



TOWN OF FOUNTAIN HILLS

STAFF REPORT

Meeting Date: 06/09/2025

Meeting Type: Planning and Zoning Commission

Agenda Type:

Submitting Department: Development Services

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Request to Planning and Zoning Commission (Agenda Language): REVIEW AND DISCUSS: Ordinances and requirements associated with regulating small cell wireless facilities in the public right-of-way.

Staff Summary (Background)

In 2017, the State of Arizona adopted rules regarding the placement and regulation of small wireless facilities (SWF) located in the public right-of-way. In response, local jurisdictions across the state adopted local procedures in keeping with these State requirements. The State's regulations are in ARS 9-591-600. Copies of those requirements are attached.

Following the requirements of the State, Fountain Hills adopted what is now Article 16-2, Small Wireless Facilities, in the Town Code to regulate this activity in the Town's rights-of-way. In addition, the Town also adopted by resolution a Wireless Facilities License Agreement, Wireless Facilities Standard Terms and Conditions, and Small Wireless Facilities in the Right-of-Way Design Standards and Guidelines. These various documents provide the details on what is required to establish and maintain a small wireless facility in the Town's right-of-way. Copies of each of these documents are attached to this report.

When the Town contracted with Mr. Campanelli to prepare a new ordinance addressing wireless telecommunications and antennas, he included provisions for regulation of small wireless facilities in the draft ordinance provided to the Town. A copy of this draft ordinance is attached.

Following is a brief review and summary of these documents. The full documents are attached. Also provided below are a few regulations staff found in other Arizona communities that may be of interest to the Commission.

State Statutes

9-591 Definitions

1. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals and that is used in providing wireless services.
19. "Small wireless facility" means a wireless facility that meets both of the following qualifications:
 - (a) All antennas are located inside an enclosure of not more than six cubic feet in volume or, in

the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of not more than six cubic feet in volume.

(b) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume, or fifty cubic feet in volume if the equipment was ground mounted before August 9, 2017. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this subdivision:

- (i) An electric meter.
- (ii) Concealment elements.
- (iii) A telecommunications demarcation box.
- (iv) Grounding equipment.
- (v) A power transfer switch.
- (vi) A cutoff switch.
- (vii) Vertical cable runs for the connection of power and other services.

25. "Wireless services" means any services that are provided to the public and that use licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

26. "Wireless services provider" means a person that provides wireless services. Wireless services provider does not include a special taxing district.

9-592 Applicability; wireless provider; use of right-of-way

A. This section applies to the activities of a wireless provider within a right-of-way.

E. An authority shall establish and make available rates, fees and terms for all of the following, within six months after August 9, 2017 or three months after receiving the first request by a wireless provider, whichever is later:

- 1. The construction, installation, mounting, maintenance, modification, operation or replacement of a utility pole or monopole by a wireless provider in a right-of-way.
- 2. The collocation of a small wireless facility by a wireless provider in a right-of-way.
- 3. The collocation of a wireless facility on or within a monopole by a wireless provider in a right-of-way.

I. Subject to subsection K, paragraph 2, subdivision (c) of this section, a new, replacement or modified utility pole that is associated with the collocation of small wireless facilities and that is installed in the right-of-way is not subject to zoning review and approval under section 9-594 if the utility pole does not exceed the greater of either:

- 1. Ten feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on August 9, 2017, that is located within five hundred feet of the new, replacement or modified utility pole and that is in the same right-of-way within the jurisdictional boundary of the authority, but not more than fifty feet above ground level.
- 2. Forty feet above ground level.

J. New small wireless facilities collocated on a utility pole or wireless support structure in the right-of-way are not subject to zoning review and approval if they do not extend more than ten feet above the utility pole or wireless support structure and do not exceed fifty feet above ground level.

K. An authority may require an application under this section for the installation of new, replacement or modified utility poles associated with the collocation of small wireless facilities. An authority shall approve an application unless the authority finds that the utility pole fails to comply with any of the following:

- 1. Applicable codes.
- 2. Local code provisions or regulations that concern any of the following:
 - (a) Public safety.
 - (b) Objective design standards and reasonable stealth and concealment requirements.

(c) Undergrounding requirements that prohibit the installation of new or the modification of existing utility poles or monopoles in a right-of-way without prior approval, if such requirements include a waiver, zoning or another process that addresses requests to install such new utility poles or monopoles or modify such existing utility poles or monopoles and do not prohibit the replacement of utility poles or monopoles.

3. Requirements that are imposed by a contract between an authority and a private property owner and that concern design standards applicable to utility poles in the right-of-way.

4. The authority's public safety and reasonable spacing requirements that concern the location of new utility poles in a right-of-way.

L. An authority shall process applications under subsection K of this section in compliance with applicable law. If an authority fails to approve or deny an application within the time frame specified by applicable law, the application shall be deemed approved. Any application fee is subject to the requirements provided in section 9- 593, subsection J. The total application fee, if allowed, may not exceed seven hundred fifty dollars.

M. The construction, installation, mounting, maintenance, modification, operation or replacement for which a permit is granted shall be completed within one hundred eighty days after the permit issuance date, unless the authority and wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

9-593 Applicability; colocation of small wireless facilities

B. Except as provided in this section and sections 9-592, 9-594, 9-595, 9-597, 9-598 and 9-599, as applicable, an authority may not prohibit, regulate or charge for the collocation of small wireless facilities.

C. Subject to this section and section 9-592, subsection J, a small wireless facility is classified as a permitted use and is not subject to zoning review or approval if the small wireless facility is collocated in a right-of-way in any zone.

G. An authority may not:

1. Directly or indirectly require an applicant to perform services that are unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit or pole space on the wireless provider's monopole or utility pole for the authority.

2. Require an applicant to provide more information to obtain a permit than the authority requires of a communications service provider that is not a wireless provider and that requests to attach facilities to a structure. An authority may require the applicant to certify that the small wireless facilities to be collocated comply with the federal communications commission's regulations concerning radio frequency emissions referenced in 47 United States Code section 332(c)(7)(B)(iv).

3. Institute, either expressly or de facto, a moratorium on filing, receiving or processing applications or issuing permits or other approvals, if any, for the collocation of a small wireless facility.

4. Require an application for routine maintenance or the replacement of small wireless facilities with small wireless facilities that are substantially similar or the same size or smaller. An authority may require a permit to work within a right-of-way for such activities, if applicable. A permit issued pursuant to this paragraph is subject to the requirements of this section.

L. This article does not allow a person to collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure or private property without the consent of the property owner.

5-594 Structures subject to zoning;

A. The following activities that take place inside of a right-of-way are subject to this section and all of the authority's codes and regulations, including the authority's zoning codes and other regulatory processes governing use of the rights-of-way, unless the activities are exempt from zoning review and approval under section 9-592, subsection I or J or section 9-593, subsection C:

1. The installation of new monopoles, utility poles or wireless facilities.
2. The collocation of wireless facilities.

B. Notwithstanding any provision in this article to the contrary, the construction, installation, maintenance, modification, operation or replacement of a monopole or associated wireless facility in a right-of-way is subject to all of the authority's codes and regulations, including the authority's zoning codes and other regulatory processes governing use of the rights-of-way.

C. An authority shall:

1. Accept and process applications for the modification of existing or the installation of new monopoles, utility poles or wireless facilities and the collocation of wireless facilities.
2. Within thirty days after receiving an application, notify the applicant whether the application is complete. If an application is incomplete, the authority must specifically identify the information missing from the application.
3. Process each complete application on a nondiscriminatory basis. A complete application is deemed approved if the authority fails to approve or deny the application within one hundred fifty days after receipt of an application for the modification of existing or the installation of new monopoles, utility poles or wireless facilities or within ninety days after receipt of a complete application for the collocation of wireless facilities. The time period for approval may be tolled to accommodate timely requests for information required to complete the application or may be extended by mutual agreement between the applicant and authority.
4. If a complete application is denied, notify the applicant in writing and provide substantial supporting evidence of the reason for denial in the written record. The written notification of the denial and the supporting evidence shall be publicly released contemporaneously. There must be a reasonable basis for the denial of an application. An authority may not deny an application if the denial is discriminatory against the applicant with respect to the placement of the facilities of other wireless providers.

D. An authority may not:

1. Require an applicant to submit information about the applicant's business decisions regarding the need for the monopole, utility pole or wireless facilities.
2. Require an applicant to submit information about, or evaluate an applicant's business decisions regarding, the applicant's service, customer demand for service or quality of service.
3. Institute, either expressly or de facto, a moratorium on filing, receiving or processing applications or issuing decisions for modifications or installations that are not a permitted use.

E. An authority, in addition to other rights the authority has under federal, state or local law, may:

1. Adopt reasonable requirements regarding the appearance and concealment of facilities, including those relating to materials used for arranging, screening or landscaping.
2. Adopt setback or fall zone requirements that are substantially similar to setback or fall zone requirements that are imposed on other types of commercial structures of a similar height.
3. Charge an application fee. Any application fee is subject to the requirements provided in section 9-593, subsection J. The total application fee, if allowed, may not exceed one thousand dollars for the modification of existing or the installation of new monopoles or utility poles or for the collocation of wireless facilities.
4. Charge a rate or fee for the use of the right-of-way for the installation of a monopole and associated wireless facility that is limited to not more than the direct and actual costs of managing the right-of-way and that is not in the form of a franchise or other fee based on revenue or customer counts.

9-596. Scope of local authority

A. Subject to this article and applicable federal law, an authority may exercise zoning, land use, planning and permitting authority and the authority's police power within the authority's territorial boundaries, including for the installation, modification and replacement of wireless support structures and utility poles.

The key language in all of this is in 5-592. In E, cities and towns are directed to establish the terms for allowing construction of new wireless provider facilities and colocation on existing facilities in the right-of-way. I and J state new poles up to 40' in height and colocation on poles up to 50' in height are not subject to local zoning.

Current Town Ordinance and Supporting Documents

Following the adoption of the State's new regulations in 2017, the Town drafted and approved the required local regulations. Because the facilities would be in street rights-of-way and not subject to zoning regulations, the Town chose to place the ordinance in Chapter 16, Streets and Sidewalks, of the Town Code. The provisions regulating SWF are in Article 16-2, Small Wireless Facilities. In particular, Section 16-2-3 sets forth the requirements and process for review and approval of these facilities. In order to obtain approval for placing these facilities in the Town's right-of-way, an applicant must sign a Facility Lease Agreement, comply with the Wireless Facilities Standard Terms and Conditions and the Town's Design Standards and Guidelines, and receive an Encroachment Permit. The actual regulations for the installation and maintenance of SWF in the Town's rights-of-way are contained in the Terms and Conditions and the Design Standards documents.

Wireless Facility Lease Agreement

The lease agreement primarily addresses six topics related to the areas of the ROW being leased:

1. Establishment of the boundary of the area leased and the provider's responsibilities within that area;
2. Provision of a site plan that shows the improvements that will be placed in the right-of-way;
3. Agreement with the Terms;
4. Lease payments;
5. Compliance with the use restrictions in the Terms; and,
6. Granting of an Encroachment Permit.

Wireless Facilities Standard Terms and Conditions

This document provides the details on how a SWF in the right-of-way is to be developed and operated. This is a legal contract document, not an ordinance. The focus of Planning Commission review will be on the sections that address the physical impacts of the use. Sections to focus attention on are:

1. Definitions.
5. Use Restrictions
6. Wireless Provider's Improvements
8. Maintenance and Utilities
13. Insurance
18. Compliance with Law

Small Wireless Facilities in the Right-of-Way Design Standards and Guidelines

This document sets minimum standards for the design of SWF facilities within the public right-of-way. The adopted standards are based on whether the SWF is being located on an existing pole (streetlight, traffic signal, or utility pole) or is installing a new structure in the right-of-way. All of these standards and guidelines are open for update and modification based on the input and direction of the Commission.

Campanelli Ordinance SWF in the ROW

The request to Mr. Campanelli was to include regulations for SWF in the right-of-way as part of the ordinance. Section 17-3 of that draft ordinance lists four application types, two of which address SWF.

Application Type I addressed colocation of SWF. SWF's being colocated on an existing pole in the public right-of-way are allowed subject to approval of a building permit. No other review criteria or standards were included.

Application Type III addressed new SWF not in the right-of-way and required review through a Special Use Permit.

None of the proposed application types in this draft ordinance addressed new SWF in the right-of-way.

Sample of SWF Requirements from other Arizona Cities and Towns

Each city and town in Arizona has had to develop their own regulation to address SWF in the right-of-way. Staff has reviewed the regulations in several other communities to see if they are providing any regulations that the Town may want to consider adding to our regulations. A few ideas that have been identified are:

Paradise Valley

- Administrative SWF applications go to Planning Commission for review of siting and site specific design at a public hearing. Notice is sent to property owners within 500'.
- Staff can examine the proposed location and an area within 100' radius for the best location that still meets the cover and capacity requirements based on the following criteria:
 - Not in sight triangle of street or driveway
 - Setback as far as possible from sidewalk or street curb
 - Setback from habitable structures on private property equal to height of structure
 - Placed to blend with landscaping
- RF frequency performance standards and monitoring requirements that include: "Existing SWF plus cumulative: Maximum estimate of RF power density levels (spatially averaged per FCC Guidelines) measured in the SWF RF environment to be inclusive of any other significant contributors to the RF environment (i.e. co-located SWF). Definition of "Significant Contributors" to be any contributor >5% of the FCC Public limit at any measurement location."

Sedona

- No antenna attached to a freestanding pole in the right-of-way, other than as a collocation with an existing power, light or other utility pole, or unless installed as a concealed facility, shall be permitted within 50 feet of any principal residential structure as measured from the location of the small wireless facility to the nearest wall of a residential structure. Small wireless facilities shall maintain a minimum 25-foot distance from the primary doorway of businesses or residences measured from the outer door frame.
- Whenever small wireless facilities must be placed in a right-of-way with residential uses on one or both sides, neither poles, equipment, antennas nor other structures shall be placed in front

of a residential structure. If a right-of-way has residential structures on only one side, the small wireless facilities shall be located on the opposite side of the right-of-way whenever possible. All small wireless facilities shall be sited to minimize visual impacts to adjacent properties and viewsheds.

- The city may deny an application subject to this section if the proposed small wireless facility, ground equipment, or new, modified, or replaced pole:
 - i. Materially and demonstrably interferes with the safe operation of traffic control equipment;
 - ii. Materially and demonstrably interferes with sight lines or clear zones for transportation or pedestrians;
 - iii. Materially fails to comply with the Americans with Disabilities Act or similar federal, state, or local laws, standards and regulations regarding pedestrian access or movement;
 - iv. Fails to comply with applicable codes, standards and regulations, including the city's design standards; or
 - v. Fails to comply with the provisions in this section.

Related Ordinance, Policy or Guiding Principle

N/A

Risk Analysis

N/A

Recommendation(s) by Board(s) or Commission(s)

N/A

Staff Recommendation(s)

There is no recommendation at this time. The purpose of this agenda item is to introduce the Commission to the existing ordinance and associated documents for regulating SWF in the right-of-way, have initial discussion about these rules, and seek direction on how the Commission would like to proceed with review and potential modifications of these requirements.

SUGGESTED MOTION

No motions will be made at this time, but the Commission may give direction to staff on steps to take to review and update the ordinance and associated documents.

Attachments

State Statutes

Article 16-2

Supporting Documents

Draft Campanelli Ordinance

591. Definitions

In this article, unless the context otherwise requires:

1. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals and that is used in providing wireless services.
2. "Applicable codes" means uniform building, fire, electrical, plumbing or mechanical codes that are adopted by a recognized national code organization or local amendments to those codes that are enacted to address threats of destruction of property or injury to persons and to an extent that is not inconsistent with this article.
3. "Applicant" means any person that submits an application and that is a wireless provider.
4. "Application" means a request that is submitted by an applicant to an authority for a permit to collocate small wireless facilities or to approve the installation, modification or replacement of a utility pole or wireless support structure.
5. "Authority" means any city, town, special district or political subdivision of this state that is authorized to make legislative, quasijudicial or administrative decisions concerning an application. Authority does not include any state court that has jurisdiction over an authority and does not include a county, special taxing district, or electric cooperative.
6. "Authority utility pole" means a utility pole that is owned or operated by an authority and that is in a rightofway. Authority utility pole does not include a utility pole for electric distribution.
7. "Cable operator" has the same meaning prescribed in section 9505 and includes a video service provider. Cable operator does not include a special taxing district.
8. "Collocate" or "collocation" means to install, mount, maintain, modify, operate or replace wireless facilities on, within or adjacent to a wireless support structure or utility pole.
9. "Communications service" means cable service as defined in 47 United States Code section 522(6), information service as defined in 47 United States Code section 153(24), telecommunications service as defined in 47 United States Code section 153(53) or wireless service.
10. "Communications service provider" means a cable operator, a provider of information service as defined in 47 United States Code section 153(24), a telecommunications carrier as defined in 47 United States Code section 153(51) or a wireless services provider.
11. "Fee" means a onetime charge.
12. "Law" means any federal, state or local law, statute, common law, code, rule, regulation, order or ordinance.
13. "Monopole" means a wireless support structure that is not more than forty inches in diameter at the ground level and that has all of the wireless facilities mounted on the pole or contained inside of the pole.
14. "Permit" means written permission required by an authority to install, mount, maintain, modify, operate or replace a utility pole or monopole, to collocate a small wireless facility on a utility pole or wireless support structure or to collocate wireless facilities on a monopole.
15. "Person" means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization, including an authority.
16. "Private easement" means an easement or other real property right that is only for the benefit of the grantor and grantee and the grantor's or grantee's successors and assigns.
17. "Rate" means a recurring charge.
18. "Rightofway" means the area on, below or above a public roadway, highway, street, sidewalk, alley or utility easement. Rightofway does not include a federal interstate highway, a state highway or state route under the jurisdiction of the department of transportation, a private easement, property that is owned by a special taxing district, or a utility easement that does not authorize the deployment sought by the wireless provider.
19. "Small wireless facility" means a wireless facility that meets both of the following qualifications:
 - (a) All antennas are located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within

an imaginary enclosure of not more than six cubic feet in volume.

(b) All other wireless equipment associated with the facility is cumulatively not more than twentyeight cubic feet in volume, or fifty cubic feet in volume if the equipment was ground mounted before August 9, 2017. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this subdivision:

- (i) An electric meter.
- (ii) Concealment elements.
- (iii) A telecommunications demarcation box.
- (iv) Grounding equipment.
- (v) A power transfer switch.
- (vi) A cutoff switch.
- (vii) Vertical cable runs for the connection of power and other services.

20. "Special taxing district" means a special district formed pursuant to title 48, chapter 11, 12, 17, 18, 19, 20 or 22.

21. "Utility pole" means a pole or similar structure that is used in whole or in part for communications services, electric distribution, lighting or traffic signals. Utility pole does not include a monopole.

22. "Wireless facility":

(a) Means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including both of the following:

- (i) Equipment associated with wireless communications.
- (ii) Radio transceivers, antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment, regardless of technological configuration.

(b) Includes small wireless facilities.

(c) Does not include the structure or improvements on, under or within which the equipment is collocated, wireline backhaul facilities, coaxial or fiberoptic cable that is between wireless support structures or utility poles or coaxial or fiberoptic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.

(d) Does not include WiFi radio equipment described in section 9506, subsection I or microcell equipment described in section 9584, subsection E.

23. "Wireless infrastructure provider" means any person that is authorized to provide telecommunications service in this state and that builds or installs wireless communications transmission equipment, wireless facilities, utility poles or monopoles but that is not a wireless services provider. Wireless infrastructure provider does not include a special taxing district.

24. "Wireless provider" means a cable operator, wireless infrastructure provider or wireless services provider.

25. "Wireless services" means any services that are provided to the public and that use licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

26. "Wireless services provider" means a person that provides wireless services. Wireless services provider does not include a special taxing district.

27. "Wireless support structure":

(a) Means:

- (i) A freestanding structure, such as a monopole.
- (ii) A tower, either guyed or selfsupporting.
- (iii) A sign or billboard.
- (iv) Any other existing or proposed structure designed to support or capable of supporting small

wireless facilities.

(b) Does not include a utility pole.

9-592. Applicability; wireless provider; use of right-of-way; rates, fees and terms; right to access; damage and repair

A. This section applies to the activities of a wireless provider within a right-of-way.

B. An authority may not enter into an exclusive arrangement with a wireless provider for use of a right-of-way for any of the following:

1. The construction, installation, maintenance, modification, operation or replacement of utility poles or monopoles.
2. The collocation of small wireless facilities on utility poles or wireless support structures.
3. The collocation of wireless facilities on monopoles.

C. An authority may charge a wireless provider a rate or fee for the use of a right-of-way for the construction, installation, maintenance, modification, operation or replacement of a utility pole in the right-of-way or the collocation of a small wireless facility in the right-of-way, only if the authority charges other communications service providers or publicly, cooperatively or municipally owned utilities for the use of the right-of-way and the authority has the legal authority to do so. If an authority charges a rate or fee pursuant to this section, the rate or fee for a wireless provider must be:

1. Limited to not more than the direct and actual cost of managing the right-of-way.
2. Competitively neutral in regard to other users of the right-of-way, including investor-owned, authority-owned or cooperatively owned entities, unless other users are exempt from such rates or fees under applicable law.

D. A rate or fee charged pursuant to subsection C of this section may not do any of the following:

1. Result in a double recovery where existing rates, fees or taxes already recover the direct and actual costs of managing a right-of-way.
2. Be in the form of a franchise or other fee based on revenue or customer counts.
3. Be unreasonable or discriminatory.
4. Exceed an annual amount equal to fifty dollars multiplied by the number of small wireless facilities that are in the authority's geographic jurisdiction and that are placed by the wireless provider in the right-of-way.

E. An authority shall establish and make available rates, fees and terms for all of the following, within six months after August 9, 2017 or three months after receiving the first request by a wireless provider, whichever is later:

1. The construction, installation, mounting, maintenance, modification, operation or replacement of a utility pole or monopole by a wireless provider in a right-of-way.
2. The collocation of a small wireless facility by a wireless provider in a right-of-way.
3. The collocation of a wireless facility on or within a monopole by a wireless provider in a right-of-way.

F. The rates, fees and terms established pursuant to subsection E of this section must be made available for acceptance by a wireless provider. At the wireless provider's option, a wireless provider may request different or additional terms that the parties shall negotiate in good faith. Documents that reflect rates, fees and terms with each wireless provider are public records. Rates, fees and terms must comply with this article, and the terms:

1. May not be unreasonable or discriminatory.
2. May include requirements applicable to other users of the right-of-way.
3. May require that the wireless provider's operation of the small wireless facilities in the right-of-way does not interfere with the authority's public safety communications.
4. Subject to subsection K of this section and section 9-593, subsection F, may not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems

on a single utility pole.

5. Subject to subsection K of this section and section 9-593, subsection F, may not limit the placement of small wireless facilities by minimum separation distances.

G. Agreements between authorities and wireless providers that are in effect on August 9, 2017 and that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on authority utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees and terms established under subsections E and F of this section for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees and terms become effective.

H. Subject to this section and the approval of an application, if required, a wireless provider may do any of the following:

1. Collocate small wireless facilities.
2. Construct, install, modify, mount, maintain, operate and replace utility poles that are associated with the collocation of small wireless facilities along, across, on and under the right-of-way.
3. Construct, install, modify, mount, maintain, operate and replace monopoles that are associated with the collocation of wireless facilities along, across, on and under the right-of-way. The installation, modification and replacement of monopoles are subject to review under section 9-594 regardless of the height of the monopole.

I. Subject to subsection K, paragraph 2, subdivision (c) of this section, a new, replacement or modified utility pole that is associated with the collocation of small wireless facilities and that is installed in the right-of-way is not subject to zoning review and approval under section 9-594 if the utility pole does not exceed the greater of either:

1. Ten feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on August 9, 2017, that is located within five hundred feet of the new, replacement or modified utility pole and that is in the same right-of-way within the jurisdictional boundary of the authority, but not more than fifty feet above ground level.
2. Forty feet above ground level.

J. New small wireless facilities collocated on a utility pole or wireless support structure in the right-of-way are not subject to zoning review and approval if they do not extend more than ten feet above the utility pole or wireless support structure and do not exceed fifty feet above ground level.

K. An authority may require an application under this section for the installation of new, replacement or modified utility poles associated with the collocation of small wireless facilities. An authority shall approve an application unless the authority finds that the utility pole fails to comply with any of the following:

1. Applicable codes.
2. Local code provisions or regulations that concern any of the following:
 - (a) Public safety.
 - (b) Objective design standards and reasonable stealth and concealment requirements.
 - (c) Undergrounding requirements that prohibit the installation of new or the modification of existing utility poles or monopoles in a right-of-way without prior approval, if such requirements include a waiver, zoning or another process that addresses requests to install such new utility poles or monopoles or modify such existing utility poles or monopoles and do not prohibit the replacement of utility poles or monopoles.
3. Requirements that are imposed by a contract between an authority and a private property owner and that concern design standards applicable to utility poles in the right-of-way.
4. The authority's public safety and reasonable spacing requirements that concern the location of new utility poles in a right-of-way.

L. An authority shall process applications under subsection K of this section in compliance with applicable law. If an authority fails to approve or deny an application within the time frame specified by applicable law, the

application shall be deemed approved. Any application fee is subject to the requirements provided in section 9-593, subsection J. The total application fee, if allowed, may not exceed seven hundred fifty dollars.

M. The construction, installation, mounting, maintenance, modification, operation or replacement for which a permit is granted shall be completed within one hundred eighty days after the permit issuance date, unless the authority and wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

N. Approval of an application by an authority authorizes the applicant to do both of the following:

1. Undertake the requested deployment.
2. Subject to applicable relocation requirements, the authority's terms as described in this section and the wireless provider's right to terminate at any time, operate and maintain the wireless provider's new, modified or replacement utility pole for a period of not less than ten years, which must be renewed for equivalent durations unless the authority makes a finding that the new or modified utility pole does not comply with the requirements described in subsection K of this section.

