licensee's Poles. Licensee accepts the use of any City Poles, City Support Structures and/or Right-of-Way in their as-is, where-is condition, with all faults, subject to City's obligation to comply with all laws with

respect to the maintenance, ownership, and operation of the Poles, Support Structures and Right-of-Way.

- 13.4 Licensee agrees to be liable for and promptly reimburse the City, except to the extent of the City's own negligence or willful misconduct, and any authorized City Pole, City Support Structure or Right-of-Way user for expenses incurred in repairing or replacing City Poles, City Support Structures, Right-of-Way or any Facilities damaged or destroyed, if such damage or destruction is caused by or results from, in whole or in part, Licensee's or its Carrier's use of City Poles, City Support Structures, or the Right-of-Way.
- 13.5 Each party shall conduct its operations, and otherwise use, occupy, or maintain City Poles, City Support Structures or Right-of-Way hereunder in compliance with all applicable Environmental Laws and shall not cause any hazardous materials to be introduced to or handled on or about City Poles, City Support Structures, or the Right-of-Way hereunder. Except to the extent City is immune from liability pursuant to federal or state laws or regulations, or to the extent City's liability is limited according to case law, each Party hereby indemnifies and shall defend and hold harmless the other and all other City Indemnitees as well as Licensee's directors, officers, employees, shareholders, agents, contractors, subcontractors, successors and assigns from and against any suits, damages, injuries, costs and expenses of any kind including, without limitation, court costs, reasonable attorney and consultant fees, remediation costs, fines and penalties, whether asserted under Environmental Laws or at common law, arising out of or related to (a) any violation hereunder by either Party, its Carriers, its employees, agents, or contractors of any Environmental Laws; or (b) the presence, release or threatened release of any hazardous materials at, on or about City Poles, City Support Structures or the Right-of-Way hereunder caused by that Party, its Carriers, its agents, employees, contractors, subcontractors, or any entity in privity with or providing a benefit to Licensee; provided, however, that neither Party shall have any obligation to so indemnify the other from that Party's own negligence or misconduct, and Licensee shall have no liability for hazardous materials existing prior to Licensee's occupancy. The foregoing indemnification provisions and obligations shall survive any termination of this Agreement.
- 13.6 Municipal Liability Limits. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the City of any applicable state limits on municipal liability or governmental immunity.
- 13.7 NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER UNDER THIS AGREEMENT OR OTHERWISE FOR SPECIAL, LIQUIDATED, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST REVENUE, BUSINESS OR SERVICE INTERRUPTION, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

## 14.0 INSURANCE

14.1 Insurance Policies Required. At all times Licensee has Wireless Facilities, or Attachments on or around City Poles or Support Structures, or Licensee Poles within the Right-of-Way, Licensee shall keep in force and affect all insurance policies and limits as set forth below:

- 14.1.1 *Workers' Compensation and Employers' Liability Insurance.* Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Missouri law at the time of the application of this provision for each accident. Licensee shall require contractors and subcontractors and others not protected under its insurance to obtain and maintain such insurance.
- 14.1.2 *Commercial General Liability Insurance.* Such policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, and \$2,000,000 each occurrence.
- 14.1.3 *Automobile Liability Insurance.* Business automobile policy covering all owned, hired, and non-owned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, and \$1,000,000 aggregate.
- 14.1.4 *Umbrella Liability Insurance.* Coverage is to be in excess of the sum of employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than \$4,000,000 each occurrence and \$4,000,000 aggregate.
- 14.1.5 *Property Insurance.* Each Party will be responsible for maintaining property insurance on its own Facilities, buildings, and other improvements, including all equipment, fixtures, and utility structures, fencing, or support systems that may be placed on, within, or around Facilities to protect fully against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance.
- 14.1.6 *Contractor and/or Subcontractors.* Licensee shall ensure that each of its contractors and/or subcontractors adhere to the same insurance requirements set forth in this Section; provided, however, this provision may be satisfied by contractors' insurance policies which meet the policy requirements and insure the activities of their subcontractors in lieu of separate subcontractor insurance policies.

