

**Right-of-Way Use License Agreement Between the
City of Tempe and Crown Castle NG West LLC**

C2016-__

This master Right-of-Way Use License Agreement (“Agreement”) is effective as of the date of the City Council’s approval and is between the City of Tempe, an Arizona municipal corporation (“City”) and Crown Castle NG West LLC, a Delaware limited liability company (“Crown Castle”).

RECITALS

- A. City owns public streets and alley right-of-way and has been granted rights in public utility easements (PUE) within the boundaries of Tempe (collectively, the “Right-of-Way or ROW”).
- B. City is authorized to manage its Right-of-Way and otherwise regulate the installation of conduit, fiber and aerial installations within the City’s boundaries pursuant to City Charter, Tempe City Code, federal law (47 U.S.C. § 253) and state statutes by the City’s police powers, its authority over public right-of-way, and its other governmental powers and authority.
- C. City owns various street lights at designated locations (referred to individually as a “Pole” or collectively as “Poles”) within its jurisdiction.
- D. City is entitled to fair and reasonable compensation for use of its Right-of-Way and City-owned Poles.
- E. Crown Castle desires to install, own, operate and lease Distributed Antenna Systems (DAS) or Small Cells within the Right-of-Way.
- F. Crown Castle agrees to secure the appropriate licenses, encroachment and other permits required by the City Code for the placement of its DAS and Small Cells within the City’s boundaries.
- G. Crown Castle agrees to comply with public property use requirements that City has established and may establish from time to time.
- H. City is willing to grant Crown Castle permission to use the Right-of-Way and certain City-owned Poles for a Distributed Antenna System or Small Cell under the standard terms and conditions described herein and consistent with applicable law.

NOW, THEREFORE AND IN CONSIDERATION of mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. Definitions

ACC means the Arizona Corporation Commission.

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

Antenna means an electrical device which converts electric power into radio waves, and vice versa.

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

Coarse Wavelength Division Multiplexing ("CWDM") is a variation of WDM that carries four to eight wavelengths per fiber or more that is designed for short to medium-haul networks (regional and metropolitan areas).

Communications Equipment means optical converters, DWDM and CWDM multiplexers and cabinets for such to be used to communicate with cell phones and similar radiofrequency or cellular devices.

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

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

Contractor means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that performs services or provides goods for Crown Castle relating to this Agreement.

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

Dense Wavelength Division Multiplex ("DWDM") is a variation of WDM but with much higher bandwidth and density. Using DWDM, up to 80 or more separate wavelengths or channels of data can be multiplexed on a single optical fiber. Each channel carries a time division multiplexed (TDM) signal. Since each channel can carry up to 2.5 Gbps, up to 200 billion bits per second can be delivered by the optical fiber simultaneously.

Distributed Antenna System (DAS) means a system consisting of nodes that each have a small low-power antenna, laser and amplifier equipment for the conversion of radio frequency ("RF") signals to optical signals and for the conversion of optical signals to RF signals. Such nodes are connected to the antenna, fiber optic lines, and associated equipment such as power supplies.

Enclosure means the enclosure housing for the electronic ground equipment shown on the site plan.

Facilities mean the Conduit, fiber optic cable or other interconnecting wires placed in, on, or under the ROW and the Small Cells, DAS and related Communications Equipment that are allowed to be installed under the applicable site licenses issued and that are reasonably necessary and appropriate to provide RF Transport Services for the provision of either commercial mobile radio services and private mobile services as defined in 47 U.S. Code § 332.

FCC means the Federal Communications Commission.

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

Node means a component of a DAS or Small Cell installation that includes one or more radiofrequency transmitters or antennas, and which is connected via a high capacity transport medium (commonly a fiber optic cable) to a common source with other Nodes.

Parties collectively mean the City of Tempe and Crown Castle.

Personal Wireless Service means any Federal Communications Commission (FCC) licensed commercial wireless telecommunications services including cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), as well as unlicensed wireless services, and common carrier wireless exchange access services.

Pole means a structure supporting street lights considered available by the City for the attachment of a DAS Node or Small Cell.

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

Public Highway means the roads, streets and alleys and all other dedicated public ROW and public utility easements of the City.

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

RF Transport Services mean the receipt of an RF signal from a wireless customer (e.g. mobile phone user) at a node antenna (“the handoff”) and conversion of the RF signal to an optical signal and transport through fiber optic lines to another site (“the transport”), and returning the optical signal to a wireless service provider for either routing elsewhere or interconnection with a public telephone network for the provision of commercial mobile radio services and private mobile services, as those terms are defined in 47 U.S. Code § 332.

Right-of-way (“ROW”) means Public Highway.

Small Cell means an operator-controlled, low-powered remote radio unit without baseband processing linked to a centralized baseband unit. This term includes, but is not limited to a femtocell, pico cell, microcell, and metro cell.

Telecommunications means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received. However, the term does not include commercial mobile radio services, pay phone services, interstate services, cable services, information services, or the sale and/or leasing of dark fiber for transmission purposes.

Telecommunications Corporation means any Public Service Corporation to the extent that it provides telecommunications services in this state.

Telecommunications Services means the offering of telecommunications for a fee directly to the public, or to such users as to be effectively available directly to the public, regardless of the facilities used.

Unsuitable Pole means any street light structure that may not be suitable for use to attach a DAS or Small Cell to because such street light is: (a) historic or architecturally significant or decorative (unless allowed by City); or (b) also a traffic signal pole (unless allowed by the City)

Utility Pole means a pole that is used for telephone, cable or electric functions.

Use Area means the portions of the Street Parcel designated on a Site Plan that Crown Castle is allowed to use and/or occupy with the Small Cell or DAS and related Communications Equipment as authorized by an executed site license (as defined below).

Wavelength Division Multiplexer (“WDM”) means a device that combines optical signals from multiple different single-wavelength end devices onto a single fiber. WDM carries two to four wavelengths per fiber.

SECTION 2. Permission to Use Right-of-Way

2.1 Subject to the provisions of this Agreement, the Tempe City Code, the City Tempe Charter, and Arizona and federal law, City hereby grants to Crown Castle permission to use the designated portions of the right-of-way (“ROW”) subject to and conditioned upon Crown Castle’s full, timely, complete and faithful performance of all obligations to be performed or required hereunder by Crown Castle, and Crown Castle hereby accepts the terms and conditions of this Agreement. Crown Castle’s ability to place its Facilities in or on a public utility easement in a particular area of the City will depend upon the nature of the rights granted to the City for such public utility easement.

2.2 Permitted Uses. Crown Castle can use the approved portions of the ROW for the installation of Conduit and underground fiber lines upon approval of a Conduit and Fiber Optic Cable Site License for Special Use substantially in the form of Exhibit B and shall conduct no other activity at or from those designated portions of the ROW beyond the authority granted by this Agreement. The location, size, and appearance of any related ground-based equipment (radios, batteries, etc.), enclosures, cabinets, and pedestals placed in the ROW must be approved by the City and such details will be addressed in the applicable site license.

2.2.1 A map of the conduit/fiber route will be provided to the City at the time of submission of the application for a Site License for Special Use of a particular portion of the ROW.

2.3 All other uses of the ROW under this Agreement are prohibited. Should Crown Castle seek to use the ROW for other purposes, it must enter into a separate agreement with the City to do so.

2.4 The authority to install Conduit and/or fiber lines on City property granted herein authorizes Crown Castle only to install such Conduit and fiber as is necessary to construct and operate its Small Cell or DAS in order to provide the authorized RF Transport Services and does not authorize Crown Castle to install or construct any other facilities not expressly provided for in this Agreement.

2.5 Crown Castle shall comply with all applicable laws as amended from time to time, including but not limited to, the Tempe City Code and the City Charter and Arizona and federal law in the exercise and performance of its rights and obligations under this Agreement. If it is necessary for Crown Castle to comply with any law or regulation of the FCC or the ACC to engage in the business activities anticipated by this Agreement, Crown Castle shall comply with such laws or regulations as a condition precedent to exercising any rights granted by this Agreement. Provided, however, no such law or regulation of the FCC

or ACC shall enlarge or modify any of the rights or duties granted by this Agreement without a written modification to this Agreement.

SECTION 3. Non-Exclusive Rights/Priority Rights

3.1 This grant is not exclusive and nothing herein contained shall be construed to prevent City from granting other like or similar grants or privileges to any other person, firm or corporation, or to deny to or lessen the powers and privileges granted City under the Constitution and laws of the State of Arizona.

3.2 Any and all rights granted to Crown Castle under this Agreement, which shall be exercised at Crown Castle's sole cost and expense, shall be subject to the prior and continuing right of City to use the ROW exclusively or concurrently, with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title which may affect ROW or public property. Nothing in this Agreement shall be construed to grant, convey, create or vest a perpetual real property interest in land to Crown Castle, including any fee or leasehold interest, easement, or any franchise rights.

3.3 Any right or privilege claimed pursuant to this Agreement by Crown Castle for any use of any public ROW shall be subordinate to: A) any prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity; B) any prior lawful occupancy or use thereof by any other person; C) and to any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with property rights established independently of this Agreement.

3.4 There is hereby reserved to City every right and power required pursuant to this Agreement to be herein reserved or provided by any lawful ordinance or the Charter of the City, and Crown Castle by its execution of this Agreement agrees to be bound thereby and to comply with any lawful action or lawful requirements of the City in its exercise of such rights or power, heretofore or hereinafter enacted or established. Neither the granting of any Agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any lawful governmental right or power of City.

3.5 By executing this Agreement, City does not waive any rights that it may have against any public utility or other property owner to require that such owners obtain prior approval from the City for such uses of their property or facilities, or that revenues received by any public utility or other property owner from Crown Castle, by virtue of Crown Castle's use of their property or facilities be included in the computation of any use agreement fees owed by such parties to the City.

3.6 Nothing in this Agreement shall be construed to prevent the City from abandoning, altering, improving, repairing, or maintaining its Facilities and/or the ROW, and for that purpose to require Crown Castle, at no expense to the City, to remove, relocate or abandon in place Crown Castle's Facilities in order to accommodate the activities of the City at Crown Castle's expense. The City shall not be liable for lost revenues sustained by Crown Castle, however caused, because of damage, modification, alteration, or destruction of its Facilities in the ROW, when such costs or lost revenues result from the construction, operation, and/or maintenance of City facilities and/or the ROW, provided that the activities resulting in such costs or lost revenues are conducted in accordance with applicable laws and regulations.

SECTION 4. Regulatory Conditions Relating to Right-of-Way Usage

4.1 For purposes of this Agreement, whenever work is done in the ROW relating to this Agreement, Crown Castle agrees that it is solely responsible for the acts, errors, omissions, and any negligence of its Contractors and that the obligations of Sections 4 and 5 are imposed on both Crown Castle and any of its Contractors, who will be considered Crown Castle's agents and for whom Crown Castle will be responsible.

Crown Castle will ensure that Crown Castle and its agents comply with Public ROW use requirements as follows:

4.2 Application. Crown Castle agrees to complete an application or renewal application form for use of the ROW and to pay the applicable application fee.

4.2.1 Notice of Changes. Crown Castle shall file a proposed amendment to the application before it makes any change that would render the application information incomplete or inaccurate. A change of Crown Castle's name or address must be filed at least sixty (60) days prior to the date the change becomes effective; a change in the telephone number must be filed ten (10) days before the change becomes effective; and in the case of a change in the facilities (by addition, subtraction or modification or movement), the change in facilities must be filed at least sixty (60) days before work commences on the facilities unless the relocation was ordered by the City. In the case of a change in services, the change must be noticed thirty (30) days before the earlier of the date the service commences, or Crown Castle begins marketing the service.

4.3 Crown Castle is completely responsible for ensuring that its Facilities are constructed, installed, operated and/or maintained in accordance with the Tempe City Code and established practices with respect to such public ROW and easements such as the proper permits being applied for prior to commencing any work and that the terms and conditions of such permits are strictly followed.

4.4 Crown Castle's use of the public ROW and easements under the control of the City shall be according to plans approved by the City Engineer, provided that such approval shall not be unreasonably withheld or delayed.

4.5 Crown Castle's Facilities to be constructed, installed, operated, maintained, upgraded and removed hereunder shall be located or relocated so as to interfere as little as possible with traffic or other authorized uses within said public ROW and easements. Any phases of construction and/or installation relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of said Facilities shall be subject to regulation by the City Engineer.

4.6 Crown Castle and its agents shall be subject to the City's exercise of such police, regulatory and other powers as it now has or may later obtain, and Crown Castle may not waive the application of the same. City shall have continuing jurisdiction and supervision over any Facilities located within or on public ROW. Daily administrative, supervisory, and enforcement responsibilities shall be delegated and entrusted to the City Manager or designee to interpret, administer and enforce the provisions of this Agreement.

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

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

4.9 Safety. Crown Castle and Crown Castle's Contractor(s) shall be solely and completely responsible for the conditions of any job site where the Facilities are being placed, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. Crown Castle's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve Crown Castle from compliance with these provisions.

4.10 Damage. If Crown Castle damages City property, Crown Castle shall promptly, at its own expense, and in a manner acceptable to the City, repair the damage.

4.11 Blue Stake. Crown Castle and its Contractor(s) shall comply with A.R.S. §§ 40-360.21 through 40-360.32 by participating as a member of the Arizona Blue Stake Center with the necessary records and persons to provide location service of Crown Castle's underground Facilities upon receipt of a locate call or as promptly as possible, but in no event later than two working days. A copy of the agreement or proof of membership shall be filed with the City Engineer.

SECTION 5. Plan Approval, Permits, and Inspection

5.1 No Facilities shall be installed, constructed, located on, or attached to any property within the City until Crown Castle has applied for and received approval for permits from the City Engineer. Crown Castle shall be solely responsible for any and all acts, errors, omissions and negligence of its Contractor(s) who are involved in the installation, construction, maintenance, repair, location, relocation and any other activity involving Crown Castle's Facilities subject to this Agreement. Additionally, Crown Castle and its Contractor(s) shall comply with all other provisions of the Tempe City Code, including but not limited to Chapter 25 regarding off-site construction, Chapter 29 regarding streets and sidewalks, and other applicable City and/or Maricopa County regulations. All rights hereunder are granted under the express condition that the City shall have the power at any time to impose lawful restrictions and limitations upon, and to make regulations as to Crown Castle's use of the public ROW as may be deemed best for the public interest, safety, or welfare to the same extent that such restrictions and limitations are applied to all non-governmental users of the public ROW.

5.2 Crown Castle shall submit the applicable permit application(s) together with the details, plans and specifications for City review and approval, and pay all applicable application, review and inspection fees prior to any and all construction work performed pursuant to the rights granted under this Agreement. Crown Castle and/or its Contractor(s) shall abide by all stipulations of all permits issued. If Crown Castle desires to change the location of any Small Cell or portion of the DAS, including any related Communications Equipment, from that set forth in the initial permit application, Crown Castle shall apply for and obtain approval for an amendment to the permit prior to installation or construction.

5.3 The City may issue reasonable policy guidelines to all users to establish procedures for determining how to control issuance of engineering permits to multiple users for the same one mile segments of their Conduit System route. Crown Castle agrees to cooperate with the City in establishing such policy and comply with the procedures established by the City Engineer or designee to coordinate the issuance of multiple engineering permits in the same one mile segments.

5.4 City will approve or deny such applications based on the availability of space at the location sought by Crown Castle, safety and other considerations in accordance with the City's Code, applicable ROW construction regulations and other applicable law. Crown Castle and/or its Contractor(s) agree to comply with the terms of any City-issued licenses and permits.

5.5 Any new Conduit or fiber placed in the ROW will be constructed using industry standard horizontal directional drilling and trenching construction methods. Other material placed in the ground may include concrete manholes, generally 4x4x4, pull boxes/handholes (#7s and #9s) and HDPE couplings and elbows, fiber optic cable, splice cases, tracer wire, grounding material, mule tape, jet string and conduit plugs. Crown Castle and/or its Contractor(s) will install any new Conduit and access points (manholes/pull boxes) using industry standard practices and in full compliance with Uniform Standard Specifications and Details for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended (hereinafter referred to as "MAG"), the City's supplements to MAG, and the City of Tempe Utility Permit and Construction Manual.

