



TO: Planning and Zoning Commission

FROM: Brett Burningham, Planning Administrator and Bruce Gardner, Assistant Town Manager

RE: Public Hearing and Possible action on Case P18-0005 “Small Cell Wireless”, a staff-initiated request to amend Section 6.9 of the Zoning Ordinance, “Wireless Communications”, including new provisions related to small wireless facilities; and, an amendment to Town Code Chapter 16 “Utilities” including new provisions related to small wireless facilities and rates and fees for the use of the public right-of-way and Town structures.

DATE: Feb. 6, 2018

STAFF RECOMMENDATION

Staff recommends approval of P18-0005 “Small Cell Wireless” Zoning Ordinance Text Amendment.

PROPOSED MOTION

Move to recommend approval of P18-0005 “Small Cell Wireless” Zoning Ordinance Text Amendment.

RELEVANT COUNCIL GOAL



Secure Future



Effective Government

SUMMARY

This application includes a staff-initiated request for a Zoning Ordinance Text Amendment and a Town Code Amendment to provide for new provisions related to small cell wireless facilities and rates and fees for use of the public right of way and Town Structures.

DISCUSSION

During the past Arizona Legislative session (Aug. 2017) a new statute was approved to allow Small Wireless Facilities (SWF) the ability to locate on utility poles in the public right-of-ways. This legislation also included provisions requiring that municipal regulations be in place or implemented within 6 months. The Town is updating the Town Code and Zoning Ordinance so that an application and fee system will be in place to accommodate Small Wireless Facility by Feb. 9, 2018.

ATTACHMENTS

1. Ordinance 655-18
2. (Exhibit B) Amendments to the Zoning Ordinance
3. Fees
4. Draft Design Standards and Guidelines
5. Draft Terms and Conditions
6. Draft License Agreement
7. Draft Irrevocable Letter of Credit Template

ORDINANCE 655-18

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AMENDING EXISTING SECTION 6.9 OF THE ZONING ORDINANCE, “WIRELESS COMMUNICATIONS” INCLUDING, BUT NOT LIMITED TO, NEW PROVISIONS RELATED TO SMALL WIRELESS FACILITIES AND AMENDING TOWN CODE CHAPTER 16 “UTILITIES” INCLUDING, BUT NOT LIMITED TO, NEW PROVISIONS REGARDING SMALL WIRELESS FACILITIES AND RATES AND FEES FOR USE OF THE PUBLIC RIGHT OF WAY AND TOWN STRUCTURES.

WHEREAS, Arizona State Legislature passed House Bill 2365 amending the Arizona Revised Statutes by adding Title 9, Chapter 5, Article 8 “Use of Public Highways by Wireless Providers”; and

WHEREAS, the Town Council has determined that it is in the best interest of the residents of Queen Creek to amend the Town Code, amend Chapter 16 to include Article 16-10, as further set forth in Exhibit “A”, which is attached hereto and incorporated herein by reference; and

WHEREAS, the Town Council has determined that it is in the best interest of the residents of Queen Creek to make changes to the Town Zoning Ordinance Section 6.9, such that it is advisable to amend Section 6.9, as further set forth in Exhibit “B”, which is attached hereto and incorporated herein by reference; and

WHEREAS, the Town Council has determined that changes to the Town Code and Zoning Ordinance are necessary to: promote the health, safety, and general welfare of the residents of the Town; to enhance the aesthetic quality of the natural and built environment of the community; to maintain and enhance the desirable character of the community; and to facilitate quality development in accordance with the Town's adopted General Plan and Zoning Ordinance.

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AS FOLLOWS:

Section 1. Any proposal for the construction or installation of new monopoles, utility poles associated with wireless facilities, or wireless facilities in the public right of way shall be subject to the following: Section 6.9 of the Town's Zoning Ordinance; the Town's reasonable design standards; the Town's reasonable stealth and concealment standards; the Town's reasonable rates and fees as adopted by the Town; and all other applicable regulatory processes.

- Section 2. Existing Chapter 16 of the Queen Creek Town Code is hereby amended by the addition of a new subsection 16-10 set as forth in Exhibit “A.”
- Section 3. Exhibit “A” is hereby approved, adopted and incorporated into the Town Code by reference, as fully as if set forth in this Ordinance in its entirety.
- Section 4. If any section, subsection, clause, phrase or portion of this Ordinance or any part of the amended and restated Town Code 16-10 is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.
- Section 5. Existing Section 6.9 of the Zoning Ordinance is hereby amended as set forth in Exhibit “B.”
- Section 6. Exhibit “B” is hereby approved, adopted and incorporated into the Town Code by reference, as fully as if set forth in this ordinance in its entirety.
- Section 7. If any section, subsection, clause, phrase or portion of this ordinance or any part of the amended and restated Town Zoning Ordinance Section 6.9, is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.
- Section 8. At least three (3) copies of Exhibits “A” and “B” shall be kept on file in the Office of the Town Clerk and kept available for public use and inspection.

PASSED AND ADOPTED BY the Mayor and Common Council of the Town of Queen Creek, Arizona, this 7th day of February, 2018.

EXHIBIT A

ARTICLE 16-10 Small Wireless Facilities

Section 16-10-1 Purpose

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

Section 16-10-2 Definitions

The definitions contained in A.R.S. § 9-591 are incorporated by this reference and shall apply to this article as if fully set forth here.

Section 16-10-3 Small Wireless Facilities in the Public Right of Way

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

A. No monopoles, utility poles associated with small wireless facilities, or small wireless facilities shall be collocated, installed, modified, or replaced in the public right of way unless the following requirements are met:

- 1) An Application is submitted to and approved by the Town pursuant to Section 16-10-4;
- 2) All Town requirements as set forth in this article are met;
- 3) All other applicable codes and requirements are met;
- 4) A Wireless Facility License Agreement is signed; and
- 5) A Wireless Facility Site Permit issued.

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

C. The installation and maintenance of monopoles in the public right of way and small wireless facilities on utility poles or monopoles in the public right of way shall be subject to rates and fees pursuant to Section 16-10-5 of this article.

D. In addition to the above requirements, the installation, replacement, and/or modification of monopoles in the public right of way shall be subject to the requirements of Section 6.9 of the Town's Zoning Ordinance.

E. In addition to the above requirements, the installation, replacement, and/or modification of utility poles that exceed the greater of either 1) ten (10) feet above the tallest existing utility pole (excluding utility poles supporting only wireless facilities), that is located within five hundred (500) feet of the proposed site for the new, replacement or modified pole if that existing pole was in place prior to August 9, 2017, but the new pole cannot be more than fifty (50) feet above ground level; or 2) Forty (40) feet above ground level, shall be subject to the requirements of Section 6.9 of the Town's Zoning Ordinance.

G. In addition to the above requirements, collocations of new small wireless facilities that exceed ten (10) feet above the utility pole or wireless support structure (defined as including a monopole if there was an existing one in the ROW) and exceed fifty (50) feet above ground level shall be subject to the requirements of Section 6.9 of the Town's Zoning Ordinance.

Section 16-10-4 Application

A. Prior to the collocation, installation, modification, or replacement of any monopole, utility pole associated with wireless facilities, or small wireless facility in the public right of way, the wireless provider must complete and submit an Application to the Town's Department of Development Services.

B. The Department of Development Services shall prescribe and provide a regular form of application for use by Applicants for permits required by this section. The Application shall include such information and details as the department deems necessary to establish the exact location, nature, dimensions, duration and purpose of the proposed small wireless facility. If requested, the Applicant shall include maps, sketches, diagrams, or similar exhibits. The Applicant shall include proof of liability insurance.

C. The Department of Development Services shall determine if the Application establishes that the utility poles associated with wireless facilities, monopoles, and/or small wireless facilities that are the subject of the Application comply with the following:

- 1) Town Design Standards and Guidelines
- 2) Town codes, ordinances, regulations, requirements, policies, and guidelines, regarding undergrounding
- 3) Town codes, ordinances, regulations, requirements, policies, and guidelines, regarding public safety
- 4) Town codes, ordinances, regulations, requirements, policies, and guidelines regarding spacing new utility poles
- 5) All other applicable Town codes, ordinances, regulations, requirements, policies, and guidelines to which the town is authorized by law to subject small wireless facilities.

D. If it is determined that the Application does not establish compliance with requirements of this section, then the Application must be denied.

Section 16-10-5 Rates and Fees

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

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

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

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

D. These fees relate solely to the matters covered by this article and are separate from all other fees, fines and penalties chargeable by the Town.

Amendments to the Zoning Ordinance

1.14 Definitions:

Monopole. a wireless support structure that is not more than 40 inches in diameter at the ground level and that has all of the wireless facilities mounted on or inside of the pole. The definition does not include a “Utility Pole” or a “Tower”.

Utility Pole. Means a pole or similar structure that is used in whole or in part by a communications service provider or for electric distribution, lighting, traffic control or signage or a similar function. Utility Pole does not include structures supporting only wireless facilities.

Tower: ... The definition does not include monopoles.

Communication Tower: ... The definition does not include “Monopoles” or “Utility Poles” as defined in this section.

Wireless facility:

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

(i) equipment associated with wireless communications.

(ii) radio transceivers, antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment, regardless of technological configuration.

(b) includes small wireless facilities.

(c) does not include the structure or improvements on, under or within which the equipment is collocated.

Small wireless facility: means a wireless facility that meets both of the following qualifications:

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

(b) all other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this subdivision:

(i) an electric meter.

(ii) concealment elements.

(iii) a telecommunications demarcation box.

(iv) ground-based enclosures.

(v) grounding equipment.

(vi) a power transfer switch.

(vii) a cut-off switch.

(viii) vertical cable runs for the connection of power and other services

6.9 Wireless Communications

A. Purpose.

1. Protect residential areas and land uses from potential adverse impacts of towers, antennas and monopoles;
2. Encourage the location of towers, and monopoles, in non-residential areas;
3. Minimize the total number of towers and monopoles throughout the community;
4. Strongly encourage the joint use of new and existing tower and monopole sites as a primary option rather than construction of additional single-use towers and monopoles;
5. Encourage users of towers, antennas, and monopoles to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
6. Encourage users of towers, antennas, and monopoles to configure them in a way that minimizes the adverse visual impact of the towers, antennas, and monopoles through careful design, siting, landscape screening, and innovative camouflaging techniques;
7. Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently;
8. Consider the public health and safety of communication towers; and,
9. Avoid potential damage to persons, personal properties, and adjacent properties from tower or monopole failure through engineering and careful siting of tower and monopole structures. In furtherance of these goals, the Town of Queen Creek shall give due consideration to the Town of Queen Creek General Plan, the Town of Queen Creek Zoning Ordinance, existing land uses, and environmentally sensitive areas in approving sites for the location of towers, antennas, and monopoles.

B. Applicability.

2. Exceptions.

- d. *New Monopoles in the Public Right of Way.* New monopoles in the public right of way shall be subject only to the provisions contained in 6.9(H).

Additions to the Zoning Ordinance

H. Monopoles in the Public Right of Way

1. Applicability.

- a. *New Monopoles.* The construction, installation, modification, maintenance, operation and replacement of monopoles in the public right of way of the Town of Queen Creek shall be subject to these regulations.
- b. *Non-applicability to Towers and Utility Poles.* This section applies only to monopoles in the public right of way and shall not be construed to apply to Towers or Utility Poles as defined in the Ordinance
- c. *Non-applicability to Monopoles Outside of the Public Right of Way.* This section applies only to monopoles in the public right of way and shall not be construed to apply to monopoles

2. General Requirements.

- a. *Inventory or Existing Sites.* Each applicant for a monopole in the public right of way shall provide to the Planning Administrator an inventory of its existing towers, monopoles, or sites approved for towers or monopoles, that are either within the jurisdiction of the Town of Queen Creek or within one (1) mile of the border thereof, including specific information about the location, height, and design of each tower or monopole.
- b. *Aesthetics.* Monopoles in the public right of way shall meet the following requirements:
 - i. Monopoles shall be configured in a way that minimizes adverse impacts by careful design, landscape screening, and innovative camouflaging techniques or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness; and,
 - ii. At a monopole site, the design of the equipment cabinet and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
- c. *Lighting.* Monopoles in the public right of way shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
- d. *State or Federal Requirements.* All monopoles must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate monopoles. If such standards and regulations are changed, then the owners of the monopoles governed by this Section shall bring such monopoles into compliance with revised standards and regulations within six (6) month of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring monopoles into compliance with such revised standards and regulations shall constitute grounds for the removal of the monopole at the owner's expense.
- e. *Building Codes; Safety Standards.* To ensure the structural integrity of monopoles in the public right of way, the owner of the monopole shall ensure that is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association (EIA) and by the Telecommunications Industries Associations (TIA), as amended from time to time. If, upon inspection, the Town of Queen Creek concludes that a monopole fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the monopole, the owner shall have thirty (30) days to bring such monopole into compliance with such standards. Failure to

bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the monopole at the owner's expense.

- f. *Measurement.* For purposes of measurement, monopole setbacks and separation distances shall be calculated and applied to facilities located in the Town of Queen Creek irrespective of municipal and county jurisdictional boundaries.
- g. *Not Essential Services.* Monopoles in the public right of way shall be regulated and permitted pursuant to this chapter and shall not be regulated or permitted as essential services, public utilities, or private utilities.
- h. *Franchises.* The Town may require owners and / or operators of monopoles in the public right of way to certify that all franchises required by law for the construction and / or operation of a wireless communication system in the Town of Queen Creek have been obtained and shall file a copy of all required franchises with the Planning Administrator. The Town Council may waive such requirements if the goals of this chapter would be better served thereby.
- i. *Public Notice.* For purposes of this Section, any conditional use request shall require public notice pursuant to Section 3.5 of this Ordinance except that the notice required shall include posting of the property, and mailing to all property owners within three-hundred feet (300') of the proposed use, and publication in a newspaper of general circulation regardless of any expression to the contrary in Section 3.5.
- j. *Signs.* No signs shall be allowed on a monopole in the public right of way except as otherwise permitted by law.
- k. *Co-Location.* The Town of Queen Creek encourages small cell wireless providers to co-locate small wireless facilities on monopoles in the public right of way and to submit applications which utilize co-location with an existing wireless telecommunications provider.
- l. *Security Fencing.* Monopoles in the public right of way shall be enclosed by security fencing not less than six feet (6') in height and no more than eight feet (8') in height, shall be constructed of a block or masonry and shall be equipped with an appropriate anti-climbing device; provided, however, that the Town Council may waive such requirements as it deems appropriate.
- m. *Landscaping.* The following requirements shall govern the landscaping surrounding monopoles in the public right of way; provided, however, that the Town Council may waive such requirements if the goals of this chapter would be better served thereby:
 - i. Monopoles in the public right of way shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from residential property. The standard buffer shall consist of a

landscaped strip at least four feet (4') wide outside the perimeter of the compound;

- ii. In locations where the visual impact of the monopole in the public right of way would be minimal, the landscaping requirement may be reduced or waived; and,
 - iii. Existing mature plan growth and natural land forms on the site shall be preserved to the maximum extent possible.
- n. *Applicability of Town's Reasonable Standards.* The Town may, in its absolute discretion, require additional compliance with the Town's reasonable design standards and stealth and concealment standards. Compliance with Section 6.9 (H)(2) of this Ordinance shall not be construed as compliance with the Town's design or stealth and concealment standards.

3. *Conditional Use Permits for Monopoles in the Public Right of Way.*

- a. *General.* The following provisions shall govern the issuance of conditional use permits for monopoles in the public right of way by the Town Council:
- i. No monopoles in the public right of way shall be developed, located, constructed, or operated unless or until a conditional use permit has been issued by the town.
 - ii. Applications for conditional use permits under this Section shall be subject to the procedures and requirements of Section 3.5 of this Ordinance, except as modified in this Section;
 - iii. In granting a conditional use permit, the Town Council may impose conditions to the extent such conditions are necessary to minimize any adverse effect of the proposed monopole in the public right of way on adjoining properties;
 - iv. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by an Arizona licensed professional engineer;
 - v. An applicant for a conditional use permit shall submit the information described in this Section and a nonrefundable fee established pursuant to a Resolution of the Town Council; and,
 - vi. A Conditional Use Permit issued under this Section shall be conditioned upon verification by the Engineer or his designee that such monopole structure is structurally sound. Such verification shall be received by the applicant prior to submission and at intervals from the date of issuance of such permits if required by the Engineer.

- b. *Information Required.* In addition to any information required for applications for conditional use permits, as defined in the Town's application(s) and / or process guide(s), on file with the Town's Development Services Department, applicants for a conditional use permit for a monopole in the public right of way shall submit the following information:
- i. A scaled site plan clearly indicating the location, type and height of the proposed monopole, adjacent land uses and zoning (including when adjacent to other municipalities), General Plan classification of the site and all properties within the applicable separation distances set forth in subsection 6, ground equipment, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed monopole and any other structures, and other information deemed by the Planning Administrator to be necessary to assess compliance with this article;
 - ii. The setback distance between the proposed monopole and any of the following: adjoining lot lines; public roadways; public sidewalks, private roadways; or any occupied structure.
 - iii. The separation distance from towers, monopoles and other structures described in the inventory of existing sites submitted, shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known;
 - iv. Method of fencing and finishing color and, the method of camouflage and, if required by the FCC or otherwise permitted by the Town, the method of illumination;
 - v. A description of compliance with the subsections of the Section, and all applicable federal, state or local laws;
 - vi. A description of compliance with the Town's design, stealth and concealment, setback / fall requirements, and safety, standards, and all other applicable standards and regulations.
 - vii. A notarized statement by the applicant as to whether construction of the monopole will accommodate co-location of additional small wireless facilities for future users;
 - viii. Identification of the entities providing the backhaul network for the monopole(s) described in the application and other cellular sites owned or operated by the applicant in the municipality;
 - ix. A description of the suitability of the use of existing towers, monopoles, other structures or alternative technology not requiring the use of

monopoles in the public right of way to provide the services to be provided through the use of the proposed monopole.