O. An authority may require a wireless provider to repair all damage to the authority's property and the right-of-way that is caused by the activities of the wireless provider or the wireless provider's contractor while occupying, installing, repairing or maintaining small wireless facilities, wireless support structures or utility poles in the right-of-way and to return the damaged property to the same condition as before the damage pursuant to the competitively neutral, reasonable requirements and specifications of the authority. If the wireless provider fails to make the repairs required by the authority within a reasonable time after the authority provides written notice to the wireless provider, the authority may make the repairs and charge the applicable party the reasonable, documented cost of the repairs.

P. This article does not relieve a wireless provider from any applicable requirement to obtain a franchise, license or other permission to provide communications service or to install, place, maintain or operate facilities or structures that are not authorized by this article in the right-of-way to provide a communications service.

9-593. Applicability; collocation of small wireless facilities; permits; application; fee

A. This section applies to the activities of a wireless provider within a right-of-way.

B. Except as provided in this section and sections 9-592, 9-594, 9-595, 9-597, 9-598 and 9-599, as applicable, an authority may not prohibit, regulate or charge for the collocation of small wireless facilities.

C. Subject to this section and section 9-592, subsection J, a small wireless facility is classified as a permitted use and is not subject to zoning review or approval if the small wireless facility is collocated in a right-of-way in any zone.

D. An authority may require an applicant to obtain one or more permits to collocate a small wireless facility if the permit requirement is of general applicability and does not apply exclusively to wireless facilities. An applicant seeking to collocate multiple small wireless facilities within the jurisdiction of a single authority may file a consolidated application for the collocation of up to twenty-five small wireless facilities if the collocations each involve substantially the same type of small wireless facilities and substantially the same type of structure.

E. An application must include an attestation that the small wireless facilities will be collocated on the utility pole or wireless support structure and that the small wireless facilities will be operational for use by a wireless services provider to provide service within one hundred eighty days after the permit issuance date, unless the authority and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

F. An authority:

1. Shall accept applications for, process and issue permits to collocate small wireless facilities.
2. Within twenty days after receiving an application, shall determine and notify the applicant whether the application is complete. If an applicant is not notified within the twenty-day period, the application is deemed complete. If an application is incomplete, the authority must specifically identify the information missing from the application.

3. Shall process each application on a nondiscriminatory basis. A complete application is deemed approved if the authority fails to approve or deny the application within seventy-five days after receiving a complete application.

4. Shall approve an application unless the application does not meet the applicable codes, local code provisions or regulations that concern public safety, objective design standards for decorative utility poles or reasonable stealth and concealment requirements or public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way. If an authority determines that applicable codes or local code provisions or regulations require that the utility pole or wireless support structure be replaced before the requested collocation, approval may be conditioned on such replacement of the utility pole or wireless support structure. The wireless provider's request for a replacement utility pole or wireless support structure will be processed pursuant to section 9-592.

5. If an application is denied, shall document the basis for the denial, including the specific code provisions, regulations or requirements on which the denial was based, and send the documentation to the applicant on or before the date that the application is denied. The applicant may cure the deficiencies identified by the authority and resubmit the application within thirty days after the denial without paying an additional application fee. The authority shall approve or deny the revised application within thirty days after receiving the revised application. Any subsequent review is limited to the deficiencies cited in the denial.

6. If an application includes multiple small wireless facilities, may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. The authority may issue separate permits for each collocation that is approved in a consolidated application.

G. An authority may not:

1. Directly or indirectly require an applicant to perform services that are unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit or pole space on the wireless provider's monopole or utility pole for the authority.

2. Require an applicant to provide more information to obtain a permit than the authority requires of a communications service provider that is not a wireless provider and that requests to attach facilities to a structure. An authority may require the applicant to certify that the small wireless facilities to be collocated comply with the federal communications commission's regulations concerning radio frequency emissions referenced in 47 United States Code section 332(c)(7)(B)(iv).

3. Institute, either expressly or de facto, a moratorium on filing, receiving or processing applications or issuing permits or other approvals, if any, for the collocation of a small wireless facility.

4. Require an application for routine maintenance or the replacement of small wireless facilities with small wireless facilities that are substantially similar or the same size or smaller. An authority may require a permit to work within a right-of-way for such activities, if applicable. A permit issued pursuant to this paragraph is subject to the requirements of this section.

H. Collocation for which a permit is granted shall be completed within one hundred eighty days after the permit issuance date, unless the authority and the wireless provider agree to extend this period or a delay is caused by the lack of commercial power at the site.

I. Approval of an application by an authority allows the applicant to do both of the following:

1. Collocate the small wireless facilities.

2. Subject to applicable relocation requirements, the wireless provider's right to terminate at any time and the authority's terms described in section 9-592, operate and maintain the small wireless facilities for a period of not less than ten years, which must be renewed for equivalent durations unless the authority makes a finding that the small wireless facilities do not comply with the applicable codes or local code provisions or regulations described in subsection F, paragraph 4 of this section.

J. An authority may charge an application fee that is limited to the actual, direct and reasonable costs that are incurred by the authority and that relate to the granting or processing of an application. An application fee shall be reasonably related in time to the incurring of such costs. If such costs are already recovered by existing fees,

rates or taxes that are paid by a wireless provider, an authority may not charge an application fee to recover such costs. An application fee may not include:

1. Third-party travel expenses that are incurred to review an application.
2. The direct payment or reimbursement of third-party rates or fees that are charged on a contingency basis or pursuant to a result-based arrangement.

K. The total application fee, if allowed, may not exceed one hundred dollars each for up to five small wireless facilities addressed in an application and fifty dollars for each additional small wireless facility addressed in the application.

L. This article does not allow a person to collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure or private property without the consent of the property owner.

9-594. Structures subject to zoning; time frames; application; fees

A. The following activities that take place inside of a right-of-way are subject to this section and all of the authority's codes and regulations, including the authority's zoning codes and other regulatory processes governing use of the rights-of-way, unless the activities are exempt from zoning review and approval under section 9-592, subsection I or J or section 9-593, subsection C:

1. The installation of new monopoles, utility poles or wireless facilities.
2. The collocation of wireless facilities.

B. Notwithstanding any provision in this article to the contrary, the construction, installation, maintenance, modification, operation or replacement of a monopole or associated wireless facility in a right-of-way is subject to all of the authority's codes and regulations, including the authority's zoning codes and other regulatory processes governing use of the rights-of-way.

C. An authority shall:

1. Accept and process applications for the modification of existing or the installation of new monopoles, utility poles or wireless facilities and the collocation of wireless facilities.
2. Within thirty days after receiving an application, notify the applicant whether the application is complete. If an application is incomplete, the authority must specifically identify the information missing from the application.
3. Process each complete application on a nondiscriminatory basis. A complete application is deemed approved if the authority fails to approve or deny the application within one hundred fifty days after receipt of an application for the modification of existing or the installation of new monopoles, utility poles or wireless facilities or within ninety days after receipt of a complete application for the collocation of wireless facilities. The time period for approval may be tolled to accommodate timely requests for information required to complete the application or may be extended by mutual agreement between the applicant and authority.
4. If a complete application is denied, notify the applicant in writing and provide substantial supporting evidence of the reason for denial in the written record. The written notification of the denial and the supporting evidence shall be publicly released contemporaneously. There must be a reasonable basis for the denial of an application. An authority may not deny an application if the denial is discriminatory against the applicant with respect to the placement of the facilities of other wireless providers.

D. An authority may not:

1. Require an applicant to submit information about the applicant's business decisions regarding the need for the monopole, utility pole or wireless facilities.
2. Require an applicant to submit information about, or evaluate an applicant's business decisions regarding, the applicant's service, customer demand for service or quality of service.
3. Institute, either expressly or de facto, a moratorium on filing, receiving or processing applications or issuing decisions for modifications or installations that are not a permitted use.

E. An authority, in addition to other rights the authority has under federal, state or local law, may:

1. Adopt reasonable requirements regarding the appearance and concealment of facilities, including those relating to materials used for arranging, screening or landscaping.
2. Adopt setback or fall zone requirements that are substantially similar to setback or fall zone requirements that are imposed on other types of commercial structures of a similar height.
3. Charge an application fee. Any application fee is subject to the requirements provided in section 9-593, subsection J. The total application fee, if allowed, may not exceed one thousand dollars for the modification of existing or the installation of new monopoles or utility poles or for the collocation of wireless facilities.
4. Charge a rate or fee for the use of the right-of-way for the installation of a monopole and associated wireless facility that is limited to not more than the direct and actual costs of managing the right-of-way and that is not in the form of a franchise or other fee based on revenue or customer counts.

F. An applicant's business decisions regarding the type and location of wireless facilities, monopoles or utility poles or the technology to be used are presumed to be reasonable. This presumption does not apply to the height or appearance of wireless facilities, monopoles or utility poles. An authority may consider the height of such structures in the zoning or other regulatory review, provided that the authority does not unreasonably discriminate between the applicant and other communications service providers that install wireless facilities.

G. Subject to applicable relocation requirements, the authority's terms described in section 9-592 and the wireless provider's right to terminate at any time, the approval term of an application shall be for a period of not less than ten years, which must be renewed for equivalent durations unless the authority makes a finding that the structure or facilities do not comply with the applicable codes or terms of the zoning or other regulatory process approval. Construction of the approved structure or facilities shall be completed within one hundred eighty days after the permit issuance date, unless the authority and the wireless provider agree to extend this period or a delay is caused by the lack of commercial power at the site.

9-595. Access to authority utility poles; rates and fees; collocations for other commercial projects or uses

A. An authority may not enter into an exclusive arrangement with any person for the right to attach to authority utility poles.

B. The rates and fees for the collocation of small wireless facilities on authority utility poles shall be nondiscriminatory regardless of the services provided by the collocating person.

C. The rate to collocate small wireless facilities on authority utility poles may not exceed fifty dollars per authority utility pole, per year.

D. An authority shall establish and make available rates, fees and terms for the collocation of small wireless facilities on authority utility poles within six months after August 9, 2017 or three months after receiving a request to collocate the first small wireless facility on such poles, whichever is later. The rates, fees and terms shall be made available for acceptance by a wireless provider. At the wireless provider's option, a wireless provider may request different or additional terms that the parties shall negotiate in good faith. Documents reflecting rates, fees and terms with each wireless provider shall be made publicly available. The rates, fees and terms shall comply with the following requirements:

1. The rates, fees and terms must be nondiscriminatory, competitively neutral and commercially reasonable and comply with this section and section 9-592, subsections E and F. Requests for collocating a small wireless facility on an authority utility pole will be processed pursuant to section 9-593. The authority may require a wireless provider to replace the authority utility pole if the authority determines that applicable codes or local code or regulatory provisions that concern public safety require replacement of the authority utility pole. The wireless provider's request to install a replacement utility pole will be processed pursuant to section 9-592. The authority shall retain ownership of the utility pole.
2. Terms must reasonably accommodate power supply and electric metering for the small wireless facility.

E. An authority may prohibit, regulate and charge for the collocation of a wireless facility on a wireless support structure owned by the authority.

9-596. Scope of local authority

A. Subject to this article and applicable federal law, an authority may exercise zoning, land use, planning and permitting authority and the authority's police power within the authority's territorial boundaries, including for the installation, modification and replacement of wireless support structures and utility poles.

B. An authority does not have any jurisdiction or authority over the design, engineering, construction, installation or operation of any small wireless facility located in an interior structure or on the site of any campus, stadium or athletic facility that is not owned or controlled by the authority, other than to require compliance with applicable codes.

C. This article does not authorize this state or any political subdivision of this state, including an authority, to require small wireless facility deployment or to regulate wireless services.

D. If an authority determines that a utility pole, monopole or wireless support structure of a wireless provider will be relocated to accommodate a public project, all wireless facilities deployed on such utility pole, monopole or wireless support structure shall be relocated at no cost to the authority.

9-597. Dispute resolution

A court of competent jurisdiction in this state shall determine all disputes arising under this article.

9-598. General requirements for use of the right-of-way

Structures and facilities deployed by wireless providers pursuant to this article shall be constructed, maintained and located as to not obstruct, endanger or hinder the usual travel or public safety on the right-of-way, damage or interfere with any other utility facilities in the right-of-way or interfere with a utility's use of the utility's facilities in the right-of-way. Construction and maintenance by the wireless provider shall comply with the national electrical safety code and all applicable laws and regulations for the protection of underground and overhead utility facilities. An authority shall treat a wireless provider's facilities located within a right-of-way on an equal basis with other utility facilities, except that an authority may adopt reasonable regulations to address the separation of the wireless provider's facilities from the other utility facilities within the right-of-way to prevent any damage to or interference with such other utility facilities or interference with a utility's use of the utility's facilities located or to be located within the right of way.

9-599. Applicability

This article does not:

1. Affect the authority of a special taxing district, investor-owned electric utility or electric cooperative that owns, controls or operates utility poles or wireless support structures to deny, limit, restrict or determine the rates, fees, terms and conditions for the use of or attachment to its utility poles or wireless support structures by a wireless provider.
2. Confer on any authority any zoning, land use, planning, permitting or other regulatory authority over the utility poles, wireless support structures or small wireless facilities owned, controlled or operated by a special taxing district, investor-owned electric utility or electric cooperative or the installation of such utility poles, wireless support structures or small wireless facilities by a special taxing district, investor-owned electric utility or electric cooperative.
3. Amend, modify or otherwise affect any private easement. Any and all rights for the use of a right-of-way are subject to the rights granted pursuant to any private easement.

9-600. Antenna use; private property; applicability

A. If an antenna is installed on property within the exclusive use or control of the antenna user whether the user has a direct or indirect ownership or leasehold interest in the property, an authority may not:

1. Unreasonably delay or prevent installation, maintenance or use of the antenna.
2. Unreasonably increase the cost of installation, maintenance or use of the antenna.
3. Prevent reception of acceptable signal quality.

B. This section applies to antennas that are not larger than one meter in diameter and installed on private property and are designed to receive video programming services via broadband radio service or to receive or transmit wireless signals other than via satellite.

C. This section does not apply to antennas used to transmit signals to and or receive signals from multiple customer locations.

Article 16-2

Small Wireless Facilities

Sections:

16-2-1	Purpose
16-2-2	Definitions
16-2-3	Small Wireless Facilities in the Public Right-of-Way
16-2-4	Rates and Fees

Section 16-2-1 Purpose

The intent and purpose of this article is to facilitate the development and installation of small wireless facilities in the Town of Fountain Hills to supplement existing wireless communications networks and to increase capacity in high demand areas, while simultaneously promoting and preserving the health, safety, and general welfare of the residents of the Town and protecting and preserving the aesthetic qualities of the natural and built environment of the Town. Through this article, the Town seeks to balance the need for increased wireless communications capacity with the need for reasonable standards to preserve the aesthetic values of the Town and to ensure the safe placement of small wireless facilities. (18-01, Added, 02/20/2018)

Section 16-2-2 Definitions

The definitions contained in A.R.S. § [9-591](#) are incorporated by this reference and shall apply to this article as if fully set forth here. (18-01, Added, 02/20/2018)

Section 16-2-3 Small Wireless Facilities in the Public Right-of-Way

This section permits the installation of small wireless facilities in the right-of-way subject to the following requirements:

- A. No monopoles, utility poles associated with small wireless facilities, or small wireless facilities shall be collocated, installed, modified, or replaced in the public right-of-way unless the following requirements are met:
1. The applicant participates in a pre-application conference with the Department of Development Services;
 2. An Application is submitted to and approved by the Town pursuant to this section;
 3. All Town requirements as set forth in this article are met;

4. All other applicable codes and requirements are met;
5. A Wireless Facility License Agreement is signed; and
6. A Wireless Facility Encroachment Permit issued.

B. The collocation, installation, modification, maintenance, and replacement of monopoles, utility poles associated with small wireless facilities, or small wireless facilities in the public right-of-way shall be subject to and comply with reasonable requirements, including the Wireless Facilities Standard Terms and Conditions, the Town's Design Standards and Guidelines, and any site-specific requirements developed based upon consultation with the Town through the site review and permitting process.

C. The Development Services Department shall prescribe and provide a regular form of Application for use by applicants for the collocation, installation, modification, maintenance, and replacement of monopoles, utility poles associated with small wireless facilities, or small wireless facilities in the public right-of-way. The Application shall include such information and details as the Department deems necessary to establish the exact location, nature, dimensions, duration and purpose of the proposed monopoles, utility poles, or small wireless facilities in the public right-of-way.

D. The Application shall be accompanied by maps, sketches, diagrams or similar exhibits. The accompanying materials shall be of the size and in the quantity prescribed by the Development Services Department and of sufficient clarity to illustrate the location, dimensions, nature and purpose of the proposed monopoles, utility poles associated with small wireless facilities, or small wireless facilities in the public right-of-way and its relation to existing and proposed facilities in the right-of-way.

E. No changes shall be made in the location, dimensions, character or duration of the monopoles, utility poles associated with small wireless facilities, or small wireless facilities in the public right-of-way as granted by the permit except upon written authorization of the Development Services Department.

F. Approval of an Application is contingent upon the applicant demonstrating compliance with the Wireless Facilities Standard Terms and Conditions, the Town's Design Standards and Guidelines, and any site-specific requirements developed based upon consultation with the Town through the site review and permitting process.

G. An applicant may appeal denial of an Application to the Town Council by following this procedure: Within seven calendar days of the denial of an Application, an applicant shall file a notice of appeal, in writing, with the Town Clerk. The Town Council may affirm, modify, or reverse the action from which the appeal is taken.

H. Upon approval of an Application, a Wireless Facility Encroachment Permit will be issued for each monopole, utility pole associated with small wireless facilities, or small wireless facility included in the Application. However, nothing in this article shall be construed to exempt monopoles, utility poles associated with small wireless facilities, or small wireless facilities in the public right-of-way from the requirements of Article [16-1](#) as an encroachment in the public right-of-way.

I. The collocation, installation, modification, maintenance, and replacement of monopoles, utility poles associated with small wireless facilities, or small wireless facilities shall be subject to rates and fees pursuant to Section [16-2-4](#) of this article. (18-01, Added, 02/20/2018)

Section 16-2-4 Rates and Fees

A. The Town Council shall, by ordinance or resolution, set and amend any rate, rate component, charge, or fee authorized by state law for the use of the public right-of-way and Town utility poles in connection with small wireless facilities including:

1. Fees for special use permit applications
2. Fees for collocation applications;
3. Fees for the use of the right-of-way;
4. Rates for the use of the Town's utility poles;
5. Fees for Encroachment Permit Applications;
6. Fees to recover legal costs resulting from enforcement to any noncompliance including, but not limited to, administrative expenses, investigation, testing, legal proceedings and filings, and continued monitoring; and
7. Other fees as the Town may determine necessary to carry out the requirements contained herein.

B. All rates and fees set or amended pursuant to this article shall be reasonable and shall not exceed the amounts permitted by state law.

C. The Town shall publish and make available its schedule of rates and fees.

D. These fees relate solely to the matters covered by this article and are separate from all other fees, fines and penalties chargeable by the Town. (18-01, Added, 02/20/2018)

The Fountain Hills Town Code is current through Ordinance 24-19, passed October 1, 2024.

Disclaimer: The town clerk's office has the official version of the Fountain Hills Town Code. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

[Town Website: www.fh.az.gov](http://www.fh.az.gov)

[Hosted by General Code.](#)

RESOLUTION NO. 2018-18

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ADOPTING THE WIRELESS FACILITY LICENSE AGREEMENT AND THE WIRELESS FACILITIES STANDARD TERMS AND CONDITIONS FOR LOCATING WIRELESS FACILITIES WITHIN TOWN RIGHTS-OF-WAY, THE 2018 TOWN OF FOUNTAIN HILLS WIRELESS FACILITIES IN THE RIGHT-OF-WAY DESIGN STANDARDS AND GUIDELINES, AND AMENDING THE TOWN COMPREHENSIVE FEE SCHEDULE; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, as follows:

SECTION 1. That the Wireless Facility License Agreement is hereby approved in the form as set forth in Exhibit "A", attached hereto and incorporated herein by reference.

SECTION 2. That the Wireless Facilities Standard Terms and Conditions are hereby approved in the form as set forth in Exhibit "B", attached hereto and incorporated herein by reference.

SECTION 3. That the 2018 Town of Fountain Hills Wireless Facilities in the Right-of-Way Design Standards and Guidelines are hereby approved in the form as set forth in Exhibit "C", attached hereto and incorporated herein by reference.

SECTION 4. That the proposed amendments to the Fee Schedule, initially posted as Development Services Department Fees, are now included in Public Works Department Fees as Encroachment/Engineering Permit Fees.

SECTION 5. That the Town Comprehensive Fee Schedule, of the Fiscal Year 2017-2018 Adopted Budget is hereby amended by adding the line items set forth in Exhibit "D", attached hereto and incorporated herein by reference.

SECTION 6. That the Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Resolution.

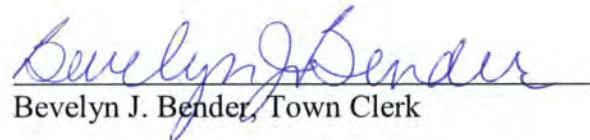
SECTION 7. Because of the urgent need for the implementation of the Town's regulations concerning small wireless facilities, and the immediate operation of this Resolution is necessary for the preservation of the public peace, health and welfare, an emergency is hereby declared to exist and this Resolution shall be in full force and effect from and after its passage and approval by the Mayor and Council as required by law and

is hereby exempt from the referendum provisions of the Constitution and laws of the State of Arizona.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, February 20, 2018.

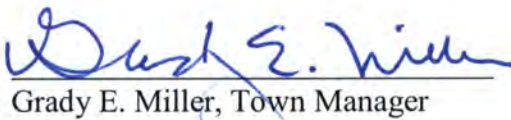
FOR THE TOWN OF FOUNTAIN HILLS: ATTESTED TO:

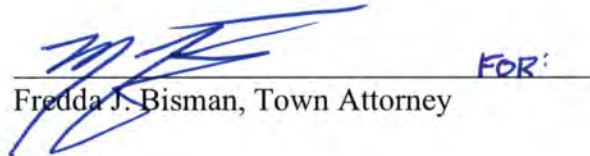

Linda M. Kavanagh


Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:


Grady E. Miller, Town Manager

 FOR:
Fredda J. Bisman, Town Attorney

CERTIFICATION

I, Bevelyn J. Bender, the duly appointed Clerk of the Town of Fountain Hills, Arizona, do hereby certify that the above and foregoing Resolution No. 2018-18 was duly passed by the Mayor and Council of the Town of Fountain Hills, Arizona, at a regular meeting held on February 20, 2018, and the roll call of the vote thereon was 6 Ayes, 0 Nays, and that the Mayor and 5 Councilmembers were present thereat.

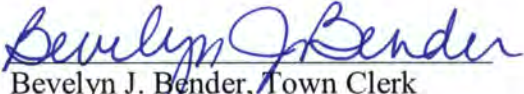

Bevelyn J. Bender, Town Clerk
Town of Fountain Hills, Arizona

EXHIBIT A
TO
RESOLUTION NO. 2018-18

[Wireless Facility License Agreement]

See following pages.

Town License# _____

Wireless Provider's Name:

WIRELESS FACILITY LICENSE AGREEMENT

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

RECITALS

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

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

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

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

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

F. The volume of the Enclosure and the above ground portion of its pad shall be

as shown in the Site Plan incorporated into each Encroachment Permit Application and shall be limited as stated on that Site Plan.

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

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

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

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

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

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

I. LICENSE TERMS

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

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

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

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

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

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

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

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

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

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

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

1.2.2 Site Plan. It is Wireless Provider's responsibility before submitting any Encroachment Permit Application authorized by this License Agreement to ensure that the Site Plan correctly shows the work that Wireless Provider intends to perform, that the Site Plan correctly shows all improvements and equipment that Wireless Provider intends be located on the Use Areas, that the Site Plan shows no work, improvements or equipment outside the Exclusive Areas and Shared Areas properly depicted and labeled on the Boundary Plan, and that all work, improvements and equipment is encompassed within the purposes enumerated in the Terms for that particular Exclusive Area or Shared Area. Any

work, improvements or equipment not conforming to all the foregoing is prohibited, even if it is clearly shown on the Site Plan or discussed in the Terms. Any refinement or other change to the Site Plan after Town issues a Encroachment Permit is void unless Wireless Provider obtains Town's approval of the change pursuant to the plans approval processes set out in the Terms and pursuant to all applicable regulatory requirements.

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

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

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

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

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

1.2.6.2 Traffic control plan.

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

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

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

3. Annual Blanket Encroachment Permit for Incidental Work at a Site: On or before January 1 of each calendar year, the Wireless Provider shall submit an application for a

Blanket Encroachment Permit to perform incidental and routine maintenance work at any site in the Town's Right-of-way. The Blanket Encroachment Permit shall only cover such activities as checking and inspecting communications equipment and antennas, changing circuit packs and cards, cleaning the cabinets and immediate area, and other similar activity. The Blanket Encroachment Permit does not include any work that requires the replacement of cabinets, antennas, or communications equipment, or any excavation, trenching, or concrete or roadway cutting within the Boundary Plan use area.

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

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

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

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

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

EXECUTED as of the date first given above.

TOWN:

Town of Fountain Hills,
an Arizona municipal corporation

By: _____

Town Manager

WIRELESS PROVIDER: _____

a _____

By: _____

Name: _____

Its: _____

EXHIBIT B
TO
RESOLUTION NO. 2018-18

[Wireless Facilities Standard Terms and Conditions]

See following pages.

WIRELESS FACILITIES STANDARD TERMS AND CONDITIONS

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

RECITALS

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

TERMS

1. DEFINITIONS. For the purposes of the Terms:

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

"Application Fee" means the Town's encroachment permit application, review and other fees related to the issuance of the permit.

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

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

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

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

"FCC" means the Federal Communications Commission.

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

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

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

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

"RF" means radio frequency.

"RF Letter" means a letter attesting to the Wireless Provider's compliance with FCC RF exposure guidelines from the Wireless Provider's senior internal

engineer.

"Right-of-way" as defined for wireless sites in A.R.S. §9-591(18) means the area on, below or above a public roadway, highway, street, sidewalk, alley, or utility easement. Right-of-way does not include a Federal Interstate Highway, a state highway or state route under the jurisdiction of the Department of Transportation, a private easement, property that is owned by a special taxing district, or a utility easement that does not authorize the deployment sought by the wireless provider.

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

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

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

"Supplemental Parcel Agreement" means an agreement authorizing the Wireless Provider to use property outside of the Town's Right-of-way, whether

owned by the Town or a third-party.

