

**AN ORDINANCE ADOPTING REGULATIONS TO GOVERN THE CONSTRUCTION, INSTALLATION, MAINTENANCE AND REMOVAL OF SMALL WIRELESS COMMUNICATION FACILITIES IN THE RIGHT-OF-WAY; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.**

WHEREAS, pursuant to Arkansas law, the City Council of North Little Rock, Arkansas (“City”) is authorized to adopt regulations by reference (Ark. Code Ann. §14-55-207); and

WHEREAS, certain Wireless Service Providers propose to occupy public rights-of-way owned, held in trust and maintained by the City, in order to install and maintain small wireless communication facilities that will enhance data connectivity through wireless communication services; and

WHEREAS, the City recognizes the economic and social value of data connectivity and desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless communication facilities within the public rights-of-way in a manner that is: (1) safe; (2) compatible with and complementary to the provision of services by the City and others lawfully using the rights-of-way; and (3) consistent with the aesthetic standards of the City; and

WHEREAS, the City owns and operates a municipal utility (“North Little Rock Electric Department” or “NLRED”) that performs the essential public service of distributing electric power and providing light and other important services; and

WHEREAS, NLRED is responsible for safeguarding its employees and the integrity of its electric system, obtaining fair compensation for the use of its infrastructure through collection of fees and other charges, ensuring compliance with all applicable federal, state and local laws, rules and regulations, ordinances and standards and policies, and permitting fair and reasonable access to available capacity on NLRED’s infrastructure; and

WHEREAS, NLRED is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Wireless Communication Facilities on NLRED’s Poles and/or Streetlights; and

WHEREAS, City is willing to permit Wireless Service Providers to occupy City’s public rights-of-way for the placement or installation of Wireless Support Structures and Wireless Attachments, to include installation on Traffic Poles; and

WHEREAS, the City and NLRED preserve the rights to own, operate, and manage property in a proprietary manner while fairly governing the conduct of business and access to public rights-of-way.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

**SECTION 1:** That the **Small Wireless Communication Facility Regulation of the City of North Little Rock**, attached hereto as Exhibit "A" and incorporated herein by reference, is hereby adopted in its entirety.

**SECTION 2:** That three (3) copies of this ordinance shall be filed with the Office of the City Clerk and on the City web site for inspection and view by the public prior to adoption.

**SECTION 3:** That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

**SECTION 4:** That the provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall be declared or held invalid, such invalidity shall not affect the remainder of the sections, phrases or provisions.

**SECTION 5:** That any person who violates this ordinance shall be subject to a fine of no less than \$100 nor more than \$1,000 per offense, except that when an offense is, in its nature, continuous in respect to time, the person in violation shall be subject to a fine of no less than \$50 nor more than \$500 per day.

**SECTION 6:** It is hereby found and determined that improved data connectivity would improve the North Little Rock economy and enhance the ability of North Little Rock citizens to share information and that adoption of a new regulation governing the installation, maintenance, and removal of small wireless communication facilities in the City's rights-of-way is necessary to achieve these benefits in a manner that is consistent with broad City interests including the proper and orderly growth of the City of North Little Rock, Arkansas, and being necessary for the immediate preservation of the public health, safety and welfare; THEREFORE, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

\_\_\_\_\_

\_\_\_\_\_  
Mayor Joe A. Smith


SPONSORS:

ATTEST:

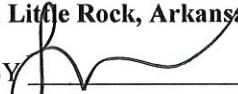
  
\_\_\_\_\_  
Mayor Joe A. Smith

\_\_\_\_\_  
Diane Whitbey, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Amy Beckman Fields, City Attorney

PREPARED BY ATTORNEY C. JASON CARTER

FILED	<u>11:30</u>	A.M.	_____	P.M.
By	<u>Amy Fields CA office</u>			
DATE	<u>1.17.18</u>			
<b>Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas</b>				
RECEIVED BY				

**Small Wireless Communication Facility Regulation**

**of the**

**City of North Little Rock, Arkansas  
("City")**

This Small Wireless Regulation (the "Regulation") dated \_\_\_\_\_, 2018 ("Effective Date") is made by the City of North Little Rock, Arkansas ("City"), a municipal corporation duly created, organized, and existing as a political subdivision of the State of Arkansas, owner and regulator of the North Little Rock Electric Department ("Utility"), supervisor and holder of public rights-of-way, and regulator of development within the City.



## Table of Contents

<b>RECITALS</b> .....	3
Article 1. Definitions .....	4
Article 2. Purpose and Scope of Regulation .....	8
Article 3. Fees and Charges .....	12
Article 4. Specifications.....	14
Article 5. Private and Regulatory Compliance .....	19
Article 6. Permit Application Procedures .....	20
Article 7. Make-Ready Work/Installation.....	23
Article 8. Post-Installation Inspections .....	25
Article 9. Abandonment of Permit.....	26
Article 10. Rearrangements and Transfers.....	26
Article 11. Pole Replacements .....	28
Article 12. Treatment of Multiple Requests for Same Pole.....	28
Article 13. Equipment Attachments.....	28
Article 14. Authorized Contractors.....	28
Article 15. Guys and Anchor Attachments.....	28
Article 16. Installation of Grounds .....	29
Article 17. Change in Utility Facilities that Forfeits Attachment Accommodations. ....	29
Article 18. Inspection.....	30
Article 19. Failure to Rearrange, Transfer or Correct.....	31
Article 20. Actual Inventory.....	32
Article 21. Unauthorized Attachments.....	32
Article 22. Reporting Requirements. ....	33
Article 23. Liability and Indemnification .....	33
Article 24. Duties, Responsibilities, and Exculpation .....	36
Article 25. Insurance.....	37
Article 26. Assignment .....	39
Article 27. Failure to Enforce .....	39
Article 29. Removal of Attachments.....	40
Article 30. Performance Bond.....	40
Article 31. Severability.....	40
Article 32. Governing Law .....	40
Article 33. Incorporation of Recitals and Appendices. ....	41
Article 34. Force Majeure. ....	41
Article 35. Casualty .....	41
APPENDIX A – FEES.....	42
APPENDIX B – DESIGN STANDARDS .....	43

## **RECITALS**

**WHEREAS**, City encourages wireless infrastructure investment and wishes to provide a fair and predictable process for the deployment of Wireless Communication Facilities while promoting proper management of the public rights-of-way in the overall interests of the public health, safety and welfare; and

**WHEREAS**, City recognizes that Wireless Communication Facilities – including facilities commonly referred to as small cells and distributed antenna systems -- are capable of delivering wireless access to advanced technology, broadband, and 911 services to residences, businesses, and schools within the City; and

**WHEREAS**, City recognizes that Wireless Communication Facilities can often be effectively deployed in public rights-of-way; and,

**WHEREAS**, City intends to fully comply with State and Federal Law to the extent it may preempt local municipal control; and

**WHEREAS**, Utility operates a municipal utility within and about City performing the essential public service of distributing electric power and providing light and other important services; and

**WHEREAS**, Utility is responsible for safeguarding the integrity of its electric system and its employees, obtaining fair compensation for the use of its infrastructure through collection of fees and other charges, ensuring compliance with all applicable federal, state and local laws, rules and regulations, ordinances and standards and policies, and permitting fair and reasonable access to available Capacity on Utility's infrastructure; and

**WHEREAS**, certain Wireless Service Providers propose to occupy City's public rights-of-way in order to install and maintain Wireless Communication Facilities and associated equipment, Wireless Service Provider's Attachments, on Utility's Poles and/or Streetlights to provide Wireless Communication Services;

**WHEREAS**, Utility is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Wireless Communication Facilities on Utility's Poles and/or Streetlights; and

**WHEREAS**, City is willing to permit Wireless Service Providers to occupy City's public rights-of-way for the placement or installation of Wireless Support Structures and Wireless Attachments; and

**WHEREAS**, City is willing to negotiate the placement of Wireless Support Structures and Wireless Attachments on City structures; such as buildings, recreational field lighting, and the like; and



**WHEREAS**, City and Utility preserve their respective rights to own, operate, and manage property in a proprietary manner while fairly governing the conduct of business and access to public rights-of-way.

**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions set out below the parties agree as follows:

**Article 1.     Definitions**

For the purposes of this Regulation, the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific Article or Section of this Regulation. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

1.1     **Affiliate**: when used in relation to a Wireless Service Provider, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with the Wireless Service Provider.

