

**WIRELESS AGREEMENT  
DISH WIRELESS AND THE CITY OF PEORIA  
PXPXH00467C, NORTHEAST CORNER OF  
91<sup>ST</sup> AVENUE AND BEARDSLEY ROAD SITE**

City Council Meeting Date:

This Wireless Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date"), by and between the City of Peoria, Arizona, an Arizona municipal corporation ("City"), and Dish Wireless, a Colorado corporation ("Company"). City and Company may be referred to individually as "Party" and collectively as "Parties".

**RECITALS**

- A. Company provides wireless communication services through the use of Wireless Facilities (hereinafter defined); and
- B. City is authorized to grant use agreements to operate and maintain Wireless Facilities within the City boundaries under the Charter and Peoria City Code, and by virtue of federal and state statutes, by the City's police powers, by its authority over its public rights-of-way and highways as defined in Chapter 23 of the Peoria City Code, and by other City powers and authority; and
- C. Company has applied to the City for permission to operate and maintain the Wireless Facilities within the City of Peoria and located within City Right-of-Way as described on the attached Exhibit "A" at a site known as the " PXPXH00467C NEC 91st Avenue and Beardsley Road Site" (the "Site") and attached to a APS transmission pole located at the NEC of 91<sup>st</sup> Avenue and Beardsley Road as depicted in Exhibit "B"; and
- D. Company has agreed to provide information required by and comply with the terms and conditions set forth in this Agreement and other requirements as City may establish from time to time.

**AGREEMENT**

NOW, THEREFORE, City hereby grants to Company this Wireless Agreement to operate and maintain Wireless Facilities at the Site within City Right-of-Way under the following terms and conditions.

**1. DEFINITIONS**

For the purposes of this Agreement, the following words, terms, phrases, and their derivations are given the meaning stated in this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

"ACC" means the Arizona Corporation Commission.

"Agreement" means this non-exclusive revocable authorization granted by the City to Company to operate and maintain Wireless Facilities on the Site.

"Agreement to Install A" is the City of Peoria requirement that the Company execute an Agreement to Install (Type A, Type A-Contractors Amendment, or Type B) and provide the City with a financial assurance that the improvements associated with the project, such as, but not limited to; utility company improvements, streetlight and other city infrastructure improvements will be properly installed. The Agreement to Install defines the improvements and the standards to which they are to be

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constructed while the financial assurances protect the City by providing the City with the money to finish the improvements, if for some reason the developer fails to do so.

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

"APS" means Arizona Public Service and its subsidiaries and affiliates.

"A.R.S." means Arizona Revised Statutes, as amended.

"Base Use Fee" means the amount Company must pay City each month of this Agreement for use of City Right-of-way. "P.C.C." means Peoria City Code, as amended.

"C.F.R." means Code of Federal Regulations, as amended.

"City" means the City of Peoria, an Arizona municipal corporation.

"City Council" means the Council of the City of Peoria.

"City Manager" means the Peoria City Manager or the City Manager's designee.

"Collocate", "collocating", or "collocation" refers to the use of Company's Facilities by another company.

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

"Company" means Dish Wireless, and related affiliates, subsidiaries, persons, or entities to which this Agreement is granted.

"Company's Improvements" means all improvements installed by the Company, 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 Company in the approved Agreement.

"Competing Users" means entities that own the water pipes, cables and wires, pavement, and other facilities that may be located within the Right-of-way. Competing Users include without limitation, the City, 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 Area.

"Critical Infrastructure Information" has the same meaning prescribed in A.R.S. § 41-1801, as amended.

"Day" means a calendar day, except a Saturday, Sunday, or a holiday prescribed in A.R.S. § 1-301.

"Encroachment Permit" means a permit issued pursuant to Chapter 23 of the Peoria City Code that allows the Company to perform work in the Right-of-Way and to install and operate improvements in the Right-of-Way.

"Environmental Laws" means all federal, state, and local laws, ordinances, rules, regulations, statutes, and judicial decisions, as amended from time to time, which in any way relate to or regulate human health, safety, industrial hygiene, environmental conditions, protection of the environment, prevention or cleanup of pollution, or contamination of the air, soil, surface water, or ground water.

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"Facility" or "Facilities" means Company's plant, equipment, and property, including but not limited to boxes, poles, wires, pipe, conduits, pedestals, antenna, and other appurtenances, in order to provide the services described in this Agreement.

"FCC" means the Federal Communications Commission.

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

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

"Fiscal Year" means a 12-month period that begins on July 1 and ends the following June 30.

"Franchise" has the same meaning prescribed in the Arizona Constitution, Article 13, §§ 4 and 6.

"Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law or the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides or herbicides, volatile solvents, materials containing asbestos or formaldehyde, or radioactive materials.

"In-Lieu Company" means a single, third party company, using the Site or Company's Facility, or part thereof, to provide services in lieu of such services being provided by Company.

"Ordinary Permit Use Fee" means the City's encroachment permit application, review, and other fees related to the issuance of the permit.

"Other Facilities" means facilities owned and operated by parties other than City or Company, which facilities occupy Public Property under authority of a City encroachment permit, Agreement, or franchise.

"Pre-existing Environmental Condition" means the presence, emission, disposal, discharge, or release of any Hazardous Substance at, in, on, under or about the Wireless Facilities and Site, however caused, existing on the Effective Date, whether the nature and extent of the contamination is known or unknown.

"Proprietary Information" means any document or material clearly identified by Company as confidential and includes, but is not limited to, any customer lists, financial information, technical information, or other information plainly identified as confidential by Company and pertains to Company's services provided to its customers.

"Public Property" means the surface of and the space above and below of real property, which is owned, operated and maintained by the city. Public Property does not include Right-of-Way.

"RF" means radio frequency.

"RF Letter" means a letter attesting to the Company's compliance with FCC RF exposure guidelines from the Company's senior internal engineer.

"Right-of-Way" 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

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by the Company.

"Section" means any section, subsection, or provision of this Agreement.

"Site" means the Use Area for the Wireless Equipment and the pole to which the antenna and other wireless facilities are attached.

"Site Documents" means the depiction of the Agreement area, schematic plans and map showing location of the installation of the 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.

"Supplemental Parcel Agreement" means an agreement authorizing the Company to use property outside of the Public Property or Right-of-Way.

"Telecommunications" has the same meaning prescribed in A.R.S. § 9-1401, as amended. "Telecommunications Company" has the same meaning prescribed in A.R.S. § 9-1401, as amended.

"Telecommunications Service" has the same meaning prescribed in A.R.S. § 9-1401, as amended. "Third Party Areas" means the portions of the Public Property subject to Third Party Limitations.

"Third Party Limitations" means some or part of the Public Property that may contain limited dedications or regulatory use restrictions imposed by a third party.

"U.S.C." means United States Code, as amended.

"Use Area" means the real property used by Company where the Wireless Facilities are located as depicted in Exhibit B.

"Violation Use Fee" means the types of fees that the City has available to remedy certain breaches of the Agreement by Company.

"Wireless Facility" has the same meaning prescribed in A.R.S. § 9-591.22, as amended.

"Wireless Facilities Site Permit", also referred to herein as "Site Permit", means the permit authorizing the installation of Wireless Facilities at a specific site in the City's Right-of-Way.

"Wireless Infrastructure Provider" has the same meaning prescribed in A.R.S. § 9-591.23, as amended.

"Wireless Services" has the same meaning prescribed in A.R.S. § 9-591.25, as amended.

"Wireless Services Provider" has the same meaning prescribed in A.R.S. § 9-591.26, as amended.

"Wireless Support Structure" has the same meaning prescribed in A.R.S. § 9-591.27, as amended.

"Zoning Code" means Chapter 21 of City Code.

## **2. PERMISSION GRANTED**

- 2.1. *Grant.* Subject to the provisions of this Agreement, and to the City Code, City grants Company the nonexclusive revocable permission to operate and maintain its Wireless Facilities within the City Right-of-Way. This Agreement does not grant Company the right and privilege to operate and maintain its Wireless Facilities on Public Property. Subject to the terms and conditions of

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this Agreement and any additional applicable permits later issued for the Site, for use of the PXPXH00467C NEC 91st Avenue and Beardsley Road Site as more fully set forth herein. The uses of any other Public Property and installation or construction of any other antennae and other equipment locations at this Site are subject to approval by the City through additional plan review by City staff. If Company desires to change the components of any of the Wireless Facilities in a manner that changes its primary purpose, written approval of such change must be obtained by the City Manager who can refer the matter to the City Council if required by ordinance, provided that such consent by either may not be unreasonably withheld or delayed. The installation and construction of a fiber optics or telecommunications network, or Wireless Facilities is not authorized by this agreement.

2.1.1. Company may not install, maintain, construct, or operate Wireless Facilities in the Right-of-Way or provide services by means of such Wireless Facilities unless a Company first obtains and maintains in good standing at all applicable times of the following: (i) A City license for video services as provided by Title 9, Chapter 5, Article 7, Arizona Revised Statutes, or Chapter 19, of the Peoria City Code, (ii) a City License for Cable Services as provided by Title 9, Chapter 5, Article 1.1, Arizona Revised Statutes, (iii) a City license for Telecommunications Services as provided by Title 9, Chapter 5, Article 1.1, Arizona Revised Statutes for facilities located in the Right-of-Way that connect the Company's Wireless Facilities to Company's interstate network. Company must provide proof of compliance with this section when Company submits to the City an application for a wireless agreement. As of the Effective Date, Company represents and warrants that Company complies with this condition. Company must notify City as provided in this Agreement of any changes to Company's compliance with this condition.