5.6 If Crown Castle desires to change the components of the DAS that will impact the ROW, written approval of such change must be obtained from a representative of the City Engineer.

5.7 The City shall have the right to inspect all construction or installation work performed subject to the provisions of this Agreement and to make such tests as it shall find necessary to meet City standards as set forth in the City of Tempe Utility Permit and Construction Manual and the MAG Uniform Standard Specifications and Details for Public Works Construction and the City of Tempe Supplements thereto and to ensure compliance with the terms of this Agreement and other pertinent provisions of law.

5.8 Any new Conduit System may be installed in multiple phases as agreed upon by Crown Castle and the City. If portions of the project will take place on the major arterial streets in City, Crown Castle and City will work to minimize the inconvenience to the citizens of City and others who use those major arterial streets impacted by the project by developing segments of the project to be completed in sequence.

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

5.10 Co-location. Crown Castle's installation of the Conduit System shall be reasonably coordinated with other utilities and City to accommodate opportunities for common installation along with Crown Castle's route as set forth in this Agreement. All installations of cable and/or fiber shall be in Conduit or Innerduct as reasonably approved by the City Engineer. Provided, however, nothing herein shall require Crown Castle to incur any material additional expense to accommodate common installations.

5.11 Although the exact placement and location of any additional Facilities shall be determined by City through the permit process, Crown Castle has expressed its intent and City has expressed its desire to have any Conduit or fiber installed outside of the paved street areas whenever such location is feasible and reasonable. Further, if it is the intent and desire of Crown Castle for the Conduit to be placed by horizontal directional drilling under such streets when feasible and reasonable. Crown Castle shall comply with the City of Tempe Utility Permit and Construction Manual and the Maricopa Association of Governments (MAG) Uniform Standard Specifications and Details for Public Works Construction and the City's Supplements thereto. Arterial streets shall not be bored unless approved by the City Engineer. In the event that a street opening in new pavement or resurfaced pavement cannot be avoided, Crown Castle agrees to

pay a surcharge fee to cover damages and early deterioration will be assessed for cutting new or resurfaced pavements less than seven years old as per Tempe City Code Section 29-19 and Appendix A.

5.12 Crown Castle shall also provide and identify a representative, such as a project manager, who shall be the contact person for the City during any construction periods.

5.13 Prior to the start of any construction work, Crown Castle shall notify all adjacent or affected residents or businesses at least forty-eight (48) hours in advance of any street, alley, sidewalk, and driveway closures and make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area.

5.13.1 If an emergency requires activity without such written notice, Crown Castle shall use reasonable best efforts to provide timely actual notice to the owners or other persons having lawful control of the adjoining property. Upon request, Crown Castle shall promptly furnish to City documentation of such permission from such other affected property owner.

5.14 Whenever Crown Castle or its Contractors shall cause any opening or alteration to be made for any purpose in any public streets, or public places, the opening or alteration shall be completed and restored with due diligence within seven (7) business days. Crown Castle shall upon the completion of the opening or alteration, restore the property, improvements or landscaping disturbed by Crown Castle or its Contractors to a condition substantially comparable to the condition before the opening or alteration and the restoration shall be performed with due diligence within a reasonably prompt time.

SECTION 6. Use of City Poles

6.1 Whenever Crown Castle seeks to attach a DAS antenna or Small Cell to an existing City Pole or replace the existing City Pole to add a DAS antenna or Small Cell or to place a DAS antenna or Small Cell on any portion of the City's ROW, Crown Castle shall submit a written application to City together with the details, plans and specifications required for City review and approval, and pay all applicable application, review and inspection fees prior to any and all construction work performed pursuant to the rights granted under this Agreement.

6.2 Once the application and site plan review process is completed and approved by the City, a DAS or Small Cell Attachment Site License for Special Use substantially in the form of either: i) Exhibit A1 (DAS Attachment for City-owned Pole); ii) Exhibit A2 (DAS Attachment for a Third Party-owned Pole); iii) Exhibit A3 (Small Cell Attachment for City-owned Pole); or iv) Exhibit A4 (Small Cell Attachment for Third-Party owned Pole) can then be executed by the Parties. The City Manager or designee will have the authority to negotiate and execute the site licenses. City will approve or deny a site license based on the availability of space at the location sought by Crown Castle, safety and other considerations in accordance with the City's Code, applicable ROW construction regulations and other applicable law.

6.2.1 Any refinement or other change to the Site Plan after the site license is executed is void unless Crown Castle obtains City's approval of the change pursuant to plan approval processes and any applicable regulatory requirements. If Crown Castle desires to change the location of any portion of the Small Cell or DAS antenna, including any related Communications Equipment, from that set forth in the initial application, Crown Castle shall apply for and obtain approval for an amendment of the site license prior to installation or construction.

6.2.2 The specific equipment and dimensions of anything that will be installed in the ROW as part of the DAS or Small Cell will be identified and attached as an exhibit to the site license.

6.3 Crown Castle and/or its Contractor(s) shall abide by all stipulations of all site licenses and permits issued.

6.4 This Agreement gives Crown Castle a non-exclusive right to have a Small Cell or DAS occupy space in the ROW subject to Chapter 25, Article VII of the Tempe City Code with respect to undergrounding and/or on an existing City Pole (including any replacement Pole) as shown by an approved location identified on an executed site license and authorizes the use of the DAS or Small Cell for the installation, operation, use and maintenance of a wireless cellular telecommunications facility. Crown Castle shall design, specify, and supply all material associated with the installation, operation and maintenance of the DAS or Small Cell. The DAS or Small Cells shall be installed and maintained by the Crown Castle at Crown Castle's sole cost and expense. Crown Castle shall not install a Small Cell or DAS or Communications Equipment or anything else unless it first obtains the necessary City approvals and permits in accordance with local laws and/or any other applicable state and federal laws and regulations. This Agreement does not provide Crown Castle with any ownership interests in City Poles, Replacement Poles, real property or ROW nor does this Agreement constitute an assignment of any of City's rights to use the public property upon which the Pole(s) is/are located (other than expressly provided herein or in the Site License). Additionally, Crown Castle acknowledges that this Agreement does not constitute or create a leasehold interest or right to the benefit of any City property or portion thereof. Crown Castle accepts the Pole in its "AS IS" condition, without representation or warranty of any kind by the City, its officers, agents, or employees, and subject to all applicable laws, rules and ordinances governing the use of the Poles or ROW for Crown Castle's intended purpose.

6.5 The determination of whether a City Pole or location is available or unavailable for the attachment or placement of a DAS antenna or Small Cell shall be within City's discretion. City reserves the right to disallow the attachment of a DAS antenna on any particular Pole or the placement of a DAS in the ROW for reasons including, but not limited to, insufficient capacity, insufficient square footage in the ROW, unable to maintain minimum offsets from proposed Pole and/ or equipment to existing underground utilities, safety, reliability or engineering concerns as well as concerns that would cause the Pole to fit within the definition of an Unsuitable Pole.

6.6 Crown Castle shall not attach a DAS antenna or Small Cell to any City Pole or put a DAS or Small Cell in the ROW without a site license from the City to do so.

6.6.1 City's act or failure to act with regard to unauthorized use shall not be deemed a ratification or licensing of the unauthorized use; and any authorizations City subsequently gives to Crown Castle for the right to use the Pole shall not operate retroactively or constitute a waiver by City of any of its rights or privileges under this Agreement or otherwise.

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

SECTION 7. Installation on Poles

7.1 Crown Castle or Crown Castle's Contractor is required to order City inspections during and upon completion of installation of any DAS or Small Cell. Installation will be inspected for adherence to plan specs, safe operation, workmanship, aesthetics and/or interference with streetlight operations. Post-installation inspection of DAS or Small Cell by City shall be performed within thirty (30) days of the installation. In the event that City objects to the installation for reasonable reasons stated, Crown Castle will be required to remove the DAS or Small Cell and resubmit design/installation plan. The Pole may not be altered without the City's written permission.

7.2 Replacement Poles. When Crown Castle and the City have agreed on an existing City Pole location as a suitable site for a DAS antenna or Small Cell, but the existing Pole needs to be replaced to accommodate the installation of such, then the following will apply:

7.2.1 Crown Castle shall pay all costs related to Pole replacement, including but not limited to Pole replacement, transfer of all existing facilities, and removal and salvage of the existing pole to the City of Tempe. Payment of Pole replacement costs does not provide Crown Castle with any ownership interest in the replaced Pole.

7.2.2 Any replacement Pole will need to conform to the height restrictions imposed by the City and the arm height of the street light must conform to the existing arm height of the other street light structures in the adjacent area. The Pole will also need to conform to the Tempe Supplement to the M.A.G. Uniform Standard Details and Specifications for Public Works Construction.

7.2.3 If the replacement Pole is damaged by Crown Castle and needs to be replaced, Crown Castle shall replace the Pole entirely at its expense within fourteen (14) days of the discovery of the damage. If the damage is caused by a third party, Crown Castle will replace the Pole within fourteen (14) days of the discovery of the damage and City will reimburse Crown Castle the cost of a standard Pole.

7.2.4 All performance required by Crown Castle under this entire Section 7.2 shall be at Crown Castle's expense. City will own the original pole and all replacement poles.

7.2.5 The re-installation of a DAS or Small Cell shall be at Crown Castle's sole cost and expense.

7.2.6 These requirements to not diminish the plans approval or any other requirement of this Agreement.

7.3 Crown Castle shall not be entitled to reimbursement from City of any amounts paid to City for Pole replacements nor for rearrangement of attachments on the City's Poles by reason of the use by City or other user(s) of any additional space resulting from such replacement or rearrangement.

7.4 Should City, or other authorized Pole user require access to the Pole and such access is restrained as a result of Crown Castle's Small Cell or DAS; Crown Castle shall work cooperatively to develop and support access requirements. Work shall be performed in accordance with City safety standards, which may require temporarily ceasing operations to comply with such standards.

7.5 Subject to obtaining permission of the owner(s) of non-City owned poles that may exist in the ROW, the City authorizes and permits Crown Castle to enter the ROW to install a Small Cell or DAS on such third party owned poles, subject to approval of a site license and payment of any applicable fees.

7.6 All Crown Castle Small Cells and DAS shall be installed and maintained in accordance with the requirements of the National Electric Code, the National Electrical Safety Code, the National Fire Protection Association Standards, the Occupational Safety and Health Administration and any other

applicable federal, state, and local laws. All fees, notices, permits, approvals, certifications and licenses required for the installation, maintenance and operation of Crown Castle's Small Cells and DAS shall be obtained and paid for by Crown Castle and proof of such shall be provided to City at no charge and upon request by City, prior to the start of work.

7.7 Electricity Charges. Crown Castle shall install or cause to be installed a separate electric meter on the Pole and will pay all actual electricity charges assessed by Salt River Project (SRP) and/or Arizona Public Service (APS) for all power usage of the Small Cell or DAS.

SECTION 8. Radio Frequency Compliance Requirements.

8.1 Crown Castle shall document, report and confirm its compliance with 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 (collectively, the FCC Rules) as follows:

8.1.1 Crown Castle shall provide a written environmental RF-EME report to the City as follows:

8.1.1.1 The RF-EME report shall confirm that Crown Castle's operation of the Small Cell or DAS antennas and radios and Communication Equipment is in compliance with the FCC rules. A statement from Crown Castle declaring exemption from reporting to the FCC is not acceptable to comply with the requirements of this Section. Each Small Cell or DAS site will require a separate RF-EME report.

8.1.1.2 Crown Castle shall provide an RF-EME report to City at the following times:

8.1.1.2.1 Within sixty (60) days of the initial operation of the Communications Equipment.

8.1.1.2.2 Prior to operating the Communications Equipment after any hardware or software modification, upgrade, repair, or other alteration that alters radio frequency emissions of the Communications Equipment.

8.2 Crown Castle shall post a notice at each Small Cell or DAS site providing a twenty-four (24) hour contact number and, as applicable, radio frequency emission hazards warning to the extent required by law.

8.3 Should Crown Castle submit any Maximum Permissible Exposure (MPE) reports to the FCC, a copy of such MPE report will be given to the City within ten (10) days of the FCC submission.

SECTION 9. Maintenance/Modifications

9.1 Maintenance of a Small Cell or DAS shall be performed by Crown Castle at Crown Castle's sole cost and expense. Crown Castle will need to obtain the appropriate permits for work in the ROW (Special Use Permit for work on a Small Cell or DAS, Utility Permit for any work on ground mounted equipment) in order to access the Poles and will also need to submit for a Barricade Permit (traffic control permit issued by Traffic Engineering), if applicable.

9.2 Crown Castle will perform routine maintenance, repair, and installation of a Small Cell or DAS on the Poles in accordance with all City ordinances, rules and regulations.

9.3 Damaged or deteriorated components must be correct within forty eight (48) hours of notification. If the components are taken out of service, Crown Castle must remove them within five (5) business days of being taken out of service.

9.4 Each Party shall be responsible for its relocation/reinstallation costs associated with Pole replacement resulting from routine Pole maintenance.

9.5 Other than in connection with the replacement of an existing Pole for the initial installation of a Small Cell or DAS, in the event a City Pole containing a Small Cell or DAS antenna is reasonably determined by the City as needing to be replaced due to damage caused by Crown Castle or a third party, City will notify Crown Castle and Crown Castle agrees to replace the Pole within fourteen (14) days. During such time, however, Crown Castle shall be allowed if necessary to place a temporary cell site and antenna structure on the ROW during replacement. City disclaims any and all liability to Crown Castle for any loss of services as a result of the Small Cell or DAS being unable to function from its previous location on the Pole. The City will reimburse Crown Castle for the cost of a standard light Pole within forty-five (45) days of City's receipt of an invoice, but Crown Castle will be responsible for any cost of the Pole in excess of that amount. Once the Pole has been replaced, and Crown Castle will be allowed to re-install the Small Cell or DAS antenna on it at Crown Castle's sole expense (and City will install its lighting apparatus and wiring at its sole cost). In the event of localized interruptions (e.g. motor vehicle accidents), City shall notify Crown Castle of the incident after taking any required actions to clear and restore the site. Crown Castle will be responsible for collection of any damages for damaged Crown Castle equipment from a third party that caused the damage.

9.6 Crown Castle shall be responsible for and reimburse the City for any and all damages to the Pole(s) caused by Crown Castle and/or its Contractors.

9.7 If Crown Castle's Small Cell or DAS antenna is not transferred and/or placed and maintained in accordance with the terms and conditions of this Agreement and Crown Castle has not corrected any Crown Castle-caused violation within thirty (30) days from its receipt of a written notice from City (or such longer time as may be reasonable under the circumstances), the City may, at its discretion, correct the violation at Crown Castle's expense

9.8 Any upgrade and/or modification to the Small Cell or DAS and/or Communications Equipment, other than a like for like replacement, will need specific approval from the City and require Crown Castle to submit the information required by Section 6.1. Any approval required from the City must be obtained in writing from the City Manager or his designee.

SECTION 10. Interference

10.1 Crown Castle will use and operate a Small Cell or DAS in a manner that will not cause harmful interference including, but not limited to, blocking of access to the Pole, electrical interference, radio frequency (RF) interference, or mechanical interference to the City's and other users' use of the Pole, provided that such other users' installation predates the installation of such Small Cell or DAS. If applicable, City agrees to supply Crown Castle with a list of other attaches or users on any Pole, which is to be used by Crown Castle, together with the respective transmission frequencies thereof. Crown Castle shall not install, operate, or allow the use of equipment, methodology or technology that may or would interfere with the optimum effective use or operation of City's existing or future fire, emergency or other communications equipment, methodology or technology (i.e., voice or other data carrying receiving or transmitting equipment). If such interference should occur, Crown Castle shall immediately discontinue using the equipment, methodology or technology that causes the interference until Crown Castle takes corrective measures to eliminate such interference. Any such corrective measures shall be made at no cost

to City. Crown Castle shall be responsible to ensure compliance with this Agreement by all persons using the ROW through or under Crown Castle or this Agreement.