"Third Party Areas" means the portions of the Right-of-way, such as canal crossings or other areas that for any reason have limited Right-of-way dedications or that have regulatory use restrictions imposed by a third party.

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

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

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

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

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

"Wireless Provider's Improvements" means all improvements installed by the Wireless Provider, including, but not limited to: all elements of the Wireless Facility, all screening elements, any landscaping plants or materials, and any

other elements provided by the Wireless Provider in the approved License Agreement.

"Wireless Services" as defined in A.R.S. §9-591(25) means any services that are provided to the public and that use licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

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

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

a) Means:

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

2. USE AREAS.

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

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

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

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

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

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

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

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

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

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

route for Wireless Provider's use must be separately authorized by Town.

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

2.6 Rights in Adjacent Land. Wireless Provider's rights are expressly limited to the real property defined as the "Use Areas" an issued Encroachment Permit. Without limitation, in the event any public Right-of-way or other public or private property at or adjacent to the Use Areas is owned, dedicated, abandoned or otherwise acquired, used, improved or disposed of by Town, such property shall not accrue to Wireless Provider but shall be the Town's property and not subject to the Use Areas.

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

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

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

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

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

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

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

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

2.12.1 Competing Users. Wireless Provider accepts the risk that Town and others (the "Competing Users") may now or in the future install their facilities in the Use Areas in locations that make parts of the Right-of-way unavailable for Wireless Provider's use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.12.6.3 Town may perform any part of the Relocation Work that has not been performed within the allotted

time. Wireless Provider shall reimburse Town for its actual costs in performing any Relocation Work. Town has no obligation to move Wireless Provider's, Town's or others' facilities.

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

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

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

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

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

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

3. DURATION; EXTENSIONS.

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

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

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

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

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

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

4. WIRELESS PROVIDER'S PAYMENTS.

Wireless Provider shall make payments to Town as follows:

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

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

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

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

4.1.4 All other amounts required by the License Agreement.

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

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

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

4.5 Use Fee Schedule. Provider shall pay all Use Fees at the times and in the amounts specified by Town's normal processes. Town's failure to collect

any item of the Use Fees does not waive Wireless Provider's liability for such Use Fee, nor shall such failure be deemed a waiver by the Town to collect such Use Fee thereafter.

4.6 Letter of Credit. The Initial Letter of Credit amount shall be based upon the Wireless Provider's good faith projection of the number of sites to be constructed within the Town of Fountain Hills during the current calendar year. The Initial Letter of Credit shall be received by the Town before any construction and encroachment permits are issued as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

4.7 Late Fees. Any fee payable under this Agreement is deemed paid only when Town actually receives good cash payment. Should any fee not be paid on or before the date due, a late fee shall be added to the amount due in the amount of the greater of ten percent (10%) of the amount due, or One Hundred Dollars (\$100.00). Furthermore, any fee that is not timely paid shall accrue simple interest at the rate of one and one-half percent (1 ½ %) per month from the date the amount first came due until paid. Wireless Provider expressly agrees that the foregoing represent fair and reasonable estimates by Town and Wireless Provider of Town's costs (such as accounting, administrative, legal and processing costs, etc.) in the event of a delay in payment of the fee. Town shall have the right to allocate payments received from Wireless Provider among Wireless Provider's obligations.

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

5. USE RESTRICTIONS.

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

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

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

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

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

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

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

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

using at the Use Areas and shall give advance written notice to Town of any change in frequencies.

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

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

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

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

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

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

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

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

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

5.6.5 Wireless Provider shall bear all costs pertaining to the erection, installation, operation, maintenance, replacement and removal of all signs including, but not limited to, the application for

and obtaining of any required sign, building or other permits regardless of the reason for any such activity, even if such activity is required by Town pursuant to these Terms.

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

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

5.8 Noise. Except during construction permitted under the License Agreement and for burglar alarms and other safety devices, outdoor loud speakers, sirens or other devices for making noise are prohibited. All equipment shall be operated so that sound coming therefrom is compliant with Section 11-1-7 of the Town Code and does not exceed the ambient noise level at the boundary of the Street Parcel. The preceding sentence does not apply to use of normal, properly maintained construction equipment used as permitted by the approved License Agreement or permit issued to Wireless Provider by the Town, to infrequent use of equipment that is as quiet or quieter than a typical well maintained gasoline powered passenger automobile, to use of an air conditioning unit that is no noisier than a typical well maintained residential air conditioning unit.

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

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

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

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

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

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

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

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

copies of all reports or other information regarding Toxic Substances.

5.14 Required Operation. During the entire term of the License Agreement and associated Encroachment Permit(s), and any renewals or extensions thereof, Wireless Provider shall actively and continuously operate the Communications Equipment twenty-four (24) hours per day, seven (7) days per week, for the Permitted Uses. Notwithstanding anything contained in this paragraph to the contrary, the operation requirements of this paragraph shall be effective commencing on the completion of the Project and shall continue through the date the License Agreement terminates or expires for any reason. In the event of relocation of the Communications Equipment or damage to the Use Areas severe enough that the Communications Equipment cannot reasonably be operated during repairs, the operation requirements of this paragraph shall be suspended during the time specified by these Terms for accomplishing repair of such damage or relocation of the Communications Equipment. Wireless Provider may temporarily cease operating the Communications Equipment for short periods necessary to test, repair, service or upgrade the Communications Equipment. Notwithstanding the foregoing to the contrary, any suspension in operations, whether or not authorized pursuant to the License Agreement, shall not serve to extend any Term of the License Agreement.

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

6. WIRELESS PROVIDER'S IMPROVEMENTS.

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

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

6.2 Zoning and Similar Approval Process. The zoning processes, building permit processes, Right-of-way management policies and similar regulatory requirements that apply to Wireless Provider's Improvements are completely separate from the plans approval processes set forth in these Terms. Wireless Provider's satisfaction of any requirement set forth these Terms does not substitute for compliance with any regulatory requirement. Wireless Provider's satisfaction of any regulatory requirement does not substitute for compliance with any requirement of these Terms. Wireless Provider must make all

submittals and communications regarding the requirements of these Terms through Town's Development Services Director and not through other staff. Wireless Provider shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Use Areas. Wireless Provider bears sole responsibility to comply with all stipulations and conditions that are required in order to secure such rezoning and other approvals. Notwithstanding anything in this paragraph to the contrary, to the extent regulatory requirements and requirements of these Terms are identical, compliance with regulatory requirements shall constitute compliance with these Terms and vice versa.

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

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

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

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

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

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

6.5.3 The Antennas and other Communications Equipment shall be properly designed, installed and maintained so as not to create a

risk of damage to the Pole, to persons or property upon or using the Street Parcel or Town's other property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. RF SAFETY FOR TOWN'S EMPLOYEES.

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

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

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

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

8. MAINTENANCE AND UTILITIES.

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

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

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

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

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

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

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

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

9. BREACH BY WIRELESS PROVIDER.

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

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

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

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

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

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

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

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

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

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

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

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

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

h. 9.1.11.1 Another failure to comply with any provision of these Terms during the following thirty (30) day period.

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

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

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

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

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

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

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

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

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

9.2.6 Require that the Wireless Provider remedy any and all violations and pay any and all outstanding fees in full (before accepting applications for new Encroachment Permits).

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

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

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

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

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

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

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

9.3.4 Violation Use Fees shall be assessed as follows:

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

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

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

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

10. BREACH BY TOWN.

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

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

11. NON-WAIVER.

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

12. TERMINATION.

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

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

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

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

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

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

13. INSURANCE.

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

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

13.1.1 Commercial General Liability. Commercial general liability insurance with a limit of Ten Million and No/100 Dollars (\$10,000,000.00) for each occurrence, a limit of Ten Million and No/100 Dollars (\$10,000,000.00) for products and completed operations annual aggregate, and a limit of Ten Million and No/100 Dollars (\$10,000,000.00) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, and liability assumed under an "insured contract" including this License Agreement. The policy will cover Wireless Provider's liability under the indemnity provisions set forth in these Terms. The policy shall contain a "separation of insured's" clause.

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

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

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

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

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

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

13.3.1 "Occurrence" coverage is required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13.5 Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to Town. At a minimum, all insurers shall be duly licensed (or

qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

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

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

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

14. INDEMNITY.

In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of any License Agreement or Encroachment Permit and until all obligations and performances under or related to the License Agreement (including these Terms) are satisfied and all matters described in this Paragraph are completely resolved, Wireless Provider and all other persons using, acting, working or claiming through or for Wireless Provider (if they or their subcontractor, employee or other person or entity hired or directed by them participated in any way in causing the claim in question) shall jointly and severally indemnify, defend and hold harmless Town and all other Additional Insureds for, from and against any and all claims or harm related to Wireless Provider's use of the Right-of-way or the rights granted to Wireless Provider with respect to the Right-of-way or Wireless Provider's exercise of its rights under these Terms (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities,

obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings and all other costs and expenses of litigation or resolving the claim) that may arise in any manner out of any use of the Right-of-way or other property pursuant to any License Agreement or Encroachment Permit or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to the License Agreement, including without limitation any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Right-of-way or surrounding areas related to Wireless Provider's exercise of its rights under this License Agreement, including without limitation, claims, liability, harm or damages caused in part by Town or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Wireless Provider or Town may be liable (collectively, "Claims"). As a condition to Town's approval of any License Agreement or Encroachment Permit, Wireless Provider specifically agrees that to the extent any provision of this paragraph is not fully enforceable against Wireless Provider for any reason whatsoever, this Paragraph shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law. The Indemnity shall also include and apply to any environmental injury, personal injury or other liability relating to Wireless Provider's use of real property under the License Agreement or any Encroachment Permits. Notwithstanding the foregoing, the Indemnity does not apply to Claims arising only from the sole gross negligence or intentionally wrongful acts of Town or to Claims that the law prohibits from being imposed upon the indemnitor.

15. CONDEMNATION.

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

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

15.2 Condemnation Proceeds. Wireless Provider hereby assigns and transfers to Town Wireless Provider's entire interest in all condemnation damages, interest, severance damages, and any other payments or proceeds of any kind relating to the condemnation (collectively the "Condemnation

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

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

16. DAMAGE TO OR DESTRUCTION OF USE AREAS.

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

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

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

17. WIRELESS PROVIDER'S RECORDS.

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

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

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

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

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

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

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

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

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

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

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

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

18. COMPLIANCE WITH LAW.

Wireless Provider shall perform its obligations under the License Agreement (including these Terms) and any Encroachment Permit in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are

now in effect or as may hereafter be adopted or amended. Without limiting in any way the generality of the foregoing, Wireless Provider shall comply with all and each of the following:

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

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

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

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

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

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

18.1.6 Wireless Provider's rights under this License Agreement and any Encroachment Permit are further subject to all present and future building restrictions, regulations, zoning laws, and all ordinances, resolutions, rules and orders of all bodies, bureaus, commissions and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction over the Use Areas or

Wireless Provider's use thereof. Wireless Provider shall comply with all of the foregoing.

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

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

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

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

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

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

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

18.5 Permits. Nothing in these Terms relieves Wireless Provider of the obligation to obtain permits, licenses and other approvals from Town or other units of government that are required for the erection, construction, reconstruction, installation, operation or maintenance of the Communications Equipment or provision of telecommunications services; or from compliance with applicable municipal codes, ordinances, laws and policies, such as zoning and land use ordinances and regulations, pavement cut and restoration ordinances and regulations, subdivision and project improvement ordinances, curb cut permits, building permits, Right-of-way permits, encroachment permits, traffic control permits and the like.

19. ASSIGNABILITY.

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

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

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

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

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

19.1.4 A Wireless Provider Insolvency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. MISCELLANEOUS.

The following additional provisions apply to these Terms:

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

20.2 Dates. Any reference to a year shall refer to a calendar year unless a fiscal year is specifically stated. Sunday, Saturday and Arizona legal holidays are holidays for purposes of the License Agreement and issued Encroachment Permits.

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

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

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

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

20.5 Conflicts of Interest. No officer, representative or employee of Town shall have any direct or indirect interest in the License Agreement or any Encroachment Permit, nor participate in any decision relating to the License Agreement or any Encroachment Permit that is prohibited by law. Notwithstanding the foregoing, pursuant to A.R.S. § 38-511, the Town of Fountain Hills may cancel the License Agreement or any Encroachment Permit, without penalty or further obligation, if any person significantly involved in

initiating, negotiating, securing, drafting or creating the License Agreement or associated Encroachment Permits on behalf of the Town is, at any time while the License Agreement or Encroachment Permits is in effect, or any extension thereof, an employee, agent or consultant to Wireless Provider in any capacity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT A
[TOWN'S DESIGN GUIDELINES]

See following pages



2018

Town of Fountain Hills
Small Wireless Facilities in the Right-of-Way
Design Standards & Guidelines

Town of Fountain Hills
Design Standards, Concepts and Requirements
Small Wireless Facilities in the Right-of-Way

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Definitions

Standard Design Requirements for Small Wireless Facility

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

"Antenna Mounting Bracket" means the hardware required to secure the antenna to the pole.

"Antenna Mounting Post" means the vertical post or pipe that the antenna mounting bracket is mounted to in order for the antenna to be attached to the pole.

"Antenna Shroud" means the three-sided cover that is mounted at the base of the antenna to conceal the appearance of the cables and wires from the hand-hole port on the pole to the bottom-fed antenna.

"Canister Antenna" means the canister or cylinder style housing used to conceal the antenna(s), amplifier(s), radio(s), cables, and wires at the top of a pole.

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

"Dog House" means the plastic or metal attachment to the base of a pole that covers the transition point of underground cables and wires to the vertical section of the pole.

"Ground Mounted Equipment" means any communications equipment that is mounted to a separate post or to a foundation on the ground.

"Light Emitting Diode" also referred to as "LED" is a type of lighting fixture installed on Town streetlight and traffic signal poles.

"Light Fixture" means the lighting unit or luminaire that provides lighting during the evening hours or during the hours of darkness.

"Luminaire Mast Arm" means the horizontal post that attaches the light fixture to the streetlight pole or traffic signal pole.

"Omni-directional Antenna" also referred to as an "omni antenna" this antenna is round in shape, like a pipe, and may be about one (1) inch diameter up to about six (6) inches diameter.

"Outside Diameter" also referred to as "OD" means the points of measurement, using the outer edges of a pole, pipe or cylinder.

"Panel Antenna" means the style of antenna that is rectangular in shape and with dimensions that are generally four (4) feet to eight (8) feet in height, by eight (8) inches to twelve (12) inches wide, and four (4) inches to nine (9) inches deep.

"Remote Radio Heads (RRH) / Remote Radio Units (RRU)" means the electronic devices that are used to amplify radio signals so that there is increased performance (farther distance) of the outgoing radio signal from the antenna.

"Right-of-way" as defined for wireless sites in A.R.S. §9-591(18) means the area on, below or above a public roadway, highway, street, sidewalk, alley, or utility easement. Right-of-way does not include a Federal Interstate Highway, a state highway or state route under the jurisdiction of the Department of Transportation, a private easement, property that is owned by a special taxing district, or a utility easement that does not authorize the deployment sought by the wireless provider.

"Sight Distance Easements" means the area of land adjacent to an intersection, driveway or roadway that has restrictive uses in order to preserve the view of oncoming or crossing vehicular and pedestrian traffic by drivers in vehicles attempting to merge with traffic or enter a roadway.

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

"Signal Head" means the "Red, Yellow and Green" light signals at a signal-controlled intersection.

"Signal Head Mast Arm" means the horizontal pole that has the signal heads mounted to it and attaches to the traffic signal pole.

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

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

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

- (i) An electric meter.
 - (ii) Concealment elements.

- (iii) A telecommunications demarcation box.
- (iv) Grounding equipment.
- (v) A power transfer switch.
- (vi) A cutoff switch.
- (vii) Vertical cable runs for the connection of power and other services.

"Stealth and Concealment Elements" means the use of shrouds, decorative elements, design concepts and faux elements so that a small wireless facility can be designed to blend in with the surrounding streetscape with minimal to any visual impact.

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

Town of Fountain Hills
Standard Design Requirements
Small Wireless Facility on Existing Streetlight

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

A. Pole Criteria:

1. *Purpose of Streetlight Pole:* The primary purpose of the pole shall remain as a pole structure supporting a streetlight luminaire and related streetlight fixtures used to provide lighting to the Town ROW. The attachment of wireless equipment to an existing streetlight pole or to a replacement pole that impedes this primary purpose will not be approved.
2. *General Requirement:*
 - a) An SWF shall be designed to blend in with the surrounding streetscape with minimal to any visual impact.
 - b) A replacement pole shall match the Town of Fountain Hills standard streetlight pole for the location in which it is installed, as closely as possible, subject to more specific criteria below.
 - c) As specified in Section 6.14 of the Town of Fountain Hills's *Wireless Facilities Standard Terms and Conditions*, for each individual pole type or style used to support the wireless equipment, one spare replacement pole shall be provided by the wireless provider to Town in advance so the pole can be replaced promptly in case of a knockdown.
 - d) All plans shall be signed and sealed by a Professional Engineer licensed in the State of Arizona.
 - e) All other details in the Town of Fountain Hills street light design standards shall apply.
3. *Specific Criteria:*
 - a) New or Replacement Pole Height

A new or replacement pole may be installed without zoning review if one of the two height requirements is met:

 - 1) Up to a ten (10) foot increase, not to exceed fifty (50) feet total (whichever is less), subject to the additional limitations in A.R.S. §9-592(I); or
 - 2) Up to forty (40) feet above ground level, per A.R.S. §9-592(J).

b) Overall Height of Replacement Pole

- 1) The "base" height of an existing streetlight pole shall be the height of the vertical pole section from the existing grade. The height of the luminaire mast arm, if higher than the vertical pole section, shall not be used to determine the new overall height of the replacement pole.
- 2) If the antennas are the highest vertical element of the site, then the new overall height of the replacement pole is measured from the existing grade to the top of the canister, top of the omni-directional antenna, or the top of the panel antenna.

c) Increase in Outside Diameter (OD) of Pole

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

d) Luminaire Mast Arms

- 1) All luminaire mast arms shall be the same length as the original luminaire arm, unless the Town requires the mast arm to be different (longer or shorter) based upon the location of the replacement pole.
- 2) Unless otherwise approved, all luminaire mast arms shall match the arc (if applicable) and style of the original luminaire arm.
- 3) The replacement luminaire mast arm shall be at the same height above the ground as the existing luminaire.

e) Luminaire Fixtures

- 1) All replacement poles shall have the Town standard light-emitting diode (LED) light fixture installed.
- 2) All replacement light fixtures shall have a new Town standard photo-cell or sensor provided by the wireless provider.

f) Pole Foundation

- 1) All pole foundations shall conform to the Town's adopted standards and specifications on streetlight design and shall be modified for wireless communications equipment and cables.
- 2) The Town, in its sole discretion, may require the pole foundation design to be "worst case" for all soil conditions.
- 3) A separate, one-inch diameter conduit shall be installed in the pole foundation for the Town's luminaire wire and any additional Town wires or cables. The Town's conduit shall be trimmed to three (3) inches above the top of the pole foundation.

- 4) The height of the pole foundation shall be two (2) inches above finished grade. If the pole foundation encroaches into any portion of the sidewalk, then the pole foundation shall be flush with the sidewalk.
 - 5) Shrouds for the streetlight pole mounting bolts may be required for the replacement pole.
- g) Painting of Replacement Pole
- 1) If the replacement pole is an unpainted galvanized pole, the pole shall not be painted or have a finish unless otherwise specified by the Town.
 - 2) For powder coated type poles, the wireless provider shall replace with same powder coated color and/or color combination per Town of Fountain Hills street light design standards or as otherwise required by the Town to minimize visual impact.
- h) Painting Antennas and Mounting Equipment
- 1) All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and other equipment mounted on a new or replacement unpainted galvanized pole shall be painted Sherwin Williams "Web Grey" (SW7075) color or equivalent, unless specified otherwise by the Town.
 - 2) All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and all other equipment mounted on a painted new or replacement pole shall be painted a color specified by the Town.
- i) Wireless provider shall install pole numbers on each replacement pole (to match the number on the existing streetlight pole being replaced) per Town of Fountain Hills street light design standards.

Town of Fountain Hills
Standard Design Requirements
Small Wireless Facility on Traffic Signal Pole

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

A. Pole Criteria:

1. *Purpose of Traffic Signal Pole:* The primary purpose of the traffic signal pole shall remain as a pole structure supporting a traffic signal and related streetlight fixtures used to provide traffic control and lighting to the Town ROW. The attachment of wireless equipment to a new or replacement traffic signal pole that impedes this primary purpose will not be approved.
2. *General Requirement:*
 - a) An SWF shall be designed to blend in with the surrounding streetscape with minimal to any visual impact.
 - b) A replacement pole shall match the Town of Fountain Hills standard traffic signal pole, as closely as possible, subject to more specific criteria below.
 - c) As specified in Section 6.14 of the Town of Fountain Hills's *Wireless Facilities Standard Terms and Conditions*, for each individual pole type or style used to support the wireless equipment, one spare replacement pole shall be provided by Company to Town in advance so the pole can be replaced promptly in case of a knockdown.
 - d) All plans shall be signed and sealed by a Professional Engineer licensed in the State of Arizona.
 - e) All other details in the Town of Fountain Hills traffic signal design standards shall apply.
3. *Specific Criteria:*
 - a) **New or Replacement Pole Height**

A new or replacement pole may be installed without zoning review if one of the two height requirements is met:

 - 1) Up to a ten (10) foot increase, not to exceed fifty (50) feet total (whichever is less), per A.R.S. §9-592(I); or
 - 2) Up to forty (40) feet above ground level, per A.R.S. §9-592(J).
 - b) **Overall Height of Replacement Pole**

The height of the replacement pole is measured from grade to the top of the antenna canister or the top of the panel antennas if the antennas are the highest elements.

- c) Increase in Outside Diameter (OD) of Pole
 - 1) If the replacement pole is a taper design, the diameter of the base section of the replacement pole OD shall not exceed twelve (12) inches or a 100% increase in the OD of the base section, whichever is less.
 - 2) If the replacement pole is non-tapered, then the diameter of the base section shall be equal to the top section and the OD shall not exceed twelve (12) inches or a 100% increase, whichever is less.
- d) Signal Head Mast Arms
 - 1) The traffic signal head mast arms shall be the same length as the original signal head mast arm unless the Town requires the mast arm to be different (longer or shorter) based upon the location of the replacement pole.
 - 2) All signal head mast arms shall match the arc (if applicable) and style of the original signal head mast arm.
- e) Luminaire Mast Arms
 - 1) All luminaire mast arms shall be the same length as the original luminaire arm unless the Town requires the mast arm to be different (longer or shorter) based upon the location of the replacement pole.
 - 2) All luminaire mast arms shall match the arc (if applicable) and style of the original luminaire arm.
- f) Signal Heads
 - 1) All existing signal heads shall be replaced, at no cost to Town, with new light-emitting diode (LED) signal heads, per Town of Fountain Hills traffic signal design standards.
 - 2) All signal heads shall be procured from a Town approved signal heads supplier or manufacturer.
- g) Luminaire Fixtures
 - 1) All replacement poles shall have the Town standard LED light fixture installed.
 - 2) All replacement light fixture shall have a new photo-cell or sensor installed to Town standard.
- h) Other Town Elements on Signal Mast Arm or Pole

All existing emergency signal detection units, video detection cameras, video cameras, cross walk service buttons, cross walk signals, and any other pedestrian or traffic devices shall be replaced with new units by wireless provider and installed at no cost to the Town. All equipment shall be procured from a list of Town approved suppliers.
- i) Signs and Other Misc.

All street name plates or signs, directional signs and any other Town

approved signs shall be replaced with new signs at no cost to the Town. All signs and attachments shall be procured from a list of Town approved suppliers.

j) Traffic Signal Pole Foundation

- 1) All pole foundations shall conform to the Town's standards and specifications on traffic signal pole design and shall be modified for wireless communications equipment, hand holes and cables.
- 2) The wireless provider shall install a three (3) inch diameter (OD) conduit in the pole foundation for the Town's cables and wires for the signal heads, luminaire and devices on the signal mast arm and luminaire mast arm. The Town's conduit shall be trimmed to three (3) inches above the top of the pole foundation.
- 3) In addition to the conduits for the Town's use inside the pole, the wireless provider shall install one of the two options for its cables and wires:
 - a) One, six (6) inch diameter (OD) conduit in the pole foundation; or
 - b) Two, four (4) inch diameter (OD) conduits in the pole foundation. The length of the conduit shall extend from the pole foundation to six (6) inches above the signal head mast arm.
- 4) Pole Foundation – Height Above Ground Level
 - a) If the pole foundation is in a landscaped or unimproved area, the height of the caisson shall be two (2) inches above finished grade. However, if the pole foundation is adjacent to or within a sidewalk or ramp, the height of the pole foundation shall be flush with the surface of the immediate area.
 - b) Shrouds for the traffic signal pole mounting bolts may be required for the replacement pole.

k) Painting of Pole, Antennas and Mounting Equipment

- 1) Specifications on paint color and painting process are provided in the Town of Fountain Hills traffic signal design standards.
- 2) For powder-coated traffic signal poles, the wireless provider shall replace with same powder-coated color and/or color combination, or as otherwise specified by the Town.

l) Construction of Traffic Signal

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

Town of Fountain Hills
Standard Design Requirements
Small Wireless Facility on Existing Utility Pole

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

A. Pole Criteria:

1. *Purpose of Utility Pole:* The primary purpose of the pole shall remain as a pole structure supporting a cables and wires used to provide communications services and electric distribution in the Town ROW. The attachment of wireless equipment to an existing third party-owned utility pole that impedes this primary purpose will not be approved.
2. *General Requirement:*
 - a) An SWF shall be designed to blend in with the surrounding streetscape with minimal to any visual impact.
 - b) A SWF mounted on an existing third party-owned utility pole is subject to more specific criteria below.
 - c) All plans shall be signed and sealed by a Professional Engineer licensed in the State of Arizona.
3. *Specific Criteria:*
 - a) Replacement Pole Height

A replacement pole may be installed without zoning review if one of the two height requirements is met:

 - 1) Up to a ten (10) foot increase, not to exceed fifty (50) feet total (whichever is less), per A.R.S. §9-592(I); or
 - 2) Up to forty (40) feet above ground level, per A.R.S. §9-592(J).
 - b) Overall Height of Replacement Utility Pole
 - 1) The "base" height of an existing utility pole shall be the height of the vertical pole section from the existing grade.
 - 2) If the antennas are the highest vertical element of the site, then the new overall height of the replacement pole is measured from the existing grade to the top of the canister or the top of the panel antenna.
 - c) Use of Existing Pole – Wood

- 1) An existing wood pole used for a SWF shall have the antennas contained within an eighteen (18) inch (OD) canister mounted at the top of the pole.
 - 2) Unless otherwise approved, the cables and wires from the base of the pole to the antennas shall be installed in a conduit or cable chase outside of the pole, facing away from the street or away from on-coming traffic.
 - 3) If a "dog house" (see *Exhibit C*) is required as a transition point connecting the underground cables and wires from the ground mounted equipment to the pole, the Town shall provide the maximum size, dimension and shape of the dog house on a case-by-case basis.
- d) Use of Existing Pole – Metal
- 1) An existing metal pole used for a SWF shall have the antennas contained within an eighteen (18) inch (OD) canister mounted at the top of the pole.
 - 2) Panel antennas on a metal pole shall have the same "RAD center" (center of radiation) so the antennas will be at the same height on the pole.
 - 3) The cables and wires from the base of the pole to the antennas shall be installed inside of the pole.
- e) Painting of Pole and Dog House
- 1) If the replacement pole is an unpainted galvanized pole, the pole shall not be painted or have a finish unless otherwise specified by the Town.
 - 2) If the existing or replacement pole includes a dog house for the transition of the cables and wires to the pole, the dog house shall be painted the same color as the pole or a color specified by the Town.
- f) Painting Antennas and Mounting Equipment
- 1) All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and other equipment mounted on a new or replacement unpainted galvanized pole shall be painted Sherwin Williams "Web Grey" (SW7075) color or equivalent, unless specified otherwise by the Town.
 - 2) All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and all other equipment mounted on a painted new or replacement pole shall be painted a color specified by the Town.
 - 3) If the antenna is mounted on a wood pole, the color of the antenna, antenna canister, mounting brackets and posts, shrouds and cable chases shall be painted a color specified by the Town that will closely match the color of the wood.
- g) Ground Mounted Equipment
- The Town may require the ground-mounted wireless equipment to be screened or concealed to reduce the visual impact to the surrounding area. The screening or concealment shall take into account the location of the site, the use of the immediate area, and the existing aesthetic elements surrounding the site.

