

Exhibit C

**TERMS & CONDITIONS FOR WIRELESS FACILITIES
ON, BELOW OR ABOVE TOWN RIGHTS-OF-WAY**

The Common Council of the Town of Gilbert has adopted the following TERMS & CONDITIONS FOR WIRELESS FACILITIES ON, BELOW OR ABOVE TOWN RIGHTS-OF-WAY (the “Terms & Conditions”) to govern all work conducted on, upon, below or above a Town right-of-way or public utility easement as provided in section 10-5(e) of the Gilbert Town Code (“Work”).

RECITALS

I. The Town, in its governmental capacities, owns or holds a legal interest in its roadways, streets, sidewalks, alleys, utility easements, and all other areas and facilities of the Town (collectively the “ROW”).

II. The Town has exclusive control of the ROW pursuant to A.R.S. §§ 9-240, 9-276, and 9-582 and is responsible for managing said ROW.

III. Various laws authorize the Town to grant, renew, deny, amend, and terminate permits and otherwise regulate ROW activities, including but not limited to the Town’s police powers, governmental powers and authority over its rights-of-way; the Gilbert Town Code and associated technical codes and standards; the Town of Gilbert Land Development Code; the Constitution of the State of Arizona; and, other applicable federal, state, and local laws, rules, and regulations including but not limited to Arizona Revised Statutes (A.R.S.) §§ 9-581 through -583 and 9-591 through -599.

IV. These Terms & Conditions seek to conform to recent changes in state law and provide uniform regulations, while also promoting administrative efficiency, protecting the health, safety, and welfare of the public, and preserving the value, functions, and physical integrity of publicly owned property and assets.

V. These Terms & Conditions become effective as to a particular site as they are incorporated by reference into each Site License that is executed by the Director of Development Services and the Provider. Except as otherwise stated herein, each Site License stands on its own.

VI. Because the Town’s existing streetlight poles and traffic signal poles are not designed to safely support the weight and stress of additional facilities, Providers shall be required to provide new poles designed to support these facilities.

DEFINITIONS SPECIFIC TO THE TERMS & CONDITIONS

1. “Affiliate” means each person or entity that falls into one or more of the following categories: (a) each person or entity having, directly or indirectly, a controlling interest in Provider; (b) each person or entity in which Provider has, directly or directly, a controlling interest; or (c) each person or entity that, directly or indirectly, is controlled by a third party that also directly or indirectly controls Provider. “Affiliate” shall not mean a creditor of Provider solely by virtue of its status as a creditor and that is not otherwise an Affiliate because it owns a controlling interest in, is owned by, or is under common ownership, common management or common control of Provider.

2. “Antenna(s)” shall have the same meaning as in the Standards.
3. “Assignment” or “Transfer” means any transaction whereby the rights and/or obligations held by Provider under a Site License are transferred, directly or indirectly, to a party other than Affiliate. An “Assignment” does not include a mortgage, pledge or other encumbrance as security for money owed.
4. “Application” shall mean the application referred to in Section 10-5 of the Gilbert Town Code, which requires an applicant to provide all the documentation and information required by the Town to support approval of a request to use Town rights of way and public utility easements for the purpose of Small Wireless Facilities. Such documentation and information may include but is not limited to a site plan, vicinity map, Boundary Plan, Utility Clearance letter, RF Letter, title report, elevations, technical specifications, and cubic feet measurements. Only certain sites are eligible for batch processing under one Application as determined by Town.
5. “Authority Utility Pole” or “Town Pole” means a traffic signal pole or light pole and its associated facilities owned or operated by the Town as further defined in the Standards. Town Pole does not include a Wireless Support Structure, nor does it include a utility pole for electric distribution.
6. “Competing Users,” means entities that have a legal interest to water pipes, cables and wires, pavement, and other facilities that may be located within the ROW. The Competing Users include without limitation the Town, the State of Arizona and its political subdivisions, the public, all manner of utility companies, and other existing or future users of the Use Areas, both public and private.
7. “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 ROW or existing or proposed uses of adjoining or nearby land: (i) all manner of streets, alleys, sidewalks, trails, ways, traffic control devices, subways, tunnels, trains and gates of every description, and all manner of other transportation facilities and their appurtenances; (ii) all manner of pipes, wires, cables, conduits, sewers, pumps, valves, switches, conductors, connectors, poles, supports, access points and guy wires of every description, and all manner of other utility facilities and their appurtenances; (iii) all manner of canals, drains, bridges, viaducts, overpasses, underpasses, culverts, markings, balconies, porches, overhangs and other encroachments of every description and all manner of other facilities and their appurtenances; and all other uses of the Right-of-way that Town may allow from time to time.
8. “Default” shall mean any of the following: (i) Provider’s failure to comply with a material term of the Terms & Conditions and/or the Site License including but not limited to any term relating to safety, abandonment, insurance, the payment of fees and costs, removal, relocation, restoration, and maintenance; (ii) Provider becomes insolvent; (iii) Provider fails to obtain all required permits and certifications or to pay all fees and taxes associated therewith; (iv) All or a substantial part of Provider’s assets are assigned for the benefit of its creditors; (v) a receiver or trustee is appointed for Provider; or (vi) Provider fails to install any facility under the Site License within one (1) year of execution of the Site License.
9. “Equipment Cabinet or Building” shall have the same meaning as in the Standards.