- x. A description of the feasible alternative location(s) of future monopoles within the Town of Queen Creek based upon existing physical, engineering, technological or geographical limitations in the event the proposed monopole is erected and;
 - xi. A statement of compliance with Federal Communications Commission (FCC) Radio Frequency (RF) exposure standards.
- c. *Noise.* No permit shall be issued for any facility which generates a noise level greater than fifty decibels (50 dB) as measured at the base of the monopole.
- d. *Factors Considered in Granting Special Use Permits for Monopoles in the Public Right of Way.* In addition to any standards for consideration of special use permit applications, the Town Council shall consider the following factors in determining whether to issue a conditional use permit, although the Town Council may waive or reduce the burden on the applicant of one (1) or more of these criteria if the Town Council concludes that the goals of this Ordinance are better served thereby:
- i. Height of the proposed monopole;
 - ii. Proximity of the monopole to adjoining lot lines, public roadways, private roadways, public sidewalks, residential structures, any occupied structures and residentially zoned district boundaries;
 - iii. Nature of uses on adjacent and nearby properties;
 - iv. Surrounding topography;
 - v. Surrounding tree coverage and vegetation;
 - vi. Design of the monopole, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - vii. Proposed ingress and egress; and,
 - viii. Availability of suitable existing towers, monopoles, other structures, or alternative technologies not requiring the use of monopoles in the public right of way, as discussed in section e below.
- e. *Availability of Suitable Existing Towers, Other Structures, or Alternative Technology.* No new monopole shall be permitted in the public right of way unless the applicant demonstrates to the reasonable satisfaction of the Town Council that no existing tower, monopole, structure, or alternative technology that does not require the use of monopoles in the public right of way can

accommodate the applicant's proposed wireless facility. An applicant shall submit information requested by the Town Council related to the availability of suitable existing towers, monopoles, other structures, or alternative technology. Evidence submitted to demonstrate that no existing tower, monopole, structure, or alternative technology can accommodate the applicant's proposed monopole may consist of any of the following:

- i. No existing towers, structures, or monopoles are located within the geographic area which meets applicant's engineering requirements;
- ii. Existing towers, monopoles, or structures are not of sufficient height to meet applicant's engineering requirements;
- iii. Existing towers, monopoles, or structures do not have sufficient structural strength to support applicant's proposed small wireless facility and related equipment;
- iv. The applicant's proposed small wireless facility would cause electromagnetic interference with the antenna or small wireless facility on the existing towers or structures, or the antenna or small wireless facility on the existing towers or structures would cause interference with the applicant's proposed small wireless facility.
- v. The fees, costs, or contractual provisions required by the owner in order to share an existing tower, utility pole, or structure or to adapt an existing tower, utility pole, or structure for sharing exceed the cost of new Monopole development.
- vi. The applicant demonstrates that there are other limiting factors that render existing towers, monopoles, or structures unsuitable; or
- vii. The applicant demonstrates that an alternative technology that does not require the use of monopoles in the public right of way, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable.

4. *Setbacks.* The following setback requirements shall apply to all monopoles in the public right of way. The Town Council may reduce the setback requirements if the goals of this subsection would be better served.

- a. *Monopole Setbacks.* Monopoles shall be set back a distance equal to at least one-hundred percent (100%) of the height of the monopole from any: adjoining lot line; public roadway; private roadway; public sidewalk, or any occupied structure. The separation distances from residential uses shall be in accordance with Table 6.9-1 set forth above.
- b. *Ground Equipment Setbacks.* Associated ground equipment must satisfy the minimum zoning district setback requirements.

5. *Co-Location.*

- a. *Good Faith.* Applicants and permittees shall cooperate and exercise good faith in co-locating wireless telecommunications facilities on the same monopole, if the Town so requests. Good faith shall include sharing technical information to evaluate the feasibility of co-location, and may include negotiations for erection of a replacement monopole to accommodate co-location. A competitive conflict to co-location or financial burden caused by sharing such information normally will not be considered as an excuse to the duty of good faith.
- b. *Third Party Review.* In the event a dispute arises as to whether a permittee has exercised good faith in accommodating other users, the Town may require the applicant to obtain a third party technical study at the applicant's expense. The Town may review any information submitted by the applicant and permittee(s) in determining whether good faith has been exercised.
- c. *Exceptions.* No co-location may be required where the shared use would or does result in significant interference in the broadcast or reception capabilities of the existing wireless telecommunications facilities or failure of the existing wireless telecommunications facilities to meet federal standards for emissions.
- d. *Violation; Penalty.* Failure to comply with co-location requirements when feasible may result in denial of a permit request or revocation of an existing permit.

6. *Minimum Setbacks and Separation.*

- a. *Separation Distances between Monopoles in the Public Right of Way.* Separation distances between monopoles shall be applicable for and measured between the proposed monopole and preexisting monopoles. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed monopole. The separation distances (listed in linear feet) shall be as shown in Table 6.9-2.

7. *Removal of Monopoles.* Any monopole in the public right of way that is not operated for a continuous period of thirty (30) days shall be considered abandoned, and the owner of such monopole shall remove the same within thirty (30) days of receipt of notice from the Town of Queen Creek notifying the owner of such abandonment. Failure to remove an abandoned monopole within said thirty (30) day period shall be grounds to remove the monopole at the owner's expense. If there are two (2) or more users of a single monopole, then this provision shall not become effective until all users cease using the monopole for the prescribed period.

I. Utility Poles Subject to Zoning

1. *Applicability.*

- a. *Utility Poles Subject to Zoning.* All new, replacement or modified Utility Poles are subject to this section 6.9(I) if they exceed the greater of either:

- i. ten (10) feet above the tallest existing utility pole (excluding utility poles supporting only wireless facilities), that is located within five hundred (500) feet of the proposed site for the new, replacement or modified pole if that existing pole was in place prior to August 9, 2017, but the new pole cannot be more than fifty (50) feet above ground level; or
 - ii. Forty (40) feet above ground levels.
- b. *Non-applicability to Towers and Utility Poles.* This section applies only to Utility Poles Subject to Zoning as defined in subsection a, and shall not be construed to apply to Utility Poles that do not meet the qualifications of subsection a, or Towers as defined in the Ordinance.
- c. *Exception for Pre-existing Utility Poles.* Legally established pre-existing Utility Poles Subject to Zoning shall not be required to meet the requirements of this Ordinance, other than the requirements of subsection 2(c) and 2(d) of this Section.

2. *General Requirements.*

- a. *Inventory or Existing Sites.* Each applicant for a Utility Pole shall provide to the Planning Administrator an inventory of its existing towers, utility poles, or sites approved for towers or utility poles, that are either within the jurisdiction of the Town of Queen Creek or within one (1) mile of the border thereof, including specific information about the location, height, and design of each tower or utility pole.
- b. *Aesthetics.* Utility Poles shall meet the following requirements:
 - i. Utility Poles shall be configured in a way that minimizes adverse impacts by careful design, landscape screening, and innovative camouflaging techniques or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness; and,
 - ii. At a Utility Pole site, the design of the ground equipment and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
- c. *State or Federal Requirements.* All Utility Poles must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate Utility Poles. If such standards and regulations are changed, then the owners of the Utility Poles governed by this Section shall bring such Utility Poles into compliance with revised standards and regulations within six (6) month of the effective date of such standards and regulations, unless a different compliance schedule is

mandated by the controlling state or federal agency. Failure to bring Utility Poles into compliance with such revised standards and regulations shall constitute grounds for the removal of the Utility Pole at the owner's expense.

- d. *Building Codes; Safety Standards.* To ensure the structural integrity of Utility Poles, the owner of the Utility Pole shall ensure that is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association (EIA) and by the Telecommunications Industries Associations (TIA), as amended from time to time. If, upon inspection, the Town of Queen Creek concludes that a Utility Pole fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the Utility Pole, the owner shall have thirty (30) days to bring such Utility Pole into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the Utility Pole at the owner's expense.
- e. *Measurement.* For purposes of measurement, Utility Pole setbacks and separation distances shall be calculated and applied to facilities located in the Town of Queen Creek irrespective of municipal and county jurisdictional boundaries.
- f. *Not Essential Services.* Utility Poles shall be regulated and permitted pursuant to this chapter and shall not be regulated or permitted as essential services, public utilities, or private utilities.
- g. *Franchises.* The Town may require owners and / or operators of Utility Poles in the public right of way to certify that all franchises required by law for the construction and / or operation of a wireless communications system in the Town of Queen Creek have been obtained and shall file a copy of all required franchises with the Planning Administrator. The Town Council may waive such requirements if the goals of this chapter would be better served thereby.
- h. *Public Notice.* For purposes of this Section, any conditional use request shall require public notice pursuant to section 3.5 of this Ordinance except that the notice required shall include posting of the property, and mailing to all property owners within three-hundred feet (300') of the proposed use, and publication in a newspaper of general circulation regardless of any expression to the contrary in Section 3.5.
- i. *Signs.* No signs shall be allowed on a Utility Pole except as otherwise permitted by law.
- j. *Security Fencing.* Utility Poles in the public right of way shall be enclosed by security fencing not less than six feet (6') in height and no more than eight feet (8') in height, shall be constructed of a block or masonry and shall be equipped

with an appropriate anti-climbing device; provided, however, that the Town Council may waive such requirements as it deems appropriate.

- k. *Co-Location.* The Town of Queen Creek encourages small cell wireless providers to co-locate small wireless facilities on Utility Poles and to submit applications which utilize co-location with an existing wireless telecommunications provider.
 - l. *Applicability of Town's Reasonable Standards.* The Town may, in its absolute discretion, require additional compliance with the Town's reasonable design standards and stealth and concealment standards. Compliance with Section 6.9 (I)(2) of this Ordinance shall not be construed as compliance with the Town's design or stealth and concealment standards.
3. *Conditional Use Permits for Utility Poles.*
- a. *General.* The following provisions shall govern the issuance of conditional use permits for Utility Poles by the Town Council:
 - i. No Utility Poles subject to this Section 6.9(I) shall be developed, located, constructed, or operated unless or until a conditional use permit has been issued by the town.
 - ii. Applications for conditional use permits under this Section shall be subject to the procedures and requirements of Section 3.5 of this Ordinance, except as modified in this Section;
 - iii. In granting a conditional use permit, the Town Council may impose conditions to the extent such conditions are necessary to minimize any adverse effect of the proposed Utility Pole on adjoining properties;
 - iv. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by an Arizona licensed professional engineer;
 - v. An applicant for a conditional use permit shall submit the information described in this section and a nonrefundable fee established pursuant to a Resolution of the Town Council; and,
 - vi. A Conditional Use Permit issued under this Section shall be conditioned upon verification by the Engineer or his designee that such Utility Pole structure is structurally sound. Such verification shall be received by the applicant prior to submission and at intervals from the date of issuance of such permits if required by the Engineer.
 - b. *Information Required.* In addition to any information required for applications for conditional use permits, as defined in the Town's application(s) and / or process

guide(s), on file with the Town's Development Services Department, applicants for a conditional use permit for a Utility Pole shall submit the following information:

- i. A scaled site plan clearly indicating the location, type and height of the proposed Utility Pole, adjacent land uses and zoning (including when adjacent to other municipalities, General Plan classification of the site and all properties within the applicable separation distances set forth in subsection 6, ground equipment, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed Utility Pole and any other structures, and other information deemed by the Planning Administrator to be necessary to assess compliance with this article;
- ii. The setback distance between the proposed Utility Pole and any of the following: adjoining lot lines; public roadways; public sidewalks, private roadways; or any occupied structure.
- iii. The separation distance from towers, Utility Poles and other structures described in the inventory of existing sites submitted, shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known;
- iv. Finishing color, the method of camouflage and, if allowed by the town, the method of illumination;
- v. A description of compliance with the subsections of the Section, and all applicable federal, state or local laws;
- vi. A description of compliance with the Town's design, stealth and concealment, setback / fall requirements, and safety, standards, and all other applicable standards and regulations.
- vii. A notarized statement by the applicant as to whether construction of the Utility Pole will accommodate co-location of additional small wireless facilities for future users;
- viii. Identification of the entities providing the backhaul network for the Utility Pole(s) described in the application and other cellular sites owned or operated by the applicant in the municipality;
- ix. A description of the suitability of the use of existing towers, Utility Poles, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed Utility Pole.

- x. A description of the feasible alternative location(s) of future Utility Poles within the Town of Queen Creek based upon existing physical, engineering, technological or geographical limitations in the event the proposed Utility Pole is erected and;
 - xi. A statement of compliance with Federal Communications Commission (FCC) Radio Frequency (RF) exposure standards.
- c. *Factors Considered in Granting Special Use Permits for Utility Poles.* In addition to any standards for consideration of special use permit applications, the Town Council shall consider the following factors in determining whether to issue a conditional use permit, although the Town Council may waive or reduce the burden on the applicant of one (1) or more of these criteria if the Town Council concludes that the goals of this Ordinance are better served thereby:
- i. Height of the proposed Utility Pole;
 - ii. Proximity of the Utility Pole to adjoining lot lines, public roadways, private roadways, public sidewalks, residential structures, any occupied structures and residentially zoned district boundaries;
 - iii. Nature of uses on adjacent and nearby properties;
 - iv. Surrounding topography;
 - v. Surrounding tree coverage and vegetation;
 - vi. Design of the Utility Pole, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - vii. Availability of suitable existing towers, utility poles, other structures, or alternative technologies not requiring the use of Utility Poles, as discussed in section e below.
- d. *Availability of Suitable Existing Towers, Other Structures, or Alternative Technology.* No new Utility Pole subject to this Section 6.9(I) shall be permitted in the public right of way unless the applicant demonstrates to the reasonable satisfaction of the Town Council that no existing tower, utility pole, structure, or alternative technology that does not require the use of Utility Poles subject to this Section 6.9(I) can accommodate the applicant's proposed wireless facility. An applicant shall submit information requested by the Town Council related to the availability of suitable existing towers, utility poles, other structures, or alternative technology. Evidence submitted to demonstrate that no existing tower,

utility pole, structure, or alternative technology can accommodate the applicant's proposed Utility Pole may consist of any of the following:

- i. No existing towers, structures, or utility poles are located within the geographic area which meets applicant's engineering requirements;
- ii. Existing towers, utility poles, or structures are not of sufficient height to meet applicant's engineering requirements;
- iii. Existing towers, utility poles, or structures do not have sufficient structural strength to support applicant's proposed small wireless facility and related equipment;
- iv. The applicant's proposed small wireless facility would cause electromagnetic interference with the antenna or small wireless facility on the existing towers or structures, or the antenna or small wireless facility on the existing towers or structures would cause interference with the applicant's proposed small wireless facility.
- v. The fees, costs, or contractual provisions required by the owner in order to share an existing tower, utility pole, or structure or to adapt an existing tower, utility pole, or structure for sharing exceed the costs of new Utility Pole development.
- vi. The applicant demonstrates that there are other limiting factors that render existing towers, utility poles, or structures unsuitable; or
- vii. The applicant demonstrates that an alternative technology that does not require the use of Utility Poles, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable.

4. *Setbacks.* The following setback requirements shall apply to all Utility Poles. The Town Council may reduce the setback requirements if the goals of this subsection would be better served.

- a. *Setbacks for Utility Poles.* Utility Poles shall be set back a distance equal to at least one-hundred percent (100%) of the height of the Utility Pole from any: adjoining lot line; public roadway; private roadway; public sidewalk, or any occupied structure. The separation distances from residential uses shall be in accordance with Table 6.9-1 set forth above.

5. *Co-Location.*

- a. *Good Faith.* Applicants and permittees shall cooperate and exercise good faith in co-locating wireless telecommunications facilities on the same Utility Pole, if the

Town so requests. Good faith shall include sharing technical information to evaluate the feasibility of co-location, and may include negotiations for erection of a replacement Utility Pole to accommodate co-location. A competitive conflict to co-location or financial burden caused by sharing such information normally will not be considered as an excuse to the duty of good faith.

- b. *Third Party Review.* In the event a dispute arises as to whether a permittee has exercised good faith in accommodating other users, the Town may require the applicant to obtain a third party technical study at the applicant's expense. The Town may review any information submitted by the applicant and permittee(s) in determining whether good faith has been exercised.
- c. *Exceptions.* No co-location may be required where the shared use would or does result in significant interference in the broadcast or reception capabilities of the existing wireless telecommunications facilities or failure of the existing wireless telecommunications facilities to meet federal standards for emissions.
- d. *Violation; Penalty.* Failure to comply with co-location requirements when feasible may result in denial of a permit request or revocation of an existing permit.

6. *Minimum Setbacks and Separation:*

- a. *Separation Distances between Utility Poles.* Separation distances between Utility Poles subject to his Section 6.9(I) shall be applicable for and measured between the proposed Utility Pole and preexisting Utility Poles subject to zoning. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed Utility Pole. The separation distances (listed in linear feet) shall be as shown in Table 6.9-2. However, the Town Council may modify the separation distance to better serve the purposes of this section.

7. *Removal of Utility Poles.* Any Utility Pole that is not operated for a continuous period of thirty (30) days shall be considered abandoned, and the owner of such Utility Pole shall remove the same within thirty (30) days of receipt of notice from the Town of Queen Creek notifying the owner of such abandonment. Failure to remove an abandoned Utility Pole within said thirty (30) day period shall be grounds to remove the Utility Pole at the owner's expense. If there are two (2) or more users of a single Utility Pole, then this provision shall not become effective until all users cease using the Utility Pole for the prescribed period.

J. Small Wireless Facilities

1. *Applicability.*

- a. *Small Wireless Facilities Subject to Zoning.* New small wireless facilities that exceed ten (10) feet above the utility pole or wireless support structure (defined as including a monopole if there was an existing monopole in the ROW) and exceed

fifty (50) feet above ground level shall be subject to the requirements of this Section 6.9(J) of the Town's Zoning Ordinance.

- b. *Non-applicability.* This section only applies to SWFs that are subject to zoning as described in subsection a, and shall not be construed to apply to SWFs that do not meet the qualifications of subsection a.

2. *General Requirements.*

- a. *Inventory or Existing Sites.* Each applicant for a SWF shall provide to the Planning Administrator an inventory of its existing small wireless facilities that are either within the jurisdiction of the Town of Queen Creek or within one (1) mile of the border thereof, including specific information about the location, height, and design of each tower or utility pole.
- b. *Aesthetics.* SWFs subject to this Section 6.9(J) shall meet the following requirements:
 - i. SWFs shall be configured in a way that minimizes adverse impacts by careful design, and innovative camouflaging techniques or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness; and,
 - ii. At a SWF site, the design of the ground equipment and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
- c. *Lighting.* SWFs shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
- d. *State or Federal Requirements.* All SWFs must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate SWFs. If such standards and regulations are changed, then the owners of the SWF governed by this Section shall bring such SWF into compliance with revised standards and regulations within six (6) month of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring SWF into compliance with such revised standards and regulations shall constitute grounds for the removal of the SWF at the owner's expense.
- e. *Building Codes; Safety Standards.* To ensure the structural integrity of SWFs, the owner of the SWF shall ensure that is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association (EIA) and by the Telecommunications Industries Associations (TIA), as amended from time to time. If, upon inspection, the Town of Queen Creek concludes that a SWF fails

to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the Utility Pole, the owner shall have thirty (30) days to bring such SWF into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the SWF at the owner's expense.