1.2     **Applicable Standards**: means all applicable engineering and safety standards governing the installation, maintenance, and operation of facilities and the performance of all work in or around electric Utility Facilities and includes the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), the American Public Power Association (“APPA”) Safety Manual, and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Regulation, and/or other reasonable safety and engineering requirements of Utility or other federal, state, or local authority with jurisdiction over Utility Facilities.

1.3     **Application**: means a request submitted by a Wireless Service Provider, or a Person acting on behalf of a Wireless Service Provider, to the Designated Office for a Permit to install Wireless Communication Facilities including approval for installation or modification of a Utility pole or Wireless Support Structure.

**Standard Application**: means an application that fully conforms to all design standards shown in Appendix B.

**Non-Standard Application**: means an Application that does not fully conform to all design standards shown in Appendix B.

1.4     **Attaching Entity**: means any public or private entity, including a Wireless Service Provider, that pursuant to an agreement with Utility or other authority, places one more Attachments on Utility’s Poles.

1.5     **Attachment(s)**: means both Wireless Communication Facilities and wireline communications wires of Wireless Service Providers and other Attaching Entities that are lawfully affixed to or installed within a Pole.

- 1.6 **Capacity**: means the ability of a Pole to accommodate the installation of an Attachment based on Applicable Standards, including space and loading considerations.
- 1.7 **City**: means the City of North Little Rock, Arkansas, a municipal corporation duly created, organized, and existing as a political subdivision of the State of Arkansas.
- 1.8 **City Facilities**: means all personal property and real property owned or controlled by City, including those used for the provision of public services and those used for other purposes.
- 1.9 **Communications Service**: means the transmission or receipt of voice, video, data, broadband Internet, or other forms of digital or analog service.
- 1.10 **Communications Space**: means the space on a Pole designated for horizontal wireline communications attachments under the NESC and other Applicable Standards.
- 1.11 **Correct**: means to perform work to bring an Attachment into compliance with Applicable Standards in a workman like condition.
- 1.12 **Days**: means calendar days unless otherwise specifically stated.
- 1.13 **Designated Office**: means the Utility's Office of Engineering and Design, or such City office as may be designated by the Mayor, where Wireless Service Providers may submit an Application.
- 1.14 **Electric Supply Space**: means the upper portion of a Pole above the communications workers safety space dedicated to electric distribution facilities under the NESC and other Applicable Standards.
- 1.15 **Emergency**: means a situation exists which, in the reasonable discretion of a Wireless Service Provider, City or Utility, if not remedied immediately, poses an imminent threat to public health, life, or safety, damage to property or a service outage.
- 1.16 **Equipment Attachment**: means each power supply, amplifier, appliance or other single device or piece of equipment associated with Wireless Communication Facilities affixed to any Utility Pole.
- 1.17 **Historic District**: means a geographically defined area within City that is empowered by City ordinance to approve or disapprove development through the issuance of a certificate of appropriateness (COA).
- 1.18 **Make-Ready or Make-Ready Work**: means all work that City or Utility reasonably determines to be required to accommodate a Wireless Communication Facility and/or to comply with all Applicable Standards. Such work includes, but is not limited to, field survey work, rearrangement and/or transfer of Utility Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), pole replacement and construction, but does not include a Wireless Service Provider's routine maintenance.



- 1.19 **Occupancy**: means the use or reservation of space for Attachments on a Pole.
- 1.20 **Overhead**: means all organizational costs that are not directly related to the cost of performing a particular task, but incurred by the Utility as necessary operational expenses, including any specified payment in lieu of taxation or internal rate of rate.
- 1.21 **Pedestals/Vaults/Enclosures**: means above- or below-ground housings that are not attached to Poles but are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices, and/or to provide a service connection point.
- 1.22 **Permit**: means written or electronic authorization executed by City and/or Utility for a Wireless Service Provider to install Wireless Communication Facilities on or within specified Poles pursuant to the requirements of this Regulation, as described within the authorization. Wireless Communication Facilities installed by a Wireless Service Provider prior to the Effective Date and previously authorized by written agreement with City and Utility (“Existing Attachments”) shall be deemed permitted hereunder.
- 1.23 **Person**: means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization that can sue or be sued, including the City.
- 1.24 **Pole**: means a Decorative Pole, Distribution Pole, Streetlight Pole, or Traffic Pole.
- Decorative Pole**: means a non-wooden pole owned or controlled by City or Utility that is specially designed to enhance the aesthetic appearance of the surrounding area. Decorative Poles are typically painted and constructed with ornamental design elements.
- Distribution Pole**: means a pole owned or controlled by Utility that is used to provide electricity and/or Communications Service
- Streetlight Pole**: means a non-Decorative Pole owned or controlled by City or Utility that is used to provide lighting or ancillary services.
- Traffic Pole**: means a pole that is owned or controlled by City and used to provide vertical support to traffic signals.
- 1.25 **Post-Installation Inspection**: means the inspection by Utility or, if permitted by Utility, inspection by Wireless Service Provider or some combination of the Utility and Wireless Service Provider to verify that Attachments have been made in accordance with Applicable Standards and the Permit.
- 1.26 **Pre-Construction Survey**: means all work or operations required by Applicable Standards and/or Utility to determine the Make-Ready Work necessary to accommodate Wireless Communication Facilities on a Pole. Such work includes, but is not limited to, field inspection and administrative processing.
- 1.27 **Reserved Capacity**: means capacity or space on a Pole that City or Utility has identified and reserved for its own future utility requirements at the time of the Permit grant pursuant to a

projected need for such use, including the installation of communications circuits for operation of Utility's electric system and/or lighting services.

1.28 **Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect wires and cables.

1.29 **Tag:** means an identification plate ("Tag") that is no smaller than 12 square inches and no larger than 36 square inches. Using font that is 12-point or larger, Tags will be permanently imprinted with the following minimum information:

1. Identity of Licensee
2. Licensee's phone number used to respond to emergencies or planned work on a 24-hour basis
3. Type of equipment
4. Serial identifier that is unique to each Wireless Communication Facility.
5. Any important safety information
6. Coded by color or other means specified by Utility and/or applicable federal, state or local regulations, that will readily identify the type of Attachment (e.g., cable TV, telephone, high-speed broadband data, public safety) and its owner.

1.30 **Traffic Pole:** means a pole that is owned or controlled by the City and used to provide vertical support to traffic signals.

1.31 **Unauthorized Attachment:** means any Attachment placed on Utility's Poles without a permit as required by this Regulation, provided the Wireless Service Provider's previously authorized Attachments made pursuant to a prior written agreement between the parties shall not be considered Unauthorized Attachments.

1.32 **Utility:** means the North Little Rock Electric Department.

1.33 **Utility Facilities:** means all personal property and real property owned or controlled by Utility, including Poles, wires, equipment, and related facilities.

1.34 **Wireless Communication Facilities:** means equipment at a fixed location that enables wireless communications between a retail user's equipment and a communication network, including: (i) equipment associated with wireless communication; (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and back-up power supplies, and comparable equipment, regardless of technological configuration. The term does not include Wireless Support Structures, wireline backhaul facilities, coaxial or fiber optic cable that is between Wireless Support Structures, ground wires, service drops or Utility Poles or coaxial or fiber optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.

1.35 **Wireless Services** means any services, whether at a fixed location or mobile, provided it is using Wireless Communication Facilities.

1.36 **Wireless Service Provider:** means a Person who sells and provides Wireless Services to the general public using Wireless Communication Facilities pursuant to one or more licenses properly issued by the FCC and other applicable authorities.

1.37 **Wireless Support Structure**: means a freestanding structure, such as: an equipment pedestal; a monopole; tower, either guyed, or self-supporting as determined by the City; billboard; or, other existing or proposed structure designed to support or capable of supporting Wireless Communication Facilities. Such term shall not include a City or Utility Pole.