10. “Facility” or “Facilities” means any third-party structure, system, equipment, improvement or facility including but not limited to small wireless facilities and their associated equipment, Antennae, Equipment Cabinet or Building, cable, wire, conduit, screen wall, improvement, radio transceivers, power supplies, and other structural elements.
11. “FCC” means the Federal Communications Commission.
12. “FCC Rules” means all applicable FCC rules and regulations including but not limited to those pertaining to radio frequency emissions.
13. “FCC OET Bulletin 65” means the FCC’s Office of Engineering & Technology Bulletin 65 as may be amended that includes the FCC Radio Frequency Exposure Guidelines.
14. “Indemnified Parties” shall mean the Town of Gilbert and its officers, employees, contractors, agents, representatives, and their respective successors and assigns.
15. “Permit” means a permit issued pursuant to Chapter 10 of the Gilbert Town.
16. “Permitted Uses” means the installation, mounting, construction, reconstruction, repair, alteration, operation, and replacement activities conducted in the Use Area in accordance with these Terms & Conditions, the Standards, and the Site License.
17. “Provider” means the entity that holds a valid Site License with the Town and is responsible for any and all activities and facilities within the Exclusive Area(s).
18. “Radio Frequency (RF) Emissions” means any electromagnetic radiation or other communications signal emitted from an Antenna or Antenna-related equipment on the ground, Antenna-supporting structure, building, or other vertical projection.
19. “RF Emissions Letter” means a letter from the Provider’s senior internal engineer that attests to the Provider’s compliance with FCC Rules.
20. “Right of Way” or “ROW” shall mean as defined under A.R.S. 9-591 *et. seq.*
21. “Site License” means a revocable, nonexclusive license to use certain ROW for Permitted Uses executed by the Town’s Director of Development Services and the Provider. The Site License shall be substantially in the form attached hereto and incorporated herein as Exhibit A. A Site License does not create or confer any interest in real or personal property.
22. “Small Wireless Facility” or “SWF” shall have the same meaning as in the Standards.
23. “Standards” means the “Standards for encroachment of structures into the public ROW” under Section 10-41 of the Gilbert Town Code.
24. “Use Area” means the specific areas described and depicted in the Site License that Provider is permitted to use and occupy exclusively (the “Exclusive Area(s)”) and certain areas that Provider is permitted to use on a shared basis (the “Shared Area(s)”). The Use Areas excludes other parts of the ROW and all other land.
25. “Utility Clearance Letter” is a letter in the form prescribed by the Town that describes all utilities in the proposed Use Area and attesting that all necessary clearances have been obtained from utility companies for utilities that are either in conflict or potentially in conflict with the Permitted Uses.
26. “Wireless Support Structure” or “WSS” shall have the same meaning as in the Standards.

TERM

27. Term; Extensions. The original term of each Site License shall be for ten (10) years, commencing on the effective date of the Site License. Town and Provider may agree to renew term of each Site License for additional ten (10) year periods. Both Town and Provider

shall be deemed to have consented to the renewal unless either party provides written notice to the contrary at least 90 calendar days prior to the end of the then-current term.

28. Holding Over. If Provider remains in possession or occupancy of a Use Area after the expiration or termination of the Site License, such holding over shall not operate as a renewal or extension of the Site License and Provider shall be liable for rent.

29. Termination by Provider. Provider may terminate a Site License at any time upon 60 calendar days prior written notice to Town. In the event a Provider exercises this option, Provider shall be subject to all obligations in these Terms & Conditions regarding the restoration and rehabilitation of the Use Area.

30. Provider's Removal and Restoration Obligations. Within 90 calendar days after termination or expiration of the Site License, at its sole cost and expenses, Provider shall commence removal of all of Facilities from ROW and restoration of the ROW in the same condition the ROW was in on the date the Site License was executed, ordinary wear and tear excepted. Removal and restoration by Provider shall be completed no later than 180 calendar days from the date of termination or expiration of the Site License, unless otherwise agreed to in writing by the Director of Development Services. If Provider fails to begin removal on or before the 30th day after the Site License expires or terminates, or if Provider fails to complete removal within the required time: (i) the Town shall have the right to cause the removal, storing and/or disposal of any or all remaining portions of Provider's facilities and equipment in any manner the Town Engineer deems appropriate and at no cost to Town; and (ii) Provider shall reimburse the Town for later than 30 calendar days from the date of receiving the Town's invoice of such costs. The obligations herein shall survive the termination or expiration of the Site License.

31. Abandonment. In the event abandonment of Facilities or any portion thereof occurs, Provider shall: (a) remove all of the Facilities (which may include subgrade facilities and foundations) at the Provider's sole cost and expense as determined by Town, and (b) restore the Town Pole and ROW (including Facilities installed sub-grade) to better than or equal to the condition that existed prior to construction and installation of the Facilities. Provider's removal and restoration obligations under this Section shall occur immediately, but in no event later than 60 calendar days from the date of abandonment.