Town of Fountain Hills
Standard Design Requirements
Wireless Facility on New Structures in ROW

The following design standards, in addition to the *Common Standards Design Concepts, Requirements and Details* that are included in this document, shall apply to a Wireless Facility that a wireless provider may install in the ROW that is not: 1) a replacement pole for an existing streetlight, 2) a replacement pole for an existing traffic signal or 3) a replacement pole for an existing utility pole.

The new wireless support structure, monopole or utility pole (the "New Structure") shall incorporate the highest level of stealth and concealment of the antennas and wireless equipment in order to minimize the visual impact of the site to the public.

A. Pole Criteria:

1. *Purpose of the New Structure:* The sole purpose of a new vertical element is to attach antennas for the provision of wireless services by a wireless provider in the Town's ROW.
2. *General Requirement:*
 - a) The New Structure shall be designed to minimize the visual and aesthetic impact of the new vertical element and associated equipment upon the look, feel, theme, and use of the surrounding area.
 - b) A wireless facility shall be designed to blend in with the surrounding streetscape and/or landscape with minimal to no adverse visual impact.
 - c) The New Structure shall be architecturally integrated and compatible with the use of the surrounding area.
 - d) The height of the New Structure cannot exceed the maximum allowed height of the zoning district that the site is proposed.
 - e) All plans shall be signed and sealed by a Professional Engineer licensed in the State of Arizona.
3. *Specific Criteria:*
 - a) *New Structure Height.* A New Structure may be installed without zoning review if one of the two height requirements are met, see A.R.S. §9-592(I) and A.R.S. §9-592(J):
 - 1) A.R.S. §9-592(I) states that the small wireless facility in the ROW is not subject to zoning review and approval in Section 9-594 if the utility pole does not exceed the greater of either:
 - i. Ten feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the effective date of this section, that is located within five hundred feet of the new, replacement or modified utility pole and

that is in the same right-of-way within the jurisdictional boundary of the authority, but no more than fifty feet above ground level.

- ii. Forty feet above ground level.
- 2) A.R.S. §9-592(J) states that new small wireless facilities collocated on a utility pole or wireless support structure in the right-of-way are not subject to zoning review and approval if they do not extend more than ten feet above the utility pole or wireless support structure and do not exceed fifty feet above ground level.
- b) Setbacks. Any New Structure subject to zoning review shall comply with all Town fall and setback requirements, including a 100% setback from all property lines, occupied structures, public roadways and sidewalks.
- c) Overall Height of New Structure. The height of the New Structure is measured from existing grade to the highest point of the New Structure.
- d) Stealth and Concealment Elements
- 1) New Structures shall be located in areas where they can blend into the existing built and natural environment, where existing landscape elements may assist with concealing the structure from view, and where the addition of the structure will least affect the view sheds from neighboring properties.
 - 2) Depending upon the location of the New Structure and the character of the neighboring area, the Town may require additional landscaping to be installed in connection with the Town's approval of the application. The additional landscaping may include trees, mature vegetation, natural features or hardscaping.
 - 3) The Wireless Provider shall conceal all equipment within a faux cactus structure, similar to the 22' to 40' tall Larsen Camouflage design (see Exhibit G) or as otherwise approved by the Town.
 - i. New Structures thus concealed shall comply with standard details, such as dimensions, colors and materials similar to existing faux cactus installations in the Town.
 - 4) As part of the stealth and concealment elements of the New Structure, the Town may require the wireless provider to install street name plates, directional signs, and other decorative signs or artistic elements on the structure.
 - 5) The wireless provider is solely responsible for the cost of all stealth and concealment elements and the installation of other elements required by the Town.
 - 6) The wireless provider is responsible for the performance of and any costs incurred for regular upkeep, maintenance and replacement (if necessary) of these stealth and concealment elements.

e) Architectural Integration with Surrounding Area

- 1) The New Structure shall be designed in consultation with various internal Town stakeholders and may include external stakeholders.
- 2) The Town may require the New Structure to be constructed of a specific material or specific design that will enhance the stealth and concealment of the site.

f) Foundation

- 1) The foundation for the New Structure, if required, shall conform to civil and structural engineering standards acceptable to the Town, with design modifications for wireless communications equipment and cables.
- 2) Unless otherwise stated herein, the height of the New Structure foundation shall be two (2) inches above finished grade. However, if the New Structure foundation is adjacent to or within a sidewalk or ramp, the height of the pole foundation shall be flush with the surface of the immediate area.
- 3) Shrouds for the pole mounting bolts may be required.
- 4) If the New Structure is concealed as a faux cactus installation, the structure shall be installed to appear as part of the natural environment, and shall not be located on existing concrete such as sidewalks or curbs, nor shall concrete be placed around the base of the facility except as needed to anchor and support the structural elements of the structure. All such concrete and anchor devices shall be shielded from view by earth, rocks, decomposed granite and landscaping as required by the Town.

g) Painting

- 1) The Town shall identify the paint colors, location of paint and any decorative work that may be painted onto the New Structure or ground equipment.
- 2) If visible, the Town shall identify the paint colors for the antennas, antenna mounting brackets and posts, antenna shrouds, and cables.
- 3) The Town may require the New Structure or ground equipment to be painted using a powder-coat or other process.

h) Ground Mounted Equipment

The Town may require the ground-mounted wireless equipment to be sited and screened or concealed to reduce the visual impact to the surrounding area. The screening or concealment shall take into account the location of the site, the use of the immediate area, and the existing aesthetic elements surrounding the site.

Town of Fountain Hills
Small Wireless in the ROW
Common Standard Design Concepts, Requirements and Details

The following standard design requirements shall be applied to all new small wireless facilities in the Town's ROW, whether for a small wireless facility to be installed on an existing or replacement streetlight pole, an existing or replacement traffic signal pole, an existing or replacement utility pole, or on a New Structure.

A. Pole Design & Installation

1. Replacement Pole Clearances – Underground Utilities

All ground-mounted electrical equipment shall maintain minimum horizontal clearance from underground utilities.

- Clearance from water lines shall be at least six (6) feet.
 - Clearance from sewer lines shall be at least six (6) feet.
 - Clearance from telecommunications shall be at least one (1) foot.
 - Clearance from cable television lines shall be at least one (1) foot.
 - Clearance from all other underground infrastructure shall be at least six (6) feet.
- a) The Town, in its sole discretion, may grant a variance, upon approval by the Town Engineer, from these horizontal separation distances on a case-by-case basis. The approval of a variance is dependent factors specific to the site.
- b) In the case where there is an issue with horizontal separation from other underground utilities, the wireless provider may elect to work with the impacted utility to have lines, pipes or property moved so that minimum clearance is achieved. All relocation of Town-owned or a privately-owned utility shall be at the sole expense of the wireless provider.

2. Calculating the Base Height of an Existing Pole

The base height, from which the calculation of the "increase in pole height" is referenced for determining the overall pole height, shall be calculated as follows:

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

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

b) Traffic Signal Pole (see *Exhibit B*)

A traffic signal pole with a luminaire mast arm that is mounted above the

signal head mast arm to the pole shall use the top of the vertical portion of the pole as the base height.

3. Replacement Pole Clearance – Original Streetlight Pole or Traffic Signal Pole

The minimum distance of the replacement pole from the original pole location shall be sixty (60) inches or more so that construction can occur safely. The Town may change this minimum distance on a case-by-case basis.

4. Replacement Pole Clearances – Sidewalks

The new or replacement pole shall maintain twelve (12) inch minimum clearance distance from sidewalks. The Town, in its sole discretion, may increase that minimum clearance on a case-by-case basis to ensure the safe use of the sidewalk and adjacent area.

5. Sight Distance Easements (SDE) and Sight Visibility Triangles (SVT)

All new and replacement poles shall be installed in a location that does not impair or interfere with SDE or SVT safety requirements as reasonable determined by the Town.

6. Cables, Wires and Jumpers

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

b) All cables for the wireless equipment and antennas shall exit the pole or conduit at a location, behind the antenna shroud, and shielded from view. It is the intent of the Town that the cables shall not be visible.

1) See Exhibit D1 for examples of appropriately shielded cables.

2) See Exhibit D2 for examples of unacceptable cabling.

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

7. Hand-holes

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

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

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

8. Wireless Facility Identification Information

- a) A four (4) inch by six (6) inch Radio Frequency Safety notice may be mounted no less than twenty-four (24) inches from the bottom of the antenna, facing away from traffic.
- b) The wireless provider may place on the pole a discreet site identification or number. The size, color and location of this identifier shall be determined by the Town.
- c) The Town, as specified in the Wireless Facilities Standard Terms and Conditions, may require the wireless provider to place on the pole, in a discreet but accessible location, the telephone number of wireless provider's network operations center.
- d) No wireless provider signs may be placed on a streetlight, traffic signal pole, wireless support structure, or a new or replacement pole except to the extent required by local, state or federal law or regulations.

9. Interference with Town Wireless Network

The Town has, or may have in the future, certain wireless devices in a network that connects traffic signals, community centers, water sites, and other locations for the Town's proprietary use. The selection of a location for a wireless site shall consider the potential interference of the Town's wireless network with RF from a wireless provider's proposed site.

10. Cable Chase and Dog Houses

The Town, in its sole discretion, shall determine if an exterior cable chase and dog house are aesthetically compatible with the pole and immediate area. The materials and paint color of the cable chase and dog house shall be determined on a case-by-case basis.

B. Removal of Original Pole, Equipment and Pole Foundation

1. Removal of Original Signal Pole, Mast Arm, Signal Heads and Luminaire

- a) The Town shall determine what original components, (e.g., original pole, mast arm, signal heads and luminaire, etc.) shall be delivered by the wireless provider, at no cost to the Town, to a location specified by the Town.
- b) If the Town accepts some of the original components, then only those components shall be delivered by the wireless provider to the Town and the remaining components shall be discarded by the wireless provider.

2. Removal of Original Streetlight or Traffic Signal Pole Foundation

The concrete pole foundation for the original streetlight or traffic signal pole shall be removed by the wireless provider as instructed by the Town:

a) Partial Removal

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

b) Complete Removal

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

C. Antennas, RRH/RRU, Cables and Mounting on Pole:

1. *General Requirement:* All antennas shall be installed in a manner that minimizes the visual impact to the general public. In order to minimize the visual impact, wireless providers should use canister antennas, where possible and appropriate unless the Town's stealth and concealment requirements indicate otherwise. See Exhibit F. All work shall be performed in a professional manner that is consistent with the highest standards of workmanship.

2. *Specific Criteria:*

a) Antenna Mounting Posts and Brackets

- 1) All panel antennas shall be mounted directly to the pole or onto a mounting pole so that the distance from the "face" of the streetlight pole to the back of the antenna does not exceed nine (9) inches.
- 2) All mounting posts shall be trimmed so that the poles do not extend higher than the top of the antenna or protrude lower than the antenna unless necessary to install the shroud.
- 3) All pole attached wireless equipment must be a minimum ten (10) feet from the sidewalk elevation.

b) Panel Antennas

- 1) All panel antennas for a small cell site shall fit within an imaginary enclosure of not more than six (6) cubic feet in volume in accordance with A.R.S. §9-591(19)(a). (NOTE: This volume does not include antenna cable shrouds when required.)
- 2) All panel antennas with exposed cables from the bottom of the antenna shall have a shroud installed on the antenna or antenna mounting posts to conceal the cables. (see *Exhibits D1 and D2*)
 - a. The type of shroud may be a forty-five (45) degree angle (away from the bottom of the antenna; toward the pole) or a ninety (90) degree angle (parallel to the bottom of the antenna) depending on the location of the site.
 - b. The shroud shall extend from the bottom of the antenna to two (2) inches below the bottom of the nearest hand-hole.

c) Canister Antennas

- 1) All canister antennas shall fit within an imaginary enclosure of not more than six (6) cubic feet in volume. (Note: This volume does not include the canister as it is a stealth device and not the antenna.)
 - 2) The canister shall be no larger than eighteen (18) inches in diameter (OD).
 - 3) All canister antennas shall be located in a canister that is mounted to a base plate at the top of the vertical section of the replacement pole.
 - 4) All cables protruding from the canister shall be concealed within the canister or by a shroud at the point where the canister is mounted to the base plate.
- d) Remote Radio Heads (RRH) / Remote Radio Units (RRU)
- Under State Law §9-591(19)(a), the RRH/RRU is not considered part of the antenna. If allowed, the RRH/RRU shall be calculated as part of "All other wireless equipment associated with this facility..." in A.R.S. §9-591(19)(b) that is subject to the twenty-eight (28) cubic feet maximum size for small cell sites.
- 1) On a case-by-case basis, the Town in its sole discretion and – upon reviewing the landscape in the immediate surrounding area, the location of the pole, and stealth options, may allow a site to have an RRH/RRU installed on the pole.

D. Ground-mounted Equipment:

1. *General requirement:* All ground-mounted equipment shall be installed in a manner that minimizes the visual and ingress/egress impact to the general public. All work shall be performed in a professional manner that is consistent with the highest standards of workmanship.
2. *Specific criteria:*
 - a) Sight Distance Easements (SDE) and Sight Visibility Triangles (SVT)
All ground-based wireless equipment shall be installed in a location that does not impair or interfere with SDE or SVT safety requirements. To ensure proper sight distance, all Town of Fountain Hills Traffic Engineering Standard Details shall apply.
 - b) Ground Equipment Location – Generally
All ground-based wireless equipment, including but not limited to equipment cabinets or power pedestals, shall be placed as far as practical to the back of the ROW while maintaining at least three (3) feet of ingress/egress in the ROW or public utility easement (PUE) around the equipment.
 - c) Ground Equipment Clearances—Underground Utilities
 - 1) All ground-mounted electrical equipment shall maintain minimum horizontal clearance from below-ground utilities:
 - Clearance from water lines shall be at least six (6) feet.
 - Clearance from sewer lines shall be at least six (6) feet.

- Clearance from telecommunications shall be at least one (1) foot.
 - Clearance from cable television lines shall be at least one (1) foot.
 - Clearance from all other underground infrastructure shall be at least six (6) feet.
- 2) The Town, in its sole discretion, may grant a variance upon approval from the Town Engineer, from these horizontal separation distances on a case-by-case basis. The approval of a variance is dependent on factors specific to the site.
 - 3) In the case where there is an issue with horizontal separation from other underground utilities, the wireless provider may elect to work with the impacted utility to have its lines, pipes or property moved so that minimum clearance is achieved. All relocation work of Town-owned or a privately-owned utility shall be at the sole expense of the wireless provider.
- d) Ground Equipment Clearance – Sidewalks
- The ground equipment shall maintain a minimum twelve (12) inch clearance distance from sidewalks. The Town, in its sole discretion, may increase the minimum clearance on a case-by-case basis to ensure the safe use of the sidewalk and adjacent area.
- e) Compliance with Height Requirements
- Evidence or documentation that, where the above-ground structure is over thirty-six (36) inches in height, given its proposed location, the structure will comply or be in compliance with applicable Town of Fountain Hills planning and zoning ordinances.
- f) Screening of Ground Equipment
- The Town requires that ground-mounted equipment be screened; the type of screening materials and design will be addressed on a case-by-case basis. See Exhibit E2 for general screening examples that the Town may consider on a case by case basis.
- 1) In cases when screening is not possible, the Town may specify the location, orientation or paint color of the ground-mounted equipment.
 - 2) Town may require ground-mounted equipment to be located underground (except for the electricity meters, kill switches, etc.).
- g) Decals and Labels
- 1) All equipment manufacturers' decals, logos and other identification information shall be removed unless required for warranty purposes.
 - 2) The wireless provider of the site may place an "Emergency Contact" or "Network Operations Center" decal or emblem to the ground equipment.
 - 3) The ground-mounted equipment shall not have any flashing lights, sirens

or regular noise other than a cooling fan that may run intermittently.

h) Equipment Cabinets on Residential Property

1) Residential Single-Family Lot

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

2) Air-conditioning Units

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

i) Electric Company Meter

- 1) All electric company meters shall be installed in the ROW or PUE. The location of the meter equipment shall have minimum ingress and egress clearance from private property lines and driveways.
- 2) All electric company meters shall maintain minimum clearance from above-ground utility cabinets and below-ground utilities.
- 3) All electric company meters shall be installed in a location that does not impair or interfere with the SDE or SVT safety requirements of the Town.
- 4) The electric company meters shall be screened or contained within a "Myers-type" or "Milbank-type" pedestal cabinet that is painted to match the ground equipment or as specified by the Town. (*see Exhibit E*)
- 5) In the case where screening is not required, the Town may specify the paint color of the electric company meter cabinet on a case-by-case basis.

Town of Fountain Hills Contacts

For questions regarding the 2018 Town of Fountain Hills Design Standards, Concepts & Requirements for Wireless Facilities in the Right-of-Way, contact:

Town of Fountain Hills Development Services Director:

**Robert Rodgers
480-816-5138**

Exhibit A1

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



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

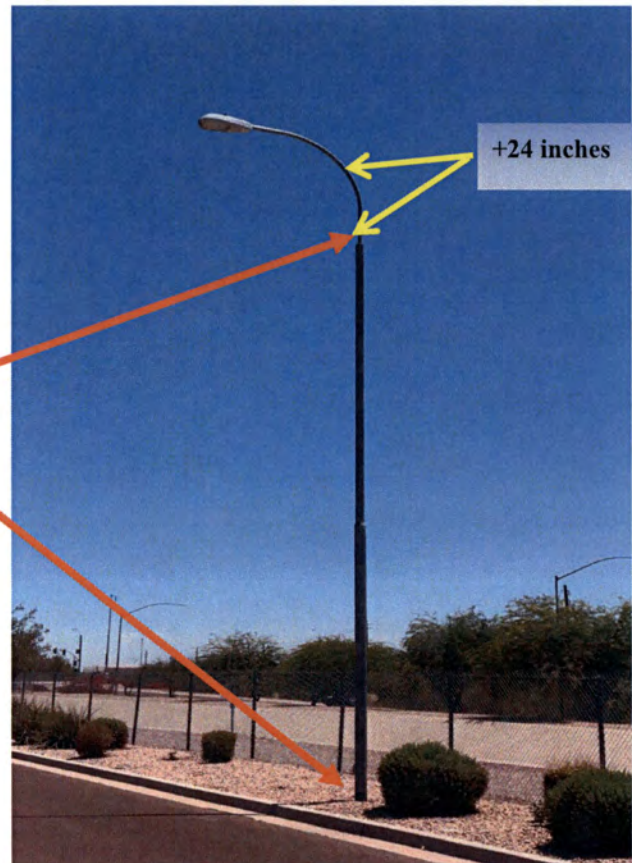


Exhibit A2

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



The "Connection Point" on an Existing Telescopic Style Streetlight Pole with an Integrated Luminaire Mast Arm



The top and Bottom Points on a telescopic Streetlight Pole to Calculate the Verticle Height of the Existing Streetlight Pole
Plus
Twenty-four (24) inches

Exhibit B

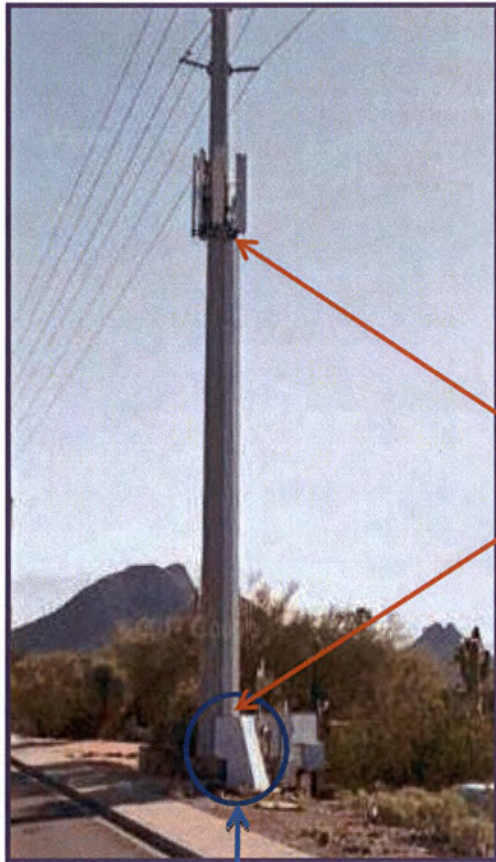
Calculation Points for Height of Existing Traffic Signal Pole



The Top and Bottom Points on a Traffic Signal Pole to Calculate the Base Vertical Height of the Existing Pole

Exhibit C

Dog House – Cable Transition from Underground to Electric Utility Pole



External cable chase
– the cables and
wires are mounted
underneath the
chase.



“Dog House” with external
cable chase installed at the
base of a pole to cover the
cables and wires when they
cannot be installed inside
the utility pole.

Exhibit D1
Antenna Shrouds – 45 Degrees



Exhibit D2
Antenna Shrouds – 90 Degrees



Exhibit D3
Unacceptable - Visible Cables

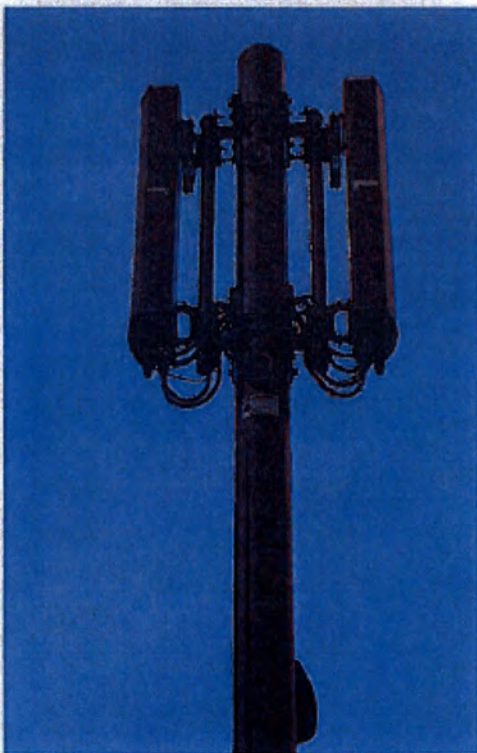


Exhibit E1

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



Exhibit E2
Ground Equipment Screening Examples



Exhibit E2
Ground Equipment Screening Examples (continued)



Exhibit F
Canister Antenna

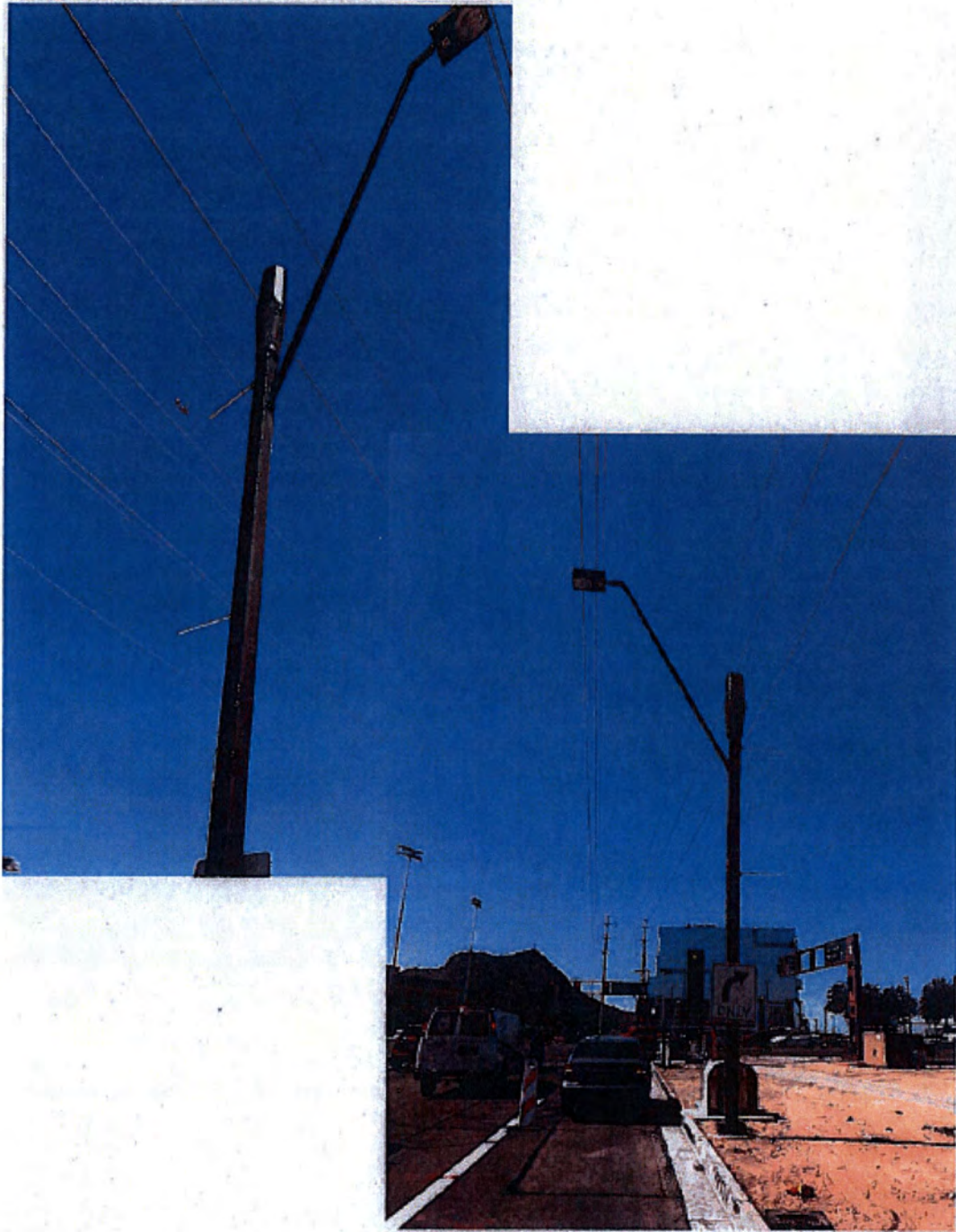


Exhibit G



Saguaros

The need for concealed sites is also prevalent in the desert southwest region. To serve this need we have developed a Saguaro Cactus. Utilizing an RF-friendly, naturalistic looking FRP shell, we are able to position antenna panels not only in the hollow shell of the upper main trunk, but also in the individual arms. This offers greater flexibility in terms of multiple panels per sector, horizontal separation, and centerline height.