- f. *Not Essential Services.* SWFs shall be regulated and permitted pursuant to this chapter and shall not be regulated or permitted as essential services, public utilities, or private utilities.
- g. *Franchises.* The Town may require owners and / or operators of SWFs shall certify that all franchises required by law for the construction and / or operation of a wireless communication system in the Town of Queen Creek have been obtained and shall file a copy of all required franchises with the Planning Administrator. The Town Council may waive such requirements if the goals of this chapter would be better served thereby.
- h. *Public Notice.* For purposes of this Section, any conditional use request shall require public notice pursuant to section 3.5 of this Ordinance except that the notice required shall include posting of the property, and mailing to all property owners within three-hundred feet (300') of the proposed use, and publication in a newspaper of general circulation regardless of any expression to the contrary in Section 3.5.
- i. *Signs.* No signs shall be allowed on a SWFs or on any portion of the premises leased for wireless telecommunication use.
- j. *Security Fencing.* SWFs shall be enclosed by security fencing not less than six feet (6') in height and no more than eight feet (8') in height, shall be constructed of a block or masonry and shall be equipped with an appropriate anti-climbing device; provided, however, that the Town Council may waive such requirements as it deems appropriate.
- k. *Co-Location.* The Town of Queen Creek encourages small cell wireless providers to co-locate small wireless facilities and to submit applications which utilize co-location with an existing wireless telecommunications provider.
- l. *Applicability of Town's Reasonable Standards.* The Town may, in its absolute discretion, require additional compliance with the Town's reasonable design standards and stealth and concealment standards. Compliance with Section 6.9 (J)(2) of this Ordinance shall not be construed as compliance with the Town's design or stealth and concealment standards.

3. *Conditional Use Permits for SWFs.*

- a. *General.* The following provisions shall govern the issuance of conditional use permits for SWFs by the Town Council:

- i. No SWF subject to this Section 6.9(J) shall be developed, located, constructed, or operated unless or until a conditional use permit has been issued by the town.
 - ii. Applications for conditional use permits under this Section shall be subject to the procedures and requirements of Section 3.5 of this Ordinance, except as modified in this Section;
 - iii. In granting a conditional use permit, the Town Council may impose conditions to the extent such conditions are necessary to minimize any adverse effect of the proposed SWF on adjoining properties;
 - iv. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by an Arizona licensed professional engineer;
 - v. An applicant for a conditional use permit shall submit the information described in this section and a nonrefundable fee established pursuant to a Resolution of the Town Council; and,
 - vi. A Conditional Use Permit issued under this Section shall be conditioned upon verification by the Engineer or his designee that such SWF structure is structurally sound. Such verification shall be received by the applicant prior to submission and at five (5) intervals from the date of issuance of such permits.
- b. *Information Required.* In addition to any information required for applications for conditional use permits, as defined in the Town's application(s) and / or process guide(s), on file with the Town's Development Services Department, applicants for a conditional use permit for a SWF shall submit the following information:
- i. A scaled site plan clearly indicating the location, type and height of the proposed SWF, adjacent land uses and zoning (including when adjacent to other municipalities), General Plan classification of the site and all properties within the applicable separation distances set forth in subsection 6, ground equipment, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed SWF and any other structures, and other information deemed by the Planning Administrator to be necessary to assess compliance with this article;
 - ii. The setback distance between the proposed SWF and any of the following: adjoining lot lines; public roadways; public sidewalks, private roadways; or any occupied structure.
 - iii. Finishing color and, the method of camouflage and illumination;
 - iv. A description of compliance with the subsections of the Section, and all applicable federal, state or local laws;

- v. A description of compliance with the Town's design, stealth and concealment, setback / fall requirements, and safety, standards, and all other applicable standards and regulations.
 - vi. A notarized statement by the applicant as to whether construction of the SWF will accommodate co-location of additional small wireless facilities for future users;
 - vii. Identification of the entities providing the backhaul network for the SWF(s) described in the application and other cellular sites owned or operated by the applicant in the municipality;
 - viii. A description of the suitability of the use of existing towers, utility poles, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed SWF.
 - ix. A description of the feasible alternative location(s) of future SWFs within the Town of Queen Creek based upon existing physical, engineering, technological or geographical limitations in the event the proposed SWF is erected and;
 - x. A statement of compliance with Federal Communications Commission (FCC) Radio Frequency (RF) exposure standards.
- c. *Factors Considered in Granting Special Use Permits for SWFs.* In addition to any standards for consideration of special use permit applications, the Town Council shall consider the following factors in determining whether to issue a conditional use permit, although the Town Council may waive or reduce the burden on the applicant of one (1) or more of these criteria if the Town Council concludes that the goals of this Ordinance are better served thereby:
- i. Height of the proposed SWF;
 - ii. Proximity of the SWF to adjoining lot lines, public roadways, private roadways, public sidewalks, residential structures, any occupied structures and residentially zoned district boundaries;
 - iii. Nature of uses on adjacent and nearby properties;
 - iv. Surrounding topography;
 - v. Surrounding tree coverage and vegetation;
 - vi. Design of the SWF, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

- vii. Availability of suitable existing towers, utility poles, other structures, or alternative technologies not requiring the use of a SWF, as discussed in section e below.
- d. *Availability of Suitable Existing Towers, Other Structures, or Alternative Technology.* No new SWF subject to this Section 6.9(J) shall be permitted in the public right of way unless the applicant demonstrates to the reasonable satisfaction of the Town Council that no existing tower, utility pole, structure, or alternative technology that does not require the use of SWF can accommodate the applicant's proposed wireless facility. An applicant shall submit information requested by the Town Council related to the availability of suitable existing towers, utility poles, other structures, or alternative technology. Evidence submitted to demonstrate that no existing tower, utility pole, structure, or alternative technology can accommodate the applicant's proposed SWF may consist of any of the following:
- i. No existing towers, structures, or utility poles are located within the geographic area which meets applicant's engineering requirements;
 - ii. Existing towers, utility poles, or structures are not of sufficient height to meet applicant's engineering requirements;
 - iii. Existing towers, utility poles, or structures do not have sufficient structural strength to support applicant's proposed small wireless facility and related equipment;
 - iv. The applicant's proposed small wireless facility would cause electromagnetic interference with the antenna or small wireless facility on the existing towers or structures, or the antenna or small wireless facility on the existing towers or structures would cause interference with the applicant's proposed small wireless facility.
 - v. The fees, costs, or contractual provisions required by the owner in order to share an existing tower, utility pole, or structure or to adapt an existing tower, utility pole, or structure for sharing exceed the cost of new SWF development.
 - vi. The applicant demonstrates that there are other limiting factors that render existing towers, utility poles, or structures unsuitable; or
 - vii. The applicant demonstrates that an alternative technology that does not require the use of towers, utility poles, or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable.

4. *Co-Location.*
 - a. *Good Faith.* Applicants and permittees shall cooperate and exercise good faith in co-locating wireless telecommunications facilities on the same utility pole, Utility Pole, monopole, or other structure if the Town so requests. Good faith shall include sharing technical information to evaluate the feasibility of co-location, and may include negotiations for erection of a replacement SWFs to accommodate co-location. A competitive conflict to co-location or financial burden caused by sharing such information normally will not be considered as an excuse to the duty of good faith.
 - b. *Third Party Review.* In the event a dispute arises as to whether a permittee has exercised good faith in accommodating other users, the Town may require the applicant to obtain a third party technical study at the applicant's expense. The Town may review any information submitted by the applicant and permittee(s) in determining whether good faith has been exercised.
 - c. *Exceptions.* No co-location may be required where the shared use would or does result in significant interference in the broadcast or reception capabilities of the existing wireless telecommunications facilities or failure of the existing wireless telecommunications facilities to meet federal standards for emissions.
 - d. *Violation; Penalty.* Failure to comply with co-location requirements when feasible may result in denial of a permit request or revocation of an existing permit.
5. *Removal of SWFs.* Any SWF that is not operated for a continuous period of thirty (30) days shall be considered abandoned, and the owner of such SWF shall remove the same within thirty (30) days of receipt of notice from the Town of Queen Creek notifying the owner of such abandonment. Failure to remove an abandoned SWF within said thirty (30) day period shall be grounds to remove the SWF at the owner's expense. If there are two (2) or more users of a single SWF, then this provision shall not become effective until all users cease using the SWF for the prescribed period.

Small Cell Wireless Facility Proposed Fees

1. Use of Right-of-Way Fee (for the use of the right-of-way, including construction, installation, maintenance, modification, operation, or replacement of the utility pole or collocation of small wireless facility)
 - \$0

2. Use Fee for Small Wireless Facility on Town-owned pole in the right-of-way:
 - \$50 per pole, per year, per collocation
 - \$100 per small wireless facility, for the first 5 wireless facilities addressed in an application; and \$50 for each additional small wireless facility (up to 25 similar small wireless facilities may be addressed in one application).
 - Maximum \$750 for utility poles

3. Use Fee for Small Wireless Facility on a Third Party-owned Pole in the right-of-way:
 - \$50 per pole, per year, per collocation

2018

Town of Queen Creek

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

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

Table of Contents

Table of Contents.....	i
Definitions	1
Small Wireless Facility on Existing Streetlight.....	3
Small Wireless Facility on Traffic Signal Pole	6
Small Wireless Facility on Existing Utility Pole.....	9
Small Wireless Facility on New Poles in ROW	11
Common Standard Design Concepts, Requirements and Details	14
Town of Queen Creek Contacts	20
Exhibit A1	
Calculation Points for Height of an Existing Streetlight with Separated Luminaire Mast Arm	21
Exhibit A2	
Calculation Points for Height of an Existing Streetlight with Integrated Luminaire Mast Arm.....	22
Exhibit B	
Calculation Points for Height of Existing Traffic Signal Pole.....	23
Exhibit C	
Dog House – Cable Transition from Underground to Electric Utility Pole.....	24
Exhibit D1	
Antenna Shrouds – 45 Degrees	25
Exhibit D2	
Antenna Shrouds – 90 Degrees	26
Exhibit D3	
Unacceptable Visible Cables	27
Exhibit E1	
Examples of Electrical Meter Pedestals – “Myers” or “Milbank” Style	28

Exhibit E2
Ground Equipment Screening Examples..... 29

Exhibit F
Cannister Antenna..... 31

Definitions
Standard Design Requirements for Small Wireless Facility

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

district, or a utility easement that does not authorize the deployment sought by the wireless provider.

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

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

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

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

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

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

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

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

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

“Town Center” means the area within the Town Center Boundary as shown on the Town’s General Plan.

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

Town of Queen Creek
Standard Design Requirements
Small Wireless Facility on Existing Streetlight

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

A. Pole Criteria:

1. *Purpose of Streetlight Pole:* The primary purpose of the pole shall remain as a pole structure supporting a streetlight luminaire and related streetlight fixtures used to provide lighting to the Town ROW. The attachment of wireless equipment to an existing streetlight pole or to a replacement pole that impedes this primary purpose will not be approved.
2. *General Requirement:*
 - a) An SWF shall be designed to blend in with the surrounding streetscape with minimal to any visual impact.
 - b) A replacement pole shall match the Town of Queen Creek standard streetlight pole, as closely as possible, in use by the Town of Queen Creek in the general vicinity, subject to more specific criteria herein.
 - c) Existing Streetlights within the Town Center shall be replaced with a decorative replacement pole matching the existing design, modified to accommodate the wireless equipment. Where possible, the antennas shall be concealed within the replacement pole or an omni-directional, single-canister antenna (or similar) so as to minimize the visual impact, or as otherwise approved by the Town.
 - d) As specified in Section 6.14 of the Town of Queen Creek's *Wireless Facilities Standard Terms and Conditions*, for each individual pole type or style used to support the wireless equipment, one spare replacement pole shall be provided by the wireless provider to Town in advance so the pole can be replaced promptly in case of damage or destruction.
 - e) All plans shall be signed and sealed by a Professional Engineer licensed in the State of Arizona.
 - f) All other standard Town engineering and technical details shall apply.
3. *Specific Criteria:*
 - a) **New or Replacement Pole Height**

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

 - 1) Up to a ten (10) foot increase, not to exceed fifty (50) feet total (whichever is less), subject to the additional limitations in A.R.S. §9-592(I); or
 - 2) Up to forty (40) feet above ground level, per A.R.S. §9-592(J).
 - b) **Overall Height of Replacement Pole**
 - 1) The "base" height of an existing streetlight pole shall be the height of the vertical pole section from the existing grade. The height of the luminaire mast arm, if higher than the vertical pole section, shall not be used to determine the new overall height of the replacement pole.
 - 2) If the antennas are the highest vertical element of the site, then the new overall height of the replacement pole is measured from the existing grade to the top of the canister, top of the omni-directional antenna, or the top of the panel antenna.

- 3) Replacement poles in the Town Center shall match the existing height of Town's decorative, existing poles except as otherwise approved by the Town.
- c) Increase in Outside Diameter (OD) of Pole
The non-tapered replacement pole outside diameter (OD) of the base section shall be equal to the top section, and the OD shall not exceed eight and five-eighths (8-5/8) inches (the pole manufacturing industry standard OD for an 8 inch diameter pole) or a 100% increase in diameter of the original pole, whichever is less.
- d) Luminaire Mast Arms
 - 1) All luminaire mast arms shall be the same length as the original luminaire arm, unless the Town requires the mast arm to be different (longer or shorter) based upon the location of the replacement pole.
 - 2) Unless otherwise approved, all luminaire mast arms shall match the arc (if applicable) and style of the original luminaire arm.
 - 3) The replacement luminaire mast arm shall be at the same height above the ground as the existing luminaire.
- e) Luminaire Fixtures
 - 1) All replacement poles shall have the Town standard light-emitting diode (LED) light fixture installed.
 - 2) All replacement light fixtures shall have a new Town standard photo-cell or sensor provided by the wireless provider.
- f) Pole Foundation
 - 1) All pole foundations shall conform to the Town's adopted standards and specifications on streetlight design and shall be modified for wireless communications equipment and cables.
 - 2) The Town, in its sole discretion, may require the pole foundation design to be "worst case" for all soil conditions.
 - 3) A separate, one-inch diameter conduit shall be installed in the pole foundation for the Town's luminaire wire and any additional Town wires or cables. The Town's conduit shall be trimmed to three (3) inches above the top of the pole foundation.
 - 4) The height of the pole foundation shall be two (2) inches above finished grade. If the pole foundation encroaches into any portion of the sidewalk, then the pole foundation shall be flush with the sidewalk.
 - 5) Shrouds for the streetlight pole mounting bolts may be required for the replacement pole.
- g) Painting of Replacement Pole
 - 1) If the replacement pole is an unpainted galvanized pole, the pole shall not be painted or have a finish unless otherwise specified by the Town.
 - 2) For powder coated or otherwise painted type poles, the wireless provider shall replace with same powder coated color and/or color combination, or as otherwise required by the Town.
- h) Painting Antennas and Mounting Equipment
 - 1) All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and other equipment mounted on a new or replacement unpainted galvanized pole shall be painted Sherwin Williams "Web Grey" (SW7075) color or equivalent, unless specified otherwise by the Town.
 - 2) All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and all other equipment mounted on a painted new or replacement pole shall be painted a color specified by the Town.

- i) Wireless provider shall install pole numbers on each replacement pole to match the number on the existing streetlight pole being replaced or as otherwise requested by the Town.

Town of Queen Creek
Standard Design Requirements
Small Wireless Facility on Traffic Signal Pole

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

A. Pole Criteria:

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

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

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

The height of the replacement pole is measured from grade to the top of the canister, top of the omni-directional antenna, or the top of the panel antenna if the antennas are the highest elements.
 - c) **Increase in Outside Diameter (OD) of Pole**
 - 1) If the replacement pole is a taper design, the diameter of the base section of the replacement pole OD shall not exceed twelve (12) inches or a 100% increase in the OD of the base section, whichever is less.
 - 2) If the replacement pole is non-tapered, then the diameter of the base section shall be equal to the top section and the OD shall not exceed twelve (12) inches or a 100% increase, whichever is less.

- d) Signal Head Mast Arms
 - 1) The traffic signal head mast arms shall be the same length as the original signal head mast arm unless the Town requires the mast arm to be different (longer or shorter) based upon the location of the replacement pole.
 - 2) All signal head mast arms shall match the arc (if applicable) and style of the original signal head mast arm.
- e) Luminaire Mast Arms
 - 1) All luminaire mast arms shall be the same length as the original luminaire arm unless the Town requires the mast arm to be different (longer or shorter) based upon the location of the replacement pole.
 - 2) All luminaire mast arms shall match the arc (if applicable) and style of the original luminaire arm.
- f) Signal Heads
 - 1) All existing signal heads shall be replaced, at no cost to Town, with new light-emitting diode (LED) signal heads, per Town of Queen Creek Traffic Engineering Standard Details.
 - 2) All signal heads shall be procured from a Town approved signal heads supplier or manufacturer.
- g) Luminaire Fixtures
 - 1) All replacement poles shall have the Town standard LED light fixture installed.
 - 2) All replacement light fixture shall have a new photo-cell or sensor installed to Town standard.
- h) Other Town Elements on Signal Mast Arm or Pole

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

All street name plates or signs, directional signs and any other Town approved signs shall be replaced with new signs at no cost to the Town. All signs and attachments shall be procured from a list of Town approved suppliers.
- j) Traffic Signal Pole Foundation
 - 1) All pole foundations shall conform to the Town's standards and specifications on traffic signal pole design and shall be modified for wireless communications equipment, hand holes and cables.
 - 2) The wireless provider shall install a three (3) inch diameter (OD) conduit in the pole foundation for the Town's cables and wires for the signal heads, luminaire and devices on the signal mast arm and luminaire mast arm. The Town's conduit shall be trimmed to three (3) inches above the top of the pole foundation.
 - 3) In addition to the conduits for the Town's use inside the pole, the wireless provider shall install one of the two options for its cables and wires:
 - a) One, six (6) inch diameter (OD) conduit in the pole foundation; or
 - b) Two, four (4) inch diameter (OD) conduits in the pole foundation. The length of the conduit shall extend from the pole foundation to six (6) inches above the signal head mast arm.

