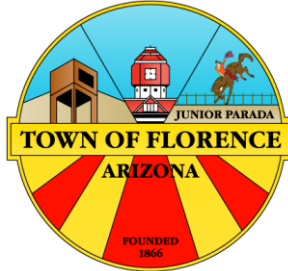


TOWN OF FLORENCE PLANNING AND ZONING COMMISSION REGULAR MEETING AGENDA

Chairman Gary Pranzo
Commissioner Mike Shoppell
Commissioner Robert Smidt
Commissioner Lonnie Frost



Florence Town Hall
775 N. Main Street
Florence, AZ 85132
(520) 868-7575
www.florenceaz.gov
Meets 1st and 3rd Thursdays

Thursday July 19, 2018, 2018

6:00 PM

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the Town of Florence Planning and Zoning Commission and to the general public that a Regular Meeting of the Florence Planning and Zoning Commission will be held on Thursday, July 19, 2018, at 6:00 p.m., in the Florence Town Council Chambers, located at 775 N. Main Street, Florence, Arizona.

1. CALL TO ORDER

2. **ROLL CALL:** Chairman Pranzo____, Commissioner Shoppell____, Commissioner Smidt____, Commissioner Frost_____.

3. PLEDGE OF ALLEGIANCE

4. **DISCUSSION/APPROVAL/DISAPPROVAL** of the minutes of the regular meeting conducted on June 21, 2018.

5. PUBLIC HEARING

A. CASE PZ-18-21-ORD SMALL WIRELESS FACILITY TEXT AMENDMENT

PRESENTATION/DISCUSSION/RECOMMENDATION of a Text Amendment application by the Town of Florence amending the Town of Florence Code of Ordinances, Title XV Land Usage, Chapter 150 Development Code, Section 150.031 Definitions, and Part 9 Wireless Communications Facilities Sections 150.180 to 150.184. (Ordinance No. 662-18)

B. CASE PZ-18-22-ORD SMALL WIRELESS FACILITY TEXT AMENDMENT

PRESENTATION/DISCUSSION/RECOMMENDATION of a Text Amendment application by the Town of Florence amending the Town of Florence Code of

Ordinances, Title XI Business Regulations, to insert Subsection 120 Small Wireless Facilities. (Ordinance No. 663-18)

6. NEW BUSINESS

A. PRESENTATION/DISCUSSION/RECOMMENDATION of the proposed Terms and Conditions for Small Wireless Facilities in Town Rights of Way.

7. PRESENTATIONS

A. FUTURE AGENDA ITEMS/INFORMATION ONLY

Staff will inform the Commission of upcoming agenda items for August 2018

8. CALL TO THE PUBLIC/COMMISSION RESPONSE:

Call to the Public for public comment on issues within the jurisdiction of the Planning and Zoning Commission. Individual Commission members may respond to criticisms made, may ask staff to review a matter raised or may ask that a matter be put on a future agenda. However, members of the Commission shall not discuss or take action on any matter during an open call to the public unless the matters are properly noticed for discussion and legal action.

9. CALL TO THE COMMISSION- CURRENT EVENTS ONLY.

10. ADJOURNMENT

POSTED ON July 16, 2018 BY MARIA HERNANDEZ, DEPUTY TOWN CLERK, AT 775 NORTH MAIN STREET, FLORENCE, ARIZONA, AND AT WWW.FLORENCEAZ.GOV.

***** PURSUANT TO TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA), THE TOWN OF FLORENCE DOES NOT DISCRIMINATE ON THE BASIS OF DISABILITY REGARDING ADMISSION TO PUBLIC MEETINGS. PERSONS WITH A DISABILITY MAY REQUEST REASONABLE ACCOMMODATIONS BY CONTACTING TOWN OF FLORENCE ADA COORDINATOR, AT (520) 868-7574 OR (520) 868-7502 TDD. REQUESTS SHOULD BE MADE AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE THE ACCOMMODATION. *****

**TOWN OF FLORENCE
PLANNING AND ZONING COMMISSION
June 21, 2018
REGULAR MEETING MINUTES**

MINUTES OF THE PLANNING AND ZONING COMMISSION OF THE TOWN OF FLORENCE MEETING HELD ON THURSDAY, June 21, 2018, AT 6:00 P.M., IN THE TOWN COUNCIL CHAMBERS, LOCATED AT 775 N. MAIN STREET, FLORENCE, ARIZONA.

1. CALL TO ORDER

Chairman Pranzo called the meeting to order at 6:00 pm

2. ROLL CALL:

Chairman Pranzo	Present
Vice-Chair Frost	Present
Commissioner Smidt	Absent
Commissioner Shoppell	Present

Council Liaison Hawkins Present

A quorum of Commissioners is present

3. PLEDGE OF ALLEGIANCE

4. DISCUSSION/APPROVAL/DISAPPROVAL of the minutes of the regular meeting conducted on June 7, 2018.

On a motion by Chairman Pranzo, seconded by Vice-Chair Frost and carried to approve the June 7, 2018 meeting minutes.

5. NEW BUSINESS

On a motion by Vice-Chair Frost, seconded by Commissioner Shoppell and carried to adjourn from Regular Session and convene to Work Session.

A. Work session/presentation and discussion on the Town proposed draft text amendments to Development Code Part 7, Parking; Loading and Unloading

Planning Manager Larry Harmer displayed a PowerPoint presentation on suggested possible changes and edits to Part 7 of the Development Code: Parking, Loading and Unloading. Some of the changes to the parking section include:

- The addition of new terms and definitions

- Re-formatting the Development Code for clarity and future additions
- Addressing new technology

The work session is meant to answer questions and gain suggestions on the changes made to the parking section of the code.

Mr. Harmer began the presentation by recommending a new layout for the code's numbering system. He stated that the current numbering system does not allow for additional sections and chapters. Mr. Harmer's proposal is the use of a layout that includes Roman numerals, letters, and numbers so the Town can easily add new sections and chapters. He then provided a general example on the layout.

Mr. Harmer suggested the addition of new terms and definitions such as zoning administrator, electric vehicle charging station, battery electric vehicles, and recreational storage vehicles. Chairman Pranzo expressed concern that the title of zoning administrator was an "ad hoc" and asked for clarification on the term. Mr. Harmer stated "zoning administrator" was a traditional title that encompassed different positions and allowed for flexibility. Chairman Pranzo asked if the term can be changed back. Mr. Harmer agreed that we could restore the original terms or titles for clarity but would provide statutory authority of a zoning administrator. Mr. Harmer stated to the Commission that the draft before them was only a starting point. Comments and concerns are necessary to put forth the best changes possible.

Mr. Harmer discussed the possibility of additional parking when appropriate. For example, if a use is changed from a bookstore to a restaurant than appropriate parking adjustments would be required. Developers would be responsible for meeting the number of parking spaces for the new use.

Mr. Harmer stated another change is that all required parking shall be paved per parking standards and any additional parking must be paved, also. A list of appropriate materials for paving was presented. Chairman Pranzo questioned this change because he does not want the sudden need to develop parking to hinder the commercial and economic growth of the Downtown area, which currently has 18 dark buildings. Mr. Harmer that the Downtown could be treated differently, and the current on-street and public parking in place might be sufficient. Vice-Chair Frost asked what "paved" meant in terms of this situation. Mr. Harmer explained the various types of pavement and the benefits such as dust proof parking. Vice-Chair Frost questioned if this paving initiative applies to residential areas. Mr. Harmer noted that we do not want to encourage a sea of parking and noted that a formula for calculating maximum parking in a residential plot is available to maintain aesthetic value.

Chairman Pranzo stated that a lot of the pavement standards are in place to prevent storm water run-off. Mr. Harmer replied that this change is driven more toward new properties with proper drainage. Mr. Harmer believed some of the different paving materials could help with water permeation. Chairman Pranzo explained that most of

these paving standards are fine for places with an HOA but must be carefully formulated to fit in the town, especially the downtown area.