2.1.2. Subject to obtaining the permission of the affected property owner, this Agreement also authorizes Company to operate and maintain its Wireless Facilities on structures owned by third parties located on Public Property, such as an electric utility company, provided, however, any installation on private property within or on the City's right-of-way, easements or other Public Property must comply with Chapters 23 and all other applicable sections of the City Code. Upon request, Company must promptly furnish to the City documentation of such permission from such other affected property owner, a copy of which is attached hereto as, **Exhibit "C"**. By executing this Agreement, the City does not waive any rights that it may have against any public utility or other property owner to require prior approval from the City for such uses of their property or facilities Revenues received by any public utility or other property owner from Company, by virtue of Company's use of their property or facilities, must be included in the computation of franchise or Agreement fees owed by such parties to the City.

Except for those Facilities specifically permitted on the PXPXH00467C NEC 91st Avenue & Beardsley Road Site, no component or any part of Company's Wireless Facilities may be installed, constructed, located on, or attached to any property within the City by Company until Company has, obtained permits pursuant to Chapter 23 of the City Code. Company must comply with all other provisions of the City Code.

2.1.3. The Site may be used by Company for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance and repair of related support Facilities (such as tower and base, antennas, microwave dishes, equipment shelters and/or cabinets) but only for the provision of what is

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commonly known as cellular telephone service (whether or not technically referred to as Personal Communications Service, or some other term) by the use of "personal wireless service facilities" (as such phrase is defined in §704 of the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), partially codified at 47 U.S.C. § 332(c)(7)(C)(2), hereinafter "1996 Act Section 704") and not for any other purpose. Company must, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations (including but not limited to laws and ordinances relating to health, safety, radio frequency emissions, and radiation) in connection with the use of (and operations, maintenance, construction and/or installations at) the Site.

2.1.4. Any privilege claimed under this Agreement and related Permits by Company in any public street or other Public Property must be subordinate to any prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity, and must be subordinate to any prior lawful occupancy or use thereof by any other person, and must be subordinate to any prior easements therein, provided, however, that nothing herein may extinguish or otherwise interfere with property rights established independently of this Agreement.

2.2. *Description of the Wireless Facilities.* Company's Wireless Facilities consists of improvements, personal property and Facilities necessary to operate its communications Wireless Facilities, including, without limitation, equipment that may be mounted on City owned poles or poles privately owned by other parties that may be on Public Property, and may include equipment buildings with perimeter screen walls in accordance with the provisions of Chapter 23 of the Peoria City Code, and related cables and utility lines (collectively the "Wireless Facilities") as described in **Exhibit A**.

### 3. SCOPE

3.1. *Specific Authorization.* This Agreement solely authorizes Company to operate and maintain Wireless Facilities to provide Wireless Services in accordance with the terms of this Agreement.

3.2. *Compliance with Laws*

3.2.1. Company agrees to comply with all applicable laws, including, but not limited to, the City Code, Policies and Standards in the exercise and performance of its rights and obligations under this Agreement. There is hereby reserved to the City the power to amend any section of the City Code pursuant to City's lawful police powers or as provided in the Agreement.

3.2.2. If it is necessary for Company to comply with any law or regulation of the FCC or the ACC to engage in the business activities anticipated by this Agreement, Company must comply with such laws or regulations as a condition precedent to exercising any rights granted by this Agreement. Provided, however, no such law or regulation of the FCC or ACC may enlarge or modify any of the rights or duties granted by this Agreement without a written modification to this Agreement.

3.2.3. Upon request, Company must provide to the City copies of any communications and

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reports submitted by Company to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters directly affecting enforcement of this Agreement.

- 3.2.4. Upon request, Company must provide the City with regular reports, as reasonably needed, to establish Company's compliance with the various requirements and other provisions of this Agreement.

**3.3. *Interference and Emergency***

3.3.1. Company must provide documentation that the Company's Wireless Facilities will not interfere with the City's public safety communications Wireless Facilities. Company agrees that all Wireless Equipment it operates within the City must strictly comply with the FCC's radio frequency emission regulations. In the event City incurs radio frequency interference that City reasonably suspects is caused by Company's operations, then City will give notice to Company via on-call assistance and in writing. Within ten (10) days following Company's receipt of such notice, Company must conduct engineering field tests to determine if such interference is being caused by Wireless Equipment operated by Company. City may conduct engineering field tests using City's own engineer to determine if such interference is caused by Company's Wireless Equipment. City's engineer and Company's engineer will use their best efforts to determine the cause of said interference, but if the two cannot agree on the cause thereof, a neutral third party engineer will be appointed by City and Company to determine the cause of the interference. If it is determined that such interference is caused by any of Company's Equipment, Company must within five (5) business days remedy such interference to City's satisfaction.

3.3.2. Company must continuously and without interruption, operate so that its Facilities are not deemed abandoned pursuant to Section 15 of this Agreement.

3.3.3. Subject to all relevant law, City may, in the event of an emergency, sever, disrupt, dig-up, or otherwise remove Company's Facilities if the action is deemed reasonably necessary by the City Manager or Development and Engineering Department Director. Notice will be given to Company at (866) 624-6874. An emergency is any condition or event, be it natural or man-made which, in the opinion of any of the officials named, poses an immediate threat to the lives or property of City residents, including, but not limited to, storms, floods, fire, accidents, drought, explosions, major water main breaks, or hazardous material spills.

3.4. *Reservation to City.* The City reserves every right and power, which is required to be herein reserved or provided by any ordinance or the Charter of the City, and Company, by its execution of this Agreement, agrees to be bound thereby and to comply with any action or requirements of City in its reasonable exercise of such rights or power, heretofore or hereafter enacted or established. Neither the granting of any Agreement nor any provision hereof may constitute a waiver or bar to the exercise of any governmental right or power of the City.

**4. FEES AND CHARGES**

4.1. *Application Fee.* Company must pay all fees and charges in connection with Company's

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performance under this Agreement. Company agrees to pay City, a fee in the amount indicated on the City fee schedule as of the date of submittal prior to submittal for approval of this Agreement to the City Council. Company has paid City a one-time payment for the Agreement Application Fee, as established by the City Code.

- 4.2. *Plan Review and Permit Fees.* Company must pay any and all plan review and permit fees as required for processing any Permits independently of this Agreement as indicated on the City fee schedule as adopted by the City Council and applicable to such permits and construction prior to the issuance of such a permit.
- 4.3. *Use Fee and Other Payments.* For the use of the Site, as of the Effective Date, Company must pay City the annual sum of a Base Fee of \$3,500 and an Annual Equipment Fee of \$10,000 for a total Category 1 WCE fee of \$13,500 for the PXPXH00467C NEC 91st Avenue & Beardsley Road Site.
- 4.3.1. Beginning on the annual anniversary of the Effective Date, and on each annual anniversary thereafter, the Base Fee of \$3,500 will increase by 3.0%.
- 4.3.2. In addition to the Base Fee and Equipment Fee, Company must pay to City any transaction privilege, sales, excise, rental and other taxes (except income taxes) imposed now or hereinafter imposed by any governmental authority upon rentals and all other amounts to be paid by Company pursuant to this Agreement.
- 4.3.3. All plan review and permit fees and costs must be paid to City at the following address or to such other persons or at such other places as City may designate in writing. All payments must be in lawful money of the United States of America.

City of Peoria  
Development and Engineering Department  
9875 N 85th Avenue  
Peoria, AZ 85345

- 4.3.4. The Base fee, Equipment fee and annual increase and costs must be paid to City at the following address or to such other persons or at such other places as City may designate in writing. All payments must be in lawful money of the United States of America.

City of Peoria  
Finance and Budget Department  
8401 W Monroe Street  
Peoria Az., 85345

City will send invoices to Company at the following address:

DISH Wireless AP Dept.  
9601 S. Meridian Blvd  
Englewood, CO 80112  
(720) 514-6400  
[WirelessAPInvoices@dish.com](mailto:WirelessAPInvoices@dish.com)  
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**5. TERM OF AGREEMENT**

- 5.1. *Term.* The term of this Agreement shall be as follows:
- 5.1.1. *Original Term.* The original term of this Agreement shall be for a period of five (5) years commencing on the Effective Date.
- 5.1.2. *Extension.* The term of this Agreement may be extended for one (1) additional five (5) year period subject to consent by City and Company, which either may withhold in its sole and absolute discretion. Both City and Company will be deemed to have elected to extend unless City or Company, respectively, gives notice to the contrary to the other at least one hundred eighty (180) days prior to the end of the original term or the current extension. The second term will begin five (5) years plus one (1) day after the initial effective date. All of the terms and conditions of this Agreement will be in effect during the Term and extension of the Term.
- 5.2. *Hold Over.* In any circumstance whereby Company remains in possession or occupancy of the Site after the expiration of this Agreement (as extended, if applicable), such holding over will not be deemed to operate as a renewal or extension of this Agreement. Instead, the hold over may only create a use right from month to month that may be terminated at any time by City upon thirty (30) days' notice to Company or by Company upon sixty (60) days' notice to City. If Company remains in possession of the Site at the termination or expiration of the initial term or any extension thereof without a written agreement with City to do so, such holding over will be construed to be a tenancy at sufferance from month to month at one and one-half (1 1/2) times the amount of the total WCE Fee in effect at the time of the hold over and Company will be subject to all terms and conditions of this Agreement.

**6. ACCEPTANCE**

- 6.1. *Written Acceptance.* Company's execution of this Agreement constitutes its acceptance of the Agreement as written and its agreement to be bound by and to comply with this Agreement. Company's signature must be acknowledged by Company before a notary public.
- 6.2. *Validity of Agreement.* Company acknowledges, as a condition of acceptance of this Agreement, that Company was represented throughout the negotiations of the Agreement by its own attorneys and had opportunity to consult with its own attorneys about its rights and obligations regarding same. Company has reviewed City's authority to execute and enforce this Agreement, and has reviewed all applicable law, both federal and state, and, after considering same, Company acknowledges and accepts the right and authority of City to execute this Agreement, to issue this Agreement and to enforce the terms herein. Both parties agree it shall not now or at any time hereafter contest or challenge the other party's authority under applicable federal, state and local law to enter into and enforce this Agreement in any city, state or federal court.

