

**CITY OF LEE'S SUMMIT'S
STANDARD TERMS AND CONDITIONS FOR THE PLACEMENT OF
WIRELESS FACILITIES IN THE RIGHT-OF-WAY**

Purpose

The purpose of these terms and conditions is to comply with the Uniform Small Wireless Facility Deployment Act, enacted by the Missouri General Assembly, by adopting an ordinance that makes available to wireless providers rates, fees and other terms and conditions regarding placement of wireless facilities in the right-of-way. The provisions of these terms and conditions are designed to promote:

- A. Increased economic development, and the development and deployment of wireless telecommunication and broadband infrastructure;
- B. Effective management of the right-of-way;
- C. Balancing the needs of the wireless industry to deploy its technology as rapidly as possible with the responsibility the City has to its residents and businesses to ensure that such encroaching installations comply with all public safety regulations and will not block a motorist's or pedestrian's line of sight;
- D. To the fullest extent permitted by law, an aesthetically pleasing community for its residents and businesses throughout all areas of Lee's Summit; and
- E. Protection and preservation of historic properties, structures, landmarks and districts.

DEFINITIONS

The following definitions shall have the meanings given to them in these Standard Terms and Conditions, except where context clearly indicates a different meaning:

Affiliate means any person or entity controlling, controlled by, or under the common control with the Wireless Provider.

Application means a request submitted by a Wireless Provider to the City for a permit to collocate small wireless facilities on a utility pole or wireless support structure, or to approve the installation, modification, or replacement of a utility pole.

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

Applicable Codes means uniform building, fire, electrical, plumbing or mechanical codes that are adopted by a recognized national code organization or local amendments to those codes that are enacted to address threats of destruction of property or injury to persons consistent with valid law.

Claim(s) means and includes allegations, assessments, taxes, impositions, proceedings, liabilities, obligations, losses, claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment, penalties, fines, damages, suits, actions, payments, judgments, demands, expenses and costs, including, but not limited to, attorney's fees incurred through all appeals.

City Pole means a Utility Pole owned, managed, or operated by or on behalf of the City.

Collocate or Collocation means to install, mount, maintain, modify, operate or replace small wireless facilities on, within or immediately adjacent to a Wireless Support Structure or Utility Pole, provided that the small wireless facility antenna is located on the wireless support structure or utility pole.

Communications Equipment means the City's antennas, radios, transmitters, repeaters, control boxes, and other equipment associated with the operation of its wireless facilities.

Communications Service means cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53) or wireless service; or other one-way or two-way communications service.

Conduit means a pipe of either metal, ceramic or plastic that is designed to protect buried cables.

Conduit System means enclosed underground raceways capable of protecting fiber optic and other communications cables, including associated individual ducts, innerducts, manholes, handholes, vaults, pull-boxes and trenches.

Contractor means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that performs services or provides goods for Wireless Provider relating to these Standard Terms and Conditions.

CFR means the Code of Federal Regulations.

Dark Fiber means fiber optic strands that are not connected to transmission equipment.

Decorative Poles means City Pole that is specially designed and placed for aesthetic purposes.

Duct means a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other facilities.

Emergency means any condition which, in the opinion of City, poses an immediate threat to the lives or property of the citizens of Lee's Summit or others caused by any natural or man-made disaster, including but not limited to, storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills, etc.

Enclosure means the enclosure housing for the electronic ground equipment shown on the Site Plan.

FCC means the Federal Communications Commission.

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

Hazardous Substance means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.

Historic District means group of buildings, properties, or sites that are either listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C, or are otherwise located in a district made subject to special design standards adopted by a local ordinance or under Missouri law as of January 1, 2018, or subsequently enacted for new developments.

Innerduct mean a rigid or flexible metal or nonmetallic raceway through which cables or fiber can be pulled within a duct or conduit for identification and protective purposes.

OSHA means the Occupational and Safety Health Administration.

Person means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority as defined by RSMo. 67.5111.

Private Easement means an easement or other real property right that is only for the benefit of the grantor and grantee and the grantor's or grantee's successors and assigns.

Public Service Corporation means a corporation engaged in furnishing gas, oil, or electricity for light, fuel, or power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit, hot or cold air or steam for heating or cooling purposes; or engaged in collecting, transporting, treating, purifying and disposing of sewage through a system, for profit; or in transmitting messages or furnishing public telegraph or telephone service, and all corporations other than municipal, operating as common carriers. However, a message transmitting company is only a public service corporation if it is a common carrier.

Right-of-Way (“ROW”) means the area on, below or above a public roadway, highway, street, sidewalk, alley, or similar property used for public travel. Right-of-way does not include a Federal Interstate Highway, railroad right-of-way, or a private easement.

Right-of-Way Use Site Approval (“RUSA”) means the written permission granted to Wireless Provider upon approval of an application to install Small Wireless Facilities either on existing, modified, replaced, or new Utility Poles or Wireless Support Structures in the ROW.

Small Wireless Facility (“SWF”) means a Wireless Facility that meets both of the following qualifications:

A. Each Wireless Provider’s antenna could fit within an imaginary enclosure of not more than six (6) cubic feet in volume.

B. All other wireless equipment associated with the wireless facility, whether ground or pole mounted, is cumulatively not more than twenty-eight (28) cubic feet in volume, provided that (i) no single piece of equipment on the utility pole shall exceed nine (9) cubic feet in volume and (ii) no single piece of equipment of ground mounted equipment shall exceed fifteen (15) cubic feet in volume, exclusive of equipment required by an electric utility to power the small wireless facility. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this definition:

1. An electric meter.
2. Concealment elements.
3. A telecommunications demarcation box.
4. Grounding equipment.
5. A power transfer switch.
6. A cutoff switch.
7. Vertical cable runs and related conduit for the connection of power and other services.

Temporary Traffic Control Permit means the same as the term is defined in City of Lee’s Summit City Code, Chapter 26, Article III, Section 26-101, as amended.

Third Party Areas mean the portions of the ROW, such as canal and railroad crossings or other areas that for any reason have limited ROW dedications or that have regulatory use restrictions imposed by a third party.

Utility Pole or Pole for purposes of these Standards Terms only means a pole or similar structure that is used or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control signals, signage, or a similar function, or for the collocation of small wireless facilities; provided, however, such term shall not include wireless support structures, electric transmission structures, or breakaway poles owned by the state highways and transportation commission.

Use Area means the portions of the right-of-way or easements designated on a Site Plan (as defined in the applicable RUSA) that Wireless Provider can use and/or occupy with the SWF or as authorized by an executed RUSA (as defined below).

Wireless Facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including both (i) equipment associated with wireless

communications and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities.

The term does not include (i) the structure or improvements on, under or within which the equipment is collocated; (ii) wireline backhaul facilities; (iii) coaxial or fiber-optic that is between wireless support structures or utility poles; or (iv) coaxial or fiber-optic cable that is not directly associated with a small wireless facility.

Wireless Infrastructure Provider means any person, including a person authorized to provide telecommunications service in Missouri, that builds or installs wireless communications transmission equipment, or Wireless Facilities, but that is not a Wireless Service Provider.

Wireless Provider means a Wireless Infrastructure Provider or Wireless Services Provider.

Wireless Services means any services using licensed or unlicensed spectrum, including the use of wifi, whether at a fixed location or mobile, provided to the public using wireless facilities.

Wireless Services Provider means a person that provides wireless services.

Wireless Support Structure means:

- A. An existing structure, such as a monopole or tower, whether guyed or self-supporting, designed to support or capable of supporting Wireless Facilities;
- B. An existing or proposed billboard;
- C. An existing or proposed building; or
- D. Any other existing or proposed structure capable of supporting Wireless Facilities, other than a structure designed solely for the collocation of Small Wireless Facilities.

Wireless Support Structure does not include a Utility Pole.

Wireline Backhaul Facility means physical transmission path, all or part of which is within the right-of-way, used for the transport of communication data by wire from a wireless facility to a network.

STANDARD TERMS FOR RIGHT-OF-WAY USE

SECTION 1. Permission Granted

1.1 Wireless Provider shall not install any Small Wireless Facility or install a new, replacement or modified Utility Pole associated with an SWF unless it first (i) obtains the necessary City approval of an Application to either install a Small Wireless Facility (SWF) or to install a new, replacement or modified Utility Pole associated with an SWF, (ii) has been issued a RUSA and (ii) any generally applicable permits for work in the right-of-way (ROW) as required by local laws or regulations and/or any other applicable state and federal laws and regulations. Upon approval of an Application, a RUSA will be executed by a countersignature of the City Engineer to indicate the Wireless Provider's agreement to these Standard Terms and Conditions (Standard Ts and Cs) and to set forth the specific requirements for each SWF or Utility Pole site. These Standard Ts and Cs shall be part of all the RUSAs for the Wireless Provider's Wireless Facilities in the ROW. To the extent permitted by valid, constitutional law, placement of any unauthorized facilities on City-owned poles or structures or in the ROW without a RUSA shall constitute trespass.

1.2 Unless otherwise stated therein, the RUSA is issued for only one SWF to be used by a single Wireless Provider. No additional SWFs can be placed in the area of the ROW covered by the RUSA without getting express permission from the City through a separate Application.

1.3 Verification of Ownership. City does not warrant its own or any other person's title to or rights to use the ROW or any other property. A Wireless Provider's right to place its Wireless Facilities in or on a utility easement in a particular area of the City will depend upon whether the utility easement authorizes the deployment sought by the Wireless Provider. It is the responsibility of the Wireless Provider to determine if the Use Area is within City ROW or a utility easement through the appropriate documentation such as a deed or dedication of ROW to the City or Utility Easement dedication for the site as part of its Application. If deemed necessary, the City may require a title report during preliminary site plan review. If the Use Area does not fall under the jurisdiction of the City, it is up to the Wireless Provider to secure the land rights to site its Wireless Facilities in the Use Area. A Wireless Provider's rights in the Use Areas are limited to the specific rights created by the City's Standard Ts and Cs and the RUSA.

