

# Avondale

Aspiring. Achieving. Accelerating.

## SMALL CELL WIRELESS TERMS AND CONDITIONS

For  
Small Wireless  
Facilities (SWF)  
Within the  
City Right-of-Way

## **SMALL CELL WIRELESS TERMS AND CONDITIONS**

The Common Council of the City of Avondale has adopted the following terms and conditions (the “Terms”) to govern the use of City-Owned right-of-way for the placement of wireless facilities by a Wireless Services Provider as defined by the Arizona Revised Statutes (“ARS”), Section 9-591, *et seq.*, Chapter 9, Title 8, entitled “Use of Public Highways by Wireless Providers (“Title 8”). These terms are effective as of August 9, 2017, and may be amended only upon approval of the City Council. These Terms work together with the Design Standards Exhibits hereto, to implement Title 8 in the City of Avondale.

### **RECITALS**

- A. City, in its governmental capacity, owns or holds a legal interest in public roads, streets and alleys and all other dedicated public rights-of-way, public utility easements and public utilities and facilities easements of the City (collectively the “ROW”). City is responsible for the management of the ROW within City’s boundaries. Pursuant to ARS §§ 9-240, 9-276 and 9-582, the City has exclusive control of the ROW.
- B. As authorized by Title 8, Wireless Service Providers will attach Wireless Facilities to Authority Utility Poles located in the ROW.
- C. All City-owned structures approved for such private uses must retain their primary governmental purpose, and those entities occupying public property must not interfere with those purposes in any way, nor shall their activities create an unreasonably dangerous condition for the public.
- D. The purpose of these Terms is to protect the health, safety, and welfare for the public, and to protect the value of and physical integrity of publicly-owned property and assets.

### **1. DEFINITIONS**

- 1.1. “Antenna(s)” means the physical structure, or structures, as depicted on the Site Plans, which are attached to (or incorporated into) the City-Owned Structure that transmits and/or receives communications exclusively for Permitted Uses by converting electric current to/from electromagnetic waves used in providing wireless services.
- 1.2. “Applicable Laws” means the federal, state, county, and City of Avondale laws, ordinances, rules, regulations, and permit requirements that apply to Licensee’s use of the Use Areas.
- 1.3. “Authority Utility Pole” means a utility pole that is owned or operated by the City and that is in the ROW. Authority Utility Pole does not include a utility pole that is used for electric distribution.

- 1.4. "City-Owned Structure" means the vertical element owned by City and located in the ROW, to which Licensee will attach an Antenna, and which applicable Avondale codes, standards, specifications, and regulations permit the collation of Small Wireless Facilities. Authority Utility Poles and City-Owned Monopoles are included in the definition of City-Owned Structures.
- 1.5. "Equipment Cabinets" means equipment that is ground mounted or placed on a concrete slab that contains Licensee's improvements, personal property and facilities to operate its Antenna(s) for Permitted Uses including: radio receivers, transmitters, related facilities, and/or cabinets, related cables and utility lines, location based power source (including a battery), the electrical meter and any other equipment necessary for the operation of wireless antenna.
- 1.6. "Licensee" means an entity providing wireless services and that holds a valid Master License to use the ROW for such business.
- 1.7. "Licensee's Facilities" means the Antennas, Equipment Cabinets, and all other cable, wire, equipment, conduit, screen walls, or other such element used by Licensee for Permitted Uses including antennas, radios and cable owned by third parties, in connection with its installation of Small Cell Wireless Facilities and related equipment on City-Owned Structures pursuant to individual Permits.
- 1.8. "Master License" means a revocable, nonexclusive permission to attach Wireless Facilities to a City-Owned Structure and encroach in the ROW, which does not create or confer any interest in real or personal property.
- 1.9. "Monopole" means a Wireless Support Structure that is not more than forty inches in diameter at the ground level and that has all of the Wireless Facilities mounted on the pole contained inside the pole.
- 1.10. "Parties" means the City and a Licensee collectively.
- 1.11. "Party" means the City or a Licensee singly.
- 1.12. "Permit" means written permission required by the City to install, mount, maintain, modify, operate or replace a Utility Pole, to collocate a Small Wireless Facility on a Utility Pole or Wireless Support Structure or to collocate Wireless Facilities.
- 1.13. "Permitted Uses" means, and is limited to, Licensee's right to construct, install, operate, maintain and repair the related support facilities (such as wireless antennas and equipment cabinets) for the delivery of Wireless Services.
- 1.14. "Small Cell Wireless Facility" means a Wireless Facility that meets both of the following qualifications:

- 1.14.1.** Having all Antennas 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; and
- 1.14.2.** All other wireless equipment associated with the facility are cumulatively not more than twenty-eight cubic feet in volume, or fifty cubic feet in volume, excluding the following equipment: an electric meter, concealment features, a telecommunications demarcation box, grounding equipment, a power transfer switch, a cutoff switch, and vertical cable runs for the connection of power and other services.
- 1.15.** "Third Party Areas" means the portions of the Right-of-Way, such as canal and railroad 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.
- 1.16.** "Use Area" means the area that Licensee is permitted to use pursuant to an approved Master License. The term Use Area includes the area depicted on the Master License that shows where Antenna and other Wireless Facilities will be attached to the City-Owned Structure, and where the Equipment Cabinet and Cable Route will be located. The Use Area shall be the smallest geometric shape necessary to accommodate the Wireless Facilities.
- 1.17.** "Utility Pole" means a pole or similar structure that is used in whole or in part for communications service, electric distribution, lighting or traffic signals. Utility pole does not include a Monopole.
- 1.18.** "Wireless Facility" means equipment at a fixed location that enables wireless communications between users of equipment and a communications network, including both of the following: (a) equipment associated with wireless communications; and (b) radio transceivers, Antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment, regardless of technological configuration.
- 1.18.1.** Includes Small Wireless Facilities.
- 1.18.2.** Does not include the structure or improvements on, under or within which the equipment is collocated, wireline backhaul facilities, coaxial or fiber-optic cable that is between wireless support structures or utility poles or coaxial or fiber-optic cable that is other not immediately adjacent to, or directly associated with, an antenna.
- 1.18.3.** Does not include wi-fi radio equipment described in ARS § 9-506, Subsection I or microcell equipment described in ARS § 9-584, Subsection E.