14.1.7 *Self-Insure*. At the City's sole discretion, Licensee may self-insure all or a portion of the insurance coverage and limits required by the City.

- 14.2 Qualification; Priority; Contractors' Coverage. The insurer must be authorized to do business under the laws of the State of Missouri and have an "A minus" or better rating in Best's Guide. Such insurance will be primary with respect to liability assumed by Licensee hereunder. All contractors and all subcontractors who perform work on behalf of Licensee or its Carriers, shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability, and automobile liability insurance coverages of the type that Licensee is required to obtain under this Section with the same limits.
- 14.3. Certificate of Insurance; Other Requirements. Prior to Licensee installing or constructing any Attachment or Wireless Facilities on or around a City Pole or Support Structure or placing a Licensee Pole in the Right-of-Way, and prior to each insurance policy expiration date during the period Licensee has any Attachment or Wireless Facilities on or around a City Pole or Support Structure or has any Licensee Poles in the City, it shall furnish the City with a certificate of insurance ("Certificate") which shall include all endorsements for each insurance policy, and upon request, certified copies of any endorsements held by Licensee. The Certificate shall reference the Small Cell Deployment Agreement. The City shall be given thirty (30) days advance notice of cancellation or nonrenewal of insurance during the same period. The City, its council members, board members, commissioners, agencies, officers, officials, employees, and representatives (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except workers' compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. All policies shall be written with deductibles, not to exceed \$100,000, or such commercially reasonable greater amount as the Parties mutually agree and expressly allowed in writing by the City. Licensee shall defend, indemnify, and hold harmless the City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Section. Licensee shall obtain Certificates from their agents, contractors, and their subcontractors and provide a copy of such Certificates to the City upon request.
- 14.4. Limits. The limits of liability set out in this Agreement may be increased or decreased by mutual consent of the City and Licensee, which consent will not be unreasonably withheld by either, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal, or other governmental compensation plans, or laws that would materially increase or decrease Licensee's exposure to risk.
- 14.5 Prohibited Exclusions. No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions that: (1) exclude coverage of liability assumed pursuant to this Agreement, (2) exclude coverage of liability arising from excavating, collapse, or underground work conducted by

Licensee, (3) exclude coverage for injuries to City employees or agents resulting from acts or omissions of Licensee, or (4) exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' employees or agents or for injuries or damages caused by Licensee's Carriers. This list of prohibited provisions shall not be interpreted as exclusive.

- 14.6 Self-Insurance. If Licensee's net worth exceeds Fifty Million (\$50,000,000.00) Dollars) Licensee may elect to request self-insurance status in lieu of obtaining any of the insurance required by this Agreement. Licensee shall provide audited financial statements to the City. In the event that Licensee is granted self-insurance status by the City, Licensee shall annually furnish the City an audited financial statement evidencing Licensee's net worth that is attested to by one of Licensee's corporate officers. The ability to self-insure shall continue so long as Licensee meets all the requirements of this Section. If Licensee subsequently no longer satisfies this Section, Licensee is required to purchase insurance as indicated by this Agreement.
- 14.7 Deductible/Self-insurance Retention Amounts. Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.
- 14.8 ) Performance Bond. Licensee shall furnish a performance bond executed by a surety company reasonably acceptable to the City which is duly authorized to do business in the State of Missouri in the amount of Fifty Thousand (\$50,000.00) Dollars for the first Poles/Attachments Licensee obtains Permits for, up to twenty-five (25) Poles/Attachments, and then an additional Fifty Thousand (\$50,000.00) Dollars for every fifty (50) Poles/Attachments thereafter, for the duration Licensee has Attachments on or around any City Pole or Support Structures or Licensee Poles within the Right-of-Way as security for the faithful performance of its duties and responsibilities set forth in this Agreement and for the payment of all persons performing labor and furnishing materials in connection with same. Licensee shall obtain a bond which allows for the use of the bond to cover damages caused by Licensee or Licensee's contractors and/or agents, and unpaid fees or Rates owed by Licensee not covered by any insurance policies including but not limited to: Reasonable documented charges for work performed by the City resulting from Licensee's actions or omissions, to include but not limited to, restoration of Licensee's sites to their prior condition, reasonable wear and tear of City property, and any unpaid permit and administrative fees owed by Licensee. Licensee shall keep such performance bond, at its expense, in full force and effect until the one hundred eightieth (180th) day after the removal of all of Licensee's Wireless Facilities from any City Poles or Support Structures and after the removal of all of Licensee's Poles, to insure the faithful performance of all the duties and responsibilities set forth in this Agreement. Such bond shall provide for thirty (30) days prior written notice to the City of cancellation or material change thereof. If the bond is cancelled or not extended, the Licensee shall replace it with another at least ten (10) days prior to expiration and if Licensee fails to do so, the City shall be entitled to present its written demand for payment of the entire face amount of such bond and to hold the funds so obtained as a security deposit. Any unused portion of any such Security Deposit shall be returned to Licensee upon replacement of the bond. In the event of any noncompliance with any