32. Termination by Town. Without limiting other rights of the Town to terminate the Site License, the Town may terminate the Site License for Default subject to Provider's ability to cure said violation. The Town's right to terminate a Site License herein is cumulative of all its rights and remedies that exist now or in the future. In the event of a Default, the Director of Development Services shall deliver to Provider a written notice that describes the Default. Provider shall have 60 calendar days from the receipt of such a notice to cure the Default to the satisfaction of the Town, unless the Director of Development Services agrees to a later date. If Provider fails to cure the Default in the time and manner required by the Town: (i) the Director of Development Services may immediately terminate the Site License by notifying Provider in writing of such termination; (ii) Provider shall immediately cease operations; (iii) Provider shall remove Facilities in the time and manner directed by the Director of Development Services; (iv) Provider shall remit all payments due no later than 60 calendar days of the receipt of the Town's notice of termination; (v) the Town shall have the right to cause the removal, storing and/or disposal of any or all remaining portions of Provider's facilities and equipment in any manner the Town Engineer deems appropriate and at no cost to Town; and (vi) Provider shall reimburse the Town for all costs in connection therewith (including but not limited to overhead and storage

expenses) no later than 60 calendar days from the date of receiving the Town's invoice of such costs. The obligations herein shall survive the termination or expiration of the Site License.

USE RESTRICTIONS AND OBLIGATIONS

33. Use Areas. Upon approval of a Site License Agreement, Town grants to Provider a license to use the Use Area described in the Site License for the Permitted Uses. Provider shall use the Use Area solely for the Permitted Uses and shall conduct no other activity at or from the Use Area. Any work, improvement or equipment land outside the Use Area is prohibited. Provider shall comply with any necessary building, traffic control, ROW management requirements, non-Town utility permits, other permits as required, and other regulatory requirements that apply to Facilities. Installation and construction of Facilities shall be in compliance with the requirements herein and the Standards. All work in the ROW will be performed only by Provider and its contractors/subcontractors and will be performed substantially in compliance with the Gilbert Town Code, Standards, applicable Town policies as amended, the National Electric Code (NEC), National Electric Safety Code (NESC), OSHA regulations, FCC OET Bulletin 65 and all other applicable laws and regulations as may be amended from time to time. Provider shall keep fully informed of and comply with all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct under the Site License including but not limited to the Occupational Safety and Health Administration ("OSHA") and the Fair Labor Standards Act ("FLSA"). Provider shall protect and indemnify Gilbert and its representatives against any claim or liability arising from or based on the violation of such, whether by Provider or its employees or subcontractors.

34. Reserved Right and Competing Users and Activities. Notwithstanding anything herein to the contrary, Town specifically reserves to itself and excludes from an approved Site License 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:

- a. Competing Users. Provider accepts the risk that, now or in the future, Town and others (the "Competing Users") may perform work and/or install facilities in the Use Areas and in locations that make parts of the ROW unavailable for Provider's use.
- b. Competing Activities. Provider also accepts the risk that, now or in the future, there may exist all manner of work and improvements upon the Use Areas (the "Competing Activities").

35. Additional Use Restrictions. In addition, Provider's use and occupation of the Use Area shall in all respects conform to all and each of the following cumulative provisions:

- a. Provider shall be responsible to ensure compliance with these Terms & Conditions by all persons using the ROW through or under Provider.
- b. Required Operations. During the entire term of each Site License and any renewals, Provider shall actively and continuously operate the Facilities twenty-four (24) hours a day, seven (7) days a week, for the Permitted Uses. Notwithstanding anything contained in this paragraph to the contrary, the operation requirements of this section shall be effective commencing on the earlier of completion of the Project or the Completion Deadline as defined in the Site License and shall continue through the date the Site License terminates or expires for any reason. In the event of relocation of the Facilities or damage to the Use Areas severe enough Facilities cannot reasonably be operated

during repairs, the operation requirements of this paragraph shall be suspended during the time specified by these Terms & Conditions for accomplishing repair of such damage to relocation of the Facilities. Provider may temporarily cease operating the Facilities for short periods necessary to test, repair, service or upgrade the Facilities.