- 4) Pole Foundation – Height Above Ground Level
 - a) If the pole foundation is in a landscaped or unimproved area, the height of the caisson shall be two (2) inches above finished grade. However, if the pole foundation is adjacent to or within a sidewalk or ramp, the height of the pole foundation shall be flush with the surface of the immediate area.
 - b) Shrouds for the traffic signal pole mounting bolts may be required for the replacement pole.
- k) Painting of Pole, Antennas and Mounting Equipment
 - 1) Specifications on paint color and painting process are provided in the Town of Queen Creek Traffic Engineering Standard Details or shall otherwise be provided by the Town.
 - 2) For powder-coated traffic signal poles, the wireless provider shall replace with same powder-coated color and/or color combination as approved by the Town.
- l) Construction of Traffic Signal

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

Town of Queen Creek
Standard Design Requirements
Small Wireless Facility on Existing Utility Pole

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

A. Pole Criteria:

1. *Purpose of Utility Pole:* The primary purpose of the pole shall remain as a pole structure supporting a cables and wires used to provide communications services and electric distribution in the Town ROW. The attachment of wireless equipment to an existing third party-owned utility pole that impedes this primary purpose will not be approved.
2. *General Requirement:*
 - a) An SWF shall be designed to blend in with the surrounding streetscape with minimal to any visual impact.
 - b) A SWF mounted on an existing third party-owned utility pole is subject to more specific criteria below.
 - c) All plans shall be signed and sealed by a Professional Engineer licensed in the State of Arizona.
3. *Specific Criteria:*
 - a) Replacement Pole Height
A replacement pole may be installed without zoning review if one of the two height requirements is met:
 - 1) Up to a ten (10) foot increase, not to exceed fifty (50) feet total (whichever is less), subject to the additional limitations in A.R.S. §9-592(I); or
 - 2) Up to forty (40) feet above ground level, per A.R.S. §9-592(J).
 - b) Overall Height of Replacement Utility Pole
 - 1) The “base” height of an existing utility pole shall be the height of the vertical pole section from the existing grade.
 - 2) If the antennas are the highest vertical element of the site, then the new overall height of the replacement pole is measured from the existing grade to the top of the canister, top of the omni-directional antenna, or the top of the panel antenna.
 - c) Use of Existing Pole – Wood
 - 1) An existing wood pole used for a SWF shall have the antennas contained within an eighteen (18) inch (OD) canister mounted at the top of the pole.
 - 2) Unless otherwise approved, the cables and wires from the base of the pole to the antennas shall be installed in a conduit or cable chase outside of the pole, facing away from the street or away from on-coming traffic.
 - 3) If a “dog house” (see *Exhibit C*) is required as a transition point connecting the underground cables and wires from the ground mounted equipment to the pole, the Town shall provide the maximum size, dimension and shape of the dog house on a case-by-case basis.

d) Use of Existing Pole – Metal

- 1) An existing metal pole used for a SWF shall have the antennas contained within an eighteen (18) inch (OD) canister mounted at the top of the pole.
- 2) Panel antennas on a metal pole shall have the same “RAD center” (center of radiation) so the antennas will be at the same height on the pole.
- 3) The cables and wires from the base of the pole to the antennas shall be installed in installed within the pole, or, if approved by the Town, in a conduit or cable chase on the outside of the pole, facing away from the street or away from on-coming traffic.
- 4) If a “dog house” (see *Exhibit C*) is required as a transition point connecting the underground cables and wires from the ground mounted equipment to the pole, the Town shall provide the maximum size, dimension and shape of the dog house on a case-by-case basis.

e) Painting of Pole and Dog House

- 1) If the replacement pole is an unpainted galvanized pole, the pole shall not be painted or have a finish unless otherwise specified by the Town.
- 2) If the existing or replacement pole includes a dog house for the transition of the cables and wires to the pole, the dog house shall be painted the same color as the pole or a color specified by the Town.

f) Painting Antennas and Mounting Equipment

- 1) All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and other equipment mounted on a new or replacement unpainted galvanized pole shall be painted Sherwin Williams “Web Grey” (SW7075) color or equivalent, unless specified otherwise by the Town.
- 2) All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and all other equipment mounted on a painted new or replacement pole shall be painted a color specified by the Town.
- 3) If the antenna is mounted on a wood pole, the color of the antenna, antenna canister, mounting brackets and posts, shrouds and cable chases shall be painted a color specified by the Town that will closely match the color of the wood, or as otherwise specified by the Town to minimize visual impact.

g) Ground Mounted Equipment

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

Town of Queen Creek
Standard Design Requirements
Small Wireless Facility on New Poles in ROW

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

A new wireless support structure, including a monopole that is up to forty (40) inches in outside diameter (OD), shall incorporate the highest level of stealth and concealment of the antennas and wireless equipment in order to minimize the visual impact of the site to the public.

A. Pole Criteria:

1. *Purpose of Wireless Support Structure:* The sole purpose of a new vertical element or wireless support structure is to attach antennas for the provision of wireless services by a wireless provider in the Town's ROW.
2. *General Requirement:*
 - a) A new wireless support structure shall be designed and located to minimize the visual and aesthetic impact of the new vertical element and associated equipment upon the look, feel, theme, and use of the surrounding area.
 - b) New wireless support structures within the Town Center shall match the existing design utilized by the Town, modified to accommodate the wireless equipment. Where possible, the antennas shall be concealed within the replacement pole or an omnidirectional, single-canister antenna (or similar) so as to minimize the visual impact, or as otherwise approved by the Town.
 - c) An SWF shall be designed and located to blend in with the surrounding streetscape with minimal to any visual impact.
 - d) The new wireless support structure shall be architecturally integrated and compatible with the use of the surrounding area.
 - e) The height of the new wireless support structure cannot exceed the maximum allowed height of the zoning district that the site is proposed.
 - f) All plans shall be signed and sealed by a Professional Engineer licensed in the State of Arizona.
3. *Specific Criteria:*
 - a) *New Pole Height*

A new wireless support structure may be installed without zoning review if one of the two height requirements are met, see A.R.S. §9-592(I) and A.R.S. §9-592(J):

A.R.S. §9-592(I) states that the small wireless facility in the ROW is not subject to zoning review and approval in Section 9-594 if the utility pole does not exceed the greater of either:

- 1) Ten feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the effective date of this section, that is located within five hundred feet of the new, replacement or modified utility pole and that is in the same right-of-way within the jurisdictional boundary of the authority, but no more than fifty feet above ground level.
- 2) Forty feet above ground level.

A.R.S. §9-592(J) states that,

New small wireless facilities collocated on a utility pole or wireless support

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

b) Overall Height of New Pole

The height of the new wireless support structure is measured from grade to the top of the canister, top of the omni-directional antenna, or the top of the panel antenna if the antennas are the highest elements of the site. Otherwise, the measured height shall be from existing grade to the highest point of the wireless support structure.

c) Outside Diameter of Monopole

The maximum outside diameter of a monopole, as defined in A.R.S. §9-591(13), shall not exceed forty (40) inches.

d) Stealth and Concealment Elements

As part of the stealth and concealment elements of the wireless support structure, the Town may require the wireless provider to install street name plates, directional signs, and other decorative signs or artistic elements on the structure.

- 1) The wireless provider is solely responsible for the cost of all stealth and concealment elements and the installation of other elements required by the Town.
- 2) The wireless provider is responsible for the performance of and any costs incurred for regular upkeep, maintenance and replacement (if necessary) of these stealth and concealment elements.

e) Architectural Integration with Surrounding Area

- 1) The new wireless support structure shall be designed and located in consultation with various internal Town stakeholders and may include external stakeholders.
- 2) No new wireless support structure shall be constructed without the consent and simple majority approval of the key stakeholders.
- 3) The Town may require the new wireless support structure to be constructed of a specific material, or located in an alternate location than originally proposed based on the Town's site plan review, that will enhance the stealth and concealment of the site.

f) Pole Foundation

- 1) The pole foundation for the wireless support structure, if required, shall conform to civil and structural engineering standards acceptable to the Town, with design modifications for wireless communications equipment and cables.
- 2) The height of the pole foundation shall be two (2) inches above finished grade. However, if the pole foundation is adjacent to or within a sidewalk or ramp, the height of the pole foundation shall be flush with the surface of the immediate area.
- 3) Shrouds for the pole mounting bolts may be required.

g) Painting of Wireless Support Structure, Antennas and Mounting Equipment

- 1) The Town shall identify the paint colors, location of paint and any decorative work that may be painted onto the new wireless support structure.
- 2) The Town shall identify the paint colors for the antennas, antenna mounting brackets and posts, antenna shrouds, and cables.
- 3) The Town may require the new wireless support structure to be painted using a powder-coat process.

h) Ground Mounted Equipment

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

Town of Queen Creek
Small Wireless in the ROW
Common Standard Design Concepts, Requirements and Details

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

A. Pole Design & Installation

1. Replacement Pole Clearances – Underground Utilities

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

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

2. Calculating the Base Height of an Existing Pole

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

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

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

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

A traffic signal pole with a luminaire mast arm that is mounted above the signal head mast arm to the pole shall use the top of the vertical portion of the pole as the base height.

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

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

4. Replacement Pole Clearances – Sidewalks

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

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

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

6. Cables, Wires and Jumpers

- a) All cables for the wireless equipment and antennas – except where such cables or wires attach to the ports in the antenna – shall be located inside a conduit, inside the caisson, or inside the pole, as appropriate. There shall not be any “dog house” or externally visible conduit or entry point of the cables unless specified by the Town.
- b) All cables for the wireless equipment and antennas shall exit the pole or conduit at a location, behind the antenna shroud, and shielded from view. It is the intent of the Town that the cables shall not be visible.
 - 1) See Exhibit D1 for examples of appropriately shielded cables.
 - 2) See Exhibit D2 for examples of unacceptable cabling.
- c) All electrical wires for the streetlight luminaire, traffic signal heads, and any Town device on the pole shall be new and connected to the existing power source.

7. Hand-holes

- a) All hand-hole locations shall be called out on the plans.
- b) All hand-holes near antennas shall have the top of the hand-hole no lower than the bottom height of the antennas.
- c) The bottom of the hand-hole should not exceed six (6) inches below the bottom of the antenna.

8. Wireless Facility Identification Information

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

9. Interference with Town Wireless Network

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

10. Cable Chase and Dog Houses

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

B. Removal of Original Pole, Equipment and Pole Foundation

1. Removal of Original Signal Pole, Mast Arm, Signal Heads and Luminaire
 - a) The Town shall determine what original components, (e.g., original pole, mast arm, signal heads and luminaire, etc.) shall be delivered by the wireless provider, at no cost to the Town, to a location specified by the Town.
 - b) If the Town accepts some of the original components, then only those components shall be delivered by the wireless provider to the Town and the remaining components shall be discarded by the wireless provider.
2. Removal of Original Streetlight or Traffic Signal Pole Foundation

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

 - a) Partial Removal

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

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

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

1. *General Requirement:* All antennas shall be installed in a manner that minimizes the visual impact to the general public. In order to minimize the visual impact, wireless providers should use canister antennas, where possible and appropriate. See Exhibit F. All work shall be performed in a professional manner that is consistent with the highest standards of workmanship.
2. *Specific Criteria:*
 - a) Antenna Mounting Posts and Brackets
 - 1) All panel antennas shall be mounted directly to the pole or onto a mounting pole so that the distance from the "face" of the streetlight pole to the back of the antenna does not exceed nine (9) inches.
 - 2) All mounting posts shall be trimmed so that the poles do not extend higher than the top of the antenna or protrude lower than the antenna unless necessary to install the shroud.
 - 3) All pole attached wireless equipment must be a minimum ten (10) feet from the sidewalk elevation.
 - b) Panel Antennas
 - 1) All panel antennas for a small cell site shall fit within an imaginary enclosure of not more than six (6) cubic feet in volume in accordance with A.R.S. §9-591(19)(a). (NOTE: This volume does not include antenna cable shrouds when required.)
 - 2) All panel antennas with exposed cables from the bottom of the antenna shall have a shroud installed on the antenna or antenna mounting posts to conceal the cables. (see Exhibits D1 and D2)
 - a. The type of shroud may be a forty-five (45) degree angle (away from the bottom of the antenna; toward the pole) or a ninety (90) degree angle (parallel to the bottom of the antenna) depending on the location of the site.

- b. The shroud shall extend from the bottom of the antenna to two (2) inches below the bottom of the nearest hand-hole.
- c) Canister Antennas
 - 1) All canister antennas shall fit within an imaginary enclosure of not more than six (6) cubic feet in volume. (Note: This volume does not include the canister as it is a stealth device and not the antenna.)
 - 2) The canister shall be no larger than eighteen (18) inches in diameter (OD).
 - 3) All canister antennas shall be located in a canister that is mounted to a base plate at the top of the vertical section of the replacement pole.
 - 4) All cables protruding from the canister shall be concealed within the canister or by a shroud at the point where the canister is mounted to the base plate.
- d) Remote Radio Heads (RRH) / Remote Radio Units (RRU)

Under State Law §9-591(19)(a), the RRH/RRU is not considered part of the antenna. If allowed, the RRH/RRU shall be calculated as part of “All other wireless equipment associated with this facility...” in A.R.S. §9-591(19)(b) that is subject to the twenty-eight (28) cubic feet maximum size for small cell sites.

 - 1) On a case-by-case basis, the Town in its sole discretion and – upon reviewing the landscape in the immediate surrounding area, the location of the pole, and stealth options, may allow a site to have an RRH/RRU installed on the pole.

D. Ground-mounted Equipment:

1. *General requirement:* All ground-mounted equipment shall be installed in a manner that minimizes the visual and ingress/egress impact to the general public. All work shall be performed in a professional manner that is consistent with the highest standards of workmanship.
2. *Specific criteria:*
 - a) Sight Distance Easements (SDE) and Sight Visibility Triangles (SVT)

All ground-based wireless equipment shall be installed in a location that does not impair or interfere with SDE or SVT safety requirements. To ensure proper sight distance, all Town of Queen Creek Traffic Engineering Standard Details shall apply.
 - b) Ground Equipment Location – Generally

All ground-based wireless equipment, including but not limited to equipment cabinets or power pedestals, shall be placed as far as practical to the back of the ROW while maintaining at least three (3) feet of ingress/egress in the ROW or public utility easement (PUE) around the equipment.
 - c) Ground Equipment Clearances—Underground Utilities
 - 1) All ground-mounted electrical equipment shall maintain minimum horizontal clearance from below-ground utilities:
 - Clearance from water lines shall be at least six (6) feet.
 - Clearance from sewer lines shall be at least six (6) feet.
 - Clearance from telecommunications shall be at least one (1) foot.
 - Clearance from cable television lines shall be at least one (1) foot.
 - Clearance from all other underground infrastructure shall be at least six (6) feet.
 - 2) The Town, in its sole discretion, may grant a variance upon approval from the Town Engineer, from these horizontal separation distances on a case-by-case basis. The approval of a variance is dependent on factors specific to the site.

- 3) In the case where there is an issue with horizontal separation from other underground utilities, the wireless provider may elect to work with the impacted utility to have its lines, pipes or property moved so that minimum clearance is achieved. All relocation work of Town-owned or a privately-owned utility shall be at the sole expense of the wireless provider.
- d) Ground Equipment Clearance – Sidewalks

The ground equipment shall maintain a minimum twelve (12) inch clearance distance from sidewalks. The Town, in its sole discretion, may increase the minimum clearance on a case-by-case basis to ensure the safe use of the sidewalk and adjacent area.
 - e) Compliance with Height Requirements

Evidence or documentation that, where the above-ground structure is over thirty-six (36) inches in height, given its proposed location, the structure will comply or be in compliance with applicable Town of Queen Creek planning and zoning ordinances.
 - f) Screening of Ground Equipment

The Town, in its sole discretion, may require the ground-mounted equipment to be screened; the type of screening materials and design will be addressed on a case-by-case basis. See Exhibit E2 for general screening examples that the Town may consider on a case by case basis.

 - 1) In cases when screening is not required, the Town may specify the location, orientation or paint color of the ground-mounted equipment.
 - 2) For wireless facilities located within the Town Center, the Town may require ground-mounted equipment to be located underground (except for the electricity meters, kill switches, etc.).
 - g) Decals and Labels
 - 1) All equipment manufacturers' decals, logos and other identification information shall be removed unless required for warranty purposes.
 - 2) The wireless provider of the site may place an "Emergency Contact" or "Network Operations Center" decal or emblem to the ground equipment.
 - 3) The ground-mounted equipment shall not have any flashing lights, sirens or regular noise other than a cooling fan that may run intermittently.
 - h) Equipment Cabinets on Residential Property
 - 1) Residential Single-Family Lot

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

Unless otherwise specified by Town, a wireless equipment cabinet with air-conditioning (not a fan only) shall be enclosed by walls and setback a minimum of fifteen (15) feet from lots where the existing or planned primary use is a residential single-family dwelling.
 - i) Electric Company Meter
 - 1) All electric company meters shall be installed in the ROW or PUE. The location of the meter equipment shall have minimum ingress and egress clearance from private property lines and driveways.
 - 2) All electric company meters shall maintain minimum clearance from above-ground utility cabinets and below-ground utilities.

- 3) All electric company meters shall be installed in a location that does not impair or interfere with the SDE or SVT safety requirements of the Town.
- 4) The electric company meters shall be screened or contained within a “Myers-type” or “Milbank-type” pedestal cabinet that is painted to match the ground equipment or as specified by the Town. (*see Exhibit E*)
- 5) In the case where screening is not required, the Town may specify the paint color of the electric company meter cabinet on a case-by-case basis.