1.4 An SWF installed by a Wireless Provider pursuant to a RUSA may be owned and/or operated by Wireless Provider's third-party wireless carrier customers ("Carriers") and installed and maintained by the Wireless Provider pursuant to agreements between the Wireless Provider and such Carriers. The SWF shall be treated as the Wireless Provider's SWF for all purposes under the RUSA provided that: A) the Wireless Provider remains responsible and liable for all performance obligations under the RUSA with respect to such SWF; B) the City's sole point of contact regarding such SWF shall be the Wireless Provider; and C) the Wireless Provider shall have the right to remove and relocate the SWF subject to these Standard Ts and Cs.

1.5 The location, spacing, size, and appearance of any related pole-mounted or ground-based equipment (microwave dishes, radios, relays, power supplies, meters, etc.), enclosures, cabinets, and pedestals placed in the ROW must be approved by the City as per the City's Design and Construction Manual. Any new vertical structures sought to be placed in the ROW will be subject to City regulations and the Lee's Summit City Code. Wireless Provider shall comply with all City regulations and Code requirements setting forth design standards and stealth and concealment requirements relating to the appearance and installation of all Wireless Facilities in the ROW as determined by the City Engineer. Any future modifications of such Wireless Facilities must maintain the stealth and concealment elements required for the original Wireless Facilities.

SECTION 2. Non-Exclusive Rights/Priority Rights

2.1 Non-Exclusive. Permission to use the ROW is not exclusive and nothing herein contained shall be construed to prevent the City from granting other like or similar grants or privileges to any other person, firm or corporation, or to deny to or lessen the powers and privileges granted to the City under the Constitution and laws of the State of Missouri.

2.2 Prior Rights. Any and all rights granted to Wireless Provider to use the ROW shall be subject to the prior and continuing right of City to use the ROW exclusively or concurrently, with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title which may affect the ROW or public property. Any use of the ROW shall be subordinate to: A) any prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity; B) any prior lawful occupancy or use thereof by any other person; and C) to any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with property rights established independently of these Standard Ts and Cs.

2.3 No Real Property or Leasehold Rights Conveyed. Nothing in these Standard Ts and Cs or a RUSA shall be construed to grant, convey, create, or vest a perpetual real property interest in land to a Wireless Provider, including any fee or leasehold interest, easement, or any franchise rights in adjacent land or ROW nor any ownership or leasehold interest in the City-owned structures, replacement poles or ROW. A RUSA with a Wireless Provider does not constitute an assignment of any of City's rights to use the public property upon which the Pole(s) is/are located (other than expressly provided herein or in the RUSA).

SECTION 3. City's Reserved Rights

3.1 City specifically reserves to itself and excludes from an approved RUSA 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, subject to the relocation requirements of Section 39, Wireless Provider accepts the risk that the City may now or in the future install or modify facilities in the Use Areas in locations that make the area unavailable for Wireless Provider's continued 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 ROW that the City may determine from time to time to be a benefit to the public.

3.2 Zoning and Similar Approval Process. To the extent permitted by valid, constitutional law, any zoning processes, building permit processes, and similar regulatory requirements that apply to Wireless Provider's Wireless Facilities on private property are separate from the approval processes for an SWF to be in the ROW. All collocations, installations, modifications, replacements, and maintenance activities proposed in an area zoned as Single Family Residential or within a Historic District are subject to zoning review, in addition to any other reviews permitted by law.

3.3 No Waiver. By allowing a Wireless Provider to use the ROW, City is not waiving any rights that it may have against any public utility or other property owner to require that such owners obtain prior approval from the City for such uses of their property or facilities. Additionally, a Wireless Facility or Utility Pole shall not be constructed or placed in Third Party 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.

3.4 Landlord/Proprietary Rights of City-owned Poles. City reserves the right to maintain its Poles and to operate City facilities on City Poles in such manner as will best enable City to fulfill City's own service requirements, including but not limited to street light banners. City shall not have any liability for any interference caused by the operation of Wireless Provider's equipment or Wireless Provider's customer's equipment with another Wireless Provider's equipment that may arise in any manner out of Wireless Provider's use of City Poles or ROW for its Wireless Facilities.

3.4.1 City reserves the right to abandon any of the City's Poles. City shall give Wireless Provider no less than one hundred eighty (180) days' notice of its intent to abandon a Pole. City may include in such notice an offer to sell the Pole to Wireless Provider at the then value thereof in place or such other equitable sum as the Parties may agree upon, in which case Wireless Provider shall have thirty (30) days from the date of such notice to purchase said Pole. If Wireless Provider has already paid for or supplied the Pole, there will be no charge for the Pole. If Wireless Provider does not purchase the Pole within the 30-day period, the City may sell or dispose of the Pole, at its sole discretion, as permitted by law.

3.4.2 Wireless Provider shall at no time sublease, sublicense, or rent any portion of the space on the Pole subject to these Standard Ts and Cs nor shall Wireless Provider permit others to attach equipment of any kind to the Poles or to Wireless Provider's SWF or Utility Pole without submitting the appropriate Application, getting prior written approval from City, amending the RUSA and paying any appropriate fees. If Wireless Provider is in violation of this provision, then City shall have the right to immediately terminate the permission granted to Wireless Provider to attach to the Poles involved in the violation and to require the Wireless Provider to remove Wireless Provider's SWF or Utility Pole from the ROW.

3.4.3 The permission to use a City-owned Pole shall be subject to the privilege to use City Poles as granted by City to any third parties under prior permissions and City reserves the right to continue, modify, and extend such attachment privileges provided any such modification does not physically interfere with Wireless Provider's rights herein.

3.4.4 City reserves the right hereafter to enter into agreements permitting third parties to attach facilities to City Poles; provided, however, that such permission shall be terminated by City in the event that the facilities of such third party interferes with Wireless Provider's equipment. Wireless Provider will not be liable for any portion of the cost of a replacement Pole necessitated by the attachment of a third party's facility made pursuant to an agreement entered into after the date of the RUSA for that Pole.

SECTION 4. Compliance with Applicable Laws and Regulations

4.1 Use of a Use Area by a Wireless Provider is subject to these Standard Ts and Cs, the Lee's Summit City Code, regulations, Applicable Codes the City Charter, applicable Jackson County laws and regulations and Missouri and federal laws and regulations. If any of these Standard Ts and Cs conflict with any provision of the City's ROW ordinance, Wireless Provider shall comply with the stricter of the two provisions to the extent permitted by valid, constitutional law. Wireless Provider shall comply with all applicable federal laws and regulations, including but not limited to, the Equal Employment Opportunity Act, the National Labor Relations Act, the Occupational Safety and Health Act, the Communications Act of 1934, the National Environmental Policy Act and the National Historic Preservation Act.

4.2 Subject to federal and state law, Wireless Provider and its agents shall be subject to the City's exercise of such police, regulatory, and other powers as it now has or may later obtain, and Wireless Provider may not waive the application of the same. City shall have continuing jurisdiction and supervision over any Wireless Facilities located within or on public ROW. All rights hereunder are granted under the express condition that the City shall have the power at any time to impose lawful restrictions and limitations upon, and to make regulations as to Wireless Provider's use of the public ROW as may be deemed best for the public health, interest, safety, or welfare to the same extent that such restrictions and limitations are applied to all non-governmental users of the public ROW. Daily administrative, supervisory, and enforcement responsibilities shall be delegated and entrusted to the City Manager or designee to interpret, administer, and enforce the provisions of these Standard Ts and Cs.

4.3 Wireless Provider is completely responsible for ensuring that its Wireless Facilities are constructed, installed, operated and/or maintained in accordance with the Lee's Summit City Code, City of Lee's Summit Design and Construction Manual, and established practices with respect to such public ROW and easements such as the proper permits being applied for prior to commencing any work and that the terms and conditions of such permits are strictly followed.

SECTION 5. Fees and Payments

5.1 Fair Market Value Understanding. Wireless Provider acknowledges and understands that (i) the anti-gift provisions of the Missouri Constitution prohibit the City from permitting use of City property, including the ROW, at fees and rates that are less reasonable fair market value and (ii) that Article 10 prohibits the General Assembly of the State of Missouri from imposing a new activity service or increasing the level of any activity or service on political subdivisions beyond that required by existing law, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs. Unless otherwise prohibited by valid, constitutional, law, the City reserves the right to amend the fees and rates sets forth in this Section 5 upon ninety (90) days written notice to the Wireless Provider.

5.2 Application Fee for the Installation of New, Replacement, or Modified Utility Poles Associated with the Collocation of Small Wireless Facilities in the ROW. Wireless Provider will pay the City the fee set forth in the City's Schedule of Fees.

5.3 Application Fee to Collocate Small Wireless Facilities on Existing Authority Pole in the ROW. Wireless Provider will pay a fee for each small wireless facility addressed in the application as set forth in the City's Schedule of Fees.

5.4 City-Owned Pole Use Rate. Wireless Provider will pay the City an annual fee for each small wireless facility collocated to a City pole as set forth in the City's Schedule of Fees.

5.5 Overtime Charge. If, at the request of Wireless Provider, the needs of Wireless Provider's work require after hours or nighttime work outside of normal business hours, Wireless Provider shall reimburse the City according to the City's Schedule of Fees in place at the time of the work.

5.6 Damage Fee. Wireless Provider shall pay any reasonable costs associated with any damage caused to the ROW or public property.

5.7 Payment Information. Any checks should reference the RUSA number and be sent to:

City of Lee's Summit
Attn: Development Services
220 SE Green St
Lee's Summit, MO 64063

With a Copy To:

City of Lee's Summit
Attn: City Engineer
220 SE Green St
Lee's Summit, MO 64063

5.8 Payment Terms. All fees due are non-refundable. The application fees are due upon submission of the application and the first annual fee for collocating a small wireless facility to a City Pole is due on Commencement Date of the RUSA and thereafter upon the anniversary of the Commencement Date for each RUSA and shall be made within five (5) business days of such date. In the event of multiple RUSAs with different anniversary dates for fees, if Wireless Provider wants to consolidate billing and have one due date, it can coordinate with the City's Engineering Division of the Public Works Department to make such an adjustment.