- c. Operations Restriction. Nothing contained in this Section shall affect the rights of the Town under Section 45 of these Terms & Conditions. 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 the Town's existing or future fire, emergency or other facilities, methodology or technology (i.e., voice or other data carrying, receiving or transmitting equipment). In the event Town reasonably believes Facilities may be interfering with Town facilities, Town shall contact Provider's Network Operations Center ("Center") via telephone at the number provided to Town in the Application. Provider shall immediately cause a technician from said Center to test Facilities and confirm that no such interference is occurring. If such interference should occur and continue for a period in excess of 48 hours following the Town's notice, Provider shall reduce power or cease operations of the interfering equipment to cure the interference. Any such corrective measures shall be made at no cost to Town.
- d. Other Equipment. Provider shall not disturb or otherwise interfere with any other antennas or other equipment Town may have already installed or may yet install in or around ROW.
- e. Safety. To perform duties necessary as owner and manager of the ROW, the Town and its employees, agents, and representatives must have uninterrupted and safe access to the ROW and all structures located thereon. Provider shall cause its senior internal engineer responsible for compliance with the FCC Rules to deliver to Town a RF Emissions Letter that attests Provider's operation of Facilities complies with the FCC Rules (a statement from Provider declaring exemption from reporting to FCC is not acceptable to comply with the requirements of this requirement) and Provider shall maintain records of RF measurements and performance of Facilities in accordance with the FCC Rules. In addition, Provider must comply with at least one of the following safety protocols at its sole cost and expense to help ensure the safety of those working on or near Facilities:
 - i. Provider shall provide Town with access to a kill switch for each Small Wireless Site so Town's employees, agents, or authorized representatives can turn off all power to the Facilities while Town work is performed at the location; or
 - ii. Within 48 hours of Town's request, Provider shall cause a technician with an RF monitor to confirm to Town that all RF emitting equipment have, in fact, been deactivated, and to install all appropriate lockout tags and devices.
- f. Signs. All signage is prohibited except as otherwise required by the Town or by law. If signage is required by the Town or by law, Provider shall comply with all of the following:
 - i. The location, size, content, and style of each sign shall be subject to the provisions of the applicable sign ordinance and shall comply with the Town's sign programs as the same may change from time to time.
 - ii. Provider shall update signs as required to comply with changes in the applicable sign ordinance and sign programs.
 - iii. 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.
 - iv. 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 building or other permits regardless of the reason for any such activity, even if such activity is required by Town pursuant to these Terms & Conditions.

- v. The requirements of this subsection apply to all signs, designs, monuments, decals, graphics, posters, banners, markings, and other manner of signage.
- g. Provider's Lighting. Except for security lighting operated with the Town's prior approval, Provider shall not operate any lights at or near the Use Areas.
- h. Noise. Except for burglar alarms and other safety devices operated with the Town's prior approval, all uses and facilities shall comply with noise-related ordinances and regulations.
- i. Limited Access. Provider is solely responsible for keeping unauthorized persons from accessing Exclusive Area(s) and Facilities.
- j. Standards of Service. 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. Provider shall not allow any person or persons in or about the Use Areas related to Provider's operations who shall fail to be courteous, efficient, and neat in appearance.
- k. Provider's Agent. Provider shall at all times retain an active, qualified, competent, and experienced person to supervise all activities upon the Use Areas and operation of the Facilities and who is available to the Town by phone twenty-four (24) hours a day, seven (7) days a week (on call basis). Said agent shall be authorized to represent and act for Provider in matters pertaining to all emergencies and the day-to-day operation of the ROW and all other matters affecting approved Site License. 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 Provider's affairs and emergencies at the ROW. Any change in such information shall be given in writing to the Town Engineer.
- l. Coordination Meetings. Provider shall meet with Town and other ROW 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 & Conditions.
- m. Secondary Power Supply. Provider may use secondary power supply (generator or battery, permanent or temporary) within the Use Area with prior written approval of the Town Engineer.
- n. Toxic Substances. Provider's activities upon or about the Use Areas shall be subject to the following regarding any hazardous or toxic substances, waste or materials or any substance now or hereafter subject to regulation under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances"): (i) 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; and (ii) Within twenty-four (24) hours after discovery by Provider of any Toxic Substances, Provider shall report such Toxic Substances to Town in writing. Within fourteen (14) calendar days thereafter, Provider shall provide Town with a written report of the nature and extent of such toxic substances found by Provider.

- i. Prior to undertaking any construction or other significant work, 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, Provider shall cause the contractor or other person performing such work to give to Town notice by the method described in these Terms & Conditions 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. Provider shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by 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. Provider shall promptly deliver to Town copies of all reports or other information regarding Toxic Substances.
- ii. Provider's failure to comply with this section shall constitute a material breach by the Provider and Town shall have the right to terminate the Site License without fault.
- o. Lien-Free. Provider shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. If any lien is filed against Town property due to acts or omissions of a Provider or its employees, agents or contractors, the Provider shall discharge the lien or bond the lien off in a manner reasonably satisfactory to Town within thirty (30) calendar days after Provider receives written notice that the lien has been filed.

FINANCIAL OBLIGATIONS

36. Provider's Payments. Provider shall pay to Town all fees and rates pursuant to the "Application Fees And Annual Rates For Wireless Facilities In Town Right-Of-Way" ("Rates and Fees") at the times and in the amounts specified by Town, and all other amounts as required by these Terms & Conditions, the Site License, and Gilbert Town Code.

37. Late Fees. Should any of the Rates and Fees 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). Furthermore, late amounts 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. Provider expressly agrees that the foregoing represent fair and reasonable estimates by Town and Provider of Town's costs (such as accounting, administrative, legal and processing costs, etc.) in the event of a delay in payment. Town shall have the right to allocate payments received from Provider among Provider's obligations.