Town of Queen Creek Contacts

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

Town Of Queen Creek Small Cell Administrator:

Exhibit A1

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



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



Exhibit A2

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



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



The Top and Bottom Points on a Telescopic Streetlight Pole to Calculate the Vertical Height of the Existing Streetlight Pole
PLUS
Twenty-four (24) inches

Exhibit B

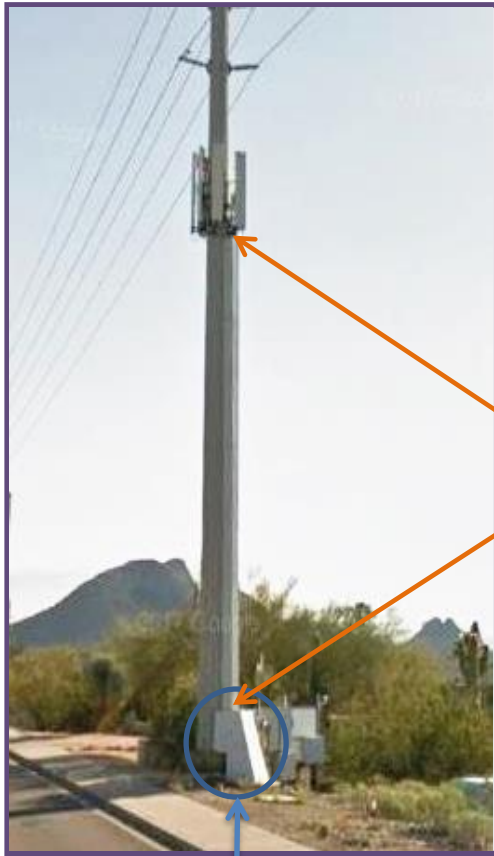
Calculation Points for Height of Existing Traffic Signal Pole



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

Exhibit C

Dog House – Cable Transition from Underground to Electric Utility Pole



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



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

Exhibit D1
Antenna Shrouds – 45 Degrees



Exhibit D2
Antenna Shrouds – 90 Degrees



Exhibit D3
Unacceptable - Visible Cables

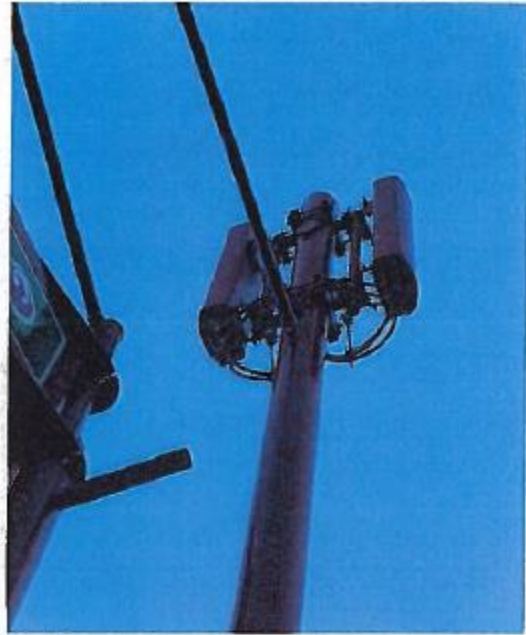
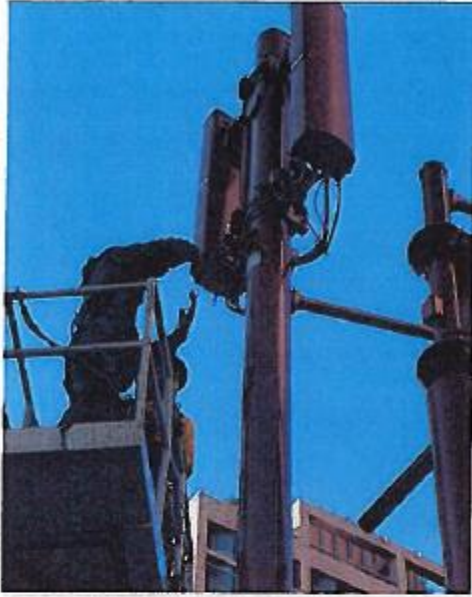


Exhibit E1

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



Exhibit E2

Ground Equipment Screening Examples

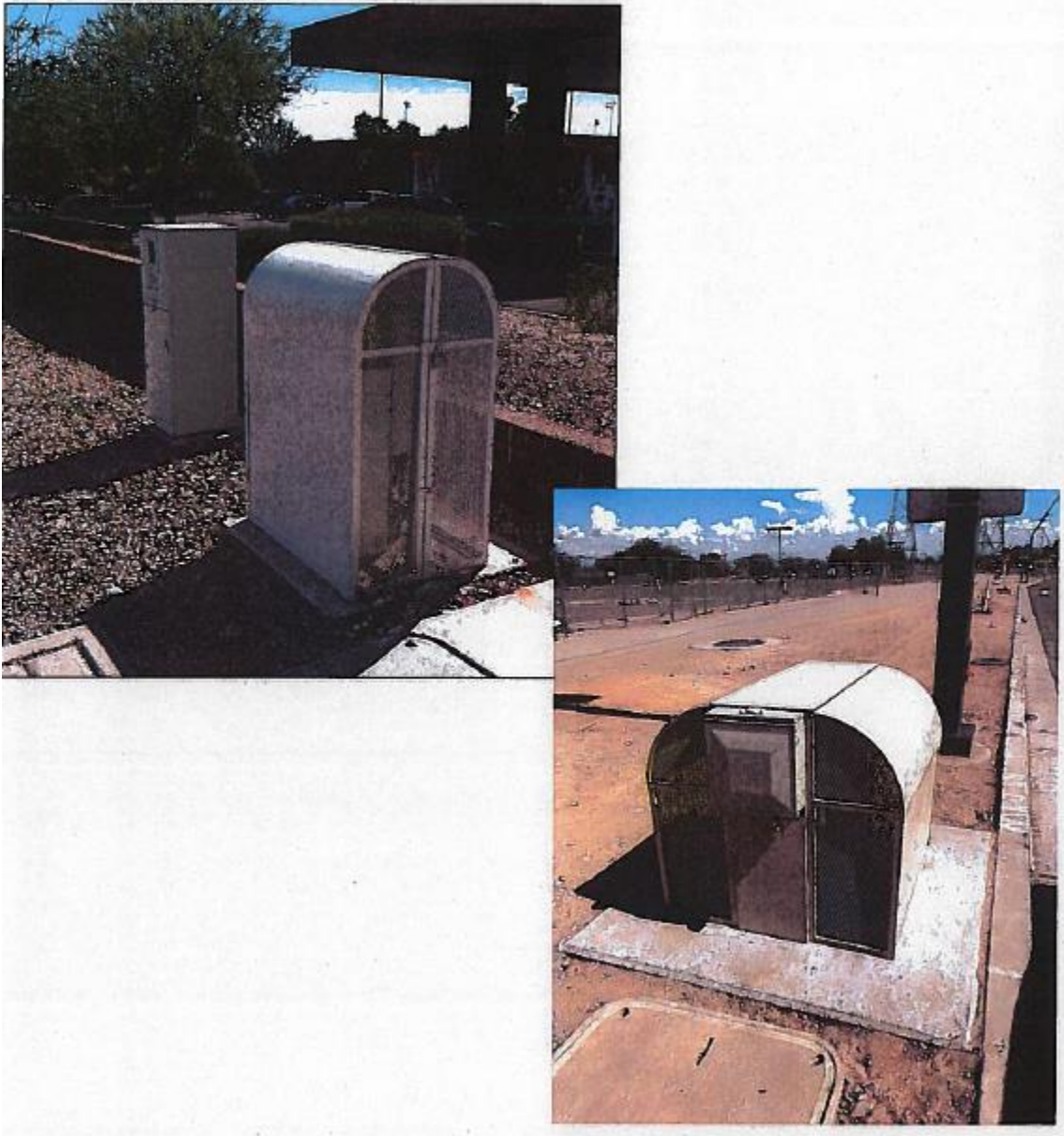


Exhibit E2
Ground Equipment Screening Examples (continued)

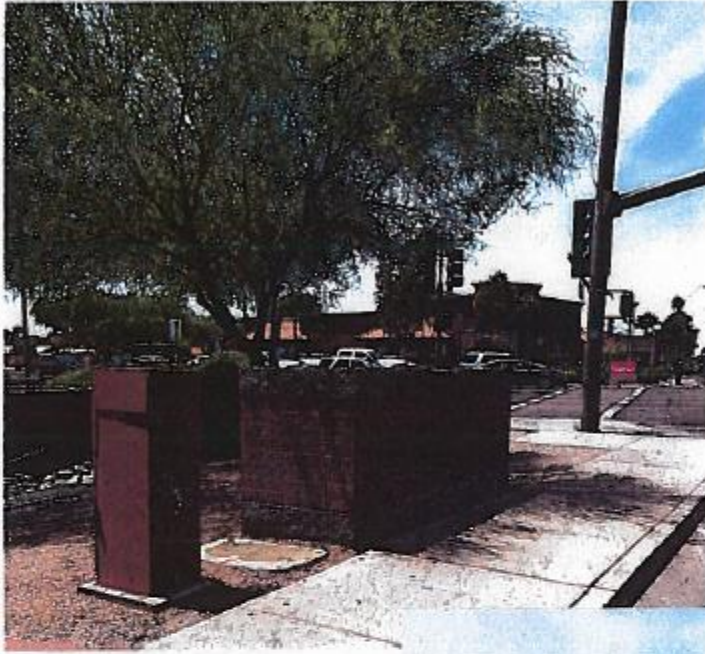
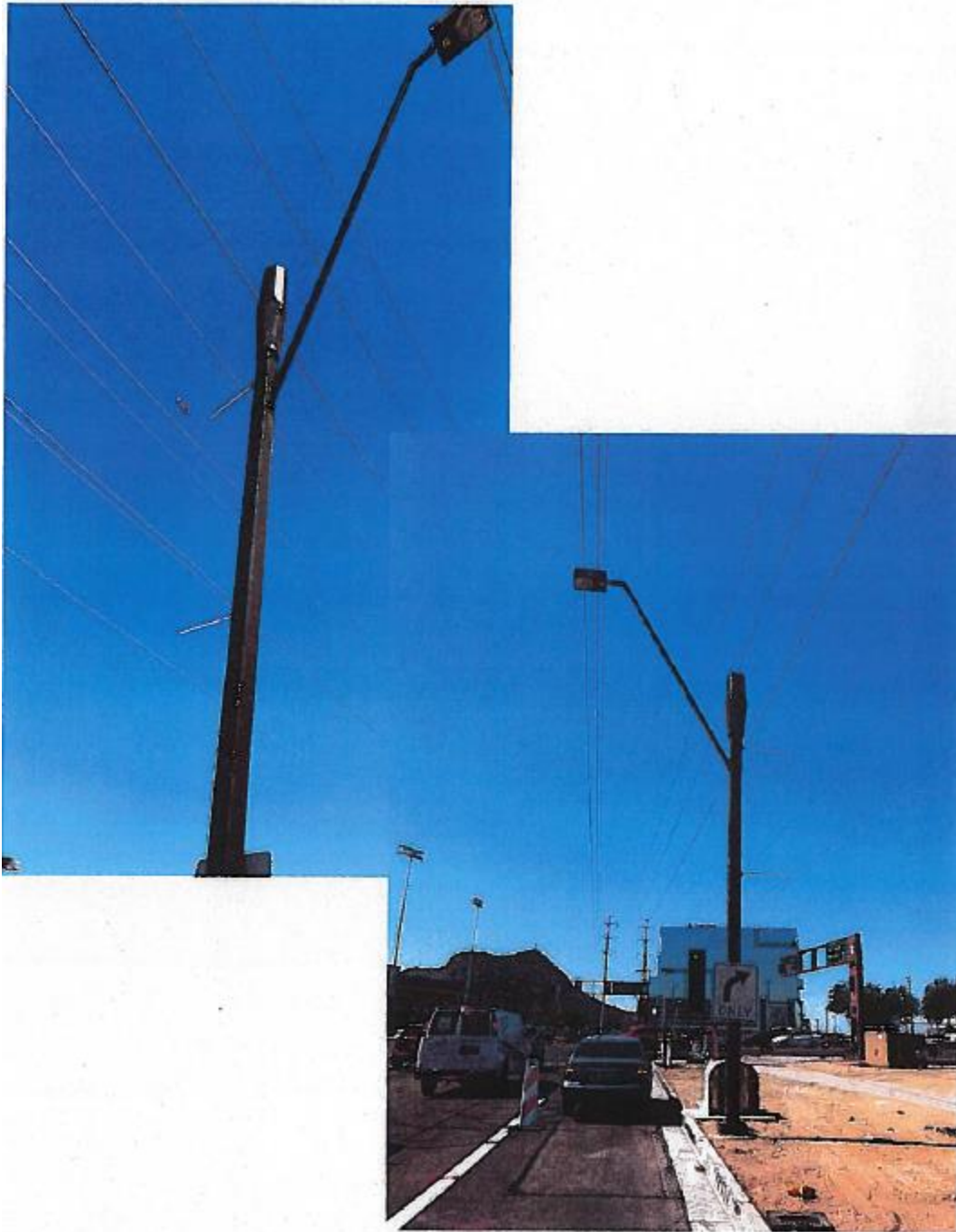


Exhibit F
Canister Antenna



PHOENIX 53749-25 426565v3

WIRELESS FACILITIES STANDARD TERMS AND CONDITIONS

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

RECITALS

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

- g. Because Town's existing streetlight poles and traffic signal poles are not designed to safely support the additional weight and stress of Wireless Facilities, Wireless Service Providers shall be required to provide poles designed to support these facilities to replace existing poles prior to attaching Wireless Facilities.

TERMS

1. DEFINITIONS. For the purposes of the Terms:

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

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

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

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

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

“Encroachment Permit” means a permit issued pursuant to Chapter 11 of the Queen Creek Town Code that allows the Wireless Provider to perform work in the Right-of-way and to install and operate improvements in the Right-of-way.

“FCC” means the Federal Communications Commission.

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

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

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

“RF” means radio frequency.

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

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

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

“Site Permit” means the permit authorizing the installation of Wireless Facilities as defined in A.R.S. §9-591(22) at a specific site in the Town’s Right-of-way.

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

- a) All antennas are located inside an enclosure of not more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of the antenna’s exposed elements could fit within an imaginary enclosure of not more than six (6) cubic feet in volume.
- b) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight (28) cubic feet in volume, or fifty (50) cubic feet in volume if the equipment was ground mounted before the effective date of this section. The following types of associated ancillary equipment are not

included in the calculation of equipment volume pursuant to this subdivision:

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

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

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

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

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

- a) Means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including both of the following:
 - i. Equipment associated with wireless communications.
 - ii. Radio transceivers, antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment, regardless of technological configuration.
- b) Includes small wireless facilities.

- c) Does not include the structure or improvements on, under or within which the equipment is collocated, wireline backhaul facilities, coaxial or fiber-optic that is between wireless support structures or utility poles or coaxial or fiber-optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.
- d) Does not include Wi-Fi radio equipment described in Section 9-506, Subsection I or microcell equipment described in Section 9-584, Subsection E.

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

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

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

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

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

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

- a) Means:
 - i. A freestanding structure, such as a monopole.
 - ii. A tower, either guyed or self-supporting.
 - iii. A sign or billboard.

- iv. Any other existing or proposed structure designed to support or capable of supporting small wireless facilities.
- b) Does not include a utility pole.

2. USE AREAS.

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

- 2.1 Limitations. Notwithstanding anything herein to the contrary, the Use Areas include and are limited to only certain areas that Wireless Provider is permitted to exclusively use and occupy (the "Exclusive Area") and certain areas that Wireless Provider is permitted to use on a shared basis (the "Shared Area"). The Use Areas are defined by the Boundary Plan.
- 2.2 Use Areas Boundary. The Use Areas is the smallest geometric shape that includes the Exclusive Areas and the Shared Areas. The Use Areas exclude other parts of the Street Parcel or and all other land. Wireless Provider shall not occupy or use any other portion of the Street Parcel or adjoining lands. An approved License Agreement or any associated Site Permit(s) does not allow any use by Wireless Provider of land outside the Street Parcel. If any portion of Wireless Provider's work, improvement or equipment is to be located on other land, then such work, improvements and equipment are prohibited unless Wireless Provider first obtains from the owner of said land (including Town, if applicable) a Supplemental Parcel Agreement allowing such work, improvements and equipment.
- 2.3 Exclusive Areas. The Exclusive Areas are limited to the following, if and as defined by the Boundary Plan:
 - 2.3.1 The land area defined as "Enclosure" on the Boundary Plan to be used by Wireless Provider solely for the enclosure housing the electronic ground equipment shown on the Site Plan (the "Enclosure"). Such area is confined to the actual area occupied by the exterior structure and the interior of the enclosure. If the Boundary Plan does not show a clearly defined and correctly labeled "Enclosure" area, then no enclosure area is available for Wireless Provider's use and any enclosure for Wireless Provider's use must be located outside the Street Parcel and authorized by a Supplemental Parcel Agreement.
 - 2.3.2 The area on the Pole defined as "Antennas" on the Boundary Plan to be used by Wireless Provider solely for mounting the

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

- 2.4 Shared Areas. Shared Areas are limited to the following areas, if and as defined by the Boundary Plan:
 - 2.4.1 A motor vehicle Parking space (the "Parking Space") at the "Parking Space" location described on the Boundary Plan to be used by Wireless Provider solely for parking a service vehicle to service the Communications Equipment and for ingress and egress to that Parking Space.
 - 2.4.2 No temporary construction area is provided by these Terms, an approved License Agreement or Site Permit. Wireless Provider must obtain from Town a separate written document giving Wireless Provider permission to work in the Right-of-way, as described elsewhere herein.
 - 2.4.3 An underground cable route (the "Signal Route") labeled as the "Signal Route" described on the Boundary Plan from the Enclosure to the Antenna to be used by Wireless Provider solely for underground radio frequency lines between the Enclosure and the Antenna. Notwithstanding the preceding sentence, the portion of the Signal Route upon the Pole shall not be underground but shall be within the Pole. If the Boundary Plan does not show a clearly defined and correctly labeled "Signal Route" area, then no signal route area is available for Wireless Provider's use and any signal route for Wireless Provider's use must be separately authorized by Town.
- 2.5 Power and Telephone Service. Nothing herein grants permission for Wireless Provider to use any portion of power, telephone or other service routes, if any. Wireless Provider acknowledges that use of the public street Right-of-way or public utility easements for these purposes, if any, is governed by Town's normal Right-of-way rules and policies, and by the franchise agreements between the Town and the electrical and telephone service providers.