5.9 Late Charge. If payment is not made by the next to the last business day of the month when payment is due, the City may impose interest at a rate of one percent (1%) per month commencing from the date payment should have been made and continuing until the payment is made. Fractions of a month shall be considered to constitute a full month for computing interest. If the cause of failure to pay the fee or any portion thereof is determined by the City to be due to civil fraud or the intentional evasion of the fee, Wireless Provider shall pay a penalty of fifty percent (50%) of the amount of deficiency. City's receipt of a late fee shall not result in a waiver of City's rights pursuant to these Standard Ts and Cs.

5.10 Taxes. To the extent taxes or other assessments are imposed by taxing authorities on the use of City property because of Wireless Provider's use or occupation of the ROW, or for the provision of wireless services, the Wireless Provider shall be responsible for the payment of such taxes, payable annually unless otherwise required by the taxing authority, subject to the limitations of applicable law, including, without limitation, FCC Declaratory Order and Ruling 18-133 and rules promulgated thereunder.

SECTION 6. Insurance

Wireless Provider shall comply with the insurance provisions set forth in Section 26-211, as amended, of the City Code.

SECTION 7. Indemnity

Wireless Provider shall comply with the insurance provisions set forth in Sections 26-213 through 26-215, as amended, of the City Code.

SECTION 8. Limitation of Liability

8.1 Wireless Provider expressly acknowledges that its Wireless Facilities are exposed to risks beyond the reasonable control of City, including acts of God or the public enemy, such as but not limited to, wind, rain, snow, hail, sleet, ice, floods, earthquake, fire, riots, sabotage, expropriation, or confiscation of facilities. Except as expressly provided in these Standard Ts and Cs, Wireless Provider shall assume all risk of loss or damage to Wireless Facilities that may arise from any cause, except for the cost of repairs to damaged Wireless Facilities to the extent caused by the gross negligence or willful misconduct of the City and not covered by Wireless Provider's insurance. City makes the City-owned structures and ROW available for Wireless Provider's use "AS IS," without representation or warranty of any kind.

8.2 IN NO EVENT, HOWEVER, SHALL CITY BE LIABLE TO WIRELESS PROVIDER OR ANY OF ITS RESPECTIVE AGENTS, REPRESENTATIVES, EMPLOYEES, OR CUSTOMERS FOR ANY LOST REVENUE, LOST PROFITS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE RESULTING FROM ANY LOSS OR DAMAGE TO WIRELESS PROVIDER'S FACILITIES, EVEN IF CITY WAS ADVISED OF OR OTHERWISE SHOULD HAVE BEEN AWARE OF, THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE LEGAL THEORY OR BASIS FOR SUCH CLAIM.

8.3 The City and its officers, agents, elected or appointed officials, employees, departments, or boards and commissions (each as acting in their official capacity), shall not be liable to Wireless Provider or to its Affiliates or customers for any interference with or disruption in the operations of Wireless Provider's Wireless Facilities or the provision of services, or for any damages arising out of or materially related to Wireless Provider's use of the ROW, except to the extent of willful misconduct or gross negligence on the part of the City by its officers, agents, elected or appointed officials, employees, departments, or boards and commissions.

8.4 Wireless Provider also agrees that it shall have no recourse whatsoever against the City or its officials, boards, commissions, agents, or employees for any loss, costs, expense, claims, liabilities, or damages arising out of or materially related to any lawful provision or requirement of the City because of the lawful enforcement of these Standard Ts and Cs.

8.5 CITY HEREBY DISCLAIMS ANY REPRESENTATIONS AND/OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENT OR FUTURE SUITABILITY OF THE POLE(S) FOR WIRELESS PROVIDER'S INTENDED PURPOSE OR ABSENCE OF DANGEROUS CONDITIONS ASSOCIATED WITH THE CITY-OWNED STRUCTURES AND ROW.

SECTION 9. Term and Renewal

The term for a RUSA shall be for ten (10) years from the Commencement Date as specified in the RUSA ("Initial Term"), except that if the Uniform Small Wireless Facility Deployment Act sunsets as set forth in RSMo. § 67-5122 the Initial Term for all RUSAs shall expire January 1, 2021 and the RUSAs shall be renegotiated in good faith. The Initial Term may be renewed for an equivalent duration unless the City makes a finding that the Utility Poles or Wireless Support Structure or Wireless Facilities do not comply with the RUSA's provisions, any Applicable Codes or local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, reasonable stealth and concealment requirements, or any other applicable federal or state law, regulation, or order.

SECTION 10. Termination by Wireless Provider

Wireless Provider may terminate a RUSA prior to its date of expiration at any time by providing the City with written notice and upon making arrangements satisfactory with the City Engineer to remove the Wireless Facilities within ninety (90) days from the date of the notice, unless the time is extended by the City Engineer. The City Engineer may agree in writing to allow Wireless Provider to abandon part or all its Conduit or Fiber in place in accordance with these Standard Ts and Cs.

SECTION 11. Termination by City

11.1 Unless prohibited by valid, constitutional law, City may, in addition to seeking any other remedy available to it, terminate the permission to attach to a particular Pole under a RUSA if Wireless Provider

neglects or refuses to comply with any of the provisions of these Standard Ts and Cs beyond all applicable cure periods and fails within thirty (30) days after written notice from City to correct such neglect, refusal, or default provided Wireless Provider shall have up to ninety (90) days (or longer if approved in writing by the City Engineer) if the nature of the cure is such that it reasonably requires more than thirty (30) days and Wireless Provider commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. Such additional time shall be no more than is necessary to reasonably implement the cure.

11.2 Termination of a RUSA shall be commenced by delivery of written notice to Wireless Provider by the City and will state the reasons for the termination.

11.3 To the fullest extent permitted by law, Wireless Provider's failure to operate its Wireless Facilities (except during specific periods expressly excused by these Standard Ts and Cs) once installed under any RUSA for a period of ninety (90) days within any twelve (12) month period or sixty (60) consecutive days of non-operation will be grounds for the termination of the RUSA at that location upon sixty (60) days' notice to Wireless Provider, unless within such sixty (60) day period Wireless Provider commences the use of such Wireless Facilities. Such time periods may be modified by the City Engineer for extenuating circumstances. The RUSAs for the Wireless Facilities shall terminate, without notice: A) upon the institution by or against the Wireless Provider of insolvency, receivership, or bankruptcy proceeding or any other proceedings for the settlement of Wireless Provider's debts; B) upon Wireless Provider making an assignment for the benefit of creditors; or C) upon Wireless Provider's dissolution or ceasing to do business.

11.4 In the event of the City's termination of a RUSA, Wireless Provider shall have one hundred twenty (120) days (or longer if approved in writing by the City Engineer) to remove the Wireless Facilities; provided however, that Wireless Provider shall be liable for and pay all fees that are due until Wireless Provider's Wireless Facilities are moved.

11.5 If after such time, the facilities have not been removed, the City shall have the right, after giving at least ten (10) days prior written notice to Wireless Provider, to remove the remaining Wireless Facilities, in which event such Wireless Facilities may be retained by City without accounting to Wireless Provider therefore, and the expense of such removal and repairs shall be charged to and paid by Wireless Provider without credit for the value, if any, of such Wireless Facilities. Excepting damages resulting from the City's or its agents' gross negligence or willful misconduct, Wireless Provider shall defend, indemnify, and hold City harmless from and against all loss, liability, or expense resulting from such removal, including but not limited to claims of third parties.

11.6 Failure to Remove. Except for any Conduit or Fiber that the City allows to be abandoned in place, failure by the Wireless Provider to remove its Wireless Facilities within the one hundred twenty (120) day time period (or by the extension of time approved by the City Engineer) will result in immediate forfeiture of the Wireless Provider's Deposit. If the Wireless Facilities are attached to a third-party owned pole, the City will only remove the non-pole-attached portions of the Wireless Facilities. If Wireless Provider does not take possession of the Wireless Facilities and/or the non-pole-attached portions of the Wireless Facilities within sixty (60) days from removal from the Pole(s), Wireless Provider agrees to allow the City to keep, sell, or dispose of such Wireless Facilities as the new owner.

SECTION 12. Assignment/Pledge of Small Wireless Facilities

12.1 Except as otherwise set forth in these Standard Ts and Cs, the permission to attach an SWF to a City Pole is personal to Wireless Provider and Pole space is for Wireless Provider's use only. Wireless

Provider shall not lease, sublicense, share with, convey, or resell to another any such space or rights granted hereunder.

12.2 Except as otherwise provided in these Standard Ts and Cs, Wireless Provider shall not transfer or assign the RUSAs without City's prior written consent; provided, however, the RUSAs may be sold, assigned, delegated, or transferred in whole or in part by Wireless Provider without any approval or consent of the City to Wireless Provider's parent, Affiliates, subsidiaries of its parent or to any entity which acquires all or substantially all of Wireless Provider's assets subject to these Standard Ts and Cs by reason of a merger, acquisition, or other business reorganization.

12.3 Any non-permitted transfer or assignment of the right to attach the SWFs to City Poles shall be void and not merely voidable. No cure or grace periods shall apply to transfers or assignment prohibited by these Standard Ts and Cs or to the enforcement against a transferee or assignee who did not receive City's consent.

12.4 Except for a permissible transfer or assignment as allowed by these Standard Ts and Cs, any assignment of a RUSA will not be effective or considered approved by the City until the person or entity to whom Wireless Provider is assigning the RUSA signs and delivers to City a document in which said assignee shall assume responsibility for all the Wireless Provider's obligations under these Standard Ts and Cs. Wireless Provider shall also provide to the City a summary of provisions of the transaction documents assigning its interests.