provisions of this Agreement by Licensee or its Carriers, the City may draw upon said bond or Security

Deposit thereby reducing the principal amount thereof. Licensee shall immediately cause the said bond to be restored to its principal sum.

## **15.0 WARRANTIES, DUTIES, RESPONSIBILITIES, AND EXCULPATION**

- 15.1 Duty to Inspect. Licensee acknowledges and agrees that the City does not warrant the condition or safety of City Poles, Facilities, Support Structures or Right-of-Way or the premises surrounding the Poles, Facilities, Support Structures, or Right-of-Way; and Licensee further acknowledges and agrees that it has an obligation to inspect the City's Poles, Facilities, Support Structures or Right-of-Way prior to commencing any work there on or around and prior to entering the premises surrounding same.
- 15.2 Knowledge of Work Conditions. By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint itself and its employees, contractors, agents, and Carriers with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands and will acquaint itself with the Facilities, difficulties, dangers, and restrictions attending the execution of such work.
- 15.3 DISCLAIMER. THE CITY WARRANTS THAT ITS WORK IN CONSTRUCTING AND MAINTAINING CITY POLES, FACILITIES, SUPPORT STRUCTURES AND RIGHTS-OF-WAY COVERED BY THIS AGREEMENT SHALL BE CONSISTENT WITH PRUDENT UTILITY PRACTICES. THE CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES REGARDING CITY POLES, FACILITIES, SUPPORT STRUCTURES OR RIGHTS-OF-WAY, ALL OF WHICH ARE HEREBY DISCLAIMED, AND THE CITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. THE CITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 15.4 Duty of Competent Supervision and Performance. The Parties further understand and agree that, in the performance of work under this Agreement, Licensee and its agents, employees, contractors, subcontractors and Carriers may work near electrically energized lines, transformers, or other City Facilities. The Parties understand and intend that energy generated, stored, or transported by City Facilities will not be interrupted during the continuance of this Agreement, except in Emergencies endangering life or threatening grave personal injury or property damage. Licensee shall ensure that its employees, agents, contractors, subcontractors, and Carriers have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, agents, contractors, subcontractors, and Carriers; employees, agents, contractors, and subcontractors of the City; and the general public, from harm or injury while performing work Permitted and authorized pursuant to this Agreement and by the City. In addition, Licensee shall furnish its employees, agents, contractors, subcontractors and/or Carriers

competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in Emergency situations in which it may be necessary to de-energize any part of City's Facilities, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the Lockout and/or Tagout procedures have been followed and the equipment is safe.