- 2.6 Rights in Adjacent Land. Wireless Provider's rights are expressly limited to the real property defined as the "Use Areas" an issued Site Permit. Without limitation, in the event any public Right-of-way or other public or private property at or adjacent to the Use Areas is owned, dedicated, abandoned or otherwise acquired, used, improved or disposed of by Town, such property shall not accrue to Wireless Provider but shall be the Town's property and not subject to the Use Areas.
- 2.7 Variation in Area. In the event the Use Areas consist of more or less than any stated area, Wireless Provider's obligations hereunder shall not be increased or diminished.
- 2.8 Condition of Title. Wireless Provider shall not have power to amend, modify, terminate or otherwise change the Site Documents or create new Site Documents.
- 2.8.1 Town does not warrant its own or any other person's title to or rights to use the Use Areas or any other property.
- 2.8.2 Wireless Provider shall pay, indemnify, defend and hold harmless Town and its agents and representatives of, from and against any and all claims, demands, damages, expenses, interest or penalties of any kind or nature whatsoever, including attorneys', arbitrators' and experts' fees and court costs that arise from or relate to Wireless Provider's non-compliance with the Site Documents.
- 2.9 Condition of Use Areas. The Use Areas are being made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use.
- 2.10 No Real Property Interest. Notwithstanding any provision hereof to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Wireless Provider's rights herein are limited to use and occupation of the Use Areas for the Permitted Uses.
- 2.11 Limited Rights in Use Areas. Wireless Provider's rights in the Use Areas are limited to the specific rights expressly granted in Wireless Provider's approved License Agreement.
- 2.12 Reserved Right and Competing Users and Activities. Notwithstanding anything herein to the contrary, Town specifically reserves to itself and excludes from any Site Permit a non-exclusive delegable right (the "Reserved Right") over the entire Use Areas for all manner of real and

personal improvements and for streets, sidewalks, trails, landscaping, utilities and every other land use of every description. Without limitation:

- 2.12.1 Competing Users. Wireless Provider accepts the risk that Town and others (the “Competing Users”) may now or in the future install their facilities in the Use Areas in locations that make parts of the Right-of-way unavailable for Wireless Provider’s use.
- 2.12.2 Competing Activities. Wireless Provider accepts the risk that there may now or in the future exist upon the Use Areas all manner of work and improvements upon the Use Areas (the “Competing Activities”). The Competing Activities include without limitation any and all laying construction, erection, installation, use, operation, repair, replacement, removal, relocation, raising, lowering, widening, realigning or other dealing with any or all of the following, whether above, upon or below the surface of the Use Areas and whether occasioned by existing or proposed uses of the Right-of-way or existing or proposed uses of adjoining or nearby land:
 - 2.12.2.1 All manner of streets, alleys, sidewalks, trails, ways, traffic control devices, subways, tunnels, trains and gates of every description, and all manner of other transportation facilities and their appurtenances.
 - 2.12.2.2 All manner of pipes, wires, cables, conduits, sewers, pumps, valves, switches, conductors, connectors, poles, supports, access points and guy wires of every description, and all manner of other utility facilities and their appurtenances.
 - 2.12.2.3 All manner of 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.
 - 2.12.2.4 All other uses of the Right-of-way that Town may permit from time to time.
- 2.12.3 Town’s Rights Cumulative. All of Town’s Reserved Rights under various provisions of the License Agreement, these Terms and Site Permits shall be cumulative to each other.

- 2.12.4 Use Priorities. These Terms do not grant to Wireless Provider or establish for Wireless Provider any exclusive rights or priority in favor of Wireless Provider to use the Use Areas. Wireless Provider shall not obstruct or interfere with or prevent any Competing User from using the Use Areas.
- 2.12.5 Regulation. Town shall have full authority to regulate use of the Use Areas and to resolve competing demands and preferences regarding use of the Use Areas and to require Wireless Provider to cooperate and participate in implementing such resolutions. Without limitation, Town may take any or all of the following into account in regulating use of the Use Areas:
 - 2.12.5.1 All timing, public, operational, financial and other factors affecting existing and future proposals, needs and plans for Competing Activities.
 - 2.12.5.2 All other factors Town may consider relevant, whether or not mentioned in the License Agreement, these Terms and Site Permit(s).
 - 2.12.5.3 Differing regulatory regimes or laws applicable to claimed rights, public benefits, community needs and all other factors relating to Competing Users and Competing Activities.
- 2.12.6 Communications Equipment Relocation. Upon one hundred eighty (180) days' notice from Town, Wireless Provider shall temporarily or permanently relocate or otherwise modify the Communications Equipment Relocation (the "Relocation Work") as follows:
 - 2.12.6.1 Wireless Provider shall perform the Relocation Work at its own expense when required by Town's town manager or designee.
 - 2.12.6.2 The Relocation Work includes all work determined by Town to be necessary to accommodate Competing Activities, including without limitation temporarily or permanently removing, protecting, supporting, disconnecting or relocating any portion of the Communications Equipment.
 - 2.12.6.3 Town may perform any part of the Relocation Work that has not been performed within the allotted time. Wireless Provider shall reimburse Town for its

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

- 2.12.6.4 Town and not Wireless Provider shall be entitled to use any of Wireless Provider's facilities that are abandoned in place or that are not relocated on Town's request.
- 2.12.6.5 All Relocation Work shall be subject to and comply with all other provisions of the License Agreement.
- 2.12.7 Disruption by Competing Users. Neither Town nor any agent, contractor or employee of Town shall be liable to Wireless Provider, its customers or third parties for any service disruption or for any other harm caused them or the Communications Equipment due to Competing Users or Competing Activities.
- 2.12.8 Emergency Disruption by Town. Town may remove, alter, tear out, relocate or damage portions of the Communications Equipment in the case of fire, disaster, or other emergencies if Town's town manager or designee deems such action to be reasonably necessary under the circumstances. In such event, neither Town nor any agent, contractor or employee of Town shall be liable to Wireless Provider or its customers or third parties for any harm so caused to them or the Communications Equipment. When practical, Town shall consult with Wireless Provider in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Communications Equipment. In any event, Town shall inform Wireless Provider after such actions. Wireless Provider's work to repair or restore the Communications Equipment shall be Relocation Work.
- 2.12.9 Public Safety. If the Communications Equipment or any other Wireless Provider equipment, improvements or activities present any immediate hazard or impediment to the public, to Town, to Town's equipment or facilities, to other improvements or activities within or without the Use Areas, or Town's ability to safely and conveniently operate the Right-of-way or perform Town's utility, public safety or other public health, safety and welfare functions, then Wireless Provider shall immediately remedy the hazard, comply with Town's requests to secure the Street Parcel, and otherwise cooperate with Town at no expense to Town to remove any such hazard or impediment.

Wireless Provider's work crews shall report the Use Areas within four (4) hours of any request by Town under this paragraph (the "RF Safety Paragraph").

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

3. DURATION; EXTENSIONS.

- 3.1 Term. The original term of each License Agreement shall be for a period of ten (10) years commencing on the effective date stated therein ("Initial Term"). The Term of any associated Site Permits issued to Wireless Provider shall be the same as Wireless Provider's approved License Agreement.
- 3.2 Extensions. The term of the License Agreement may be extended for one (1) additional ten (10) year period ("Extension Term") subject to consent by Town and Wireless Provider, which either may withhold in its sole and absolute discretion. Both Town and Wireless Provider shall be deemed to have elected to extend unless Town or Wireless Provider, respectively, gives notice to the contrary to the other at least ninety (90) days prior to the end of the initial Term.
- 3.3 Holding Over. In any circumstance whereby Wireless Provider would remain in possession or occupancy of the Use Areas after the expiration of this License Agreement (as extended, if applicable), such holding over shall not be deemed to operate as a renewal or extension of the License Agreement or Site Permits, but shall only create a use right from month to month that may be terminated at any time by Town upon thirty (30) days' notice to Wireless Provider, or by Wireless Provider upon sixty (60) days' notice to Town.
- 3.4 Town's Right to Cancel. Notwithstanding anything contained herein to the contrary, Town shall have the unconditional right, with or without cause, to terminate any Site Permit for reasons including but not limited to street widening, Right-of-way abandonment, or development that may impact the

location of the site, upon one hundred eighty (180) days' prior written notice given at any time after the first one hundred eighty (180) days.

- 3.5 Wireless Provider's Right to Cancel. Wireless Provider shall have the unilateral right to terminate any License Agreement without cause upon thirty (30) days' prior written notice. Wireless Provider has no right to terminate any time after an event of default by Wireless Provider has occurred (or an event has occurred that would become a default after passage of time or giving of notice).
- 3.6 Removal and Restoration Obligations. Upon expiration or termination of any License Agreement or Site Permit, or any abandonment of any Wireless Facilities, Wireless Provider shall remove its Wireless Facilities from the Right-of-way, at its sole cost and expense as provided in Section 12.4 hereto.

4. WIRELESS PROVIDER'S PAYMENTS.

Wireless Provider shall make payments to Town as follows:

- 4.1 Use Fee Items. Wireless Provider shall pay to Town each of the following separate and cumulative amounts (collectively the "Use Fees"):
 - 4.1.1 An annual amount (the "Base Use Fee").
 - 4.1.2 An amount (the "Application Fee") based on Wireless Provider's application and permit review and other costs as set out below.
 - 4.1.3 An amount (the "Violation Use Fee") based on certain breaches by Wireless Provider of the License Agreement as set out below.
 - 4.1.4 All other amounts required by the License Agreement.
- 4.2 Base Use Fee Amount. The amount of Base Use Fee Wireless Provider shall pay to Town for each year of this Agreement shall be the total of all applicable fee line items for wireless communications facilities (including without limitation "antenna base fee" and "ground equipment fee", as applicable) as set out in the then current fee schedule as it may be amended from time to time by Town's town council.
- 4.3 Application Fee Amount. The amount of the Application Fee for Small Wireless Facilities under A.R.S. § 9-592 shall be Seven Hundred Fifty Dollars (\$750.00) and the Application Fee for wireless sites under A.R.S. §

Commented [MVP1]: Determine whether to keep, or do we need to post before adopting.

9-594 shall be One Thousand Dollars (\$1000.00). Nothing herein shall prevent the Town from charging any other applicable fees ordinarily charged by the Town for review of plans, issuance of permits, and inspection of Wireless Provider's work upon the Use Areas (including, without limitation, encroachment permits, traffic control fees, technology fees) as set out in the then current fee schedule as it may be amended from time to time by Town's town council.

- 4.4 Use Fees Cumulative. All items of Use Fees shall be cumulative and separate from each other.
- 4.5 Use Fee Schedule. Provider shall pay all Use Fees at the times and in the amounts specified by Town's normal processes. Town's failure to collect any item of the Use Fees does not waive Wireless Provider's liability for such Use Fee, nor shall such failure be deemed a waiver by the Town to collect such Use Fee thereafter.
- 4.6 Letter of Credit. The Initial Letter of Credit amount shall be based upon the Wireless Provider's good faith projection of the number of sites to be constructed within the Town of Queen Creek during the current calendar year. The Initial Letter of Credit shall be received by the Town before any construction and encroachment permits are issued as follows:
 - 4.6.1 The amount of the letter of credit shall be as follows: Thirty Thousand Dollars (\$30,000.00) for up to ten (10) wireless sites; Sixty Thousand Dollars (\$60,000) for eleven (11) to twenty (20) wireless sites; One Hundred Five Thousand Dollars (\$105,000) for twenty one (21) to thirty five (35) wireless sites; One Hundred Eighty Thousand Dollars (\$180,000) for thirty six (36) to sixty (60) wireless sites; Three Hundred Thousand Dollars (\$300,000) for sixty one (61) to one hundred (100) wireless sites; Four Hundred Fifty Thousand Dollars (\$450,000) for one hundred one (101) to one hundred fifty (150) wireless sites; Six Hundred Seventy Five Thousand Dollars (\$675,000) for one hundred fifty one (151) to two hundred twenty five (225) wireless sites; One Million Fifty Thousand Dollars (\$1,050,000) for two hundred twenty six (226) to three hundred fifty (350) wireless sites; One Million Five Hundred Thousand Dollars (\$1,500,000) for three hundred fifty one (351) to five hundred (500) wireless sites; Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) for five hundred one (501) to seven hundred fifty (750) wireless sites; and Three Million Dollars (\$3,000,000) for seven hundred fifty one (751) to one thousand (1,000) wireless sites. If the number of Wireless Provider's wireless sites is more than one thousand (1,000), the Three Million Dollar (\$3,000,000) letter of credit shall remain in effect

and the letter of credit for the wireless sites in excess of one thousand sites shall be calculated using the schedule provided in this subsection.

- 4.6.2 The Town will determine at least once annually if the number of Wireless Provider's wireless sites that are licensed require that the letter of credit be upgraded to a higher amount. If Town requires a new letter of credit, it shall provide formal notice in writing to the Wireless Provider. The Wireless Provider must provide the new letter of credit within 45 days of receiving written notice.
- 4.6.3 The letter of credit is a security deposit for Wireless Provider's performance of all of its obligations under these Terms within the Town of Queen Creek.
- 4.6.4 The letter of credit shall meet the requirements listed on Exhibit "B" attached hereto.
- 4.6.5 Wireless Provider shall provide and maintain the letter of credit during the entire term of the License Agreement as follows:
 - 4.6.5.1 Wireless Provider shall cause the original letter of credit to be delivered to Town's Small Cell Administrator.
 - 4.6.5.2 Wireless Provider shall pay all costs associated with the letter of credit, regardless of the reason or manner such costs are required.
 - 4.6.5.3 Within ten (10) business days after Town gives Wireless Provider notice that Town has drawn on the letter of credit, Wireless Provider shall cause the letter of credit to be replenished to its prior amount.
- 4.6.6 Town may draw on the letter of credit upon any Event of Default, and in the following circumstances whether or not they are an Event of Default:
 - 4.6.6.1 Wireless Provider fails to cause the letter of credit to be renewed, extended, increased in amount or otherwise maintained as required by these Terms.
 - 4.6.6.2 Wireless Provider fails to make monetary payments as required by these Terms.

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

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

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

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

5. USE RESTRICTIONS.

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

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

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

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

- 5.3.1 All antennas, including the antenna's exposed elements, are located inside an enclosure of not more than six (6) cubic feet in volume, and
 - 5.3.2 All other wireless equipment associated with the facility is cumulatively not more than twenty-eight (28) cubic feet in volume.
 - 5.3.3. The following ancillary equipment is not included in the equipment volume: electric meter, concealment elements, telecom demarcation box, grounding equipment, power transfer switch, cutoff switch, and vertical cable runs.
- 5.4 Communications Operations Restriction. Pursuant to A.R.S. 9-592(F)(3), Wireless Provider shall not install, operate, or allow the use of equipment, methodology or technology that interferes or is likely to interfere with the optimum effective use or operation of Town's existing or future fire, emergency or other communications equipment, methodology or technology (i.e., voice or other data carrying, receiving or transmitting equipment). If such interference should occur, Wireless Provider shall immediately discontinue using the equipment, methodology or technology that causes the interference until Wireless Provider takes corrective measures to alter the Communications Equipment to eliminate such interference. Any such corrective measures shall be made at no cost to Town. Wireless Provider shall give to Town advance written notice containing a list of the radio frequencies Wireless Provider is using at the Use Areas and shall give advance written notice to Town of any change in frequencies.
- 5.5 Other Equipment. Wireless Provider shall not disturb or otherwise interfere with any other antennas or other equipment Town or an authorized third party may have already installed or may yet install upon the Street Parcel.
- 5.6 Signs. All signage is prohibited except in compliance with the following requirements:
- 5.6.1 Wireless Provider shall install and thereafter maintain the following signs and other markings as reasonably determined by Town from time to time:
 - 5.6.1.1 All signs and markings required for safe use of the Use Areas by Town, Wireless Provider and other persons who may be at the Use Areas at any time for any reason.

- 5.6.1.2 Any signage Town may request directing parking, deliveries and other vehicles and other users to comply with this License Agreement.
 - 5.6.1.3 Warning signs listing only Wireless Provider's name, permanent business address, telephone number, emergency telephone number, and any information required by law.
 - 5.6.2 All signage not expressly allowed by these Terms is prohibited.
 - 5.6.3 The location, size, content and style of each sign shall be subject to the provisions of the applicable sign ordinance and shall comply with Town's sign programs as the same may change from time to time. Wireless Provider shall update signs, at Wireless Provider's sole cost and expense, as required to comply with changes in the applicable sign ordinance and Town's sign programs.
 - 5.6.4 Wireless Provider shall design, make, install and maintain all signage in a first class, professional manner without broken panels, faded or peeling paint or other damage. Town reserves the right to require Wireless Provider to install, at Wireless Provider's cost, new or updated signage if the existing signage is not compliant with this Agreement.
 - 5.6.5 Wireless Provider shall bear all costs pertaining to the erection, installation, operation, maintenance, replacement and removal of all signs including, but not limited to, the application for and obtaining of any required sign, building or other permits regardless of the reason for any such activity, even if such activity is required by Town pursuant to these Terms.
 - 5.6.6 The requirements of this paragraph apply to all signs, designs, monuments, decals, graphics, posters, banners, markings, and other manner of signage.
- 5.7 Wireless Provider's Lighting. Except for security lighting temporarily operated with Town's approval from time to time, Wireless Provider shall not operate outdoor lights at the Use Areas.
- 5.8 Noise. Except during construction permitted under the License Agreement and for burglar alarms and other safety devices, outdoor loud speakers, sirens or other devices for making noise are prohibited. All equipment shall be operated so that sound coming therefrom does not exceed the ambient noise level at the boundary of the Street Parcel and cannot be heard at the

closer of i) the exterior boundary of the Street Parcel or ii) two hundred feet (200') outside the boundary of the Street Parcel. The preceding sentence does not apply to use of normal, properly maintained construction equipment used as permitted by the approved License Agreement or permit issued to Wireless Provider by the Town, to infrequent use of equipment that is as quiet or quieter than a typical well maintained gasoline powered passenger automobile, to use of an air conditioning unit that is no noisier than a typical well maintained residential air conditioning unit.