Chairman Pranzo is concerned that developers might walk away from commercial construction due to harsh paving code. Mr. Harmer agreed and suggested that mechanisms be put in place to prevent such limitations and narrow down the definitions for building modifications.

Vice-Chair Frost asked if Downtown housed enough patron parking. Chairman Pranzo and Mr. Harmer discussed downtown options found in public parking areas, back lots, and the possibility of future development of back door entrances to establishments as the Town grows. Commissioner Shoppell asked about parking enforcement in the Downtown area Mr. Harmer responded that the code already discusses parking enforcement. Mr. Harmer briefly noted provisions for shared parking among businesses.

Mr. Harmer suggested Recreation Vehicles should be behind a 6 ft. wall with a gate and no more than 48 hours on the front street for travel prep or cleaning. Mr. Harmer stated Florence currently allows on-site storage for RVs. Chairman Pranzo noted reluctance to address on-site storage and that this would work better in HOA areas.

Mr. Harmer briefly explains that the Development Code currently prohibits someone from overpopulating a site with parking. Mr. Harmer stated some people believe this restriction is unfair due to business models requiring more parking. However, this may be a case by case matter. Chairman Pranzo responded that this code is meant to limit rain water run-off. Mr. Harmer noted that this is only a suggestion. Some other suggestions were the addition of sidewalks to connect parking areas to building fronts and the option of parking calculations by employee shift, the number of pumps, or per bed.

Vice-Chair Frost asked if the code addressed lighting. Mr. Harmer answered that a different section in the code pertained to lighting requirements. Mr. Harmer will be investigating dark sky policies, but this may be difficult due to the nearby prisons. Mr. Harmer mentioned other topics such as assisted, sober, and independent dwellings. Chairman Pranzo asked the definition of a "dwelling unit." Mr. Harmer explained they are either single family homes or human places of habitation. ADA standards will be part of the new and current standards.

Mr. Harmer discussed the future of electric vehicles and he went into signage and charging time of electric vehicle charging spaces. Commissioner Shoppell asked how the system works and who pays for the service. Mr. Harmer explained that the concept is like a gas pump where a customer would pay with a card after parking their vehicle to charge. Commercial developers would be responsible for the construction of the charging stations and the electricity for the charging stations. Mr. Harmer added ideas have been pulled from other communities and that, currently, there is no Arizona legislation concerning electric cars, but one may soon. Vice-Chair

Frost asked where the information was derived. –Mr. Harmer explained that the research came from a cross-examination of other cities and towns such as Sedona, Flagstaff, Prescott, Chandler, Gilbert, Coolidge, Casa Grande, and Maricopa. Vice-Chair Frost concurred with the “tried and true” method.

Mr. Harmer ended his presentation on the point that table work session would be beneficial and details on RVs and electric vehicles can be addressed at a later date.

On a motion by Chairman Pranzo, seconded by Vice-Chair Frost and carried to adjourn from Work Session and reconvene to Regular Session.

B. July 5, 2018 Meeting Cancellation

Mr. Harmer noted that there are no agenda items for July 5, 2018 and that the meeting will be canceled.

6. PRESENTATION BY DEVELOPMENT SERVICES

A. The Commission will hear an update on the progress of the proposed Small Wireless Facility Ordinances and Terms and Conditions

Dana Burkhardt, Planning Consultant, explained to the Commission that public outreach for comments began by email, newspaper, social media, and a public meeting will be held on the 12th and 19th of July. The previous meeting was recapped. Mr. Burkhardt asked for further comments and concerns.

Chairman Pranzo asked if the following sentence could be added into the text, “anticipated weight shall not exceed 25 percent of the yield strength of the monopole base material.”

The Commission asked if the equipment could be removed. Mr. Burkhardt stated that the provider of the pole was solely responsible for removing the equipment as per the Terms and Conditions agreement. Mr. Burkhardt described how the equipment may go underground. The major concern among the Commissioners was the impact the poles would have on Town aesthetics, especially in the Downtown area. The Commissioners asked for graphics that showed what the poles would look like in Florence. Mr. Burkhardt agreed to provide photos of the possible aesthetic outcomes in Florence. Vice-Chair Frost was concerned about section nine because the terms called for an off-switch, but no safety training. Mr. Burkhardt agreed to clarify that safety training was required every year.

7. CALL TO THE PUBLIC/COMMISSION RESPONSE

Call to the Public for public comment on issues within the jurisdiction of the Planning and Zoning Commission. Individual Commission members may respond to criticisms made, may ask staff to review a matter raised or may ask that a matter be put on a future agenda. However, members of the Commission shall

not discuss or take action on any matter during an open call to the public unless the matters are properly noticed for discussion and legal action.

A. ADJOURMENT

On a motion of Vice-Chair Frost, seconded by Commissioner Shoppell and carried to adjourn the meeting at 7:21 pm.

Gary Pranzo, Chairman

Date



**Planning and Zoning Commission
Staff Report**

July 19, 2018
Agenda Items (5A, 5B & 6A)

Project Name: PZ-18-21-ORD / PZ-18-22-ORD Small Wireless Facilities
Text Amendments & Terms and Conditions

Prepared By: Dana Burkhardt, Planning Consultant

Reviewed By: Larry Harmer, Planning Manager

APPLICANT:

Town of Florence
Development Services Department
224 W. 20th Street
Florence, AZ 85132

OVERVIEW:

On February 1, 2018 the Planning and Zoning Commission took action to initiate a text amendment to the Town's Land Development Code to implement the State mandated requirements for Small Wireless Facilities (SWFs) within Town rights of way. Staff has consulted with stakeholders, the community at large, and researched best practices from other Arizona communities to develop a policy to effectively address this mandate. The result of this effort is culminated in the attached draft amendments to the Town Code, Land Development Code, and the "Small Wireless Facilities Terms and Conditions."

BACKGROUND/ANALYSIS:

On March 31, 2017, House Bill 2365 was signed into law, which amended Title 9, Chapter 5 of the Arizona Revised Statutes, by adding Article 8 "Use of Public Highways by Wireless Providers." The new statutes are ARS Sections 9-591 through 9-599.

HB 2365 requires municipalities to allow SWFs or "small cells" to be installed within the public right-of-way and Town easements. Small cells are different from typical wireless facilities. As the name implies, they are much smaller and cover limited areas. Small cells are low-powered wireless base stations that typically provide coverage for targeted indoor and outdoor areas of varying sizes (e.g., homes, office buildings, shopping malls, and stadiums). SWFs allow wireless service providers to add capacity to their networks by

providing improved access for cell phone coverage and high-speed wireless data services not being served by traditional cell sites.

Small cells typically are attached to vertical structures within the right of way, such as light poles, utility poles, and traffic signal poles, to form a network. HB 2365 allows wireless providers to construct, install, modify, mount, maintain, operate, and replace utility poles associated with the collocation of small cells and to do the same for monopoles that are associated with the collocation of all wireless facilities, not just small cells.