- 15.5 Request to De-Energize. If the City de-energizes any equipment or line at Licensee's request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse City for all Costs and expenses that City incurs in complying with Licensee's request. Before City de-energizes any equipment or line, it shall provide, upon request, an estimate of all Costs and expenses to be incurred in accommodating Licensee's request.
- 15.6 Interruption of Service. If Licensee causes an interruption of service by damaging or interfering with any equipment of the City, Licensee shall, at its own expense, immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify City immediately.
- 15.7 Duty to Inform. Licensee further warrants that it understands the imminent dangers, INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION, inherent in the work necessary to make installations on City Poles and/or Support Structures by Licensee's employees, agents, contractors, subcontractors and Carriers, and Licensee accepts the duty and sole responsibility to notify, inform, and train Licensee's employees, agents, contractors, subcontractors, and Carriers of such dangers and to keep them informed and trained regarding same.
- 15.8 Lockout-Tagout ("LOTO"). Licensee shall be responsible for its own LOTO program. This program must be in full compliance with OSHA 29 CFR 1910.147. Licensee shall submit a copy of its LOTO Program to the City for review by the Safety Specialist or designee before the start of any work where 29 CFR 1910.147 is applicable. OSHA LOTO procedure requires at a minimum: (a) Use of locks and/or tags on energy isolating devices.; (b) special LOTO procedures for jobs requiring multiple LOTO devices; (c) Licensee must provide their own lockout/tagout devices (d) all Licensee contractors and employees, and City employees, authorized or affected, must be trained by Licensee or other acceptable training source concerning the LOTO procedures; (e) locks, and/or tags, shall not be removed by anyone other than the designated and Approved Employee applying them except under approved Emergency situations and the appropriate notification and documentation must be followed to ensure the safety of Licensee and City contractors and employees; (f) testing and positioning of machines or equipment will be performed only under special procedures per OSHA 29 CFE 1910.147(f); (g) City employees will shut down and start up all systems unless otherwise specifically directed by City management; (g) Licensee will maintain a log of machines and equipment that are locked out and/or tagged out during the performance of the work, and the log shall identify the equipment that was worked on, the dates the work began and ended, why work was being done and the name of the individual performing the work. Licensee shall

submit this log to the City Safety Specialist or designee on a daily basis when LOTO work is being performed.

## **16.0 DEFAULT, TERMINATION AND OTHER REMEDIES**

- 16.1 An Event of Default. Each of the following being an “event of Default,” shall be deemed to have occurred hereunder by Licensee if:
- 16.1.1 Licensee breaches any material term or condition of this Agreement or Permit granted hereunder; or
  - 16.1.2 Licensee evades or attempts to evade any material provision of this Agreement or Permit granted hereunder; or
  - 16.1.3 Licensee makes a material misrepresentation of fact in this Agreement or Permit Application hereunder; or
  - 16.1.4 Licensee fails to complete work by the date and in accordance with the terms specified in this Agreement or Permit granted hereunder, unless an extension is obtained or unless the failure to complete the work is beyond the Licensee’s control or the result of a *Force Majeure Event*; or
  - 16.1.5 Licensee fails to timely Correct violations of Applicable Standards.
- 16.2 Upon the occurrence of any one or more of the Events of Default set forth in this Article 16 hereof, the City may revoke the Permits granted to Licensee that are the subject of the Event of Default and require removal of the Wireless Facilities and/or Licensee Poles without Rate or fee refund until the Event of Default is cured.
- 16.3 Without limiting the rights granted to the City pursuant to the foregoing Section 16.2, the Parties hereto agree to conduct themselves reasonably and in good faith and to use a good faith effort to meet and to resolve outstanding issues, including but not limited to the Issue Resolution Process of Article 18.
- 16.4 In the event the City fails to perform, observe, or meet any material covenant or condition made in this Agreement or shall breach any material term of condition of this Agreement, or at any time any representation, warranty or statement made by the City shall be incorrect or misleading in any material respect, then the City shall be in default of this Agreement. Upon being provided notice from Licensee of said default, the City shall have thirty (30) days to cure same and if such default is not cured, then Licensee shall have any and all remedies at law or in equity available to it, including termination of this Agreement without any liability therefor.
- 16.4.1 The above notwithstanding, Licensee’s sole remedy if the City is unable to perform a survey or complete Make-Ready Work within the prescribed timeframes under Articles 6 and 7 is the authority to perform such survey or