- 5.9 Limited Access. It is Wireless Provider's and not Town's responsibility to keep unauthorized persons from accessing the Communications Equipment and the Exclusive Areas.
- 5.10 Standards of Service. Wireless Provider shall operate the Use Areas in a first-class manner, and shall keep the Use Areas attractively maintained, orderly, clean, neat and tidy at all times. Wireless Provider shall not allow any person or persons in or about the Use Areas related to Wireless Provider's operations who shall fail to be clean, courteous, efficient and neat in appearance.
- 5.11 Wireless Provider's Agent. Wireless Provider shall at all times retain on call available to Town by telephone an active, qualified, competent and experienced person to supervise all activities upon the Use Areas and operation of the Communications Equipment. Wireless Provider's agent shall be authorized to represent and act for Wireless Provider in matters pertaining to all emergencies and the day-to-day operation of the Right-of-way and all other matters affecting a License Agreement or Site Permit. Wireless Provider shall also provide notice to Town of the name, street address, electronic mail address, and regular and afterhours telephone number of a person to handle Wireless Provider's affairs and emergencies at the Right-of-way. Any change shall be given in writing to Town's Small Cell Administrator in the manner stated for notices required herein.
- 5.12 Coordination Meetings. Wireless Provider shall meet with Town and other Right-of-way users from time to time as requested by Town to coordinate and plan construction on the Use Areas and all matters affected by these Terms. Without limitation, Wireless Provider shall attend Town's scheduled utility planning meetings.
- 5.13 Toxic Substances. Wireless Provider's activities upon or about the Use Areas shall be subject to the following regarding any hazardous or toxic substances, waste or materials or any substance now or hereafter subject to regulation under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., the

Commented [MVP2]: Do we have these? Do we want this?

Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances"):

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

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

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

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

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

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

6. WIRELESS PROVIDER'S IMPROVEMENTS.

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

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

6.2 Zoning and Similar Approval Process. The zoning processes, building permit processes, Right-of-way management policies and similar regulatory requirements that apply to Wireless Provider's Improvements are completely separate from the plans approval processes set forth in these Terms. Wireless Provider's satisfaction of any requirement set forth these Terms does not substitute for compliance with any regulatory requirement. Wireless Provider's satisfaction of any regulatory requirement does not substitute for compliance with any requirement of these Terms. Wireless Provider must make all submittals and communications regarding the requirements of these Terms through Town's Small Cell Administrator and not through other staff. Wireless Provider shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Use Areas. Wireless Provider bears sole responsibility to comply with all stipulations

and conditions that are required in order to secure such rezoning and other approvals. Notwithstanding anything in this paragraph to the contrary, to the extent regulatory requirements and requirements of these Terms are identical, compliance with regulatory requirements shall constitute compliance with these Terms and vice versa.

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

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

Commented [MVP3]: Discuss with Town. If planning and development is doing the plans approval, is there efficiency to be achieved if it counts for both?

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

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

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

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

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

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

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

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

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

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

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

6.8.1 Conceptual plans showing the general layout, locations, elevations, configuration, and capacities of all significant

improvements, topographical features, pedestrian and vehicular ways, buildings, utilities, and other features significantly affecting the appearance, design, function or operation of each element of Wireless Provider's Improvements.

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

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

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

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

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

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

Commented [MVP4]: Need to discuss this with Brett. See prior comment about planning / development doing the review.

- 6.9.4 Town and Wireless Provider shall endeavor to resolve design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason or however arising, in light of Town's ownership and other uses of the Use Areas, and as a condition of Town's entering into a License Agreement or issuing a Site Permit, final decision authority regarding all design and construction issues shall rest with Town.
- 6.9.5 All Wireless Provider's Improvements shall comply with all requirements of law, any applicable insurance contracts and these Terms.
- 6.10 Cost of Wireless Provider Improvements. All Wireless Provider's Improvements shall be designed and constructed by Wireless Provider at Wireless Provider's sole cost and expense, including without limitation any alteration or other change to Town's equipment or other improvements or property that may occur. In no event shall Town be obligated to compensate Wireless Provider in any manner for any of Wireless Provider's Improvements or other work provided by Wireless Provider during or related to the term of any approved License Agreement and Site Permit(s). Wireless Provider shall timely pay for all labor, materials, work, and all professional and other services related thereto and shall pay, protect, indemnify, defend and hold harmless Town and Town's employees, officers, contractors and agents against all claims related to such items. Wireless Provider shall bear the cost of all work required from time to time to cause the Use Areas and Town's adjoining property (if directly affected by Wireless Provider's work) to comply with local zoning rules, the Americans with Disabilities Act, building codes and all similar rules, regulations and other laws if such work is required because of work performed by Wireless Provider, by Wireless Provider's use of the Use Areas, or by any exercise of the rights granted to Wireless Provider under this License Agreement or associated Site Permit(s).
- 6.11 Improvement Quality. Any and all work performed on the Use Areas by Wireless Provider shall be performed in a workman-like manner meeting or exceeding the best practices of similar facilities in Maricopa County, Arizona, and shall be diligently pursued to completion and in conformance with all building codes and similar rules. All of Wireless Provider's Improvements shall be high quality, safe, fire resistant, modern in design, and attractive in appearance, all as approved by Town through the plans approval processes described in these Terms in addition to any zoning, building code or other regulatory processes that may apply.
- 6.12 Ownership of Wireless Provider's Improvements. All Wireless Provider's Improvements (including without limitation poles and lights) except the

Communications Equipment shall be and become part of the real property of Town as the same is constructed or installed.

- 6.13 **Damage During Work.** Upon performing any work upon the Right-of-way, Wireless Provider shall simultaneously restore the Right-of-way to its prior condition, as directed by Town and repair any holes, mounting surfaces or other damage whatsoever to the Right-of-way. Such work shall include revegetation and appropriate irrigation systems for revegetated areas.
- 6.14 **Replacement Pole.** If Town approves a Wireless Provider proposal to install Antennas on a Town owned pole, then in addition to the other requirements, the following shall apply:
- 6.12.1 Wireless Provider shall provide and deliver to Town a replacement pole, including mast arm, so that a replacement is immediately available to Town in case the original pole is damaged.
 - 6.12.2 If Town uses a replacement pole, then Wireless Provider shall provide another replacement pole.
 - 6.12.3 Upon installation of a replacement pole, the Town will determine if the original pole, mast arm(s), signal head(s), and light fixture(s) shall be delivered by Wireless Provider to the Town's Corporation Yard or if the Wireless Provider shall dispose of the original pole, mast arm, signal head and light fixture.
 - 6.12.4 All performance under this paragraph shall be at Wireless Provider's expense. Town owns the original pole and all replacement poles.
- 6.15 **Coordination with Encroachment Permit.** The Street Parcel is located in Town's public street Right-of-way. Wireless Provider shall obtain encroachment permits at Wireless Provider's expense as follows:
- 6.15.1 Wireless Provider shall perform no construction work in the Right-of-way without obtaining from Town a permit giving permission to work in the Right-of-way.
 - 6.15.2 Wireless Provider shall not alter or modify its antennas, wireless equipment or any improvements without submitting plans or drawings of the proposed alteration or modification to Town and obtaining approval from Town's Small Cell Administrator.

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

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

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

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

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

7. RF SAFETY FOR TOWN'S EMPLOYEES.

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

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

- 7.1 Provide access to a "kill switch" for each wireless site that the Town's employees, agents, or representatives can use to turn off all power to the Wireless Provider's Facilities while Town's work is performed at the location.
- 7.2 Within 24 hours of a request, agree to send a technician with an RF monitor to confirm that all RF emitting equipment has, in fact, been deactivated, and to install all appropriate lockout tags and devices.

8. MAINTENANCE AND UTILITIES.

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

- 8.1 Maintenance by Town. Town has no maintenance or repair obligations for the Communications Equipment or other Wireless Provider's Improvements.
- 8.2 Maintenance by Wireless Provider. Wireless Provider shall at all times repair and maintain the Use Areas at Wireless Provider's sole expense in a first-class, sound, clean, safe and attractive manner, meeting or exceeding the manner of maintenance at first class comparable facilities in Maricopa County, Arizona, as determined in Town's reasonable discretion. The preceding sentence does not require Wireless Provider to repair or maintain Town's facilities at the Use Area unless such work is attributable in whole or in part to Wireless Provider's use of the Use Areas.
- 8.3 Utility Service. Wireless Provider shall contract for and pay all charges, fees, deposits and other amounts for electricity and telephone and other data communication service to the Use Areas at the rates applicable thereto. Wireless Provider shall use no other utilities at the Use Areas, unless otherwise authorized by Town.
- 8.4 Utility Interruptions. Town is not responsible for any interruption of utilities to or upon the Use Areas or other difficulties related to utilities at the Use Areas.
- 8.5 Right of Inspection. Town shall be entitled to inspect all construction, reconstruction or installation work and to make such tests as it deems

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

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

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

9. BREACH BY WIRELESS PROVIDER.

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

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

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

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

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

adequate that there is no gap in the insurance coverage required by these Terms.

- 9.1.4 If the Wireless Provider's right to use a Utility Pole expires or is terminated for any reason.
- 9.1.5 If Wireless Provider does not commence and diligently pursue to completion each required stage of construction of the site within the times required herein. The times specified for concluding each stage of required construction have been established far enough in advance, and have taken into account the likelihood of construction delays, so that no cure period is provided.
- 9.1.6 If Wireless Provider shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding or if any assignment of any of Wireless Provider's or such other person's property shall be made for the benefit of creditors or if Wireless Provider or such other person dies or is not regularly paying its debts as they come due (collectively a "Wireless Provider Insolvency").
- 9.1.7 If the issuer of any letter of credit shall fail for any reason to timely and fully honor any request by Town for funds or other performance under the instrument and Wireless Provider fails to cause the issuer, or some other person, to honor the request within ten (10) days after Town notifies Wireless Provider that such request has not been honored.
- 9.1.8 If Wireless Provider shall fail to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the Right-of-way or timely pay any taxes pertaining to the Right-of-way and does not cure such failure within thirty (30) days.
- 9.1.9 If Town shall be exposed to any liability, obligation, damage, cost, expense, or other claim of any description, whether or not asserted, unless Wireless Provider gives immediate notice to Town of Wireless Provider's commitment to indemnify, defend and hold Town harmless against such claim, and Wireless Provider does in fact promptly commence and continue to indemnify, defend and hold Town harmless against such claim.
- 9.1.10 If Wireless Provider shall fail to meet its obligations under the RF Safety Paragraph.

- 9.1.11 If Wireless Provider shall engage in a pattern of repeated failure (or neglect) to timely do or perform or observe any provision contained herein. After Town has once given notice of any failure by Wireless Provider to comply with its obligations set forth in these Terms, the following shall constitute a repeated failure by Wireless Provider to comply with such provision:
 - 9.1.11.1 Another failure to comply with any provision of these Terms during the following thirty (30) day period.
 - 9.1.11.2 Three (3) or more failures to comply with any provision of these Terms during any ninety (90) day period.
 - 9.1.11.3 Six (6) or more failures to comply with any provision of these Terms during any twelve (12) month period.
 - 9.1.12 If Wireless Provider shall fail to or neglect to timely and completely do or perform or observe any other provisions herein and such failure or neglect shall continue for a period of thirty (30) days after Town has notified Wireless Provider in writing of such failure or neglect.
- 9.2 Town's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, Town may, at its option and from time to time, exercise at Wireless Provider's expense any or all or any combination of the following cumulative remedies in any order and repetitively at Town's option:
- 9.2.1 Terminate the License Agreement or any or all Site Permits due to Wireless Provider's breach or for any other reason, however, such termination does not terminate Wireless Provider's obligations arising during the time simultaneous with or prior to or the termination, and in no way terminates any of Wireless Provider's liability related to any breach of these Terms.
 - 9.2.2 Pay or perform, for Wireless Provider's account, in Wireless Provider's name, and at Wireless Provider's expense, any or all payments or performances required hereunder to be paid or performed by Wireless Provider.
 - 9.2.3 Abate at Wireless Provider's expense any violation of these Terms.

- 9.2.4 Notwithstanding anything under these Terms to the contrary, unilaterally and without Wireless Provider's or any other person's consent or approval, draw upon, withdraw or otherwise realize upon or obtain the value of any letter of credit, escrowed funds, insurance policies, or other deposits, sureties, bonds or other funds or security held by Town or pledged or otherwise obligated to Town by Wireless Provider or by any third party (whether or not specifically mentioned herein) and use the proceeds for any remedy permitted by these Terms.
 - 9.2.5 Require an additional security deposit adequate in Town's sole discretion to protect Town and the Right-of-way.
 - 9.2.6 Assert, exercise or otherwise pursue at Wireless Provider's expense any and all other rights or remedies, legal or equitable, to which Town may be entitled, subject only to the limitation set out below on Town's ability to collect money damages in light of the Violation Use Fee.
- 9.3 Violation Use Fee. Wireless Provider and Town agree that Wireless Provider's failure to comply with the provisions herein will result in damages to Town, including but not limited to expenses related to administrative costs, staff time, field work and inspections, legal services, etc. Wireless Provider's failure to comply with the provisions herein will result in damages in an amount that is and will be impracticable to determine. Therefore, the parties have agreed that Wireless Provider shall pay the Violation Use Fee set out below in accordance with the following (the "Violation Fee Provisions"):
- 9.3.1 Violation Use Fee is only intended to remedy damages that Town suffers because of Wireless Provider's breach of this Agreement. Wireless Provider's payment of Violation Use Fee does not in any way excuse any breach by Wireless Provider of these Terms or limit in any way Town's obtaining any other legal or equitable remedy provided by these Terms or otherwise for such breach. For example, Wireless Provider's obligation to pay Violation Use Fee does not in any way detract from Wireless Provider's indemnity and insurance obligations under these Terms, which shall apply according to their terms in addition to Wireless Provider's obligation to pay Violation Use Fee.
 - 9.3.2 Town may elect to draw upon the letter of credit to collect the Violation Use Fee.

- 9.3.3 The Violation Fee Provisions and the amount of the Violation Use Fee per day or part thereof are as follows:
- 9.3.3.1 The amount of Six Hundred Dollars (\$600.00) per day for Wireless Provider's failure to properly restore the public Right-of-way or to correct related violations of specifications, code, ordinance or standards within ten (10) business days after Town's notice to correct such defects. Such Violation Use Fee shall be in addition to any cost the Town may incur to restore the Right-of-way or correct the violation.
 - 9.3.3.2 The amount of Five Hundred Dollars (\$500.00) per instance of any other action or non-action by the Wireless Provider contrary to these Terms herein and that is not cured after three (3) business days' notice.
- 9.3.4 Violation Use Fees shall be assessed as follows:
- 9.3.2.1 If Town determines that Wireless Provider is liable for Violation Use Fee, then Town shall issue to Wireless Provider a notice of Town's assessing a Violation Use Fee. The notice shall set forth the nature of the violation and the amount of the assessment.
 - 9.3.2.2 Wireless Provider shall pay the Violation Use Fee within ten (10) days after Town's notice. However, if the Violation Use Fee amount exceeds Five Thousand Dollars (\$5,000), then the following shall apply:
 - 9.3.2.2.1 Wireless Provider shall have thirty (30) days after the notice to pay the Violation Use Fee or give Town notice contesting the assertion of noncompliance.
 - 9.3.2.2.2 If Wireless Provider fails to respond to the notice, Wireless Provider shall pay the Violation Use Fee. Otherwise, Town shall schedule a public hearing to investigate whether the Violation

Use Fee is properly assessed. Town shall provide Wireless Provider at least ten (10) days' notice of such hearing, which shall specify the time, place and purpose of the hearing. At the hearing, Wireless Provider shall be provided an opportunity to be heard and present evidence. If the result of the hearing is that Wireless Provider is liable for Violation Use Fee, then the Violation Use Fee is due ten (10) days after the hearing decision is announced.

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

10. BREACH BY TOWN.

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

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

11. NON-WAIVER.

Wireless Provider acknowledges Wireless Provider's unconditional obligation to comply with these Terms herein. No failure by Town to demand any performance required of Wireless Provider under these Terms herein, and no acceptance by Town of any imperfect or partial performances under these Terms herein, shall excuse such performance or impair in any way Town's ability to

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

12. TERMINATION.

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

- 12.1 **Surviving Obligations.** Expiration or termination of a License Agreement or Site Permit does not terminate Wireless Provider's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination.
- 12.2 **Delivery of Possession.** Wireless Provider shall cease using the Use Areas associated with the expired or terminated License Agreement or Site Permit. Wireless Provider shall, without demand, peaceably and quietly quit and deliver up the Use Areas to Town thoroughly cleaned, in good repair with the Use Areas maintained and repaired and in as good order and condition, reasonable use and wear excepted, as the Use Areas now are or in such better condition as the Use Areas may hereafter be placed.
- 12.3 **Confirmation of Termination.** Upon expiration or termination of a License Agreement or Site Permit for any reason, Wireless Provider shall provide to Town upon demand recordable disclaimers covering the Use Areas executed and acknowledged by Wireless Provider and by all persons

claiming through this License Agreement, Site Permit or Wireless Provider any interest in or right to use the Use Areas.

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

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

13. INSURANCE.

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

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

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

forth in these Terms. The policy shall contain a “separation of insured’s” clause.

- 13.1.2 Automobile Liability. Automobile liability insurance with a limit of One Million Dollars (\$1,000,000) for each occurrence covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Wireless Provider’s use of the Right-of-way. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and off loading.
- 13.1.3 Workers’ Compensation. Such workers’ compensation and similar insurance as is required by law and employer’s liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) disease for each employee, Five Hundred Thousand Dollars (\$500,000) policy limit for disease. All contractors and subcontractors must provide like insurance.
- 13.1.4 Special Risk Property. Unless waived by Town in writing, all risk property insurance covering damage to or destruction of all real and personal improvements to the Right-of-way, including without limitation, all improvements existing upon the Right-of-way prior to this License Agreement or hereafter constructed in an amount equal to full replacement cost of all such improvements. Such insurance shall be special causes of loss policy form (minimally including perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, collapse and flood). Coverage shall include pollutant clean up and removal with minimum limits coverage of Fifty-Thousand Dollars (\$50,000.00).
- 13.1.5 Other Insurance. Any other insurance Town may reasonably require for the protection of Town and Town’s employees, officials, representatives, officers and agents (all of whom, including Town, are collectively “Additional Insureds”), the Right-of-way, surrounding property, Wireless Provider, or the activities carried on or about the Right-of-way. Such insurance shall be limited to insurance a reasonable person owning, leasing, designing, constructing, occupying, or operating similar facilities might reasonably purchase.

13.2 Policy Limit Escalation. Town may elect by notice to Wireless Provider to increase the amount or type of any insurance to account for inflation,

changes in risk, or any other factor that Town reasonably determines to affect the prudent amount of insurance to be provided.

