

COS case No. \_\_\_\_\_

Wireless company's name:

Wireless company's internal site name:

**ANTENNA SITE RIGHT-OF-WAY LICENSE AGREEMENT**

THIS ANTENNA SITE RIGHT-OF-WAY LICENSE AGREEMENT (the "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the City of Scottsdale, an Arizona municipal corporation ("Licensor"), and, a \_\_\_\_\_, a \_\_\_\_\_ ("Licensee").

**RECITALS**

A. Licensor has adopted a certain Notice of Antenna Site Standard Terms, through Resolution No. 11079 of the Scottsdale City Council on April 24, 2018 (the "Standard Terms"), and on file at the City Clerk's office.

B. The Standard Terms sets out various recitals (collectively the "Standard Recitals") and provisions (collectively the "Standard Terms").

C. Licensor holds rights to occupy a parcel of land (the "Street Parcel") comprising street right-of-way for \_\_\_\_\_. The Street Parcel is located approximately \_\_\_\_\_ feet \_\_\_\_\_ of the center of the intersection of \_\_\_\_\_ and \_\_\_\_\_.

D. This Agreement allows Licensee to use certain limited portions of the Street Parcel.

E. The portions of the Street Parcel that this Agreement allows Licensee to use (the "Use Areas") are defined in the package of maps and related materials (the "Boundary Plan") attached hereto as **Exhibit "A"**.

F. Licensee desires to install and operate on the Use Areas the wireless telecommunications receiving, processing and transmitting devices and related electronic equipment that is specified on the Site Plan (the "Communications Equipment") subject to the requirements of this Agreement. The Communications Equipment is limited to the actual electronic equipment, portable cabinets for such equipment, the Enclosure, [the antennas (the "Main Antennas") used to communicate with cell telephones and similar devices, the antennas (the "Microwave Antennas") used to relay signals off-site in bulk], and [a permanently installed emergency backup generator (the "Fixed Generator")], all as shown on the drawing (the "Site Plan") attached hereto as **Exhibit "B"**. Notwithstanding anything in this Agreement to the contrary, the Communications Equipment excludes any item not shown on the Site Plan.

G. The volume of the Enclosure and the above ground portion of its pad as shown in the Site Plan is \_\_\_\_\_ cubic feet.

H. The Street Parcel is currently improved with an approximately \_\_\_\_\_ foot tall [electrical] [light] [traffic signal] [street light] [antenna support] pole (the "Pole") owned by Licensor.

I. Licensee proposes to replace the Pole with a new Pole that Licensor ("Pole Owner") will own.

J. In order to install the Communications Equipment, Licensee desires to construct supporting improvements and perform all other work shown on the Site Plan (collectively the "Project").

K. Licensee shall complete the entire Project and put the Communications Equipment in full operation no later than one hundred eighty (180) days after the date of this Agreement (the "Completion Deadline").

L. Licensor desires to grant to Licensee a license to install, maintain, operate and repair the Communications Equipment (the "Permitted Uses") subject to the requirements of this Agreement.

M. Licensor desires to reserve rights to construct and use and allow others to construct and use all manner of additional improvements upon the Use Areas and the Street Parcel subject to the requirements of this Agreement and the rights granted to Licensee herein.

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

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

#### I. LICENSE TERMS

1. License Terms. Licensor hereby grants to Licensee a license to use the Use Areas as follows:

1.1 Standard Terms Incorporated. The Standard Terms are all incorporated here by reference as if set out in full. **LICENSEE WARRANTS AND REPRESENTS THAT LICENSEE HAS READ AND AGREES TO THE STANDARD RECITALS AND THE STANDARD TERMS.** Capitalized terms used but not defined in this Agreement shall have the meanings assigned by the Standard Recitals and the Standard Terms.

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

1.2.1 Licensee's Boundary Plan Responsibility. It is Licensee's responsibility before signing this Agreement to ensure that the Boundary Plan is prepared as follows:

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

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

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

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

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

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

1.2.1.7 Any change to the Boundary Plan after Licensor executes this Agreement is void unless it is memorialized in a formal amendment to this Agreement.