38. Letter of Credit. Provider shall provide to Town a letter of credit before any work is performed in the ROW, which shall be based upon the Provider's good faith projection of the number of sites to be constructed within the Town of Gilbert during the current calendar year. The letter of credit is a security deposit for Provider's performance of all of its obligations under these Terms & Conditions and Site License(s). The form of the letter of credit shall be as required Town Attorney. The amount of the letter of credit shall be as follows: Thirty Thousand Dollars (\$30,000.00) for up to ten (10) sites; Sixty Thousand Dollars (\$60,000) for eleven (11) to twenty (20) sites; One Hundred Five Thousand Dollars (\$105,000) for twenty one (21) to thirty

five (35) sites; One Hundred Eighty Thousand Dollars (\$180,000) for thirty six (36) to sixty (60) sites; Three Hundred Thousand Dollars (\$300,000) for sixty one (61) to one hundred (100) sites; Four Hundred Fifty Thousand Dollars (\$450,000) for one hundred one (101) to one hundred fifty (150) sites; Six Hundred Seventy Five Thousand Dollars (\$675,000) for one hundred fifty one (151) to two hundred twenty five (225) sites; One Million Fifty Thousand Dollars (\$1,050,000) for two hundred twenty six (226) to three hundred fifty (350) sites; One Million Five Hundred Thousand Dollars (\$1,500,000) for three hundred fifty one (351) to five hundred (500) sites; Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) for five hundred one (501) to seven hundred fifty (750) sites; and Three Million Dollars (\$3,000,000) for seven hundred fifty one (751) to one thousand (1,000) sites. If the number of 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 section. The Town shall have the right to determine at least once annually if the number of Provider's licensed sites 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 Provider. Provider must provide the new letter of credit no later than 45 calendar days of receiving said written notice.

- a. Provider shall provide and maintain the letter of credit during the entire term of the Site License as follows:
 - i. Provider shall cause the original letter of credit to be delivered to the Town Engineer.
 - ii. Provider shall pay all costs associated with the letter of credit, regardless of the reason or manner such costs are required.
 - iii. Within ten (10) business days after Town gives Provider notice that Town has drawn on the letter of credit, Provider shall cause the letter of credit to be replenished to its prior amount.
- b. Town may draw on the letter of credit upon Default, in addition to the following circumstances whether or not they are an event of Default:
 - iv. Provider fails to cause the letter of credit to be renewed, extended, increased in amount or otherwise maintained as required by these Terms & Conditions.
 - v. Provider fails to make monetary payments as required by these Terms & Conditions.
 - vi. The issuer of the letter of credit fails to honor a draft on the letter of credit immediately or otherwise repudiates or fails to honor the letter of credit.
- c. Town shall also have such additional rights regarding the letter of credit as may be provided elsewhere in these Terms & Conditions.

39. Metering. Provider shall install separate meters for any utilities used by Provider and shall pay for all utilities supplied to, used, or consumed as a result of the operation of Facilities, including without limitation (as applicable) all gas, electric, sanitation, and telephone installation and monthly usage charges. Provider shall comply with all Town ordinances, these Terms & Conditions, and other applicable regulations related to utility services. Any third-party equipment needed to service the Facilities shall be required to apply for and obtain separate licenses, permits, and clearances requires by Town.

40. Emergency Replacements. At its sole cost and expense, Provider shall purchase one new pole (and its related parts) per type of pole that is the subject to a Site License and shall deliver said pole to Town at Town's storage site (unless agreed to dby the Director of

Development Services) no later than seven (7) calendar days of the execution of the Site License. All replacement poles and parts shall be approved by Town prior to delivery. Provider shall coordinate said delivery with the Town. Failure to comply with this Section shall constitute Default and may result in termination of the Site License at no fault to Town.

41. Replacement of an existing Town Pole. Where installation of Facilities requires replacement of an existing Town Pole as determined by Town, Provider shall at its sole cost and expense remove and replace the existing Town Pole with a pole structure that meets all applicable Town requirements, standards, specifications, and safety requirements.

42. Payment Amounts Cumulative. All amounts payable by Provider hereunder or under any tax, assessment or other existing or future ordinance, law or other contract or obligations to the Town 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.

43. Removal or Relocation for Town Projects, Competing Users, Competing Activities. Provider understands and acknowledges that the Town may require Provider to remove or relocate Facilities and any portion thereof from the ROW, and Provider shall, at the Town Engineer's direction, remove or relocate the same at Provider's sole cost and expense, whenever the Town Engineer reasonably determines that the relocation or removal is needed for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any construction or maintenance project of the Town, a Competing User, and/or a Competing Activity. In such a case, the Town shall use reasonable efforts to afford Provider a reasonably equivalent and available alternate location as determined by Town. If Provider fails to remove or relocate the Facilities or any portion thereof as requested by the Town Engineer within 90 calendar days of Provider's receipt of the request, the Town shall be entitled to remove the Facilities and any portion thereof at Provider's sole cost and expense without further notice to Provider. Provider shall reimburse the Town for the Town's actual expenses associated with the removal (including, without limitation, overhead and storage expenses) within 90 calendar days following issuance of invoice for the same. In the event the Town requires removal and relocation under this Section, Provider shall obtain any necessary third party approvals at its sole cost and expense.

44. Reconnection. In the event of an emergency, maintenance, accident or condition that causes the Town to replace or remove a Facilities, the Provider at its sole expense shall be responsible for the reconnection to a utility.