**7. ENCROACHMENT PERMIT – PXPXH00467C NORTHEAST CORNER OF 91<sup>ST</sup> AVENUE & BEARDSLEY ROAD SITE**

- 7.1. *Site.* City has jurisdictional authority over the Right-of-Way in Use Area as depicted in attached **Exhibit A**.

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- 7.2. *Ingress, Egress and Utility Access.* Under this Agreement, Company, its employees, agents, subcontractors, lenders, invitees and guests shall have pedestrian and vehicular access to the Site without notice to the City twenty-four (24) hours a day, seven (7) days a week, at no charge. This Agreement grants access to perform work where no excavation is involved and where previously permitted structures and facilities exist. If excavation is required, plans must be submitted to City Staff for approval that will not be unreasonably withheld. Company must submit engineered plans and drawings through the standard Encroachment Permit application process showing the exact location of Company's activities and the plans for installation to City staff for approval prior to installation.
- 7.3. *Use of Site.* The Site may be used solely for the operation of wireless communication services utilizing radio communication Facilities ("Company Facilities"). Company may not use the Site for any other purpose without the written consent of City. The Site may be used only for lawful purposes, and only in accordance with all applicable building, fire and zoning codes, and local ordinances and regulations.
- 7.4. *City Cooperation.* City agrees to cooperate with Company, at Company's expense, in making application for and obtaining all Agreements and any and all other necessary approvals that may be required for Company's intended use of the Site. However, nothing herein shall be deemed to constitute a contractual obligation of City, as a municipality, to issue a required Agreement where the officer, agent or employee of City responsible for the issuance of such Agreement deems the issuance of such an Agreement to be inappropriate. This Agreement is not intended to supersede, modify or waive City Code or Zoning Code requirements applicable to the construction of wireless communication facilities except to the extent they relate to an encroachment permit for the PXPXH00467C Northeast Corner of 91<sup>st</sup> Avenue & Beardsley Road Site.
- 7.5. *Tests and Construction.* Company may enter the Right-of-Way following the full execution of this Agreement to enter upon the Site for the purpose of making appropriate engineering and boundary surveys, inspections, soil test borings, and other reasonably necessary tests for construction of Company's Facilities, except as otherwise limited by Section 7.3. Company will indemnify and hold City harmless against liability, loss, cost, damage or expense that may arise out of any personal injury or property damage resulting from Company's entry upon the Site, except to the extent caused by City's gross negligence or willful misconduct. Company must coordinate with the Development and Engineering Department to avoid interfering with any City operations while conducting any such tests or construction.
- 7.6. *Company Construction/Improvements*
- 7.6.1. Company must submit plans and specifications for all the Facilities to be constructed or installed for prior review and approval by the Development and Engineering Department. Such approval is separate from, but may be obtained concurrent with, development approvals (building permits, encroachment permits, traffic control permits, etc.) required and issued by the Development and Engineering Department. All of Company's construction and installation work must be performed at the Company's sole cost and expense and in a good and workmanlike manner.
- 7.6.2. The construction plans and specifications must include fully dimensioned site plans that are drawn to scale and show, as applicable, antenna, equipment shelter, the proposed

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changes in the landscape, the proposed type and height of fencing, if any, the proposed type of construction material for all structures, including fencing or screening, and any other details requested by City or required to obtain development approvals.

- 7.6.3. Company shall apply for and obtain any permits to construct, install, maintain, or perform any work in the public highways, public streets, public rights-of-way, and public utility easements, which require a permit and plan review approval from the City pursuant to applicable City Codes. Before constructing, operating, installing or using facilities in the public highways, public streets, public rights-of-way and public utility easements, Company shall notify the City in writing and shall be the party to apply and be responsible for any permits to construct, install, maintain or perform any work in the public highways, public streets, public rights-of-way and public utility easements which require a construction permit from the City pursuant to applicable City Codes or this Agreement.
- 7.6.4. Revocable right-of-way permits require submittal of an application together with the required number of complete construction plans (i.e., drawing, details, maps, notes, etc.). Upon City receipt of the application and plans, the City will perform a technical plan review. Upon completion of the technical review, either a permit will be issued to the applicant or the application will be returned for completion, corrections, modifications, or submittal of all required information, in which case the applicant will be notified and may resubmit the application only after the required changes have been made.

Plan review fees are due and will be collected at the time of the submittal of the application and the required number of plans.

- 7.6.5. Revocable right-of-way permits fees are due and will be collected at the time of the issuance of the permit. Revocable right-of-way permit fees shall not be charged where there is a valid Franchise and the franchise fees are in lieu of the payment of permit fees.
- 7.6.6. Applicant must submit required construction assurances (permit bond in the amount of the cost of the improvements) and certificate of insurances for each permit prior to any and all construction work performed pursuant to the rights granted under this Agreement. The performance bonds for each permit are separate from the performance bond requirement for the agreement as referenced in Section 8.1. Company and/or its Contractor(s) shall abide by all stipulations of all licenses and permits issued. If Company desires to change the location of any portion of the Conduit System(s) and/or Fiber Optic Network(s), including any related Facilities or equipment, from that set forth in the initial Permit Application, Company shall apply for and obtain approval for an amendment to the permit prior to installation or construction.
- 7.6.7. Once applicant has completed the construction, the construction assurance will only be released after the City has inspected and approved the construction. A performance bond will be required for each subsequent or additional construction project and/or work on public property
- 7.6.8. Company must strictly adhere to and perform in accordance with the City's Engineering Standards Manual, including Chapter 12 Public Utilities – Non-City Utilities, as amended from time to time by the City Engineer; failure to do so will result in a breach of this Agreement.

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- 7.6.9. Company Facilities will remain Company's personal property and not fixtures, and title to the same shall be held by Company. Company must remove all Company Facilities at its sole expense on or before the expiration or earlier termination of this Agreement and must repair any damage to the Site caused by such removal, and restore the Site to the condition it was in at the time of removal reasonable wear and tear and casualty excepted. If this removal involves the removal of a City owned structure such as a ball field light, a replacement structure approved by the Development and Engineering Department must be constructed at Company's expense.
- 7.6.10. Any portion of Company's Facilities, or any of Company's personal property, equipment, or improvements on the Site not removed on or before ninety (90) days following the termination of this Agreement, may be removed by City and all expenses of such removal, storage, and site restoration charged to Company.
- 7.6.11. Company must make no alterations or additional improvements to or upon the Site without first obtaining written approval of the Development and Engineering Department.
- 7.7. *Utilities.* Company is liable for and must pay throughout the term of this Agreement, all charges for all utility service furnished to the Site for all Company purposes related to the operation and maintenance of Company's Facilities.
- 7.8. *Maintenance and Repair.* Company must keep their building, fencing or screen walls , and other Facilities in good repair and in a neat and clean condition and must maintain and preserve any landscaping within and around any fenced area in accordance with City Code.
- 7.9. *Hazardous Substances.* Company's activities upon or about the Use Area are 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"):
- 7.9.1. *No Warranties.* Company understands the hazards presented to persons, property, and the environment by dealing with Toxic Substances. City makes no warranties as to whether the Use Area contains actual or presumed asbestos or any other Toxic Substances.
- 7.9.2. *Discovery.* Within twenty-four (24) hours after discovery by Company of any Toxic Substances, Company must report such Toxic Substances to City in writing. Within fourteen (14) days thereafter, Company must provide City with a written report of the nature and extent of such toxic substances found by Company.
- 7.9.3. *Disturbance of Toxic Substances.* Prior to undertaking any construction or other significant work, Company must cause the Use Area 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, Company must cause Company's contractor or other person performing

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such work to give City notice by the method described in this Agreement to the effect that the person will inspect for Toxic Substances, will not disturb Toxic Substances, and will indemnify, defend and hold City harmless against any disturbance in Toxic Substances in the course of the Company's or other person's work. Company must cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Company in connection with the Use Area 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. Company must promptly deliver to City copies of all reports or other information regarding Toxic Substances.

**8. LETTER OF CREDIT**

- 8.1. Within thirty (30) Days after the Effective Date of this Agreement, Company must deposit with the City a bond or irrevocable letter of credit in the amount of one hundred thousand dollars (\$100,000.00) (replenishable as specified in Section 8.3 below) issued by a federally insured commercial lending institution. The form and substance of said bond or letter of credit will be used to assure (a) the faithful performance by Company of all provisions of this Agreement; (b) compliance with all orders, permits, and directions of any Department of the City having jurisdiction over Company's acts or defaults under this Agreement; and (c) Company's payment of any penalties, liquidated damages, claims, liens, and taxes due to the City that arise by reason of the construction, operation, or maintenance of the Wireless Facilities, including cost of removal or abandonment of any of Company's property.
- 8.2. *Drawing on Letter of Credit.* The letter of credit may be drawn upon by the City by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the City Manager certifying that Company has been found to have failed to comply with this Agreement, stating the nature of noncompliance, and stating the amount being drawn. The rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether reserved by this Agreement or authorized by law, and no action proceeding against a letter of credit will affect any other right the City may have.
- 8.3. *Replenishing.* The letter of credit shall be structured in such a manner so that if the City at any time draws upon the letter of credit, upon notice to Company by the issuing lending institution, Company must immediately increase the amount of available credit by the amount necessary to replenish that portion of the available credit exhausted by the honoring of the City's draft; provided, however the maximum amount available to be drawn on this letter of credit for any one event may not exceed one hundred thousand dollars (\$100,000). The intent of this Section is to make available to the City at all times a letter of credit in the amount of one hundred thousand dollars (\$100,000).