Town staff is proposing minor modifications to the Florence Land Development Code to regulate wireless facilities and monopoles within the parameters of HB 2365 (Exhibit B). Additionally, staff is proposing a complimentary amendment to the Florence Town Code by inserting Chapter 120 “Small Wireless Facilities”, under Title XI: Business Regulations (Exhibit A). The proposed amendments allow requests for SWFs in rights of way to be licensed and permitted in a similar manner as telecommunications and cable facilities within Town rights of way, although franchise/exclusive agreements with providers are prohibited. The steps are as follows:

- 1) **License** – Wireless providers are required to receive a license to operate in the right of way by Town Council, subject to the “Terms and Conditions” (Exhibit C).
- 2) **Design Review** – Wireless providers may then apply for and receive Design Review and Site Plan approval for each proposed SWF.
- 3) **Building Permit** – Concurrent with Design Review, Wireless Providers may submit building permit application. Up to 25 facilities may be requested on one application, however individual building permits will be issued for each facility.
- 4) **ROW Encroachment Permit** – Prior to commencement of construction within town rights of way, an approved encroachment permit is required.
- 5) **Annual Emergency Operations Permit** – Wireless providers shall apply for and receive an annual permit for emergency operations for each facility located within the ROW.
- 6) **Duration** – Applicants are permitted to operate and maintain their SWF’s for a period of 10 years, and may be granted an additional 10 year term.



The variety of scenarios presented in HB 2365 provides for a multitude of options including major/minor collocations and modifications to Wireless Facilities. For additional details of this legislation, please refer to the League of Cities and Towns SWF Guide, and HB 2365 language provided with your June 7, 2018 staff report. The highlights of the bill are as follows:

- Prohibits cities from imposing moratorium on receiving and processing permits for wireless antennae applications.
- Explicitly allows by right, without a zoning approval process, wireless carriers and wireless infrastructure providers to access the public right-of-way to collocate new small cell wireless sites on City street light poles, utility poles and other structures, build new poles for small cells, and under certain conditions build Monopoles and taller utility poles.
- Streamlines the permitting process for attaching small cells making these facilities a permitted use exempt from zoning review or approval.
- Sets timeframes for the approval or denial of an application - 75 days or the application is automatically approved.
- Requires a local government to grant approval unless the application does not meet regulations concerning public safety, design standards, concealment requirements or spacing requirements for ground-mounted equipment in the right-of-way.
- Bundling: Allows applicants seeking to collocate multiple small wireless facilities within a single City's jurisdiction to file a consolidated application for up to 25 small wireless facilities so long as the collocations are substantially similar.
- Significantly reduces the amount of annual rent a City can charge for a small cell within the public right-of-way.

PUBLIC PARTICIPATION:

Town Staff has complied with all applicable Town requirements and Arizona Revised Statutes regarding public notification and public participation. A notice for the Planning and Zoning Commission Public Hearing was advertised in the local Town paper. Meetings and public outreach for these proposed amendments are as follows (* denotes tentatively scheduled):

June 7, 2018	Planning and Zoning Commission Work Session
June 21, 2018	Planning and Zoning Commission Review/Discussion
July 12, 2018	Neighborhood Meeting (5-6PM Community Center)
July 19, 2018	Planning and Zoning Commission (public hearing)
*August 6, 2018	Town Council (public hearing and 1st reading)
*August 20, 2018	2nd Town Council (action)

STAFF RECOMMENDATION:

Staff finds the proposed text amendments and Terms and Conditions as attached, comply with the State mandate HB 2365. Additionally, these proposed policies are in the interest of the general welfare, health and safety of the public. Therefore, staff recommends that the Planning and Zoning Commission forward to the Town Council a favorable recommendation to adopt Town of Florence Ordinance Numbers 662-18, 663-18, and the proposed Terms and Conditions for Small Wireless Facilities in Rights of Way.

ATTACHMENTS:

- Exhibit A – Proposed amendment to the Town Code Title XI, Article 120
(Ordinance No. 663-18)
- Exhibit B – Proposed amendments to the Land Development Code
(Ordinance No. 662-18)
- Exhibit C – Proposed Small Wireless Facility Terms and Conditions

EXHIBIT A

Town of Florence HB2365 Small Wireless Facility Town Code Text Amendment (Ordinance 663-18)

Text in **red** are proposed additions to the Town Code.

TITLE XI: BUSINESS REGULATIONS

Chapter

- 110. GENERAL PROVISIONS**
- 111. PEDDLER, SOLICITOR, TRANSIENT MERCHANT AND STREET VENDOR**
- 112. SPECIAL EVENTS**
- 113. ROADSIDE SALES**
- 114. EDIBLE FOODSTUFFS VENDOR**
- 115. PAWNSHOPS, SECOND-HAND DEALERS, JUNK COLLECTORS AND AUCTION HOUSES**
- 116. SEXUALLY ORIENTED BUSINESS**
- 117. TELECOMMUNICATIONS SERVICE**
- 118. CABLE COMMUNICATIONS**
- 119. LICENSING OF MEDICAL MARIJUANA-RELATED FACILITIES**
- 120. SMALL WIRELESS FACILITIES**

CHAPTER 120: SMALL WIRELESS FACILITIES

Section

120.01 Purpose and intent

120.02 Definitions

120.03 License required

120.04 Small Wireless Facilities in the public right of way

120.05 Application

120.06 Rates and fees

§ 120.01 PURPOSE AND INTENT.

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

(Ord. 663-18, passed DATE)

§ 120.02 DEFINITIONS.

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

(Ord. 663-18, passed DATE)

§ 120.03 LICENSE REQUIRED.

No wireless provider shall install, maintain, construct or operate wireless facilities in any public highway or public right of way in the town unless a license to use the right of way for wireless services has first been granted to the provider by the Town Council of the town under this chapter.

A wireless provider desiring a license to occupy the rights of way and other highways of the town to provide wireless services shall file a proposal with the Town Manager in the form prescribed by the Town's Small Cell Wireless Facilities Terms and Conditions, and shall pay a fee determined by the resolution of the Mayor and Town Council pursuant to §120.06 of this chapter.

§ 120.04 SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT OF WAY.

This section permits the installation of small wireless facilities in the right of way subject to ARS § 9-591, *et seq.*, and applicable Federal law, as follows:

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

- 1) An Application is submitted to and approved by the Town pursuant to Section 120.05;
- 2) All Town requirements as set forth in this article are met;
- 3) All other applicable codes and requirements are met;
- 4) Town's Small Wireless Facility Terms and Conditions are met and a Wireless Facility License Agreement is signed; and
- 5) A Wireless Facility Permit is issued by the Town.

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

(C) The installation and maintenance of monopoles in the public right of way and small wireless facilities on utility poles or monopoles in the public right of way shall be subject to rates and fees pursuant to Section 120.06 of this article.

(D) In addition to the above requirements, the installation, replacement, and/or modification of monopoles in the public right of way shall be subject to the requirements of "Part 9. Wireless Communications Facilities" of the Town's Development Code.

(E) In addition to the above requirements, the installation, replacement, and/or modification of utility poles that exceed the greater of either of the following, shall be subject to the requirements of "Part 9. Wireless Communications Facilities" of the Town of Florence Development Code.

- 1) Ten (10) feet in height above the tallest existing utility pole (excluding utility poles supporting only wireless facilities), that is located within five hundred (500) feet of the proposed site for the new, replacement or modified pole within the same right of way if that existing pole was in place on August 9, 2017, but the new or modified pole cannot be more than fifty (50) feet above ground level; or
- 2) Forty (40) feet above ground level.

(F) In addition to the above requirements, collocations of new small wireless facilities that exceed ten (10) feet above the utility pole or wireless support structure (including existing monopoles in the right of way) and exceed fifty (50) feet above ground level shall be subject to the requirements of "Part 9. Wireless Communications Facilities" of the Town of Florence

Development Code. Small wireless facility collocations that do not exceed the above dimensional requirements are exempt from zoning review.

(Ord. 663-18, passed DATE)

§ 120.05 APPLICATION.

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

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

- (1) Within 20 days of receiving an application, the Town shall notify if the application is incomplete and identify the missing information.
- (2) Within 75 days of a receiving a complete application, the Town must approve or deny the application (or application is automatically approved).
- (3) With respect to a denied application, the Town must (i) document the basis for a denied application, (ii) accept a resubmitted application within 30 days of denial (at no additional cost), and (iii) approve or deny the resubmitted application within 30 days of receiving the revised application.
- (4) A resubmitted application cannot be denied for a deficiency not identified in the original denial from the Town.