## **Article 2. Purpose and Scope of Regulation**

2.1. **Purpose**: The purpose of this Regulation is to provide policies and procedures for the placement of Wireless Communications Facilities in public rights-of-way within the jurisdiction of the City, and upon City and Utility Facilities, which will preserve the integrity, safe usage, and visual qualities of the City public rights-of-way and the City as a whole. This Regulation establishes uniform standards, to be used and included in individual permits, to address issues presented by Wireless Communication Facilities including, but not limited to:

2.1.1. Prevention of interference with the use of streets, sidewalks, alleys, parkways, Utility Poles, and other public ways and places;

2.1.2. Prevention of the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

2.1.3. Prevention of interference with other facilities and operations of facilities lawfully located in City public rights-of-way or public property;

2.1.4. Protection against environmental damage, including damage to trees or shrubbery including, but not limited, those items planted pursuant to City landscaping, zoning, tree preservation, or other City policies;

2.1.5. Preservation of the character of neighborhoods in which facilities are installed;

2.1.6. Preservation of the historical character of historic structures, or historic neighborhoods, including but not limited to such structures or neighborhoods listed on the National Register of Historic Places; and,

2.1.7. Facilitation of the rapid deployment of small cell facilities to provide the citizens with the benefits of advanced wireless services.

## 2.2. **Grant of Permits.**

2.2.1. City shall grant Wireless Service Providers a revocable, nonexclusive permit authorizing the installation and maintenance of Wireless Support Structures and Wireless Communication Facilities within the City's public rights-of-way, as provided in this Regulation. Applications to install Wireless Support Structures or Wireless Communication Facilities outside of the right-of-way will be processed according to City ordinances governing the zoning and development of property.

2.2.2. Utility shall grant Wireless Service Providers a revocable, nonexclusive permit authorizing the installation of Attachments to Utility's Poles; provided that: (i) the Utility has sufficient Capacity to accommodate the requested Attachment(s), (ii) the Wireless

Service Provider meets all requirements set forth in this Regulation, and (iii) such Permit(s) comply with all Applicable Standards.

2.2.3. City may grant a Wireless Service Provider a revocable, nonexclusive permit authorizing the installation and maintenance of a Wireless Support Structure and Wireless Communication Facilities on City property, other than a Pole, upon such terms and conditions as may be approved in accordance with Arkansas law.

2.2.4. Permits issued pursuant to this regulation may be reviewed and revised by the City and/or Utility after eight (8) years from the date approved in order to advance or improve communication, aesthetic appearance or other public concern identified in Section 2.1. Within one year of any such revision, Wireless Service Providers shall: (1) cause their Wireless Support Structures and Wireless Communication Facilities to conform to revised permit requirements; or (2) cause or allow their Wireless Support Structures and Wireless Communication Facilities to be removed at the expense of the Wireless Service Provider.

### 2.3. **General Restrictions for Wireless Support Structures.**

2.3.1. No Person shall install or maintain a Wireless Support Structure within the public right-of-way without a permit issued by the City, or in violation thereof.

2.3.2. No Person shall be issued a Permit to install or maintain a Wireless Support Structure within the public right-of-way unless that Person is a Wireless Service Provider, or an Affiliate duly authorized to act on behalf of a Wireless Service Provider.

2.3.3. No Person shall install a Wireless Support Structure within the public right-of-way when suitable Utility Poles or Wireless Support Structures are available for Attachments in the public right-of-way within one hundred feet (100') of the proposed location. Provided that a Utility Pole or Wireless Support Structure can structurally support the proposed Wireless Communication Facility, the suitability of a Utility Pole or Wireless Support Structure shall be determined pursuant to the operational constraints of equipment used by the Wireless Service Provider.

2.3.4. No Person shall install a Wireless Support Structure in the right-of-way that is taller than thirty-five feet (35') in height above ground.

2.3.5. No Person shall install a Wireless Support Structure in any location that impedes or prevents the provision of lighting, electric distribution, communication, or other existing services that are provided using a City or Utility Pole.

2.3.6. No Person shall install a Wireless Support Structure in any Historic District unless and until issued a certificate of appropriateness by the historic district commission.

2.3.8. All Wireless Support Structures shall conform to design standards of Appendix B and be designed for colocation, lighting, or other services that the City deems to be useful to the public.

2.3.9 No Person shall install a Wireless Support Structure within twenty-five (25) feet of the outer curbing of an intersection. This section shall not apply to City or Utility approved Street Light Poles, Traffic Poles, and other City and/or Utility Facilities that are modified or replaced to hold a Wireless Communication Facility.

2.4. **General Restrictions for Wireless Communications Facilities.**

2.4.1. No Person shall install or maintain a Wireless Communication Facility on any City or Utility Facility without a permit issued by the Utility, or in violation thereof.

2.4.2. No Person shall be issued a Permit to install or maintain a Wireless Communications Facility on any City or Utility Facility unless that Person is a Wireless Service Provider, or an Affiliate duly authorized to act on behalf of a Wireless Service Provider.

2.4.3. No Person shall install a Wireless Communications Facility on any City or Utility Facility that impedes or prevents the provision of light, electricity, or operation of electrical equipment or other existing services that are provided using the City or Utility Facility.

2.4.4. No Person shall install a Wireless Communication Facility on any City or Utility Pole that is inaccessible from a street with a bucket truck.

2.4.5. No Person shall energize a Wireless Communication Facility unless and until the Wireless Communication Facility has passed Post-Construction Inspection in accordance with Article 8.

2.5. **Decorative Poles Restrictions.** In addition to the General Restrictions in Article 2.4, no Person shall install a Wireless Communication Facility on or within a Decorative Pole unless the specific design of the Wireless Communication Facility has been approved by the City and Utility. Applications for Permits to install a Wireless Communication Facility on or within a Decorative Pole shall be treated as a Non-Standard Application.

2.6. **Distribution Poles.** In addition to the General Restrictions in Article 2.4, no Person other than Utility shall install any Attachments within or above the Electric Supply Space on any Distribution Pole.

2.7. **Streetlight or Traffic Poles.** In addition to the General Restrictions in Article 2.4, no Person shall install a Wireless Communication Facility on or within a Streetlight or Traffic Pole that, when combined with the existing lighting equipment and other existing City and Utility Facilities, shall require more electricity than can be safely provided by the existing service line, without sufficiently upgrading the existing service line.

2.8. **Reserved Capacity.** City and/or Utility may limit access to Poles when the City and/or Utility plan to use such Poles for future purposes. At the time of Permit issuance, Wireless Service Provider shall be notified if Capacity on particular Poles is being reserved for reasonably foreseeable future use. For Attachments made with notice of such a Reservation of Capacity, on giving Wireless Service Provider at least ninety (90) calendar days prior notice, City or Utility may reclaim such Reserved Capacity at any time following the installation of a Wireless Service

Provider's Attachment if required for City's or Utility's use. If reclaimed, City or Utility may at such time also install associated facilities, including the attachment of communications lines for internal operational or governmental communications requirements. City or Utility shall give Wireless Service Provider the option to remove its Attachment(s) from the affected Poles or to pay for the cost of any Make-Ready Work needed to expand Capacity for City or Utility service requirements, so that Wireless Service Provider can maintain its Attachment on the affected Poles. The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 10. Wireless Service Provider shall not be required to bear any of the costs of rearranging or replacing its Attachment(s), if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity. The above notwithstanding, City or Utility may deny access to a particular Pole at the time of Application if City or Utility has an identified need for that Pole within the reasonably foreseeable future for future electric, illumination, communications or other municipal purposes.

2.9. **No Interest in Property.** No use, however lengthy, of any City or Utility Facility, and no payment of any fees or charges required under this Regulation, shall create or vest in any Wireless Service Provider any easement or other ownership or property right of any nature in any portion of such Facility. Neither this Regulation, nor any Permit granted under this Regulation, shall constitute an assignment of any rights of any nature by City or Utility. Notwithstanding anything in this Regulation to the contrary, Wireless Service Providers shall, at all times, be and remain permit-holders only.

2.10. **Right to Attach.** Nothing in this Regulation, other than a Permit issued pursuant to this Article 2, shall be construed as granting any Person any right to install Attachments to any specific City or Utility Pole, or poles in general.

2.11. **Rights over Poles.** This Regulation does not in any way limit City's or Utility's right to locate, operate, maintain, or remove its Poles in the manner that will best enable it to fulfill its service requirements or to comply with any federal, state, or local legal requirement and policies, including undergrounding requirements.

2.12. **Expansion of Capacity.** Nothing in this Regulation shall be construed to require City or Utility to install, retain, extend, or maintain any Pole for use when such Pole is not needed for City's or Utility's own service requirements. The above, notwithstanding Utility will not unreasonably deny a request to extend or replace a Pole upon request.