10.1.1 In the event any such interference occurs, Crown Castle will (i) remedy such interference as soon as possible but no later than within seventy-two (72) hours after receipt of written notice from City, conditioned on City's ability to support corrective actions, if required, or (ii) cease operation of the DAS or Small Cell until such interference can be eliminated with City's support, if required.

10.1.2 If such interference is not eliminated within said seventy-two (72) hour period, City will have the right, in addition to any other rights that it may have at law or in equity, to take all necessary and reasonable steps, at Crown Castle's sole cost and expense, to disable the Small Cell or DAS to eliminate such interference (after giving reasonable prior notice to Crown Castle of City's intent to do so). City shall have the right to terminate Crown Castle's right to attach the Small Cell or DAS causing such interference by giving at least sixty (60) days' notice to Crown Castle to remove the Small Cell or DAS permanently from the Pole, unless within such sixty (60) day period, Crown Castle cures any interference.

10.2 Should City, Crown Castle or other authorized users require access to a Pole and such access is restrained as a result of City's or Crown Castle's operational equipment, City and Crown Castle shall work cooperatively to develop and support access requirements. Work shall be performed in accordance with City's safety standards, which may require temporarily ceasing wireless operations to comply with such standards.

10.3 City agrees that City and/or any other subsequent user of the Pole or surrounding ROW within 500 feet of the Pole, will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of Crown Castle. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

SECTION 11. Traffic Control

11.1 If and when applicable, Crown Castle shall submit a Traffic Control Plan to Traffic Engineering for approval one week prior to beginning work under a site license. It shall be noted that Traffic under this Agreement shall include all motor vehicles, bicyclists, and pedestrians. Crown Castle shall not begin work until the Traffic Control Plan is approved by the City. An approved Traffic Control Plan shall be maintained onsite during all phases of work, otherwise work will cease until the Traffic Control Plan is approved. All traffic shall be regulated in accordance with MAG; the City of Tempe Barricade Manual, latest edition, available through the City of Tempe Traffic Engineering; the Manual on Uniform Traffic Control Devices (MUTCD); and any Special Provisions included herein.

11.2 At the time of the pre-construction conference, Crown Castle shall designate an American Traffic Safety Services Association (ATSSA) certified individual who is well qualified and experienced in construction traffic control and safety, to be responsible for implementing, monitoring, and altering traffic control measures as necessary to insure that traffic is carried through the work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are protected from hazard and accidents. At the same time, the City shall designate a representative who will be responsible to see that all traffic control and traffic control alterations are implemented per these traffic control specifications.

11.3 Crown Castle shall have the full responsibility and liability for traffic control for work performed by Crown Castle or their Contractors. In the event Crown Castle or its Contractor(s) damages any traffic signal equipment, traffic signal conduit, loop detectors and/or circuits, it shall have them repaired immediately at its expense by an electrical Contractor that has had traffic signal experience which is pre-approved by the City. Any damage caused by Crown Castle or its Contractor(s) that is repaired by the City will be billed to Crown Castle at two times the cost.

11.4 To the extent reasonably possible, pedestrian access shall be maintained along the length of the project at all times per the requirements of the Americans with Disabilities Act and as approved by Traffic Engineering.

11.5 During construction it may be necessary to alter traffic control as approved by Traffic Engineering. Alterations to traffic control shall be in accordance with the latest edition of Part VI of the Manual on Uniform Traffic Control Devices: "Traffic Control for Streets and Highway Construction and Maintenance Operations"; the latest edition of the City of Phoenix Traffic Control Manual; or the City of Tempe Barricade Manual, latest edition. The most restrictive manual shall apply. Crown Castle shall pay any and all applicable barricade fees.

11.6 Speed limits shall be strictly enforced.

SECTION 12. Hazardous Substances

12.1 Crown Castle agrees it will not produce, dispose, transport, treat, use, generate, store any Hazardous Substances on, under, about or within the area of the Pole and ROW in violation of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., the Arizona Hazardous Waste Management Act, A.R.S. § 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq. or any other federal, state, county, or local law or regulation. Crown Castle may not use the ROW in a manner that would require a permit or approval related to Hazardous Substances from the Arizona Department of Health Services or any governmental agency other than the City. Crown Castle will pay, indemnify, defend and hold City harmless against any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Crown Castle pursuant to this Agreement and must immediately notify City of any Hazardous Substance at any time discovered or existing upon the ROW. Crown Castle will ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services.

12.2 Crown Castle and/or its Contractor(s) shall immediately notify City of any Hazardous Substance at any time discovered or existing in the ROW. Crown Castle is not responsible for Hazardous Substances that may exist in the ROW if Crown Castle's Contractors and/or any other persons using the ROW under this Agreement did not do any of the following:

- a. Participate in the Hazardous Substance coming to the ROW
- b. Participate in spreading or otherwise disturbing the Hazardous Substance

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

12.4 Within twenty-four (24) hours after any violation by Crown Castle and/or by its Contractor(s) of this Agreement pertaining to Hazardous Substances, Crown Castle shall give City notice reporting such violation at the number

SECTION 13. On-Call Assistance

Crown Castle shall be available to staff employees of any City department having jurisdiction over Crown Castle's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its Facilities. City may contact by telephone the Network Operations Center operator at the following phone number 1-888-632-0931 regarding such problems or complaints, and may use that number in order to reach Crown Castle at any time for any emergency matter. Crown Castle shall use reasonable efforts to respond to any issues within the time frames specified in its service level agreements. Crown Castle shall make arrangements with a local entity to handle any necessary problems or complaints that require a physical presence.

SECTION 14. Mapping Requirement

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

14.1.1 If complete updates are not provided in a compatible format, Crown Castle shall pay the actual, reasonable costs the City incurs to update the City's electronic mapping format due to the location or relocation of Crown Castle's Facilities.

14.2 In the event Crown Castle fails to supply records in the City specified format and there is a cost to the City in converting Crown Castle-provided files, Crown Castle will be responsible for the conversion costs and will pay such costs within thirty (30) days of the date of the bill from the City invoicing the amount due.

SECTION 15. Relocation

15.1 Crown Castle shall relocate at no expense to the City any Facilities or other encroachment installed or maintained in, on or under any public place or ROW, as may be necessary to facilitate any public purpose, including but not limited to transit projects such as Light Rail or Streetcar or any City project whenever directed to do so by City. However, to the extent that the City receives funds from any third parties or government entities for a project that requires the relocation of Facilities owned, operated and/or maintained by the Crown Castle, the City shall allocate such funds to the relocation of Crown Castle's Facilities. If more than one user of the ROW is required to relocate for the same project, and is eligible for reimbursement, any such funds shall be distributed on a pro rata basis based on the total relocation costs of each of the ROW users eligible for such reimbursement. Crown Castle shall not hold the City liable for failure to request or file a claim for any funds for the relocation of the Crown Castle's Facilities. Such relocations shall be accomplished in accordance with the directions from City and shall be pursuant to the same terms and conditions as the initial installation allowed pursuant to this Agreement and any applicable issued permits. Within ninety (90) days after service of notice by the City, Crown Castle shall remove the

designated portions of the Facilities, or in the event that, by the nature of the removal such removal cannot be performed within the ninety-day period, Crown Castle shall take reasonable steps to remove the Facilities and diligently prosecute the removal to completion, and, if requested, restore the sidewalks and other ROW to a condition comparable to the condition before the construction of the public improvement at no cost and expense to the City.

15.2 Crown Castle agrees to obtain a permit as required by this Agreement prior to removing, abandoning, relocating or reconstructing of any portion of its Small Cell or DAS on public property or ROW. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Crown Castle is required to make repairs that are of an emergency nature or in connection with an unscheduled disruption of the Facilities. Crown Castle will maintain any annual permits required by the City for such maintenance and emergency repairs. Crown Castle will notify City before the repairs and will apply for and obtain the necessary permits in a reasonable time after notification.

15.3 If the City needs to perform any part of the necessary relocation or removal work that has not been done within the time required by the City, it shall be entitled to seek payment for such relocation costs by drawing upon the Deposit required by this Agreement pursuant to Section 34.

SECTION 16. Damage to Public Property.

16.1 In addition to any indemnity obligation under this Agreement, whenever the installation, use, maintenance, removal, or relocation of any of Crown Castle's Facilities is required or permitted under this Agreement, and such installation, removal or relocation damages or disturbs the surface or subsurface of any ROW or public property or the public improvement located thereon, therein, or thereunder, however such damage or disturbance was caused. Crown Castle, at its sole cost and expense, shall promptly restore the surface or subsurface of the ROW or public property and/or repair or replace the surface, subsurface and/or public improvement therein, or thereunder, in as good a condition as before in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. If Crown Castle does not repair the damage or disturbance as just described, then City shall have the option, upon fifteen (15) days prior written notice to Crown Castle, to perform or cause to be performed such reasonable and necessary work on behalf of Crown Castle and to charge Crown Castle for the actual costs incurred by the City at City's standard rates.

16.2 Notwithstanding the notice provision above, in the event of a Public Emergency, the City shall have the right to immediately perform, without prior written notice to Crown Castle, such reasonable and necessary work on behalf of Crown Castle to repair and return public property to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. The City shall provide written notice to Crown Castle of the repairs as soon as practicable after the work has begun. Crown Castle agrees that any severed City-owned Conduit and/or fiber must be completely repaired or replaced to the nearest splice point. If the City needs to perform any part of the necessary repairs, relocation and/or removal work, it shall be entitled to seek payment for such repairs, relocation and/or removal costs from Crown Castle and may draw upon a performance bond and/or Deposit required by this Agreement in full or partial satisfaction of such costs, if payment is not made by Crown Castle as required by Section 16.3 below.

16.3 Upon the receipt of a demand for payment by City, Crown Castle shall promptly reimburse City for such costs. Failure to pay will entitle the City to draw upon the Deposit within thirty (30) days of the demand for payment to Crown Castle.

16.4 For any pavement cuts by Crown Castle, Crown Castle agrees to restore the pavement and to reimburse the City for all costs arising from the reduction in the service life of any public road, in accordance with the

provisions of Chapter 29 of the Tempe City Code and the fees established by the City pursuant thereto. Crown Castle agrees to pay within thirty (30) days from the date of issuance of an invoice from City. Failure to pay will entitle City to draw upon the Deposit and/or performance bond immediately.

SECTION 17. Public Emergency Disruption by City.

City shall have the right, because of a Public Emergency, to sever, disrupt, remove, tear out, dig-up or otherwise damage and/or destroy Facilities of Crown Castle without any prior notice to Crown Castle, if the action is deemed necessary by either the City Manager, Fire Chief, Police Chief, City Engineer, or Public Works Director or designee. In such event, neither the City nor any agent, Contractor or employee of City shall be liable to Crown Castle, its Contractors or its customers or their parties for any harm so caused to them or the Facilities. When practical and if possible, City will consult with Crown Castle in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Small Cell or DAS. City shall inform Crown Castle of any actions taken. Crown Castle shall be responsible for repair at its sole expense of any of its Facilities damaged pursuant to any such action taken by City.

SECTION 18. Public Safety/Public Emergency.

18.1 If any of Crown Castle's Facilities or activities present any immediate hazard or impediment to the public, to the City, to other improvements or activities within or outside of the route area(s), or to City's ability to safely and conveniently operate the ROW or perform City's utility, public safety and/or other public health, safety and welfare functions, then Crown Castle shall immediately remedy the hazard, comply with City's request to secure the route area, and otherwise cooperate with City at no expense to City to remove any such hazard or impediment.

18.2 In the event of a Public Emergency, neither the City nor any agent, Contractor or employee of the City shall be liable to Crown Castle or its Contractors or its customers or other third parties for any harm so caused to them by the reasonable actions of the City or its agents, Contractors or employees in responding to such public emergency. When practical and if possible, City will consult with Crown Castle in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of either the public property involved or the Facilities involved.

SECTION 19. City's Reserved Rights

19.1 City reserves the right to maintain its Poles and to operate City facilities on City Poles in such manner as will best enable it to fulfill its own service requirements, including but not limited to attachment of additional antennas to City Poles so long as such requirements and additional facilities do not materially interfere with Crown Castle's operations. City shall not have liability for any interference with the operation of Crown Castle's equipment or of Crown Castle's customer's equipment that may arise in any manner out of Crown Castle's use of City Poles or ROW for its Small Cell or DAS antennas.

19.2 If City deems it necessary, in connection with the installation, operation, maintenance, replacement, relocation, or removal of City Poles or the facilities located on City Poles, to relocate Crown Castle's Small Cells or DAS antennas attached to City's Pole, the City may require Crown Castle to relocate the Small Cell or DAS antenna to another location on the ROW (the "Alternate Property") provided: (a) the Alternate Property is similar to Crown Castle's current premises in size and is compatible for Crown Castle's use; (c) City shall give Crown Castle at least six (6) months written notice before requiring Crown Castle to relocate; and (d) Crown Castle shall be allowed if necessary to place a temporary cell site and antenna structure on the ROW during relocation.

19.2.1 Crown Castle shall perform the relocation work at its own expense.

19.2.2 City or its Contractors may perform any part of the relocation work that has not been performed within the allotted time. Crown Castle shall reimburse City for its actual costs in performing any relocation work. However, City has no obligation to move Crown Castle facilities.

19.3 City reserves the right to abandon any of the City's Poles. City shall give Crown Castle no less than one hundred eighty (180) days' notice of its intent to abandon a Pole. City shall include in such notice an offer to sell the Pole to Crown Castle at the then value thereof in place or such other equitable sum as the Parties may agree upon, in which case Crown Castle shall have thirty (30) days from the date of such notice to purchase said Pole. If Crown Castle has already paid for the Pole, there will be no charge for the Pole. If Crown Castle does not purchase the Pole within the 30-day period, the City's permission to Crown Castle to attach to such Pole shall terminate, and unless the City notifies Crown Castle otherwise, Crown Castle shall immediately remove Crown Castle's Small Cell or DAS antenna from the Pole. Failure to do so will result in City withdrawing actual costs from the Deposit provided by Crown Castle under Section 34.

19.4 Crown Castle shall at no time sublease, sublicense or rent any portion of the space on the Pole subject to this Agreement nor shall Crown Castle permit others to attach equipment of any kind to the Poles or to Crown Castle's Small Cell or DAS antenna attached to the Poles without submitting the appropriate wireless project application, getting prior written approval from City and paying any appropriate fees. If Crown Castle is in violation of this provision, then City shall have the right to immediately terminate the permission granted to Crown Castle to attach to the Poles involved in the violation and to require Crown Castle to remove Crown Castle's Small Cell or DAS antenna from such Poles.

19.5 All permits issued to Crown Castle relating to this Agreement shall be subject to the privilege to use City Poles as granted by City to any third parties under prior permissions and City reserves the right to continue, modify, and extend such attachment privileges provided any such modification does not physically interfere with Crown Castle's rights herein.

19.6 City reserves the right hereafter to enter into agreements permitting third parties to attach facilities to City Poles; provided, however, that such permission: (i) shall be terminated by City in the event that the facilities of such third party interferes with Crown Castle's equipment; (ii) requires the third party to reimburse Crown Castle for: (a) the expense of altering Crown Castle's Small Cell or DAS antenna to accommodate the attachment of third party's facility, including the cost of relocating Crown Castle's Small Cell or DAS antenna from an existing Pole to a replacement Pole; and (b) such third parties' pro rata share of all costs incurred by Crown Castle for the purchase and installation of the Pole. Crown Castle will not be liable for any portion of the cost of a replacement Pole necessitated by the attachment of a third party's facility made pursuant to an agreement entered into subsequent to the date of this Agreement.

19.7 Emergencies. The Parties shall notify each other of any emergency situation related to the Pole(s) or Crown Castle's Small Cell or DAS. An emergency shall be any condition that poses an immediate threat to the safety or welfare of citizens or property in Tempe.

19.7.1 In the event of an emergency discovered by Crown Castle, Crown Castle shall immediately notify City, at (480) 350-8311 of any emergency situation related to the Pole(s) or Crown Castle's Small Cell or DAS, at the emergency phone number which shall be kept updated and current between the parties on an as-needed basis.

19.7.2 In the event of an emergency discovered by City, City shall immediately notify Crown Castle at its Network Operations Center at 888-632-0931 of any emergency situation related to the

Pole(s) or Crown Castle's Small Cell or DAS, at the emergency phone number which shall be kept updated and current between the parties on an as-needed basis.