12.5 For any transfer and/or assignment not covered by Section 12.2 that involves the sale of any of the SWFs or sale/leaseback transactions or a transaction in which a third party gains a security interest in or any other type of ownership interest or financial claim to the SWFs, the Wireless Provider must give immediate notice to the City. Such transaction automatically revokes the permission the City has given to Wireless Provider to attach the SWFs to City Poles and will be grounds for termination of the RUSA. If the new owner or the entity with the security interest in the SWF does not enter into an acceptable RUSA with the City for permission to have the SWF attached to the City Pole within sixty (60) days of the sale or transfer of ownership or transaction that results in a security interest in the SWF, permits will need to be acquired to remove the SWF and removal of the SWF needs to be completed within thirty (30) days or within ninety (90) days of the transfer of ownership (whichever is earlier). Wireless Provider shall not be subject to this provision if it provides or maintains a faithful performance bond in favor of City in the sum of one thousand five hundred dollars (\$1,500.00) per Small Wireless Facility or the sum of Seventy-Five Thousand Dollars (\$75,000) for all of its Small Wireless Facilities, to guarantee that the new party or entity shall comply with these Standard Ts and Cs. Said bond shall be acknowledged by Wireless Provider, as principal, and shall be issued by a surety with an AM Best rating of A-VII or better for the last four quarters.

12.6 City shall not unreasonably withhold, condition, or delay requests for assignment that require City's consent.

12.7 Payment of any outstanding fees and/or any applicable pole use fee will need to be paid either by Wireless Provider or the subsequent new owner before any permits will be issued. City reserves the right to draw upon the entire Deposit if such payment is not made by the end of the thirty (30) day period referenced in Section 12.5 above.

SECTION 13. Bonds

Prior to receiving a RUSA or any permit to construct, install, maintain, or perform any work on public property that requires a permit from the City pursuant to applicable City codes, Wireless Provider shall

obtain, cause to be filed and maintain a performance bond, maintenance bond, and payment bond in accordance with Chapter 26 of the City Code.

SECTION 14. Wireless Provider's Records and Reports

14.1 Wireless Provider shall keep records and provide information to the City upon reasonable request relating to the status of the construction and repair of Wireless Provider's Wireless Facilities.

14.2 The City may require such additional reasonable non-confidential information as defined by Missouri law, records, and documents from Wireless Provider from time to time as are appropriate in order to reasonably monitor compliance with these Standard Ts and Cs. Wireless Provider shall provide such records within thirty (30) days of a request by the City for production of the same unless additional time is reasonably needed by Wireless Provider and agreed to in writing by the City, in which case, the Wireless Provider shall have such reasonable time as needed for the production of the same. If any person other than the Wireless Provider maintains records on Wireless Provider's behalf, Wireless Provider shall be responsible for making such records available to the City for auditing purposes pursuant to this Section.

14.3 If Wireless Provider determines that to be able to respond to City's request for access to documentation for inspection, it must reasonably provide Proprietary Information, Wireless Provider shall mark such documentation as "Confidential." Such Proprietary Information shall include, but not be limited to any customer names and lists, financial information, technical information, or other information clearly identified as "Confidential" pertaining to services provided to customers.

14.4 Information that is already in the public domain shall not be considered Proprietary Information. If public domain information is included with Proprietary Information on the same document, the City shall only disclose those portions within the public domain.

14.5 Notwithstanding any provision in these Standard Ts and Cs, Wireless Provider acknowledges and understands that the City is subject to the disclosure requirements of Missouri's Sunshine Law (RSMo. § 610.010 et seq).

14.6 Reports. Upon the receipt of a reasonable written request and subject to any necessary confidentiality requirements, Wireless Provider shall provide and/or make available to the City for review copies of any communications and reports submitted by Wireless Provider to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters directly affecting enforcement of these Standard Ts and Cs.

SECTION 15. Penalties for Violation of Terms

City may pursue any remedy at law, including but not limited to injunctive relief, civil trespass, and withholding other City permits and authorizations until Wireless Provider complies with these Standard Ts and Cs or applicable law. Such remedies are cumulative and may be pursued in the alternative.

SECTION 16. Notice

16.1 All notices, which shall or may be given pursuant to this Standard Ts and Cs, shall be in writing delivered to the City or Wireless Provider by overnight express courier, registered or certified mail, return

receipt requested, postage prepaid to the address below.

CITY OF LEE'S SUMMIT:

Public Works Director and City Engineer
City of Lee's Summit
220 SE Green Street
Lee's Summit MO 64063
Phone: (816) 969-1800

With copies to:

City Attorney's Office
220 SE Green St
Lee's Summit, MO 64063
Phone: (816) 969-1400

16.2 Unofficial notice may also be given by e-mail to a designated representative of the City and the Wireless Provider, however, unofficial notice does not satisfy the notice provisions in these Standard Ts and Cs.

16.3 Wireless Provider must provide a name, title, and address of the person to whom the City should send any notices and this information shall be included on all RUSAs. Should the information change, Wireless Provider shall notify the City of the updated information within ten (10) business days of the change.

SECTION 17. Partial Invalidity

If any section, paragraph, subdivision, clause, phrase, or provision of these Standard Ts and Cs shall be adjudged invalid or unenforceable, or determined to be preempted by federal or state laws or regulations by a court of competent jurisdiction, the same shall not affect the validity of these Standard Ts and Cs as a whole or any part of the provisions of these Standard Ts and Cs other than the part adjudged to be invalid, unenforceable, or preempted.

SECTION 18. Non-Waiver

Wireless Provider shall not be excused from complying with any of these Standard Ts and Cs by any failure of City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

SECTION 19. Force Majeure

With respect to any of these Standard Ts and Cs, the violation or non-compliance of which could result in the imposition of a financial penalty, forfeiture or other sanction upon Wireless Provider, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by Wireless Provider and is beyond its reasonable control.

SECTION 20. Dispute Resolution

20.1 If any dispute or claim arises out of the interpretation, performance or breach of these Standard Ts and Cs, the City and Wireless Provider, upon the written demand of either, will meet within ten (10)

business days of such demand to attempt in good faith to resolve the dispute. The meeting will be attended by representatives of the City and Wireless Provider having the authority to resolve the dispute.

20.2 If the dispute is not resolved, the City and the Wireless Provider may agree to use nonbinding mediation. If nonbinding mediation is agreed to, the City and the Wireless Provider shall mutually agree upon the services of one (1) mediator. The costs of nonbinding mediation, including any mediator's fees and the costs for the use of the facilities during the meetings (if any) shall be born equally between the City and the Wireless Provider. Each entity's costs and expenses will be borne by the entity incurring them.

20.3 If the dispute is not resolved within a reasonable time, both the City and the Wireless Provider shall be free to use other remedies such as nonbinding arbitration or litigation to resolve the dispute.

SECTION 21. Venue

Any action at law, suit in equity, or judicial proceeding for the enforcement of these Standard Ts and Cs and all RUSAs shall be instituted only in the courts located within eastern district Jackson County, Missouri, including federal court.

SECTION 22. Exhibits

All Exhibits referred to in these Standard Ts and Cs shall be deemed a part of these Standard Ts and Cs.

SECTION 23. Amendments

The City may amend these Standard Ts and Cs from time to time and the City Manager or designee will be authorized to approve such amendments. Applications for Wireless Facilities that are submitted after such amendments and the resulting RUSAs will be subject to such amendments, however RUSAs in effect prior to such amendments will be subject to and grandfathered in for the length of the current term. Upon any renewal of the RUSA, this Standard Ts and Cs in effect at the time of the renewal will apply.

STANDARD CONDITIONS FOR INSTALLATION, OPERATION, AND MAINTENANCE

SECTION 24. Application Review and Approval Process

24.1 Application Required. Whenever a Wireless Provider seeks to collocate an SWF to an City Pole or to install, replace, modify, or operate a Utility Pole in the City's ROW, the Wireless Provider shall submit a written application (Application) to City together with the requested documents, details, plans and specifications required for City review and approval, and pay the applicable fee as set forth in Schedule of Fees of the Lee's Summit City Code. The form of such application will be set by the City Engineer, which may be modified as needed and a Site Plan will be required. The Application and its requirements shall be made publicly available. The City will determine the completeness for the SWF application within the maximum time permitted by valid, constitutional law after submittal of an Application that has all the required information and documents attached. For the installation of new Utility Poles for an SWF or for the installation or collocation of Wireless Facilities within the ROW, the City will determine the completeness of the Application within the maximum time permitted by valid, constitutional law after submittal of an Application that has all the required information and documents attached.

24.1.1 Attestations Required. As part of the Application, Wireless Provider must certify that

the SWF will comply with the Federal Communication Commission's (FCC) regulations concerning radio frequency (RF) emissions as set forth in the FCC's Office of Engineering and Technology (OET) Bulletin 65 and 47 C.F.R § 1.1307, as amended; that the volume of the SWF is no larger than permitted by law; and that the SWF(s) will be collocated on the Utility Pole or Wireless Support Structure and that the SWF will be operational for use by a Wireless Services Provider to provide service within one (1) year after the RUSA/Right-of-Way Permit issuance date. The City and the Wireless Provider may agree to extend this period or if delay is caused by lack of commercial power at the site.

24.1.2 Acceptance. The filing of the Application will begin the review process to determine the completeness of the Application. Once the Application has been deemed 'complete', the City will begin its substantive review of the information and documents submitted to determine approval or denial.

24.1.3 Site Plan. The Wireless Provider shall ensure that the Site Plan correctly shows the work that the Wireless Provider or its Contractor intends to perform as required by the City Code and Design and Construction Manual, that the Site Plan correctly shows all improvements and equipment that Wireless Provider intends to be located on the Use Areas, and that all areas of the ROW that will be occupied are identified.