- 1.19.** “Wireless Services” means any services that are provided to the public and that use licensed or unlicensed spectrum, whether at a fixed location or mobile, using Wireless Facilities.

## **2. Licensing Scope**

- 2.1.** Licensee shall not attach any Wireless Facility to a City-Owned Structure or place Licensee Facilities in the ROW without a Master License approved by the Avondale City Council. Placement of any unauthorized facilities on City-Owned Structures or in the ROW without a Master License and Permit shall constitute trespass.
- 2.2.** Master Licenses and Permits do not provide Licensee with any ownership or leasehold interests in the City-Owned Structures, replacement poles or ROW, nor do they provide Licensee with any of the City’s rights to use the public property upon which the City-Owned Structures and Licensee’s Facilities are located, other than those expressly provided herein or in a Permit.
- 2.3.** City specifically reserves to itself and excludes from an approved Permit a non-exclusive and delegable right over the entire Use Area for all manner of real and personal improvements related to governmental activity or other improvement designed to benefit the public. Licensees accept the risk that the City and others may now or in the future install or modify facilities in the Use Areas in locations that make the area unavailable for Licensee’s use. Such activities may include, but are not limited to any and all construction, erection, installation, use, operation, repair, replacement, removal, relocation, raising, lowering, widening, realigning, or otherwise accommodating all manner of streets, sidewalks, alleys, trails, traffic control devices, transit facilities, pipes, wires, cables, conduit, sewer, canals, drains, overpasses, culverts, bridges, and other encroachments, and any other use of the right of way that the City may determine from time to time to be a benefit to the public.
- 2.4.** There may be portions of the ROW, such as canal crossings, structures not owned or operated by the City, or other areas that are encumbered for the benefit of others, have limited dedications to the public, or that have regulatory use restrictions imposed by a third party. Areas subject to such encumbrances, restrictions, or regulation are Third Party Areas and Licensee Facilities shall not be constructed or placed in such areas without the express written permission from the Third Party or Third Parties that have property rights or regulatory authority over the specific Third-Party Area.
- 2.5.** City 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 Licensee to cooperate and participate in implementing such solutions. In exercising its authority, the City may consider any legal, timing, operational,

financial and other factors affecting existing and future proposals and public needs in the Use Area.

- 2.6. Licensees assume all risk, costs and expenses related to the Licensee Facilities and loss of service that may occur due to damage, destruction or collapse of any City-Owned Structure or due to any incompatibility of Licensee's use with City's use, or other user's use, of the City-Owned Structures. Licensee shall be solely responsible for the relocation of any Licensee Facilities placed on a structure or property not owned by City or wrongly designated as a City-Owned Structure and/or ROW at any time.
- 2.7. City may require Licensees to remove any unauthorized attachment to a City-Owned Structure or placement of facilities in the ROW. If Licensees fail to remove the unauthorized facilities within thirty (30) days after notice, City may remove the unauthorized facilities without incurring any liability, including but not limited to liability for interruption of service. Licensees shall reimburse City for its actual costs of removal of the unauthorized facilities. The failure of the City to act to remove any unauthorized facilities shall not constitute permission or a de facto Permit in any manner nor shall subsequent issuance of a Permit operate retroactively.
- 2.8. Licensee Facilities may be used solely for Permitted Uses, and Licensees are not authorized to and shall not use the Licensee Facilities to offer or provide any other services not specified herein. The Licensee Facilities shall be owned by Licensees.

### **3. Licensing Procedures**

- 3.1. Licensee shall submit an application for a Master License to the City Engineer for approval by the City Council. The form of Master License is attached hereto as Exhibit A. Following Council approval of the Master License, individual Permits consistent with the Master License and Applicable Laws may be approved by the City Engineer.
- 3.2. Licensee shall submit an application for an individual Permit on an application form approved by the City Engineer ("Application"). Once the Application is reviewed and approved by City, a Permit in substantially the form of Exhibit B may then be executed by the Parties. The City Engineer or designee will have the authority to execute a Permit.
- 3.3. Licensee shall submit one Application for each site or proposed Use Area.
- 3.4. Any change to the site plan of an approved Permit is void unless City agrees to the change in writing during the Permit approval process.

- 3.5. Licensees shall comply with any necessary zoning, building permit, traffic control, ROW management requirements, non-City utility permits, other permits as required, or other regulatory requirements (“Permits”) that apply to Licensee Facilities.
- 3.6. Licensees are responsible for the study and inspection of the City-Owned Structures and ROW to be utilized by Licensee and for determining the fitness for the use by Licensee. City expressly disclaims all warranties of merchantability and fitness for a purpose or absence of hazardous conditions associated with the City-Owned Structures and ROW. City makes the City-Owned Structures and ROW available for Licensee’s use “AS IS.”
- 3.7. To the extent that Licensee owns any fiber or conduits that will be placed underground, and to the extent that State law requires it, Licensee shall comply with Arizona Revised Statutes Title 40, Chapter 2, Article 6.3 by participating as a member of the Arizona Blue Stake Center. A copy of Licensee’s proof of membership shall be filed with the City when the Application is submitted.