Our Saguaros range from 10-40 feet tall, housing one to two antenna arrays. Scars, woodpecker holes and thousands of painted needles enhance the realism.

Even the birds can't tell the difference

PHOENIX 77018-1 429462v3

EXHIBIT B

[LETTER OF CREDIT FORMS AND INSTRUCTIONS]

See following pages

Wireless Facility Irrevocable Letter of Credit Template

Instructions:

The following four (4) pages contain the template for an irrevocable letter of credit relating to wireless facilities to be located within Town rights-of-way.

Throughout the document there are blank spaces into which should be inserted the wireless facility provider name, bank name and letter of credit document name. Please insert this information where requested.

The irrevocable letter of credit number may not be available when the initial submission of the draft language for review is made. This can be inserted later when the letter is actually issued by the named financial institution.

Submit the draft irrevocable letter of credit, together with _____, to the Town's Development Services Director.

The issuer of the irrevocable letter of credit shall be a federally-insured financial institution, a member of the New York Clearing House Association or another commercial bank or trust company satisfactory to the Town, having a net worth and financial wherewithal also satisfactory to the Town.

As a reminder, any assurance submitted in a format other than the approved letter of credit template is subject to review by the Town Attorney and Town Development Services Director and may not be accepted.

FORM OF WIRELESS FACILITY LETTER OF CREDIT

[INSERT BANK NAME]
[INSERT LETTER OF CREDIT DOCUMENT NAME]

_____, 20__

Letter of Credit No. _____

Initial Expiration Date: _____

Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268
Attn: Small Cell Administrator

At the request and for the account of our customer, **[Insert Wireless Facility Provider name]**, a(n) _____ ("Provider"), **[Insert Bank Name]** ("us", "we" or "Bank"), hereby establishes, in favor of Town of Fountain Hills, an Arizona municipal corporation ("Town"), this clean, irrevocable and unconditional **[Insert Letter of Credit Document Name]** ("Letter of Credit"). This Letter of Credit authorizes you to draw on us in amounts which in the aggregate shall not exceed the Stated Amount (herein so called) of _____ Dollars (\$_____). We hereby engage with you that draft(s) drawn and presented in compliance with the terms contained in this Letter of Credit will be duly honored upon presentation as stated above, on or before the expiration date hereof.

You may obtain the funds available under this Letter of Credit by presentment to us of your sight draft or drafts drawn on us in the form set forth as Exhibit "A" hereto, accompanied by copies of the original of this Letter of Credit and amendment(s) thereto, if any. Within ten (10) days after we honor your draft, you must make the original of this Letter of Credit available to us in Maricopa County, Arizona upon which we may endorse our payment.

Drafts may be presented by any of the following means:

By telefax to () _____ - _____

By email to _____

By hand or overnight courier service delivery to:

[This address must be in
Maricopa County, Arizona.]

By hand or overnight courier service delivery to:

[This address need not be in
Maricopa County, Arizona]

This Letter of Credit is valid until _____, 201_ and shall thereafter be automatically renewed for successive one (1) year periods, unless, at least one hundred twenty (120) days prior to expiration, we notify you in writing, by either registered or certified mail, that we elect not to renew the Letter of Credit for such additional period. In the event of such notification, any then unused portion of the Letter of Credit shall be available upon your presenting to us your draft on or before the then- current expiration date.

If cancellation of this Letter of Credit is required before the expiry date stated herein (which may be extended from time to time either automatically as stated in Item 4 immediately above or by written amendment by us and acceptance by you), the original of this Letter of Credit and amendment(s) thereto, if any, must be returned to us accompanied by your letter requesting cancellation in the form attached hereto as Exhibit "B". This letter of credit may also be reduced upon our receipt of a reduction certificate, the form of Exhibit "B".

You may draw the full amount of this Letter of Credit or only part of it from time to time, in your discretion; provided, that the total of all drafts honored by us under this Letter of Credit shall not exceed the Stated Amount available to you under this Letter of Credit.

Unless otherwise expressly stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600.

Very truly yours,

[Insert Bank Name]

By: _____
Name: _____
Its: _____

EXHIBIT A

Drawn Under **[Insert Bank Name]**
[Insert Letter of Credit Document Name] No. _____

\$ _____ (U.S.) _____, 20__

To: **[Insert Bank Name]**

Drawn under **[Insert Bank Name]** **[Insert Letter of Credit Document Name]** No. _____.

I am the Development Services Director, and a duly authorized representative, of **Town of Fountain Hills**, an Arizona municipal corporation (the "Town"), the beneficiary of **[Insert Bank Name]** **[Insert Letter of Credit Document Name]** No. _____, and hereby certify that the amount drawn hereunder represents funds currently due the Town under separate agreement(s) with **[Insert Name of Provider]**.

Accordingly, please pay to the Town _____ Dollars (\$ _____).

Please make payment to the Town in the form of a wire deposit to:

If such deposit cannot be accomplished immediately for any reason, please make your payment in the form of a cashier's check issued by your institution and delivered to me at 16705 E Avenue of the Fountains Fountain Hills, AZ 85268, Attn: Development Services Director.

If there is any imperfection or defect in this draft or its presentation, please inform me immediately at (480) 816-5122 so that I may correct it. Also, please immediately notify the Town Attorney.

TOWN OF FOUNTAIN HILLS

By: _____
Name: _____
Its: Development Services Director

EXHIBIT B

Date:

_____ and _____

Ref: Letter of Credit No. _____

As parties to the above referenced Letter of Credit, we request that the following action(s) be taken as evidenced by our initials and signatures below:

Please initial:

_____ Reduce the amount from U.S. \$ _____ to
U.S. \$ _____.

_____ Extend the expiration date from _____
to _____.

_____ Cancel this Letter of Credit effective immediately.

Enclosed herewith are the original Letter of Credit documents, including the amendment(s), if any, thereto.

(Note: If any of these documents are not included with this letter, you must specify each missing document and explain the reason why it is not being returned.)

Town of Fountain Hills, an
Arizona municipal corporation

By: _____

Name: _____

Title: _____

_____, a(n) _____

By: _____

Name: _____

Title: _____

EXHIBIT C
[FORM OF ASSIGNMENT]
See following pages

Assumption Of Wireless Facility License Agreement

This assumption is made pursuant to Paragraph 19 of the Town of Fountain Hills Wireless Facilities Standard Terms and Conditions ("Terms"), incorporated by reference into that certain Wireless Facility License Agreement (the "License Agreement") between Town of Fountain Hills, an Arizona municipal corporation ("Town") and _____, a _____ ("Wireless Provider") dated _____, 20____.

_____, a _____ ("Assignee"), having acquired the rights of the Wireless Provider under the License Agreement, hereby assumes the License Agreement, agrees to be bound thereby, and obligates itself to fully perform the terms and conditions of the License Agreement, all in favor of Town.

ASSIGNEE WARRANTS AND REPRESENTS THAT ASSIGNEE HAS READ AND AGREES TO THE TOWN OF FOUNTAIN HILLS WIRELESS FACILITIES STANDARD TERMS AND CONDITIONS.

After the Date of this assumption, notices to Assignee shall be addressed as follows:

Assignee's network operations center phone number as required by the Terms is
() _____.

Assignee's address for notices as required by the Terms shall be:

Assignee's billing address for routine billing invoices as required by the Terms shall be:

Assignee understands that nothing in this Assumption serves to modify any provision (except for the Notice addresses, as provided above) or extend the Term of the License Agreement. The person signing this document on behalf of Assignee warrants to Town his authority to do so.

Dated: _____, 20____

ASSIGNEE: _____,
a _____

By: _____
Its: _____

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by
_____, _____ of _____, a _____.

Notary Public

My Commission Expires:

Date

EXHIBIT D
TO
RESOLUTION NO. 2018-18

[Amendments to Town Comprehensive Fee Schedule]

See following pages.

Description	Fee FY17-18
<i>ENCROACHMENT/ENGINEERING PERMITS</i>	
<i>Small Wireless Facilities:</i>	
ROW Use Fee	\$50/year x number of small wireless facilities
Authority utility pole attachment	\$50/year
Small Wireless Facilities collocation	\$100 per SWF up to five
Small Wireless Facilities collocation	\$50 for SWF over five
Batched applications for up to 25 SWF's	\$100 per SWF up to five (at \$100 each) (\$500 maximum fee)
Batched applications for up to 25 SWF's	\$50 per SWF 6 - 20 sites (\$1000 maximum fee)
Applications for new, replacement or modified utility poles NOT subject to zoning review	Not to Exceed \$750
Applications for new, replacement or modified utility poles and collocation of wireless facilities subject to zoning review	Not to Exceed \$1000

PHOENIX 77018-1 430871v7

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§17	<u>Personal Wireless Service Facilities</u>

This Chapter 17 is intended to repeal and replace all previous versions of, and amendments to, Chapter 17 (“Wireless Telecommunications Towers and Antennas”) and Article 16-2 (“Small Wireless Facilities”) of the Zoning Ordinance of the Town of Fountain Hills (“Town Code”), all of

which are hereby repealed and replaced in their entirety by this Chapter 17 et. seq., as of the effective date hereof.

Commented [JW1]: Similar language in heading of adopting ordinance

No Personal Wireless Service Facility (“PWSF”) shall be sited, constructed, reconstructed, installed, materially changed or altered, expanded, or used unless in conformity with this Chapter.

Commented [JW2]: See adopted ordinance Section 17.01 B. 1.

For the installation, construction, erection, relocation, substantial expansion, or material alteration of any PWSF that is not classified as a Small Wireless Facility as hereinafter defined and discussed, the Town shall require a special use permit and site plan approval pursuant to the provisions of this Chapter, which shall be applied for in accord with the procedure set forth in Chapter 2, §2.02, unless otherwise provided herein below.

The performance of maintenance, routine maintenance, in-kind replacement of components, and/or repairs (as defined herein) to an existing PWSF and/or existing personal wireless service equipment shall not require a special use permit.

Each application for a special use permit under this Chapter and each individual PWSF for which an application for a special use permit is submitted shall be considered based on the individual characteristics of each respective installation at each proposed location as an individual case. In other words, each installation at each proposed location shall be reviewed and considered independently for its own characteristics and potential impacts, irrespective of whether the proposed facility is designed and intended to operate independently or whether the installation is designed and/or intended to operate jointly as part of a Distributed Antenna System.

§17-1 Purpose and Legislative Intent

The purpose of this section is to promote the health, safety, and general welfare of the residents of the Town of Fountain Hills and to preserve the scenic, historical, natural, and man-made character and appearance of the Town while simultaneously providing standards for the safe provision, monitoring, and removal of cell towers and other personal wireless service facilities consistent with applicable federal, state and local laws and regulations.

Commented [JW3]: Similar to Sec. 7.01 A

Consistent with the balancing of interests which the United States Congress intended to embed with the federal Telecommunications Act of 1996 (hereinafter “the TCA”), Chapter 17 is intended to serve as a *Smart Planning Provision*, designed to achieve the four (4) simultaneous objectives of: (a) enabling personal wireless service providers to provide adequate personal wireless services throughout the Town so that Town residents can enjoy the benefits of same, from any FCC licensed wireless carrier from which they choose to obtain such services, while (b) minimizing the number of cell towers and/or other personal wireless service facilities needed to provide such coverage, (c) preventing, to the greatest extent reasonably practical, any unnecessary adverse impacts upon the Town’s communities, residential areas, and individual homes, and (d) complying with all of the legal requirements which the TCA imposes upon the Town, when the Town receives, processes

Commented [JW4]: Used in adopted ordinance Section 17.01 B. 2. a. - d.

and determines applications seeking approvals for the siting, construction and operation of cell towers and/or other personal wireless service facilities.

The Town seeks to minimize, to the greatest extent possible, any unnecessary adverse impacts caused by the siting, placement, physical size, and/or unnecessary proliferation of personal wireless service facilities, including, but not limited to, adverse aesthetic impacts, adverse impacts upon property values, adverse impacts upon the character of any surrounding properties and communities, adverse impacts upon historical and/or scenic properties and districts, and the exposure of persons and property to potential dangers such as structural failures, ice fall, debris fall, and fire.

The Town also seeks to ensure that, in applying this section, the Town Council (“Council”) is vested with sufficient authority to require applicants to provide sufficient, accurate, and truthful probative evidence to enable the Council to render factual determinations consistent with both the provisions set forth herein below and the requirements of the TCA when rendering decisions upon such applications.

To achieve the objectives stated herein, the Town seeks to employ the “General Authority” preserved to it under Section 47 U.S.C.A. §332(c)(7)(A) of the TCA, to the greatest extent which the United States Congress intended to preserve those powers to the Town, while simultaneously complying with each of the substantive and procedural requirements set forth within subsection 47 U.S.C.A. §332(c)(7)(B) of the TCA.

§17-2 Definitions; Word Usage

For the purposes of this article, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meanings provided in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The definitions set forth herein shall supersede any definitions set forth within the Town Code, and the definitions set forth herein below shall control and apply to Chapter 17 and all subparagraphs herein.

ACCESSORY FACILITY OR ACCESSORY STRUCTURE

A facility or structure serving or being used in conjunction with a personal wireless services facility or complex and located on the same property or lot as the personal wireless services facility or complex or an immediately adjacent lot, including, but not limited to utility or transmission equipment storage sheds or cabinets.

ACHP

The Federal Advisory Council on Historic Preservation.

ADEQ

The Arizona Department of Environmental Quality.

ADEQUATE COVERAGE

As determined by the Town Council, adequate coverage means that a specific wireless carrier's personal wireless service coverage is such that the vast majority of its customers can successfully use the carrier's personal wireless service the vast majority of the time, in the vast majority of the geographic locations within the Town, that the success rate of using their devices exceeds 97%, and that any geographic gaps in a carrier's gaps in personal wireless services are not significant gaps, based upon such factors including, but not limited to, lack of significant physical size of the gap, whether the gap is located upon a lightly traveled or lightly occupied area, whether only a small number of customers are affected by the gap, and/or whether or not the carrier's customers are affected for only limited periods of time. A wireless carrier's coverage shall not be deemed inadequate simply because the frequency or frequencies at which its customers are using its services are not the most preferred frequency of the wireless carrier.

ANTENNA

An apparatus designed for emitting radiofrequency (RF) radiation to be operated or operating from a fixed location for personal wireless service.

Commented [JW5]: Similar definition in Section 17.02

APPLICANT

Any individual, corporation, limited liability company, general partnership, limited partnership, estate, trust, joint-stock company, association of two or more persons having a joint common interest, or any other entity submitting an application for a special use permit, site plan approval, variance, building permit, and/or any other related approval, for the installation, operation and/or maintaining of one or more personal wireless service facilities.

APPLICATION

Refers to all necessary and required documentation and evidence that an applicant must submit to receive a special use permit, building permit, or other approval for personal wireless service facilities from the Town.

BOARD OF ADJUSTMENT

The Board of Adjustment of the Town of Fountain Hills, established pursuant to §1.06 of the Zoning Ordinance with membership, powers, duties, and responsibilities as set forth in Article 28 of the Town Code.

COUNCIL OR TOWN COUNCIL

The Town Council of the Town of Fountain Hills.

CELL TOWER

A free-standing, guy-wired, or otherwise supported pole, tower, or other structure designed to support or employed to support equipment and/or antennas used to provide personal wireless

services, including, but not limited to, a pole, monopole, monopine, slim stick, lattice tower or other types of standing structures.

CEQ

The Council on Environmental Quality, as established under NEPA.

COLOCATION, CO-LOCATION, and/or CO-LOCATE

To install, mount or add new or additional equipment to be used for the provision of personal wireless services to a pre-existing structure, facility, or complex which is already built and is currently being used to provide personal wireless services by a different provider of such services, wireless carrier or site developer.

COMPLETE APPLICATION, COMPLETED APPLICATION

An application that contains all the necessary and required information, records, evidence, reports, and/or data necessary to enable an informed decision to be made with respect to an application. Where any information is provided pursuant to the terms of this Chapter and the Community Development Director, Engineer or the Town's expert or consultant or the Council determines, based upon information provided, that any additional, further, or clarifying information is needed as to one or more aspects, then the application will be deemed incomplete until that further or clarifying information is provided to the satisfaction of the Community Development Director, Engineer, Town Council or the Town's expert or consultant of the Council.

COMPLEX

The entire site or facility, including all structures and equipment, located at the site.

DBM (dBm)

DBM stands for decibel milliwatts, which is a concrete measurement of the wireless signal strength of wireless networks. Signal strengths are recorded in negative numbers and can range from approximately -30 dBm to -110 dBm. The closer the number is to 0, the stronger the cell signal.

DEPLOYMENT

The placement, construction, or substantial modification of a personal wireless service facility.

DISTRIBUTED ANTENNA SYSTEM, DAS

A network of spatially separated antenna nodes connected to a common source via a transport medium that provides personal wireless service within a geographic area.

EFFECTIVE PROHIBITION

A finding by the Town Council that if an application seeking approval for a specific new Personal Wireless Service Facility at a specific location, and a specific height, were to be denied, such denial would either: (a) prevent an identified Wireless Carrier from providing personal wireless services within a specific geographic area, or areas, within the Town, or (b) would prevent a specific

Wireless Carrier from constructing a sufficient number of such facilities necessary to enable it to provide Personal Wireless Services within the Town.

An effective prohibition shall not be found to exist if a Wireless Carrier has Adequate Coverage in a specified geographic area, such that its end-use customers can use their cellular telephones to connect to landlines using the Carrier's Personal Wireless Services; however, the frequencies are not the "most preferred" frequencies of the Carrier.

An effective prohibition shall also not be found to exist if an applicant fails to establish before the Town Council that any existing geographic gap or capacity deficiency in the specific Wireless Carrier's coverage cannot be remedied through a less intrusive means than what is being proposed, including, but not limited to, potential installations on alternative less intrusive sites, a shorter tower or facility, the incorporation of a more stealthy design, etc.

A finding of Effective Prohibition, or lack thereof, shall be based upon an applicant's submission of sufficient probative, relevant, and sufficiently reliable evidence and the appropriate weight the Town Council deems appropriate to afford.

ELEVENTH HOUR SUBMISSIONS

An applicant's submission of new and/or additional materials in support of an application less than five (5) business days before the expiration of an applicable shot clock or at an otherwise unreasonably short period of time before the expiration of the shot clock, making it impracticable for the Town Council to adequately review and consider such submissions due to their complexity, volume, or other factors, before the expiration of the shot clock.

ENURE

To operate or take effect. To serve to a person or party's use, benefit, or advantage.

EPA

The United States Environmental Protection Agency.

FAA

The Federal Aviation Administration or its duly designated and authorized successor agency.

FACILITY

A set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.

FCC

The Federal Communications Commission.

GENERAL POPULATION/UNCONTROLLED EXPOSURE LIMITS

The applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (ii), made applicable pursuant to 47 CFR §1.1310(e)(3).

HEIGHT

When referring to a tower, personal wireless service facility, or personal wireless service facility structure, the height shall mean the distance measured from the pre-existing grade level to the highest point on the tower, facility, or structure, including, but not limited to, any accessory, fitting, fitment, extension, addition, add-on, antenna, whip antenna, lightning rod or other types of lightning-protection devices attached to the top of the structure.

HISTORIC STRUCTURE

Any structure that is either on the National Register of Historic Places or is eligible for inclusion in the national register, irrespective of whether or not an application for inclusion onto the national register has been filed or not filed.

ILLEGALLY EXCESSIVE RF RADIATION or ILLEGALLY EXCESSIVE RADIATION

RF radiation emissions at levels that exceed the legally permissible limits set forth within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

IN-KIND REPLACEMENT

The replacement of a malfunctioning component(s) with a properly functioning component of substantially the same weight, dimensions, and outward appearance.

MACROCELL

A cellular base station that typically sends and receives radio signals from large towers and antennas. These include traditionally recognized cell towers, typically ranging from 50 to 199 feet in height.

MAINTENANCE or ROUTINE MAINTENANCE

Plumbing, electrical or mechanical work that may require a building permit but that does not constitute a modification to the personal wireless service facility. It is work necessary to assure that a wireless facility and/or telecommunications structure exists and operates reliably and in a safe manner, presents no threat to persons or property, and remains compliant with the provisions of this chapter and FCC requirements.

NECESSARY or NECESSITY or NEED

What is technologically required for the equipment to function as designed by the manufacturer and anything less will result in prohibiting the provision of service as intended and described in the narrative of the application. “Necessary” or “need” does not mean what may be desired, preferred, or the most cost-efficient approach and is not related to an applicant’s specific chosen design standards or unspecified “coverage objectives.” Any situation involving a choice between or among alternatives or options is not a need or a necessity.

NEPA

The National Environmental Policy Act, 42 U.S.C. §4321, et seq.

NHPA

The National Historic Preservation Act, 54 U.S.C. 300101 et seq, and 36 CFR Part 800, et seq.

NODE, DAS NODE

A fixed antenna and related equipment installation that operates as part of a system of spatially separated antennas, all of which are connected through a medium through which they work collectively to provide personal wireless services, as opposed to other types of personal wireless facilities, such as macrocells, which operate independently.

NOTICE ADDRESS

An address, which is required to be provided by an applicant at the time it submits an application for a special use permit, at which the Town, Town Council, and/or Community Development Director or Engineer can mail notice, and the mailing of any notice to such address by first-class mail shall constitute sufficient notice to any and all applicants, co-applicants, and/or their attorneys, to satisfy any notice requirements under this Chapter, as well as any notice requirements of any other local, state and/or federal law.

NOTICE OF INCOMPLETENESS, NOTICE OF INCOMPLETE APPLICATION

A written notice, mailed by first class mail, to an applicant seeking approval for the installation of a PWSF, wherein the sender advises the applicant that its application is either incomplete, the wrong type of application, or is otherwise defective, and setting for the reason or reasons why the application is incomplete and/or defective.

NOTICE OF EFFECTIVE PROHIBITION CONDITIONS

A written notice, which is required to be provided to the Town at the time of the filing of any application by all applicants seeking any approval, of any type, for the siting, installation, and/or construction of a PWSF, wherein the respective applicant asserts, claims or intends to assert or claim, that a denial of their respective application, by any agent, employee, board or body of the Town, would constitute an “effective prohibition” within the meaning of the TCA, and concomitantly, that a denial of their respective application or request would violate Section 47 U.S.C. §332(c)(7)(B)(i)(II) of the TCA.

OCCUPATIONAL/CONTROLLED EXPOSURE LIMITS

The applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (i), made applicable pursuant to 47 CFR §1.1310(e)(2).

PERSONAL WIRELESS SERVICE/PERSONAL WIRELESS SERVICES

Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, within the meaning of 47 U.S.C. §332(c)(7)(c)(i), and as defined therein.

PERSONAL WIRELESS SERVICE FACILITY, PERSONAL WIRELESS SERVICES FACILITY or PWSF

A facility or facilities used for the provision of personal wireless services, within the meaning of 47 U.S.C. §332(c)(7)(c)(ii). It means a specific location at which a structure that is designed or intended to be used to house or accommodate antennas or other transmitting or receiving equipment is located. This includes, without limitation, towers of all types and all kinds of support structures, including but not limited to buildings, church steeples, silos, water towers, signs, utility poles, or any other structure that is used or is proposed to be used as a telecommunications structure for the placement, installation and/or attachment of antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets, and other structures enabling the complex to provide personal wireless services.

PROBATIVE EVIDENCE

Evidence which tends to prove facts, and the more a piece of evidence or testimony proves a fact, the greater its probative value, as shall be determined by the Town Council, as the finder-of-fact in determining whether to grant or deny applications for special permits under this provision of the Town Code.

REPAIRS

The replacement or repair of any components of a wireless facility or complex where the replacement is substantially identical to the component or components being replaced, or for any matters that involve the normal repair and maintenance of a wireless facility or complex without the addition, removal, or change of any of the physical or visually discernible components or aspects of a wireless facility or complex that will impose new visible intrusions of the facility or complex as originally permitted.