19.7.3 City may remove, alter, tear out, relocate or damage portions of the Small Cell, DAS, or related Communications Equipment in the case of fire, disaster, or other emergencies if the City Manager or designee deems such action to be reasonably necessary under the circumstances. In such event, neither City nor any employee, agent, or Contractor shall be liable to Crown Castle or its customers or third parties for any harm so caused to them or the Small Cell, DAS, or Communications Equipment. When and if practical, City shall consult with Crown Castle in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Small Cell, DAS, or related Communications Equipment. In any event, City shall inform Crown Castle after such actions. Crown Castle's work to repair or restore the Small Cell, DAS, or related Communications Equipment shall be considered relocation work.

19.7.4 If the Small Cell, DAS, or Communications Equipment or Crown Castle activities present an immediate hazard or impediment to the public, to City, to City equipment or facilities, to other improvements or activities within the Use Area(s), or to City's ability to safely and conveniently manage the ROW or perform City's health, safety, or welfare function, then Crown Castle shall immediately remedy the hazard and cooperate with City at no expense to City to remove any such hazard or impediment. Crown Castle's work crews shall report to the Use Area(s) within four (4) hours of any request by City to do so.

19.8 Zoning and Similar Approval Process. Any applicable zoning processes, building permit processes, ROW management policies and similar regulatory requirements that apply to Crown Castle's Small Cell, DAS and/or related Communications Equipment are completely separate from the plans approval processes under this Agreement or the site license. Crown Castle's satisfaction of any regulatory requirement does not substitute for compliance with any requirement of this Agreement or constitute approval of any plans for the purposes of this Agreement. Crown Castle must make all submittals and communications regarding the requirements of this Agreement through the Land Services Division of the Public Works Department.

SECTION 20. Non-use/Abandonment of the Facilities.

20.1 An "Abandoned Facility" will mean a Facility no longer in service or physically disconnected from a portion of the operating Facility or from any other Facility that is in use or still carries service. If Crown Castle ceases to provide services or abandons use of any of its Facilities, upon cancellation or termination of the Agreement, Crown Castle shall notify the City and may, subject to the City's approval, permanently abandon the Facilities in place. In such event, the City, at its option, may acquire ownership of the Facilities. In lieu of permanent abandonment, the City may require Crown Castle, to the reasonable satisfaction of the City and without cost or expense to the City, to promptly remove the Facilities and to restore the public property and ROW to a reasonable condition under the supervision of the City.

20.2 Upon permanent abandonment, if the City does not require removal, Crown Castle shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities, which are not removed as required by the City within ninety (90) days of either such date of termination or cancellation or of the date the City issued a permit authorizing removal, whichever is later, automatically shall become the property of the City. Crown Castle will notify the Arizona Blue Stake Center to record the Facilities that have been abandoned.

20.3 Title to any and all personal property installed by Crown Castle upon the ROW that is not removed during the period set forth in Section 20.2 shall automatically vest in City.

SECTION 21. Contractors

21.1 The specific independent Contractors identified and used by Crown Castle for the construction activities to expand and extend Crown Castle's Facilities and Use Area will need to be approved by the City Engineer or designee prior to issuance of each construction permit, such approval shall not be unreasonably withheld, delayed, conditioned or denied. Any Contractors performing construction work within the ROW or public easements shall comply with licensing requirements of the Arizona General Contractors.

21.2 Each Contractor shall have the same obligations with respect to its work as Crown Castle would have if Crown Castle performed the work. Crown Castle shall be responsible for ensuring that the work of Contractors is performed consistent with this Agreement and other applicable law, shall be responsible for acts or omissions of Contractors under this Agreement to the same degree it is responsible for the acts of its employees, shall be responsible for promptly correcting acts or omissions by any Contractor, and shall implement a quality control program to ensure that the work contemplated by this Agreement is performed.

21.3 Crown Castle shall furnish separate certificates and endorsements for each independent Contractor. All coverages for independent Contractors shall be subject to substantially similar requirements stated herein for Crown Castle.

SECTION 22. Legal Workers

If, and to the extent A.R.S. § 41-4401 is applicable to this Agreement, Crown Castle shall comply with laws regarding workers as follows:

22.1 Crown Castle warrants to City that Crown Castle and all of its Contractors will comply with all federal immigration laws and regulations that relate to their employees and that there is compliance with the E-Verify Program under A.R.S. § 23-214(A).

22.2 A breach of the foregoing warranty by Crown Castle shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement.

22.3 City retains the legal right to inspect the papers of any employee of Crown Castle Contractor who works pursuant to this Agreement to ensure that they are complying with the warrant given above.

22.4 City may conduct random verification of Crown Castle's Contractors employment records to ensure compliance with the warranty given above.

22.5 Crown Castle shall indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations of the warranty given above.

SECTION 23. Payments

23.1 By entering into this Agreement, neither party waives any current or future rights reserved under the Telecommunications Act of 1996 or any subsequent law or FCC Order or Rule interpreting such Act, including but not limited to, those rights set forth in Sections 253(c), reserving the City's right to manage the public ROW and to require fair, non-discriminatory and reasonable compensation from Crown Castle for use of the public ROW.

23.2 Crown Castle shall be solely responsible for payments to City as follows:

23.2.1 Application Fee – Crown Castle shall pay City an application fee for the administrative costs involved in the development of a ROW Use Agreement, which shall be due at the time of the submittal of the application.

23.2.2 Compensation for Use of the ROW

23.2.2.1 Upon the Commencement Date of any site license for either an underground Conduit System route or installed fiber footage, the annual fee is Two Dollars and Fifteen Cents (\$2.15) per linear foot of trench, which shall be adjusted annually as provided in Section 23.2.2.1.1 below.

23.2.2.1.1 Commencing on July 1, 2017 and on each July 1 through the fifth year of the term, the linear foot fee shall be escalated annually by the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index-All Urban Consumers, West Region for All Items (CPI) average percentage as calculated at the end of the prior calendar year. If there is no increase in the CPI, the fee shall remain what it was for the prior year.

23.2.2.2 Upon the Commencement Date of any site license for placement of a Small Cell or DAS antenna on a third-party owned Utility Pole in the ROW, the fee will be as set forth on Appendix A of the Engineering Fees as authorized by Section 29-19 of the Tempe City Code and adjusted annually as provided by Section 23.2.2.1.1 above with the new amount to be effective on each anniversary date of the Commencement Date of the particular site license for the duration of the site license term. The specific amounts owed will be set forth in the site license.

23.2.2.3 Associated ground and other equipment installed in the ROW will be subject to the applicable fees in effect at the time of the Small Cell or DAS installation on the Utility Pole in the ROW as set forth in the applicable Wireless Services Facilities (WCF) category found in Appendix A of the Engineering Fees as authorized by Section 29-19 of the Tempe City Code and any amounts owed will be set forth in the applicable site license.

23.2.2.4 The Parties may agree in writing to an in-kind payment of fiber(s) and/or conduit(s) or other consideration in lieu of monetary compensation for use of the ROW. Any such alternative compensation or consideration shall be set forth in the applicable site license.

23.2.3 Compensation for Use of a City-owned Pole

23.2.3.1 Upon the Commencement Date of any Attachment Site License for placement of a Small Cell or DAS antenna on a City-owned Pole, Crown Castle shall pay City a fee according to the applicable Wireless Services Facilities (WCF) category as set forth in Appendix A of the Engineering Fees as authorized by Section 29-19 of the Tempe City Code and such amount will be set forth in the Attachment Site License.

23.2.3.2 Fees for ground equipment associated with the Small Cell or DAS above that are placed in the ROW are set forth in the WCF categories and any amounts owed will be set forth in the Attachment Site License.

23.3 All fees due pursuant to a site license are non-refundable and are due within thirty (30) days of the initial Commencement Date. The annual fee will be due thereafter upon the anniversary of the

Commencement Date for each site license and shall be made within five (5) business days of that date. In the event of multiple site licenses with different anniversary dates for fees, if Crown Castle wants to consolidate billing and have one due date, it can coordinate with the Land Services Division to make such an adjustment.

23.4 Permit Fees – Associated ground and other equipment installed will be subject to the applicable permit fees in effect at the time of the installation on the Pole in the ROW. Crown Castle shall pay all applicable construction permit fees to place Facilities in the ROW, which includes charges for encroachment permit applications, issuance, inspection, testing, plan review and any other fees adopted by City and applicable to persons doing work and/or encroaching in the City’s ROW pursuant to Tempe City Code 29-19. If, at the request of Crown Castle, the needs of Crown Castle’s work requires after hours or nighttime work outside of normal business hours, Crown Castle shall reimburse the City according to the Section 29-19 fee schedule in place.

23.5 Damage Fees – Crown Castle shall pay any reasonable costs associated with any damage caused to the ROW or public property under Tempe City Code Sections 29-18 and 29-19.

23.6 Any checks should reference the site license number and be sent to:

City of Tempe
Attn: City Engineer
31 E. 5th St.
Garden Level
Tempe, AZ 85281

23.7 If payment is not made by the next to the last business day of the month when payment is due, the City may impose interest at a rate of one and one-half percent (1.5%) percent per month commencing from the date payment should have been made and continuing until the payment is made. Fractions of a month shall be considered to constitute a full month for the purpose of computing interest. If the cause of failure to pay the fee or any portion thereof is determined by the City to be due to civil fraud or the evasion of the fee, Crown Castle shall pay a penalty of fifty percent (50%) of the amount of deficiency. City’s receipt of a late fee shall not result in a waiver of City’s rights pursuant to this Agreement. Failure to pay the annual fee within sixty (60) days of the anniversary date of the particular site license shall be considered to be a material breach of this Agreement and will be grounds for the City to terminate the site license for that location upon ten (10) days’ written notice to Crown Castle.

23.8 Taxes. Crown Castle shall pay all applicable city, county and state taxes levied, assessed, or imposed by reason of this Agreement or those related to the Crown Castle’s services provided by Small Cell or DAS. Such taxes are in addition to any non-tax amounts owed by Crown Castle to City pursuant to this Agreement. Crown Castle consents to the disclosure of any and all information reported on Crown Castle’s transaction privilege tax returns submitted to the City by authorizing and allowing the City’s tax collector to release such information to the City Manager or designees.

SECTION 24. Insurance

- A. Insurance Required: Prior to any access to Poles or ROW, Crown Castle shall procure and maintain for the duration of the Agreement insurance against claims for i) bodily injury, sickness or disease, or death of any or more persons other than Crown Castle’s employees; ii) damages insured by usual personal and advertising injury liability coverage; iii) damages because of injury to or destruction of tangible property, including loss of use resulting from; iv) products/completed operations; v) and damages involving contractual liability insurance applicable to Crown Castle’s indemnity obligations under this

Agreement. Such insurance shall cover claims as may be occasioned by the operations, act, omission or negligence of Crown Castle or its officers, agents, representatives, employees or Contractors during all times that this Agreement and any site licenses are in effect. Insurance limits are inclusive of umbrella coverage.

B. Minimum Limits of Coverage: Without limiting any obligations or liabilities, the Crown Castle, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance and with forms reasonably satisfactory to the City. Each insurer shall have a current A.M. Best Crown Castle, Inc., rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

i. Minimum Limits of Insurance. Crown Castle shall maintain limits no less than:

a. Commercial General Liability

Commercial general liability insurance limit of not less than \$5,000,000 for each occurrence, with a \$5,000,000 general aggregate limit. The general aggregate limit shall apply separately to the services under this Agreement or the general aggregate shall be twice the required per occurrence limit. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual coverage, meeting the liability assumed under the indemnification provisions of this Agreement which coverage will be at least as broad as Insurance Services Office Inc. policy form CG 00 01, including but not limited to severability of interests and waiver of subrogation clauses. Crown Castle shall also obtain Endorsement CG 20 10 10 01 and CG 20 37 07 04 or equivalent thereof, naming the City as an additional insured.

In the event the general liability policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance

b. Worker's Compensation

Crown Castle shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Crown Castle employees engaged in the performance of services; and employer's liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

In case services are subcontracted, Crown Castle will require the subcontractor to provide worker's compensation and employer's liability to at least the same extent as provided by Crown Castle.

c. Automobile Liability

Commercial business automobile liability insurance with a combined single limit for bodily injury and property damages of not less than \$2,000,000 per each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the Crown Castle's work. Coverage shall be at least as broad as coverage Symbol 1 "any auto" (Insurance Service Office policy form CA

0001 or any replacements thereof). Such coverage shall include coverage for pollution for upset/overturn/collision of the automobile(s) and loading and unloading hazards.

d. Special Risk Property Insurance

Unless waived by the City's Risk Management Division in writing, Crown Castle shall carry all risk property insurance covering damage to or destruction of all of its real and personal improvements to the Right-of-Way, including without limitation, all improvements existing upon the Right-of-Way prior to this Agreement or hereafter constructed in an amount equal to full replacement costs of all such improvements. Such insurance shall be special causes of loss policy form (minimally including perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, collapse and flood). Coverage shall include pollutant clean up and removal with minimum limits coverage of a Fifty-Thousand Dollar (\$50,000.00) annual aggregate. Such pollutant clean up and removal coverage may be by separate policy or self-insurance.

- C. Additional Insured. The insurance coverage, except for workers compensation, employer's liability and special risk property insurance, required by this Agreement, shall name the City, its agents, representatives, directors, officials, employees and officers, as additional insureds, and shall specify that insurance afforded the Crown Castle shall be primary insurance, and that any self-insured retention and/or insurance coverage carried by city or its employees shall not contribute to the coverages provided by Crown Castle. This provision and the naming of the City as an additional insured shall in no way be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(s).
- D. Coverage Term. All insurance required herein shall be maintained in full force and effect while any site license is effective and until Licensee has completed all removal and restoration obligations hereunder. Failure to do so shall constitute a material breach of this Agreement and can be a cause for termination of this Agreement.
- E. Primary Coverage. Crown Castle's insurance shall be primary insurance to the City, and any insurance or self-insurance maintained by the City shall not contribute to it.
- F. Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City. Crown Castle shall promptly furnish City's Risk Management Division with copies of any accident or incident report(s) sent to Crown Castle's insurance carriers covering accidents/incident occurring in connection with and/or as a result of this Agreement.
- G. Waiver. The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of Crown Castle's acts, mistakes, omissions, work or services.
- H. Deductible/Retention. The policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be disclosed

by Crown Castle and shall be assumed by and be for the account of, and at the sole risk of Crown Castle who shall be solely responsible for deductible and/or self-insurance retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. Notwithstanding the foregoing, the preceding two (2) sentences shall not apply to Crown Castle so long as Crown Castle has a net worth in excess of \$50,000,000.00.

- I. Certificates of Insurance. Prior to the commencement of any work pursuant to this Agreement, Crown Castle shall furnish to the City certificates of insurance with formal endorsements as required by the Agreement, issued by Crown Castle's insurer(s) as evidence that policies providing the required coverages, conditions, and limits required by this Agreement are in full force and effect and obtain approval of such certificates from the City's Risk Manager, which reasonable approval may not be withheld. Notwithstanding the foregoing, no site licenses may be executed and Crown Castle may not perform any work pursuant to this Agreement until such time as a certificate of insurance is provided to the City. Such certificates shall identify the Agreement or site license number or name and will include the endorsement(s) listing the City as an additional insured. Such certificates and all subsequent renewals that are required shall be sent directly to:

Risk Management
City of Tempe
20 E. 6th St., 2nd Floor
Tempe, AZ 85281

with a copy to:
City of Tempe
City Engineer
31 E. 5th
Garden Level
Tempe, AZ 85281

- J. Copies of Policies. The City reserves the right to request and to receive, within ten (10) working days, copies of any or all of the above policies and/or endorsements. The City shall not be obligated, however, to review same or to advise Crown Castle of any deficiencies in such policies and endorsements, and such receipt shall not relieve Crown Castle from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Crown Castle's obligations under this Agreement. In lieu of providing copies of actual insurance policies, Crown Castle may elect instead to allow City to inspect copies of the insurance policies at Crown Castle's most proximate place of business within Arizona. If City inspects the insurance policies, City shall not reveal the policy limits, coverages or other terms of the insurance policies except in the course of administering or enforcing this Agreement or as required by a court or other applicable legal authority.
- K. Policy Limit Escalation. By written notice to Crown Castle, City may elect to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that City reasonably determines to affect the reasonable amount of insurance to be provided.
- L. Nothing containing in these insurance requirements is to be construed as limited the extent of either Party's responsibility for payment of damages resulting from either Party's use of the Pole or limiting, diminishing or waiving either Party's obligation to indemnify, defend and hold harmless the other as set forth in the Indemnification Section 25 of this Agreement.
- M. All policies shall contain an endorsement providing that the coverage afforded under such policies shall provide thirty (30) days' prior written notice of cancellation, except for non-payment of premium will be given to City.