24.1.3.1 The Wireless Facilities will exclude any item not shown on the Site Plan. Any refinement or other change to the Site Plan after the City approves the Application and issues the RUSA will void the approval, unless Wireless Provider obtains City's written and signed approval of the change by the City Engineer and the RUSA is amended with an updated Site Plan; provided that the Wireless Provider may perform work to its SWF as described in RSMo. 67.5113.4 without submitting an Application or additional approval if Wireless Provider provides the City with a description of the equipment as set forth in RSMo. 67.5113.4.

24.1.4 Batching Sites for Approval. A Wireless Provider seeking to collocate multiple SWFs may file a consolidated Application for the collocation of up to twenty (20) SWFs if the collocations each involve substantially the same type of SWF and substantially the same type of structure and located within the same geographic proximity (a "batch"). All information required for one SWF, however, will still be required for all the SWFs contained within the consolidated application, except to the extent that such information would be unnecessarily duplicative. Individual RUSAs and Permits will still be required for each location.

24.2 Review Process. City may approve or deny an Application based on the Applicable codes, City code provisions or City regulations that concern public safety, objective design standards for Decorative Poles, reasonable stealth and concealment requirements, and public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in the ROW. Pursuant to the above, if the City determines that the Utility Pole or Wireless Support Structure will need to be replaced before the requested collocation, approval shall be conditioned on such replacement of the Utility Pole or Wireless Support Structure.

24.2.1 The internal process for approving an Application will be determined by the City Engineer and may be modified by the City Engineer whenever necessary to meet the needs of the City and the Wireless Provider. Any modifications to it shall be made publicly available. On a consolidated Application involving more than one collocation of an SWF, the City can remove any SWF collocation for which incomplete information has been provided or that does not

quality for consolidated treatment or that has been denied. Once an SWF collocation has been removed from the batch, it will be processed as though it were an individual Application.

24.2.2 When the review process is completed and an Application is approved by the City, the RUSA as submitted with the Application (or as amended) will be countersigned by the City. The execution of the RUSA will provide authorization for the Wireless Provider or its Contractor to be issued a Right-of-Way Permit.

24.2.3 Any refinement or other change to the Site Plan (as defined in the applicable RUSA) after the RUSA is executed is void unless Wireless Provider obtains City's approval of the change pursuant to plan review processes and any applicable regulatory requirements. If Wireless Provider desires to change the location of any portion of the Wireless Facility from that set forth in the initial Application, Wireless Provider shall apply for and obtain approval for an amendment of the RUSA prior to installation or construction.

24.2.4 The appearance of and the specific equipment and dimensions of anything that will be installed in the ROW as part of the Wireless Facilities will be identified and attached as part of the Site Plan exhibit to the RUSA. 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 between the City and the Wireless Provider.

24.2.5 Wireless Provider shall design, specify, and supply all material associated with the installation, operation, and maintenance of the SWF or Wireless Provider's Utility Pole. The SWF shall be installed and maintained by or on behalf of Wireless Provider at Wireless Provider's sole cost and expense.

24.3 Plan and Placement Approval Required. Wireless Provider's use of the public ROW and easements under the control of the City shall be according to plans approved by the City Engineer, provided that such approval shall not be unreasonably withheld or delayed. To the fullest extent permitted by valid, constitutional law, the location, spacing, size, and appearance of any related pole-mounted or ground-based equipment (microwave dishes, radios, relays, power supplies, meters, etc.), enclosures, cabinets, and pedestals placed in the ROW must be approved by the City Engineer.

24.4 Design Standards and Stealth and Concealment Requirement Compliance. Wireless Providers and Contractors shall comply with the City's established objective design and construction standards and reasonable stealth and concealment requirements relating to the appearance and installation of Wireless Facilities in the ROW as set forth in the Design and Construction Manual. The City Engineer shall be responsible for establishing and updating, modifying or supplementing such design standards and stealth and concealment requirements to address relevant changes in law, technology, or administrative processes. The design standards and stealth and concealment requirements and any updates, modifications or supplements shall be made publicly available. Any future modifications of such Wireless Facilities must maintain the stealth and concealment elements required for the original Wireless Facilities, unless otherwise approved by the City.

SECTION 25. Work Within the Right-of-Way

25.1 Wireless Provider's Wireless Facilities to be constructed, installed, operated, maintained, upgraded, and removed hereunder shall be located or relocated to interfere as little as possible with traffic or other authorized uses within said public ROW and easements. Any phases of construction and/or installation relating to traffic control, backfilling, compaction, and paving, as well as the location or

relocation of said Wireless Facilities shall be subject to regulation by the City Engineer.

25.1.1 General Maintenance. The Wireless Facility site, including but not limited to all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and the RUSA.

25.1.2 Good Condition Required. Wireless Facilities shall always be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the life or property of any person.

25.1.3 Clean Up. Wireless Provider and/or its Contractor(s) shall, during installation, relocation, or removal of the Wireless Facilities and upon completion of such work, remove all temporary construction materials and equipment, debris, and unused materials provided for in the work, and maintain and put the work site and public ROW in a safe, neat, and clean condition.

25.1.4 Graffiti Removal. Wireless Provider shall always keep and maintain its Wireless Facilities and Utility Poles free of all graffiti. City shall notify Wireless Provider in writing if graffiti is on the Wireless Facilities. If Wireless Provider fails to remove the graffiti within thirty (30) days after notice in writing is received, City shall have the right to abate any graffiti present and Wireless Provider shall reimburse City for all costs directly attributable to such abatement within thirty (30) days of City's presenting Wireless Provider with a statement of such costs. Failure to reimburse City within this period will allow City to deduct such amount owed from the Deposit.

25.2 Changes to Facilities. Any changes, modifications or replacements of the Wireless Facilities must conform to the design standards and stealth and concealment requirements the City has for such Wireless Facilities as set forth in the Design and Construction Manual. If a Wireless Provider desires to change the components of the Wireless Facilities that will impact the ROW or its visual effect, written approval of such change must be obtained from the City Engineer or his/her designee.

25.3 When Approval for Changes is not Required. The following types of changes shall not be deemed to impact the ROW, such that written approval shall not be required, however, an approved Traffic Control Plan may still be required: A) a change to a Wireless Facility involving only substitution of internal components that does not result in any change to the external appearance, dimensions, or weight of the Wireless Facility; or B) a replacement of a Wireless Facility with a Wireless Facility that is the same or smaller in weight and dimensions as the previously approved Wireless Facility; or C) a replacement of a component or components of a Wireless Facility with a component or components that is/are the same or smaller in weight and dimensions as the previous component or components.

SECTION 26. Safety Requirements

26.1 Prevention of Failures and Accidents. Wireless Provider and any of its Contractors shall always employ ordinary and reasonable care to install and maintain in use nothing less than the best available technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public. Wireless Provider and Wireless Provider's Contractor(s) shall be solely and completely responsible for the conditions of any job site where the Wireless Facilities are being placed, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. Wireless Provider's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve Wireless Provider

from compliance with these provisions.

26.2 General Safety Requirements. All work in the ROW will be performed only by a Licensee and its contractors and the Wireless Facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in compliance with the Lee's Summit City Code, applicable City policies, the Design and Construction Manual Design and Construction Manual, National Electric Code (NEC), National Electric Safety Code (NESC), and OSHA regulations. All work in the ROW shall be performed in such manner that will not interfere with the use of other property.

26.3 Radio Frequency Radiation Safety Requirements.

26.3.1 Unless prohibited by law, Wireless Provider shall provide a written certification as part of its Application that the SWF will comply with the FCC Radio Frequency Exposure Guidelines (FCC OET Bulletin 65 and IEEE C95 Standards) and all other applicable radio frequency emissions laws and regulations in effect from time to time, including, FCC's RF for "general population/uncontrolled exposure" and for "occupational/controlled exposure". If the Wireless Facilities are "categorically excluded" from the requirement for routine environmental processing for RF exposure pursuant to 47 C.F.R. § 1.1307(b)(1), Wireless Provider shall confirm this in writing to the City.

26.3.2 City Worker Safety. Both OSHA and the FCC require that individuals with exposure to RF signals in their work environments be made aware of the safety issues and how to properly mitigate them. Wireless Provider acknowledges and agrees that State-mandated access to the City's ROW and City-owned poles by Wireless Provider's for SWFs now expose City workers and its Contractors to such RF emissions.

26.3.2.1 To perform duties necessary as owner and manager of the ROW, the City's employees, agents, and representatives must have uninterrupted and safe access to the ROW and all structures located thereon. To ensure the safety of those working on or near Wireless Provider's SWF, the Wireless Provider must:

26.3.2.1.1 Power Shutdown. Provide a power shutdown method for the City's employees, agents, or representatives ("kill switch") to turn off all power to the Wireless Provider's Wireless Facilities while City secures the site during an Emergency, such as a pole knock down. This will allow staff and first responders to be able to power down the site to stop the RF emissions. These can include:

- A) Providing a key to the meter pedestal or equipment box for breaker access.
- B) Meter pedestal or equipment box locked with cut-able padlock seal.
- C) Access to ground accessible fuse in hand hole or J-box.
- D) Any other method allowing immediate on-site shutdown.

26.3.2.1.2 On-Call Technician. Within 24 hours of a request and upon coordination with the City as to the scheduling, Wireless Provider will 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. Upon deactivation, City workers will then be able to perform the maintenance or repair work to the City-owned poles. Upon completion of the work, City's employee shall contact the Wireless Provider's NOC and inform them that the site

may reactivate the RF signals.

SECTION 27. Conduit and Fiber Installation

27.1 Wireless Providers may use approved portions of the ROW for the installation of underground Conduit and fiber lines as is necessary to operate its SWF or Wireless Facility on a Utility Pole but only after entering into a separate agreement or license with the City to do so. A map of the Conduit/fiber route must be provided to the City as part of its Application. The Wireless Provider should internally coordinate its transport and communication functions.