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

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

(D) If it is determined that the Application does not establish compliance with requirements

of this section, then the Application must be denied.

(Ord. 663-18, passed DATE)

§ 120.06 RATES AND FEES.

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

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

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

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

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

(Ord. 663-18, passed DATE)

EXHIBIT B

Town of Florence HB2365 Small Wireless Facility Development Code Text Amendment (Ordinance 662-18)

The following text in **red** are proposed additions to the Development Code and text with a ~~strikethrough~~ are proposed for deletion.

DEFINITIONS

§ 150.031 DEFINED WORDS.

ANTENNA(E). Any exterior transmitting or receiving device mounted on a building or structure and used to transmit or receive communications that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunication signals or other communication signals. This definition does not include a personal use antenna or amateur antenna.

MONOPOLE. A freestanding wireless support structure that is not more than 40 inches in diameter at the ground level and that has all of the wireless facilities mounted inside of the pole with exception of the antenna(s) and necessary concealed ground equipment. A monopole may also be an alternative tower structure that is designed to replicate a tree or other natural feature (aka. stealth).

TOWER. Any structure that is designed and constructed primarily for the purpose of supporting one or more wireless facilities, antennas for telephone, radio, and similar communication purposes, including monopole towers. The term includes, but is not limited to, radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, stealth towers and alternative tower structures. The term also includes the structure and any support thereto.

WIRELESS COMMUNICATION FACILITY.:

- (a) means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including both of the following:
 - (i) equipment associated with wireless communications.
 - (ii) radio transceivers, antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment, regardless of technological configuration.
- (b) includes small wireless facilities.
- (c) does not include the structure or improvements on, under or within which the equipment is collocated.
- (d) does not include non-commercial, non-business fixed wireless communications, such as television and satellite reception antennae or amateur radio antennae

WIRELESS COMMUNICATION FACILITY, SMALL. A wireless facility that meets both of the following qualifications:

- (a) each antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of the

antenna's exposed elements could fit within an imaginary enclosure of not more than six cubic feet in volume.

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

- (i) an electric meter.
- (ii) concealment elements.
- (iii) a telecommunications demarcation box.
- (iv) ground-based enclosures.
- (v) grounding equipment.
- (vi) a power transfer switch.
- (vii) a cut-off switch.
- (viii) vertical cable runs for the connection of power and other services

(Ord. 662-18, passed DATE)

PART 9. WIRELESS COMMUNICATIONS FACILITIES

§ 150.180 PURPOSE. GENERAL APPLICABILITY.

~~—WIRELESS COMMUNICATIONS FACILITIES, as herein defined, require specified, additional conditions and design criteria other than those used only for non-commercial, non-business fixed wireless communications, such as television and satellite reception antennae or amateur radio antennae which are exempt.~~

The purpose of this Article is to establish general requirements for the installation of wireless communications facilities, including towers and antennas. The goals of this Article are to:

- (A) Minimize the adverse visual effects of towers through careful design, siting, and screening, while preserving the rights of wireless telecommunications providers;
- (B) Encourage the location of towers in non-residential areas;
- (C) Minimize the total number of towers throughout the community;
- (D) Strongly encourage the joint use (co-location) of new and existing tower sites as a primary option rather than construction of additional single-use towers;
- (E) Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;

(F) Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, screening, and innovative camouflaging techniques;

(G) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently; and

(H) Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

(Prior Code, Ch. 4, Art. IV, § 4-316) (Ord. 432-06, passed 6-19-2006) (Ord. 662-18, passed DATE)

§ 150.181 ADMINISTRATIVE REVIEW AND APPROVAL.

The following wireless communications facilities may be approved administratively by the Zoning Administrator or designee upon satisfactory review by the Technical Advisory Committee through the design review and building permit process, unless otherwise specified herein:

~~Wireless communications~~ (A) ~~f~~Facilities comprised of panel antennae mounted on or against an existing structure, or antennae attached to a 69kV or higher power line tower or pole which does not raise the height of the tower or pole more than 15 feet above its original height; ~~when not located within Town-owned right of way;~~ or

(B) ~~n~~New antennae attached to an existing, conforming wireless communications tower which does not raise the height of the tower more than 15 feet above its original height ~~when not located within Town-owned right of way may be approved by the Planning Director after review and approval by the Site Plan Review Committee;~~ or

(C) Small Wireless Communications Facilities located within Town-owned right of way shall be subject to the town's Small Wireless Facility Terms and Conditions, Wireless Facility License Agreement, and Permit requirements. Refer to Town Code §120.

(Prior Code, Ch. 4, Art. IV, § 4-317) (Ord. 432-06, passed 6-19-2006) (Ord. 662-18, passed DATE)

§ 150.182 REQUIRED INFORMATION.

(A) Site plan approval is required.

(B) At the time of request the applicant shall also submit:

(1) A current map, or update to an existing map on file showing locations of applicant's antenna(e) and facilities and all other known existing and proposed wireless

communications towers within a one-mile radius of the proposed tower and the following accompanying information:

(a) Report from a structural Engineer registered in the state showing the tower antenna capacity by type and number, and a certification that the tower **and attached equipment** is designed to withstand winds in accordance with ANSUEIA/TIA 222 (latest revision) standards;

(b) Complete names and addresses of the owners of all antennae and equipment to be located at the site as of the date of application;

(c) Written authorization for the use from the site owner; and

(d) Provide the town with a plan for the total build-out in the town. This allows the town to coordinate tower locations with other applicants.

(2) Proof that:

(a) Reasonable measures have been taken to assure that the proposed structure will be placed in a location which will minimize the visual impact on the surrounding area;

(b) The proposed antenna and equipment could not be placed on a preexisting facility under control of the applicant and function under applicable regulatory and design requirements without unreasonable modification;

(c) If the application is for siting in a residential area, the area cannot be adequately served by a facility placed in a non-residential area; and

(d) A new tower is designed to accommodate the applicant's potential future needs, is of suitable construction and should be adapted to allow the co-location of additional antennae.

(3) A written agreement that:

(a) The tower and/or antenna shall be removed within 180 days of cessation of use, and to return the area to its condition prior to the construction of the tower;

(b) The applicant's service is subordinate to essential public communications services and agreement to suspend use of any site which may be in conflict with the services, regardless of the reason for the conflict, until the conflict is resolved; and

(c) All applicable health, nuisance, fire and safety codes are met. If upon inspection, the town determines that a wireless communications facility fails to comply with the agreements or applicable codes, the owner of the facility will have 30 days to bring the facility into compliance. Failure to bring the facility into compliance within 30 days will constitute grounds for the removal of the facility at the owner's expense.

(Prior Code, Ch. 4, Art. IV, § 4-318) (Ord. 432-06, passed 6-19-2006)

§ 150.183 DESIGN CRITERIA.

(A) *Physical appearance.* To the extent possible, materials, colors, textures and landscaping shall be designed to blend in with the surrounding setting. A tower shall be finished or painted so as to minimize visual obtrusiveness and shall not be illuminated unless otherwise required by state or federal regulations. Panel antennae and their associated cables and hardware mounted on or against an existing structure shall be **architecturally integrated and** painted to match the existing façade, or be otherwise camouflaged to reduce their visual impact.

(B) *Signs and communications tower.* ~~No signage shall be allowed on an antenna or communications tower.~~ **A sign identifying operator/provider contact information, restricting trespass, warning of life safety risks, and other similar notification is required. No other signage shall be allowed on an antenna or communications tower.**

(C) *Distance.* A tower must be set back from all nonresidential lot lines a minimum distance equal to the height of the tower and from all residential lot lines a minimum distance equal to the height of the tower plus 20%.