1.2.2 Site Plan. It is Licensee's responsibility before signing this Agreement to ensure that the Site Plan correctly shows the work that Licensee intends to perform, that the Site Plan correctly shows all improvements and equipment that Licensee intends be located on the Use Areas, that the Site Plan shows no work, improvements or equipment outside the Exclusive Areas and Shared Areas properly depicted and labeled on the Boundary Plan, and that all work, improvements and equipment is encompassed within the purposes enumerated in the Standard Terms for that particular Exclusive Area or Shared Area. Any work, improvements or equipment not conforming to all the foregoing is prohibited, even if it is clearly shown on the Site Plan or discussed in the Standard Terms. Any refinement or other change to the Site Plan after Licensor executes this Agreement is void unless Licensee obtains Licensee's approval of the change pursuant to the plans approval processes set out in the Standard Terms and pursuant to all applicable regulatory requirements.

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

1.2.4 Licensee's Payments. Licensee shall pay to Licensor the amounts described in the Standard Terms. Licensor's billing cycle shall be based on a fiscal year of July 1 to June 30<sup>th</sup> of the following year. Licensee shall pay Base Use Fee and Ordinary Permit Use Fee in advance upon execution of this License Agreement. Licensee's initial payment of Base Use Fee shall be prorated based on the remaining portion of the current fiscal year. Thereafter, Licensor will provide an annual bill to Licensee no later than July 15<sup>th</sup> for the fiscal year and Licensee's annual payment for the current fiscal year shall be due to Licensor no later than August 25<sup>th</sup> of that fiscal year.

1.2.5 Use Restrictions. Licensee shall comply with the use restrictions set out in the Standard Terms.

1.2.6 Other Requirements. Licensee's obligations include and Licensee's rights are limited by all of the Standard Terms' provisions, including without limitation, those regarding:

- 1.2.6.1 Improvements by Licensor.
- 1.2.6.2 Licensee's improvements, plans approval, work hours, etc.
- 1.2.6.3 Construction deadlines.
- 1.2.6.4 Maintenance and utilities.
- 1.2.6.5 Breach, default, remedies, waivers, etc.
- 1.2.6.6 Termination.
- 1.2.6.7 Indemnity and insurance.
- 1.2.6.8 Condemnation.
- 1.2.6.9 Damage to or destruction of the Use Areas.
- 1.2.6.10 Licensor's access to Licensee's records.
- 1.2.6.11 Compliance with law.
- 1.2.6.12 Assignability.
- 1.2.6.13 Amendments, notice, funding, statutory cancellation and other miscellaneous issues.

1.2.7 Encroachment Permits. This Agreement constitutes an "encroachment permit" under Chapter 47 of the Scottsdale Revised Code to the extent of granting permission for the Communications Equipment to exist on the Street Parcel but not to allow any construction or other work of any description in the Right-of-way or to allow obstruction of traffic or alteration of Licensor's improvements. Before performing any work on the Right-of-way, Licensee shall obtain the following additional encroachment permits, as applicable:

- 1.2.7.1 Permission to Work in the Right-of-way.
- 1.2.7.2 Permission to Alter City Improvements.
- 1.2.7.3 Permission to Obstruct Traffic.
- 1.2.7.4 Any other applicable permits regarding work in the Right-of-way.

1.2.8 Compliance with Law. Licensee acknowledges that this Agreement does not constitute, and Licensor has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Licensee with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the city of Scottsdale or any other governmental body upon or affecting Licensee's use of the Street Parcel. For example, Licensee shall comply with all zoning, building and right-of-way codes, ordinances and policies.

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3(CITY OWNED REPLACEMENT POLE ON NON-SCOTTSDALE RIGHT-OF-WAY)

2. Licensor's Initial Information. Unless and until Licensor gives notice otherwise, Licensor's contract administrator shall be KEITH NIEDERER.

3. Licensee's Initial Information. Unless and until Licensee gives notice otherwise:

3.1 Licensee's network operations center phone number as provided in paragraph 4.15 of the Standard Terms shall be (\_\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_.

3.2 Licensee's address for notices as provided in paragraph 17.8 of the Standard Terms shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3.3 Licensee's billing address for routine billing invoices as provided in paragraph 17.9 of the Standard Terms shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EXECUTED as of the date first given above.

**LICENSOR:** **CITY OF SCOTTSDALE,**  
an Arizona municipal corporation

By: \_\_\_\_\_  
KEITH NIEDERER,  
Wireless telecommunications License Administrator

**LICENSEE:** \_\_\_\_\_,  
a \_\_\_\_\_

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

## TABLE OF EXHIBITS FOR SITE LICENSE

<u>Exhibit</u>	<u>Paragraph</u>	<u>Description</u>
A	E	Boundary Plan
B	F	Site Plan
C	3.8.3 (Standard Terms)	Requirements for letter of credit
D	16.5 (Standard Terms)	Form of assumption