**9. INSTALLATION, CONSTRUCTION & OPERATION OF THE WIRELESS FACILITIES**

- 9.1. *Damage to Right-of-Way.* Whenever the installation, removal, or relocation of any of Company's Wireless Facilities is required under this Agreement, and such installation, removal or relocation cause damage to the Right-of-Way, Company, at its sole cost and expense, must promptly repair and return Right-of-Way to a safe and satisfactory condition in accordance with applicable laws, reasonably satisfactory to the Development and Engineering Department Director or designee. If Company does not repair the Site as just described, City will have the option, upon fifteen (15) days prior written notice to Company, to perform or cause to be performed such

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reasonable and necessary work on behalf of Company and to charge Company for the proposed costs to be incurred or the actual costs incurred by City at City's standard rates, plus an administrative fee of fifteen percent (15%). Upon the receipt of a demand for payment by City, Company must, within thirty (30) days, reimburse City for such costs. For any pavement cuts by Company, Company agrees to restore the pavement to the condition in which it existed prior to the cut and to reimburse City for all costs arising from the reduction in the service life of any public road in accordance with the provisions of Chapter 23 of the City Code and the fees established by City pursuant thereto. Company agrees to pay within thirty (30) days from the date of issuance of an invoice from City. In the event Company creates a dangerous condition for which immediate repair or corrective action is necessary City may at City's sole option and discretion, immediately repair and restore the site to a safe condition without prior notice to Company and charge Company as provided above.

- 9.2. *Damage to Facilities of Others.* Company must construct, install, locate and relocate its Wireless Facilities in such a manner that it causes no disruption of other services or damage to other facilities. If Company damages any City property, Company must pay to City, the full costs of all repairs, together with an administrative fee of fifteen percent (15%). If Company damages any property owned by an entity other than City, Company must, at the option of the entity whose property was damaged, either repair and restore such facility to its condition before such damage or reimburse that entity the full cost incurred for repairs and restoration and other damages as proved by such other entity.

## **10. TERMINATION**

- 10.1. *Termination.* This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, provided that the grace period for any monetary default is ten (10) days from receipt of written notice of default; or (ii) by Company if it does not obtain or maintain any agreement, permit, or other approval necessary for the construction and operation of the Site; or (iii) by Company if Company determines that the Site is not appropriate for its operations for economic or technological reason, including without limitation, signal interference; or (iv) Company's Insolvency as described in this section.
- 10.2. *Rights at Termination.* The following provisions will apply at the expiration of the term of this Agreement:
- 10.2.1. *Surviving Obligations.* Expiration or termination of this Agreement does not terminate Company's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination.
- 10.2.2. *Delivery of Possession.* Company must cease using the Site. Company must without demand, peaceably and quietly quit and deliver up the Use Area to the City thoroughly cleaned, in good repair with the Use Area maintained and repaired and in as good order and condition, reasonable use and wear excepted, as the Use Area is now or in such better condition as the Use Area may hereafter be placed.
- 10.2.3. *Confirmation of Termination.* Upon expiration or termination of this Agreement for any reason, Company must provide to City upon demand recordable disclaimers covering the Use Area executed and acknowledged by Company and by all persons claiming

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through this Agreement or Company any interest in or right to use the Use Area.

10.2.4. *Removal of Improvements.* Company must remove all Facilities and restore the Use Area to its prior condition, or to a condition matching City's surrounding land and improvements, as directed by City, at Company's expense within thirty (30) days of termination of this Agreement. Without limitation, such work shall include revegetation and appropriate irrigation for revegetated areas.

10.2.5. *Prior Improvements.* This section also applies to any improvements that Company may have made to the Site.

10.3. *Company's Insolvency.* Company's insolvency will be deemed an event of default. "Insolvency" means: (a) the making by Company of any general assignment or general arrangement for the benefit of creditors; (b) the filing by or against Company of a petition to have Company adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Company, the same is dismissed within sixty (60) days); or (c) the appointment of a trustee or receiver to take possession of substantially all of Company's assets located at the Site or of Company's interest in this Agreement, where possession is not restored to Company within thirty (30) days.

## **11. INDEMNITY AND INSURANCE**

11.1. *Insurance Responsibility.* During the entire term of this Agreement, Company must insure its property and activities at and about the Site and must provide insurance and indemnification as follows. Company must procure and maintain, and must cause its contractors to procure and maintain substantially the same coverage with substantially the same limits as required of Company, as provided in this Section 11, until all their respective obligations have been discharged, insurance against claims for injury to persons or damage to property which may arise from or in connection with Company's obligations under this Agreement and Company's activities on the Site, including but not limited to the installation, construction, relocation, removal, repair, operation, and maintenance of the Wireless Facilities and Communications Equipment by Company, its agents, representatives, employees, or contractors. The insurance requirements herein in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the limits contained herein are sufficient to protect Company from liabilities that might arise out of this Agreement by Company, its agents, representatives, employees or contractors, and Company is free to purchase such additional insurance as may be determined necessary.

11.2. *Minimum Scope and Limits of Insurance.* During the term of this Agreement, Company shall insure its property and activities at and about the Site Area and shall provide insurance and indemnification as follows:

11.2.1. *Commercial General Liability - Occurrence Form.* Not later than the date of this Agreement, and at all times thereafter when company is occupying or using the Site Area in any way, Company shall obtain and cause to be in force and effect the following instances:

11.2.2. *Insurance Required.* Policy must also include coverage for products completed operations, independent contractors, personal injury, property damage, and advertising injury.

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- 11.2.3. **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 Agreement. The policy will cover Company's liability under the indemnity provisions of this Agreement. The policy shall contain a "separation of insureds" clause.
- 11.2.4. **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 Company's use of the ROW. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and off- loading.
- 11.2.5. **Special Risk Property.** Unless waived by City in writing, all risk property insurance covering damage to or destruction of all real and personal improvements to the ROW, including without limitation, all improvements existing upon the ROW prior to this 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).
- 11.2.6. **Workers' Compensation.** Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Company's employees engaged in the performance of any work or services in or about the Right-of-way of not less than One Million and No/100 Dollars (\$1,000,000.00) for each accident, bodily injury and disease for each employee. If any work is subcontracted by Company, Company will require the Subcontractor to provide Workers' Compensation to at least the same extent as required herein.
- 11.2.7. **Other Insurance.** Any other insurance City may reasonably require for the protection of City and City's employees, officials, representatives, officers and agents (all of whom, including City, are collectively "Additional Insureds"), the ROW, surrounding property, Company, or the activities carried on or about the ROW. Such insurance shall be limited to insurance a reasonable person owning, leasing, designing, constructing, occupying, or operating similar facilities might reasonably purchase.
- 11.2.8. **Policy Limit Escalation.** City may elect by notice to Company to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that City reasonably determines to affect the prudent amount of insurance to be provided.
- 11.2.9. **Form of All Insurance.** All insurance provided by Company with respect to the ROW, whether required by this Agreement or not, shall meet the following requirements:
- a) "Occurrence" coverage is required.

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- b) If Company uses any excess insurance then such excess insurance shall be "follow form" equal to or broader in coverage than the underlying insurance.
- c) Policies must also cover and insure Company's activities relating to the business operations and activities conducted away from the ROW.
- d) Within five (5) business days of receiving a written request from the City, Company shall provide copies of insurance certificates, insurance policies, formal endorsements or other documentation acceptable to City that all insurance coverage required by this Agreement is provided.
- e) Company's insurance shall be primary insurance with respect to claims arising out of Company's operations, activities and obligations under this Agreement.
- f) All policies, including workers' compensation, shall waive transfer rights of recovery (subrogation) against City, and the other Additional Insureds.
- g) All deductibles, retentions, or "self-insured" amounts shall be subject to the following:
  - Company shall be solely responsible for any self-insurance amount or deductible.
  - Any self-insured exposure shall be deemed to be an insured risk under this Agreement.
  - Company 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.
  - The right to self-insure is limited and specific to Company and does not extend to Company's contractors or others.
- h) All policies except Workers' Compensation must name City and the other Additional Insureds as additional insureds. Company shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement with respect to claims arising out of Company's operations, activities and obligations under this Agreement.
- i) All policies must require the insurer to provide City with at least thirty (30) days prior notice of any cancellation.
- j) All policies shall require that notices be given to City in the manner specified for notices to City under this Agreement.

11.2.10. *No Representation of Coverage Adequacy.* By requiring insurance herein, City does

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not represent that coverage and limits will be adequate to protect Company. City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Company from, nor be construed or deemed a waiver of, Company's obligation to maintain the required insurance at all times.

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

11.3.1. Claims arising only from the sole gross negligence or intentionally wrongful acts of City.

11.3.2. Claims that the law prohibits from being imposed upon the indemnitor.

11.4. *Insurance to be Provided by Others.* Company shall cause its contractors, subcontractors or other persons occupying, working on or about, or using the ROW pursuant to this Agreement to be covered by their own or Company's insurance as required by this Agreement and must name City of Peoria its agents, representatives, officers, directors, officials, employees, and

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volunteers as an additional insured. 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 ROW (such as Company's consulting design engineers).

11.5. *Telecommunications, Media & Technology Errors & Omissions including Network Security & Privacy Liability Insurance (Cyber).*

Company hereby avows that it does not have access to any data that originates with the City or is shared with the City by the public. If Company obtains access to such data, Company will obtain Telecommunications, Media & Technology Errors & Omissions, Network Security & Privacy Liability Insurance in accordance with the following:

Per Claim and Aggregate \$10,000,000

The policy must cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this Agreement. In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, Agreement warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the Effective Date of this Agreement. If such insurance is maintained on an occurrence form basis, Company must maintain such insurance for an additional period of one (1) year following termination or expiration of this Agreement. If such insurance is maintained on a claims-made basis, Company must maintain such insurance for an additional period of three (3) years following termination or expiration of this Agreement. If Company contends that any of the insurance it maintains pursuant to other sections of this clause satisfies this requirement (or otherwise insures the risks described in this section), Company must provide proof of same. The insurance must provide coverage for the following risks: (i) Liability arising from theft, dissemination and use of confidential information (a defined term including but not limited to bank account, credit card account, personal information such as name, address, social security numbers, etc. information) stored or transmitted in electronic form; (ii) Network security liability arising from the unauthorized access to, use of or tampering with the System including hacker attacks, inability of an authorized third party, to gain access to your services including denial of service, unless caused by a mechanical or electrical failure; (iii) Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, the System, network or similar computer related property and the data, software, and programs thereon.