45. Removal or Relocation required by the Town Engineer. At Provider's sole cost and expense, Provider shall promptly disconnect, remove and/or relocate the applicable Facilities and any portion thereof within the time frame and in the manner required by the Town Engineer if the Town Engineer reasonably determines that the disconnection, removal and/or relocation of any part of Facilities: (a) is necessary to protect the public health, safety, welfare, or Town property; (b) Facilities or any portion thereof is adversely affecting proper operation of streetlights, traffic signal poles or other Town property or service; or (c) Provider has unauthorized facilities or attachments in the Use Area and has failed to remove such facilities or attachments within 30 days of receiving written notice of the Town Engineer. The failure of the Town to act to remove any unauthorized facilities shall not constitute permission or a de facto Site License in any manner, nor shall subsequent issuance of a Site License operate retroactively. If the Town Engineer reasonably determines that there is imminent danger to the public, then the Town may immediately disconnect, remove, or relocate the applicable Facilities at the Provider's

sole cost and expense. The Town Engineer shall provide to Provider 30 calendar days written notice prior to the removal, unless there is imminent danger to the public health, safety, or welfare. Provider shall reimburse Town for the Town's actual costs of removal under this Section no later than 60 calendar days of receiving the Town's invoice. In the event the Town requires relocation under this Section, Provider shall obtain any necessary third party approvals at its sole cost and expense. The obligations herein shall survive the termination or of the Site License.

46. Notice of Removal or Relocation by Provider. If the Provider causes the removal or relocation of Facilities at its own discretion, Provider shall notify the Town Engineer in writing not less than ten (10) business days prior to the removal or relocation.

47. Damage to ROW. At Provider's sole cost and expense, Provider shall repair any damage to the ROW, and the property of the Town and any third party, resulting from Provider's activities under the Site License within 10 calendar days following the date of said activities, subject to the approval of the Town Engineer. Required repairs may include the restoration of the ROW and of the property of the Town and any third party to substantially the same condition as it was immediately before the date of the Site License for the applicable site (including restoration or replacement of any damaged trees, shrubs or other vegetation). The obligations herein shall survive the termination or expiration of the Site License.

RESERVATIONS

48. Both Town and the Provider may conduct RF emission and interference studies from time to time to determine whether a Provider's use of the Facilities will interfere with use of the Town Poles or the ROW by the Town or the public. In the event such a study indicates that a Provider's use will potentially interfere with the use of the Town Pole or the ROW by the Town or the public, the Provider shall have no more than 30 calendar days to remedy the interference to Town's satisfaction. If the problem is not so remedied in 30 calendar days, then Town may require the Provider, at Provider's full expense, to relocate the Facilities so as to remove or minimize the interference to the extent Town deems necessary.

49. Town 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 Town Property; (ii) rights to generate electricity from the wind or wind power on, as to or about any portion of the Town Property; and (iii) the right to grant to others the rights hereby reserved.

50. Town shall have the right to operate, replace, and maintain all Town Poles in such manner as best serves Town's service requirements including, but not limited to, the right to allow the attachment of additional facilities. Provider agrees to shut down communications and electrical equipment during any time Town is maintaining, testing or replacing the Town Pole within 72 hours from the time of notice. If Provider fails to shut off the equipment within 72 hours from the time of notice, Provider shall reimburse Town for all costs incurred by the Town related to the delay including time and labor expenses. The reimbursement will be at a minimum \$500 per incident.

INDEMNIFICATION

51. To the fullest extent permitted by law, Provider 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 Facilities or any condition created in or about the Facilities or any accident, injury, or damage whatsoever occurring in or at Facilities or from the failure of Provider 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 Provider 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, Provider'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 Provider, its employees, contractors, or agents. If the damage or injury is caused by the joint or concurrent negligence of Town and Provider, the loss shall be borne by Town and Provider in proportion to their degree of negligence or fault. Provider'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 & Conditions. The indemnification obligations contained herein shall survive the expiration or termination of the Site License.

INSURANCE

52. Without limiting any liabilities or any other obligations of any Provider or any of its contractors and subcontractors under any Site License or otherwise, a Provider and each of its contractors and subcontractors shall provide and maintain, with forms and insurers acceptable to Town, and until all obligations under all Site License are satisfied, the minimum insurance coverage, as follows unless otherwise agreed to in writing by the Director of Development Services:

- a. Commercial General Liability Insurance, including coverage of contractual liability assumed under each Site License, affording protection of not less than TWO MILLION DOLLARS (\$2,000,000.00) 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 Facilities or due in any way to the use, occupancy, maintenance or operation of Facilities.
- b. Workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Provider's and Provider's contractor or subcontractor employees who may be working on Facilities, and employer's liability with a minimum limit of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).
- c. Commercial automobile liability insurance with a combined single limit for bodily injury and property damage of not less than TWO MILLION DOLLARS (\$2,000,000.00) each occurrence with respect to vehicles assigned to or used in the performance of the work, whether owned, hired, or non-owned.

53. The insurance policies required herein shall include the Town of Gilbert, 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 Town of Gilbert, members of its governing bodies, its officers, agents and employees shall be excess and not contributory.

54. Provider and each of its contractors and subcontractors (and the insurers providing the required coverages) shall waive all rights of subrogation against the Town of Gilbert, members of its governing bodies, its officers, agents, and employees.