- N. Crown Castle shall be responsible for ensuring that the City is notified within thirty (30) days of the occurrence of any reduction in the insurance coverage amounts, cancellation or expiration of any of the policies as required by this Agreement that are not replaced.
- O. If a policy does expire during the term of this Agreement, a renewal certificate(s) must be sent directly to the City's Risk Management prior to the expiration date.
- P. Crown Castle shall furnish separate certificates of insurance and endorsements for each Contractor. All coverages for Contractors shall be subject to similar requirements stated herein for Crown Castle.

SECTION 25. Indemnity

25.1 In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Crown Castle shall pay, indemnify, defend and hold harmless City and all other Additional Insureds for, from and against any and all Claims related to Crown Castle's use of the Right-of-Way or the rights granted to Crown Castle with respect to the Right-of-way or Crown Castle's exercise of its rights under this Agreement (including, without limitation, the negligence or intentional misconduct of Crown Castle and its employees, Contractors and agents in connection therewith) (collectively, the "Indemnity").

25.2 Without limitation, the Indemnity shall include and apply to any and all Claims that may arise in any matter out of any use by Crown Castle or its Contractor of the Right-of-Way or other property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement by Crown Castle or its Contractor, including without limitation any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Right-of-Way or surrounding areas related to this Agreement, and including without limitation, Claims, liability, harm or damage caused in part by City or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Crown Castle or City may be liable.

25.3 As a condition to City's executing this Agreement, Crown Castle specifically agrees that to the extent any provision of this paragraph is not fully enforceable against Crown Castle for any reason whatsoever, this paragraph shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law.

25.4 The Indemnity shall also include and apply to any environmental injury, personal injury or other liability relating to Crown Castle's use of Right-of-Way or public real property under this Agreement or from Crown Castle's non-compliance with the Site Plan.

25.5 Notwithstanding the foregoing, the Indemnity does not apply to:

25.5.1 Claims arising from the active negligence or intentionally wrongful acts of City or its employees, agents or contractors.

25.5.2 Claims that the law prohibits from being imposed upon the indemnitor.

25.6 Subject to any legal protections for privilege and/or confidentiality, the Parties shall promptly notify each other in writing of any claims, demands, or lawsuits which may involve the City in relation to this Agreement and provide copies of all relevant accident reports, incident reports, statements or other

documents that are relevant to the claims, demands, or lawsuits or which may lead to the discovery of relevant materials or information, in the possession of the other party, its employees, agents, contractors, and/or others.

25.7 Subject to any legal protections for privilege and/or confidentiality, both parties agree to make their employees, agents, and Contractors available to the other party to gather any relevant information relating to an incident, which results in a claim, demand, or lawsuit.

25.8 It is the purpose of this section to provide maximum indemnification to the City under the terms and conditions expressed and, in the event of a dispute, this section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the City by Crown Castle against any and all claims, demands or lawsuits. The sole exception shall be an express determination by a court of competent jurisdiction upon full adjudication of the case that the damages either arose only from the City's active negligence or intentional acts or that the City was comparatively at fault for the damages. Only in this event may Crown Castle then commence an action against the City for damages related to that portion judicially determined to be the City's fault.

25.9 The amount and type of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the Indemnity in this Section.

25.10 The obligations set forth in this section shall survive completion of the work, termination or expiration of this Agreement.

SECTION 26. Limitation of Liability

26.1 Neither Party shall be liable to the other, or any of their respective agents, representatives, employees, or customers for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence, strict liability or otherwise).

26.2 In addition, Crown Castle expressly acknowledges that Crown Castle's Facilities are exposed to many risks beyond the reasonable control of City, including acts of God or the public enemy, such as but not limited to, wind, rain, sleet, ice, floods, fire, riots, sabotage, expropriation or confiscation of facilities. Except as expressly provided in this Agreement, Crown Castle shall assume all risk of loss to Facilities that may arise in connection with these hazards.

26.3 CITY HEREBY DISCLAIMS ANY REPRESENTATIONS AND/OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENT OR FUTURE SUITABILITY OF THE POLE(S) FOR CROWN CASTLE'S INTENDED PURPOSE.

26.4 Crown Castle acknowledges and agrees that Crown Castle bears all risk of loss or damage to the Small Cells or DAS antennas installed on the Poles pursuant to this Agreement from any cause, except for the cost of repairs to damaged Facilities to the extent caused by the negligence or willful misconduct of the City and not covered by Crown Castle's insurance. IN NO EVENT, HOWEVER, SHALL CITY BE LIABLE TO CROWN CASTLE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES RESULTING FROM ANY LOSS OR DAMAGE TO CROWN CASTLE'S FACILITIES, REGARDLESS OF WHETHER THE CITY WAS ADVISED OF, OR OTHERWISE SHOULD HAVE BEEN AWARE OF, THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE LEGAL THEORY OR BASIS FOR SUCH CLAIM.

SECTION 27. Limitation of Liability

27.1 The City and its officers, agents, elected or appointed officials, employees, departments, boards and commissions, shall not be liable to Crown Castle or to its affiliates or customers for any interference with or disruption in the operations of Crown Castle's Facilities or the provision of services, or for any damages arising out of or materially related to Crown Castle's use of the ROW, except to the extent of intentional misconduct or gross negligence on the part of the City its officers, agents, elected or appointed officials, employees, departments, boards and commissions.

27.2 Crown Castle also agrees that it shall have no recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of or materially related to any provision or requirement of the City because of the enforcement of this Agreement or because of defects in this Agreement or Tempe City Code.

SECTION 28. Term and Renewal

28.1 This Agreement shall be effective as of the date of approval of the Agreement by the City Council (the "Effective Date") and unless sooner terminated in accordance with the provisions of Sections 29 and 30, shall continue in effect for a period of ten (10) years ("Initial Term").

28.2 The term of this Agreement shall automatically be extended for two (2) additional five (5) year terms (each a "Renewal Term"), unless Crown Castle gives written notice of its intent to terminate the Agreement no later than six (6) months prior to the end of the Initial Term or Renewal Term (as applicable). The word "Term" will refer to both the Initial Term and any Renewal Term(s).

28.3 The initial term for each particular site license shall be the first day of the month following the full execution of each site license (the "Commencement Date") and shall be for an initial term of ten (10) years ("Site License Initial Term"). Each site license shall automatically be extended for two (2) successive five (5) year renewal terms (each, a "Site License Renewal Term") unless Crown Castle notifies the City in writing of Crown Castle's intent not to renew the site license at least thirty (30) days prior to the expiration of the then current term. The Site License Initial Term and all Site License Renewal Terms shall be collectively referred to herein as the "Site License Term." Notwithstanding anything herein, after the expiration of this Agreement, its terms and conditions shall survive and govern with respect to any remaining site license in effect until their expiration or termination.

28.4 Crown Castle may terminate any site license at any time during any Site License Term upon ninety (90) days prior written notice. However, Crown Castle does not have the right to terminate any time after an event of default by Crown Castle has occurred (or an event has occurred that would become a default after passage of time or giving of notice). Termination of any site license shall not affect Crown Castle's liabilities and obligations incurred under such site license prior to the effective date of such termination.

SECTION 29. Termination by Crown Castle

29.1 Crown Castle may terminate this Agreement prior to its date of expiration by providing the City with ninety (90) days written notice and only upon making arrangements satisfactory with the City Engineer to remove all Crown Castle's Facilities from public property and the ROW, unless the City Engineer agrees in writing to allow Crown Castle to abandon part or all of its Facilities in place. If the City Engineer agrees to allow Crown Castle to abandon its Facilities in place, the ownership of such Facilities, including everything permitted by City to be abandoned in place, shall transfer to City and Crown Castle shall cooperate to execute any documents necessary to accomplish such transfer within thirty (30) days of such allowance of abandonment.

29.2 Unless the City has consented to allow Crown Castle to abandon part or all of its Facilities in place, upon termination of this Agreement, Crown Castle shall remove all of its Facilities within ninety (90) days or forfeit its Deposit.

SECTION 30. Termination by City

30.1 City may, in addition to seeking any other remedy available to it, terminate this Agreement to occupy space in the ROW or the permission to attach to a particular Pole under a site license if Crown Castle neglects or refuses to comply with any of the provisions of this Agreement beyond all applicable cure periods and fails within thirty (30) days after written notice from City to correct such neglect, refusal or default provided Crown Castle shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Crown Castle commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. In the event any default is limited solely to one or more site licenses, but not the Agreement as a whole, the City's termination right shall be limited to those site licenses under which Crown Castle is in default beyond any applicable cure period.

30.2 Crown Castle's failure to maintain or procure the insurance policy(ies) as required by Section 24 shall be cause for the City to terminate this Agreement and the applicable site licenses pursuant to Section 30.1.

30.3 Crown Castle's failure to pay any amounts owed to the City after notice of such deficiency and the opportunity to cure as provided by this Agreement shall be cause for the City to terminate the applicable site licenses pursuant to Section 30.1.

30.4 Crown Castle's failure to operate its Facilities (except during specific periods expressly excused by this Agreement) once installed under any site license for a period of six (6) months within any twelve (12) month period will be grounds for the termination of the site license at that location upon sixty (60) days' notice to Crown Castle, unless within such sixty (60) day period Crown Castle commences the use of such Facilities.

30.5 This Agreement shall terminate, without notice, (i) upon the institution by or against either Party of insolvency, receivership or bankruptcy proceeding or any other proceedings for the settlement of either Party's debts, (ii) upon either Party making an assignment for the benefit of creditors or (iii) upon either Party's dissolution or ceasing to do business.

30.6 Upon termination of the right to attach to Poles, neither Party will owe any further obligations to the other under this Agreement, except for the responsibility of the Crown Castle to remove the Small Cells, DAS antennas and any other Facilities from the Poles within ninety (90) days of such termination and to pay any fees associated with Crown Castle's usage of the Poles for the time period during which Facilities were attached, the indemnities and hold harmless provisions contained throughout this Agreement, and Crown Castle's obligation to reimburse City for all costs, expenses and losses properly incurred by City pursuant to this Agreement.

30.7 In the event of the termination of this Agreement, Crown Castle shall have ninety (90) days to remove the Facilities; provided however, that Crown Castle shall be liable for and pay all fees pursuant to the terms of this Agreement to City until Crown Castle's Facilities are moved. Crown Castle shall defend, indemnify and hold City harmless from and against all loss, liability or expense resulting from such removal, including but not limited to claims of third parties.

30.8 In the event that Crown Castle fails to vacate the Pole(s) or fails to remove all of its Facilities in accordance with this Agreement, City shall have the right, after giving at least ten (10) days prior written notice to Crown Castle, to remove the remaining Facilities, in which event such Facilities may be retained by City without accounting to Crown Castle therefore, and the expense of such removal and repairs shall be charged to and paid by Crown Castle without credit for the value, if any, of such Facilities. If the Small Cell or DAS antenna is attached to a third-party owned pole, the City will only remove the non-pole-attached portions of the Small Cell or DAS. If Crown Castle does not take possession of the Small Cell or DAS and/or the non-pole-attached portions of the Small Cell or DAS within sixty (60) days from removal from the Pole(s), ownership of all portions of the Small Cell or DAS will transfer to the City, who will have the right to keep, sell or dispose of such Facilities.

30.9 Crown Castle's failure to pay the charges imposed under Section 30.8 within fourteen (14) days of the City's invoice billing for the amount will entitle the City to immediately draw upon the Deposit for the amount owed.

30.10 Termination of either this Agreement and/or the permission to attach to City Poles pursuant to any provision herein shall be commenced by delivery of written notice to Crown Castle by the City.

SECTION 31. Assignment/Pledge of Small Cells or DAS

31.1 This Agreement and the permission to attach a Small Cell or DAS antenna to a City Pole are personal to Crown Castle and Pole space is for Crown Castle's use only. Crown Castle shall not lease, sublicense, share with, convey or resell to another any such space or rights granted hereunder. Violation of this subsection will be grounds for termination under Section 30.

31.2 Crown Castle shall not transfer or assign this Agreement without City's prior written consent; provided, however, this Agreement may be sold, assigned, delegated or transferred in whole or in part by Crown Castle without any approval or consent of the City to Crown Castle's principal, affiliates, subsidiaries of its principal or to any entity which acquires all of Crown Castle's assets in the market defined by the FCC in which the ROW is located by reason of a merger, acquisition or other business reorganization. Violation of this subsection will be grounds for termination under Section 30.

31.3 Any non-permitted transfer or assignment of the right to attach the Small Cell or DAS antennas to City Poles shall be void and not merely voidable. City, may, in its sole discretion and in addition to all other lawful remedies available to City under this Agreement and in any combination terminate this Agreement, collect any fees owed from Crown Castle all without prejudicing any other right or remedy of City under this Agreement. No cure or grace periods shall apply to transfers or assignment prohibited by this Agreement or to the enforcement of any provision of this Agreement against a transferee or assignee who did not receive City's consent.

31.4 Any assignment of this Agreement will not be effective or considered approved by the City until the person or entity to whom Crown Castle is assigning this Agreement signs and delivers to City a document in which said assignee shall assume responsibility for all of Crown Castle's obligations under this Agreement.

31.5 In connection with any assignment/transfer requiring City's consent, Crown Castle shall pay to City in advance the sum of Two Thousand Dollars (\$2,000.00) as a nonrefundable fee for legal, administrative and other expenses related to every assignment/transfer.

31.6 This Section 31.6 shall not apply to any transfer and/or assignment pursuant to Section 31.2. Crown Castle must give immediate notice to the City of any sale of the Small Cell or DAS or sale/leaseback

transaction or transaction in which a third party gains a security interest in or any other type of ownership interest or financial claim to the Small Cell or DAS. Such transaction automatically revokes the permission the City has given to Crown Castle to attach the Small Cell or DAS antenna to City Poles and will be grounds for termination under Section 30. If the new owner or the entity with the security interest in the Small Cell or DAS does not enter into an acceptable agreement with the City for permission to have the Small Cell or DAS attached to the City Pole within sixty (60) days of the sale or transfer of ownership or transaction that results in a security interest in the Small Cell or DAS, permits will need to be acquired to remove the Small Cell or DAS and removal of the Small Cell or DAS needs to be completed within thirty (30) days or within ninety (90) days of the transfer of ownership (whichever is earlier).

31.7 Payment of any outstanding fees and/or any applicable attachment fee will need to be paid either by Crown Castle or the subsequent new owner before any permits will be issued. City reserves the right to draw upon the entire Deposit if such payment is not made by the end of the thirty (30) day period referenced in Section 31.6 above.

SECTION 32. Protection against Liens on Property

32.1 Crown Castle shall not do or allow or cause anything to be done whereby City's Poles may be encumbered by a construction lien or any other type of lien. Within forty-five (45) days after any lien is filed against City's Poles purporting to be for labor or materials furnished to Crown Castle, Crown Castle shall discharge or bond against such lien of record. Notice is hereby given that City will not be liable for any labor or materials furnished to Crown Castle on credit and that no construction or other lien for any such labor or materials shall attach to or affect City's interest in and to City's Poles.

32.2 Crown Castle shall indemnify, defend and hold harmless City from all claims, demands, costs and liabilities, including reasonable attorney's fees and costs, in connection with or arising out of any such lien or claim of lien.