11.6. *Notice of Cancellation.* Upon receipt of notice from its insurer(s), Company must provide thirty (30) days prior written notice of cancellation to the City. Such notice must be sent directly to the addresses listed below and must be sent by first class mail.

City of Peoria  
Attention: Adina Lund  
Development and Engineering Director  
Development and Engineering Department  
9875 N. 85<sup>th</sup> Avenue

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Peoria, Arizona 85345  
Phone: (623) 773-7249  
Email: Adina.lund@peoriaaz.gov

With a copy to:  
City Attorney's Office  
Attention: City Attorney 8401 W Monroe Street  
Peoria Az. 85345  
623-773-7330  
Email: cityattorney@peoriaaz.gov

- 11.7. *Acceptability of Insurers.* Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A-VII. City in no way warrants that the above-required minimum insurer rating is sufficient to protect Company from potential insurer insolvency.
- 11.8. *Verification of Coverage.* Company must furnish City with certificates of insurance (ACORD form or equivalent approved by City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by City before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of this Agreement. All certificates required by this Agreement must be sent directly to the City of Peoria Development and Engineering Department with a copy to Risk Management at the addresses listed in Section 11.6. The Agreement number and description are to be noted on the certificate of insurance. At the City's request, the Company must make certified copies of all insurance policies required by this Agreement available for the City's review through a representative and at the Company's most proximate location.
- 11.9. *Approval.* Any modification or variation from the insurance requirements in this Agreement must have prior approval from the Office of the City Attorney, whose decision will be final. Such action will not require a formal contract amendment, but may be made by administrative action.
- 11.10. *Risk of Loss.* Company assumes the risk of any and all loss, damage or claims related to Company's use of the Site or other property of City, Company or third parties throughout the term of this Agreement and the term(s) of any and all Permits. Company must be responsible for any and all damage to its property and equipment related to this Agreement unless caused by the negligence of the City or its agents or contractors.

## **12. ASSIGNABILITY AND TRANSFERABILITY**

- 12.1. *Assignments Affected.* Every assignment of any of Company's interest in the Right-of-way, any Agreement, any Permit, or any of Company's rights or interests hereunder is prohibited unless Company first receives from City notice of City's consent to the assignment. City's

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consent to such assignment not to be unreasonably withheld, conditioned, or delayed. All references in this Agreement to assignments by Company 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: (i) Any voluntary or involuntary assignment, conveyance or transfer of Company's right to use the Right-of-way under this Agreement or any interest or rights of City under this Agreement, in whole or in part; (ii) 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 Company's rights to use the Right-of-way (collectively "Liens"); (iii) Any assignment by Company of any interest in any Agreement or Permit for the benefit of creditors, voluntary or involuntary; (iv) A Company Insolvency; (v) The occurrence of any of the foregoing by operation of law or otherwise; (vi) The occurrence of any of the foregoing with respect to any assignee or other successor to Company.

12.2. *Pre-Approved Assignments.* Subject to certain conditions hereafter stated, City hereby consents to certain assignments (the "Pre-approved Assignments"). Only the following assignments are Pre-approved Assignments:

12.3.1. *Complete Assignment of Agreement and Permits.* Company's complete assignment of all of Company's rights and Interests in the Right-of-way and approved Agreements, and issued Permits to a single assignee who meets all of the following requirements, as determined by City in City's reasonable discretion (a "Qualified Operator"): (i) The assignee has experience, management, credit standing and financial capacity and other resources equal to or greater than Company's and adequate to successfully perform the obligations set forth herein; (ii) The assignee is experienced in the management and operation of similar projects; (iii) The assignee assumes all of Company's obligations herein; (iv) The assignee has a net worth of not less than Fifty Million and No/100 Dollars (\$50,000,000.00).

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

12.3.3. *Merger.* The merger or consolidation of Company with another entity that is a Qualified Operator.

12.3.4. *Common Ownership Transfer.* Company's complete assignment of all of Company's rights and interests in the Right-of-Way and approved Agreements to a single assignee who is and remains a majority owned subsidiary of Company's owner as of the date of the Agreement (or a majority owned subsidiary of a majority owned subsidiary of Company's owner as of the date of the Agreement), or a majority owned subsidiary of Company.

12.4. *Limitations on Assignments.* City's consent to any assignment, including without limitation, Pre-approved Assignments, is not effective until the following conditions are satisfied: (i) Except for the sale of stock, Company must provide to City a summary of the transaction assigning its interests; and (ii) Each assignee must execute an assumption of any and all Agreements and Permits to be assigned in the form attached as Exhibit E; and (iii) Each Pre-approved Assignment must satisfy all other requirements of this Agreement pertaining to assignments.

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- 12.5. *Assignment Remedies.* Any assignment without City's consent shall be void and shall not result in the assignee obtaining any rights or interests. City may, in its sole discretion and in addition to all other remedies available to City under this Agreement or otherwise, and in any combination, terminate any and all Agreements and Permits; collect Base Fee from the assignee and/or declare the assignment to be void, all without prejudicing any other right or remedy of City this Agreement. No cure or grace periods may apply to assignments prohibited under this Agreement or to enforcement of any provision under this Agreement against an assignee who did not receive City's consent.
- 12.6. *Effect of Assignment.* Prior to any assignment, each assignee must execute an assumption of each Agreement and Permit in the form attached hereto as Exhibit E. No action or inaction by City shall be deemed a waiver of the prohibition on assignments or any other provision herein, or the acceptance of the assignee, Company or occupant as Company, or a release of Company from the further performance by Company of the provisions of this Agreement, any agreement or any permit. Consent by City to an assignment shall not relieve Company from obtaining City's consent to any further assignment. No assignment may release Company from any liability hereunder.
- 12.7. *Enforceability after Assignment.* No consent by City may be deemed to be a novation. City's consent to any assignment does not in any way expand or modify the terms set forth this Agreement or waive, diminish or modify any of City's rights or remedies under any agreement or any permit. The terms set forth in this Agreement will be enforceable against Company and each successor, partial or total, and regardless of the method of succession, to Company's interest hereunder. Each successor having actual or constructive notice of this Agreement, any agreement or permit will be deemed to have agreed to the preceding sentence.
- 12.8. *Grounds for Refusal.* Except for the Pre-approved Assignments, no assignment of any agreement or permit by Company is contemplated or bargained for. Without limitation, City has the right to impose upon any consent to assignment such conditions and requirements as City may deem appropriate.
- 12.9. *Consent to Assignments.* Company must attach to each Pre-approved Assignment a copy of Company's notice to City of the Pre-approved Assignment and other required documents, Company must attach to each other assignment, a copy of City's notice to Company of City's consent to the assignment. This Agreement will continue to be enforceable according to its terms in spite of any provisions of any documents relating to an assignment.

**13. USE AREA**

- 13.1. *Authority to Use Right-of-Way.* Upon approval of this Agreement, City grants to Company permission to install Wireless Facilities in the Right-of-Way upon issuance of all required Permits as set forth below.
- 13.2. *Limitations.* Notwithstanding anything herein to the contrary, the Use Area includes and is limited to only certain area that Company is permitted to use and occupy as depicted in **Exhibit B.**
- 13.3. *Use Area Boundary.* The Use Area excludes other parts of the Public Property and all other land. Company must not occupy or use any other portion of the Public Property or adjoining

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lands. An approved Agreement or an issued Permit does not allow any use of land outside the Use Area. If any portion of Company's work, improvement, or equipment is to be located on other land, such work, improvements, and equipment are prohibited unless Company first obtains from the owner of said land (including City, if applicable) an agreement allowing such work, improvements, or equipment (a "Supplemental Parcel Agreement").

- 13.4. *Power and Telephone Service.* Nothing herein grants permission for the Company to use any portion of the power, telephone or other service routes, if any. Use of the Public Property or utility easements for these purposes, is governed by other City laws, rules, and policies, and by the Agreement or franchise between City and electrical, telephone, and other service companies. Any proposed service entrance section, electrical meter pedestal, vault or other equipment and any associated conduits required by power, telephone, or other service companies to be constructed by the Company to provide such services to the Site must be clearly indicated on the Site Construction Drawings.
- 13.5. *Rights in Adjacent Land.* Company's interests granted by this Agreement are expressly limited to the real property defined as the Use Area in an issued Permit. Without limitation, in the event any public right-of-way or other public or private property at or adjacent to the Use Area is owned, dedicated, abandoned, or otherwise acquired, used, improved, or disposed of by City, such property will not accrue to Company but will be City's only.
- 13.6. *Variation in Area.* In the event the Use Area consists of more or less than any stated area, Company's obligations hereunder will not be increased or decreased.
- 13.7. *Condition of Title.* Company must not amend, modify, terminate, or otherwise change the Site Documents or create new Site Documents without the City's written approval.
- 13.7.1. *Title.* City does not warrant title or rights to use the Use Area or any other property.
- 13.7.2. *Indemnity.* Company must pay, indemnify, defend, and hold harmless the City 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 reasonable attorneys', arbitrators' and experts' fees and court costs that arise from or relate to Company's failure to comply with the Site Documents except to the extent caused by City's gross negligence or willful misconduct.
- 13.8. *Condition of Use Area.* The Use Area is 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 or particular purpose.
- 13.9. *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, Company's rights herein are limited to use and occupation of the Use Area for the Permitted Uses. Company's rights in the Use Area are limited to the specific rights created herein as an approved Agreement.
- 13.10. *Reserved Right and Competing Users and Activities.* Notwithstanding anything herein to the contrary, City specifically reserves to itself and excludes from any issued Permit a non-exclusive delegable right (the "Reserved Right") over the entire Use Area for all manner of real and personal improvements and for streets, sidewalks, trails, landscaping, utilities, and