Make-Ready itself at Licensee's expense. Except, any work in the Supply Space must be done by City or an Approved Contractor. City will provide, upon request, a list of contractors approved to perform work within the Supply Space. Licensee may perform such survey or Make-Ready Work itself or, for work in the electric Supply Space, retain an Approved Contractor to do the work, immediately upon expiration of the prescribed timeframes without any cure period or Issue Resolution Process. City will review and approve additional contractors submitted by Licensee to the extent that they are qualified to perform the relevant work in accordance with the Applicable Standards.

16.4.2 Under no circumstance will the failure of the City to meet the survey or Make-Ready time periods set out in Articles 5 and 6 subject the City to damages.

16.5 Upon termination of this Agreement, for any reason, Licensee shall remove its Wireless Facilities and Licensee Poles from all City Poles, Support Structures and Rights-of-Way within six (6) months of receiving notice. If not so removed within that time period, the City shall have the right to remove Licensee's Attachments, Facilities and Licensee Poles and Licensee agrees to pay the actual and documented Cost thereof within forty-five (45) days after it has received an invoice from the City.

## **17.0 FAILURE TO ENFORCE**

Failure of the City or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

## **18.0 ISSUE RESOLUTION PROCESS**

18.1 Dispute Resolution. Except for an action seeking a temporary restraining order or an injunction or to compel compliance with this dispute resolution procedure, the Parties can invoke the dispute resolution procedures in this Article at any time to resolve a controversy, claim, or breach arising under this Agreement. Each Party will bear its own costs for dispute resolution activity.

18.2 Initial Meeting. At either Party's written request, each Party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The Parties will conduct any meeting in-person or via conference call, as reasonably appropriate.

18.3 Executive Meeting. If ninety (90) days after the first in-person meeting of the senior representatives the Parties have not resolved the dispute to their mutual satisfaction, each Party will designate executive representatives at the director level or above to meet and negotiate in good faith to resolve the dispute. To facilitate the negotiations, the Parties may agree in writing to use mediation or another alternative dispute resolution procedure.

- 18.4 Unresolved Dispute. If after sixty (60) days from the first executive-level, in-person meeting, the Parties have not resolved the dispute to their mutual satisfaction; either Party may invoke any legal means available to resolve the dispute, including enforcement of the default and termination procedures set out in Article 16.
- 18.5 Confidential Settlement. Unless the Parties otherwise agree in writing, communication between the Parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery and inadmissible in litigation.
- 18.6 Business as Usual. During any dispute resolution procedure or lawsuit, the Parties will continue providing services to each other and performing their obligations under this Agreement.
- 18.7 Rates, Fees, and Penalties. Rates, fees, interest, and penalties will continue to accrue pending dispute resolution procedures unless the dispute specifically involves a dispute over the application of the Rate, fees, interest, or penalties.

## 19.0 ASSIGNMENT

- 19.1 Limitations on Assignment. Neither this Agreement nor any part of Licensee's rights hereto may be assigned or pledged, in whole or in part, without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

19.1.1 Notwithstanding the foregoing, the transfer of the rights and obligations of Licensee under this Agreement to a parent, subsidiary, successor, or financially viable affiliate, or to any entity which acquires all or substantially all of Licensee's assets by reason of a merger, acquisition, or other business reorganization, shall be consented to by the City, provided that:

19.1.1.1 Licensee furnishes the City thirty (30) days prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee and;

19.1.1.2 Provided that Licensee delivers to the City the following: (1) a Bond, pursuant to Section 14.8 of this Agreement, issued in the name of the transferee; (2) an Assignment and Assumption agreement between the Licensee, and the transferee; (3) the transferee's Certificate of Insurance naming the City as insured; and (4) a copy of this Agreement with an Addendum whereby transferee has become a signatory to this Agreement assuming all obligations of Licensee arising under this Agreement.