32.3 Failure to remove any lien recorded against the Pole within forty-five (45) days of receipt of notice of recordation shall be considered a material breach of the applicable site license and grounds for termination by the City, unless there has been a good faith attempt to remove the lien.

SECTION 33. Performance Bond

33.1 Prior to receiving any permit to construct, install, maintain or perform any work on public property that requires a permit from the City pursuant to applicable City codes, Crown Castle shall cause to be filed and maintain until either completion of the construction or termination of this Agreement as determined by Crown Castle, a faithful performance bond in favor of City in the sum of One Hundred Thousand Dollars (\$100,000.00) or the amount of the construction costs (whichever is greater) to guarantee that Crown Castle shall observe, fulfill and perform each and every term of this Agreement. In case of any breach of any condition of this Agreement, any amount of the sum in the bond, up to the whole thereof, may be forfeited to compensate City for any damages it may suffer by reason of such breach. Said bond shall be acknowledged by Crown Castle, as principal, and shall be issued by a surety with an AM Best rating of A-VII or better for the last four quarters. City and Crown Castle agree that the process and procedure for drawing upon, curing, and replenishing the performance bond shall be the same as set forth below for the Deposit required in Section 34.

33.2 If Crown Castle has completed the above construction and wants the bond released, the City will need to inspect and approve the construction prior to such release. However, a performance bond will be required for each subsequent or additional construction project and/or work on public property.

SECTION 34. Deposit

34.1 Within thirty (30) days of the full execution of this Agreement, Crown Castle shall provide either a cash deposit, irrevocable letter of credit or on-demand bond to the City in the initial amount of Thirty Thousand Dollars (\$30,000.00) as a security fund (the "Deposit"). Once the number of site licenses exceeds fifteen (15), the Deposit will need to be increased/decreased annually upon notice from City to Crown Castle to reflect an amount equal to Two Thousand Dollars (\$2,000.00) per site license during the initial Term and Two Thousand Five Hundred Dollars (\$2,500.00) per site license during each Renewal Term, provided however, in no event shall the Deposit be less than Thirty Thousand Dollars (\$30,000.00). Said Deposit shall be maintained with the City for the term of this Agreement as security for the faithful performance by Crown Castle of all of the provisions of this Agreement, and compliance with all lawful orders, permits and directions of any department or office of the City having jurisdiction over its acts or defaults under this Agreement and any site license issued pursuant thereto, and the payment by Crown Castle of any fees, claims, liens and taxes due the City which arise by reason of the installation, operation or maintenance of the Small Cell or DAS, including the removal of Crown Castle's Small Cells or DAS upon termination of any site license and/or this Agreement. The Deposit shall remain with the City until all Facilities have been removed and all sums due to the City have been fully paid.

34.2 Any letter of credit or on-demand bond shall be approved by the City Attorney's Office. City shall have the full power of withdrawal of funds from the Deposit. No withdrawals shall be made from the Deposit without the prior written approval of the City Manager and no less than ten (10) business days prior written notice of intent to draw upon the Deposit to Crown Castle.

34.3 Within twenty (20) days after notice to Crown Castle that any amount has been withdrawn by City from the Deposit, Crown Castle shall deposit with the City an additional amount so that the total amount of funds available to the City is the greater of Thirty Thousand Dollars (\$30,000.00) or Two Thousand (\$2,000.00) per site license during the Initial Term and Two Thousand Five Hundred (\$2,500.00) during either the first or second Renewal Term.

34.4 If Crown Castle fails, within ten (10) business days of a notice of intent to draw on the Deposit, to either dispute the notice in writing; or pay City any taxes or fees due and unpaid; or fails to repay to City, within such ten (10) business days of such notice, any damages, costs or expenses which City shall be compelled to pay by reason of any act or default of Crown Castle in connection with this Agreement; or fails, within thirty (30) days of such notice of failure by City to dispute the notice in writing, or comply with any provision of this Agreement which City reasonably determines can be remedied by an expenditure of funds from the Deposit, City may immediately withdraw the amount thereof. Upon such withdrawal, City shall notify Crown Castle within ten (10) days thereafter of the amounts and date thereof.

34.5 Any funds that City erroneously or wrongfully withdraws shall be credited to the Deposit, with interest of one percent (1.0%) per month, within thirty (30) business days of such a determination.

34.6 Upon termination of the last remaining site license, City will return the Deposit within sixty (60) days but only after City reasonably determines that all obligations under this Agreement have been satisfied, including, but not limited to, any obligations to remove Facilities and restore the ROW to its prior condition.

SECTION 35. Crown Castle's Records

35.1 During the entire term of this Agreement, Crown Castle shall keep records and provide information to the City upon request relating to the status of the construction, repair, location or relocation of Crown Castle's Facilities.

35.2 If necessary for the City to determine Crown Castle's compliance with the terms of this Agreement or other applicable law, within ten (10) days of written notice by City of a request for disclosure, Crown Castle shall provide relevant documentation as requested by City, respond to questions, and produce relevant books and records for the City's inspection and copying. Such records shall be available to City at Crown Castle's most proximate place of business within Arizona. Crown Castle shall also require its employees, agents, and accountants to give their full cooperation and assistance in connection with City's access to such records.

35.2.1 Such documentation can include information on the type of services Crown Castle is offering its customers (but not necessarily information disclosing any particular service being provided to a specific customer) and/or the financial information used in calculating any payments or taxes due to the City under this Agreement. If Crown Castle determines that in order to respond to City's request for documentation, it must reasonably provide Proprietary Information, Crown Castle shall so mark such documentation as "Confidential."

35.2.2. Proprietary Information disclosed by Agreement shall mean any document or material clearly identified as "Confidential." Such Proprietary Information shall include, but not be limited to any customer names and lists, financial information, technical information, or other information clearly identified as "Confidential" pertaining to services provided to its customers.

35.2.3 Proprietary Information disclosed by Crown Castle to the City or its constituent departments shall be regarded as Proprietary as to third parties. If the City receives a request to disclose such information, the City shall notify Crown Castle of such request and allow Crown Castle a reasonable opportunity to defend its information from disclosure.

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

35.2.5 Notwithstanding any provision in this Agreement, Crown Castle acknowledges and understands that the City is subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. § 39-121 et seq.).

35.3 Reports. Upon request and subject to any necessary confidentiality requirements, Crown Castle shall provide to City copies of any communications and reports submitted by Crown Castle to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters directly affecting enforcement of this Agreement.

SECTION 36. Penalties for Violation of Terms

36.1 City may pursue any remedy at law, including but not limited to injunctive relief, civil trespass, and withholding other City permits and authorizations until Crown Castle complies with the terms of the Agreement or the applicable law.

36.2 Such remedies are cumulative and may be pursued in the alternative.

SECTION 37. Cancellation for Conflict of Interest.

Pursuant to A.R.S. § 38-511, City may cancel this Agreement within three (3) years after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of City is or becomes at any time while the Agreement or an extension of the Agreement is in effect an employee of or a consultant to any other party

to this Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when Crown Castle receives written notice of the cancellation, unless the notice specifies a later time.

SECTION 38. NOTICE

38.1 All notices, which shall or may be given pursuant to this Agreement, shall be in writing and transmitted through the U.S. certified or registered mail, postage prepaid, by means of prepaid private delivery systems, or by facsimile or email transmission showing a valid delivery receipt if a hard copy of the same is followed by delivery through the U.S. mail or by private delivery systems, addressed as follows:

CITY OF TEMPE:

City of Tempe - City Engineer
31 E. 5th St.
Tempe, AZ 85281
Phone: (480) 350-8200

With copies to:

Tempe City Attorney's Office
21 E. 6th St., Suite # 201
Tempe, AZ 85281
Phone: (480) 350-8227

Crown Castle:

CROWN CASTLE NG WEST LLC
c/o Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn: Ken Simon, General Counsel
(724) 416-2000

with a copy which shall not constitute legal notice to:

CROWN CASTLE NG WEST LLC
c/o Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn: Small Cell Contracts Administration
(724) 416-2000

38.2 Unofficial notice may also be given by e-mail to a designated representative of a Party.

38.3 Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above.

38.4 Crown Castle shall notify the City within ten (10) business days of any change in mailing address.

SECTION 39. Penalties for Violation of Terms

39.1 City may pursue any remedy at law, including but not limited to injunctive relief, civil trespass, and withholding other City permits and authorizations until Crown Castle complies with the terms of the Agreement or the applicable law.

39.2 Such remedies are cumulative and may be pursued in the alternative.

SECTION 40. Governing Law

It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Arizona, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts located within Maricopa County, Arizona, including federal court.

SECTION 41. Partial Invalidity

If any section, paragraph, subdivision, clause, phrase or provision of this Agreement shall be adjudged invalid or unenforceable, or is preempted by federal or state laws or regulations, the same shall not affect the validity of this Agreement as a whole or any part of the provisions of this Agreement other than the part adjudged to be invalid, unenforceable or preempted.

SECTION 42. Non-Waiver

Crown Castle shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

SECTION 43. Force Majeure

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

SECTION 44. Dispute Resolution

44.1 If any dispute or claim arises out of the interpretation, performance or breach of this Agreement, the Parties agree that upon the written demand of either Party, they will meet within two (2) weeks of such demand to attempt in good faith to resolve the dispute. The meeting will be attended by representatives of both Parties having the authority to resolve the dispute.

44.2 If the Parties fail to resolve the dispute, then the Parties agree that the dispute may be resolved through mediation. If mediation is agreed to by the disputing Parties, the disputing Parties shall mutually agree upon the services of one (1) mediator. The costs of mediation, including any mediator's fees and the costs for the use of the facilities during the meetings (if any) shall be born equally by the Parties. Each Party's costs and expenses will be borne by the Party incurring them.

44.3 If the dispute is not resolved within a reasonable time, the disputing Parties shall be free to use other remedies such as nonbinding arbitration or litigation to resolve the dispute.

SECTION 45. Amendments, Modifications or Supplements

This Agreement may not be amended, modified or supplemented except by an authorized representative of each party in a written agreement signed by both Parties. The City Manager or designee shall be considered to be an authorized representative for the City.

SECTION 46. Exhibits

All Exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement.

SECTION 47. Survival

Upon termination of this Agreement, no new site licenses will be issued and permission for the Small Cells or DAS to occupy space on the Poles or be in the ROW will terminate at the end of individual site license Term as applicable. However, all other terms and conditions of this Agreement shall survive and govern with respect to any remaining site license in effect until their expiration or termination, including any Section of this Agreement that must survive termination to fulfill its essential purpose. Notwithstanding anything herein, after the expiration of this Agreement, its terms and conditions shall survive and govern with respect to any remaining site license in effect until their expiration or termination.

This Agreement executed this ____ day of _____ 2016.

Crown Castle NG West LLC
a Delaware limited liability company,

By: 
Name: ~~Rod Hansen~~ John A. Timmerly
Title: VP/~~General Manager, SCN, West Region~~
Date: 8/19/16

City of Tempe,
An Arizona municipal corporation

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney

- Exhibit A1– DAS Pole Attachment Site License Template**
- Exhibit A2 – DAS Site License Template**
- Exhibit A3– Small Cell Pole Attachment Site License Template**
- Exhibit A4 – Small Cell Site License Template**
- Exhibit B – Conduit and Fiber Optic Cable Site License Template**

Exhibit A1
DAS Pole Attachment Site License Template
(City-Owned Pole/Replacement Pole)

Company Name:
Crown Castle NG West LLC
Site Identification Name or Number:

Distributed Antenna System (DAS)
Pole Attachment Site License for Special Use
C201 - _____

This Distributed Antenna System (DAS) Pole Attachment Site License for Special Use (“Attachment Site License”) is effective this 1st day of _____, 201__, by and between City of Tempe, an Arizona municipal corporation (“City”) and Crown Castle NG West LLC, a Delaware limited liability company (“Crown Castle”).

RECITALS

- A. City and Crown Castle have entered into a master Right-of-Way Use Agreement C2016-__ dated _____, 2016 (“ROW Use Agreement”), which sets out certain defined terms and conditions for use of the ROW and attachment to Poles (as defined).
- B. Crown Castle desires to install, own, operate and lease a Distributed Antenna System (DAS) on a certain City-owned Pole(s) in the ROW identified below subject to the requirements of this Attachment Site License and the ROW Use Agreement.
- C. In order to install the DAS antennas and related Communications Equipment, Crown Castle desires to construct supporting improvements and perform all other work shown on the Site Plan submitted to the City (collectively the “Project”).

Therefore, the Parties agree as follows:

Pole Attachment Site License Terms

- 1. ROW Use Agreement Incorporated. To the extent applicable, the provisions of the ROW Use Agreement between the City and the Crown Castle are all incorporated here by reference as if set out in full. Capitalized terms used but not defined in this Attachment Site License shall have the meanings assigned by the ROW Use Agreement. Crown Castle shall comply with the use restrictions set out in the ROW Use Agreement.
- 2. Scope of Permission. This Attachment Site License allows Crown Castle to use certain limited portions of the ROW and is issued pursuant to Section 29-19(b) of the Tempe City Code to the extent of granting permission for use of the ROW but not to allow obstruction of traffic or alteration of City’s improvements. Before performing any work in, on, above or under the ROW, Crown Castle shall obtain any other relevant permits and pay related fees, as applicable relating to work in the ROW. Unless otherwise stated, this Attachment Site License is approved for only one tenant of the DAS as identified below. No additional tenants can be added to the DAS

without getting express permission from the City to use the ROW and applying for all applicable permits and paying all related fees.

3. Tenancy. The DAS tenant is _____.
4. ROW Use Area. City holds an interest in land comprising street ROW located at _____ (“ROW Use Area”). The ROW Use Area is currently improved with an approximately _____ foot tall street light Pole owned by City. The portions of the ROW Use Area that this Attachment Site License allows Crown Castle to use are defined in the package of maps and related materials (the “Site Plan”) attached hereto as Exhibit 1. Crown Castle shall have no rights in adjacent land or ROW. Crown Castle’s rights in the Use Areas are limited to the specific rights created by the ROW Use Agreement and this Attachment Site License.
5. Site Plan. It is the Crown Castle’s responsibility before signing this Attachment Site License to ensure that the Site Plan correctly shows the work that Crown Castle intends to perform, that the Site Plan correctly shows all improvements and equipment that Crown Castle intends to be located on the ROW Use Areas, and that all areas of the ROW that will be occupied are identified. The elevations and locations actually occupied by any antennas and their supporting brackets must be identified, clearly defined and correctly labeled on the Site Plan. Any proposed generators of any type (whether permanent or temporary) must be identified, clearly defined as to specific dimensions and plan for usage and correctly labeled on the Site Plan. Any fiber optic cable within the Pole must be identified and the placement as such must be approved by the City.
 - 5.1 Any work, improvements or equipment not conforming to all the foregoing is prohibited, even if it is clearly shown on the Site Plan or discussed between the Parties.
 - 5.2 Crown Castle does not have exclusive rights to any portion of the Use Areas, unless the City has specifically agreed to give such exclusive rights as shown by an exhibit to this Attachment Site License detailing the exclusive rights area(s).
 - 5.3 Notwithstanding anything in this Attachment Site License to the contrary, the DAS and related Communications Equipment excludes any item not shown on the Site Plan.
 - 5.4 Any refinement or other change to the Site Plan after the City executes this Agreement is void, unless the Crown Castle obtains City’s approval of the change pursuant to the City’s plan approval processes and pursuant to all applicable regulatory requirements.
6. Generators. Any generators in the Use Areas must be specifically approved by the City. Generators must be equipped with well-maintained mufflers and comply with all federal, state, and local laws and regulations. Exercising a fixed generator must be confined to not more than a single session of one (1) hour or less each calendar month between the hours of 9 a.m. and 6 p.m. on a day that is not a weekend or holiday. No portable generators can be used except when power to the Communications Equipment is down during an emergency. In such case, the portable generator will need to be removed within four (4) hours after the power has been restored.
7. Enclosure. The volume of the Enclosure and the above ground portion of its pad as shown in the Site Plan is _____ cubic feet. The location, size, and appearance of the related ground-

based equipment (radios, batteries, etc.), enclosures, cabinets, and pedestals shall be as follows:

8. Completion Deadline. Crown Castle shall complete the Project and put the DAS and related Communications Equipment in full operation no later than one year from the date of the Development Plan Review completion.
9. Term of Agreement. The term of this Attachment Site License begins as of the date indicated above, which will be the first day of the month following the full execution of this Attachment Site License (the "Commencement Date") and shall be for an initial term of ten (10) years ("Initial Term"). This Attachment Site License shall automatically be extended for two (2) successive five (5) year renewal terms (each, a "Renewal Term") unless Crown Castle notifies the City in writing of Crown Castle's intent not to renew the Attachment Site License at least thirty (30) days prior to the expiration of the then current term. The City will have the ability to terminate this Attachment Site License as provided by Section 30 of the ROW Use Agreement.
10. Payments. Crown Castle shall pay to City the amount required by Section 23.2.3 of the ROW Use Agreement, which annual amount is initially \$ _____ (the "Fee"), plus a City transaction privilege tax ("TPT") of 1.8% (or the current applicable rate) pursuant to Section 23.8 of the ROW Use Agreement, which TPT amount is \$ _____. Accordingly, the total initial payment due for 201_ is \$ _____.
11. Insurance. Crown Castle will provide evidence of the insurance coverage required by Section 24 of the ROW Use Agreement and the Certificate(s) of Insurance required by Subsection I of Section 24 will be attached as Exhibit 2 to this Attachment Site License.
12. City's Notice Information.