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every other land use of every description, provided the foregoing does not unreasonably interfere with Company's use of the Use Area. Without limitation:

- 13.10.1. *Competing Users*. Company accepts the risk that City and others (the "Competing Users") may now or in the future install their facilities in the Use Area in locations that make parts of the Public Property unavailable for Company's use.
- 13.10.2. *Competing Activities*. Company accepts the risk that there may now or in the future exist upon the Use Area all manner of work and improvements upon the Use Area (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 Area and whether occasioned by existing or proposed uses of the Public Property or existing or proposed uses of adjoining or nearby land: (i) 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; (ii) 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; (iii) All manner of canals, drains, bridges, viaducts, overpasses, underpasses, culverts, markings, balconies, porches, overhangs and other encroachments of every description and all manner of other facilities and their appurtenances; (iv) All other uses of the Public Property that City may permit from time to time.
- 13.11. *City's Rights Cumulative*. All of City's Reserved Rights under various provisions of this Agreement and any and all issued Permits will be cumulative to each other.
- 13.12. *Use Priorities*. This Agreement does not grant to Company or establish for Company any exclusive rights or priority in favor of Company to use the Use Area. Company must not obstruct or interfere with or prevent any Competing User from using the Use Area. City agrees that Competing Users may not obstruct or interfere with or prevent Company from using the Use Area.
- 13.13. *Regulation*. City reserves the full authority to regulate use of the Use Area and to resolve competing demands and preferences regarding use of the Use Area and to require Company to cooperate and participate in implementing such resolutions. Without limitation, City may take any or all of the following into account in regulating use of the Use Area: (i) all timing, public, operational, financial and other factors affecting existing and future proposals, needs and plans for Competing Activities; and (ii) all other factors City may consider relevant, whether or not mentioned in this Agreement and any and all issued Permits; (iii) differing regulatory regimes or laws applicable to claimed rights, public benefits, community needs and all other factors relating to Competing Users and Competing Activities.
- 13.14. *Communications Equipment Relocation*. Upon ninety (90) days' notice from City APS, Company must temporarily or permanently relocate or otherwise modify the Communications Equipment (the "Relocation Work") as follows: (i) Company must perform the Relocation Work at its own expense when required by the City Manager; and (ii) The Relocation Work includes all work determined by City to be necessary to accommodate Competing Activities,

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including without limitation temporarily or permanently removing, protecting, supporting, disconnecting, or relocating any portion of the Communications Equipment; and (iii) City may perform any part of the Relocation Work that has not been performed within the allotted time. Company must reimburse City for its actual costs in performing any Relocation Work. City has no obligation to move Company's, City's or others' facilities, but may assist Company to find a new location and to expedite the approval process; and (iv) City reserves the right to use any of Company's Facilities that are abandoned in place or that are not relocated on City's request; and (v) all Relocation Work is subject to and must comply with this Agreement; and (vi) if City and Company cannot mutually agree on an alternate location, this Agreement will terminate as set forth in section 16.2; and (vii) Communication Equipment relocated to an acceptable location must be reflected by an amendment to this Agreement and subject to City Council approval.

- 13.15. *Interference/Disruption by Competing Users.* Neither City, nor any agent, contractor, or employee of City will be liable to Company, its customers nor third parties for any service disruption or for any harm caused them or the Communications Equipment due to Competing Users or Competing Activities.
- 13.16. *Emergency Disruption by City.* City may remove, alter, tear out, relocate or damage portions of the Communications Equipment in the case of fire, disaster, or other emergencies as the City Manager deems such action to be reasonably necessary. City will make reasonable efforts to contact the Company's Network Operations Center at (\_\_\_\_) - \_\_\_\_\_. \_\_\_\_\_. In such event, neither City, nor any agent, contractor or employee of City may be liable to Company or its customers or third parties for any harm so caused to them or the Communications Equipment. When practical, City may consult with Company in advance to assess the necessity of such actions and to minimize damage or disruption of operation of the Communications Equipment to the extent reasonably practical under the circumstances. City will inform Company after such action is taken. The terms and condition for Relocation Work apply for Company's repair for the emergency disruption of Company's Wireless Facilities.
- 13.17. *Public Safety.* If the Communications Equipment or any other Company equipment, improvements, or activities present any immediate hazard or impediment to the public, to City, to City's equipment or facilities, to other improvements or activities within or outside of the Use Area, or to City's ability to safely and conveniently operate the Public Property or perform City's utility, public safety, or other public health, safety, and welfare functions, Company must immediately remedy the hazard, comply with City requests to secure the Public Property, and otherwise cooperate with City at no expense to City to remove any such hazard or impediment. Company's work crews must report to the Use Area within four (4) hours of any request by City under this section. The City may impose violation use fees and civil sanctions as provided in Peoria City Code Chapter 26 for Company's failure to comply with this section, this Agreement, or City Code.
- 13.18. *Third Party Permission.* Company's Wireless Facilities must not be located on Third Party Areas without the third party's written permission. This Agreement may be suspended for Company's failure to obtain the third party's written permission to use Third Party Areas.

**14. PROPRIETARY INFORMATION**

- 14.1. *Public Records Law.* Notwithstanding any provision in this Agreement, Company

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acknowledges and understands that City is a political subdivision of the State of Arizona and is subject to the disclosure requirements of Arizona's Public Records Laws (A.R.S. § 39-121 et. seq.).

**15. ABANDONMENT**

15.1. *Abandonment; Removal of Facilities.* In the event that the use of a substantial part of any of the Wireless Facilities is discontinued for any reason for a continuous period of two (2) years for reasons other than Force Majeure, or in the event such Wireless Facilities or property has been installed in any Public Property without complying with the requirements of this Agreement, or this Agreement has terminated or been revoked, Company must promptly, upon being given sixty (60) days' notice from the City, begin removal of such Wireless Facilities and related appurtenances from the Public Property other than such underground facilities which the City may permit to be abandoned in place. In the event of such removal, Company must promptly restore the Public Property or other area from which such property has been removed to a condition satisfactory to the City subject to the City's customary practice to review upon request of Company. Company may not abandon any Facilities, structures, or property in place as provided in this Agreement unless approved in writing by the City's Engineering Director. At a minimum, the Public Property must be restored to a condition as existed before the installation of the structures or property. If Company fails to remove any Facility, structures, or property within ninety (90) days of notice from the City, the City may perform the removal and repair work itself or through a third party and collect the City's cost from Company or from Company's bond. This provision survives the termination of this Agreement..

15.2 *Permanent Abandonment.* The Wireless Facilities and any other property of Company remaining on the Public Property without the consent of the City one hundred eighty (180) days after the revocation of this Agreement may be considered permanently abandoned at the sole discretion of the City Manager.

**16. AGREEMENT REVOCATION**

16.1. *Revocation for Nonuse.* Not later than 24 months after the date that the City issues a wireless agreement under Peoria City Code Chapters 23 or 19, or a telecommunication license or an amended cable or video service agreement under Peoria City Code Chapters 23 and 19, Company must offer and provide wireless services to the public unless the Company cannot meet the requirement for reasons provided in the City Code. If Company fails to comply with this section, the City may revoke this Agreement.

16.2. *Revocation for Cause.* In addition to Peoria City Code Chapter 23 and subject to Section 16.4 below, this Agreement may, after public hearing and notice and an opportunity to cure pursuant to Section 16.3 below, be revoked, altered, or suspended by the City as it deems necessary on any of the following grounds: (i) failure to file and maintain any faithful letters of credit, insurance coverage or pay Agreement fees as required under this Agreement; (ii) failure to comply with applicable law regarding the operation of the Wireless Facilities, this Agreement, or the appropriate regulatory authority; (iii) violation of material terms of this Agreement; (iv) fraud by Company, in its conduct or relations under the Agreement; (v) willful or grossly negligent violations of this Agreement; (vi) failure to comply with any federal, state, local or administrative order, law, permit regulation or consent decree as such may apply to Company's activities, as contemplated in this Agreement; or (vii) permanent or temporary

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suspension for a period greater than one hundred eighty (180) calendar days by the United States or the State of Arizona for any authorizations for Company to own, operate, maintain, or construct Wireless Facilities.

- 16.3. *Cure Period.* If any of the foregoing events occur, Company will be given a period of sixty (60) days after receipt of a written notice of default from the City to cure the default before the hearing described in Section 23-97.(e).(3) of the Peoria City Code. The provisions of Section 23-97.(e).(3) of the Peoria City Code apply: (i) if Company fails to cure the event of default within the 60 day period; or (ii) when an event of a default cannot be cured within the sixty (60) day period and Company fails to begin and diligently pursue the cure.
- 16.4. *City Determination.* If City determines Company has failed to remedy its default as provided for in Section 23-97 of the Peoria City Code, City will notify Company of that determination and will state the major causes and reasons supporting the determination. Company will be granted ten (10) days to respond to the determination. The City will consider the response of Company, if any, and may then terminate, postpone, or proceed. If the City proceeds with the revocation, alteration, or suspension process, or reactivates a postponed proceeding, City will serve a written statement of revocation, alteration, or suspension upon Company stating the principal reasons for such action and a copy of the statement must be sent by certified U.S. mail, return receipt requested, to Company as provided in Section 19.12. The City Council may take final action on the revocation, alteration, or suspension of this Agreement after the public hearing.
- 16.5. *Removal of Facilities.* Upon revocation of this Agreement, the City may declare a forfeiture, whereupon all rights and privileges of Company under this Agreement will immediately be divested without a further act upon the part of Company, and Company must remove its structures or property from the Public Property and restore the Public Property to the condition as existed prior to the removal of the structure or property. Upon Company's failure to do so within ninety (90) days of revocation, the City may perform the work and collect the City's cost from Company. At the City's option, Company may abandon structures or property in place as provided in this Agreement. At a minimum, the Public Property must be restored to a condition as existed before the removal of the structures or property.