27.2 Location. The exact placement and location of any additional Wireless Facilities shall be determined by City.

27.3 Co-location. Wireless Provider's installation of the Conduit System shall be reasonably coordinated with other utilities and City to accommodate opportunities for common installation along Wireless Provider's route. All installations of cable and/or fiber shall be in Conduit or innerduct as reasonably approved by the City Engineer. Provided, however, nothing herein shall require Wireless Provider to incur any material or unreasonable additional expense to accommodate common installations or to reserve fiber or conduit space for use by the City.

27.4 Interference. Any Conduit System to be constructed, installed, operated, and maintained shall be located or relocated to interfere as little as possible with traffic, existing utilities, or other authorized uses over, under, or through said streets and public ways. Wireless Provider shall not install, operate, or allow the use of Conduit System equipment, methodology, or technology that may or would interfere with the optimum effective use or operation of City's existing or future fire, Emergency, or other Communications Equipment, methodology, or technology (i.e., voice or other data carrying receiving or transmitting equipment). If such interference should occur, Wireless Provider shall immediately discontinue using the Conduit System equipment, methodology, or technology that causes the interference until Wireless Provider takes corrective measures to alter the Conduit System to eliminate such interference. Any such corrective measures shall be made at no cost to City. Wireless Provider shall be responsible to ensure compliance with this Standard Ts and Cs by all persons using the ROW through or under Wireless Provider or these Standard Ts and Cs.

27.5 Installation. Any new Conduit or fiber placed in the ROW will be constructed in accordance with City of Lee's Summit's Design and Construction Manual.

27.6 One Call. Wireless Provider and its Contractor(s) shall comply with Missouri's Underground Facility Safety and Damage Prevention Act, as amended, with the necessary records and persons to provide location service of Wireless Provider's underground facilities and Conduit upon receipt of a locate call or as promptly as possible, but in no event later than two (2) working days.

27.7 Restoration. Whenever the installation, use, maintenance, removal, or relocation of any of Wireless Provider's Wireless Facilities is required or permitted under this Standard Ts and Cs, and such installation, removal, or relocation damages or disturbs the surface or subsurface of any ROW or public property or the public improvement located thereon, therein, or thereunder, however such damage or disturbance was caused, Wireless Provider, at its sole cost and expense, shall promptly restore the surface or subsurface of the ROW or public property and/or repair or replace the surface, subsurface, and/or public improvement therein, or thereunder, to its functional equivalence before the damage in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer within ten (10) days from date of the damage, unless an extension of time is agreed to in writing by the City

Engineer. If Wireless Provider does not repair the damage or disturbance as just described, then City shall have the option, upon fourteen (14) days prior written notice to Wireless Provider, to perform or cause to be performed such reasonable and necessary work on behalf of Wireless Provider and to charge the Wireless Provider for the actual and reasonable costs incurred by the City at City's standard rates.

27.8 Separation. Wireless Facilities or Utility Poles may not be in areas where they will cause damage to or interference with other utility facilities or interference with a utility's use of the utility's facilities located or to be located within the ROW.

27.9 Inspections. The City shall have the right to inspect all construction or installation work performed in the ROW and to make such tests as it shall find necessary to meet City standards as set forth in the City of Lee's Summit's Design and Construction Manual and to ensure compliance with these Standard Ts and Cs and other pertinent provisions of law. Wireless Provider shall cooperate with all inspections.

SECTION 28. Use of Poles in the Right-of-Way

28.1 Unless prohibited by valid, constitutional law, the determination of whether a City Pole or location within the ROW is available or unavailable for the attachment or placement of an SWF shall be within City's discretion. Within the limitations of valid, constitutional law, City reserves the right to disallow the attachment of a SWF on any Pole or the placement of an SWF in the ROW for reasons including, but not limited to, noncompliance with the City's design guidelines and/or stealth or concealment requirements, insufficient capacity of the Pole, insufficient square footage in the ROW to accommodate the proposed location of the ground equipment, unable to maintain minimum offsets from proposed Pole and/or equipment to existing underground utilities, safety, reliability, or engineering concerns.

28.2 City's act or failure to act regarding unauthorized use of the ROW by placement of a SWF or other Wireless Facility without approval of an application shall not be deemed a ratification or approval of the unauthorized use; and any authorizations City subsequently gives to Wireless Provider for the right to use the Pole shall not operate retroactively or constitute a waiver by City of any of its rights or privileges under these Standard Ts and Cs or a RUSA.

28.3 City may require Wireless Provider to remove any unauthorized attachment to a Pole or unauthorized placement of an SWF within the ROW. If Wireless Provider has failed to remove Wireless Provider's SWF from City's Pole(s) within thirty (30) days after City notified Wireless Provider of the unauthorized attachment, City may remove Wireless Provider's SWF without liability to Wireless Provider, in which circumstance Wireless Provider shall reimburse City upon demand for the reasonable cost City incurred in making such removal. Except to the extent caused by the willful misconduct of the City and its agents, employees and assigns, Wireless Provider shall defend, indemnify, and hold City harmless from and against all loss, liability, or expense (including but not limited to claims of third parties) resulting from the removal of such unauthorized attachment. Placement of an SWF in the ROW without the City's express written permission shall constitute trespass.

28.4 The City's traffic signals and their associated poles and equipment have a significant impact to public safety, and a new traffic signal pole for SWF would require the intersection meet traffic signal warrants and the installation of a new traffic signal controlled intersection. The City may prohibit Wireless Provider from installing or placing any attachment that could possibly cause delay of maintenance, conflict with operations, and or limit the reservation of space upon a traffic signal pole to continue or improve its primary purpose.

SECTION 29. Installation on Poles

29.1 Wireless Provider or Wireless Provider's Contractor is required to obtain a Right-of-Way Permit prior to starting construction and to order City inspections during and upon completion of installation of any SWF. Installation will be inspected for adherence to the approved Application and all applicable laws, codes, regulations, including but not limited to plan specs, safe operation, aesthetics, and/or interference with streetlight or traffic operations. Post-installation inspection of an SWF by City shall be performed within thirty (30) days of the installation. If City objects to the installation for reasonable reasons stated, Wireless Provider will be required to remove the SWF and resubmit design/installation plan. The Pole may not be altered without the City's written permission, except as otherwise permitted by applicable law, these Standard Ts and Cs, or the applicable RUSA.

29.2 Replacement Poles. When Wireless Provider and the City have agreed on an existing City Pole location as a suitable site for an SWF, but the City determines the existing Pole needs to be replaced to accommodate the installation of such SWF, then the following will apply:

29.2.1 Wireless Provider shall be responsible for design and construction of replacement Pole and pay all costs related to Pole replacement, including but not limited to Pole replacement, transfer of all existing facilities, and removal and salvage of the existing pole to the City of Lee's Summit. Payment of Pole replacement costs does not provide Wireless Provider with any ownership interest in the replacement Pole. The City shall be the owner of the replacement pole.

29.2.2 The replacement Pole must conform to the City of Lee's Summit's Design and Construction Manual.

29.2.3 All performance required by Wireless Provider under this entire Section shall be at Wireless Provider's expense. City will own the original pole and all replacement poles.

29.3 Any re-installation of an SWF shall be at Wireless Provider's sole cost and expense.

29.4 These requirements do not diminish the plans approval or any other requirement of these Standard Ts and Cs.

29.5 Wireless Provider shall not be entitled to reimbursement from City of any amounts paid to City for Pole replacements nor for rearrangement of attachments on the City's Poles due to the use by City or other user(s) of any additional space resulting from such replacement or rearrangement. This Section does not limit Wireless Provider's right to reimbursement from any other user or third party pursuant to Section 3.4.

29.6 To fullest extent permitted by law, should City, or other authorized Pole user, require access to the Pole and such access is restrained because of Wireless Provider's SWF, Wireless Provider shall work cooperatively to develop and support access requirements. Work shall be performed in accordance with City safety standards, which may require temporarily ceasing operations to comply with such standards.

29.6.1 Subject to obtaining permission of the owner(s) of non-City owned poles that may exist in the ROW, the City authorizes and permits Wireless Provider to enter the ROW to install an SWF on such third party owned poles, subject to approval of a RUSA and payment of any applicable fees.

29.6.2 All Wireless Provider SWFs shall be installed and maintained in accordance with the

requirements of the National Electric Code, the National Electrical Safety Code, the National Fire Protection Association Standards, the Occupational Safety and Health Administration and any other applicable federal, state, and local laws. All fees, notices, permits, approvals, certifications, and licenses required for the installation, maintenance, and operation of Wireless Provider's SWFs shall be obtained and paid for by Wireless Provider and proof of such shall be provided to City at no charge and upon request by City, prior to the start of work.

29.7 Electricity. Wireless Provider shall install or cause to be installed a separate electric meter on the Pole and will pay all actual electricity charges assessed by the electric company for all power usage of the SWF. Any third-party equipment needed to service the Wireless Facilities shall be required to apply for and obtain separate permits. The City shall not provide easements within the ROW to Wireless Providers or third parties.

SECTION 30. Maintenance/Modifications

30.1 Maintenance of an SWF or Wireless Provider's Utility Pole shall be performed by Wireless Provider at Wireless Provider's sole cost and expense. Wireless Provider will need to obtain the a Right-of-Way Permit each time it works in the ROW including any work on ground mounted equipment to access the Poles, and will also need to submit for a Temporary Traffic Control Permit (traffic control permit issued by Traffic Engineering), if applicable.

30.2 Wireless Provider will perform routine maintenance, repair, and installation of an SWF or Wireless Provider's Utility Pole in accordance with all City ordinances, rules, and regulations.

30.3 Damaged or deteriorated components must be corrected within five (5) business days of notification or such extended time as allowed by the City Engineer. If the components are taken out of service, Wireless Provider must remove them within thirty (30) business days of being taken out of service.

30.4 Wireless Provider shall be responsible for any relocation/reinstallation costs associated with Pole replacement resulting from routine Pole maintenance.