RF

Radiofrequency.

RF RADIATION

Radiofrequency radiation. That being electromagnetic radiation, which is a combination of electric and magnetic fields that move through space as waves, and can include both Non-Ionizing radiation and Ionizing radiation.

SECTION 106 REVIEW

A review under Section 106 of the National Historic Preservation Act.

SETBACK

For purposes of special use permit applications, a setback shall mean the distance between (a) any portion of a personal wireless facility and/or complex, including but not limited to any and all accessory facilities and/or structures, and (b) the exterior line of any parcel of real property or part thereof which is owned by, or leased by, an applicant seeking a special use permit to construct or install a personal wireless facility upon such real property or portion thereof. In the event that an

applicant leases only a portion of real property owned by a landlord, the setback shall be measured from the facility to the line of that portion of the real property that is actually leased by the applicant, as opposed to the exterior lot line of the non-leased portion of the property owned by the landlord.

SHOT CLOCK

The applicable period, which is presumed to be a reasonable period within which the Town is generally required to issue a final decision upon an application seeking special use permit approval for the installation or substantial modification of a personal wireless services facility or structure to comply with Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA.

SHPO

The Arizona State Historic Preservation Office

SITE DEVELOPER or SITE DEVELOPERS

Individuals and/or entities engaged in the business of constructing wireless facilities and wireless facility infrastructure and leasing space and/or capacity upon, or use of, their facilities and/or infrastructure to *wireless carriers*. Unlike *wireless carriers*, site developers generally do not provide personal wireless services to end-use consumers.

SMALL CELL

A fixed cellular base station that sends and receives radio signals and is typically mounted upon poles or support structures at substantially lower elevations than macrocell facilities.

SMALL WIRELESS FACILITY

A personal wireless service facility that meets all of the following criteria

- (a) The facility does not extend the height of an existing structure to a total cumulative height of more than fifty (50) feet from ground level to the top of the structure, and any equipment affixed thereto;
- (b) Each antenna associated with the deployment is no more than three (3) cubic feet in volume;
- (c) All wireless equipment associated with the facility, including any pre-existing equipment and any proposed new equipment, cumulatively total no more than twenty-eight (28) cubic feet in volume;
- (d) The facility is not located on tribal land; and
- (e) The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR §1.1310(E)(1).

SPECIAL USE PERMIT

The official document or permit granted by the Town Council pursuant to which an applicant is allowed to file for and obtain a building permit to construct and use a personal wireless services facility, personal wireless service equipment, and/or any associated structures and/or equipment

which are used to house, or be a part of, any such facility or complex, or to be used to provide personal wireless services.

STATE

The State of Arizona.

STEALTH or STEALTH TECHNOLOGY

A design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and generally in the same area as the requested location of such personal wireless service facilities. This shall mean building the least visually and physically intrusive facility and complex under the facts and circumstances.

STRUCTURE

A pole, tower, base station, or other building, physical support of any form used for, or to be used for, the provision of personal wireless service.

SUBSTANTIAL EVIDENCE

Substantial Evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

TCA

The Telecommunications Act of 1996, 47 U.S.C. §332(c)

TOLLING or TOLLED

The pausing of the running of the time period permitted under the applicable shot clock for the respective type of application for a personal wireless services facility. Where a shot clock is tolled because an application has been deemed incomplete and timely notice of incompleteness was mailed to the applicant, the submission of additional materials by the applicant to complete the application will end the tolling, thus causing the shot clock period to *resume* running, as opposed to causing the shot clock to begin running *anew*.

TOWER, TELECOMMUNICATIONS TOWER

Any structure designed primarily to support one or more antennas and/or equipment used or designed for receiving and/or transmitting a wireless signal.

Commented [JW6]: Similar, longer definition in Section 17.02

TOWN

The Town of Fountain Hills.

TOWN CODE

The Zoning Code of the Town of Fountain Hills.

UNDERTAKING

Any application for a special use permit seeking Council approval for the installation of a personal wireless services facility licensed under the authority of the FCC shall constitute an undertaking within the meaning of NEPA, in accord with 42 CFR §137.289 and 36 CFR §800.16.

WIRELESS CARRIERS or CARRIER

Companies that provide Personal Wireless Services to end-use consumers.

ZONING ORDINANCE

The Zoning Ordinance of the Town of Fountain Hills, as codified in Chapter 1, §1.01 of the Town Code.

§17-3 Application Types

Commented [JW7]: Adopted ordinance Section 17.04 covers application types.

There shall be four (4) specific types of applications for special use permits under this section, which shall include Type I, Type II, Type III, and Type IV applications. It shall be the obligation of any applicant to explicitly and correctly identify which type of application they are filing.

1. Type I Applications Colocations of Small Wireless Facilities

Type I applications shall be limited to applications wherein an applicant seeks to co-locate a new small wireless facility, as defined in this Chapter, by installing new personal wireless service equipment upon an already existing small personal wireless services facility structure.

If the completed facility would still meet the physical limits and requirements to meet the definition of a small wireless facility after the installation of the new equipment, then the application to install such new equipment is a Type I application.

Type I applications for co-location of a small wireless facility in a public right of way as set forth in A.R.S. §9-592(J) and A.R.S. §9-593(C) shall be a permitted use with a building permit.

Type I applications for co-location of a small wireless facility in all other areas or zones shall require an applicant to obtain a special use permit from the Town Council.

2. Type II Applications Co-locations that do not meet the definition of a Small Wireless Facility.

Type II applications shall be limited to applications wherein an applicant is seeking to co-locate new personal wireless service equipment by installing such new wireless equipment upon an already existing personal wireless services facility structure, tower, or complex which does not meet the definition of a small wireless facility or which will not meet the definition of a small wireless facility if and when the proposed new personal wireless service equipment is installed upon the existing facility and/or structure. Type II applications for co-location of personal wireless

service facility equipment shall either be a permitted use with a building permit or a special use permit, as set forth below.

The co-location of personal wireless service facility equipment on an approved PWSF tower or PWSF structure on property within C-O Commercial Office Zoning District; C-C Common Commercial Zoning District; C-1 Neighborhood Commercial Professional District; C-2 Intermediate Commercial Zoning District; C-3 General Commercial Zoning District; IND-1 Planned Industrial Zoning District; IND-2 Light Industrial Zoning District; and UT Utility Zoning District is a permitted use subject to the issuance of a building permit, provided that the Town Engineer determines that the proposed co-location will not:

- (a) Increase the approved height of the supporting structure by more than 15%;
- (b) Cause the original approved number of antennas to be exceeded by more than 50%;
- (c) Increase the original approved square footage of accessory buildings by more than 200 square feet;
- (d) Add new or additional microwave antenna dishes;
- (e) expand the footprint of said support structure; or
- (f) potentially cause significant adverse impacts on the existing support structure or the surrounding area.

If the Town Engineer cannot make the findings above, special use permit and site plan approvals will be required in accord with the provisions of the Zoning Ordinance, and the Town Engineer shall refer the application to the Town Council, where it will be subject to the terms and conditions specified in the requirements and standards in this Chapter as part of the special use permit and site plan review process.

The co-location of personal wireless service facility equipment on an approved PWSF tower or PWSF structure on property within all other zoning districts shall require a special permit and site plan approvals as provided in this Chapter.

3. Type III Applications New Small Wireless Facilities

Type III applications shall be limited to applications seeking to install and/or construct a new small wireless facility, as defined in Section §17-2 hereinabove, which is not collocated in a public right of way.

Type III applications shall require applicants to obtain a special use permit and site plan approvals from the Town Council in all zoning districts.

4. Type IV Applications New Towers and All Other Wireless Facilities

Commented [JW8]: Adopted ordinance allows co-location in any district provided it meets the criteria below and is consistent with the adopted SUP if one was required.

Commented [JW9]: Modified to 10% or 20 feet in adopted ordinance based on established FCC criteria

Commented [JW10]: Used in adopted ordinance Sections 17.04 A. 2. and 4.

Commented [JW11]: Adopted ordinance Section 17.04 B. 1. conveys the same requirement that the request does not meet the listed standards then it must receive public review.

Commented [JW12]: In the adopted code new small cell wireless not in the ROW are treated the same as any other wireless facility.

Commented [JW13]: This section is basically the same as adopted ordinance Section 17.04 B. Any application that does not meet the criteria in A for administrative review requires public review.

Type IV applications shall include applications for the installation of a new telecommunications tower, personal wireless service facility, complex, structure, or equipment that does not meet the criteria for Type I, Type II, or Type III applications.

Type IV applications shall require applicants to obtain a special use permit and site plan approvals from the Town Council in all zoning districts.

§ 17-4 Shot Clock Periods

To comply with the requirements of Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA, the following shot clock periods set forth herein below shall be presumed to be reasonable periods within which the Town Council shall render determinations upon special use permit applications for personal wireless service facilities.

The Town Council shall render determinations upon such applications within the periods set forth hereinbelow, unless the applicable shot clock period listed below is tolled, extended by agreement or the processing of the application is delayed due to circumstances beyond the Council and/or Town's controls, as addressed within subsections §17-15, §17-16, §17-17 and §17-18 herein below.

1. Type I Applications Colocations of Small Wireless Facilities
Sixty (60) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Town Council shall issue a written decision upon a Type I application within sixty (60) days from the date when the Town receives a Type I application.

Upon receipt of a Type I application, the Town Engineer shall review the application for completeness. If the Town Engineer determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within ten (10) days of the Town's receipt of the application, the Town Engineer, or their designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the applicant.

Within such Notice of Incompleteness, the Town Engineer shall advise the applicant, with reasonable clarity, of the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Town Engineer shall toll the sixty (60) day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Town Engineer to remedy the issues the Town Engineer identified in the Notice of Incomplete Application, which they had mailed to the applicant. The submission of

Commented [JW14]: Shot clocks in adopted ordinance are addressed in Section 17.05 B.

Because of the different structure did not use the exact wording but included the same time frames.

any responsive materials by the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Town Engineer determines that the application is still incomplete and/or defective, then the Town Engineer shall, once again, mail a Notice of Incompleteness within ten (10) days of the applicant having filed its supplemental or corrected materials to the Town and the shot clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

2. Type II Applications Colocations on existing Towers, Structures, or other Facilities which do not meet the definition of a Small Wireless Facility. Ninety (90) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Town Council shall issue a written decision upon a Type II application within ninety (90) days from the date when the Town receives a Type II application.

Upon receipt of a Type II application, the Town Engineer shall review the application for completeness. If the Town Engineer determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within thirty (30) days of the Town's receipt of the application, the Town Engineer, or their designee, shall mail the applicant a Notice of Incompleteness by first class mail to the Notice Address provided by the applicant.

Within such Notice of Incompleteness, the Town Engineer shall advise the applicant, with reasonable clarity of the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Town Engineer shall toll the ninety (90) day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Town Engineer to remedy the issues the Town Engineer identified in the Notice of Incomplete Application, which they had mailed to the applicant.

The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Town Engineer determines that the application is still incomplete and/or defective, then the Town Engineer shall, once again, mail a Notice of Incompleteness within ten (10) days of the applicant having filed its supplemental or corrected materials to the Town. The shot clock shall be tolled again, and the same procedure provided hereinabove shall be repeated.

3. Type III Applications New Small Wireless Facilities
 Sixty (60) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Town Council shall issue a written decision upon a Type III application within sixty (60) days from the date when the Town receives a Type III application.

Upon receipt of a Type III application, the Town Engineer shall review the application for completeness. If the Town Engineer determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within ten (10) days of the Town's receipt of the application, the Town Engineer, or their designee, shall mail the applicant a Notice of Incompleteness by first class mail to the Notice Address that the applicant has provided.

Within such Notice of Incompleteness, the Town Engineer shall advise the applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application, and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Town Engineer shall toll the sixty (60) day shot clock, which shall not thereafter run unless and until the applicant tenders an additional submission to the Town Engineer to remedy the issues the Town Engineer identified in the Notice of Incomplete Application, which they had mailed to the applicant.

The submission of any responsive materials by the applicant shall automatically cause the shot clock period to start running anew, consistent the 47 CFR §1.6003(d).

If upon receipt of any additional materials from the applicant, the Town Engineer determines that the application is still incomplete and/or defective, then the Town Engineer shall, once again, mail a Notice of Incompleteness within ten (10) days of the applicant having filed its supplemental or corrected materials to the Town and the shot clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

4. Type IV Applications New Towers and All Other Wireless Facilities
 One Hundred Fifty (150) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Town Council shall issue a written decision upon a Type IV application within one hundred fifty (150) days from the date when the Town receives a Type IV application.

Upon receipt of a Type IV application, the Town Engineer shall review the application for completeness. If the Town Engineer determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise

defective, then, within thirty (30) days of the Town's receipt of the application, the Town Engineer, or their designee, shall mail the applicant a Notice of Incompleteness by first class mail to the Notice Address provided by the applicant.

Within such Notice of Incompleteness, the Town Engineer shall advise the applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application, and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Town Engineer shall toll the one hundred fifty (150) day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Town Engineer to remedy the issues the Town Engineer identified in the Notice of Incomplete Application, which they had mailed to the applicant.

The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running.

If, upon receipt of any additional materials from the applicant, the Town Engineer determines that the application is still incomplete and/or defective, then the Town Engineer shall, once again, mail a Notice of Incompleteness within ten (10) days of the applicant having filed its supplemental or corrected materials to the town, and the shot clock shall once again be tolled, and the same procedure provided hereinabove shall be repeated.

§17-5 Shot Clock Tolls, Extensions & Reasonable Delay Periods

Commented [JW15]: Adopted ordinance Section 17.05 B. 2.

Consistent with the letter and intent of Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA, each of the shot clock periods set forth within Section §17-4 hereinabove shall generally be presumed to be sufficient periods within which the Town Council shall render decisions upon special permit applications.

Notwithstanding same, the applicable shot clock periods may be tolled, extended by mutual agreement between any applicant and/or its representative and the Town Council, and the Town Council shall not be required to render its determination within the shot clock period presumed to be reasonable for each type of application, where the processing of such application is reasonably delayed, as described hereinbelow.

1. Tolling of the Applicable Shot Clock Due to Incompleteness and/or Applicant Error

As provided for within Section §17-4 hereinabove, in the event that the Town Engineer deems an application incomplete, the Town Engineer shall send a Notice of Incompleteness to the applicant to notify the applicant that its application is incomplete and/or contains material errors, and shall reasonably identify the missing information and/or documents and/or the error(s) in the application.

If the Town Engineer mails a Notice of Incompleteness as described hereinabove, the applicable shot clock shall automatically be tolled, meaning that the applicable shot clock period within which the Town Council is required to render a final decision upon the application shall immediately cease running, and shall not resume running, unless and until the Town receives a responsive submission from the applicant.

If and when the applicant thereafter submits additional information in an effort to complete its application, or cure any identified defect(s), then the shot clock shall automatically *resume* running, but shall not be deemed to start running *anew*.

The applicable shot clock period shall, once again, be tolled if the Town Engineer thereafter provides a second notice that the application is still incomplete or defective, despite any additional submissions which have been received by the Town, from the applicant, up to that point.

2. Shot Clock Extension by Mutual Agreement

The Town Council, in its sole discretion, shall be free to extend any applicable shot clock period by mutual agreement with any respective applicant. This discretion on the part of the Council shall include the Council's authority to request, at any time, and for any period of time the Council may deem reasonable or appropriate under the circumstances, consent from a respective applicant to extend the applicable shot clock period to enable the Council, the applicant, or any relevant third party, to complete any type of Undertaking or task related to the review, analysis, processing, and determination of the particular application, which is then pending before the Council, to the extent that any such Undertaking, task, or review is consistent with, or reasonably related to, compliance with any federal, state, or local law and/or the requirements of any provision of the Town Code, including but not limited to this Chapter.

In response to any request by the Council, the applicant, by its principal, agent, attorney, site acquisition agent, or other authorized representative, can consent to any extension of any applicable shot clock by affirmatively indicating its consent either in writing or by affirmatively indicating its consent on the record at any public hearing or public meeting. The Town Council shall be permitted to reasonably rely upon a representative of the applicant indicating that they are authorized to grant such consent on behalf of the respective applicant, on whose behalf they have been addressing the Council within the hearing process.

3. Reasonable Delay Extensions of Shot Clock Periods

The Town recognizes that there may be situations wherein, due to circumstances beyond the control of the Town and/or the Town Council, the review and issuance of a final decision upon a special permit application for a personal wireless facility cannot reasonably be completed within the application shot clock periods delineated within Section §17-4 hereinabove.

If, despite the exercise of due diligence by the Town and the Town Council, the determination regarding a specific application cannot reasonably be completed within the applicable shot clock period, the Council shall be permitted to continue and complete its review and issue its determination at a date beyond the expiration of the applicable period, if the delay of such final decision is due to circumstances including, but not limited to, those enumerated hereinbelow, each of which shall serve as a reasonable basis for a reasonable delay of the applicable **shot clock period**.

Commented [JW16]: Note: In adopted ordinance there are three additional provision stated in Section 17.05 B. 2. c. regarding the tolling of shot clocks.

Reasonable delays that may constitute proper grounds for extending the presumed sufficient periods for rendering determinations under the applicable shot clock periods may include but are not necessarily limited to, those set forth within Sections §17-15, §17-16, §17-17, and §17-18 herein below.

§17-6 **Application Requirements**

Commented [JW17]: Direct wording from this section was not used in the adopted ordinance, but most of the same requirements are included, differences are noted below.

Applications for special use permits under this section shall be made to the Town Engineer, who shall initially determine whether or not the application is complete and/or free of defects upon receipt of the same.

See adopted ordinance Section 17.05 A for application requirements.

If the Town Engineer determines that the application is defective or incomplete, they shall promptly mail a **Notice of Incompleteness** to the applicant, in accord with §17-4 to toll the applicable shot clock, to ensure that the Town and the Town Council are afforded sufficient time to review and determine each respective application.

Each application shall include the following materials, the absence of any one of which listed hereinbelow shall render the respective application incomplete:

1. **Special Use Permit and Site Plan Applications**

Commented [JW18]: Adopted ordinance Section 17.05 C. 3. states requirement to follow Section 2.02 for public review applications, includes site plan submittal.

Completed applications for a special use permit and site plan that shall identify all applicants, co-applicants, site developer(s), and wireless carrier(s) on whose behalf the application is being submitted, as well as the property owner of the proposed site.

2. **Filing Fees**

Commented [JW19]: Requirement to pay a fee is in adopted ordinance Section 17.05 A. 7.

The appropriate filing fees then being charged by the Town for applications for special use permit applications, site plan applications, and other related applications.

3. **A “Notice Address”**

Commented [JW20]: Contact information is a standard part of an application submittal, did not include this level of detail in the adopted ordinance.

A “Notice Address,” that being a specific address to which the Town, Town Council, and/or Town Engineer may mail any type of notice, and that the mailing of same to such address shall constitute sufficient notice to any applicant, co-applicant, and/or their

attorney, to comply with any requirement under this section as well as any local, state and/or federal law

4. Proof of Authorization for Site Occupancy

Where an applicant is not the owner of the real property upon which it seeks to install its equipment or facility, it shall submit proof of authorization to occupy the site at issue. If the applicant is leasing all or a portion of real property upon which it intends to install its new facility or equipment, then the applicant shall provide a written copy of its lease with the owner of such property. The applicant may redact any financial terms contained within the lease, but it shall not redact any portion of the lease which details the amount of area leased nor the specific portion of the real property to which the applicant has obtained the right to occupy, access, or preclude others from entering.

Where an applicant seeks to Co-Locate new equipment into an existing facility, it shall provide a copy of its written co-location agreement with the owner of such pre-existing facility, from which it may redact any financial terms.

Commented [JW21]: Authorization by the property owner is a standard application requirement, did not include a specific requirement in the adopted ordinance.

5. A Drawn-To-Scale Depiction

The applicant shall submit drawn-to-scale depictions of its proposed wireless support structure and all associated equipment to be mounted thereon or to be installed as part of such facility, which shall clearly and concisely depict all equipment and the measurements of same to enable the Town Engineer to ascertain whether the proposed facility would qualify as a small wireless facility as defined under this Chapter.

If the applicant claims that its proposed installation qualifies as a small wireless facility within this Chapter, the drawn-to-scale depiction shall include complete calculations for all of the antennas and equipment of which the facility will be comprised, depicting that, when completed, the installation and equipment will meet the physical size limitations which enable the facility to qualify as a small wireless facility.

Commented [JW22]: Required in adopted ordinance Section 17.05 A. 5 and 6. a and 17.05 C. 3. a.

6. Site plan

The applicant shall submit a site plan and site plan application in accordance with §2.04 of the Zoning Ordinance. The site plan shall show all existing and proposed structures and improvements, including antennas, roads, buildings, guy wires and anchors, parking, and landscaping. It shall include grading plans for new facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the site plan.

Commented [JW23]: Required in adopted ordinance Section 17.05 A. 5 and 6. a and 17.05 C. 3. a.

7. Engineer's Report

To the extent that an application proposes the co-location of new equipment onto an existing tower or facility, the applicant shall provide an engineer's report certifying that

Commented [JW24]: See adopted ordinance Section 17.03 A. 12 and 13.

the proposed shared use will not diminish the structural integrity and safety of the existing structure and explaining what modifications, if any, will be required in order to certify to the above.

8. Environmental Assessment Form

Commented [JW25]: Not in adopted ordinance.

A completed environmental assessment form (EAF) and a completed visual EAF addendum if required by ADEQ.

9. Visual Impact Analysis

Commented [JW26]: See provisions in adopted ordinance Sections 17.03 A. 3. f., and 17.05 A. 6. a.

A completed visual impact analysis, which, at a minimum, shall include the following:

(a) Small Wireless Facilities

For applications seeking approval for the installation of a small wireless facility, the applicant shall provide a visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a “clear line of sight” between the tower location and their location.

(b) Telecommunications Towers and Personal Wireless Service Facilities which do not meet the definition of a Small Wireless Facility

For applications seeking approval for the installation of a telecommunications tower or a personal wireless service facility that does not meet the definition of a small wireless facility, the applicant shall provide:

- (i) A “Zone of Visibility Map” to determine locations from where the new facility will be seen.
- (ii) A visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a “clear line of sight” between the tower location and their location.

The photographic images shall depict the height at which the proposed facility shall stand when completed, including all portions and proposed attachments to the facility, including, but not limited to, the main support structure, all antennas, transmitters, whip antennas, lightning rods, t-bars, crossbars, and cantilever attachments which shall, in whole or in part, be affixed to it, any and all surrounding equipment compound(s), fencing, cellular equipment cabinets, transformers, transformer vaults and/or cabinets, sector distribution boxes, ice bridges, backup generators, switch boxes etc., to the extent that any of such compound and/or equipment will be visible from properties other than the property upon which the proposed tower and compound are to be installed.

The visual impact analysis shall include an assessment of alternative designs and color schemes, as well as an assessment of the visual impact of the proposed facility, taking into consideration any supporting structure which is to be constructed, as well as its base, guy wires, accessory structures, buildings, and overhead utility lines from abutting properties and streets.

10. Alternative Site Analysis

Commented [JW27]: See adopted ordinance Section 17.05 A. 6 h. and 17.05 C. 3. c.

A completed alternative site analysis of all potential less intrusive alternative sites which the applicant has considered, setting forth their respective locations, elevations, and suitability or unsuitability for remedying whatever specific wireless coverage needs the respective applicant or a specific Wireless Carrier is seeking to remedy by the installation of the new facility which is the subject of the respective application for a special use permit.

If, and to the extent that an applicant claims that a particular alternative site is unavailable, in that the owner of an alternative site is unwilling or unable to accommodate a wireless facility upon such potential alternative site, the applicant shall provide probative evidence of such unavailability, whether in the form of communications or such other form of evidence that reasonably establishes same.

The alternative site analysis shall contain:

- (a) an inventory of all existing tall structures and existing or approved communications towers within a two-mile radius of the proposed site.
- (b) a map showing the exact location of each site inventoried, including latitude and longitude (degrees, minutes, seconds), ground elevation above sea level, the height of the structure and/or tower, and accessory buildings on the site of the inventoried location.
- (c) an outline of opportunities for shared use of an existing wireless facility as opposed to the installation of an entirely new facility.

- (d) a demonstration of good-faith efforts to secure shared use from the owner of each potential existing tall structure and existing or approved communications tower, as well as documentation of the physical, technical, and/or financial reasons why shared usage is impractical in each case.

11. FCC Compliance Report

Commented [JW28]: See adopted ordinance Section 17.05 A. 6. j.

An FCC compliance report, prepared by a licensed engineer, and certified under penalties of perjury, that the content thereof is true and accurate, wherein the licensed engineer shall certify that the proposed facility will be FCC compliant as of the time of its installation, meaning that the facility will not expose members of the general public to radiation levels that exceed the permissible radiation limits which the FCC has set.

If it is anticipated that more than one carrier and/or user is to install transmitters into the facility, the FCC compliance report shall take into account anticipated exposure from all users on the facility and shall indicate whether or not the combined exposure levels will or will not exceed the permissible General Population Exposure Limits, or alternatively, the occupational Exposure Limits, where applicable.

Such FCC Compliance Report shall provide the calculation or calculations with which the engineer determined the levels of RF radiation and/or emissions to which the facility will expose members of the general public.

On the cover page of the report, the report shall explicitly specify: (a) Whether the applicant and their engineer are claiming that the applicable FCC limits based upon which they are claiming FCC compliance are the *General Population Exposure Limits* or the *Occupational Exposure Limits*. If the applicant and/or their engineer are asserting that the Occupational Exposure Limits apply to the proposed installation, they shall detail a factual basis as to why they claim that the higher set of limits is applicable, (b) The exact minimum distance factor, measured in feet, which the applicant's engineer used to calculate the level of radiation emissions to which the proposed facility will expose members of the general public. The minimum distance factor is the closest distance (i.e., the minimum distance) to which a member of the general public shall be able to gain access to the transmitting antennas mounted upon, or which shall be a part of, the proposed facility.

12. FCC License

Commented [JW29]: Not in adopted ordinance.

A copy of any applicable Federal Communications Commission license possessed by any carrier named as an applicant, co-applicant, or whose equipment is proposed for installation as of the time the application is being filed with the Town.

13. **Effective Prohibition Claims**

Commented [JW30]: Not in adopted ordinance.