#### **4. Standards for Installation, Operations, and Maintenance**

- 4.1. Licensee, at its sole expense, shall supply all material associated with the installation, operation, and maintenance of Licensee’s Facilities. Licensee shall maintain Licensee’s Facilities always.
- 4.2. Where installation of Licensee’s Facilities requires replacement of an existing City-Owned Structure, Licensee shall replace the City-Owned Structure with a structure meeting all applicable City standards and specifications and shall return replaced structures to City at a designated location.
- 4.3. All Licensee Facilities shall be designed and constructed by Licensees at the Licensees’ sole cost and expense, including without limitation any alteration or other change to the City’s equipment or other improvements or personalty that may occur. In no event shall City be obligated to compensate a Licensee in any manner for any of Licensee’s improvements or other work provided by Licensee during or related to the term of any Permit. Licensee 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 City and City’s employees, officers, contractors, and agents against all claims related to such items. Licensee shall bear the cost of all work required from time to time to cause the Use Areas and City’s adjoining property (if directly impacted by Licensee’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 Licensee, by Licensees’ use of the Use Areas, or by any exercise of the rights granted to Licensee under a Master License or a Permit.

- 4.4.** Licensees shall purchase and store two (2) extra street light poles, at their own cost, in anticipation of emergency or routine replacement of such poles utilized by Licensee or City. Streetlight pole replacements shall be provided within three (3) weeks. In the event a replacement is not available, the City may replace such pole; however, such pole may not be able to support the Licensee's equipment. All replacement poles shall be approved by City prior to installation.
- 4.5.** Licensees shall apply for and obtain one annual permit for emergency operations (no excavation) occurring within the ROW and/or on the City-Owned Structures. Each Licensee shall renew such permit annually during the term of each individual Permit so that such a permit for emergency operations is in force during the entire time that Licensee is occupying the ROW.
- 4.6.** All work in the ROW will be performed only by a Licensee and its contractors and will be performed substantially in compliance with Avondale City Code, applicable City policies, the Uniform Standard Specifications and Details for Public Works Construction sponsored and distributed by the Maricopa Association of Governments ("MAG") as amended, Avondale's Engineering and Design Standards, Avondale's Approved Product List and Technical Specifications, National Electric Code (NEC), National Electric Safety Code (NESC), OSHA regulations, compliance with the 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.
- 4.7.** Upon performing work in the ROW, Licensee shall simultaneously restore the ROW to its prior condition, as directed by City, and repair any holes, mounting surface or other damage whatsoever to the ROW. Such work shall include revegetation and appropriate irrigation systems for revegetated areas.
- 4.8.** Licensees shall, at all times during the term of a Permit, maintain the Licensee Facilities in good repair and shall keep the Use Area free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or source of undue vibration, heat, noise or interference.
- 4.9.** Licensees shall prepare and maintain record drawings of all Licensee Facilities located on City-Owned Structures and in the ROW and furnish such record drawings at City's request. Locations of said encroachments shall be reported using State Plan Coordinate System Arizona Central Zone, North American Datum 1983 (NAD83) for horizontal position, and North American Vertical Datum 1988 (NAVD88) for vertical positions; or other public land survey system accepted by the City Engineer or designee. Licensees shall furnish City copies of the record drawings in both hard copy and electronic formats, as requested by the City. The electronic copy shall be provided in Autocad 2014 DWG format or other current City electronic format. If the horizontal and vertical locations are not known or provided as requested by City, Licensees shall reimburse the



City for actual costs associated with locating and potholing a Licensee's Facilities, in the event that Licensee Facilities need to be located in connection with one of Avondale's projects.

- 4.10.** If Licensee Facilities are not located in the precise location depicted in the Permit or the As-Built Drawings, Licensees shall be responsible, and shall reimburse City, for all costs and damages incurred in locating the Licensee Facilities and all delay costs incurred to locate (and if necessary relocate) the Licensee Facilities.
- 4.11.** Consistent with the requirements of Avondale City Code and Avondale's Engineering and Design Standards, Licensees shall screen or conceal, as applicable, all pole-mounted, pad, and ground-mounted equipment used for Permitted Uses with required aesthetic features, such as canisters, screen walls, and landscaping, as approved by City with each Permit. Concealing and screening shall blend with or enhance the surrounding area with the use of artistic and/or architectural detail and shall take into account scale, form, texture, materials and color and shall conceal the equipment. Concealing and screening features shall be noted on the site survey and construction drawings submitted with each application.
- 4.12.** Licensees shall not install signage at the Use Area except as may be required for the safe use of the Use Areas by the City, Licensee, and others. Any such signs shall be maintained at all times, shall not exceed 18" x 12" in size, and shall include Licensee's name, business address, telephone number, and emergency contact information. In no instance shall such signs contain a commercial message.
- 4.13.** Except for security lighting operated with the City's approval from time to time, Licensees shall not operate outdoor lights at the Use Areas.
- 4.14.** Except during permitted construction and safety tests, equipment located on the Use Area shall not emit noise greater than ambient noise level of the surrounding ROW. This limitation does not apply to infrequent use of equipment that is as quiet or quieter than a well-maintained gasoline generator or to the use of air conditioning equipment than is no louder than a typical well-maintained residential air conditioning unit.
- 4.15.** If a Licensee abandons use of any of Licensee's Facilities, or any portion thereof, installed under or pursuant to an approved Permit, the Licensee shall remove all of the Licensee Facilities, including subgrade facilities and foundations, installed pursuant to the approved Permit immediately, but in no event later than thirty (30) days, at the Licensee's expense and restore the City-Owned Structure and ROW, including Licensee Facilities installed sub-grade, to better than or equal to the condition that existed prior to construction and installation of the Licensee Facilities.