**17. RADIO FREQUENCY REQUIREMENTS; CITY EMPLOYEE SAFETY**

- 17.1. *RF Compliance Requirements.* Company must document, report, and confirm its compliance with 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"). Company must cause its senior internal engineer responsible for compliance with the FCC Rules to deliver to City a written letter (the "RF Letter"), as follows: (i) The RF Letter must attest that Company's operation of the Communications Equipment is in compliance with the FCC Rules. A statement from Company declaring exemption from reporting to FCC is not acceptable to comply with the requirements of this paragraph; and (ii) Company must maintain records of radio frequency measurements and Communications Equipment performance in accordance with the FCC Rules; and (iii) Company must show its compliance with the FCC Rules.
- 17.2. *Prior Notice for Work Near Wireless Facilities.* Prior to performing any work on the Site, the City's employee will contact the Network Operations Center (the "NOC") whose current contact information must be located on the ground level Communications Equipment or on the pole.

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The City's employee will identify himself or herself as an employee of City and will request Company deactivate the RF signals at the Site for a specified period. Upon completion of the work, the City's employee will contact the NOC to inform Company that the Site may activate the RF signals.

- 17.3. *Kill Switch.* Company must provide access to a "kill switch" for the Wireless Facilities and Communication Equipment located at the Site for use by the City's employees, agents, or representatives.

**18. VIOLATION USE FEES AND PUBLIC SAFETY VIOLATIONS**

18.1. *Violation Use Fee.* Company agrees to pay Violation Use Fees as provided in Peoria City Code Chapter 23, Sections 23-90 to 23-102 should Company breach the terms of this Agreement and fail to cure the breach after the applicable notice and cure period. The City at its sole discretion may elect to draw upon the letter of credit required in Section 8 to collect the Violation Use Fees. With respect to violations that are continuous with respect to time, each day the violation continues is a separate period for purposes of recovery of Violation Use Fees. Company's payment of Violation Use Fees does not excuse Company's breach of this Agreement or limit the City's legal or equitable remedies.

18.2. *Enforcement of Violation Use Fees.* The City Manager may issue a warning for Company's first violation under this section. The City Manager will issue notice to the Company as listed in Section 19.12. If City determines that Company is liable for Violation Use Fee, the City assesses the Violation Use Fee by setting forth the nature of the violation and the amount of the assessment. Within ten (10) days of the notice of violation date, Company may appeal the violation as provided in Peoria City Code Chapter 26 or must pay the Violation Use Fee.

18.3. *Public Safety Violations Civil Sanctions.* In addition to imposing a Violation Use Fee, as provided in Peoria City Code Chapter 23 the City Manager may issue notices of violation of this Agreement and may take those measures necessary to promote, preserve, and protect public health, safety, and welfare within the public right-of-way. The City Manager may issue a warning for Company's first violation under this Section. The City Manager will issue notice to the Company as listed in Section 19.12, and Company's violation may result in a civil sanction as provided in Peoria City Code Chapter 23, Sections 23-90 to 23-102. For continuing violations within a 24-hour period, each calendar day is considered a separate period for civil sanctions.

18.4. *Civil Action for Violations.* These remedies are cumulative and the City may proceed under one or more remedies. Any party who causes, permits, facilitates, or aids or abets any violation of any provision of this section or who fails to perform any act or duty required by this section is subject to a civil sanction as provided in Peoria City Code Chapter 23, Sections 23-90 to 23-102.

**19. GENERAL CONDITIONS**

- 19.1. *Agreement Administrator and Enforcement.* In all matters of Agreement administration, the City Manager or designee has authority to determine Company's compliance with the terms and provisions of the Agreement, and in the event of non-compliance, to exercise any or all of the remedies provided in this Agreement to the full extent provided by law.

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- 19.2. *Right of Inspection of Construction.* The City may inspect all construction or installation work performed subject to the provisions of this Agreement and to make such tests as it deems necessary to ensure compliance with the terms of this Agreement and other pertinent provisions of law.
- 19.3. *Right of Intervention.* The City may intervene in any suit or proceeding related to or arising out of this Agreement to which Company is party, and Company may not oppose such intervention by the City.
- 19.4. *No Recourse.* Company has no recourse whatsoever against the City or its officials, boards, commissions, agents, or employees for any loss, costs, expense, or damage arising out of any provision, requirement, enforcement, or defect in this Agreement.
- 19.5. *Non-Enforcement by the City.* Company will not be relieved of its obligation to comply with any of the provisions of this Agreement by reason of the City's failure to insist upon or to seek compliance with any term and condition.
- 19.6. *Agreement Documents.* Company must submit to the City the letter of credit and insurance certificates as required by the Agreement within thirty (30) days of the Effective Date. The Agreement granted is not legally operative until all of Company's requirements in this Section are completed. In the event Company does not timely satisfy these, this Agreement will be deemed null and void unless Company's time period to comply is extended by the Council.
- 19.7. *Survival of Warranties.* Company's representations and warranties made as part of the grant of this Agreement or any permit issued under this Agreement survive termination or revocation of this Agreement.
- 19.8. *Right of Cancellation.* Company acknowledges that this Agreement is subject to cancellation by the City under A.R.S. § 38-511.
- 19.9. *Covenant Against Contingent Fees.* Company warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and that no member of the City Council or any employee of the City has any interest, financially or otherwise, in this Agreement. For breach or violation of this warranty, the City has the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
- 19.10. *Independent Contractor.* Any provision in this Agreement that may appear to give the City the right to direct Company or Company the right to direct the City as to the details of accomplishing the work or to exercise a measure of control over the work means that the party will follow the wishes of the other party as to the results of the work only.
- 19.11. *Governing Law: Jurisdiction.* Arizona law governs this Agreement, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding to enforce this Agreement must be instituted in Maricopa County, Arizona courts.
- 19.12. *Delivery, Procedure of Notices and Communications.* All notices, consent, or other communication under this Agreement must be in writing and: (i) delivered in person; or (ii) deposited in the United States mail, postage prepaid, registered or certified mail, return receipt

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requested; or (iii) deposited with any commercial air courier or express service and addressed as follows:

To City:

City of Peoria  
Adina Lund  
Development and Engineering Director  
Development and Engineering Department  
9875 N 85<sup>th</sup> Avenue  
Peoria, Arizona 85345  
Phone: (623) 773-7249

To Company:

DISH WIRELESS, L.L.C.  
ATTN: Lease Administration  
5701 South Sante Fe Blvd.  
Littleton, Colorado 801020

With a copy to:

City of Peoria  
City Attorney's office  
Attention: City Attorney  
8401 W Monroe St  
Peoria, Arizona 84345

Notice will be deemed received at the time it is personally served, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) calendar days after the notice is deposited in the United States mail as above provided. Any time period stated in a notice will be computed from the time the notice is deemed received unless noted otherwise. Any party may change its mailing address, phone number, email address or the person to receive notice by notifying the other party as provided in this Section. Notices sent by electronic mail must also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by electronic mail.

- 19.13. *Organization/Employment Disclaimer.* This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, agreement, or relationship, partnership, or formal business organization of any kind, and the rights and obligations of the Parties will be only those expressly set forth in this Agreement.
- 19.14. *Entire Agreement; Amendment; Waivers.* This Agreement, and the below listed exhibits which are incorporated herein by this reference and are attached and/or on file at the City and available for inspection, constitute the entire agreement between the City and Company with respect to the transactions contemplated therein and supersede all prior negotiations, communications, discussions and correspondence, whether written or oral, concerning the subject matter hereof. No supplement, modification, or amendment of any term of this Agreement will be deemed binding or effective unless executed in writing by the Parties. No

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waiver of any of the provisions of this Agreement will be deemed, or will constitute, a waiver of any other provisions, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver is binding unless expressly executed in writing by the Party making the waiver.

Exhibit "A" - Site Drawings  
Exhibit "B" - Use Area or Legal Description  
Exhibit "C" - APS Letter of Authorization

- 19.15. *Right of Parties.* Nothing in this Agreement, whether express or implied, is intended to confer any right or remedies under or by reason of this Agreement on any persons other than the Parties to this Agreement and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge any obligation or liability of any person who is not a party to this Agreement, nor will any provisions in this Agreement give any persons not a party to this Agreement any right of subrogation or action over or against any Party to this Agreement.
- 19.16. *Construction.* This Agreement is the result of negotiations between the Parties, both of whom are represented by legal counsel and neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions of this Agreement will be construed in accordance with their usual and customary meanings. The Parties hereby waive the application of any rule of law that otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular and the singular the plural. The words "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. All references to "Sections" herein refer to the sections and paragraphs of this Agreement unless specifically stated otherwise. The section and other headings contained in this Agreement are inserted for convenience of reference only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation of this Agreement.
- 19.17. *Severability.* If any covenant, condition, term, or provision of this Agreement is held to be illegal, or if the application of this Agreement to any person or in any circumstances to any extent be judicially determined to be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, condition, term, or provision to persons or in circumstances other than those to which it is held invalid or unenforceable, must not be affected, and each covenant, term, and condition of this Agreement is valid and enforceable to the fullest extent permitted by law.
- 19.18. *Cooperation and Further Documentation.* Each of the Parties agree to provide the other with such additional and other duly executed documents as are reasonably requested to fulfill the intent of this Agreement.
- 19.19. *Force Majeure.* For the purpose of any of the provisions of this Agreement, neither Company nor the City, as the case may be, will be considered in breach of or in default of their obligations under this Agreement as a result of the enforced delay in performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to: acts of God, acts of the public enemy, acts of the Federal Government, acts of the Arizona Public Service, acts of Maricopa County, acts of the State of Arizona or any of its