30.5 Other than in connection with the replacement of an existing Pole for the initial installation of an SWF, in the event a City Pole containing an SWF is reasonably determined by the City as needing to be replaced due to damage caused by Wireless Provider or a third party, City will notify Wireless Provider and Wireless Provider agrees to replace the Pole within fourteen (14) days or by an extended deadline as allowed by the City Engineer. If Wireless Provider fails to replace the Pole within such period, the RUSA for such Pole shall terminate and City may install a pole for its own purposes. If the Pole is damaged by Wireless Provider or its contractors and needs to be replaced, Wireless Provider shall replace the Pole entirely at its expense. If the damage is caused by a third party other than the Wireless Provider's contractors, Wireless Provider will replace the Pole and City will reimburse Wireless Provider the cost of a City of Lee's Summit standard detail Pole. During the fourteen (14) day replacement period (or the extended time period if applicable), Wireless Provider shall be allowed if necessary to place a temporary cell site and antenna structure on the ROW during replacement. City disclaims any and all liability to Wireless Provider for any loss of services because of the SWF being unable to function from its previous location on the Pole. The City will reimburse Wireless Provider for the cost of a standard light Pole based on the cost of the pole prior to any collocations or modifications to the Pole within forty-five (45) days of City's receipt of an invoice, but Wireless Provider will be responsible for any cost of the Pole in excess of that amount. Once the Pole has been replaced, Wireless Provider will be allowed to re-install the SWF on it at Wireless Provider's sole expense and City will install its lighting apparatus and wiring at its sole cost. In the event of localized interruptions (e.g., motor vehicle accidents), City shall notify Wireless Provider of the incident after taking any required actions to clear and restore the site. Wireless Provider will be

responsible for collection of any damages for damaged Wireless Provider equipment from a third party that caused the damage.

30.6 Wireless Provider shall be responsible for and reimburse the City for any and all damages to the Pole(s) caused by Wireless Provider and/or its Contractors.

30.7 If Wireless Provider's SWF is not transferred and/or placed and maintained in accordance with the terms and conditions of this Standard Ts and Cs and Wireless Provider has not corrected any Wireless Provider-caused violation within thirty (30) days from its receipt of a written notice from City (or such longer time as may be reasonable under the circumstances), the City may, at its discretion, correct the violation at Wireless Provider's expense and deduct the actual and reasonable charges from the Deposit.

30.8 Any upgrade and/or modification to the SWF or Wireless Facilities will need specific approval from the City and require Wireless Provider to submit the information required by these Standard Ts and Cs, except for upgrades, replacements, or modifications set forth in RSMo. § 67.5113.4. For upgrades, replacements, or modifications set forth in RSMo. § 67.5113.4, Wireless Provider shall provide a description of such new equipment and the location where the equipment is being installed to the City prior to performing any work. Any approval required from the City must be obtained in writing from the City Engineer or designee. Any upgrades, changes, modifications, or replacements of the Wireless Facilities must conform to the City's Design and Construction Manual.

SECTION 31. City Maintenance of City-owned Poles

City shall have the right to operate, replace, and maintain all City-owned poles or 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. Wireless Provider agrees to shut down communications and electrical equipment during any time City is maintaining, testing, or replacing the City-owned pole or structure within 24 hours from the notice. If Wireless Provider fails to shut off the equipment within 24 hours from the notice, Wireless Provider shall reimburse City for its costs related to the delay including time and labor expenses. The reimbursement will be at a minimum of Five Hundred Dollars (\$500) per incident. Failure to shut off the equipment will be deemed to be a breach of the RUSA for that site.

SECTION 32. Interference

32.1 Wireless Provider shall use and operate an SWF in a manner that will not cause harmful interference including, but not limited to, blocking of access to the Pole, electrical interference, radio frequency (RF) interference, or mechanical interference to the City's and other users' use of the Pole, provided that such other users' installation predates the installation of such SWF. If applicable, City agrees to supply Wireless Provider with a list of other attachers or users on any Pole, which is to be used by Wireless Provider, together with the respective transmission frequencies thereof. Wireless Provider shall not install, operate, or allow the use of equipment, methodology, or technology that may or would interfere with the optimum effective use or operation of City's existing or future fire, Emergency, or other Communications Equipment, methodology, or technology (i.e., voice or other data carrying, receiving, or transmitting equipment). If such interference should occur, Wireless Provider shall immediately discontinue using the equipment, methodology, or technology that causes the interference until Wireless Provider takes corrective measures to eliminate such interference. Any such corrective measures shall be made at no cost to City. Wireless Provider shall be responsible to ensure compliance with these Standard Ts and Cs by all persons using the ROW through or under Wireless Provider or these Standard Ts and Cs.

32.1.1 In the event any such interference occurs, Wireless Provider will: A) remedy such interference as soon as possible but no later than within forty-eight (48) hours after receipt of written notice from City, conditioned on City's ability to support corrective actions, if required, or B) cease operation of the Wireless Facilities until such interference can be eliminated with City's support, if required, subject to the ability to power down the interfering equipment and later power up the interfering equipment but only for intermittent testing purposes. Upon extenuating circumstances shown by the Wireless Provider, the City Engineer may extend the 48-hour time period.

32.1.2 If such interference is not eliminated within said forty-eight (48) hours (or extended period, if applicable), City will have the right, in addition to any other rights that it may have at law or in equity, to take all necessary and reasonable steps, at Wireless Provider's sole cost and expense, to disable the SWF to eliminate such interference (after giving reasonable prior notice to Wireless Provider of City's intent to do so). City shall have the right to terminate Wireless Provider's right to attach the SWF causing such interference by giving at least forty-five (45) days' notice to Wireless Provider to remove the SWF permanently from the Pole, unless within such 45-day period, Wireless Provider cures any interference.

32.2 Should City, Wireless Provider, or other authorized users require access to a Pole and such access is restrained because of City's or Wireless Provider's operational equipment, City and Wireless Provider shall work cooperatively to develop and support access requirements. Unless prohibited by valid, constitutional law, Work shall be performed in accordance with City's safety standards, which may require temporarily ceasing wireless operations to comply with such standards.

SECTION 33. Traffic Control

33.1 When applicable, Wireless Provider must obtain a Temporary Traffic Control Permit prior to beginning work under a RUSA.

33.2 To the extent reasonably possible, pedestrian access shall be maintained along the length of the project at all times per the requirements of the Americans with Disabilities Act and as approved by the City of Lee's Summit Traffic Engineer.

SECTION 34. Hazardous Substances

34.1 Wireless Provider agrees it will not produce, dispose, transport, treat, use, generate, or store any Hazardous Substances on, under, about, or within the area of the Pole and ROW in violation of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, et. seq., the Missouri Hazardous Waste Management Law, RSMo. § 260.350, et seq., the Resource Conservation and Recovery Act., 42 U.S.C. § 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq. or any other federal, state, county, or local law or regulation.

34.2 To the fullest extent permitted by valid, constitutional law, Wireless Provider shall pay, indemnify, defend, and hold City harmless against any loss or liability incurred because of any Hazardous Substance produced, disposed of, or used by Wireless Provider pursuant to these Standard Ts and Cs and must immediately notify City of any Hazardous Substance discovered at any time that is unlawfully present upon the ROW. Wireless Provider will ensure that any on-site or off-site storage, treatment, transportation, disposal, or other handling of Hazardous Substance pertaining to Wireless Provider's use of the ROW will be performed by persons who are properly trained, authorized, licensed, and otherwise permitted to perform those services.

34.3 Wireless Provider is not responsible for Hazardous Substances that may exist in the ROW if Wireless Provider's Contractors and/or any other persons using the ROW under this Standard Ts and Cs did not do any of the following:

34.3.1 Acted or failed to act in a manner that allowed the Hazardous Substance to enter the ROW.

34.3.2 Participate in spreading or otherwise disturbing the Hazardous Substance following discovery of such Hazardous Substance.

34.4 Wireless Provider understands the hazards presented to persons, property, and the environment by dealing with Hazardous Substances. Wireless Provider acknowledges the possibility that the ROW may contain actual or presumed asbestos and other Hazardous Substances containing materials.

34.5 As soon as possible, but no later than twenty-four (24) hours after any violation by Wireless Provider and/or by its Contractor(s) of these Standard Ts and Cs pertaining to Hazardous Substances, Wireless Provider shall give City notice reporting such violation at the phone number set forth in Section 40.3.1.

34.6 Nothing in this Section shall be construed prohibit the placement of emergency power systems that comply with all federal and state environmental requirements.

SECTION 35. On-Call Assistance

Wireless Provider shall be available to staff employees of any City department having jurisdiction over Wireless Provider's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its Wireless Facilities. City may contact by telephone the Network Operations Center operator at a phone number to be provided to the City regarding such problems or complaints, and may use that number to reach Wireless Provider at any time for any Emergency matter. Wireless Provider shall use reasonable efforts to respond to any issues within the time frames specified in these Standard Ts and Cs or the applicable RUSA. Wireless Provider shall handle or otherwise make arrangements with a local entity to handle any necessary problems or complaints that require a physical presence.

SECTION 36. Mapping Requirement

Wireless Provider shall maintain drawings of its Wireless Facilities located within the ROW and furnish a copy both electronically in an ESRI-compatible mapping format (or in a mapping format compatible with the current City electronic mapping format as specified by the City) and in hard copy form. Upon completion of new or relocation construction of Wireless Facilities in the ROW, Wireless Provider shall create and maintain precise, up-to-date maps of any of its Conduit System routes and any other above ground equipment located in the ROW and precise and verifiable horizontal and vertical location information and will make this information available to the City upon such installation. Wireless Provider will also provide surface-location marking of any portion of Wireless Provider's Wireless Facilities that are located underground within any public ROW within ten (10) business days of installation.