- 4.16.** Licensees shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. If any lien is filed against City Property as a result of acts or omissions of a Licensee or its employees, agents or contractors, the Licensee shall discharge the lien or bond the lien off in a manner reasonably satisfactory to City within thirty (30) days after Licensee receives written notice that the lien has been filed.
- 4.17.** Licensees shall install separate meters for any utilities used by Licensee and shall pay for all utilities supplied to, used, or consumed as a result of the operation of Licensee's Facilities, including without limitation (as applicable) all gas, electric, sanitation, and telephone installation and monthly use charge. Licensees shall comply with all City of Avondale Ordinances, permit requirements, Utility Terms and Conditions, and regulations related to utility services. Any third-party equipment needed to service the Licensee Facilities shall be required to apply for and obtain separate permits. The City shall not provide easements within the right-of-way to Licensees or third-parties.
- 4.18.** In the event of an emergency, maintenance, accident or condition that causes the City to replace or remove a Licensee's Facility, the Licensee at its sole expense shall be responsible for the reconnection to a utility. No secondary power supply (generator or battery, permanent or temporary) may be located on the City-Owned Structures or in the ROW without the prior written consent of City pursuant to an approved Permit.

## **5. Duration**

### **5.1. Term of Master Licenses and Permits**

Subject to a Licensee's right to terminate, Master Licenses and Permits shall have a duration of ten years.

### **5.2. Early Termination**

Licensees may terminate a Master License or Permit at any time upon service of 60-days written notice to City. In the event a Licensee exercises this option, Licensee shall be subject to all obligations in these Terms and Conditions to restore and rehabilitate all City-Owned Structures and ROW used for Licensee's Facilities to their former condition and utility.

### **5.3. Renewal**

Permits shall be renewable for one additional term of ten years, at a Licensee's sole discretion, so long as the Licensee and Licensee's Facilities are in compliance with these Terms and Conditions, the related Master License, and all applicable federal, state, local, and City codes, standards, specifications, rules, and regulations.

## **6. Relocation of City-Owned Structures**

City shall have the right at any time to require relocation of a Licensee's Facilities or any portion of them to accommodate a public project, at Licensee's expense, to another location suitable for Licensee's use. Licensee shall have at least ninety (90) days' notice of such relocation and shall fully cooperate in such relocation. If a Licensee fails to relocate as required herein, the Licensee shall reimburse City for actual, direct and indirect damages incurred by the City as a result of such delays. If necessary City may permit Licensee to place a temporary Small Cell Wireless Facility (Cell on Wheels or similar installation) on the City Property or at some other location acceptable to Licensee, at Licensee's cost, until such relocation is complete.

## **7. Operations Interference, Emergency Disruption, Testing, and Reservation**

- 7.1.** Licensees shall not use the City-Owned Structures or the ROW in any way which interferes with the use of any portion of the City Property by City. In the event City determines that a Licensee's use of the City-Owned Structures or the ROW interferes with the City's use of the City Property, City will notify the Licensee of such interference and the Licensee shall have fifteen (15) days to remedy the interference. If a Licensee does not remedy the interference, such action shall be deemed a material breach by the Licensee and City shall have the right to terminate the Permit.
- 7.2.** City shall be entitled to inspect all construction, reconstruction, or installation work and to conduct such tests as it deems necessary to ensure compliance with the terms herein and all applicable laws, regulations, and rules. This right to access is in addition to access rights for City inspectors or other employees and officers acting within their legal authority.
- 7.3.** Licensees 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 City's existing or future fire, law enforcement, Police, Public Safety, transportation, information technology, engineering, emergency or other communication equipment, methodology or technology (including, but not limited to, voice, data or other carrying, receiving or transmitting equipment.) If such interference should occur, the Licensee shall immediately discontinue using the equipment, methodology or technology that causes the interference until the Licensee takes corrective measures to alter the Licensee Facilities to eliminate such interference. Any such corrective measures shall be made at no cost to City.
- 7.4.** City may remove alter, tear out, relocate, or damage portions of Licensee's Facilities in the case of fire, disaster, or other emergency if the City deems such action to be reasonable necessary under the circumstances. In such event, neither the City nor any agent, contractor or employee of the City shall be liable

to Licensee or its customers or third parties for any harm so caused to them or Licensee's Facilities. When practical, City shall consult with Licensee in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption or operation of the Licensee's Facilities. In any event, City shall inform Licensee after such actions.