The Town is aware that applicants seeking approvals for the installation of new wireless Facilities often assert that federal law, and more specifically the TCA, prohibits the local government from denying their respective applications.

In doing so, they assert that their desired facility is “necessary” to remedy one or more significant gaps in a carrier’s personal wireless service, and they proffer computer generated propagation maps to establish the existence of such purported gaps.

The Town is additionally aware that, in August 2020, driven by a concern that propagation maps created and submitted to the FCC by wireless carriers were inaccurate, the FCC caused its staff to perform actual drive tests, wherein the FCC staff performed 24,649 tests, driving nearly ten thousand (10,000) miles through nine (9) states, with an additional 5,916 stationary tests conducted at 42 locations situated in nine (9) states.

At the conclusion of such testing, the FCC Staff determined that the accuracy of the propagation maps submitted to the FCC by the wireless carriers had ranged from as little as 16.2% accuracy to a maximum of 64.3% accuracy.

As a result, the FCC Staff recommended that the FCC no longer accept propagation maps from wireless carriers without supporting drive test data to establish their accuracy. A copy of the FCC Staff’s 66-page report is made a part of this Chapter as Appendix 1. The Town considers it of critical import that applicants provide truthful, accurate, complete, and sufficiently reliable data to enable the Town Council to render determinations upon applications for new wireless facilities consistent with this Chapter's requirements and the TCA's statutory requirements.

Consistent with same, if, at the time of filing an application under this Chapter, an applicant intends to assert before the Town Council or the Town that: (a) an identified wireless carrier suffers from a significant gap in its personal wireless services within the Town, (b) that the applicant’s proposed installation is the least intrusive means of remedying such gap in services, and/or (c) that under the circumstances pertaining to the application, a denial of the application by the Town Council would constitute an “effective prohibition” under Section 47 U.S.C. §332 the TCA, then, at the time of filing such application, the applicant shall be required to file a written statement which shall be entitled:

“Notice of Effective Prohibition Conditions”

If an applicant files a Notice of Effective Prohibition Conditions, then the applicant shall be required to submit Probative Evidence to enable the Town Council to reasonably determine: (a) whether or not the conditions alleged by the respective applicant exist, (b) whether there exists a significant gap or gaps in an identified wireless carrier’s personal wireless services within the Town, (c) the geographic locations of any such gaps, and (d)

the geographic boundaries of such gaps, to enable the Town Council to determine whether granting the respective application would be consistent with the requirements of this Chapter and the legislative intent behind same, and whether or not Federal law would require the Town Council to grant the respective application, even if it would otherwise violate the Town Code, including, but not limited to, this Chapter.

The additional materials which the applicant shall then be required to provide shall include the following:

(a) Drive Test Data and Maps

If, and to the extent that an applicant claims that a specific wireless carrier suffers from a significant gap in its personal wireless services within the Town, the applicant shall conduct or cause to be conducted a drive test within the specific geographic areas within which the applicant is claiming such gap or gaps exist, for each frequency at which the carrier provides personal wireless services. The applicant shall provide the Town and the Town Council with the actual drive test data recorded during such drive test, in a simple format which shall include, in table format:

- (i) the date and time for the test or tests,
- (ii) the location, in longitude and latitude, of each point at which signal strength was recorded
- and
- (iii) each signal strength recorded, measured in DBM, for each frequency.

Such data is to be provided in a separate table for each frequency at which the respective carrier provides personal wireless services to any of its end-use customers.

- (iv) The applicant shall also submit drive test maps depicting the actual signal strengths recorded during the actual drive test for each frequency at which the carrier provides personal wireless services to its end-use customers.

If an applicant claims that it needs a “minimum” signal strength (measured in DBM) to remedy its gap or gaps in service, then for each frequency, the applicant shall provide three (3) signal strength coverage maps reflecting actual signal strengths in three (3) DBM bins, the first being at the alleged minimum signal strength, and two (2) additional three (3) DBM bin maps depicting signal strengths immediately below the alleged minimum signal strength claimed to be required.

By way of example, if the applicant claims that it needs a minimum signal strength of – 95 DBM to remedy its alleged gap in service, then the applicant shall provide maps depicting the geographic area where the gap is alleged to exist, showing the carrier’s coverage at – 95 to -98 DBM, -99

to -101 DBM, and -102 to -104 DBM, for each frequency at which the carrier provides personal wireless services to its end-use customers.

(b) Denial of Service and/or Dropped Call Records

If and to the extent that an applicant claims that a specific wireless carrier suffers from a capacity deficiency or a gap in service that renders the carrier incapable of providing adequate coverage of its personal wireless services within the Town, then the applicant shall provide dropped call records and denial of service records evidencing the number and percentage of calls within which the carrier's customers were unable to initiate, maintain and conclude the use of the carrier's personal wireless services without actual loss of service, or interruption of service.

14. Estimate for Cost of Removal of Facility

A written estimate for the cost of the decommissioning, and removal of the facility, including all equipment that comprises any portion or part of the facility, compound, and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein

Commented [JW31]: Not in adopted ordinance.

15. Property Owner Consent & Liability Acknowledgement

A signed written consent from each owner of the subject real property upon which the respective applicant is seeking installation of its proposed personal wireless service facility, wherein the owner or owners both authorize the applicant to file and pursue its special use permit application and acknowledge the potential landowner's responsibility, under section §17-11 for engineering, legal and other consulting fees incurred by the Town.

Commented [JW32]: Not in adopted ordinance.

§ 17-7 Design Standards

The following design standards shall apply to all applications for the siting, construction, maintenance, use, erection, movement, reconstruction, expansion, material change, or structural alteration of a personal wireless service facility.

1. Small Wireless Facilities

Small Wireless Facilities (SWF) shall be sited to inflict the minimum adverse impacts upon individual residential properties and, specifically, to minimize, to the greatest extent reasonably feasible, adverse aesthetic impacts upon residential homes or reductions in the property values of same.

Commented [JW33]: Design standards for SWF in ROW covered in separate document. SWF not in ROW must meet the same design standards as other cell towers. See adopted ordinance Section 17.03 A. 3.

SWFs attached to pre-existing wooden and non-wooden poles shall conform to the following criteria:

- (a) Proposed antenna and related equipment shall meet:
 - (i) design standards which the Town may maintain and update as needed, provided that the Town makes its designed standards publicly available for review by any potential applicant seeking approval for the installation of an SWF within the Town, and
 - (ii) National Electric Safety Code (NESC) standards, and
 - (iii) National Electrical Code (NEC) standards.
- (b) Antennas and antenna equipment, including but not limited to radios, cables, associated shrouding, disconnect boxes, meters, microwaves, and conduit, which are mounted on poles, shall be mounted as close to the pole as technically feasible. They shall not be illuminated except as required by municipal, federal, or state authority, provided this shall not preclude deployment on a new or replacement streetlight.
- (c) Antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or be mounted as close to the pole as feasible. Conduits and cabinets shall cover all cables and wiring to the extent that it is technically feasible, if allowed by the pole owner. The number of conduits shall be minimized to the extent technically feasible. To the extent it is technically feasible, antennas, equipment enclosures, and all ancillary equipment, boxes, and conduits shall match the approximate material and design of the surface of the pole or existing equipment to which they are attached.

SWFs attached to replacement poles and new poles shall conform to the criteria set forth herein above for SWFs attached to pre-existing wooden and non-wooden poles but shall additionally conform to the following criteria:

- (a) The Town prefers that wireless providers and site developers install SWFs on existing or replacement poles instead of installing new poles, and accordingly, to obtain approval for the installation of a new pole, the provider shall be required to document that installation on an existing or replacement pole is not technically feasible.
- (b) To the extent technically feasible, all replacement poles and new poles and pole-mounted antennas and equipment shall substantially conform to the material and design of the pole being replaced, or in the case of a new pole, it shall conform to the nearest adjacent pole or poles.
- (c) The height of replacement poles and new poles shall conform with the height limitations applicable to the district within which the applicant seeks to install their

proposed SWF unless the applicant obtains a variance to obtain relief from any such limitation(s).

2. Telecommunications Towers and Personal Wireless Service Facilities which do not meet the definition of a Small Wireless Facility

Commented [JW34]: Similar to provisions in adopted ordinance Section 17.03 A. 3.

The design of a proposed new telecommunications tower or personal wireless service facility shall comply with the following:

- (a) The choice of design for installing a new personal wireless service facility or the substantial modification of an existing personal wireless service facility shall be chosen to minimize the potential adverse impacts that the new or expanded facility may, or is likely to, inflict upon nearby properties.
- (b) Any new telecommunications tower shall be designed to accommodate future shared use by other communications providers.
- (c) Unless specifically required by other regulations, a telecommunications tower shall have a finish (either painted or unpainted) that minimizes its degree of visual impact.
- (d) Notwithstanding the height restrictions listed elsewhere in this chapter, the maximum height of any new telecommunications tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature in accordance with municipal, state, and/or federal law and/or regulation. (e) Accessory Structures

- (i) Accessory structures shall maximize the use of building materials, colors, and textures designed to blend with the natural surroundings. The use of camouflage communications towers may be required by the Council to blend the communications tower and/or its accessory structures further into the natural surroundings. "Camouflage" is defined as the use of materials incorporated into the communications tower design that give communications towers the appearance of tree branches and bark coatings, church steeples and crosses, sign structures, lighting structures, or other similar structures.
- (ii) Accessory structures shall be designed to be architecturally similar, compatible with each other, and shall be no more than 12 feet high. The buildings shall be used only for housing equipment related to the particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building.
- (iii) No portion of any telecommunications tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to the company name, phone numbers, banners, and streamers, except the following. A sign of no greater than two square feet indicating the name of the facility owner(s) and a twenty-four-hour emergency telephone shall be

Commented [JW35]: Adopted ordinance Section 17.03 A. 3. c.

posted adjacent to any entry gate. In addition, "no trespassing" or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of the Town.

- (f) Towers must be placed to minimize visual impacts. Applicants shall place towers on the side slope of the terrain so that, as much as possible, the top of the tower does not protrude over the ridgeline, as seen from public ways.
- (g) Existing vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees shall take place on a site connected with an application made under this article prior to the approval of the special use permit use.
- (h) Screening.
 - (i) Deciduous or evergreen tree plantings may be required to screen portions of the telecommunications tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas.
 - (ii) Where a site adjoins a residential property or public property, including streets, screening suitable in type, size and quantity shall be required by the Town Council.
 - (iii) The applicant shall demonstrate to the approving board that adequate measures have been taken to screen and abate site noises, such as heating and ventilating units, air conditioners, and emergency power generators. Telecommunications towers shall comply with all applicable sections of this chapter as it pertains to noise control and abatement.
- (i) Lighting. Telecommunications towers shall not be lighted except where FAA/FCC required lighting of the telecommunications towers necessary. No exterior lighting shall spill from the site in an unnecessary manner.
- (j) Access.
 - (a) Adequate emergency and service access shall be provided and maintained. Maximum use of existing roads, public or private, shall be made. Road construction shall always minimize ground disturbance and vegetation cutting to the top of fill, the top of cuts, or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
 - (b) To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of telecommunications providers that might use the facility.

Commented [JW36]: Adopted ordinance Section 17.03 A. 3. f.

Commented [JW37]: Adopted ordinance Section 17.03 A. 3. g.

Commented [JW38]: Similar to adopted ordinance Section 17.03 A. 3. h.

Commented [JW39]: Similar to adopted ordinance Section 17.03 A. 4.

(k) **Parking.** Parking shall be provided to assure adequate emergency and service access. The Town Council shall determine the number of required spaces, but in no case shall the number of parking spaces be less than two spaces.

(l) **Fencing.** A fence shall adequately enclose the telecommunications tower and any accessory structures, the design of which shall be approved by the Town Council. The Town Council may waive this requirement if the applicant demonstrates that such measures are unnecessary to ensure the security of the facility.

Commented [JW40]: Similar to adopted ordinance Section 17.03 A. 10.

§ 17-8 **Town Council Initial Review**

Commented [JW41]: Not included in the adopted ordinance.

1. **Initial Review**

Upon the acceptance of an application that appears to be complete, the Town Engineer shall transmit the application to the Town Council for initial review.

The Town Council shall then conduct an initial review to consider whether or not to establish itself as Lead Agency pursuant to ADEQ and/or NEPA and whether or not a use or area variance is required for the proposed application such that a referral for an application to the Board of Adjustment will be required to be made after the Town Council has declared itself to serve as Lead Agency and during the process of the Town Council considering an ADEQ determination of environmental significance. That consideration of granting any required variances by the Board of Adjustment is done concurrently with the Town Council's review and consideration of special permit and site plan approval.

The Town Council shall then conduct a public hearing upon each application and render its determinations in accord with Sections §17-9 and §17-10 herein below and shall ultimately determine whether or not to grant each applicant a special use permit and/or site plan approval.

§ 17-9 **Hearings and Public Notices**

Commented [JW42]: Adopted ordinance just references the requirements in the ordinance for SUP, does not repeat the notice requirements.

1. **Public Hearings**

The Town Council shall conduct a public hearing upon each special permit application, except the Town Council shall have the authority to schedule such additional or more frequent public hearings as may be necessary to comply with the applicable shot clocks imposed upon the Town and the Town Council under the requirements of the TCA.

2. **Required Public Notices**

The Town Council shall ensure that both the public and property owners whose properties might be adversely impacted by the installation of a wireless facility receive Notice of any public hearing pertaining to same and shall ensure that they are afforded an opportunity to be heard concerning same.

Before the date scheduled for the public hearing, the Town Council shall cause to be published a

“NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY”

Each “Notice of Public Hearing for New Wireless Facility” shall state the name or names of the respective applicant or co-applicants, provide a brief description of the personal wireless facility for which the applicant seeks a special permit and the date, time, and location of the hearing.

Each “Notice of Public Hearing for New Wireless Facility” shall be published both: (a) once per week for two successive weeks in the official newspaper of the Town of Fountain Hills and (b) by mailing copies of such notice to property owners, as provided for herein below.

The face of each envelope containing the notices of the public hearing shall state, in all bold typeface, in all capital letters, in a font size no smaller than 12 point, the words:

“NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY”

For Type I and Type III applications, notices of public hearing shall be mailed to all property owners whose real properties are situated within 300 feet of any property line of the real property upon which the applicant seeks to install its new wireless facility. If the site for the proposed facility is situated on, or adjacent to, a residential street containing twelve (12) houses or less, the Town Council shall additionally mail a copy of such notices to all homeowners on that street, even if their home is situated more than 300 feet from any property line of the property upon which the applicant proposes to install its facility.

For Type II and Type IV applications, the applicant shall mail such notices of public hearing to all property owners whose real properties are situated within 1,500 feet of any property line of the real property upon which the applicant seeks to install its new wireless facility.

The applicant shall additionally post a notice upon the proposed site advising the public of the public hearing.

Prior to the date of the hearing, the respective applicant shall file an Affidavit of Mailing, attesting to whom the applicant mailed such notices and the content of the notices which were mailed to such recipients.

§17-10 Factual Determinations to be Rendered by the Town Council

Commented [JW43]: Not used in the adopted ordinance.

1. Evidentiary Standards

In determining special use permit applications for personal wireless service facilities, the Town Council shall have sole discretion to determine what probative evidence it shall require each applicant to produce in support of its application to enable the Council to make each of the factual determinations enumerated below.

By way of common examples of the types of evidence that the Council may require an applicant to produce are the following:

- (a) where an applicant is not the owner of the real property upon which it proposes to install a new wireless facility, the Council can require the applicant to provide a copy of the applicant's lease with the property owner (including any schedules, property descriptions, appendices or other attachments), from which the applicant may censor or delete any financial terms which would be irrelevant to the factual issues which the Council is required to determine;
- (b) where the Council deems it appropriate, the Council can require the applicant to perform what is commonly known as a "balloon test" and to require the applicant to publish a reasonably sufficient advance public notice of same to enable the Council, property owners, and the community, an opportunity to assess the actual adverse aesthetic impact which the proposed facility is likely to inflict upon the nearby properties and surrounding community;
- (c) where the applicant asserts a claim that a proposed facility is necessary to remedy one or more existing significant gaps in an identified wireless carrier's personal wireless services, the Council may require the applicant to provide drive-test generated coverage maps, as opposed to computer-generated coverage maps, for each frequency at which the carrier provides personal wireless services, to show signal strengths in bins of three (3) DBM each, to enable the Council to assess the existence of such significant gaps accurately, and/or whether the carrier possesses adequate coverage within the geographic area which is the subject of the respective application.
- (d) where the applicant asserts that a potential less intrusive alternative location for a proposed facility is unavailable because the owner of the potential alternative site is incapable or unwilling to lease space upon such site to the applicant, the Council may require the applicant to provide proof of such unwillingness in the form of communications to and from such property owner, and/or a sworn affidavit wherein a representative of the applicant affirms, under penalty of perjury, that they attempted to negotiate a lease with the property owner, what the material terms of any such offer to the property owner were, when the offer was tendered, and how, if at all, the property owner responded to such offer.

Commented [JW44]: See adopted ordinance Section 17.05 C. 3. c. viii.

The Council shall have sole discretion to determine, among other things, the relevance of any evidence presented, the probative value of any evidence presented, the credibility of any testimony provided, whether expert or otherwise, and the adequacy of any evidence presented.

The Council shall not be required to accept, at face value, any unsupported factual claims asserted by an applicant but may require the production of evidence reasonably necessary to enable the Council to determine the accuracy of any factual allegations asserted by each respective applicant.

Conclusory factual assertions by an applicant shall not be accepted as evidence by the Council.

2. **Factual Determinations**

Commented [JW45]: See adopted ordinance Section 17.05 C. for review and approval criteria.

To decide applications for special use permits under this Section, the Town Council shall render factual determinations, which shall include two (2) specific types of factual determinations, as applicable.

First, the Council shall render local zoning determinations according to Section (a) hereinbelow.

Then, if, and only if, an applicant asserts claims that:

- (a) a denial of its application would effectively prohibit an identified Wireless Carrier from providing Personal Wireless Services within the Town, or
- (b) its proposed wireless facility or installation *is necessary to remedy a significant gap in personal wireless services for an explicitly identified Wireless Carrier*, and that its proposed installation *is the least intrusive means of remedying a specifically identified significant gap or gaps*.

The Council shall then *additionally* render TCA determinations in accord with Section (b) herein below.

The Council shall separately record each factual determination it makes in a written decision and shall reference, or make note of, the evidence-based upon which it rendered each of its factual determinations.

Each factual determination made by the Council shall be based upon Substantial Evidence. For purposes of this provision, "Substantial Evidence" shall mean such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

Evidence that the Council may consider shall include any evidence submitted in support of an application and any evidence submitted by anyone opposing a respective application, whether such evidence is in written or photographic form or whether it is in the form of testimony by any expert, or any person who has personal knowledge of the subject of their testimony. The Council may, of course, additionally consider as evidence any information or knowledge which they, themselves, personally possess and any documents, records, or other evidence which is a matter of public record, irrespective of whether such public record is a record of the Town, or is a record of or is maintained by, another federal, state and/or other governmental entity and/or agency which maintains records which are available for, or subject to, public review.

The requirements for specific factual determinations set forth below are intended to enure to the benefit of the Town, its residents, and property owners, and not applicants.

If, and to the extent that the Town Council fails to render one or more of such determinations, that omission shall not constitute grounds upon which the respective applicant can seek to annul, reverse or modify any decision of the Town Council.

(a) LOCAL ZONING DETERMINATIONS

The Council shall make the following factual determinations as to whether the application meets the requirements for granting a special use permit under this Chapter.

(i) Compliance with §2.02

Whether the proposed installation will meet each of the conditions and standards set forth within §2.02 in the absence of which the Town Council is not authorized to grant a special use permit.

(ii) Potential Adverse Aesthetic Impacts

Whether the proposed installation will inflict a significant adverse aesthetic impact upon properties located adjacent to, or in close proximity to, the proposed site or any other properties situated in a manner that would sustain significant adverse aesthetic impacts by the installation of the proposed facility.

(iii) Potential Adverse Impacts Upon Real Estate Values

Whether the proposed installation will inflict a significant adverse impact upon the property values of properties that are located adjacent to, or in close proximity to, the proposed site or properties that are otherwise situated in a manner that would cause the proposed installation to inflict a significant adverse impact upon their value.

(iv) Potential Adverse Impact Upon the Character of the Surrounding Community

Whether the proposed installation will be incompatible with the use and/or character of properties located adjacent to or in close proximity to the proposed site or other properties situated in a manner that would cause the proposed installation to be incompatible with their respective use.

(v) Potential Adverse Impacts Upon Historic Properties or Historic Districts

Whether the proposed installation will be incompatible with and/or would have an adverse impact upon, or detract from the use and enjoyment of, and/or character of a historic property, historic site, and/or historic district, including, but not limited to, historic structures, properties and/or districts which are listed on, or are eligible for listing on, the National Register of Historic Places.

(vi) Potential Adverse Impacts Upon Ridgelines or Other Aesthetic Resources of the Town

Whether the proposed installation will be incompatible with and/or would have an adverse aesthetic impact upon or detract from the use and enjoyment of, and/or character of, recognized aesthetic assets of the Town, including, but not limited to, scenic areas and/or scenic ridgelines, scenic areas, public parks, and/or any other traditionally or historically recognized valuable scenic assets of the Town.

(vii) Sufficient Fall Zones

Whether the proposed installation shall have a sufficient fall zone and/or safe zone around the facility to afford the general public safety against the potential dangers of structural failure, icefall, debris fall, and fire.

(viii) Mitigation

Whether the applicant has mitigated the potential adverse impacts of the proposed facility to the greatest extent reasonably feasible. To determine mitigation efforts on the part of the applicant, the mere fact that a less intrusive site, location, or design would cause an applicant to incur additional expense is not a reasonable justification for an application to have failed to propose reasonable mitigation measures.

If, when applying the evidentiary standards set forth in subparagraph (a) hereinabove, the Town Council determines that the proposed facility would not meet the standards set forth within §2.02 or that the proposed facility would inflict one or more of the adverse impacts described hereinabove to such a substantial extent that granting the respective application would inflict upon the Town and/or its citizens and/or property owners the types of adverse impacts which this provision was enacted to prevent, the Town Council

shall deny the respective application for a special use permit unless the Council additionally finds that a denial of the application would constitute an Effective Prohibition, as provided for in Sections (b) and (c) immediately hereinbelow.

(b) TCA DETERMINATIONS

In cases within which an applicant has filed a “Notice of Effective Prohibition Conditions,” the Town Council shall determine if a denial of the respective application would “Effectively Prohibit” a specifically identified Wireless Carrier from providing Personal Wireless Services within any geographic area or areas in the Town.

More specifically, the Town Council shall determine whether a denial of the specific application would either: (i) prevent *an identified* Wireless Carrier from providing personal wireless services *within a specific geographic area* or areas within the Town or (ii) would prevent a specific Wireless Carrier from constructing *a sufficient number* of such facilities necessary to enable it to provide Personal Wireless Services within the Town.

In determining whether a denial of any specific application would constitute an “Effective Prohibition,” the Town Council shall determine: (1) whether an applicant has established that an identified Wireless Carrier suffers from one or more significant gaps in its Personal Wireless Services, and (2) whether its proposed installation is the least intrusive means of remedying any such gap or gaps.

(1) Significant Gap in Personal Wireless Services of an Identified Carrier

The Town Council shall determine whether the applicant has established, based upon probative evidence provided by the applicant and/or its representative, that a specific Wireless Carrier suffers from a significant gap in its personal wireless services within the Town.

In rendering such determination, the Council shall consider factors including, but not necessarily limited to:

- (a) whether the identified Wireless Carrier, which is alleged to suffer from any significant gap in their personal wireless services, already provides Adequate Service in its Personal Wireless Services to its customers at any frequency being used by the carrier to provide personal wireless services to its end-use customers,
- (b) whether any such alleged gap is relatively large or small in geographic size,
- (c) whether the number of the carrier’s customers affected by the gap is relatively small or large,
- (d) whether or not the location of the gap is situated on a lightly traveled road, or sparsely or densely occupied area, and/or

- (e) overall, whether the gap is relatively insignificant or otherwise relatively *de minimis*.

An Effective Prohibition shall not be found to exist under subparagraph (c) hereinbelow if a Wireless Carrier *has* adequate coverage in any specified geographic area, such that its end-use customers can use their cellular telephones to connect to landlines using the Carrier's Personal Wireless Services, but the frequency at which the customers are using such services is not the frequency *most desired* by the Carrier.

(2) Least Intrusive Means of Remediating Gap(s) in Service

The Town Council shall determine whether the applicant has established, based upon probative evidence provided by the applicant and/or its representative, that the installation of the proposed facility at the specific site proposed by the applicant and the specific portion of the site proposed by the applicant, and at the specific height proposed by the applicant, is the least intrusive means of remediating whatever significant gap or gaps which the applicant has contemporaneously proven to exist as determined by the Town Council based upon any evidence in support of, and/or in opposition to, the subject application.

In rendering such determination, the Council shall consider factors including, but not necessarily limited to:

- (a) whether the proposed site is the least intrusive location at which a facility to remedy an identified significant gap may be located, and the applicant has reasonably established a lack of potential alternative less intrusive sites and lack of sites available for co-location,
- (b) whether the specific location on the proposed portion of the selected site is the least intrusive portion of the site for the proposed installation
- (c) whether the height proposed for the facility is the minimum height actually necessary to remedy an established significant gap in service,
- (d) whether or not a pre-existing structure can be used to camouflage the facility and/or its antennas,
- (e) whether or not, as proposed, the installation mitigates adverse impacts to the greatest extent reasonably feasible through the employ of Stealth design, screening, use of color, noise mitigation measures, etc., and/or
- (f) overall whether or not there is a feasible alternative to remedy the gap through alternative, less intrusive substitute installations.

An Effective Prohibition shall also not be found to exist in subparagraph (c) hereinbelow if an applicant fails to establish before the Town Council that any existing geographic gap or capacity deficiency in the specific Wireless Carrier's coverage cannot be remedied

through a less intrusive means than what is being proposed, including, but not limited to, potential installations on alternative less intrusive sites, a shorter tower or facility, the incorporation of a more stealthy design, etc.

(c) Finding of Effective Prohibition or Lack of Effective Prohibition

After considering the evidence presented before it, the Town Council shall determine whether or not a denial of the respective application would constitute an effective Prohibition.