(D) *New communications towers.* No new communications tower shall be located within 1,320 feet of an existing tower unless the existing tower does not meet the structural specifications or technical requirements necessary for additional antenna co-location, or unless a co-location agreement could not be obtained at commercial reasonable terms and conditions, including price. Communications towers used to support athletic field lighting or parking lot lighting, and communications towers which are camouflaged to disguise the presence of commercial antennas shall be exempt from this requirement.

(E) *Height.* In all districts, towers, antennae and all related wireless communication facilities mounted on buildings, water tanks or **collocated on** other structures other than freestanding ~~or~~ **and** guyed communications towers must not extend more than ten feet above the highest part of the structure. **Refer to subsection (F) for freestanding tower height restrictions.**

(F) *Freestanding ~~or~~ and guyed towers.* ~~New~~ **Freestanding lattice or guyed towers are not permitted. Monopoles and camouflaged or “stealth” tower applications may be placed located in the following all zoning districts and subject to the maximum building height of the specified district following height limitations, unless express waiver is provided granted by Town Council at the time of special permit with an approved Conditional Use Permit. approval.**

(G) *All districts.* ~~Freestanding or guyed towers~~ **Monopole and camouflaged or “stealth” towers** height **shall** not exceeding ten feet above the maximum height permitted in the specified district **and shall not exceed a maximum of fifty (50) feet in height.**

(H) *Wind Loading.* Anticipated wind load shall not exceed 25% of the yield strength of the monopole or utility pole base material.

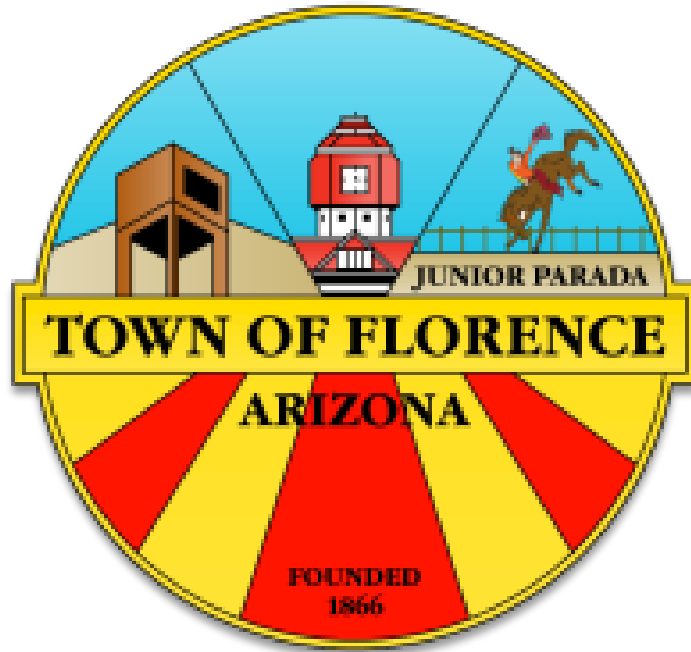
(Prior Code, Ch. 4, Art. IV, § 4-319) (Ord. 432-06, passed 6-19-2006) (Ord. 662-18, passed DATE)

§ 150.184 REPLACEMENT AND/OR REBUILDING OF WIRELESS COMMUNICATIONS TOWERS.

Pre-existing nonconforming wireless communications towers which have been destroyed or structurally damaged shall be replaced with towers meeting the requirements as provided in this Development Code, ~~except that they may be rebuilt to their original height and in their original location, regardless of setback requirements.~~

(Prior Code, Ch. 4, Art. IV, § 4-320) (Ord. 432-06, passed 6-19-2006) (Ord. 662-18, passed DATE)

EXHIBIT C



SMALL WIRELESS FACILITIES IN TOWN RIGHTS OF WAY

TERMS AND CONDITIONS

TC FINAL DRAFT

* Draft edits are tracked with a ~~strikethrough~~ for deletions and underline for additions

SMALL CELL WIRELESS TERMS AND CONDITIONS

The Town Council of the Town of Florence has adopted the following terms and conditions (the “Terms”) to govern the use of Town-Owned right-of-way for the placement of wireless facilities by a Wireless Services Provider as defined by the Arizona Revised Statutes (“ARS”), Section 9-591, *et seq.*, Title 9, Article 8, entitled “Use of Public Highways by Wireless Providers (“Article 8”). These terms are effective as of _____, 2018, and may be amended only upon approval of the Town Council. These Terms work together with Title XI - Chapter 120 of the Florence Town Code and Part 9 “Wireless Communications Facilities” of the Florence Land Development Code, to implement ARS Article 8 in the Town of Florence.

RECITALS

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

1. DEFINITIONS

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

a concrete slab that contains Licensee's improvements, personal property and facilities to operate its Antenna(s) for Permitted Uses including: radio receivers, transmitters, related facilities, and/or cabinets, related cables and utility lines, location-based power source (including a battery), the electrical meter and any other equipment necessary for the operation of wireless antenna.

- 1.5.** "Licensee" means an entity providing wireless services and that holds a valid License to use the ROW for such business.
- 1.6.** "Licensee's Facilities" means the Antennas, Equipment Cabinets, and all other fiber, cable, wire, equipment, conduit, screen walls, or other such element used by Licensee for Permitted Uses including frequencies, technology, antennas, radios, fiber and cable owned by third parties, in connection with its installation of Small Cell Wireless Facilities and related equipment on Town-Owned Structures pursuant to individual Permits.
- 1.7.** "License" means a revocable, nonexclusive permission to attach Wireless Facilities to a Town-Owned Structure and encroach in the ROW, which does not create or confer any interest in real or personal property.
- 1.8.** "Monopole" means a Wireless Support Structure that is not more than forty inches in diameter at the ground level and that has all of the Wireless Facilities mounted on the pole or contained inside the pole.
- 1.9.** "Parties" means the Town and a Licensee collectively.
- 1.10.** "Party" means the Town or a Licensee singly.
- 1.11.** "Permit" means written permission required by the Town to install, mount, maintain, modify, operate or replace a Utility Pole, to collocate a Small Wireless Facility on a Utility Pole or Wireless Support Structure or to collocate Wireless Facilities.
- 1.12.** "Permitted Uses" means, and is limited to, Licensee's right to construct, install, operate, maintain and repair the related support facilities (such as wireless antennas and equipment cabinets) for the delivery of Wireless Services.
- 1.13.** "Small Cell Wireless Facility" means a Wireless Facility that meets both of the following qualifications:
 - 1.13.1.** Having all Antennas located inside an enclosure of not more than six cubic feet in volume, or in the case of an Antenna that has exposed elements, the Antenna and all of the Antenna's exposed elements could fit within an imaginary enclosure of not more than six cubic feet in volume; and
 - 1.13.2.** All other wireless equipment associated with the facility are cumulatively not more than twenty-eight cubic feet in volume, or fifty cubic feet in volume, excluding the following equipment: an electric meter,

concealment elements, a telecommunications demarcation box, grounding equipment, a power transfer switch, a cutoff switch, and vertical cable runs for the connection of power and other services.