- 7.5.** Licensees shall at all times retain on call and available to the City by telephone an active, qualified, competent and experienced person to supervise all activities upon the Use Areas and operation of Licensee's Facilities and who shall be authorized to represent and act for Licensee in matters pertaining to all emergencies and day-to-day operation of the ROW and all other matters affecting a Permit.
- 7.6.** Both City and the Licensees may conduct radio frequency emission and interference studies from time to time to determine whether a Licensee's use of the Licensee Facilities will interfere with City's use of the City-Owned Structures or the ROW. In the event such a study indicates that a Licensee's use will potentially interfere with City's use of the City-Owned Structures or the ROW, the Licensee shall have thirty (30) days to remedy the interference to City's satisfaction. If the problem is not so remedied in thirty (30) days, then City may require the Licensee, at Licensee's full expense, to relocate the Licensee Facilities so as to remove or minimize the interference, to the extent City deems necessary. City may permit Licensee to place a temporary Antenna (Cell on Wheels or similar installation) on the City-Owned Structures, the ROW or at some other location acceptable to Licensee and City, during relocation of the Licensee's Facilities.
- 7.7.** City may, at its expense, perform tests as necessary to determine compliance of the Licensee Facilities on the City-Owned Structures or in the ROW with Federal radio frequency exposure limit rules, 47 C.F.R. Section 1.1310, or subsequent Federal rules as amended from time to time.
- 7.8.** Licensees shall conduct an initial test for compliance with Federal radio frequency exposure limit rules prior to placing Licensee Facilities (or that of any sub-lessees of Licensee) on City-Owned Structures or in the ROW into commercial operation, and Licensees shall perform additional tests upon any significant change in the Licensee Facilities on the City-Owned Structures or in the ROW, such as sublicenses to third parties for them to install communications equipment on the City-Owned Structures or in the ROW. All such testing shall be performed by a qualified radio engineer, and a copy of the test results shall be provided to all Parties. If such tests show noncompliance with applicable radio frequency exposure limit rules then in effect, then noncompliant Licensee Facilities on the City-Owned Structures or in the ROW shall be shut down (except for work necessary to bring it into compliance) until subsequent tests again show compliance with such rules.

- 7.9.** City does not grant, and reserves for itself, its lessees, successors and assigns, (i) all mineral rights, seismic rights and rights to oil, gas, water, other hydrocarbons or minerals on, as to, under or about any portion of the City Property; (ii) rights to generate electricity from the wind or wind power on, as to or about any portion of the City Property; and (iii) the right to grant to others the rights hereby reserved.
- 7.10.** City shall have the right to operate, replace and maintain all City-Owned Structures in such manner as best serves City's service requirements including, but not limited to, the right to allow the attachment of additional facilities. Licensee agrees to shut down communications and electrical equipment during any time City is maintaining, testing or replacing the City-Owned Structure within one (1) business day from the date of notice. If Licensee fails to shut off the equipment within one (1) business day from the date of notice, Licensee shall reimburse City for its costs related to the delay including time and labor expenses. The reimbursement will be at a minimum \$500 per incident.

## **8. Fees**

- 8.1.** Licensees shall pay the application fees set forth on the Schedule of Fees on Exhibit C, attached hereto and incorporated herein, for each Permit at the time of submittal of a Permit application.
- 8.2.** Licensees shall pay all applicable permit fees at the time of issuance of each Permit, including by way of illustration and not limitation, all applicable taxes, traffic control fees, and technology fees that are adopted by the City from time to time.
- 8.3.** The applicable fees set forth on Exhibit C for each Permit shall be consideration for the right to use City-Owned Structures or the ROW.
- 8.4.** The Fee shall be paid to City in advance, on or before the anniversary date of the effective date of each Permit, without prior demand and without any deduction or offset whatsoever.
- 8.5.** Fees paid by Licensees are non-refundable.

## **9. Safety Program for City's Employees**

In order to perform duties necessary as owner and manager of the public ROW, the City and its employees, agents, and representatives must have uninterrupted and safe access to the ROW and all structures located thereon. In conjunction with the requirements of paragraph 7.10, above, and in order to ensure the safety of those working on or near a

Licensee's Facilities, Licensees must comply with at least one of the following safety protocols:

- 9.1. Provide access to a kill switch for each Small Wireless Site that the City's employees, agents, or representatives can use to turn off all power to the Licensee's Facilities while City work is performed at the location.
- 9.2. 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.

## 10. Indemnification

To the fullest extent permitted by law, Licensees shall indemnify, hold harmless, and defend the Indemnified Parties for, from and against all claims, damages, losses, and expenses including, but not limited to, reasonable attorneys' fees arising out of or resulting from the conduct or management of Licensee's Facilities or any condition created in or about the Licensee's Facilities or any accident, injury, or damage whatsoever occurring in or at Licensee's Facilities or from the failure of Licensee to keep its facilities in good condition and repair, provided that any such claim, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property, including loss of use therefrom, and (b) is caused by any act or omission of Licensee or anyone directly or indirectly employed by it, including any contractor or subcontractor, or anyone for whose acts it might be liable. Notwithstanding the foregoing, Licensee's obligation to indemnify or hold harmless the Indemnified Parties under this provision shall be limited to the extent that the damage or injury is attributable to the negligence or other wrongful acts or omissions of Licensee or its employees, contractors, subcontractors or agents. If the damage or injury is caused by the joint or concurrent negligence of City and Licensee, the loss shall be borne by City and Licensee in proportion to their degree of negligence or fault. Licensee's hold harmless agreement includes latent defects, and, subject to standard provisions of the relevant policies, the hold harmless obligation shall be specifically covered and insured by the insurance policies required by these Terms.

## 11. Insurance

- 11.1. Without limiting any liabilities or any other obligations of any Licensee or any of its contractors or subcontractors under any Master License, Permit or otherwise, a Licensee and its contractors or subcontractors shall provide and maintain, with forms and insurers acceptable to City, and until all obligations under the Master License and all Permits are satisfied, the minimum insurance coverage, as follows:
  - 11.1.1. Commercial General Liability Insurance, including coverage of contractual liability assumed under each Permit, affording protection of not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence, combined single limit for bodily injury and property damage, against

damages because of, or on account of, bodily injuries to or the death of any person or destruction of or damage to the property of any person, occurring on or about any of Licensee's Facilities or due in any way to the use, occupancy, maintenance or operation of the Small Cell or Ground Facilities or related facilities.