SECTION 37. Relocation

37.1 If City deems it necessary, in connection with the installation, operation, maintenance, replacement, relocation, or removal of City Poles or the facilities located on City Poles, to relocate Wireless

Provider's SWF attached to City's Pole for a public project, the City may require Wireless Provider to relocate the SWF to another location on the ROW (the "Alternate Property") provided: A) the Alternate Property is similar to Wireless Provider's current premises in size and is compatible for Wireless Provider's use; B) City shall give Wireless Provider at least ninety (90) days written notice requiring Wireless Provider to complete its relocation; and C) Wireless Provider shall be allowed if necessary to place a temporary cell site and antenna structure on the ROW during relocation.

37.2 Wireless Provider shall perform the relocation work at its own expense.

37.3 City or its contractors may perform any part of the relocation work that has not been performed within the allotted time. Wireless Provider shall reimburse City for its actual, reasonable costs in performing any relocation work. However, City has no obligation to move Wireless Provider's Wireless Facilities.

37.4 Wireless Provider shall relocate, at no expense to the City, any Wireless Facilities or other encroachment installed or maintained in, on, or under any public place or ROW, as may be necessary to facilitate any public project, including but not limited to transit projects such as Light Rail or Streetcar or any City project whenever directed to do so by City. The City will assist the Wireless Provider in finding a new location for the relocated facility. If feasible and necessary, the Wireless Provider will be allowed to place a temporary facility at the appropriate location during relocation activities.

Such relocations shall be accomplished in accordance with the directions from City and shall be pursuant to the same terms and conditions as the initial installation allowed pursuant to these Standard Ts and Cs and any applicable issued permits. Within ninety (90) days after service of notice by the City, Wireless Provider shall completely remove the designated portions of the Wireless Facilities, or in the event that, by the nature of the removal such removal cannot be performed within the 90-day period, Wireless Provider shall take reasonable steps to remove the Wireless Facilities and diligently prosecute the removal to completion and, if requested, restore the sidewalks and other ROW to a condition comparable to the condition before the construction of the public improvement at no cost and expense to the City.

37.5 Wireless Provider agrees to obtain a Right-of-Way Permit as required by City Code prior to removing, abandoning, relocating, or reconstructing any portion of its Wireless Facilities on public property or ROW. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Wireless Provider is required to make repairs that are of an Emergency nature or because of an unscheduled disruption of the Wireless Facilities. Wireless Provider will maintain any annual permits required by the City for such maintenance and Emergency repairs. Wireless Provider will notify City before the repairs and will apply for and obtain the necessary permits in a reasonable time after notification.

37.6 Wireless Provider 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.

SECTION 38. Damage to Public Property

In addition to any indemnity obligation under these Standard Ts and Cs and in compliance with the City Code, whenever the installation, use, maintenance, removal, or relocation of any of Wireless Provider's Wireless Facilities is required or permitted under these Standard Ts and Cs, and such installation, removal or relocation damages or disturbs the surface or subsurface of any ROW or public property or the public improvement located thereon, therein, or thereunder, however such damage or disturbance

was caused, Wireless Provider, at its sole cost and expense, shall promptly restore the surface or subsurface of the ROW or public property and/or repair or replace the surface, subsurface, and/or public improvement therein, or thereunder, to its functional equivalence before the damage in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. If Wireless Provider does not repair the damage or disturbance as just described, then City shall have the option, upon fifteen (15) days prior written notice to Wireless Provider, to perform or cause to be performed such reasonable and necessary work on behalf of Wireless Provider and to charge Wireless Provider for the actual and reasonable costs incurred by the City at City's standard rates.

Notwithstanding the notice provision above, in the event of a Public Emergency, the City shall have the right to immediately perform, without prior written notice to Wireless Provider, such reasonable and necessary work on behalf of Wireless Provider to repair and return public property to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. The City shall provide written notice to Wireless Provider of the repairs as soon as practicable after the work has begun. Wireless Provider agrees that any severed City-owned Conduit and/or fiber must be completely repaired or replaced to the nearest splice point. If the City needs to perform any part of the necessary repairs, relocation, and/or removal work, it shall be entitled to seek payment for such actual and reasonable repairs, relocation, and/or removal costs from Wireless Provider and may draw upon a performance bond and/or Deposit required by these Standard Ts and Cs in full or partial satisfaction of such costs, if payment is not made by Wireless Provider.

SECTION 39. Public Emergency Disruption by City

City shall have the right, because of a Public Emergency, to disable, alter, relocate, sever, disrupt, remove, tear out, dig-up, or otherwise damage any element of the Wireless Facilities of Wireless Provider without any prior notice to Wireless Provider, if the action is deemed reasonably necessary by either the City Manager, Fire Chief, Police Chief, City Engineer, or Public Works Director or designee to protect the public health, safety, and welfare. In such event, neither the City nor any agent, Contractor, or employee of City shall be liable to Wireless Provider, its Contractors, or its customers or their parties for any harm so caused to them or the Wireless Facilities. When practical and if possible, City will consult with Wireless Provider in advance by calling its Network Operations Center (NOC) to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Wireless Facilities. City shall inform Wireless Provider of any actions taken. Excepting damages resulting from the City's or its agents' gross negligence or willful misconduct, Wireless Provider shall be responsible for repair at its sole expense of any of its Wireless Facilities damaged pursuant to any such action taken by City.

SECTION 40. Public Safety/Public Hazard

40.1 If any of Wireless Provider's Wireless Facilities or activities present any immediate hazard or dangerous condition to the public, to the City, to other improvements or activities within or outside of the route area(s), or to City's ability to safely and conveniently operate the ROW or perform City's utility, public safety and/or other public health, safety and welfare functions, then if the action is deemed reasonably necessary by either the City Manager, Fire Chief, Police Chief, City Engineer, or Public Works Director or designee, City shall have the right to disable, alter, relocate, sever, disrupt, remove, tear out, dig-up, or otherwise damage Wireless Facilities of Wireless Provider. City shall inform Wireless Provider of any actions taken and Wireless Provider shall remove its equipment. Notwithstanding the above, before any such actions are taken, the City shall notify the Wireless Provider at its Network Operations Center to give notice of the Emergency or immediate hazard or dangerous condition.

40.2 In the event of an action taken by City under this Section, neither the City nor any agent, Contractor, or employee of the City shall be liable to Wireless Provider or its Contractors or its customers or other third parties for any harm so caused to them by the reasonable actions of the City or its agents, Contractors, or employees in responding to such Emergency, public hazard or dangerous condition. When practical and if possible, City will consult with Wireless Provider in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of either the public property involved or the Wireless Facilities involved. Following notice from the City, Wireless Provider shall reasonably cooperate with the City, at no expense to City, to remedy the hazard and secure the route area.

40.3 Emergencies. The Parties shall notify each other of any Emergency related to the Pole(s) or Wireless Provider's SWFs or Utility Poles.

40.3.1 In the event of an Emergency discovered by Wireless Provider, Wireless Provider shall immediately notify City at (816) 969-1700 of any Emergency related to the Pole(s) or Wireless Provider's SWF or Utility Pole. This Emergency phone number shall be kept updated and current between the Wireless Provider and the City on an as-needed basis.

40.3.2 In the event of an Emergency discovered by City, City shall immediately notify Wireless Provider at its Network Operations Center of any Emergency related to the Pole(s) or Wireless Provider's SWF or Utility Pole. This Emergency phone number shall be kept updated and current between the Parties on an as-needed basis.

SECTION 41. Non-use/Abandonment of the Wireless Facilities

41.1 An "Abandoned Wireless Facility" will mean a Wireless Facility no longer in service or permanently physically disconnected from a portion of the operating Wireless Facility or from any other Wireless Facility that is in use or still carries service. If Wireless Provider ceases to provide services or abandons use of any of its Wireless Facilities, upon cancellation or termination of the RUSA, Wireless Provider shall notify the City and may, subject to written and signed approval by the City Engineer or their designee, abandon the Wireless Facilities in place. In such event, the City, at its option, may acquire ownership of the Wireless Facilities at no cost to the City. In lieu of abandonment in place, the City may require Wireless Provider, to the reasonable satisfaction of the City and without cost or expense to the City, to promptly remove the Wireless Facilities and to restore the public property and ROW to a reasonable condition under the supervision of the City in accordance with City Code.

41.2 Upon abandonment in place Wireless Provider shall submit to the City a proposal and instruments for transferring ownership to the City within thirty (30) days. Any such Wireless Facilities, which are not removed as required by the City within ninety (90) days of either such date of termination or cancellation or of the date the City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Wireless Provider will notify the Missouri One Call to record the Wireless Facilities that have been abandoned. The City Engineer may extend the ninety (90) day time period for extenuating circumstances.

41.3 Title to any and all personal property installed by Wireless Provider upon the ROW that is not removed during the period set forth in this Section shall automatically vest in City.

SECTION 42. Contractors

42.1 Wireless Provider shall be responsible for ensuring that the work of Contractors is performed

consistent with these Standard Ts and Cs and other applicable law, and shall be responsible for the acts, errors, omissions, and any negligence of their Contractor(s) who are involved in the installation, construction, maintenance, repair, location, relocation, and any other activity involving Wireless Provider's Wireless Facilities to the same degree it is responsible for the acts of its employees. Wireless Provider shall be responsible for promptly correcting acts, errors, or omissions by any Contractor and shall implement a quality control program to ensure that the work contemplated by these Standard Ts and Cs is performed.

42.2 The specific independent Contractors identified and used by Wireless Provider for the construction activities to expand and extend Wireless Provider's Wireless Facilities and Use Area will need to be approved by the City Engineer or designee prior to issuance of each Right-of-Way Permit, and such approval shall not be unreasonably withheld, delayed, conditioned, or denied. Wireless Provider may satisfy this Section by providing a list of specific independent Contractor's for the City's pre-approval. Each Contractor shall have the same obligations with respect to its work as Wireless Provider would have if Wireless Provider performed the work. Any Contractors performing construction work within the ROW or public easements shall comply with licensing requirements of the Missouri General Contractors.

SECTION 43. Severability

The provisions of these Standard Ts and Cs are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the these Standard Ts and Cs which may remain in effect without the invalid provision or application.