2.13. **Poles and Wireless Support Structures Owned by Wireless Service Provider.** Wireless Support Structures, and their surrounding area, owned by Wireless Service Providers shall be maintained according to this Regulation and the uniform standards of the City, as may be amended from time to time.

2.14. **Service Restoration.** Utility's service restoration requirements shall take precedence over any and all work operations of a Wireless Service Provider on Utility's Poles.

2.15. **Other Agreements.** Except as expressly provided in this Regulation, nothing in this Regulation shall limit, restrict, or prohibit Utility from fulfilling any agreement or arrangement

regarding Utility Facilities into which Utility has previously entered, or may enter in the future, with others parties.

2.16. **Permitted Uses.** Application of this Regulation is limited to the uses specifically stated in the recitals set forth above and no other use shall be allowed without the express written consent to such use by City and Utility.

2.17. **Electric Power.** To the extent a Wireless Service Provider requires electric service for its facilities it shall obtain and be responsible for payment of such power and extension of service pursuant to the applicable standard process for such service. Utility shall bill Wireless Service Provider for electric service in accordance with Section 3.6.

### **Article 3. Fees and Charges**

3.1. **Payment of Fees and Charges.** As a condition of any permit issued under Article 2, Wireless Service Providers shall pay to City and Utility the fees and charges specified in Appendix A and shall comply with the terms and conditions specified in this Regulation.

3.2. **Payment Period.** Unless otherwise expressly provided, Wireless Service Providers shall pay any invoice they receive from City and/or Utility pursuant to this Regulation within sixty (60) calendar days of receipt of invoice. If a Wireless Service Provider pays any amount under protest or dispute, then such Wireless Service Provider shall make full payment consistent with the timeframe prescribed above, and shall designate payment as "PAID UNDER PROTEST."

3.2.1. Any charges payable by Wireless Service Providers and/or City or Utility hereunder shall be billed by a party within two (2) years from the end of the calendar year in which the charges were incurred; any such charges beyond such period shall not be billed by a party and shall not be payable by the other party.

3.3. **Application Fee.** Wireless Service Providers shall pay a non-refundable Application Fee for each Wireless Communication Structure and Wireless Communication Facility to be installed in the public right-of-way in the amount stated in Appendix A. The purpose of this fee is to reimburse City and Utility for all administrative, engineering, professional and other costs related to review of the Application.

3.3.1 A single Application may include up to twenty-five (25) Wireless Communication Structures or Wireless Communication Facilities. Wireless Service Providers shall only include Wireless Communication Structures and Wireless Communication Facilities of the same type and design on a single Application.

3.3.2 City may adjust the Application Fee from time to time to cover actual and documented costs incurred in processing Applications or adjust a particular Application Fee based on documented excessive costs to the City. Any adjustment in the standard fees shown on Appendix A will be publicized for thirty (30) days before the effective date.

3.3.3 Failure to include appropriate Application Fees with Applications will cause the Application(s) to be deemed incomplete. Incomplete Application(s) will not be processed until cured.



3.4. **Attachment Fees.** Wireless Service Providers shall pay an annual Wireless Attachment Fee per Wireless Communication Facility installed on or within City or Utility Poles, as set out in Appendix A. The Wireless Attachment Fee shall be subject to periodic adjustment by a vote of the City Council.

3.5. **Right-of-Way Fees.** Wireless Service Providers shall pay the City a separate annual Right-of-Way Fee for each Wireless Communication Structure and Wireless Communication Facility occupying the right-of-way, as set out in Appendix A. The Right-of-Way Fee shall be subject to periodic adjustment by a vote of the City Council.

3.6. **Power Consumption.** In addition to the all other fees, Wireless Service Providers shall pay for electric power consumed by their Attachments according to the electric rates approved by the City. Utility will normally base charges for all Attachments by metering one Attachment and multiplying the result by the total number of Attachments.

3.7. **Billing of Attachment and Right-of-Way Fees.** Wireless Service Providers shall be invoiced for the per-pole Wireless Attachment Fees and Right-of-Way Fees annually. These fees shall be payable in advance for each Wireless Communication Facility and Wireless Communication Structure for which a Permit was issued as of October 1 of the prior calendar year (the "Record Date"). The invoices shall set forth the total number of Wireless Communication Facilities and Wireless Communication Structures of the Wireless Service Provider during the annual period as of the Record Date.

3.7.1. **Contesting Fee.** Wireless Service Providers shall have sixty (60) days from receipt of invoice to contest the invoice or any quantity or calculation within the invoice.

3.8. **Refunds.** No fees and charges specified in Appendix A shall be refunded on account of any surrender of a Permit granted under this Regulation.

3.9. **Late Charges.** If City and/or Utility does not receive payment for any fee or other amount owed within sixty (60) calendar days after it becomes due, Wireless Service Providers shall pay a late processing charge equal to five percent (5%) of the amount owed. In addition to assessing a late processing charge, if any fees or charges remain unpaid for a period exceeding ninety (90) days: (1) Wireless Service Providers shall be charged interest at the rate of ten percent (10%) per year on the amount owed; (2) City and/or Utility may discontinue the processing of Applications for new Attachments until such fees or charges are paid; and (3) City and/or Utility may disconnect electric service from Wireless Service Provider's Attachment(s) at Wireless Service Provider's expense.

3.10. **Charges and Expenses.** After the issuance of a Permit, Wireless Service Providers shall reimburse City, Utility and any other Attaching Entity for those actual, and documented costs for facilitating the installation of Attachments or for which such Wireless Service Provider is otherwise responsible under this Regulation. Such costs and reimbursements shall include, but not necessarily be limited to, all design, engineering, administration, supervision, payments, labor, Overhead, materials, equipment and applicable transportation used for work on, or in relation to such Wireless Service Provider's Attachments as set out in this Regulation or as requested by such Wireless Service Provider in writing.

3.11. **Advance Payment.** City or Utility, in their sole reasonable discretion, will determine the extent to which Wireless Service Providers will be required to pay in advance estimated costs, including, but not limited to, administrative, construction, inspections, and Make-Ready Work costs, in connection with the initial installation or rearrangement of such Wireless Service Provider's Attachments pursuant to the procedures set forth in Articles 6 and 7 below.

3.12. **True-Up.** Whenever City or Utility requires advance payment of estimated expenses prior to undertaking an activity on behalf of a Wireless Service Provider and the actual cost of the activity exceeds the advance payment of estimated expenses, Wireless Service Providers must pay the difference in cost, provided that costs are documented with sufficient detail to enable a Wireless Service Provider to verify the charges. To the extent that City's or Utility's actual cost of the activity is less than the estimated cost, the difference in cost shall be refunded to the Wireless Service Provider.

3.13. **Determination of Charges.** Wherever this Regulation requires a Wireless Service Provider to pay for work done including applicable Overhead cost or contracted by City or Utility, the charge for such work shall include all reasonable material, labor, engineering, administrative, and applicable Overhead costs. City and Utility shall bill their services based upon actual costs, and such costs will be determined in accordance with the cost accounting systems used for recording capital and expense activities. Consistent with Article 19, if a Wireless Service Provider was required to perform work and fails to perform such work within the specified timeframe, and City or Utility performs such work, the Wireless Service Provider may be charged for actual and documented costs for completing such work.

3.14. **Work Performed by City or Utility.** Wherever this Regulation requires City or Utility to perform any make ready work, City or Utility, at their sole discretion, may utilize its employees or contractors, or any combination of the two, to perform such work.

3.15. **Charges for Incomplete Work.** In the event that a Permit is awarded to a Wireless Service Provider and then steps are taken by City and/or Utility to facilitate construction by performing necessary engineering and administrative work and the Permit is subsequently abandoned or canceled by Wireless Service Provider, such Wireless Service Provider shall reimburse Utility for all of the actual and documented costs incurred by Utility through the date of cancellation, including engineering, clerical and administrative and Make-Ready construction costs.