19.1.1.3 Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, or conditions of this Agreement without the express written consent to the release of Licensee by the City.

19.2 Prohibition of Sub-licensing. Except as expressly provided by this Agreement, Licensee shall not sub-license to any third party, including but not limited to, allowing third parties to place Wireless Facilities on City's Poles, Facilities, or placing Poles within the Right-of-Way. This includes Overlapping. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Facilities by Other Parties, including but not limited to leases of dark Fiber, that involves no additional Attachment or Overlapping, is not subject to this Section 19.2.

19.2.1 Licensee shall ensure that such use by any Other Parties complies with this Agreement. Licensee remains responsible and liable for all performance obligations under this Agreement with respect to such use by Other Parties of Licensee's Wireless Facilities. City's sole point of contact regarding such Other Parties' use and activities shall be Licensee.

## **20.0 RECEIVERSHIP, FORECLOSURE OR ACT OF BANKRUPTCY**

20.1 The Pole, Facilities, Support Structures or Right-of-Way use granted hereunder to Licensee shall, at the option of the City, cease and terminate one hundred twenty (120) days after the filing of bankruptcy or the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of Licensee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all Defaults under this Agreement.

20.2 In the case of foreclosure or other judicial sale of the Wireless Facilities, assets, property and equipment of Licensee, or any part thereof, including or excluding this Agreement, the City may serve notice of termination upon Licensee and the successful bidder at such sale, in which event this Agreement herein granted, and all rights and privileges of this Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

20.2.1 The City shall have approved the transfer of this Agreement to the successful bidder, as and in the manner this Agreement provides; and

20.2.2 Such successful bidder shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions to this Agreement.

## **21.0 TERM OF AGREEMENT**

21.1 This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years and, unless terminated by either Party, shall automatically be renewed for two additional five (5) year terms. Either Party may terminate this Agreement at the end

of the initial term or a successor term by giving written notice of intent to terminate the Agreement at the end of the then-current term. Such a notice must be given at least ninety (90) days prior to the end of the then-current term.

21.2 Even after the termination of this Agreement, Licensee’s indemnity obligations shall continue with respect to any claims or demands related to Licensee’s Wireless Facilities and Poles, as provided for in Section 13.5.

**22.0 AMENDING AGREEMENT**

This Agreement shall not be amended, changed, or altered except in writing and with approval by authorized representatives of both Parties.

**23.0 NOTICES**

23.1 Wherever in this Agreement notice is required to be given by either Party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail with return receipt requested, with postage prepaid, and except where specifically provided for elsewhere, properly addressed as follows:

If to City, at:

\_\_\_\_\_  
ATTN: \_\_\_\_\_  
[Address] \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

If to Licensee, at:

\_\_\_\_\_  
ATTN: \_\_\_\_\_  
[Address] \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

or to such other address as either Party, from time to time, may give the other Party in writing.

23.2 The above notwithstanding the Parties may agree to utilize electronic communications such as, for NJUNS notifications, as well as email for notifications related to the Permits Application, approval process, and necessary transfer or Licensee Modifications.

23.3 Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where City can contact Licensee to report damage to Licensee’s Facilities

or other situations requiring immediate communications between the Parties. Such contact person shall be qualified and able to respond to City's concerns and requests regarding this Agreement. Failure to maintain an emergency contact shall subject Licensee to a penalty of \$100 per incident and shall eliminate City's liability to Licensee for any actions that City deems reasonably necessary given the specific circumstances.

#### **24.0 FORCE MAJEURE**

If either the City or Licensee is prevented or delayed from fulfilling any provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, pandemic, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the City or Licensee delayed in performing the acts required by this Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the Party affected shall endeavor to remove or overcome such inability as soon as reasonably possible.