- 1.14.** “Third Party Areas” means the portions of the Right-of-Way, such as canal and railroad crossings or other areas that for any reason have limited right-of-way dedications or that have regulatory use restrictions imposed by a third party.
- 1.15.** “Town-Owned Structure” means the vertical element owned by Town and located in the ROW, to which Licensee will attach an Antenna, and which applicable Florence codes, standards, specifications, and regulations permit the collation of Small Wireless Facilities. Authority Utility Poles and Town-Owned Monopoles are included in the definition of Town-Owned Structures.
- 1.16.** “Use Area” means the area that Licensee is permitted to use pursuant to an approved Permit. The term Use Area includes the area depicted on the Permit that shows where Antenna and other Wireless Facilities will be attached to the Town-Owned Structure, and where the Equipment Cabinet and associated ground mounted equipment will be located. The Use Area shall be the smallest geometric shape necessary to accommodate the Wireless Facilities, including concealment enclosures.
- 1.17.** “Utility Pole” means a pole or similar structure that is used in whole or in part for communications service, electric distribution, lighting or traffic signals. Utility pole does not include a Monopole.
- 1.18.** “Wireless Facility” means equipment at a fixed location that enables wireless communications between users of equipment and a communications network, including both of the following: (a) equipment associated with wireless communications; and (b) radio transceivers, Antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment, regardless of technological configuration.
 - 1.18.1.** Includes Small Wireless Facilities.
 - 1.18.2.** Does not include the structure or improvements on, under or within which the equipment is collocated, wireline backhaul facilities, coaxial or fiber-optic cable that is between wireless support structures or utility poles or coaxial or fiber-optic cable that is other not immediately adjacent to, or directly associated with, an antenna.
 - 1.18.3.** Does not include wi-fi radio equipment described in ARS § 9-506, Subsection I or microcell equipment described in ARS § 9-584, Subsection E.
- 1.19.** “Wireless Services” means any services that are provided to the public and that use licensed or unlicensed spectrum, whether at a fixed location or mobile, using Wireless Facilities.

2. Licensing Scope

- 2.1. Licensee shall not attach any Wireless Facility to a Town-Owned Structure or place Licensee Facilities in the ROW without a License approved by the Florence Town Council. Placement of any unauthorized facilities on Town-Owned Structures or in the ROW without a License and Permit shall constitute trespass.
- 2.2. Licenses and Permits do not provide Licensee with any ownership or leasehold interests in the Town-Owned Structures, replacement poles or ROW, nor do they provide Licensee with any of the Town's rights to use the public property upon which the Town-Owned Structures and Licensee's Facilities are located, other than those expressly provided herein or in a Permit.
- 2.3. Town specifically reserves to itself and excludes from an approved Permit a non-exclusive and delegable right over the entire Use Area for all manner of real and personal improvements related to governmental activity or other improvement designed to benefit the public. Licensees accept the risk that the Town and others may now or in the future install or modify facilities in the Use Areas in locations that make the area unavailable for Licensee's use. Such activities may include, but are not limited to any and all construction, erection, installation, use, operation, repair, replacement, removal, relocation, raising, lowering, widening, realigning, or otherwise accommodating all manner of streets, sidewalks, alleys, trails, traffic control devices, transit facilities, pipes, wires, cables, conduit, sewer, canals, drains, overpasses, culverts, bridges, and other encroachments, and any other use of the right of way that the Town may determine from time to time to be a benefit to the public.
- 2.4. There may be portions of the ROW, such as canal crossings, structures not owned or operated by the Town, or other areas that are encumbered for the benefit of others, have limited dedications to the public, or that have regulatory use restrictions imposed by a third party. Areas subject to such encumbrances, restrictions, or regulation are Third Party Areas and Licensee Facilities shall not be constructed or placed in such areas without the express written permission from the Third Party or Third Parties that have property rights or regulatory authority over the specific Third-Party Area.
- 2.5. Subject to the requirements of ARS § 9-591, *et seq.*, the Town shall have full authority to regulate use of the Use Areas and to resolve competing demands and preferences regarding use of the Use Areas and to require Licensee to cooperate and participate in implementing such solutions. In exercising its authority, the Town may consider any legal, timing, operational, financial and other factors affecting existing and future proposals and public needs in the Use Area.
- 2.6. Licensees assume all risk, costs and expenses related to the Licensee Facilities and loss of service that may occur due to damage, destruction or collapse of any Town-Owned Structure or due to any incompatibility of Licensee's use with Town's use, or other user's use, of the Town-Owned

Structures. Licensee shall be solely responsible for the relocation of any Licensee Facilities placed on a structure or property not owned by Town or wrongly designated as a Town-Owned Structure and/or ROW at any time.

- 2.7. Town may require Licensees to remove any unauthorized attachment to a Town- Owned Structure or placement of facilities in the ROW. If Licensees fail to remove the unauthorized facilities within thirty (30) days after notice, Town may remove the unauthorized facilities without incurring any liability, including but not limited to liability for interruption of service. Licensees shall reimburse Town for its actual costs of removal of the unauthorized facilities. The failure of the Town to act to remove any unauthorized facilities shall not constitute permission or a de facto Permit in any manner nor shall subsequent issuance of a Permit operate retroactively.
- 2.8. Licensee Facilities may be used solely for Permitted Uses, and Licensees are not authorized to and shall not use the Licensee Facilities to offer or provide any other services not specified herein. The Licensee Facilities shall be owned by Licensees.

3. Licensing and Permitting Procedures

- 3.1. Licensee shall submit an application for a License to the Town Manager for approval by the Town Council. The form of License is attached hereto as Exhibit A. Following Council approval of the License, individual Permits consistent with the License and Applicable Laws may be approved by the Director of Development Services.
- 3.2. Licensee shall submit an application for an individual Permit on an application form approved by the Director of Development Services (“Application”). Once the Application is reviewed and approved by Town, a Permit in substantially the form of Exhibit B may then be executed by the Parties. The Director of Development Services or designee will have the authority to execute a Permit.
- 3.3. Licensee shall submit one Permit Application for each site or proposed Use Area. An applicant seeking to collocate multiple small wireless facilities within Town right-of-way may file a consolidated application for the collocation of up to twenty-five (25) small wireless facilities if the collocations each involve substantially the same type of small wireless facilities and structure. Town shall charge a permit fee for and issue individual permits for each facility included in a consolidated application.
- 3.4. Any change to the site plan of an approved Permit is void unless Town agrees to the change in writing during the Permit approval process.
- 3.5. Licensees shall comply with Article 120 of the Town Code and any necessary zoning, building permit, traffic control, ROW management requirements, non-Town utility permits, other permits as required, or other regulatory requirements (“Permits”) that apply to Licensee Facilities.

- 3.6. Licensees are responsible for the study and inspection of the Town-Owned Structures and ROW to be utilized by Licensee and for determining the fitness for the use by Licensee. Town expressly disclaims all warranties of merchantability and fitness for a purpose or absence of hazardous conditions associated with the Town-Owned Structures and ROW. Town makes the Town-Owned Structures and ROW available for Licensee's use "AS IS."
- 3.7. To the extent that Licensee owns any fiber or conduits that will be placed underground, and to the extent that State law requires it, Licensee shall comply with ARS Title 40, Chapter 2, Article 6.3 by participating as a member of the Arizona Blue Stake Center. A copy of Licensee's proof of membership shall be filed with the Town when the Application is submitted.

4. Standards for Installation, Operations, and Maintenance

- 4.1. Licensee, at its sole expense, shall supply all material associated with the installation, operation, and maintenance of Licensee's Facilities. Licensee shall maintain Licensee's Facilities and shall notify the designated Town representative listed on the annual permit, a minimum of 24 hours (or as required to request and receive permits for work within the right of way) in advance of servicing or maintaining the permitted Use Area. All servicing and maintenance shall comply with applicable Town Codes, policies, permits and requirements.
- 4.2. Where installation of Licensee's Facilities requires replacement of an existing Town-Owned Structure, Licensee shall replace, at Licensee's sole expense, the Town-Owned Structure with a structure meeting all applicable Town standards and specifications and shall return replaced structures to Town at a designated location. This shall include and not limited to the premature aging or wear and tear of Town-Owned Structure or Use Area caused by the Licensee's attachments and facilities, as determined by the Town.
- 4.3. All Licensee Facilities shall be designed and constructed by Licensees at the Licensees' sole cost and expense, including without limitation any alteration or other change to the Town's equipment or other improvements or personalty that may occur. In no event shall Town be obligated to compensate a Licensee in any manner for any of Licensee's improvements or other work provided by Licensee during or related to the term of any Permit. Licensee shall timely pay for all labor, materials, work and all professional and other services related thereto and shall pay, protect, indemnify, defend and hold harmless Town and Town's employees, officers, contractors, and agents against all claims related to such items. Licensee shall bear the cost of all work required from time to time to cause the Use Areas and Town's adjoining property (if directly impacted by Licensee's work) to comply with local zoning rules, the Americans with Disabilities Act, building codes and all similar rules, regulations and other laws if such work is required because of work performed by Licensee, by Licensees' use of the Use Areas, or by any exercise of the rights granted to Licensee under a License or a Permit.