Unless and until City give notice otherwise, any notices relating to this Attachment Site License shall be sent to:

City of Tempe
ATTN: City Engineer
31 E. 5th St., Garden Level
Tempe, AZ 85281
(480) 350-8200

13. Crown Castle's Notice Information.
 - 13.1 Crown Castle's network operations center phone number shall be (888) 632-0931.
 - 13.2 Unless and until Crown Castle gives notice otherwise, any notices relating to this Attachment Site License shall be sent to:

Crown Castle NG West LLC
c/o Crown Castle USA Inc.
2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn: E. Blake Hawk, General Counsel, Legal Department

With a copy which shall not constitute legal notice to:

Crown Castle NG West LLC
c/o Crown Castle USA Inc.
2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn: SCN Contracts Management

13.3 Crown Castle's billing address for any billing invoices is:

Crown Castle NG West LLC
c/o Crown Castle USA Inc.
Attn: _____

Site Name: _____

14. Reservation of Rights. City desires to reserve rights to construct and use and allow others to construct and use all manner of additional improvements upon the Use Areas and the ROW subject to the requirements of this Attachment Site License and the ROW Use Agreement and the rights granted to Crown Castle under those.

This Attachment Site License has been executed as of the date signed by the City below.

Crown Castle NG West LLC
a Delaware limited liability company,

By: _____
Name: Rod Hanson
Title: VP/General Manager, SCN, West Region
Dated: _____

City of Tempe,
An Arizona municipal corporation

Name: _____
Title: _____
Dated: _____

Exhibit 1 - Site Plan
Exhibit 2 – Certificate of Insurance

Exhibit A2
DAS Site License Template
(Third Party-Owned Pole)

Company Name:
Crown Castle NG West LLC
Site Identification Name or Number:

Distributed Antenna System (DAS)
Site License for Special Use
C201 - _____

This Distributed Antenna System (DAS) Site License for Special Use (“Site License”) is effective this 1st day of _____, 201__, by and between City of Tempe, an Arizona municipal corporation (“City”) and Crown Castle NG West LLC, a Delaware limited liability company (“Crown Castle”).

RECITALS

- A. City and Crown Castle have entered into a master Right-of-Way Use Agreement C2016-__ dated _____, 2016 (“ROW Use Agreement”), which sets out certain defined terms and conditions for use of the ROW.
- B. Crown Castle desires to install, own, operate and lease a Distributed Antenna System (DAS) in the portion of the ROW identified below subject to the requirements of this Site License and ROW Use Agreement.
- C. In order to install the DAS antennas and related Communications Equipment, Crown Castle desires to construct supporting improvements and perform all other work shown on the Site Plan submitted to the City (collectively the “Project”).

Therefore, the Parties agree as follows:

Site License Terms

- 1. ROW Use Agreement Incorporated. To the extent applicable, the provisions of the ROW Use Agreement between the City and the Crown Castle are all incorporated here by reference as if set out in full. Capitalized terms used but not defined in this Site License shall have the meanings assigned by the ROW Use Agreement. Crown Castle shall comply with the use restrictions set out in the ROW Use Agreement.
- 2. Scope of Permission. This Site License allows Crown Castle to use certain limited portions of the ROW and is issued pursuant to Section 29-19(b) of the Tempe City Code to the extent of granting permission to be in the ROW. Before performing any work in, on, above or under the ROW, Crown Castle shall obtain any other relevant permits and pay related fees, as applicable relating to work in the ROW. Unless otherwise stated, this Site License is approved for only one tenant of the DAS as identified below. No additional tenants can be added to the DAS without getting express permission from the City to use the ROW and applying for any applicable permits and paying all related fees.

3. Tenancy. The DAS tenant is _____.
4. The ROW is currently improved with an approximately _____ foot tall *[electrical] [light] [antenna support]* pole ("Pole").
5. The Pole is owned by _____ ("Pole Owner") and is located on the ROW at _____ *[address]*.
6. Crown Castle has entered into a pole attachment agreement with Pole Owner dated _____, 20__ whereby Crown Castle has obtained permission from Pole Owner to use the Pole in the manner described in this Agreement.
7. The portion of the ROW containing the Pole is identified in the package of maps and related materials (the "Site Plan") attached hereto as Exhibit 1. Crown Castle shall have no rights in adjacent land or additional ROW. Crown Castle's rights are limited to the specific rights created by the ROW Use Agreement and this Site License. In order to install the DAS, Crown Castle desires to construct supporting improvements and perform all work shown on the Site Plan.
8. Site Plan. It is the Crown Castle's responsibility before signing this Site License to ensure that the Site Plan correctly shows the work that Crown Castle intends to perform, that the Site Plan correctly shows all improvements and equipment that Crown Castle intends to be located in the ROW and that all areas of the ROW that will be occupied are identified. The elevations and locations actually occupied by any antennas and their supporting brackets must be identified, clearly defined and correctly labeled on the Site Plan. Any proposed generators of any type (whether permanent or temporary) must be identified, clearly defined as to specific dimensions and plan for usage and correctly labeled on the Site Plan. Any fiber optic cable within the Pole must be identified and the placement as such must be approved by the City.
 - 8.1 Any work, improvements or equipment not conforming to all the foregoing is prohibited, even if it is clearly shown on the Site Plan or discussed between the Parties.
 - 8.2 Crown Castle does not have exclusive rights to any portion of the ROW, unless the City has specifically agreed to give such exclusive rights as shown by an exhibit to this Site License detailing the exclusive rights area(s).
 - 8.3 Notwithstanding anything in this Site License to the contrary, the DAS and related Communications Equipment excludes any item not shown on the Site Plan.
 - 8.4 Any refinement or other change to the Site Plan after the City executes this Agreement is void, unless the Crown Castle obtains City's approval of the change pursuant to the City's plan approval processes and pursuant to all applicable regulatory requirements.
9. Generators. Any generators in the Use Areas must be specifically approved by the City. Generators must be equipped with well-maintained mufflers and comply with all federal, state, and local laws and regulations. Exercising a fixed generator must be confined to not more than a single session of one (1) hour or less each calendar month between the hours of 9 a.m. and 6 p.m. on a day that is not a weekend or holiday. No portable generators can be used except when power to the Communications Equipment is down during an emergency. In such case, the portable generator will need to be removed within four (4) hours after the power has been restored.

10. Enclosure. The volume of the Enclosure and the above ground portion of its pad as shown in the Site Plan is _____ cubic feet. The location, size, and appearance of the related ground-based equipment (radios, batteries, etc.), enclosures, cabinets, and pedestals shall be as follows:

11. Term of Agreement. The term of this Site License begins as of the date indicated above, which will be the first day of the month following the full execution of this Site License (the "Commencement Date") and shall be for an initial term of ten (10) years ("Initial Term"). This Site License shall automatically be extended for two (2) successive five (5) year renewal terms (each, a "Renewal Term") unless Crown Castle notifies the City in writing of Crown Castle's intent not to renew the Site License at least thirty (30) days prior to the expiration of the then current term. The City will have the ability to terminate this Site License as provided by Section 30 of the ROW Use Agreement.

12. Payments. Crown Castle shall pay to the City the amount required by Section 23.2.2.2 of the ROW Use Agreement, which shall be adjusted annually as provided by Section 23.2.2.1.1 of the ROW Use Agreement. The adjusted new amount will be effective on each anniversary date of the Commencement Date of this Site License. The initial amount of the fee is \$ _____.

12.1 Crown Castle is also responsible for payment of any applicable permit or WCF fees owed for associated ground and other equipment installed in the ROW in the amount of \$ _____ pursuant to Section 23.2.2.3 of the ROW Use Agreement.

13. Insurance. Crown Castle will provide evidence of the insurance coverage required by Section 24 of the ROW Use Agreement and the Certificate(s) of Insurance required by Subsection I of Section 24 will be attached as Exhibit 2 to this Site License.

14. City's Notice Information.

Unless and until City give notice otherwise, any notices relating to this Site License shall be sent to:

City of Tempe
ATTN: City Engineer
31 E. 5th St., Garden Level
Tempe, AZ 85281
(480) 350-8200

15. Crown Castle's Notice Information.

15.1 Crown Castle's network operations center phone number shall be (888) 632-0931.

15.2 Unless and until Crown Castle gives notice otherwise, any notices relating to this Site License shall be sent to:

Crown Castle NG West LLC
c/o Crown Castle USA Inc.
2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn: E. Blake Hawk, General Counsel, Legal Department

With a copy which shall not constitute legal notice to:

Crown Castle NG West LLC
c/o Crown Castle USA Inc.
2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn: SCN Contracts Management

15.3 Crown Castle's billing address for any billing invoices is:

Crown Castle NG West LLC
c/o Crown Castle USA Inc.
Attn: _____

Site Name: _____

16. Reservation of Rights. City desires to reserve rights to construct and use and allow others to construct and use all manner of additional improvements upon the Use Areas and the ROW subject to the requirements of this Site License and the ROW Use Agreement and the rights granted to Crown Castle under those.

This Site License has been executed as of the date signed by the City below.

Crown Castle NG West LLC
a Delaware limited liability company,

By: _____
Name: Rod Hanson
Title: VP/General Manager, SCN, West Region
Date: _____

City of Tempe,
An Arizona municipal corporation

Name: _____
Title: _____
Dated: _____

Exhibit 1 - Site Plan
Exhibit 2 - Certificate of Insurance

Exhibit A3
Small Cell Pole Attachment Site License Template
(City-Owned Pole/Replacement Pole)

Company Name:
Crown Castle NG West LLC
Site Identification Name or Number:

Small Cell Pole Attachment
Site License for Special Use
C201 - _____

This Small Cell Pole Attachment Site License for Special Use (“Attachment Site License”) is effective this 1st day of _____, 201__, by and between City of Tempe, an Arizona municipal corporation (“City”) and Crown Castle NG West LLC, a Delaware limited liability company (“Crown Castle”).

RECITALS

- A. City and Crown Castle have entered into a master Right-of-Way Use Agreement C2016-__ dated _____, 2016 (“ROW Use Agreement”), which sets out certain defined terms and conditions for use of the ROW and attachment to Poles (as defined).
- B. Crown Castle desires to install a Small Cell on certain City-owned Pole(s) in the ROW identified below subject to the requirements of this Attachment Site License and the ROW Use Agreement.
- C. In order to install the Small Cell and related Communications Equipment, Crown Castle desires to construct supporting improvements and perform all other work shown on the Site Plan submitted to the City (collectively the “Project”).

Therefore, the Parties agree as follows:

Pole Attachment Site License Terms

- 1. ROW Use Agreement Incorporated. To the extent applicable, the provisions of the ROW Use Agreement between the City and the Crown Castle are all incorporated here by reference as if set out in full. Capitalized terms used but not defined in this Attachment Site License shall have the meanings assigned by the ROW Use Agreement. Crown Castle shall comply with the use restrictions set out in the ROW Use Agreement.
- 2. Scope of Permission. This Attachment Site License allows Crown Castle to use certain limited portions of the ROW Parcel and is issued pursuant to Section 29-19(b) of the Tempe City Code to the extent of granting permission for use of the ROW but not to allow obstruction of traffic or alteration of City’s improvements. Before performing any work in, on, above or under the ROW, Crown Castle shall obtain any other relevant permits and pay related fees, as applicable relating to work in the ROW. Unless otherwise stated, this Attachment Site License is approved for only one Small Cell to be used by a single wireless provider as identified below. No additional Small

Cells can be placed in the ROW Parcel without getting express permission from the City to use the ROW and applying for all applicable permits and paying all related fees.

3. Tenancy. The Small Cell tenant is _____.
4. ROW Parcel. City holds an interest in a parcel of land (the "ROW Parcel") comprising street ROW located at _____. The ROW Parcel is currently improved with an approximately _____ foot tall street light Pole owned by City. The portions of the ROW Parcel that this Attachment Site License allows Crown Castle to use ("Use Areas") are defined in the package of maps and related materials (the "Site Plan") attached hereto as Exhibit 1. Crown Castle shall have no rights in adjacent land or ROW. Crown Castle's rights in the Use Areas are limited to the specific rights created by the ROW Use Agreement and this Attachment Site License.
5. Site Plan. It is the Crown Castle's responsibility before signing this Attachment Site License to ensure that the Site Plan correctly shows the work that Crown Castle intends to perform, that the Site Plan correctly shows all improvements and equipment that Crown Castle intends to be located on the Use Areas, and that all areas of the ROW Parcel that will be occupied are identified. The elevations and locations actually occupied by any antennas and their supporting brackets must be identified, clearly defined and correctly labeled on the Site Plan. Any proposed generators of any type (whether permanent or temporary) must be identified, clearly defined as to specific dimensions and plan for usage and correctly labeled on the Site Plan. Any fiber optic cable within the Pole must be identified and the placement as such must be approved by the City.
 - 5.1 Any work, improvements or equipment not conforming to all the foregoing is prohibited, even if it is clearly shown on the Site Plan or discussed between the Parties.
 - 5.2 Crown Castle does not have exclusive rights to any portion of the Use Areas, unless the City has specifically agreed to give such exclusive rights as shown by an exhibit to this Site License detailing the exclusive rights area(s).
 - 5.3 Notwithstanding anything in this Attachment Site License to the contrary, the Small Cell and related Communications Equipment excludes any item not shown on the Site Plan.
 - 5.4 Any refinement or other change to the Site Plan after the City executes this Agreement is void, unless the Crown Castle obtains City's approval of the change pursuant to the City's plan approval processes and pursuant to all applicable regulatory requirements.
6. Generators. Any generators in the Use Areas must be specifically approved by the City. Generators must be equipped with well-maintained mufflers and comply with all federal, state, and local laws and regulations. Exercising a fixed generator must be confined to not more than a single session of one (1) hour or less each calendar month between the hours of 9 a.m. and 6 p.m. on a day that is not a weekend or holiday. No portable generators can be used except when power to the Communications Equipment is down during an emergency. In such case, the portable generator will need to be removed within four (4) hours after the power has been restored.
7. Enclosure. The volume of the Enclosure and the above ground portion of its pad as shown in the Site Plan is _____ cubic feet. The location, size, and appearance of the related ground-based equipment (radios, batteries, etc.), enclosures, cabinets, and pedestals shall be as follows:

8. Completion Deadline. Crown Castle shall complete the Project and put the Small Cell and related Communications Equipment in full operation no later than one year from the date of the Development Plan Review completion.
9. Term of Agreement. The term of this Attachment Site License begins as of the date indicated above, which will be the first day of the month following the full execution of this Attachment Site License (the "Commencement Date") and shall be for an initial term of ten (10) years ("Initial Term"). This Attachment Site License shall automatically be extended for two (2) successive five (5) year renewal terms (each, a "Renewal Term") unless Crown Castle notifies the City in writing of Crown Castle's intent not to renew the Attachment Site License at least thirty (30) days prior to the expiration of the then current term. The City will have the ability to terminate this Attachment Site License as provided by Section 30 of the ROW Use Agreement.
10. Payments. Crown Castle shall pay to City the amount required by Section 23.2.3 of the ROW Use Agreement, which annual amount is initially \$ _____ (the "Fee"), plus a City transaction privilege tax ("TPT") of 1.8% (or the current applicable rate) pursuant to Section 23.8 of the ROW Use Agreement, which TPT amount is \$ _____. Accordingly, the total initial payment due for 201_ is \$ _____.
11. Insurance. Crown Castle will provide evidence of the insurance coverage required by Section 24 of the ROW Use Agreement and the Certificate(s) of Insurance required by Subsection I of Section 24 will be attached as Exhibit 2 to this Attachment Site License.
12. City's Notice Information.