#### **25.0 INCORPORATION OF RECITALS AND APPENDICES**

The recitals stated above and all Appendices to this Agreement are incorporated into and constitute part of this Agreement.

#### **26.0 ENTIRE AGREEMENT**

This Agreement and its Appendices constitute the entire Agreement between the Parties concerning Attachments of Licensee's Wireless Facilities on City Poles and City Support Structures, as well as Licensee's Poles in the Right-of-Way within the geographical service area covered by this Agreement. Unless otherwise expressly stated in this Agreement, all previous agreements applicable to Wireless Facilities, Support Structures and Licensee Poles, whether written or oral, between City and Licensee, are superseded and of no further effect.

#### **27.0 SEVERABILITY**

If any provision or portion thereof of this Agreement is or becomes invalid under any Laws or ruling of the court having jurisdiction, such provision or ruling shall not render unenforceable this entire Agreement. Rather, the Parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision.

#### **28.0 GOVERNING LAW**

All matters relating to this Agreement shall be governed by the laws (without reference to choice of law) of the state of Missouri.

#### **29.0 COUNTERPARTS**

This Agreement may be executed in any number of counterparts by the Parties, each of which when so executed will be an original, but all of which together will constitute one and the same instrument. To facilitate execution of this Agreement, the Parties may execute and exchange facsimile or email counterparts of the signature pages to this Agreement.

*[Remainder of Page Blank and Signature Pages Follow]*

SAMPLE

**CITY**

WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written above.

City of \_\_\_\_\_  
By: \_\_\_\_\_  
Title:  
Address:  
Telephone:  
Email:

**STATE OF MISSOURI**

: ss

County of \_\_\_\_\_

I, the undersigned, a Notary Public in and for the State of Missouri, hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me [NAME \_\_\_\_\_], [TITLE \_\_\_\_\_] to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he/she signed and sealed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

\_\_\_\_\_

Notary Public in and for the  
State of Missouri, residing at  
\_\_\_\_\_

**LICENSEE**

WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written above.

\_\_\_\_\_  
By: \_\_\_\_\_  
Title:  
Address:  
Telephone:  
Email:

STATE OF MISSOURI

: ss

County of \_\_\_\_\_

I, the undersigned, a Notary Public in and for the State of Missouri, hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me [NAME \_\_\_\_], [TITLE \_\_\_\_] to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he/she signed and sealed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

\_\_\_\_\_  
Notary Public in and for the  
State of Missouri, residing at

\_\_\_\_\_

## APPENDIX A RATES, FEES, and CHARGES

**The Annual Wireless Attachment Rate** shall be \$270 Dollars per Pole. Only one Wireless Attachment permitted per Pole. Each five (5) years hereafter, the Annual Wireless Attachment Rate shall increase by three (3%) percent. The new Rate shall be effective January 1 of the following year.

The Annual Wireless Attachment Rate is for all Poles, including Pole Top Attachments, Attachments in the Communication Space, Attachments on Street Light Poles, or any other Support Structure. Distribution Poles shall include Single Phase, Three Phase Poles, and Secondary Poles. Primary Poles with Distribution Power Equipment and Transmission Line Power Poles are not included.

**Roadway Poles Exception.** Pursuant to Section 11.2 of this Agreement, the annual Attachment Rate, only as to Roadway Poles, shall be \$150 Dollars per Pole. Without any increase in the Rate so long as the Permit authorizing the Collocation remains in effect.

### Non-Recurring Fees

1. Permit Application Fee for Small Cell Attachments: One Hundred dollars (\$100.00) per Application (limit five (5) Attachments per Application), plus \$100 for each Small Cell beyond the initial five (5). See Article 6 of Agreement.
2. Permit Application Fee for Placement of Licensee Poles in the Right of Way: One Thousand dollars (\$1,000.00) per Pole.
3. Anchor Use Fee: Two Hundred dollars (\$200) per Utility Anchor.
4. Grounding Connection Fee: Two Hundred dollars (\$200) per connection.
5. Transfer Attachment to new Pole – Tangent Pole Attachment (\$325)
5. The Parties reserve the right to adjust non-recurring Fees from time to time to cover actual costs, provided any such adjustments are applied on a nondiscriminatory basis to all Attaching Entities.