- 4.4. Licensees shall purchase and store two (2) extra street light poles, at their own cost, in anticipation of emergency or routine replacement of such poles utilized by Licensee or Town. Streetlight pole replacements shall be provided within three (3) weeks. In the event a replacement is not available, the Town may replace such pole; however, such pole may not be able to support the Licensee's equipment. All replacement poles shall be approved by Town prior to installation.
- 4.5. Licensees shall apply for and obtain one annual permit for emergency operations (no excavation) occurring within the ROW and/or on the Town-Owned Structures. The annual permit shall include disclosure of safety ~~training~~ ~~and~~ instruction for Town employee's subject to Section 9 of this agreement. Each Licensee shall renew such permit annually during the term of each individual Permit so that such a permit for emergency operations is in force during the entire time that Licensee is occupying the ROW.
- 4.6. All work in the ROW will be performed only by a Licensee and its contractors and will be performed substantially in compliance with Florence Town Code, applicable Town policies, the Uniform Standard Specifications and Details for Public Works Construction sponsored and distributed by the Maricopa Association of Governments ("MAG") as amended, Florence's Engineering and Design Standards, Florence's Approved Product List and Technical Specifications, National Electric Code (NEC), National Electric Safety Code (NEC), OSHA regulations, compliance with the FCC Radio Frequency Exposure Guidelines (FCC OET Bulletin 65) and all other applicable radio frequency emissions laws and regulations in effect from time to time.
- 4.7. Upon performing work in the ROW, Licensee shall simultaneously restore the ROW to its prior condition, as directed by Town, and repair any holes, mounting surface or other damage whatsoever to the ROW. Such work shall include new landscaping or revegetation and appropriate irrigation systems for landscaped areas.
- 4.8. Licensees shall, at all times during the term of a Permit, maintain the Licensee Facilities in good repair and shall keep the Use Area free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or source of undue vibration, heat, noise or interference.
- 4.9. Licensees shall prepare and maintain record drawings of all Licensee Facilities located on Town-Owned Structures and in the ROW and furnish such record drawings at Town's request. Locations of said encroachments shall be reported using State Plan Coordinate System Arizona Central Zone, North American Datum 1983 (NAD83) for horizontal position, and North American Vertical Datum 1988 (NAVD88) for vertical positions; or other public land survey system accepted by the Director of Development Services or designee. Licensees shall furnish Town copies of the record drawings in both hard copy and electronic formats, as requested by the Town. The electronic copy shall be provided in Autocad 2014 DWG format or other current Town electronic format. If the

horizontal and vertical locations are not known or provided as requested by Town, Licensees shall reimburse the Town for actual costs associated with locating and potholing a Licensee's Facilities, in the event that Licensee Facilities need to be located in connection with one of Florence's projects.

- 4.10. If Licensee Facilities are not located in the precise location depicted in the Permit or the As-Built Drawings, Licensees shall be responsible, and shall reimburse Town, for all costs and damages incurred in locating the Licensee Facilities and all delay costs incurred to locate (and if necessary relocate) the Licensee Facilities.
- 4.11. Consistent with the requirements of Florence Town Code and Florence's Engineering and Design Standards, Licensees shall screen or conceal, as applicable and determined to be reasonable by the Town, all pole-mounted, pad, and ground-mounted equipment used for Permitted Uses with aesthetic features, such as canisters, screen walls, and landscaping, as approved by Town with each Permit. Concealing and screening shall blend with or enhance the surrounding area with the use of artistic and/or architectural detail and shall take into account scale, form, texture, materials and color and shall conceal the equipment. Concealing and screening features shall be noted on the site survey and construction drawings submitted with each application.
- 4.12. Licensees shall not install signage at the Use Area except as required for emergency contact in accordance with the Florence Development Code § 150.183(B) for the safe use of the Use Areas by the Town, Licensee, and others. Any such signs shall be maintained at all times, shall not exceed 18" x 12" in size, and shall include Licensee's name, business address, telephone number, and emergency contact information. In no instance shall such signs contain a commercial message.
- 4.13. Except for security lighting operated with the Town's approval from time to time, Licensees shall not operate outdoor lights at the Use Areas.
- 4.14. Except during permitted construction and safety tests, equipment located on the Use Area shall not emit noise greater than ambient noise level of the surrounding ROW, and in no case shall exceed the limits imposed by Title XIII, § 132.02 of the Town Code. This limitation does not apply to infrequent use of equipment that is as quiet or quieter than a well-maintained gasoline generator or to the use of air conditioning equipment than is no louder than a typical well-maintained residential air conditioning unit.
- 4.15. If a Licensee abandons use of any of Licensee's Facilities, or any portion thereof, installed under or pursuant to an approved Permit, the Licensee shall remove all of the Licensee Facilities, including subgrade facilities and foundations, installed pursuant to the approved Permit no later than thirty (30) days, at the Licensee's expense and restore the Town-Owned Structure and ROW, including Licensee Facilities installed sub-grade, to better than or equal to the condition that existed prior to construction and installation of the Licensee Facilities.

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

5. Duration

5.1. Term of Licenses and Permits

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

5.2. Early Termination

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

5.3. Renewals

Permits shall be renewed for equivalent terms of ten years, unless the Town finds that the Licensee or permitted small wireless facilities, new or modified utility pole, or structure do not comply with the applicable Town codes or regulations, or with applicable federal or state laws.

6. Relocation of Town-Owned Structures

Town shall have the right at any time to require relocation of a Licensee's

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

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

- 7.1.** Licensees shall not use the Town-Owned Structures or the ROW in any way which interferes with the use of any portion of the Town Property by Town. In the event Town determines that a Licensee's use of the Town-Owned Structures or the ROW interferes with the Town's use of the Town Property, Town will notify the Licensee of such interference and the Licensee shall have fifteen (15) days to remedy the interference. If a Licensee does not remedy the interference, such action shall be deemed a material breach by the Licensee and Town shall have the right to terminate the Permit.
- 7.2.** Town shall be entitled to inspect all construction, reconstruction, or installation work and to conduct such tests as it deems necessary to ensure compliance with the terms herein and all applicable laws, regulations, and rules. This right to access is in addition to access rights for Town inspectors or other employees and officers acting within their legal authority.
- 7.3.** Licensees shall not install, operate, or allow the use of equipment, methodology or technology that interferes or is likely to interfere with the optimum effective use or operation of Town's existing or future fire, law enforcement, Police, Public Safety, transportation, information technology, engineering, emergency or other communication equipment, methodology or technology (including, but not limited to, voice, data or other carrying, receiving or transmitting equipment.) If such interference should occur, the Licensee shall immediately discontinue using the equipment, methodology or technology that causes the interference until the Licensee takes corrective measures to alter the Licensee Facilities to eliminate such interference. Any such corrective measures shall be made at no cost to Town.
- 7.4.** Town may remove alter, tear out, relocate, or damage portions of Licensee's Facilities in the case of fire, disaster, or other emergency if the Town deems such action to be reasonable necessary under the circumstances. In such event, neither the Town nor any agent, contractor or employee of the Town shall be liable to Licensee or its customers or third parties for any harm so caused to them or Licensee's Facilities. Town shall make good faith effort to consult with Licensee in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption or operation of the Licensee's Facilities by calling the emergency number posted on the facility. In any ~~ei~~event, Town shall inform Licensee after such actions.