Unless and until City give notice otherwise, any notices relating to this Attachment Site License shall be sent to:

City of Tempe
 ATTN: City Engineer
 31 E. 5th St., Garden Level
 Tempe, AZ 85281
 (480) 350-8200

13. Crown Castle's Notice Information.
 - 13.1 Crown Castle's network operations center phone number shall be (888) 632-0931.
 - 13.2 Unless and until Crown Castle gives notice otherwise, any notices relating to this Attachment Site License shall be sent to:

Crown Castle NG West LLC
 c/o Crown Castle USA Inc.
 2000 Corporate Drive
 Canonsburg, PA 15317-8564
 Attn: E. Blake Hawk, General Counsel, Legal Department

With a copy which shall not constitute legal notice to:

Crown Castle NG West LLC
 c/o Crown Castle USA Inc.

2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn: SCN Contracts Management

13.3 Crown Castle's billing address for any billing invoices is:

Crown Castle NG West LLC
c/o Crown Castle USA Inc.
Attn: _____

Site Name: _____

14. Reservation of Rights. City desires to reserve rights to construct and use and allow others to construct and use all manner of additional improvements upon the Use Areas and the ROW Parcel subject to the requirements of this Attachment Site License and the ROW Use Agreement and the rights granted to Crown Castle under those.

This Attachment Site License has been executed as of the date signed by the City below.

Crown Castle NG West LLC
a Delaware limited liability company,

By: _____
Name: Rod Hanson
Title: VP/General Manager, SCN, West Region
Date: _____

City of Tempe,
An Arizona municipal corporation

Name: _____
Title: _____
Dated: _____

Exhibit 1 - Site Plan
Exhibit 2 – Copy of Certificate of Insurance

Exhibit A4
Small Cell Site License Template
(Third Party-Owned Pole)

Company Name:
Crown Castle NG West LLC
Site Identification Name or Number:

Small Cell
Site License for Special Use
C201 - _____

This Small Cell Site License for Special Use ("Site License") is effective this 1st day of _____, 201__, by and between City of Tempe, an Arizona municipal corporation ("City") and Crown Castle NG West LLC, a Delaware limited liability company ("Crown Castle").

RECITALS

- A. City and Crown Castle have entered into a master Right-of-Way Use Agreement C2016-____ dated _____, 2016 ("ROW Use Agreement"), which sets out certain defined terms and conditions for use of the ROW.
- B. Crown Castle desires to install a Small Cell in the portion of the ROW identified below subject to the requirements of this Site License and ROW Use Agreement.
- C. In order to install the Small Cell and related Communications Equipment, Crown Castle desires to construct supporting improvements and perform all other work shown on the Site Plan submitted to the City (collectively the "Project").

Therefore, the Parties agree as follows:

Site License Terms

- 1. ROW Use Agreement Incorporated. To the extent applicable, the provisions of the ROW Use Agreement between the City and the Crown Castle are all incorporated here by reference as if set out in full. Capitalized terms used but not defined in this Site License shall have the meanings assigned by the ROW Use Agreement. Crown Castle shall comply with the use restrictions set out in the ROW Use Agreement.
- 2. Scope of Permission. This Site License allows Crown Castle to use certain limited portions of the ROW and is issued pursuant to Section 29-19(b) of the Tempe City Code to the extent of granting permission to be in the ROW. Before performing any work in, on, above or under the ROW, Crown Castle shall obtain any other relevant permits and pay related fees, as applicable relating to work in the ROW. Unless otherwise stated, this Site License is approved for only one Small Cell to be used by a single wireless provider as identified below. No additional Small Cells can be placed in the ROW Parcel without getting express permission from the City to use the ROW and applying for all applicable permits and paying all related fees.
- 3. Tenancy. The Small Cell tenant is _____.

4. The ROW is currently improved with an approximately _____ foot tall *[electrical] [light] [antenna support]* pole (“Pole”).
5. The Pole is owned by _____ (“Pole Owner”) and is located on the ROW at _____ *[address]*.
6. Crown Castle has entered into a pole attachment agreement with Pole Owner dated _____, 20__ whereby Crown Castle has obtained permission from Pole Owner to use the Pole in the manner described in this Agreement.
7. The portion of the ROW containing the Pole is identified in the package of maps and related materials (the “Site Plan”) attached hereto as Exhibit 1. Crown Castle shall have no rights in adjacent land or additional ROW. Crown Castle’s rights are limited to the specific rights created by the ROW Use Agreement and this Site License. In order to install the Small Cell, Crown Castle desires to construct supporting improvements and perform all work shown on the Site Plan.
8. Site Plan. It is the Crown Castle’s responsibility before signing this Site License to ensure that the Site Plan correctly shows the work that Crown Castle intends to perform, that the Site Plan correctly shows all improvements and equipment that Crown Castle intends to be located in the ROW and that all areas of the ROW that will be occupied are identified. The elevations and locations actually occupied by any antennas and their supporting brackets must be identified, clearly defined and correctly labeled on the Site Plan. Any proposed generators of any type (whether permanent or temporary) must be identified, clearly defined as to specific dimensions and plan for usage and correctly labeled on the Site Plan. Any fiber optic cable within the Pole must be identified and the placement as such must be approved by the City.
 - 8.1 Any work, improvements or equipment not conforming to all the foregoing is prohibited, even if it is clearly shown on the Site Plan or discussed between the Parties.
 - 8.2 Crown Castle does not have exclusive rights to any portion of the ROW, unless the City has specifically agreed to give such exclusive rights as shown by an exhibit to this Site License detailing the exclusive rights area(s).
 - 8.3 Notwithstanding anything in this Site License to the contrary, the Small Cell and related Communications Equipment excludes any item not shown on the Site Plan.
 - 8.4 Any refinement or other change to the Site Plan after the City executes this Agreement is void, unless the Crown Castle obtains City’s approval of the change pursuant to the City’s plan approval processes and pursuant to all applicable regulatory requirements.
9. Generators. Any generators in the Use Areas must be specifically approved by the City. Generators must be equipped with well-maintained mufflers and comply with all federal, state, and local laws and regulations. Exercising a fixed generator must be confined to not more than a single session of one (1) hour or less each calendar month between the hours of 9 a.m. and 6 p.m. on a day that is not a weekend or holiday. No portable generators can be used except when power to the Communications Equipment is down during an emergency. In such case, the portable generator will need to be removed within four (4) hours after the power has been restored.

10. Enclosure. The volume of the Enclosure and the above ground portion of its pad as shown in the Site Plan is _____ cubic feet. The location, size, and appearance of the related ground-based equipment (radios, batteries, etc.), enclosures, cabinets, and pedestals shall be as follows:

11. Term of Agreement. The term of this Site License begins as of the date indicated above, which will be the first day of the month following the full execution of this Site License (the "Commencement Date") and shall be for an initial term of ten (10) years ("Initial Term"). This Site License shall automatically be extended for two (2) successive five (5) year renewal terms (each, a "Renewal Term") unless Crown Castle notifies the City in writing of Crown Castle's intent not to renew the Site License at least thirty (30) days prior to the expiration of the then current term. The City will have the ability to terminate this Site License as provided by Section 30 of the ROW Use Agreement.

12. Payments. Crown Castle shall pay to the City the amount required by Section 23.2.2.2 of the ROW Use Agreement, which shall be adjusted annually as provided by Section 23.2.2.1.1 of the ROW Use Agreement. The adjusted new amount will be effective on each anniversary date of the Commencement Date of this Site License. The initial amount of the fee is \$_____.

12.1 Crown Castle is also responsible for payment of any applicable permit or WCF fees owed for associated ground and other equipment installed in the ROW in the amount of \$_____ pursuant to Section 23.2.2.3 of the ROW Use Agreement.

13. Insurance. Crown Castle will provide evidence of the insurance coverage required by Section 24 of the ROW Use Agreement and the Certificate(s) of Insurance required by Subsection I of Section 24 will be attached as Exhibit 2 to this Site License.

14. City's Notice Information.

Unless and until City give notice otherwise, any notices relating to this Site License shall be sent to:

City of Tempe
ATTN: City Engineer
31 E. 5th St., Garden Level
Tempe, AZ 85281
(480) 350-8200

15. Crown Castle's Notice Information.

15.1 Crown Castle's network operations center phone number shall be (888) 632-0931.

15.2 Unless and until Crown Castle gives notice otherwise, any notices relating to this Site License shall be sent to:

Crown Castle NG West LLC
c/o Crown Castle USA Inc.
2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn: E. Blake Hawk, General Counsel, Legal Department

With a copy which shall not constitute legal notice to:

Crown Castle NG West LLC
c/o Crown Castle USA Inc.
2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn: SCN Contracts Management

15.3 Crown Castle's billing address for any billing invoices is:

Crown Castle NG West LLC
c/o Crown Castle USA Inc.
Attn: _____

Site Name: _____

16. Reservation of Rights. City desires to reserve rights to construct and use and allow others to construct and use all manner of additional improvements upon the Use Areas and the ROW subject to the requirements of this Site License and the ROW Use Agreement and the rights granted to Crown Castle under those.

This Site License has been executed as of the date signed by the City below.

Crown Castle NG West LLC
a Delaware limited liability company,

By: _____
Name: Rod Hanson
Title: VP/General Manager, SCN, West Region
Date: _____

City of Tempe,
An Arizona municipal corporation

Name: _____
Title: _____
Dated: _____

Exhibit 1 - Site Plan
Exhibit 2 - Certificate of Insurance

Exhibit B
Conduit and Fiber Optic Cable Site License for Special Use Template

Company Name:
Crown Castle NG West LLC
Site Identification Name or Number:

**Site License for Special Use of Public Right-Of-Way for
Conduit and Fiber Optic Cable Installation**

C201 - _____

This Site License for Special Use of Public Right-of-Way for Conduit and Fiber Optic Cable Installation (“Site License”) is by and between City of Tempe, an Arizona municipal corporation (“City”) and Crown Castle NG West LLC, a Delaware limited liability company (“Crown Castle”).

RECITALS

- A. City and Crown Castle have entered into a master Right-of-Way Use Agreement C2016-____ dated _____, 2016 (“ROW Use Agreement”), which sets out certain defined terms and conditions for occupation of the ROW with an underground Conduit System (as defined).
- B. Crown Castle desires to install, operate, maintain and repair a Conduit System to provide backhaul to a DAS or Small Cell in the ROW subject to the requirements of this Site License and the ROW Use Agreement.
- C. City desires to grant to Crown Castle a license for special use to install such a Conduit System in a portion of the ROW identified in this Site License subject to the requirements of this Site License and the ROW Use Agreement.

Therefore, the Parties agree as follows:

Site License Terms

- 1. ROW Use Agreement Incorporated. To the extent applicable, the provisions of the ROW Use Agreement between the City and the Crown Castle are all incorporated here by reference as if set out in full. Capitalized terms used but not defined in this Site License shall have the meanings assigned by the ROW Use Agreement. Crown Castle shall comply with the use restrictions set out in the ROW Use Agreement.
- 2. Scope of Permission. This Site License allows Crown Castle to use a limited portion of the ROW for its Conduit System and is issued pursuant to Section 29-19(b) of the Tempe City Code to the extent of granting permission to occupy the ROW, but not to allow obstruction of traffic or alteration of City’s improvements. Before performing any work in, on, above or under the ROW, Crown Castle shall obtain any other relevant permits and pay related fees, as applicable relating to work in the ROW.

3. Conduit System Route. Crown Castle's Conduit System route is shown on Exhibit 1, which shall be kept Confidential to the extent required by law. Total linear footage for this route is _____ I.f..
4. Ownership of Conduit. Crown Castle acknowledges ownership of the Conduit being installed or has identified below the actual owner(s) of any existing Conduit being used for the route and the length of such Conduit along the route:
 - A. _____ [*Identity of Conduit owner(s)*]
 - B. _____ I.f. [*Identify the length of the leased Conduit*]
5. Ownership of Fiber. Should any portion of the Conduit System route be comprised of fiber leased by Crown Castle, Crown Castle shall identify such portions of the route to the City along with verification of the identity of the dark fiber provider through the provision of an agreement between the parties or some other documentation sufficient to establish the dark fiber lease. Total Crown Castle owned fiber linear footage for the Conduit System route is _____ I.f.
6. Ownership of Electronics Lighting the Fiber. _____ is the entity who will be lighting the A and Z ends of the circuit to connect a Node to the central hub site.
7. Dark Fiber Lessee(s). Crown Castle will be leasing its dark fiber within the Conduit System route to _____ [*Identity of lessee customer*]
8. Route Expansion. If Crown Castle desires to expand the Conduit System route through additional extensions on either end of the current route or through lateral connections to the existing route, this Site License can be amended to include such additional footage and be signed by the City Manager or designee.
9. Term of Agreement. The term of this Site License begins as of the date signed by the City below (the "Commencement Date") and shall be for an initial term of ten (10) years ("Initial Term"). This Site License shall automatically be extended for two (2) successive five (5) year renewal terms (each, a "Renewal Term"), unless Crown Castle notifies the City in writing of Crown Castle's intent not to renew the Site License at least thirty (30) days prior to the expiration of the then current term. The City will have the ability to terminate this Site License as provided by Section 30 of the ROW Use Agreement.
10. Payments. Crown Castle shall pay to City compensation for use of the ROW calculated as the rate required by Section 23.2.2.1 of the ROW Use Agreement multiplied by the total linear footage of ROW occupied by either Crown Castle owned Conduit as identified in Section 4 above or Crown Castle owned fiber identified in Section 5 above, which annual amount is initially \$_____ (the "Fee"). Such Fee will be adjusted annually as provided in Section 23.2.2.1.1 upon the fiscal year rate adjustment. If part of Crown Castle's Conduit System route involves leased Conduit containing Crown Castle owned dark fiber, the total annual fee will be calculated based on the current rate multiplied by the total linear footage of Crown Castle owned dark fiber.
11. Insurance. Crown Castle will provide evidence of the insurance coverage required by Section 24 of the ROW Use Agreement and the Certificate(s) of Insurance required by Subsection I of Section 24 will be attached as Exhibit 2 to this Site License.
12. City's Notice Information.

Unless and until City give notice otherwise, any notices relating to this Site License shall be sent to:

City of Tempe
ATTN: City Engineer
31 E. 5th St., Garden Level
Tempe, AZ 85281
(480) 350-8200

13. Crown Castle's Notice Information.

13.1 Crown Castle's network operations center phone number shall be (888) 632-0931.

13.2 Unless and until Crown Castle gives notice otherwise, any notices relating to this Site License shall be sent to:

Crown Castle NG West LLC
c/o Crown Castle USA Inc.
2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn: E. Blake Hawk, General Counsel, Legal Department

With a copy which shall not constitute legal notice to:

Crown Castle NG West LLC
c/o Crown Castle USA Inc.
2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn: SCN Contracts Management

13.3 Crown Castle's billing address for any billing invoices is:

Crown Castle NG West LLC
c/o Crown Castle USA Inc.
Attn: _____

Site Name: _____

This Site License has been executed as of the date signed by the City below.

Crown Castle NG West LLC
a Delaware limited liability company,

By: _____
Name: Rod Hanson
Title: VP/General Manager, SCN, West Region
Date: _____

City of Tempe,
An Arizona municipal corporation

Name: _____

Title: _____

Dated: _____

Exhibit 1 – Confidential – Map of Conduit System Route
Exhibit 2 – Certificate of Insurance