### Other Fees

1. **Standard Unauthorized Attachment Fee:** Licensee shall pay back Annual Attachment Rate for all Unauthorized Attachments (except Service Drop and/or Riser Attachments where an existing Permitted Pole Attachment exists) for a period of five (5) years, or since the date of the last inventory of Licensee's Attachments (whichever period is shortest), at the Annual Attachment Rate(s) in effect during such periods. Plus, One Thousand dollars (\$1000) per Attachment (including Service Drops, Overlashes, and Riser Attachments that were not reported and were installed subsequent to the date of this Agreement). Aggregate Unauthorized Attachment Fees shall be limited to \$10,000 per year.
2. **Non-Transfer/Removal Fees:** If, consistent with Article 8.1.2 of the Agreement, Licensee fails to rearrange, transfer, remove or Correct violations in a timely manner, Licensee shall be subject to a daily fee of One Hundred dollars (\$100) per Attachment, per day, beginning on the day after expiration of the original time period for completion of the work specified in the

Agreement and the original notification that Licensee needs to rearrange, transfer, remove or Correct violations. Beginning with the ninetieth (90<sup>th</sup>) day after expiration of the time period for completion of the work specified in the Agreement and original notification the daily fee shall escalate to Five Hundred dollars (\$500) per Attachment, per day. Aggregate daily fees shall be limited to \$10,000 per year.

3. All work performed by City due to Licensee's failure to perform shall be invoiced at the actual and documented Cost, plus twenty-five percent (\$25%).

SAMPLE

**APPENDIX B**  
**APPLICATION FOR SMALL CELL WIRELESS ATTACHMENT PERMIT**

City of \_\_\_\_\_

Date:

Address:

Permit #:

Attention: \_\_\_\_\_

In accordance with the terms and conditions of the Agreement between us, dated \_\_\_\_\_ 20\_\_\_\_, (i) an Application is hereby made for a Permit to make construct and install Wireless Facilities including Attachments to City Poles and/or to install a Licensee Pole(s) in the Right-of-Way. The specific Pole(s) and Locations for the installations/Collocations/Modification is requested as follows:

<b>Pole No.</b>	<b>Location</b>	<b>Attachment Overlash</b>
-----------------	-----------------	--------------------------------

Application

Permission

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

Granted by: \_\_\_\_\_

\_\_\_\_\_

Address

CITY OF \_\_\_\_\_

Address

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

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Cost: \_\_\_\_\_

Application Fee(s) Total: \_\_\_\_\_

Application Fee(s) Paid: \_\_\_\_\_

Make-Ready Work Cost Totals: \_\_\_\_\_

Make-Ready Work Cost Totals Accepted: \_\_\_\_\_

1. Application shall be submitted electronically with a hard copy delivered to the City.
2. A complete description of all Facilities shall be given; including quantities, sizes and types of all cables and equipment. See Article 6.
4. Licensee will notify all other Attaching Entities of the need to transfer and/or rearrange Attachments.

**Mutual Agreement(s) to toll time for review of Application(s) or Resubmission of Application(s)**

The Parties hereto mutually agree to toll or extend the period of time allowed for the review of this Application as follows: \_\_\_\_\_

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

**Licensee**

**City**

\_\_\_\_\_

\_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

The Parties hereto mutually agree to toll or extend the period of time allowed for the resubmission by Licensee of this Application as follows:

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

**Licensee**

**City**

\_\_\_\_\_

\_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**APPENDIX C**  
**STANDARDARS AND SPECIFICATIONS**

[City to insert City's Standards and Specifications]

SAMPLE