55. Prior to execution of the Site License, Provider and each of its contractors and subcontractors shall furnish the Town 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) calendar days' prior written notice of cancellation, termination, or material change shall be sent directly to Town.

56. 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 Town.

GENERAL PROVISIONS

1. Assumption of the Risk. Provider assumes all risk, costs, and expenses related to the Facilities and loss of service that may occur due to damage, destruction or collapse of any Town Pole or due to any incompatibility of Provider's use with Town's use, or another user's use, of the Town Poles. Provider shall be solely responsible for the relocation of any Facilities placed on a structure or property not owned by Town or wrongly designated as an Town Pole and/or ROW at any time.
 2. Express Disclaimer. TOWN EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS. TOWN ALSO EXPRESSLY DISCLAIMS THE ABSENCE OF HAZARDOUS CONDITIONS ASSOCIATED WITH THE TOWN FACILITIES, TOWN POLES, AND ROW. TOWN MAKES AVAILABLE TOWN FACILITIES, TOWN POLES, AND ROW IN "AS IS" CONDITION.
 3. Assignment. Provider may assign, sell or transfer its interest under a Site License without the prior written approval or consent of Town, but only if said assignment, sale or transfer is to the Provider's Affiliate or to any entity that acquires all or substantially all of the Provider's assets by reason of a merger, acquisition, or other business reorganization in the market defined by the Federal Communications Commission in which the Facilities are located. Provider may not otherwise assign a Site License without the Town's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Any purported assignment in violation of this Section shall be void.
 4. Severability. If any a provision of these Terms & Conditions, including its exhibits, is invalidated by a court of competent jurisdiction, all other provisions hereof shall continue in effect.
 5. Ownership. The Town agrees that no part of Facilities constructed, modified, or erected or placed on the ROW by Provider shall become, or be considered by the Town as being affixed to or a part of the ROW. All portions of the Facilities constructed, modified, erected, or placed by Provider on the ROW shall be and shall remain the property of Provider unless otherwise agreed to in writing by Town and Provider.
 6. Remedies Cumulative. Unless otherwise specified in these Terms & Conditions, the rights and remedies contained herein are not exclusive, but are cumulative of all rights and remedies that exist now or in the future.
 7. Attorneys' Fees and Expenses. In the event of default or suit arising out of these Terms & Conditions and its exhibits, 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.

8. Non-Waiver. The Town's failure to enforce a term herein shall not prevent the Town from later enforcing that term and all other terms.

9. Exhibits. The forms of exhibits attached to these Terms & Conditions may change from time to time in the Town's discretion as the law changes or as technology and business needs change.

10. No Third Party Rights. Neither the Terms & Conditions nor any Site License shall bestow any rights upon any third party. A Site License binds and benefits the Town and Provider only.

TABLE OF EXHIBITS FOR TERMS & CONDITIONS

<u>Exhibit</u>	<u>Description</u>
A	Site License form
B	Schedule of Fees

Exhibit B
SAMPLE SITE LICENSE FORM

THIS SITE LICENSE (the "Site License") is made and entered into this ___ day of _____, 20____, by and between the Town of Gilbert, an Arizona municipal corporation ("Town"), and _____, a _____ ("Provider").

RECITALS

A. The Town of Gilbert "Terms and Conditions for Wireless Facilities On, Below Or Above Town Rights-of-Way" incorporated herein by this reference sets out various terms and conditions that govern this Site License (collectively the "Terms and Conditions").

B. The Town of Gilbert "Standards for Encroachment of Structures into the Public ROW" incorporated herein by this reference (collectively the "Standards") also govern the uses and facilities contemplated herein.

B. Town holds an interest in Town rights-of-way (the "ROW") located approximately _____ feet _____ of the center of the intersection of _____ and _____.

C. This Site License allows Provider to use certain limited portions of the ROW.

D. The portions of the ROW that this Site License allows Provider to use (the "Use Areas") are defined in the package of maps and related materials (the "Boundary Plan") attached hereto as **Exhibit "1"**.

E. Provider desires to install and operate on the Use Areas the wireless facilities receiving, processing and transmitting devices and related electronic equipment that is specified on the Site Plan (the "Facilities") subject to the requirements of this Site License. Facilities are limited to the actual electronic equipment, portable cabinets for such equipment, the enclosure, the antennas ("Antennas") used to communicate with cell phones and similar devices, all as shown on the drawing (the "Site Plan") attached hereto as **Exhibit "2"**. Notwithstanding anything in this Site License to the contrary, the Facilities excludes any item not shown on the Site Plan.

F. The volume of the Building or Equipment Enclosure and the above ground portion of its pad as shown in the Site Plan is _____ cubic feet.

G. The ROW is currently improved with an approximately _____ foot tall [**traffic signal**] [**street light**] [**antenna support**] pole (the "Pole") owned by Town ("Pole Owner").

H. [**FOR TOWN POLE**] Provider proposes to [**use the existing Pole**] [**replace the existing Pole**] with a new Pole that Town ("Pole Owner") will own.