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

Structures in such manner as best serves Town's service requirements including, but not limited to, the right to allow the attachment of additional facilities. Licensee agrees to shut down communications and electrical equipment during any time Town is maintaining, testing or replacing the affected Town-Owned Structure within one (1) business day from the date of notice in a manner provided in Section 9 of this agreement, or as otherwise agreed to in writing between Licensee and Town. If Licensee fails to shut off the equipment within one (1) business day from the date of notice, or within the agreed upon timeframe, Licensee shall reimburse Town for its costs related to the delay including time and labor expenses. The reimbursement will be at a minimum \$500 per incident.

8. Fees

- 8.1.** Section 120.06 of the Florence Town Code specifies Rates and Fees applicable to small wireless facilities within the Town's right-of-way. Licensees shall pay the application fees set forth on the Schedule of Fees on Exhibit C, attached hereto and incorporated herein, for each Permit at the time of submittal of a Permit application.
- 8.2.** Licensees shall pay all applicable permit fees at the time of issuance of each Permit, including by way of illustration and not limitation, all applicable taxes, traffic control fees, and technology fees that are adopted by the Town from time to time.
- 8.3.** The applicable fees set forth on Exhibit C for each Permit shall be consideration for the right to use Town-Owned Structures or the ROW.
- 8.4.** The Fee shall be paid to Town in advance, on or before the anniversary date of the effective date of each Permit, without prior demand and without any deduction or offset whatsoever.
- 8.5.** Fees paid by Licensees are non-refundable.

9. Safety Program for Town's Employees

In order to perform duties necessary as owner and manager of the public ROW, the Town and its employees, agents, and representatives must have uninterrupted and safe access to the ROW and all structures located thereon. In conjunction with paragraph 4.5 requiring annual permits for emergency operations, and paragraph 7.10, above, and in order to ensure the safety of those working on or near a Licensee's Facilities, Licensees must comply with at least one of the following safety protocols:

- 9.1.** Provide access to a cutoff switch for each Small Wireless Site that the Town's employees, agents, or representatives can use to turn off all power to the Licensee's Facilities while Town work is performed at the location. The Town, will provide the licensee at least twenty-four (24) hours' notice of turning off the site, unless an immediate shut down is needed to protect the public's health, safety, and general welfare.

- 9.2. Within 24 hours of a request, agree to send a technician with an RF monitor to confirm that all RF emitting equipment has, in fact, been deactivated, and to install all appropriate lockout tags and devices.

10. Indemnification

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

11. Insurance

- 11.1. Without limiting any liabilities or any other obligations of any Licensee or any of its contractors or subcontractors under any License, Permit or otherwise, a Licensee and its contractors or subcontractors shall provide and maintain, with forms and insurers acceptable to Town, and until all obligations under the License and all Permits are satisfied, the minimum insurance coverage, as follows:
 - 11.1.1. Commercial General Liability Insurance, including coverage of contractual liability assumed under each Permit, affording protection of not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence, combined single limit for bodily injury and property damage, against damages because of, or on account of, bodily injuries to or the death of any person or destruction of or damage to the property of any person, occurring on or about any of Licensee's Facilities or due in any way to the use, occupancy, maintenance or operation of the Small Cell or Ground Facilities or related facilities.
 - 11.1.2. Workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Licensee's and

Licensee's contractor or subcontractor employees who may be working on Licensee's Facilities, and employer's liability with a minimum limit of ONE HUNDRED THOUSAND DOLLARS (\$100,000).

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

12. Breach and Letter of Credit

- 12.1.** Any breach of these Terms and Conditions or of any provision of a License or Permit, if left uncured after 30-days' written notice, shall render Licensee's Facilities as unauthorized work within the right-of-way, and shall be subject to the penalties in the Florence Town Code.
- 12.2.** Prior to the effective date of any License or Permit, Licensees shall provide a letter of credit in an amount based upon a Licensee's good-faith estimate of the number of Permits to be issued within the Town in the current calendar year. The letter of credit shall be a security deposit for a Licensee's performance of all of its obligations under these Terms, and shall be in substantially the same form as approved by the Town Attorney.
 - 12.2.1.** The amount of the letter of credit shall be, as follows: Thirty Thousand Dollars (\$30,000.00) for up to ten (10) Permits; Sixty Thousand Dollars (\$60,000.00) for eleven (11) to twenty (20) Permits; One Hundred Five

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

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

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

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

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

13. General Provisions

13.1. Force Majeure

13.1.1. Neither Town nor any Licensee shall be liable or responsible for a delay or failure in performing or carrying out any of its obligations (other than obligations to make payments) under any License or Permit caused by force majeure. Force majeure shall mean any cause beyond the reasonable control of Town or Licensee, as applicable, or beyond the reasonable control of any of their respective contractors, subcontractors,

suppliers or vendors, including without limitation: acts of God, including, but not necessarily limited to, lightning, earthquakes, adverse weather of greater duration or intensity than normally expected for the job area and time of year, fires, explosions, floods, other natural catastrophes, sabotage, acts of a public enemy, acts of government or regulatory agencies, wars, blockades, embargoes, insurrections, riots, or civil disturbances; Labor disputes, including, but not necessarily limited to, strikes, work slowdowns, work stoppages, or labor disruptions, labor or material shortages, or delays or disruptions of transportation; orders and judgments of any federal, state or local court, administrative agency or governmental body; the adoption of or change in any federal, state or local laws, rules, regulations, ordinances, permits or licenses, or changes in the interpretation of such laws, rules, regulations, ordinances, permits or licenses, by a court or public agency having appropriate jurisdiction after the date of the adoption of these Terms; or any suspension, termination, interruption, denial or failure to issue or renew by any governmental authority or other party having approval rights of any approval required or necessary hereunder for installation or operation of any Small Cell Equipment or for either Party to perform its obligations hereunder, except when such suspension, termination, interruption, denial or failure to issue or renew results from the negligence or failure to act of the Party claiming the occurrence of an event of force majeure.

- 13.1.2.** If either Town or a Licensee is rendered unable to fulfill any of its obligations under a License or Permit by reason of force majeure, such Party shall promptly notify the other and shall exercise due diligence to remove such inability with all reasonable dispatch; provided, that nothing contained in this Section 14.1 shall be construed as requiring Town or a Licensee to settle any strike, work stoppage or other labor dispute in which it may be involved, or to accept any permit, certificate, license or other approval on terms deemed unacceptable to such Party, or to enter into any contract or other undertaking on terms which the Party deems to be unduly burdensome or costly.

13.2. Assignment

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

13.3. Entire Agreement

These Terms and Conditions and any related Licenses represent the entire agreement

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

13.4. Severability

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

13.5. Governing Law and Choice of Forum

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

13.6. Remedies Cumulative

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

13.7. Attorneys' Fees and Expenses

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

13.8. Notices

Notices hereunder shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid to the addresses set forth in the License and to the Town as follows:

If to Town: Town of Florence
 Development Services Department
 425 E. Ruggles Street
 Florence, AZ 85132
 Attn: Director of Development Services

Copy to: Town of Florence Town Clerk
 Attn: Lisa Garcia
 775 N. Main Street
 Florence, AZ 85132

By notice from time to time, a person may designate any other street address within Pinal County, Arizona as its address for giving notice hereunder. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

13.9. Exhibits

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

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