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departments, acts of any railroad, fire, floods, epidemics, strikes, lock outs, freight embargoes, drought, or unusually severe weather; it being the purpose and intent of this provision that in the occurrence of any such enforced delay, the time for performance of Company's and the City's obligations, as the case may be, will be extended for the period of the enforced delay, provided that the party seeking the benefit of this provision will have notified the other party in writing of the cause or causes, and requested an extension for the period of the enforced delay. If notice by the party claiming such extension is sent to the other party more than thirty (30) days after commencement of the cause, the period of delay will be deemed to commence thirty (30) days prior to the giving of such notice. This section shall only apply to those acts which commence after the Effective Date of this Agreement and shall in no way apply to any act initiated, or on-going, prior to the Effective Date of this Agreement

- 19.20. *On-Call Assistance.* Company must be available to staff employees of any City department having jurisdiction over Company's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its Wireless Facilities. City may contact by telephone the control center operator at telephone number (602) 692-5737 regarding such problems or complaints. In the event of a public emergency, pursuant to Sections 13.16 and 13.17, the emergency contact can be reached at (602) 692-5737.
- 19.21. *Legal Worker Requirements.* A.R.S. § 41-4401 prohibits the City from awarding a contract to any party who fails, or whose contractors fail, to comply with A.R.S. § 23-214(A) in connection with this Agreement. Therefore, Company and each contractor it uses warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A in connection with this Agreement. A breach of this warranty will be deemed a material breach of this Agreement and may be subject to penalties up to and including revocation of the Agreement. City retains the legal right to inspect the papers of Company's or contractor's employees who provide services under this Agreement to ensure that Company and its contractors comply with this warranty.
- 19.22. *Lawful Presence Requirement.* A.R.S. §§ 1-501 and 1-502 prohibit the City from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships, or limited liability companies.
- 19.23. *Written Acceptance.* Company's execution of this Agreement constitutes Company's acceptance of this Agreement as granted and its agreement to be bound by and to comply with the terms and conditions of this Agreement. Company's signature must be acknowledged by Company before a notary public.
- 19.24. *Data Confidentiality and Data Security.* As used in this Agreement, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to Company as part of the terms and conditions of this Agreement. Except as specifically provided in this Agreement, Company must not divulge confidential data provided by City to Company and clearly marked confidential to any third party without the City's prior written consent. These prohibitions do not apply to the following data: (i) data which was known to the Company prior to the Effective Date or is publicly

**WIRELESS AGREEMENT  
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91<sup>ST</sup> AVENUE AND BEARDSLEY ROAD SITE**

available; or (ii) data which was acquired by the Company in its performance under this Agreement and which was disclosed to the Company by a third party, who to the best of the Company's knowledge and belief, had the legal right to make such disclosure and the Company is not otherwise required to hold such data in confidence; or (iii) data which is required to be disclosed by virtue of law, regulation, or court order, to which the Company is subject. Company assumes all liability to maintain the confidentiality of City's confidential data in Company's possession. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

**DISH WIRELESS L.L.C., a Colorado Limited Liability Company**

By: \_\_\_\_\_  
David Mayo  
Executive Vice President

**THE CITY OF PEORIA, an Arizona municipal corporation**

By: \_\_\_\_\_  
Henry Darwin  
City Manager

**ATTEST:**

By: \_\_\_\_\_  
Jill Boltz, Acting City Clerk

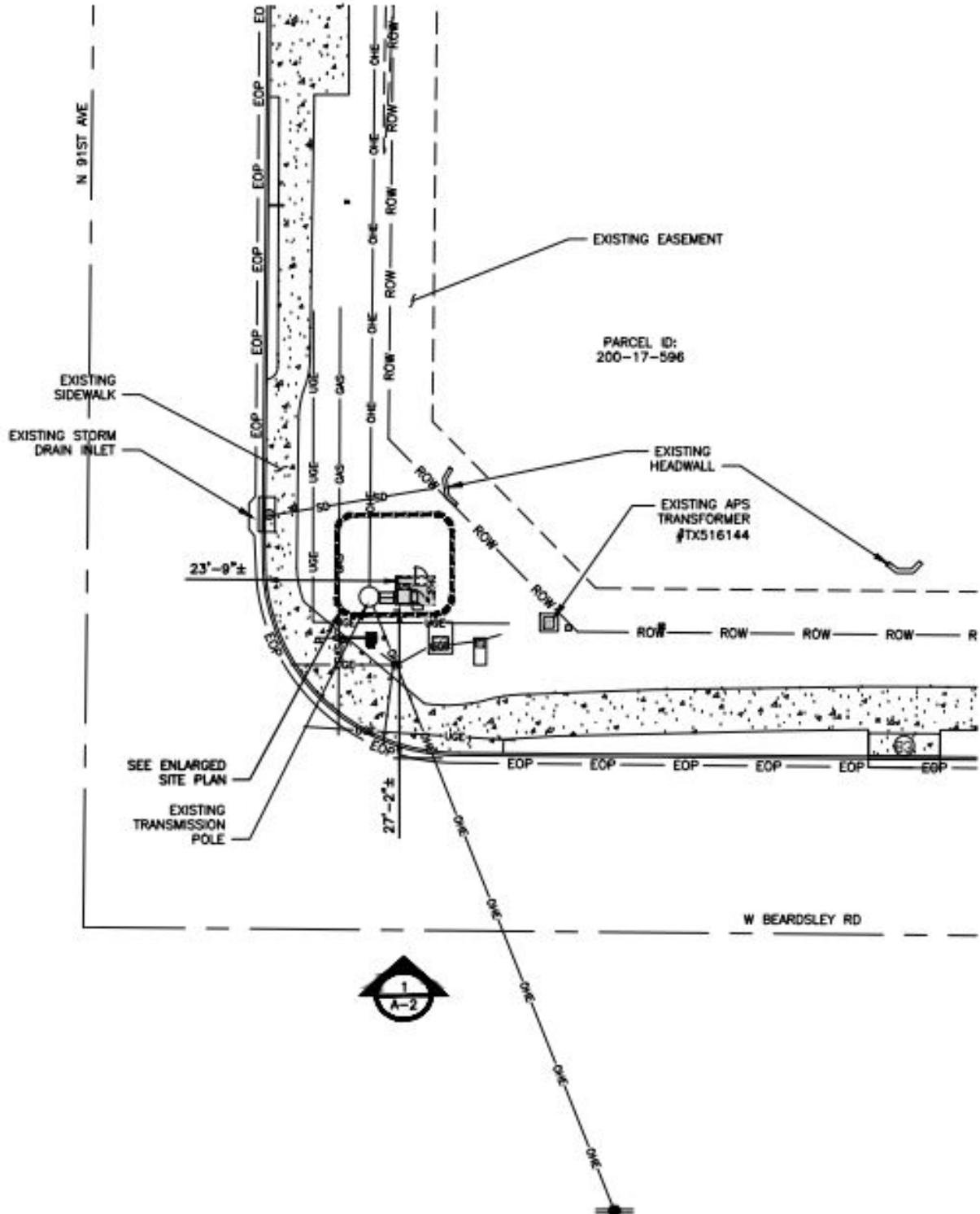
**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Emily Jurmu, City Attorney

WIRELESS AGREEMENT  
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EXHIBIT A

Site Drawings





**WIRELESS AGREEMENT  
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91<sup>ST</sup> AVENUE AND BEARDSLEY ROAD SITE**

**EXHIBIT C**

**APS Letter of Authorization**

SITE LICENSE AGREEMENT

This Site License Agreement ("SLA") is made pursuant to the Master Terms and Conditions for Site License ("Master Terms and Conditions"), between Arizona Public Service Company and Dish Wireless L.L.C. a Colorado LLC corporation ("Licensee") dated July 19, 2021. Capitalized terms used in this SLA have the same meaning as such terms in the Master Terms and Conditions unless otherwise indicated. This SLA is governed by the provisions of the Master Terms and Conditions, the provisions of which are specifically incorporated herein by this reference.

1. Site Name and Number: PXPXH00467C  
APS line name and number: N/A
2. Site Address: 91st Ave & Beardsley (NE Corner), Peoria, AZ 85382
3. Site Legal Description: See Exhibit I.
3. Site Latitude and Longitude (Approximate): 33.667383, -112.254897
4. Commencement Date: June 1, 2022.
5. Fees: [REDACTED] per year plus any additional fees as set forth in the Master Terms and Conditions.
6. Term: See Master Terms and Conditions and First Amendment dated 9/5/21
8. Renewal Options: See Master Terms and Conditions
9. Ownership of underlying fee: Peoria ROW
10. If APS has the right to occupy the Site under a Ground Lease, a copy of the Ground Lease is attached to this SLA as Exhibit 2. N/A for this site
11. APS contact for emergencies:  
Dave Carlton, (602) 371-6514 or APS Security (602) 250-2222
12. Licensee contact for emergencies:  
Alvin Laxamana, (480) 529-4686 or DISH NOC (833) 347-4602
13. Description of Communications Facility: See Exhibit I.
14. Special provisions: N/A for this site. For clarity and avoidance of doubt, the Initial Term shall commence on the Commencement Date. In addition, Licensee shall pay the Fee commencing on the Commencement Date.

LICENSEE:

Dish Network L.L.C.

By: [REDACTED]

Name: Dan Phifer

Title: Market General Manager

Date: 7-13-22

LICENSOR:

ARIZONA PUBLIC  
SERVICE COMPANY

By: [REDACTED]

Name: Deborah Sapp

Title: Mgr Project & Program Mgmt

Date: 7/21/22