I. [**FOR THIRD-PARTY POLE**] Provider has entered into a certain _____ (the "Pole Antenna Agreement") with Pole Owner dated _____, 20____ whereby Provider has obtained permission from Pole Owner to use the existing Pole in the manner described in this Agreement, or Provider proposes to replace the existing Pole with a new Pole that Pole Owner will own.

J. [**FOR POLE OWNED BY PROVIDER**] Provider proposes to install an approximately _____ foot tall wireless support structure (the "Pole") owned by Provider ("Pole Owner").

K. Provider desires to construct supporting improvements and perform all other work to install the Facilities as shown on the Site Plan (collectively the "Project").

L. Provider shall complete the entire Project and put the Facilities in full operation no later than one hundred eighty (180) days after the date of this Site License (the “Completion Deadline”).

M. Town desires to grant to Provider a license to install, maintain, operate, and repair the Facilities (the “Permitted Uses” as further defined in the Terms and Conditions) subject to the requirements of this Agreement.

N. The Terms and Conditions Recitals are all incorporated here by reference as if set out in full.

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

LICENSE TERMS

1. License Terms. Subject to the Terms and Conditions, Standards, and this Site License, the Town hereby grants to Provider a license to use the Use Areas depicted in Exhibit 2.
2. Terms and Conditions Incorporated. The Terms and Conditions are all incorporated here by reference as if set out in full. **PROVIDER WARRANTS AND REPRESENTS THAT PROVIDER HAS READ AND AGREES TO THE STANDARDS AND THE TERMS AND CONDITIONS.** Capitalized terms used but not defined in this Site License shall have the meanings assigned by the Terms and Conditions.
3. Terms and Conditions Application. Provider shall comply with all of the Terms and Conditions. Without limitation, the Terms and Conditions shall apply to the Use Areas as follows:
 - (a) Provider’s Boundary Plan Responsibility. It is Provider’s responsibility before signing this Site License to ensure that the Boundary Plan is prepared as follows:
 - (i) Provider shall insure that the Boundary Plan clearly depicts all portions of the ROW that Provider desires to use and that each such area is clearly shown on the Boundary Plan and labeled to indicate clearly which of the categories of Exclusive Areas or Shared Areas set out in the Terms and Conditions applies to the area.
 - (ii) If the Boundary Plan does not clearly show any portion of the ROW as one of the categories of Exclusive Areas or Shared Areas set out in the Terms and Conditions, then such portion of the ROW is not part of the Use Areas and Provider may not use such portion of the ROW, even if the use is discussed in the Terms and Conditions.
 - (iii) Any Exclusive Area or Shared Area described or named in the Terms and Conditions that is not depicted and labeled clearly and correctly on the Boundary Plan is excluded from this Site License and is unavailable for Provider’s use.
 - (iv) Any portion of the Boundary Plan or the Site Plan that indicates a Provider use of the ROW that is not one of the Exclusive Areas or Shared Areas specifically enumerated in the Terms and Conditions is excluded from this Site License and not available for Provider’s use.
 - (v) All work, improvements and equipment within an Exclusive Area or Shared Area is limited to the purposes enumerated in the Terms and Conditions for that particular Exclusive Area or Shared Area.

(vi) This Site License does not allow use of any land other than the specified portions of the ROW that are Exclusive Areas or Shared Areas.

(vii) Any change to the Boundary Plan after Town executes this Site License is void unless memorialized in a formal written amendment to this Site Amendment.

(b) Provider's Site Plan. It is Provider's responsibility before signing this Site License to ensure that the Site Plan correctly shows the work that Provider intends to perform, that the Site Plan correctly shows all improvements and equipment that 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 and Conditions 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 and Conditions. Any refinement or other change to the Site Plan after Town executes this Agreement is void unless Provider obtains Provider's approval of the change pursuant to the plans approval processes set out in the Terms and Conditions and pursuant to all applicable regulatory requirements.

4. Term of Agreement. The term of this Site License is as stated in the Terms and Conditions.

5. Provider's Payments. Provider shall pay to Town the amounts described in the Terms and Conditions.

6. Use Restrictions. Provider shall comply with the use restrictions set out in the Terms and Conditions.

7. Permits. This Site License constitutes a Permit under Chapter 10 of the Gilbert Town Code to the extent of granting permission for the Facilities to exist on the ROW 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, Provider shall obtain the additional permits required by Chapter 10 of the Gilbert Town Code, as deemed applicable by Town including but not limited to permits regarding work in the right-of-way.

8. Compliance with Law. Provider acknowledges that this Site License 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 Provider with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the Town of Gilbert or any other governmental body upon or affecting Provider's use of the ROW. For example, Provider shall comply with all building and right-of-way codes, ordinances, and policies.

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

(a) Provider's network operations center phone number is:

(____) _____ - _____.

(b) Provider's address for notices:

(c) Provider's billing address for routine billing invoices:

EXECUTED as of the date first given above.

TOWN:

TOWN OF GILBERT,
an Arizona municipal corporation

Director of Development Services

PROVIDER:

a _____

By: _____

Its:

TABLE OF EXHIBITS FOR SAMPLE SITE LICENSE

<u>Exhibit</u>	<u>Description</u>
1	Boundary Plan
2	Site Plan