- 11.1.2.** Workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Licensee's and Licensee's contractor or subcontractor employees who may be working on Licensee's Facilities, and employer's liability with a minimum limit of ONE HUNDRED THOUSAND DOLLARS (\$100,000).
- 11.1.3.** Commercial automobile liability insurance with a combined single limit for bodily injury and property damage of not less than TWO MILLION DOLLARS (\$2,000,000) each occurrence with respect to vehicles assigned to or used in the performance of the work, whether owned, hired, or non-owned.
- 11.2.** The policies required by Sections 12.1.1 and 12.1.3 herein shall include the City of Avondale, members of its governing bodies, its officers, agents and employees as additional insureds and shall stipulate that the insurance afforded for shall be primary insurance and that any insurance carried by the City of Avondale, members of its governing bodies, its officers, agents and employees shall be excess and not contributory.
- 11.3.** Contractor, its subcontractors and its insurers providing the required coverages shall waive all rights of subrogation against the City of Avondale, members of its governing bodies, its officers, agents and employees.
- 11.4.** Prior to commencing construction, Contractor or Subcontractor shall furnish the City with Certificates of Insurance and related endorsements as evidence that policies providing the required coverage, conditions and limits are in full force and effect. Such certificates shall provide that not less than thirty (30) days' notice of cancellation, termination, or material change shall be sent directly to City.
- 11.5.** All insurance policies shall be obtained from companies duly authorized to issue such policies in the State of Arizona, having Best's ratings of "A" and acceptable to City.

## **12. Breach and Letter of Credit**

- 12.1.** Any breach of these Terms and Conditions or of any provision of a Master License or Permit, if left uncured after 30-days' written notice, shall render Licensee's Facilities as unauthorized work within the right-of-way, and shall be subject to the penalties in Avondale City Code 21-7.

**12.2.** Prior to the effective date of any Master License or Permit, Licensees shall provide a letter of credit in an amount based upon a Licensee's good-faith estimate of the number of Permits to be issued within the City in the current calendar year. The letter of credit shall be a security deposit for a Licensee's performance of all of its obligations under these Terms, and shall be in substantially the same form as approved by the City Attorney.

**12.2.1.** The amount of the letter of credit shall be, as follows: Thirty Thousand Dollars (\$30,000.00) for up to ten (10) Permits; Sixty Thousand Dollars (\$60,000.00) for eleven (11) to twenty (20) Permits; One Hundred Five Thousand Dollars (\$105,000.00) for twenty-one (21) to thirty-five (35) Permits; One Hundred Eighty Thousand Dollars (\$180,000.00) for thirty-six (36) to sixty (60) Permits; Three Hundred Thousand Dollars (\$300,000.00) for sixty-one (61) to one hundred (100) Permits; Four Hundred Fifty Thousand Dollars (\$450,000.00) for One hundred one (101) to one hundred fifty (150) Permits; Six Hundred Seventy-Five Thousand (\$675,000.00) for one hundred fifty-one (151) to two hundred twenty-five (225) Permits; One Million Fifty Thousand Dollars (\$1,050,000.00) for two hundred twenty-six (226) to three hundred fifty (350) Permits; One Million Five Hundred Thousand Dollars (1,500,000.00) for three hundred fifty-one (351) to five hundred (500) Permits; Two Million Two Hundred and Fifty Thousand Dollars (\$2,250,000.00) for five hundred one (501) to seven hundred fifty (750) Permits; and Three Million Dollars (\$3,000,000.00) for seven hundred fifty-one (751) to one thousand (1,000) Permits. If the number of Permits exceeds one thousand (1,000), then the Three Million Dollar (\$3,000,000.00) letter of credit shall remain in effect and the amounts for additional Permits shall be calculated according to the calculation above.

**12.2.2.** The City will determine at least once annually if Licensee must update the amount of the letter of credit based upon the then-current number of Licensee's Permits.

**12.2.3.** Licensee shall pay all costs associated with the letter of credit and shall maintain the letter of credit for at least one year following the term of any Permit.

**12.2.4.** City may, in its sole discretion, draw on the letter of credit in the event of any default under these Terms and Conditions. In such event, Licensee shall cause that the letter of credit be replenished to its prior amount within ten (10) business days after City notifies a Licensee that it has drawn on the letter of credit.



- 12.3.** The City's remedies for breach are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available under the law.

### **13. General Provisions**

#### **13.1. Force Majeure**

**13.1.1.** Neither City nor any Licensee shall be liable or responsible for a delay or failure in performing or carrying out any of its obligations (other than obligations to make payments) under any Master License or Permit caused by force majeure. Force majeure shall mean any cause beyond the reasonable control of City or Licensee, as applicable, or beyond the reasonable control of any of their respective contractors, subcontractors, suppliers or vendors, including without limitation: acts of God, including, but not necessarily limited to, lightning, earthquakes, adverse weather of greater duration or intensity than normally expected for the job area and time of year, fires, explosions, floods, other natural catastrophes, sabotage, acts of a public enemy, acts of government or regulatory agencies, wars, blockades, embargoes, insurrections, riots, or civil disturbances; Labor disputes, including, but not necessarily limited to, strikes, work slowdowns, work stoppages, or labor disruptions, labor or material shortages, or delays or disruptions of transportation; orders and judgments of any federal, state or local court, administrative agency or governmental body; the adoption of or change in any federal, state or local laws, rules, regulations, ordinances, permits or licenses, or changes in the interpretation of such laws, rules, regulations, ordinances, permits or licenses, by a court or public agency having appropriate jurisdiction after the date of the adoption of these Terms; or any suspension, termination, interruption, denial or failure to issue or renew by any governmental authority or other party having approval rights of any approval required or necessary hereunder for installation or operation of any Small Cell Equipment or for either Party to perform its obligations hereunder, except when such suspension, termination, interruption, denial or failure to issue or renew results from the negligence or failure to act of the Party claiming the occurrence of an event of force majeure.