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

- 13.3.1 "Occurrence" coverage is required.
- 13.3.2 If Wireless Provider uses any excess insurance then such excess insurance shall be "follow form" equal to or broader in coverage than the underlying insurance.
- 13.3.3 Policies must also cover and insure Wireless Provider's activities relating to the business operations and activities conducted away from the Right-of-way.
- 13.3.4 Within five (5) business days of receiving a written request from the Town, Wireless Provider shall provide copies of insurance certificates, insurance policies, formal endorsements or other documentation acceptable to Town that all insurance coverage required herein is provided.
- 13.3.5 Wireless Provider's insurance shall be primary insurance with respect to claims arising out of Wireless Provider's operations, activities and obligations set forth in these Terms.
- 13.3.6 All policies, including workers' compensation, shall waive transfer rights of recovery (subrogation) against Town, and the other Additional Insureds.
- 13.3.7 All deductibles, retentions, or "self-insured" amounts shall be subject to the following:
 - 13.3.7.1 Wireless Provider shall be solely responsible for any self-insurance amount or deductible.
 - 13.3.7.2 Such amounts shall not exceed in total One Hundred Thousand Dollars (\$100,000.00) per loss. At such times as Wireless Provider's net worth is more than One Hundred Million Dollars (\$100,000,000.00), such limit shall be One Million and No/100 Dollars (\$1,000,000.00).
 - 13.3.7.3 Any self-insured exposure shall be deemed to be an insured risk under this License Agreement.

- 13.3.7.4 Wireless Provider shall provide to the beneficiaries of all such amounts no less insurance protection than if such self-insured portion was fully insured by an insurance company of the quality and caliber required hereunder.
 - 13.3.7.5 The right to self-insure is limited and specific to Wireless Provider and does not extend to Wireless Provider's contractors or others.
 - 13.3.8 All policies except workers' compensation must name Town and the other Additional Insureds as additional insureds. Wireless Provider shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement with respect to claims arising out of Wireless Provider's operations, activities and obligations under the License Agreement.
 - 13.3.9 All policies must require the insurer to provide Town with at least thirty (30) days' prior notice of any cancellation. The insurer's duty to notify Town of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."
 - 13.3.10 All policies shall require that notices be given to Town in the manner specified for notices to Town set forth in the License Agreement and these Terms.
- 13.4 Insurance Certificates. Wireless Provider shall evidence all insurance by furnishing to Town certificates of insurance annually and with each change in insurance coverage. Certificates must evidence that the policy described by the certificate is in full force and effect and that the policy satisfies each requirement of these Terms applicable to the policy. For example, certificates must evidence that Town and the other Additional Insureds are additional insureds. Certificates must also be in an industry standard form reasonably acceptable to Town. Wireless Provider shall provide updated certificates at Town's request.
- 13.5 Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to Town. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

- 13.6 No Representation of Coverage Adequacy. By requiring insurance herein, Town does not represent that coverage and limits will be adequate to protect Wireless Provider. Town reserves the right to review any and all of the insurance policies and/or endorsements cited in these Terms but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in these Terms or failure to identify any insurance deficiency shall not relieve Wireless Provider from, nor be construed or deemed a waiver of, Wireless Provider's obligation to maintain the required insurance at all times.
- 13.7 Risk of Loss. Wireless Provider assumes the risk of any and all loss, damage or claims related to Wireless Provider's use of the Right-of-way or other property of Town, Wireless Provider or third parties throughout the term of any License Agreement or Site Permit. Wireless Provider shall be responsible for any and all damage to its property and equipment related to the License Agreement or Site Permit.
- 13.8 Insurance to be Provided by Others. Wireless Provider shall cause its contractors or other persons occupying, working on or about, or using the Right-of-way pursuant to these Terms to be covered by their own or Wireless Provider's insurance as required by these Terms. The required policy limits for commercial general liability insurance provided by such persons shall be One Million Dollars (\$1,000,000) for each occurrence, One Million Dollars (\$1,000,000) for products and completed operations annual aggregate, and Two Million Dollars (\$2,000,000) general aggregate limit per policy year. This paragraph does not apply to persons who do not actually perform physical labor in the Right-of-way (such as Wireless Provider's consulting design engineers).

14. INDEMNITY.

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

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

15. CONDEMNATION.

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

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

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

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

16. DAMAGE TO OR DESTRUCTION OF USE AREAS.

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

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

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

17. WIRELESS PROVIDER'S RECORDS.

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

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

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

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

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

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

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

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

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

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

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

Town shall not request such reports more often than once in any twelve (12) month period.

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

18. COMPLIANCE WITH LAW.

Wireless Provider shall perform its obligations under the License Agreement (including these Terms) and any Site Permit in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended. Without limiting in any way the generality of the foregoing, Wireless Provider shall comply with all and each of the following:

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

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

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

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

18.1.4 The approval of this License Agreement or issuance of any Site Permit cannot and does not impair Town's, power to enact, apply or enforce any laws or regulations, or exercise any

governmental powers affecting in any way Wireless Provider, the Use Areas, the Street Parcel, or the Right-of-way.

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

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

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

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

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

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

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

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

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

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

19. ASSIGNABILITY.

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

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

circumstances and conditions and to all persons claiming pursuant to such transactions, circumstances and conditions:

- 19.1.1 Any voluntary or involuntary assignment, conveyance or transfer of Wireless Provider's right to use the Right-of-way under this License Agreement or any interest or rights of Town under this License Agreement, in whole or in part.
 - 19.1.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise affecting Wireless Provider's rights to use the Right-of-way (collectively "Liens").
 - 19.1.3 Any assignment by Wireless Provider of any interest in the License Agreement or Site Permit(s) for the benefit of creditors, voluntary or involuntary.
 - 19.1.4 A Wireless Provider Insolvency.
 - 19.1.5 The occurrence of any of the foregoing by operation of law or otherwise.
 - 19.1.6 The occurrence of any of the foregoing with respect to any assignee or other successor to Wireless Provider.
- 19.2 Pre-approved Assignments. Subject to certain conditions hereafter stated, Town hereby consents to certain assignments (the "Pre-approved Assignments"). Only the following assignments are Pre-approved Assignments:
- 19.2.1 Complete Assignment of License Agreement and Site Permits. Wireless Provider's complete assignment of all of Wireless Provider's rights and Interests in the Right-of-way, the approved License Agreement and all Site Permits to a single assignee who meets all of the following requirements, as determined by Town in Town's reasonable discretion (a "Qualified Operator"):
 - 19.2.1.1 The assignee has experience, management, credit standing and financial capacity and other resources equal to or greater than Wireless Provider's and adequate to successfully perform the obligations set forth herein.

- 19.2.1.2 The assignee is experienced in the management and operation of similar projects.
 - 19.2.1.3 The assignee assumes all of Wireless Provider's obligations herein.
 - 19.2.1.4 The assignee has a net worth of not less than Fifty Million and No/100 Dollars (\$50,000,000.00).
 - 19.2.2 Stock Transfers. The transfer of publicly traded stock, regardless of quantity.
 - 19.2.3 Merger. The merger or consolidation of Wireless Provider with another entity that is a Qualified Operator.
 - 19.2.4 Common Ownership Transfer. Wireless Provider's complete assignment of all of Wireless Provider's rights and interests in the Right-of-way, the approved License Agreement and Site Permits to single assignee who is and remains a wholly owned subsidiary of Wireless Provider's sole owner as of the date of the License Agreement (or a wholly owned subsidiary of a wholly owned subsidiary of Wireless Provider's sole owner as of the date of the License Agreement).
- 19.3 Limitations on Assignments. Town's consent to any assignment, including without limitation, Pre-approved Assignments, is not effective until the following conditions are satisfied:
- 19.3.1 Except for the sale of stock, Wireless Provider shall provide to Town a complete copy of the document assigning its interests, or other such documentation acceptable to the Town.
 - 19.3.2 Each assignee must execute an assumption of the License Agreements and/or the Site Permits in form acceptable to Town.
 - 19.3.3 Each Pre-approved Assignment must satisfy all other requirements of these Terms pertaining to assignments.
- 19.4 Assignment Remedies. Any assignment without Town's consent shall be void and shall not result in the assignee obtaining any rights or interests. Town may, in its sole discretion and in addition to all other remedies available to Town under these Terms or otherwise, and in any combination, terminate any and all of the License Agreement and Site Permits, collect Use Fees from the assignee and/or declare the assignment to be void, all without prejudicing any other right or remedy of Town under these Terms.

No cure or grace periods shall apply to assignments prohibited under these Terms or to enforcement of any provision under these Terms against an assignee who did not receive Town's consent.

- 19.5 **Effect of Assignment.** Prior to any effective assignment, each assignee must execute an assumption of each License Agreement and Site Permit in the form attached hereto as Exhibit "C." No action or inaction by Town shall be deemed a waiver of the prohibition on assignments or any other provision herein, or the acceptance of the assignee, Wireless Provider or occupant as Wireless Provider, or a release of Wireless Provider from the further performance by Wireless Provider of the provisions of these Terms. Consent by Town to an assignment shall not relieve Wireless Provider from obtaining Town's consent to any further assignment. No assignment shall release Wireless Provider from any liability hereunder.
- 19.6 **Enforceability after Assignment.** No consent by Town shall be deemed to be a novation. Town's consent to any assignment does not in any way expand or modify the terms set forth in these Terms or waive, diminish or modify any of Town's rights or remedies under the License Agreement or any Site Permit. The terms set forth in these Terms shall be enforceable against Wireless Provider and each successor, partial or total, and regardless of the method of succession, to Wireless Provider's interest hereunder. Each successor having actual or constructive notice of the License Agreement, these Terms or any Site Permit shall be deemed to have agreed to the preceding sentence.
- 19.7 **Grounds for Refusal.** Except for the Preapproved Assignments, no assignment of the License Agreement or any Site Permit by Wireless Provider is contemplated or bargained for. Without limitation, Town has the right to impose upon any consent to assignment such conditions and requirements as Town may deem appropriate.
- 19.8 **Consent to Assignments.** Wireless Provider shall attach to each Pre-approved Assignment a copy of Wireless Provider's notice to Town of the Pre-approved Assignment and other required documents. Wireless Provider shall attach to each other assignment, a copy of Town's notice to Wireless Provider of Town's consent to the assignment. These Terms shall continue to be enforceable according to its terms in spite of any provisions of any documents relating to an assignment.
- 19.9 **Assignment Fee.** Wireless Provider shall pay to Town in advance the sum of Five Hundred Dollars (\$500) as a nonrefundable fee for legal, administrative and other expenses related to every Pre-approved Assignment (other than the sale of publicly traded stock) or to any request for a consent to assignment, whether or not Town grants such request.

20. MISCELLANEOUS.

The following additional provisions apply to these Terms:

- 20.1 Amendments. These Terms may not be amended except by a formal writing executed by all of the parties.
- 20.2 Dates. Any reference to a year shall refer to a calendar year unless a fiscal year is specifically stated. Sunday, Saturday and Arizona legal holidays are holidays for purposes of the License Agreement and issued Site Permits.
- 20.3 Time of Essence. Time is of the essence of each and every provision of the License Agreement and issued Site Permits.
- 20.4 Severability. If any provision of these Terms shall be ruled by a court or agency of competent jurisdiction to be invalid or unenforceable for any reason, then:
- 20.2.1 The invalidity or unenforceability of such provision shall not affect the validity of any remaining provisions of these Terms.
 - 20.2.2 These Terms shall be automatically reformed to secure to the parties the benefits of the unenforceable provision, to the maximum extent consistent with law.
- 20.5 Conflicts of Interest. No officer, representative or employee of Town shall have any direct or indirect interest in the License Agreement or any Site Permit, nor participate in any decision relating to the License Agreement or any Site Permit that is prohibited by law. Notwithstanding the foregoing, pursuant to A.R.S. § 38-511, the Town of Queen Creek may cancel the License Agreement or any Site Permit, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the License Agreement or associated Site Permits on behalf of the Town is, at any time while the License Agreement or Site Permits is in effect, or any extension thereof, an employee, agent or consultant to Wireless Provider in any capacity.
- 20.6 No Partnership. The transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.
- 20.7 Nonliability of Officials and Employees. No official, representative or employee of Town shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by Town or for any amount which may become due to any party or successor, or with respect to any obligation of Town or otherwise under the terms of

any License Agreement or related to any License Agreement or Site Permit.

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

If to Town: Town of Queen Creek
22358 S. Ellsworth Road
Queen Creek, AZ 85142
Attn: Town Manager

Copy to: Town of Queen Creek
22358 S. Ellsworth Road
Queen Creek, AZ 85142
Attn: _____, Small Cell Administrator

Dickinson Wright PLLC
1850 N. Central Ave, Suite 1400
Phoenix, AZ 85004
Attn: Scott Holcomb, Esq.

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

Commented [MVP6]: Ask Town if we need to exclude Fridays?

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

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

License Agreement or any Site Permit is terminated pursuant to the terms of this subsection.

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

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

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

20.14 Attorneys' Fees. If any action, suit or proceeding is brought by either party hereunder to enforce the License Agreement or any issued Site Permit or for failure to observe any of the covenants of the License Agreement, these Terms or any issued Site Permit, or to vindicate or exercise any rights or remedies hereunder, the prevailing party in such proceeding shall be entitled to recover from the other party such prevailing party's reasonable attorneys' fees and other reasonable litigation costs (as determined by the court (and not a jury) in such proceeding).

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

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

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

20.16.2 A breach of the foregoing warranty by Wireless Provider shall be deemed a material breach of the License Agreement and any issued Site Permit that is subject to penalties up to and

including termination of this License Agreement and any issued Site Permits.

- 20.16.3 Town retains the legal right to inspect the papers of any employee of Wireless Provider or any subcontractor who works on a Use Area pursuant to License Agreement and any Site Permit to ensure that they or the subcontractor is complying with the warranty given above.
- 20.16.4 Town may conduct random verification of Wireless Provider's and its subcontractors' employment records to ensure compliance with the warranty given above.
- 20.16.5 Wireless Provider shall indemnify, defend and hold Town harmless for, from and against all losses and liabilities arising from any and all violations of the warranty given above.

EXHIBIT A
[TOWN'S DESIGN GUIDELINES]

EXHIBIT B
[LETTER OF CREDIT FORMS AND INSTRUCTIONS]

EXHIBIT C
[FORM OF ASSIGNMENT]

PHOENIX 53749-25 414469v5

Town License# _____

Wireless Provider's Name:

WIRELESS PROVIDER SITE LICENSE AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

I. LICENSE TERMS

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

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

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

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

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

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

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

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

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

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

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

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

even if it is clearly shown on the Site Plan or discussed in the Terms. Any refinement or other change to the Site Plan after Town issues a Site Permit is void unless Wireless Provider obtains Town's approval of the change pursuant to the plans approval processes set out in the Terms and pursuant to all applicable regulatory requirements.

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

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

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

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

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

1.2.6.2 Traffic control plan.

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

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

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

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

Commented [MVP1]: Do we have such a thing?

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

4. Town's Initial Information. Unless and until Town gives notice otherwise, Town's contract administrator shall be the Town's Small Cell Administrator.

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

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

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

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

EXECUTED as of the date first given above.

TOWN: Town of Queen Creek,
an Arizona municipal corporation

By: _____

Town Manager

WIRELESS PROVIDER: _____

a _____
By: _____
Name: _____
Its: _____

PHOENIX 53749-25 423485v1

Wireless Facility Irrevocable Letter of Credit Template

Instructions:

1. The following four (4) pages contain the template for an irrevocable letter of credit relating to wireless facilities to be located within Town rights-of-way.
2. Throughout the document there are blank spaces into which should be inserted the wireless facility provider name, bank name and letter of credit document name. Please insert this information where requested.
3. The irrevocable letter of credit number may not be available when the initial submission of the draft language for review is made. This can be inserted later when the letter is actually issued by the named financial institution.
4. Submit the draft irrevocable letter of credit, together with _____, to the Town's Small Cell Administrator.
5. The issuer of the irrevocable letter of credit shall be a federally-insured financial institution, a member of the New York Clearing House Association or another commercial bank or trust company satisfactory to the Town, having a net worth and financial wherewithal also satisfactory to the Town.
6. As a reminder, any assurance submitted a format other than the approved letter of credit template is subject to review by the Town Attorney and Town Small Cell Administrator and may not be accepted.

FORM OF WIRELESS FACILITY LETTER OF CREDIT

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

_____, 201__

Letter of Credit No. _____

Initial Expiration Date: _____

Town of Queen Creek
22350 South Ellsworth Road
Queen Creek, AZ 85242
Attn: Small Cell Administrator

1. At the request and for the account of our customer, **[Insert Wireless Facility Provider name]**, a(n) _____ ("Provider"), **[Insert Bank Name]** ("us", "we" or "Bank"), hereby establishes, in favor of Town of Queen Creek, an Arizona municipal corporation ("you" or "Town"), this clean, irrevocable and unconditional **[Insert Letter of Credit Document Name]** (this "Letter of Credit"). This Letter of Credit authorizes you to draw on us in amounts which in the aggregate shall not exceed the Stated Amount (herein so called) of _____ and No/100 Dollars (\$_____). We hereby engage with you that draft(s) drawn and presented in compliance with the terms contained in this Letter of Credit will be duly honored upon presentation as stated above, on or before the expiration date hereof.

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

3. Drafts may be presented by any of the following means:
 - A. By telefax to () _____ - _____
 - B. By email to _____
 - C. By hand or overnight courier service delivery to:
[This address must be in Maricopa County, Arizona.]

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

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

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

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

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

Very truly yours,

[Insert Bank Name]

By: _____
Name: _____
Its: _____

EXHIBIT A

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

\$ _____ (U.S.) _____, 200__

To: **[Insert Bank Name]**

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

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

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

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

If such deposit cannot be accomplished immediately for any reason, please make your payment in the form of a cashier's check issued by your institution and delivered to me at 22350 South Ellsworth Road, Queen Creek, AZ 85242, Attn: Small Cell Administrator.

If there is any imperfection or defect in this draft or its presentation, please inform me immediately at (480) _____ so that I may correct it. Also, please immediately notify the Town Attorney, Scott Holcomb Esq., at (602) 285-5028.

TOWN OF QUEEN CREEK

By: _____

Name: _____

Its: Small Cell Administrator

EXHIBIT B

Date:

_____ and _____

Ref: Letter of Credit No. _____

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

Please initial:

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

_____ Extend the expiration date from _____
to _____.

_____ Cancel this Letter of Credit effective immediately.

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

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

Town of Queen Creek, an
Arizona municipal corporation

By: _____
Name: _____
Title: _____

_____, a(n) _____

By: _____
Name: _____
Title: _____

PHOENIX 53749-25 426556v1