#### **Article 4.     Specifications**

4.1. **Installation.** Wireless Communication Facilities and Wireless Support Structures, in each and every location, shall be erected and maintained in accordance with the requirements and specifications of Applicable Standards, including the latest revision of the National Electric Code (NEC) and National Electrical Safety Code (NESC), as may be amended from time to time, and in compliance with any construction standards now in effect or that may hereafter be issued by City or Utility (provided such construction standards are not inconsistent with this Regulation and are applied on a non-discriminatory basis) or any rules or orders of a governmental authority having jurisdiction. The location of any Attachment may be reasonably re-designated from time to time to accommodate other Attaching Entities for reasons of electrical

service safety or reliability, with costs allocated in accordance with Article 10.2. Notwithstanding the foregoing, with respect to any Attachment that was in compliance with the Applicable Standards, including NESC or Utility construction standards, at the time such Attachment was made but has become noncompliant because of revisions to the NESC or Utility construction standards, Wireless Service Providers shall be required to bring their Attachments into compliance with then-current standards only in connection with relocation, pole replacement, or rebuild affecting such Attachment or in the event such noncompliance creates an imminent threat to public safety. When maintenance or repair work is needed with respect to noncompliance with Applicable Standards as set forth in this Section, the actual costs of maintenance, repair, and inspection shall be borne by Wireless Service Providers.

4.2. **Limitations.** Absent Utility's prior written permission, the following limitations shall apply to Wireless Communication Facilities installed on Utility's Poles:

4.2.1. **Pole Top Installation.** Wireless Communication Facilities will only be installed below the Electric Supply Space on Poles used for electric distribution, in compliance with Applicable Standards.

4.2.2. **One Wireless Communication Facility Per Pole.** No more than one Wireless Communication Facility may be installed on a single Utility Pole (a single facility installation consisting of multiple antennas or nodes may be permissible).

4.2.3. **Poles with Distribution Equipment Installed.** In determining whether a particular Pole has sufficient capacity to accommodate a proposed Wireless Communication Attachment, the Utility shall deny access if existing electric equipment installed on the Pole (including without limitation: transformers, capacitors, reclosers, sectionalizers, voltage-regulators, voltage-regulator racks, primary metering, gang operated switches, and any other equipment being used by the Utility) would, in the Utility's reasonable judgment, preclude the attachment of additional facilities.

4.2.4. **Accessible by Bucket Truck.** In order to ensure a clear and safe climbing path for utility linemen, Wireless Communication Facilities may only be installed on Poles that are less than 50 feet above ground in height and that are accessible from the street by a Utility bucket truck.

4.2.5. **Pedestals.** Absent Utility's approval, no Pedestals, Vaults, and/or other Enclosures shall be placed within six (6) feet of any Utility Pole or other Utility Facilities. If permission is granted, all such installations shall be per the Applicable Standards. Further, Wireless Service Providers must move any such above-ground enclosures at such Wireless Service Provider's expense in order to provide sufficient space for Utility to set a replacement Pole.

4.2.6. **Installations within Certain Distance from Utility Substations.** No permit Applications will be approved for the installation of Wireless Communication Facilities on Utility Poles within three-hundred (300) feet of any Utility electric substation's outer fence.

4.3. **Request of a Waiver.**

4.3.1. Requests to waive any City requirements applicable to a new Wireless Support Structure must be made in writing by a Wireless Service Provider to the City's Planning Department for submission to the Board of Zoning Adjustments, with notice to Utility, either before or at the time of Permit Application submission. The request must specifically identify the provision requested to be waived, justification for requesting the granting of the waiver, and the proposed solution as a result of the waiver. City shall notify the Wireless Service Provider in writing within sixty (60) days of receiving a request for waiver as to whether the request is granted in whole or in part. The request will be considered according to the normal rules and procedures of the Board of Zoning Adjustments.

4.3.2. Requests to waive any other requirements must be made in writing by the Wireless Service Provider to the Utility's senior employee, or his designee, either before or at the time of Permit Application submission. The request must specifically identify the Applicable Standard or provision requested to be waived, justification for requesting the granting of the waiver, and the proposed solution as a result of the waiver. Utility shall notify the Wireless Service Provider in writing within thirty (30) days of receiving a request for waiver as to whether the request is granted in whole or in part. Utility will not grant any waiver which in the sole opinion of Utility will result in a violation of the NESC or other applicable federal, state, or local law, regulation, or ordinance.

4.3.3. Notwithstanding the foregoing, in the event a request for waiver for a particular Wireless Communication Facility requires approval by both City and Utility, City and Utility shall work together to coordinate a joint-response in order not to unreasonably delay or interfere with Wireless Service Provider's proposed Permit.

4.4. **Maintenance of Facilities.** Wireless Service Providers shall, at their own expense, make and maintain their Attachment(s) and Wireless Communication Facilities in safe condition and good repair, in accordance with all Applicable Standards. All maintenance work on Wireless Communication Facilities located below the Electric Supply Space shall only be performed by qualified personnel. During the period described in Section 2.2.4, Wireless Service Providers shall not be required to update or upgrade its Attachments if they met Applicable Standards at the time they were made; provided, however, Wireless Service Provider shall update or upgrade the Attachment in connection with relocation, pole replacement or rebuild affecting such Attachment or in the event such update or upgrade is required or necessary in order to resolve an imminent threat to public safety.

4.5. **Tagging.** Upon installation, Wireless Service Providers shall affix a Tag to any pole or structure upon which Licensee's Wireless Communication Facilities have been installed and to the exterior of any ground-mounted Wireless Communication Facilities. The Tag will be constructed of aluminum or other material of extended durability. Tags will be installed approximately 66" above ground level on any pole or structure to which a Wireless Communication Facility has been installed.

4.6. **Interference.** Wireless Service Providers shall not allow their Wireless Communication Facilities to impair the ability of City, Utility or any third party to use Utility's Poles including telecommunications already on the poles, nor shall any Wireless Service Provider allow its Wireless Communication Facilities to interfere with the operation of any City facilities, Utility Facilities or third-party facilities. Neither City nor Utility will grant after the date of this Regulation a permit, license or any other right to any third party, if at the time such third party applies for access to a Pole Utility knows or has reason to know that such third party's use may in any way adversely affect or interfere with the Wireless Service Provider's existing Attachments or Wireless Communication Facilities, Wireless Service Provider's use and operation of its facilities, or Wireless Service Provider's ability to comply with the terms and conditions of this Regulation.

4.6.1. **RF Responsibility.** Wireless Service Providers are solely responsible for the radio frequency ("RF") emissions emitted by its Wireless Communication Facilities and associated equipment, ensuring that the RF exposure from its emissions are within the limits permitted under all applicable rules of the FCC. City and Utility are solely responsible for the RF emissions emitted by its equipment or facilities and ensuring that the RF exposure from its emissions are within the limits permitted under all applicable rules of the FCC.

4.6.2. **Signage.** To the extent required by FCC rules and/or applicable local, state or federal law, Wireless Service Providers shall install appropriate signage to notify workers and third parties of the potential for exposure to RF emissions. The signage will be placed so that it is clearly visible to workers who climb the pole or ascend by mechanical means.

4.6.3. **Duty to Others.** Wireless Service Providers shall be under a duty and obligation in connection with the operation of its facilities to protect against RF interference to the RF signals of City, Utility, all Wireless Service Providers, and any other Attaching Entities. Utility shall be under no obligation to remedy or resolve RF interference among Wireless Service Providers or other Attaching Entities, and shall not be liable for any such RF interference among Wireless Service Providers or other Attaching Entities. Utility will, however, endeavor to have all Attaching Entities coordinate and cooperate with each other relating to the resolution of interference. Notwithstanding the foregoing, in the event City's or Utility's operations create RF interference to Wireless Service Providers or other Attaching Entities, City or Utility shall endeavor to correct such RF interference promptly and shall cooperate with the other parties relating to the correction.

4.7. **Protective Equipment.** Each Wireless Service Provider and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and facilities pursuant to FCC and Utility rules and requirements. Each Wireless Service Provider shall, at its own expense, install protective devices designed to handle the electric voltage and current carried by Utility's Facilities. Every Permit issued pursuant to this Regulation shall bear the warning and condition that NEITHER CITY NOR UTILITY SHALL BE LIABLE FOR ANY ACTUAL OR CONSEQUENTIAL DAMAGES TO WIRELESS COMMUNICATION FACILITIES, WIRELESS SERVICE PROVIDER'S CUSTOMERS' FACILITIES, OR TO ANY OF WIRELESS SERVICE PROVIDER'S EMPLOYEES, CONTRACTORS, CUSTOMERS, OR

OTHER PERSONS, EXCEPT TO THE EXTENT CAUSED BY UTILITY'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT.