**13.1.2.** If either City or a Licensee is rendered unable to fulfill any of its obligations under a Master License or Permit by reason of force majeure, such Party shall promptly notify the other and shall exercise due diligence to remove such inability with all reasonable dispatch; provided, that nothing contained in this Section 14.1 shall be construed as requiring City or a Licensee to settle any strike, work stoppage or other labor dispute in which it may be involved, or to accept any permit,

certificate, license or other approval on terms deemed unacceptable to such Party, or to enter into any contract or other undertaking on terms which the Party deems to be unduly burdensome or costly.

### **13.2. Assignment**

Licensees will have the right to assign, sell or transfer its interest under a Master License or Permit without the approval or consent of City, to the Licensee's affiliate or to any entity which acquires all or substantially all of the Licensee's assets in the market defined by the Federal Communications Commission in which the Licensee's Facilities are located by reason of a merger, acquisition, or other business reorganization. Licensees may not otherwise assign a Master License or Permit without the City's consent, City's consent not to be unreasonably withheld, conditioned or delayed. Any purported assignment in violation of this Section shall be void.

### **13.3. Entire Agreement**

These Terms and Conditions and any related Master Licenses represent the entire agreement of the Parties. There are no other agreements or terms, written or oral. Except for those previously-executed and enforceable contracts, these Terms and Conditions and related Master Licenses supersedes all previous communications and representations between the Parties on the same subject matter, whether oral or written. All changes to any Master License agreed to by the Parties shall be in writing, and must be executed by both Parties.

### **13.4. Severability**

If any a provision of these Terms is invalidated by a court of competent jurisdiction, all other provisions hereof shall continue in effect.

### **13.5. Governing Law and Choice of Forum**

These Terms and all matters relating hereto shall be governed by, construed and interpreted in accordance with the laws of the State of Arizona without reference to principles of conflict of laws in Arizona or any other jurisdiction. Any proceeding shall be filed, prosecuted and resolved in the courts of the State of Arizona, state or federal, and venue for any litigation or other dispute shall be only in Maricopa County, Arizona. The Parties waive any and all rights to a jury.

### **13.6. Remedies Cumulative**

All remedies specified in these Terms and all remedies provided by law or otherwise (except as specifically excluded herein), shall be cumulative and not alternative.

### **13.7. Attorneys' Fees and Expenses**

In the event of default by either Party or any action or suit arising out of these Terms and Conditions, any Master License or any individual Permit, the prevailing Party or the non-defaulting Party shall be entitled to recover its costs, expenses, reasonable attorneys' fees, experts' fees and witness fees of any type.

### **13.8. 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 to the addresses set forth in the Master License and to the City as follows:

If to City: City of Avondale  
Development & Engineering Services Department  
11465 W Civic Center Dr Suite 120  
Avondale, AZ 85323  
Attn: City Engineer

Copy to: City of Avondale City Attorney  
c/o Gust Rosenfeld P.L.C.  
1 E Washington St #1600  
Phoenix, AZ 85004

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 by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

### **13.9. Exhibits**

The forms of Exhibits attached to this Master Agreement may change from time to time in City's discretion, as technology and business needs change.

**EXHIBIT A**

**FORM OF MASTER LICENSE**

DRAFT

## EXHIBIT A TO TERMS AND CONDITIONS

### MASTER LICENSE FORM

#### WIRELESS PROVIDER MASTER LICENSE FOR USE OF RIGHT-OF-WAY

This Master License, made this \_\_\_\_ day of, 20 \_\_\_\_ ("Master License Effective Date"), between the City of Avondale, an Arizona municipal corporation ("City") and \_\_\_\_\_ (\_\_\_\_\_) a \_\_\_\_\_ corporation ("Licensee") for the use of City right-of-way.

**1. Master License.** This Master License is issued to Licensee to conduct the Permitted Uses in compliance with those documents entitled "Wireless Facilities in the Right-of-Way Standard Terms and Conditions" ("Terms and Conditions") and "Design Standards, Concepts and Requirements – Wireless Facilities in the Right-of-Way" ("Design Standards") adopted by the City Council and on file with the City Clerk of Avondale and as authorized by Section 708 of the City Zoning Ordinance. The Terms and Conditions and Design Standards are incorporated into this Master License by reference. In the event of a contradiction, modification or inconsistency between the Terms and Conditions or Design Standards and this Master License, the terms of this Master License shall govern. Capitalized terms used in this Master License shall have the same meaning described for them in the Terms and Conditions unless otherwise indicated herein. **LICENSEE WARRANTS AND REPRESENTS THAT LICENSEE HAD READ AND AGREES TO THE TERMS AND CONDITIONS AND DESIGN STANDARDS.**

**2. Preliminary Site Plan Approval and Permit Application.** Licensee agrees that the information it submits to City with any Preliminary Site Plan or Permit Application shall accurately sets forth and depicts the location of the Utility Pole it desires to use for Wireless Facilities in the Right-of-Way and the specific Permitted Uses Licensee desires on each Utility Pole, including all Licensee Facilities. All Licensee's work in the Right-of-Way shall comply with this Master License.

**3. Deviations from Standards Terms and Conditions and/or Design Standards.** If Licensee requests

**4. Term; Termination.** The term of this Master License shall commence on the Master License Effective Date and continue for a term of ten years. City may terminate this Master License if Licensee violates any term of this Master License and such violation continues for ten (10) days following written notice to Licensee of such violation.