If the Town Council affirmatively determines that the applicant has failed to establish either: (i) that a denial of the application would prevent an identified Wireless Carrier from providing personal wireless services within a specific geographic area or areas within the Town or (ii) that a denial of the application would prevent a specific Wireless Carrier from constructing a sufficient number of such facilities necessary to enable it to provide Personal Wireless Services within the Town, then the Town Council shall find that a denial of the application does not constitute an Effective Prohibition.

If the Town Council affirmatively determines that: (i) a denial of the application would prevent an identified Wireless Carrier from providing personal wireless services within a specific geographic area or areas within the Town, or (ii) that a denial of the application would prevent a specific Wireless Carrier from constructing a sufficient number of such facilities necessary to enable it to provide Personal Wireless Services within the Town, then the Town Council shall find that a denial of the application would constitute an Effective Prohibition, and the Town Council shall grant the subject application, irrespective of whether or not the granting of same would otherwise be inconsistent with any other provision of this Section §17-10.

§ 17-11 Retention of Consultants

1. Use of Consultants

Where deemed reasonably necessary by the Town Council and/or the Town, the Town Council and/or the Town may retain the services of professional consultants to assist the Town Council in carrying out its duties in deciding special use permit applications for personal wireless service facilities. Where the Town Council uses the services of private engineers, attorneys, or other consultants for purposes of engineering, scientific, land use planning, environmental, legal, or similar professional reviews of the adequacy or substantive aspects of applications or of issues raised during the course of review of applications for special use permit approvals of personal wireless service facilities, the applicant and landowner, if different, shall be jointly and severally responsible for payment of all the reasonable and necessary costs incurred by the Town for such services.

Commented [JW46]: Not used in adopted ordinance; however, adopted ordinance Sections 17.06 B. 2. a. and b. allow the Town to hire a consultant.

That responsibility shall not exceed the actual cost to the Town of such engineering, legal, or other consulting services.

2. Advance Deposits for Consultant Costs

The Town and/or Town Council may require advance periodic monetary deposits held by the Town on account of the applicant or landowner to secure the reimbursement of the Town's consultant expenses. The Town Council shall establish policies and procedures for the fixing of escrow deposits and the management of payment from them. After the audit and approval of itemized vouchers by the Town Clerk as to the reasonableness and necessity of the consultant charges, the Town may make payments from the deposited funds for engineering, legal, or consultant services. Upon receiving a request by the applicant or landowner, the Town shall supply copies of such vouchers to the applicant and/or landowner reasonably in advance of audit and approval, appropriately redacted where necessary to shield legally privileged communications between Town officers or employees and the Town's consultant. When it appears that there may be insufficient funds in the account established for the applicant or landowner by the Town to pay current or anticipated vouchers, the Town shall cause the applicant or landowner to deposit additional sums to meet such expenses or anticipated expenses in accordance with policies and procedures established by the Town Council. Consultants shall undertake no review on any matter scheduled before the Town Council until the initial escrow deposit has been made or requested replenishment of the escrow deposit has been made. No reviewing agency shall be obligated to proceed unless the applicant complies with escrow deposit requirements.

3. Reasonable Limit Upon Consultant Expenses

A consultant expense or part thereof is reasonable in amount if it bears a reasonable relationship to the customary fee charged by engineers, attorneys, or planners within the region for services performed on behalf of applicants or reviewing boards in connection with comparable applications for land use or development.

The Town may also take into account any special conditions for consideration as it may deem relevant, including but not limited to the quality and timeliness of submissions on behalf of the applicant and the cooperation of the applicant and agents during the review process.

A consultant expense or part thereof is necessarily incurred if it was charged by the engineer, attorney or planner, or other consultants for a service that was rendered to assist the Town Council in: (a) making factual determinations consistent with the goals of protecting or promoting of the health, safety or welfare of the Town or its residents; (b) assessing potential adverse environmental impacts such as those identified within an ADEQ process; (c) accessing potential adverse impacts to historic properties, structures and/or districts, and/or (d) assessing and determining factual issues relevant to Effective Prohibition claims, as addressed herein, enabling the Council to best comply with the letter and intent of the provision of the TCA which is relevant thereto.

4. Audits Upon the Request of an Applicant

Upon request of the applicant or landowner, the Town Council shall review and audit all vouchers and determine whether such engineering, legal, and consulting expenses are reasonable in amount and necessarily incurred by the Town in connection with the review and consideration of a special use permit application for personal wireless service facility. In the event of such a request, the applicant or landowner shall be entitled to be heard by the Town Council on reasonable advance notice.

5. Liability for Consultant Expenses

For a land-use application to be complete, the applicant shall provide the written consent of all owners of the subject real property, both authorizing the applicant to file and pursue land development proposals and acknowledging potential landowner responsibility, under this section, for engineering, legal, and other consulting fees incurred by the Town. If different from the applicant, the owner(s) of the subject real property shall be jointly and severally responsible for reimbursing the Town for funds expended to compensate services rendered to the Town under this section by private engineers, attorneys, or other consultants. The applicant and the owner shall remain responsible for reimbursing the Town for its consulting expenses, notwithstanding that the escrow account may be insufficient to cover such expenses. No building permit or other permit shall be issued until reimbursement of costs and expenses determined by the Town to be due. In the event of failure to reimburse the Town for such fees, the following shall apply:

The Town may seek recovery of unreimbursed engineering, legal, and consulting fees by court action in an appropriate jurisdiction, and the defendant(s) shall be responsible for the reasonable and necessary attorney's fees expended by the Town in prosecuting such action.

Alternatively, and at the sole discretion of the Town, a default in reimbursement of such engineering, legal, and consulting fees expended by the Town shall be remedied by charging such sums against the real property that is the subject of the special use permit application by adding that charge to and making it a part of the next annual real property tax assessment roll of the Town. Such charges shall be levied and collected simultaneously and in the same manner as Town-assessed taxes and applied in reimbursing the fund from which the costs were defrayed for the engineering, legal, and consulting fees. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record by certified mail, return receipt requested, of an opportunity to be heard and object before the Town Council to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.

§17-12 Setback Requirements

1. Small Wireless Facilities

Commented [JW47]: See adopted ordinance Section 17.03 B. for setback requirements.

- (a) Within C-O Commercial Office Zoning District; C-C Common-Commercial Zoning District; C-1 Neighborhood Commercial Professional District; C-2 Intermediate Commercial Zoning District; C-3 General Commercial Zoning District; IND-1 Planned Industrial Zoning District; IND-2 Light Industrial Zoning District; and UT Utility Zoning District, the minimum setback shall be fifty (50) feet, unless the facility is being installed upon a pre-existing utility pole or other utility structure.
- (b) Within all residentially-zoned and other districts, all small wireless facilities shall be set back a minimum of three hundred (300) feet from any residential dwelling or structure unless the facility is being installed upon a pre-existing utility pole or is being co-located upon a pre-existing personal wireless service facility.

2. Cell Towers and all Personal Wireless Service Facilities that do not meet the definition of a Small Wireless Facility

Commented [JW48]: See adopted ordinance Section 17.03 B. for setback requirements

- (a) Each proposed wireless personal service facility and personal wireless service facility structure, compound, and complex shall be located on a single lot and comply with applicable setback requirements. Adequate measures shall be taken to contain on-site all icefall or debris from tower failure and preserve the privacy of any adjoining residential properties.
- (b) Each lot containing a wireless personal service facility and personal wireless service facility structure, compound, and complex shall have the minimum area, shape, and frontage requirements generally prevailing for the zoning district where located in the Schedules of Regulations for Nonresidential and Residential Districts of this chapter, and such additional land if necessary to meet the setback requirements of this section.
- (c) Cell towers and personal wireless service facilities that do not meet the definition of a small wireless facility shall maintain a minimum setback of a distance equal to one hundred ten (110%) percent of the height of the facility, for front yard setbacks, rear yard setbacks, and side yard setbacks, in all zoning districts.

§17-13 Height Restrictions

Commented [JW49]: See adopted ordinance Section 17.04 A. 7. c. for statement that towers in excess of max. building height for the district cannot be approved administratively. No max. height set.

1. Small Wireless Facilities

Personal Wireless Service Facilities which meet the definition of a small wireless facility shall not exceed a maximum height of sixty (60) feet above ground elevation in C-O Commercial Office Zoning District; C-C Common-Commercial Zoning District; C-1 Neighborhood Commercial Professional District; C-2 Intermediate Commercial Zoning

District; C-3 General Commercial Zoning District; IND-1 Planned Industrial Zoning District; IND-2 Light Industrial Zoning District; and UT Utility Zoning District and shall not exceed a maximum height of forty-five (45) feet within all other zoning districts.

2. Non-Small Wireless Facilities

Personal Wireless Service Facilities which do not meet the definition of a small wireless facility shall not exceed a maximum height of one hundred fifty (150) feet above ground elevation in C-O Commercial Office Zoning District; C-C Common-Commercial Zoning District; C-1 Neighborhood Commercial Professional District; C-2 Intermediate Commercial Zoning District; C-3 General Commercial Zoning District; IND-1 Planned Industrial Zoning District; IND-2 Light Industrial Zoning District; and UT Utility Zoning District, and 100 feet above ground level in all other zoning districts.

§ 17-14 Use Restrictions and Variances

Commented [JW50]: Not used in adopted ordinance. Use variances are prohibited

1. Use Restrictions by Application Type and Zoning District

Type I applications No Use Variance Required

Type I applications for co-location of a small wireless facility in a public right of way as set forth in A.R.S. §9-592(J) and A.R.S. §9-593(C) shall be a permitted use with a building permit.

Type I applications for co-location of a small wireless facility in all other areas or zones shall require an applicant to obtain a special use permit from the Town Council.

Type II applications No Use Variance Required Unless Determined Otherwise

Applications for colocations of a wireless personal services facility, which do not meet the definition of a small wireless facility, shall be considered a special use permit in all districts and shall require a special use permit and a building permit but shall not require a use variance, unless the Town Council, in its sole discretion, determines that the proposed colocation will increase the overall intrusiveness of the site to a sufficient extent that its presence would no longer be compatible with the surrounding properties and/or surrounding community, in which case the Town Council shall issue a decision determining that the applicant shall be required to obtain a variance from the Board of Adjustment in accord with §2.07 of the Zoning Ordinance.

In rendering a determination of whether or not a variance shall be required, the Town Council shall consider, among other things: (a) the physical size, number, and potential intrusiveness of each new item of equipment to be installed as part of the proposed colocation, (b) the extent to which the installation of such equipment is to require or effectuate a significant physical expansion of the size or area of the facility or complex, (c) the extent to which the addition of such additional equipment will likely increase the

adverse aesthetic impact of the facility, and/or any other potentially significant adverse impacts which are likely to cause a significant increase in the overall intrusiveness of the wireless facility, and/or its compound or complex, such that it will no longer be reasonably compatible with the use of nearby or surrounding properties and/or that its presence would be incompatible with the character and use of the nearby properties and/or surrounding community.

If the Town Council determines that a variance is required for a specific proposed facility, then the applicant shall be required to file an application for a variance to the Board of Adjustment. The Board of Adjustment shall thereafter have the authority to (a) determine that no variance is necessary, (b) grant the application for a variance, or (c) deny the application for a variance.

Type III Applications No Use Variance Required

Applications for installing new Small Wireless Facilities that meet the criteria for Type III applications, which are not collocated in a public right of way, shall be considered a special use permit use in all districts. They shall require a special use permit and building permit but shall not require a variance unless they do not meet the applicable setback requirements or height limitation.

Type IV Applications Variance Requirements

Type IV applications seeking approval for the installation of a new cell tower and/or all other wireless facilities that are not a small wireless facility shall be a permitted use in all districts, which shall not need a use variance but shall require a special use permit, building permit, and area variance if the proposed facility does not meet the applicable height limitation and/or setback requirements.

§ 17-15 Environmental Impacts

Commented [JW51]: Not used in adopted ordinance.

If, and to the extent that, the Town Council determines a proposed installation bears the potential for a significant adverse impact upon the environment within the meaning of ADEQ and/or the NEPA, then the Council shall be expected to comply with the requirements of ADEQ in determining both (a) the extent of adverse impacts upon the environment and/or historic properties and (b) what mitigation measures the applicant should be required to undertake to minimize the adverse environmental impacts and/or adverse impacts upon historic sites, structures and/or districts.

If a respective applicant fails to obtain a review from the ADEQ and/or NEPA and opinion letters from the ADEQ and the FCC pertaining to its proposed installation prior to a first public hearing before the Town Council for the respective application, then the Town Council may make direct

requests to the ADEQ and the FCC for their review of the application. The Town Council may request SHPO and the FCC's review and input in completing the statutorily required environmental impact analysis pursuant to ADEQ and NEPA.

In addition, the Town Council shall comply with the statutory requirements of ADEQ to complete an ADEQ review, make determinations of significance, and, where appropriate, require the applicant to complete a draft environmental impact statement and, if additionally appropriate, to thereafter complete a final environmental impact statement and analysis.

So long as the Town Council acts with reasonable diligence in completing its ADEQ and NEPA review, if compliance with the statutory requirements for environmental review requires a period of effort that extends beyond the expiration of the applicable shot clock period, the delays beyond such period shall be deemed reasonable.

§ 17-16 Historic Site Impacts

Commented [JW52]: Not used in adopted ordinance.

The Town Council shall consider the potential adverse impacts of any proposed facility upon any historic site, district, or structure consistent with the Town's historic preservation law requirements and comprehensive plan and ADEQ.

If, and to the extent that, the Town Council determines that a proposed installation bears the potential for a significant adverse impact on a historic site or a historic district within the meaning of ADEQ and/or the NHPA (especially if the historic site at issue is listed upon the National Register of historic places), then the Council shall comply with the requirements of both ADEQ and Town law in determining both: (a) the extent of adverse impacts upon the historic properties and (b) what mitigation measure might the applicant be required to undertake to minimize the adverse environmental impacts and/or adverse impacts upon historic sites, structures and/or district.

Should a respective applicant fail to obtain a SHPO and/or a Section 106 review under NHPA, and opinion letters from SHPO and the FCC pertaining to its proposed installation prior to a first public hearing before the Town Council for the respective application, then the Town Council shall make direct requests to SHPO and the FCC for their review of the application. They shall request SHPO and the FCC's review and input in completing the statutorily-required environmental/historic impact analysis pursuant to ADEQ and NHPA.

This request shall include, but not be limited to, a request to the FCC for a Section 106 review, as defined in this Chapter, as the Town recognizes each application for a special use permit for the installation of a personal wireless services facility shall constitute "an undertaking" for purposes of compliance with the National Historic Preservation Act.

In addition, the Town Council shall comply with the statutory requirements of ADEQ to complete a SEQ ADEQ RA review, make determinations of significance, and, where appropriate,

require the applicant to complete a draft environmental impact statement, and if additionally appropriate, to thereafter complete a final environmental impact statement and analysis.

So long as the Town Council acts with reasonable diligence in completing its ADEQ and NHPA review, if compliance with the statutory requirements for historic preservation review requires a period of effort that extends beyond the expiration of the applicable shot clock period, the delays beyond such period shall be deemed reasonable.

§ 17-17 Force Majeure

Commented [JW53]: Not used in adopted ordinance.

In the event that the rendering of a final decision upon a special use permit application under this Chapter is delayed due to natural and/or unnatural events and/or forces which are not within the control of the Town or the Town Council, such as the unavoidable delays experienced in government processes due to the COVID 19 pandemic, and/or mandatory compliance with any related federal or state government orders issued in relation thereto, such delays shall constitute reasonable delays which shall be recognized as acceptable grounds for extending the period for review and the rendering of final determinations beyond the period allotted under the applicable shot clock.

§ 17-18 Eleventh Hour Submissions

Commented [JW54]: Not used in adopted ordinance.

In the event that applicant tenders eleventh-hour submissions to the Town, the Council, and/or the Town Engineer in the form of (a) expert reports, (b) expert materials, and/or (c) materials which require a significant period for review due either to their complexity or the sheer volume of materials which an applicant has chosen to provide to the Council at such late point in the proceedings, the Town Council shall be afforded a reasonable time to review such late-submitted materials.

If reasonably necessary, the Town Council shall be permitted to retain the services of an expert consultant to review any late-submitted expert reports which were provided to the Council, even if such review or services extend beyond the applicable shot clock period, so long as the Council completes such review and retains and secures such expert services within a reasonable period of time thereafter and otherwise acts with reasonable diligence in completing its review and rendering its final decision.

§ 17-19 Prohibition Against Illegally Excessive Emissions and RF Radiation Testing

Commented [JW55]: Subsections 1 and 2 used in adopted ordinance Section 17-06 B. Otherwise, not used in adopted ordinance.

As disclosed on the FCC's public internet website, personal wireless services facilities erected at any height under 200 feet are not required to be registered with the FCC.

Of even greater potential concern to the Town is the fact that the FCC does not enforce the RF radiation limits codified within the CFR by either: (a) testing the actual radiation emissions of wireless Facilities either at the time of their installation or at any time thereafter, or (b) requiring

their owners to test them. *See* relevant excerpts from the FCC's public internet website annexed as Appendix 2.

This means that when wireless Facilities are constructed and operated within the Town, the FCC will have no idea where they are located and no means of determining, much less ensuring, that they are not exposing residents within the Town and/or the general public to Illegally Excessive levels of RF Radiation.

The Town deems it to be of critical importance to the health, safety, and welfare of the Town, its residents, and the public at large that personal wireless service facilities do not expose members of the general public to levels of RF radiation that exceed the limits which have been deemed safe by the FCC, and/or are imposed under CFR.

In accord with the same, the Town enacts the following RF Radiation testing requirements and provisions set forth herein below.

No wireless telecommunications facility shall at any time be permitted to emit illegally excessive RF Radiation as defined in §17-2 or to produce power densities that exceed the legally permissible limits for electric and magnetic field strength and power density for transmitters, as codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

To ensure continuing compliance with such limits by all owners and/or operators of personal wireless service facilities within the Town, all owners, and operators of personal wireless service facilities shall submit reports as required by this section.

As set forth hereinbelow, the Town may additionally require, at the owner and/or operator's expense, independent verification of the results of any analysis set forth within any reports submitted to the Town by an owner and/or operator.

If an operator of a personal wireless service facility fails to supply the required reports or fails to correct a violation of the legally permissible limits described hereinabove, following notification that their respective facility is believed to be exceeding such limits, any special use permit or other zoning approval granted by the Town Council or any other body or representative of the Town is subject to modification or revocation by the Town Council following a public hearing.

1. Initial Certification of Compliance with Applicable RF Radiation Limits

Within forty-five (45) days of initial operation or a substantial modification of a personal wireless service facility, the owner and/or operator of each Telecommunications antenna shall submit to the Town Engineer a written certification by a licensed professional engineer, sworn to under penalties of perjury, that the facility's radio frequency emissions comply with the limits codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

The engineer shall measure the emissions of the approved facility, including the cumulative impact from other nearby Facilities, and determine if such emissions are within the limits described hereinabove.

A report of these measurements and the engineer's findings with respect to compliance with the FCC's Maximum Permissible Exposure (MPE) limits shall be submitted to the Town Engineer.

If the report shows that the facility does not comply with applicable limits, then the owner and/or operator shall cease operation of the facility until the facility is brought into compliance with such limits. Proof of compliance shall be a certification provided by the engineer who prepared the original report. The Town may require, at the applicant's expense, independent verification of the results of the analysis.

2. Random RF Radiofrequency Testing

At the operator's expense, the Town may retain an engineer to conduct random unannounced RF Radiation testing of such Facilities to ensure the facility's compliance with the limits codified within 47 CFR §1.1310(e)(1) et seq.

The Town may cause such random testing to be conducted as often as the Town may deem appropriate. However, the Town may not require the owner and/or operator to pay for more than one test per facility per calendar year unless such testing reveals that one or more of the owner and/or operator's facilities are exceeding the limits codified within 47 CFR §1.1310(e)(1) et seq., in which case the Town shall be permitted to demand that the facility be brought into compliance with such limits, and to conduct additional tests to determine if, and when, the owner and/or operator thereafter brings the respective facility and/or facilities into compliance.

If the Town at any time finds that there is good cause to believe that a personal wireless service facility and/or one or more of its antennas are emitting RF radiation at levels in excess of the legal limits permitted under 47 CFR §1.1310(e)(1) et seq., then a hearing shall be scheduled before the Town Council at which the owner and/or operator of such facility shall be required to show cause why any and all permits and/or approvals issued by the Town for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.

Such hearing shall be duly noticed to both the public and the owner and/or operator of the respective facility or facilities at issue. The owner and/or operator shall be afforded not less than two (2) weeks' written notice by first-class mail to its Notice Address.

At such hearing, the burden shall be on the Town to show that, by a preponderance of the evidence, the Facilities emissions exceeded the permissible limits under 47 CFR §1.1310(e)(1) et seq.

In the event that the Town establishes same, the owner and/or operator shall then be required to establish, by clear and convincing evidence, that a malfunction of equipment caused their failure to comply with the applicable limits through no fault on the part of the owner/operator.

If the owner and/or operator fails to establish same, the Town Council shall have the power to and shall revoke any special use permit, variance, building permit, and/or any other form of zoning-related approval(s) which the Town Council, Board of Adjustment, Town Engineer and/or any other representative of the Town may have then issued to the owner and/or operator, for the respective facility.

In addition, the Town Council shall impose a fine of not less than \$1,000, nor more than \$5,000 for such violation of subparagraph 1. hereinabove, or, in the case of a second offense within less than five (5) years, a minimum fine of \$5,000, nor more than \$25,000.

In the event that an owner or operator of one or more personal wireless service facilities is found to violate subparagraph 1. hereinabove three or more times within any five (5) year period, then in addition to revoking any zoning approvals for the facilities which were violating the limits codified in 47 CFR §1.1310(e)(1) et seq., the Town Council shall render a determination within which it shall deem the owner/operator prohibited from filing any applications for any new wireless personal services facilities within the Town for a period of five (5) years.

§17-20 **Bond Requirements, Removal of Abandoned Facilities and Reclamation**

Commented [JW56]: Mostly, not used in adopted ordinance.

1. **Bond Requirement**

At or prior to the filing of an application for a special use permit for the installation of a new personal wireless service facility, each respective applicant shall provide a written estimate for the cost of the decommissioning and removal of the facility, including all equipment that comprises any portion or part of the facility, compound and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein. The Town Council's Engineer shall review this estimate.

Upon receiving a special use permit approval from the Town Council and a building permit, prior to the commencement of installation and/or construction of such facility or any part thereof, the applicant shall file with the Town a bond for a length of no less than three (3) years in an amount equal to or exceeding the estimate of the cost of removal of the facility and all associated structures, fencing, power supply, and other appurtenances connected with the facility. The bond must be provided within thirty (30) days of the approval date and before any installation or construction begins.

Replacement bonds must be provided ninety (90) days prior to the expiration of any previous bond.

At any time the Town has good cause to question the sufficiency of the bond at the end of any three-year (3) period, the owner and/or operator of the facility, upon request by the Town, shall provide an updated estimate and bond in the appropriate amount.

Failure to keep the bonds in effect is cause for the removal of the facility at the owner's expense. Each facility will require a separate bond, regardless of the number of owners or location.

2. Removal of Abandoned Facilities

Commented [JW57]: Adopted ordinance Section 17.06 A. has similar language.

Any personal wireless service facility that is not operated or used for a continuous period of twelve (12) consecutive months shall be considered abandoned. At the owner's expense, the owner of said facility shall be required to remove the facility and all associated equipment buildings, power supply, fence, and other items associated with such facility, compound, and/or complex, and permitted with the facility.

If the facility is not removed within ninety (90) days, the bond secured by the facility owner shall be used to remove the facility and any accessory equipment and structures.

§17-21 ADA Accommodations

[Reserved]

§17-22 General Provisions

Commented [JW58]: Not used in adopted ordinance.

1. Balancing of Interests

The Town formally recognizes that, as has been interpreted by federal courts, when it enacted the TCA, Congress chose to preserve local zoning authority over decisions regarding the placement, construction, and modification of personal wireless facilities (47 U.S.C. §332(c)(7)(A)) subject only to the limitations set forth in subsection §332(c)(7)(b), consistent with the holding of the United States Court of Appeals in Sprint Telephony PCS v. County of San Diego, 543 F.3d 571 (9th Cir. 2008) and its progeny, and the Town has relied upon such federal courts' interpretations of the TCA in enacting Chapter §17 et seq.

The Town similarly embraces the Federal courts' determinations that the TCA as the Court additionally articulated in Sprint Telephony PCS v. County of San Diego, 543 F.3d 571 (9th Cir. 2008) This includes preserving to local governments, including the Town of Fountain Hills, the power to deny applications for the installation of wireless personal services facilities based upon traditional grounds of zoning denials, including, but not limited to, the potential adverse aesthetic impacts or a reduction in property values which the construction of any proposed structure may inflict upon nearby properties or the surrounding community.

This additionally includes the recognition that, under this balancing of interest test, "once an area is sufficiently serviced by a wireless service provider, the right to deny applications (for new wireless facilities) becomes broader" Crown Castle NG East LLC v. The Town of Hempstead, 2018 WL 6605857.

It is the intent of the Town that this Chapter be applied in a manner consistent with the balancing of interests codified within the TCA.

Consistent with same, the Town rejects and shall reject any current and/or future FCC interpretations of any provision of the TCA which are clearly inconsistent with, and/or are clearly contrary to, both the language of the TCA and binding decisions of the United States Court of Appeals for the Ninth Circuit and United States District Courts within the Ninth Circuit.

This includes a rejection of any FCC interpretations inconsistent with Sprint and any claims that the FCA legally prohibits the Town Council from denying a permit application based solely upon a claim that an applicant desires the installation of its new facility for “densification” of its existing personal wireless services, or to offer a new service, irrespective of whether or not the carrier already possesses adequate coverage within the Town, and irrespective of the potential adverse impact which the installation of such new facility or facilities would inflict upon the Town, its property owners, citizens and/or communities.

2. Conflict With Federal or State Laws

To the extent that any provision of this Chapter is found to conflict with any applicable federal or State law, it is the intent of the Town that the remaining portion of this Chapter, which has not been found to conflict with such law, be deemed to remain valid and in full force and effect.