4.8. **Safety Briefing.** Wireless Service Providers shall prepare a written "Safety Briefing" suitable for City and Utility employees and contractors who may be required to work near and/or around such Wireless Communication Facilities.

4.9. **Signage and Cut-Off Switch.** Each Wireless Service Provider shall install a lockable power cut-off switch as directed by Utility and consistent with Applicable Standards and Utility specifications for every Pole to which such Wireless Service Providers has attached facilities that can emit RF energy. Utility will specify instances where these power cut-off facilities and associated equipment need to be pad mounted. The cut-off switch will allow for the power source and any back-up power sources to be disconnected. If required by City and/or Utility, the power source must also be equipped with an external indicator light to provide certainty that the power has been disconnected. Wireless Service Providers shall provide Utility with access to disconnect switch by providing keys or combinations to the lock. Disconnect and meter sockets must be installed according the Utility's standards. RF caution signs shall be installed according to Applicable Standards.

4.10. **Cut-Off Procedure.** In ordinary circumstances, City and/or Utility's authorized field personnel will contact the applicable Wireless Service Provider's designated point of contact to inform a Wireless Service Provider of the need for a temporary power shut-down. Upon receipt of the call, the Wireless Service Provider will power down its antenna remotely, the power-down will occur during normal business hours and City and/or Utility will endeavor to provide 24 hours' advance notice. In the event of an unplanned power outage or other unplanned cut-off of power, or an Emergency, the power-down will be with such advance notice at City's and/or Utility's sole discretion and, if circumstances warrant, employees and contractors of City and/or Utility may accomplish the power-down by operation of the power disconnect switch without advance notice to the Wireless Service Provider and shall notify the Wireless Service Provider as soon as possible. In all such instances, once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power-down shall restore power and inform the other party as soon as possible that power has been restored.

4.11. **Emergency Contact Information.** Each Wireless Service Provider shall provide emergency after hours contact information to City and Utility to ensure proper notification in case of an emergency. Information will include 24/7 telephone, cell phone and pager information, a list of duty managers by district and escalation procedures. Wireless Service Providers shall provide Utility with updated emergency contact information on an annual basis and whenever changes are made.

4.12. **Violation of Specifications.** If a Wireless Service Provider's Attachments, or any part of them, are installed, used, or maintained in violation of this Regulation, and Wireless Service Provider has not Corrected the violation(s) within thirty (30) days from receipt of written notice of the violation(s) from Utility, the provisions of Article 19 shall apply. When City or Utility believes that any violation(s) by a Wireless Service Provider poses an imminent threat to the safety of any person, interfere with the performance of City's or Utility's service obligations, or present an imminent threat to the physical integrity of Utility Poles or facilities, Utility may perform such

work and/or take such action as it deems reasonably necessary without first giving written notice to any Wireless Service Provider. As soon as practicable afterward, the Wireless Service Provider will be advised of the work performed or the action taken. The Wireless Service Provider shall be responsible for all actual and documented costs incurred by City or Utility in taking action pursuant to this Article 4.12.

4.13. **Removal of Nonfunctional Attachments.** At its sole expense, each Wireless Service Provider shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service (“Nonfunctional Attachment”) as provided in this Section 4.13. Except as otherwise provided in this Regulation, each Wireless Service Provider shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless the Wireless Service Provider receives written notice from City or Utility that removal is necessary to accommodate City’s, Utility’s or another Attaching Entity’s use of the affected Pole(s), in which case the Wireless Service Provider shall remove the Nonfunctional Attachment within ninety (90) days of receiving the notice. After the time designated for removal, Utility may, in its sole discretion, remove and dispose of the Nonfunctional Attachment and Wireless Service Provider shall be responsible for the costs therefor.

## **Article 5. Private and Regulatory Compliance**

5.1. **Necessary Authorizations.** Before a Wireless Service Provider occupies any of City’s or Utility’s Poles, the Wireless Service Provider shall obtain from the appropriate public or private authority, or from any property owner or other appropriate Person, any required authorization to construct, operate, or maintain its Wireless Communication Facilities on public or private property. City and Utility retain the right to require evidence that appropriate authorization has been obtained before any Permit is issued to a Wireless Service Provider. A Wireless Service Provider’s obligations under this Article 5 include, but are not limited to, its obligation to obtain and pay for all necessary approvals to occupy public/private rights-of-way and easements from entities other than City, and all necessary licenses and authorizations to provide the services that it provides over its Wireless Communication Facilities from entities other than City. As a condition of every permit, WIRELESS SERVICE PROVIDERS SHALL DEFEND, INDEMNIFY, AND REIMBURSE CITY AND UTILITY FOR ALL LOSSES, COSTS, AND EXPENSES, INCLUDING REASONABLE ATTORNEY’S FEES, THAT CITY AND/OR UTILITY MAY INCUR AS A RESULT OF CLAIMS BY GOVERNMENTAL BODIES, OWNERS OF PRIVATE PROPERTY, OR OTHER PERSONS THAT A WIRELESS SERVICE PROVIDER DOES NOT HAVE SUFFICIENT RIGHTS OR AUTHORITY TO ATTACH WIRELESS SERVICE PROVIDER’S WIRELESS COMMUNICATION FACILITIES ON UTILITY’S POLES TO PROVIDE PARTICULAR SERVICES.

5.2. **Sufficiency of Public Rights-of-Way.** Neither City nor Utility makes any representation or warranty of any nature that its existing or future public rights-of-way, easements or other property rights, private or public, were, are or will be sufficient to permit the attachment, maintenance, replacement, relocation, repair, or modification of Attachments on any City or Utility Poles.

5.3. **Lawful Purpose and Use.** All Wireless Communication Facilities and Wireless Support Structures must at all times serve a lawful purpose, and the use of such Wireless Communication



Facilities and Wireless Support Structures must comply with all applicable federal, state and local laws.

5.4. **Forfeiture of City's or Utility's Rights.** No Permit granted under this Regulation shall extend, or be deemed to extend, to any of City's or Utility's Poles or other City or Utility Facilities, to the extent that a Wireless Service Provider's Attachment would result in a forfeiture of City's or Utility's rights. Any Permit that would result in forfeiture of City's or Utility's rights shall be deemed invalid as of the date that City and/or Utility granted it. Further, if any Wireless Service Provider's existing Wireless Communication Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, such Wireless Service Provider shall remove its Wireless Communication Facilities within sixty (60) days of receipt of written notice from City or Utility. If the Wireless Service Provider does not remove its Wireless Communication Facilities in question within sixty (60) days of receiving written notice from City or Utility, City or Utility may at its option perform such removal at the Wireless Service Provider's expense. Notwithstanding the forgoing, Wireless Service Providers shall have the right to contest any such forfeiture before any of its rights are terminated, provided that such Wireless Service Provider shall indemnify City and Utility for liability, costs, and expenses, including reasonable attorney's fees, which may accrue during Wireless Service Provider's challenge.

5.5. **Effect of Consent to Construction/Maintenance.** Consent by City or Utility to the construction or maintenance of any Attachments by a Wireless Service Provider shall not be deemed consent, authorization, or acknowledgment that the Wireless Service Provider has obtained all required Authorizations with respect to such Attachment.

## **Article 6. Permit Application Procedures.**

### **6.1. Permit Required.**

6.1.1. Before installing any Wireless Communication Facility or Wireless Support Structure in a right-of-way, a Wireless Service Provider, or an Affiliate duly authorized to act on behalf of a Wireless Service Provider, shall submit an Application to the Designated Office and receive a Permit therefor, with respect to each such Wireless Communication Facility or Wireless Support Structure.

6.1.2. Subject to Section 7.7.3, before making any original Attachment to any City or Utility Facility, a Wireless Service Provider or an Affiliate duly authorized to act on behalf of a properly licensed and authorized Wireless Service Provider, shall submit an Application and receive a Permit therefor from the City or Utility, with respect to each such Utility Pole or Utility Facility.