**5. Fees.** Licensee shall pay the applicable fees as adopted by resolution of the City Council, as set forth in the Terms and Conditions.

**6. Approvals/Fiber.** It is understood and agreed that Licensee's ability to use the Utility Poles in the Right-of-Way is contingent upon its obtaining all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities, as well as a satisfactory fiber and electrical connections required for the Permitted Use. Licensee shall obtain such Governmental Approvals prior to commencing work in the Right-of-Way. In the event that Licensee is not able to obtain such Governmental Approvals or not able to obtain them in a satisfactory manner, or that the approved location is no longer technically compatible for its use, Licensee shall have the right to terminate this Master License or a Permit. Notice of Licensee's exercise of its right to terminate shall be given to Licensee in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by Licensee, or upon such later date as designated by Licensee. All rentals paid to said termination date shall be retained by City. Upon such termination, this Master License or the Permit, as applicable, shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder. Otherwise, Licensee shall have no further obligations for the payment of rent to City.

**7. Compliance with Law.** Licensee acknowledges that this Master License does not constitute, and City has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Licensee with regard to any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City or any other governmental body upon or affecting Licensee's use of the Use Area.

**8. Notices.** All notices, requests, demands and other communications under this Master License shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by next-business-day delivery by a nationally recognized overnight carrier to the following addresses:

If to City:

If to License:

City of Avondale  
11465 W. Civic Center Drive  
Avondale, Arizona 85323  
Attention: City Manager

EXECUTED to be effective as of the date shown above.

CITY OF AVONDALE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM

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

LICENSEE:

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

Name: \_\_\_\_\_

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

**EXHIBIT B**

**SAMPLE PERMIT OF SMALL WIRELESS FACILITY**

DRAFT



EXHIBIT B  
FORM OF PERMIT

Permit No. \_\_\_\_

Date: \_\_\_\_\_  
Master License Date: \_\_\_\_\_  
Licensee: \_\_\_\_\_

**1. Facility Type.** This Permit is for (check one):

- Wireless Facilities installed on a Utility Pole owned by City, including replacement poles.
- Wireless Facilities installed on a Utility Pole owned by a third party pursuant to a separate agreement with the third party.
- Wireless Facilities installed on a Utility Pole owned by Licensee.

When used in this Permit, the term “Permitted Uses” means the use of the Utility Pole as designated above and on Exhibit 1 to install, maintain, operate and repair the Wireless Facilities in accordance with the Terms and Conditions and the Design Standards, as those terms are defined in Section \_\_\_\_\_ of the Avondale City Code.

**2. Permit.** This Site License is issued to Company to conduct the Permitted Uses in accordance with those documents entitled “Small Cell Wireless Terms and Conditions for Small Wireless Facilities within the Right-of-Way” (“Terms and Conditions”) and “Design Standards for Small Wireless Facilities within the City Right-of-Way” (“Design Standards”) adopted by the City Council and on file with the City Clerk of Avondale and as authorized by Section 708 of the City Zoning Ordinance. The Terms and Conditions and Design Standards are attached to this Site License and incorporated herein by reference. In the event of a contradiction, modification or inconsistency between the Terms and Conditions or Design Standards and this Site License, the terms of this Site License shall govern. Capitalized terms used in this Site License shall have the same meaning described for them in the Terms and Conditions unless otherwise indicated herein.

**3. Project Description and Locations.** Licensee shall have the right to use the Utility Pole for Wireless Facilities at the designated areas in the Right-of-Way as further described in Exhibit 1 attached hereto (the "Use Area") for the Permitted Use.

**4. Wireless Facilities.** The Wireless Facilities to be installed at the City Utility Pole are described in Exhibit 1 attached hereto.

**5. Term; Termination.** The term of this Permit shall commence on the Permit Effective Date and continue for a term of ten years. City may terminate this Permit if Licensee violates the term of this Permit and such violation continues for ten (10) days following written notice of such violation.

**6. Fees.** Licensee shall pay the applicable fees as adopted by resolution of the City Council, as set forth in the Terms and Conditions.

**7. Compliance Responsibility.** It is Licensee's responsibility to ensure that Exhibit 1 correctly shows the work that Licensee intends to perform, that Exhibit 1 correctly shows all improvements and equipment that Licensee intends be located on the Use Areas, that Exhibit 1 shows no work, improvements or equipment outside the Use Areas, and that all work, improvements and equipment is encompassed within the purposes enumerated in the Terms and Conditions for the Use Area. Any work, improvements or equipment not conforming to all the foregoing is prohibited, even if it is clearly shown on Exhibit 1 or discussed in the Terms and Conditions. Any refinement or other change to Exhibit 1 after City executes this Permit is void unless Licensee obtains City's approval of the change pursuant to the plans approval processes set out in the Terms and condition and pursuant to all applicable regulatory requirements.

**8. Compliance with Law.** Licensee acknowledges that this Permit does not constitute, and City has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Licensee with regard to any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City or any other governmental body upon or affecting Licensee's use of the Use Area.

**9. Notices.** Any notices given shall be as set forth in the Master License

EXECUTED to be effective as of the date shown above.

CITY OF AVONDALE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LICENSEE:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT 1

UTILITY POLE, USE AREA AND WIRELESS FACILITIES

**EXHIBIT C**

**SCHEDULE OF FEES**

<b>Small Cell Wireless Application Fee</b> (includes plan review, permit and inspection fees)	<b>\$750 (Due at time of initial submission)</b>
<b>ROW Use Fee</b>	<b>\$50 per year per location</b>

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