6.2. **Professional Engineer.** Unless otherwise waived in writing by Utility, as part of the Utility's Pole Attachment Permit Application process, and at the Wireless Service Provider's sole expense, a qualified and experienced professional engineer, or an employee or contractor of the Wireless Service Provider who has been approved by Utility, must undertake and complete the engineering design and pole loading analyses calculations required in completing a Permit Application, participate in the Pre-Construction Survey, conduct the Post-Construction Inspection, and certify that the Wireless Service Provider's Wireless Communication Facilities can be and were

installed on the identified Poles in compliance with the Applicable Standards and in accordance with the Permit. The professional engineer's qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems, and unless otherwise waived by Utility, such engineer must be licensed in the State of Arkansas. The Utility may require the Wireless Service Provider's professional engineer, employee or contractor to conduct a post-construction inspection that the Utility will verify by means that it deems to be reasonable.

6.2.1. **Pre-Existing Attachments.** Unless updates or upgrades are required by Applicable Standards, or unless Utility provides notice to the contrary, Wireless Service Providers shall not be required to obtain Permits for authorized Attachment(s) existing as of the effective date of this Regulation. Such grandfathered Attachments shall, however, be subject to the Attachment Fees specified in Appendix A. Wireless Service Providers shall provide City and Utility a list of all such pre-existing Attachments within six (6) months of the Effective Date of this Regulation but shall be subject to notification requirements.

6.3. **Submission of Application for Attachment Permit.** Wireless Service Providers shall submit a properly executed Application, which, unless otherwise agreed by Utility, shall include a survey and detailed plans for the proposed Attachments, including a description of any necessary Make-Ready Work to accommodate the Attachments, certified by a licensed professional engineer or City or Utility approved employee or contractor of Wireless Service Provider. Wireless Service Providers shall use the Application form provided. The City or Utility may amend the Application form from time to time, provided that any such changes are not inconsistent with the terms of this Regulation, and are applied to all Attaching Entities on a non-discriminatory basis and reasonable advance written notice is provided to Wireless Service Provider of such changes. City's or Utility's acceptance of the submitted design documents does not relieve any Wireless Service Provider of full responsibility for any errors and/or omissions in the engineering analysis.

6.3.1 Each Application for Wireless Communication Facilities may contain applications for up to a maximum of twenty-five (25) locations, provided that the proposed Wireless Communication Facilities to be installed at each such location are of the same size, type and configuration.

6.3.2 Each Application shall contain a detailed description of the Wireless Communication Facilities proposed to be installed, including type of equipment, certification as to approval of FCC equipment compliance, the installation design, pole loading calculations, RF interference studies and documentation (datasheets and technical specifications of the antenna system) that confirms all RF emissions comply with applicable laws governing RF exposure levels, including FCC OET Bulletin 65.

6.3.3 Each Application shall include a proposed attachment submittal of each device or design that has not been previously approved, which shall be considered a Non-Standard Application.

6.3.4 Wireless Service Providers shall utilize generally accepted industry standard software for the pole loading analysis, including SPIDA Calc.

6.3.5 Reserved.

6.3.6 Each Permit Application shall contain a Safety Briefing for the type of Wireless Installation proposed, if not previously approved.

6.3.7 No Wireless Service Provider, nor any Person acting on behalf of a Wireless Service Provider shall simultaneously submit more than one Permit Application. No Wireless Service Provider, nor any Person acting on behalf of a Wireless Service Provider, shall submit a Permit Application while such Wireless Service Provider has a Permit Application under review.

6.4. **Review of Application for Attachment Permit.** Permit Applications shall be reviewed in the order received. Unless otherwise agreed, under normal circumstances, the Permit Application review process shall be as follows:

6.4.1. **Application for Attachment with Survey.** If a Wireless Service Provider's Application includes a survey and detailed plans for the proposed Attachments, including a description of any necessary Make-Ready to accommodate the Attachments, City or Utility shall review and respond to such properly executed and complete Permit Application for routine installations as promptly as is reasonable, providing a response during normal circumstances within ninety (90) days of receipt.

6.4.1.1. City's or Utility's response will either: (i) concur with the proposed Make-Ready as described in the Wireless Service Provider's Application and engineering survey and provide a cost estimate for the Utility's portion of that Make-Ready (ii) provide the Wireless Service Provider a revised Make-Ready analysis based on what Make-Ready Work Utility reasonably determines is required as well as providing the Wireless Service Provider a cost estimate for the Utility's portion of that Make-Ready work; or (iii) provide a written explanation as to why the Application is being denied, in whole or in part, for reasons of safety, reliability or insufficient Capacity that cannot be resolved consistent with Applicable Standards, including City and County zoning and construction ordinances.

6.4.2. **Application for Attachment Without a Survey.** Utility in its sole discretion may authorize a Wireless Service Provider to submit an Application without a Pre-Construction Survey (including a description of necessary Make-Ready). In such case, Utility or its contractor Engineer shall review the Application and perform a Pre-Construction Survey, and, if the Attachment can be accommodated consistent with Applicable Standards, prepare a description of any necessary Make-Ready to accommodate the proposed Attachment. Under normal circumstances, Utility will respond to such properly executed and complete Permit Application for routine installations as promptly as is reasonable, with a goal of providing a response within ninety (90) days of receipt.

6.4.2.1. A field survey will be required for each Attachment requested to determine the adequacy of the Pole to accommodate the proposed Wireless

Communication Facilities. Utility shall assess the Wireless Service Provider the actual and documented costs of the survey(s).

6.4.2.2. Utility's response will either: (i) provide a description of Make-Ready identified by Utility and a cost estimate for the Utility's portion of that Make-Ready; or (ii) provide a written explanation as to why the Application is being denied, in whole or in part.

6.4.2.3. If Utility does not meet the timeframe described in this Section 6.4.2 to complete the Pre-Construction Survey, the Wireless Service Provider may, at its option, hire a Utility approved professional engineer or an approved Wireless Service Provider employee or contractor to conduct the Survey. Any such Pre-Construction Survey shall be subject to review and approval by Utility.

6.4.3 Response to Estimate. Upon receipt of Utility's response, a Wireless Service Provider shall have sixty (60) days to approve the estimate of any proposed Make-Ready Work and, if advance payment is required, provide payment in accordance with this Regulation and the specifications of the estimate.

6.5. **Permit for Installation in Public Right-of-Way.** Wireless Service Providers shall submit a properly executed Permit Application to the City which accurately describes the location, dimensions, and appearance of any Wireless Communication Facilities or Wireless Support Structures to be installed in the public right-of-way, along with other information required by this Regulation. Designated City and Utility employees may administratively approve Applications to install attachments of Wireless Communication Facilities to City Poles and Utility Poles, respectively, and installation of Wireless Support Structures upon payment of proper fees by the Applicant, provided that the Application fully complies with all requirements of this Regulation and meets the design standards of Appendix B. Noncompliant Applications may only be approved by designated City and Utility employees when fully compliant with City ordinances and aesthetic standards. The denial of a permit may be appealed in accordance with Section 4.3

6.6. **Permit as Authorization to Attach.** Upon completion and inspection of any necessary Make-Ready Work and receipt of payment for such work, City and/or Utility will sign and return the Permit Application, which shall serve as authorization for the Wireless Service Provider to make its Attachment(s).

6.7. **Notification to Utility.** Within thirty (30) days of completing the installation of an Attachment, each Wireless Service Provider shall provide written notice and as-builts, as required to Utility.

## **Article 7. Make-Ready Work/Installation**

7.1. **Estimate for Make-Ready Work.** As per Article 6, if Utility determines that it can accommodate a Wireless Service Provider's request for Attachment(s), it will advise the Wireless Service Provider of any estimated Make-Ready Work charges necessary to accommodate the Attachment.

7.2. **Who May Perform Make-Ready.** Make-Ready Work shall be performed only by Utility and/or a qualified contractor authorized by Utility to perform such work.

7.2.1. Unless otherwise agreed by Utility, only Utility or its contractor will set any new or replacement Poles or perform Make-Ready in the electric supply space.

7.3. **Time Frame for Completion of Make-Ready.** If Utility, or its contractor, is performing Make-Ready Work it will use good faith efforts to complete routine Make-Ready Work within ninety (90) days of receipt of the Wireless Service Provider's approval of the Make-Ready estimate (and advance payment if required). If there are extenuating circumstances that make the necessary Make-Ready Work more complicated or time-consuming, including, but not limited to, the relative novelty of the type of Wireless Communication Facilities and associated equipment to be attached, the total number of Poles upon which Utility is currently obligated to perform Make-Ready Work, or seasonal weather conditions, Utility shall identify those factors in the Make-Ready description and cost estimate and the parties shall agree upon a reasonable timeframe for completion. If Utility does not complete agreed upon Make-Ready work within ninety (90) days, or the agreed-upon timeframe, it may allow the Wireless Service Provider to use a Utility approved qualified contractor to complete such Make-Ready Work and refund any amounts paid by the Wireless Service Provider to Utility for performing such Make-Ready Work that is not completed.

7.3.1. Utility may delay the time period for completion of Make-Ready work by written notice in order to respond to severe storms, natural disasters, or other emergency situations.

7.4. **Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Wireless Service Provider's Attachments, Utility will endeavor to include such work in its normal work schedule. If a Wireless Service Provider requests, and Utility agrees, to perform Make-Ready Work on a priority basis or outside of Utility's normal work hours, the Wireless Service Provider will pay any resulting increased actual and documented costs. Nothing in this Regulation shall be construed to require Utility to perform a Wireless Service Provider's work before other scheduled work or Utility service restoration.

7.5. **Payment for Make-Ready Work.** Upon completion of the Make-Ready Work performed by Utility, Utility shall invoice the Wireless Service Provider for Utility's actual and documented cost of such Make-Ready Work. The costs of the work shall be itemized in accordance with Article 3, and if Utility received advance payment, the costs shall be trued up in accordance with Article 3. Each Wireless Service Provider shall be responsible for entering into an agreement with other existing Attaching Entities to reimburse them for any costs that they incur in rearranging or transferring their facilities to accommodate the Wireless Service Provider's Attachments.

7.6. **Notification of Make Ready Work.** Before starting Make-Ready Work, Utility shall notify all existing Attaching Entities of the date and location of the scheduled work and notify them of the need to rearrange and/or transfer their facilities at the Wireless Service Provider's cost within the specified time period. To the extent that Utility has the legal authority, it shall rearrange and/or transfer existing facilities of such other Attaching Entities that have not been moved in a timely manner. The Wireless Service Provider shall pay for any such rearrangement or transfer.

7.6.1. In instances where a Wireless Service Provider is performing Make-Ready, where an existing Attaching Entity has not relocated or otherwise undertaken work required to complete Make-Ready (such as repairing existing Attachments not in compliance with Applicable Standards) within ninety (90) days of notice by Utility or the Wireless Service Provider to such other Attaching Entity, the Wireless Service Provider is authorized, to the extent that Utility has such authority, and the legal ability to delegate such authority, to relocate or repair the other Attaching Entity's Attachments on behalf of Utility. The Wireless Service Provider shall pay the costs to relocate the other Attaching Entity's Attachments as part of the Wireless Service Provider's Make Ready.

**7.7. Operator's Installation/Removal/Maintenance Work.**

7.7.1. All of the Wireless Service Provider's installation, removal, and maintenance work, by either the Wireless Service Provider's employees or authorized contractors, shall be performed at the Wireless Service Provider's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of Utility's Poles or other Facilities or other Attaching Entity's facilities or equipment. All such work is subject to the insurance requirements of Article 25.

7.7.2. All of a Wireless Service Provider's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all applicable regulations specified in Section 4.1. Wireless Service Providers shall assure that any person installing, maintaining, or removing its Wireless Communication Facilities is fully qualified and familiar with all Applicable Standards, and the design specifications established by Utility.

7.7.3. Notwithstanding anything to the contrary in this Regulation, subsequent to the original installation of Wireless Service Provider's Wireless Communications Facilities, Wireless Service Provider may modify or replace the Wireless Communications Facilities without obtaining prior written consent of City or Utility so long as such modification or replacement does not: (a) modify the external appearance of the Wireless Communication Facility; (b) increase the electric consumption of the Wireless Communication Facility; (c) increase the load on the applicable Pole beyond the loading, if any, that was established in the approved Application; or (d) involve placement of equipment outside the area designated in the approved Application provided Licensee provides written notice of such modification or replacement to City or Utility.

**Article 8. Post-Installation Inspections**

8.1. No Person shall energize any Wireless Communication Facility unless and until it has passed post-installation inspection.

8.2. Within five (5) business days after the Wireless Service Provider notifies the City and/or Utility that the installation of a Wireless Support Structure or Wireless Communication Facility has been completed, the City, Utility or their contractors shall perform a post-installation inspection to ensure all work was performed in accordance with the Permit and Applicable Standards.

8.3. If the post-installation inspection reveals that a Wireless Service Provider's facilities have been installed in violation of a Permit or Applicable Standards, City and/or Utility will notify the Wireless Service Provider in writing and the Wireless Service Provider shall have thirty (30) days from the date of receipt of such notice to correct such violation(s), or such other period as the parties may agree upon in writing, unless such violation creates an Emergency in which case the Wireless Service Provider shall make all reasonable efforts to correct such violation immediately. A reinspection fee, as shown on Appendix A, will be charged to the Wireless Service Provider for each additional inspection of the facility.

8.4. If a Wireless Service Provider's Attachments remain out of compliance with Applicable Standards or approved design after any three (3) subsequent inspections or a period of ninety (90) days, consistent with Article 19 City and/or Utility will provide notice of the continuing violation and the Wireless Service Provider will have thirty (30) days from receipt of such notice to Correct the violation, otherwise the provisions of Article 19 shall apply.

#### **Article 9. Abandonment of Permit**

City or Utility may deem a Permit to be abandoned if a Wireless Service Provider does not: (1) begin work authorized by a Permit issued under this Regulation within one hundred eighty (180) calendar days of the effective date of such right to begin work, unless such time period is extended; or (2) request a post-installation inspection of completed work within two hundred seventy days (270), unless such time period is extended. City or Utility may, but shall have no obligation to, use the space allocated for a Wireless Service Provider's Attachment(s) for its own needs or make the space available to other Attaching Entities. Application Fees associated with abandoned Permits shall not be refunded.

#### **Article 10. Rearrangements and Transfers**

10.1 **Required Transfers of Wireless Communication Facilities.** If Utility reasonably determines that a rearrangement or transfer of a Wireless Communication Facility is necessary, including as part of Make-Ready to accommodate another Attaching Entity's Attachment, Utility will require the Wireless Service Provider who owns the Wireless Communication Facilities to perform such rearrangement or transfer within ninety (90) days after receiving notice from Utility, or other agreed upon notification. If the Wireless Service Provider fails to rearrange or transfer its Attachment within ninety (90) days after receiving such notice from Utility, the provisions of Article 19 shall apply, including Utility's right to rearrange or transfer the Wireless Communication Facilities ninety (90) days after the Wireless Service Provider's receipt of original notification of the need to rearrange or transfer its facilities. The actual and documented costs of such rearrangements or transfers shall be apportioned as specified under Article 10.2. Utility shall not be liable for damage to Wireless Communication Facilities except to the extent provided in Article 23. In Emergency situations, Utility may rearrange or transfer Wireless Communication Facilities as it determines to be necessary in its reasonable judgment. In Emergency Situations Utility shall use reasonable efforts provide such notice as is practical, given the urgency of the particular situation., If a Wireless Service Provider fails to rearrange and/or transfer its Wireless Communication Facilities within the prescribed time period, Utility may delegate its authority to rearrange and/or transfer the Wireless Communication Facilities to an authorized Attaching Entity or its authorized contractors. In such case, another Attaching Entity



may rearrange or transfer the Wireless Communication Facilities ninety (90) days after the Wireless Service Provider's receipt of original notification of the need to rearrange or transfer its facilities.

**10.2 Allocation of Costs.** The costs for any rearrangement or transfer of any Wireless Communication Facilities or the replacement of a Pole (including, without limitation, any related costs for tree cutting or trimming required to clear the new location of Utility's cables or wires) shall be allocated to Utility and/or the Wireless Service Provider that owns the Wireless Communication Facilities and/or other Attaching Entity on the following basis:

10.2.1. If Utility intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the Utility's costs related to the modification/replacement of the Pole. The Wireless Service Provider shall be responsible for costs associated with the rearrangement or transfer of the Wireless Service Provider's Wireless Communication Facilities. Prior to making any such modification or replacement, Utility shall make reasonable efforts to provide the Wireless Service Provider at least ninety (90) days written notification of its intent in order to provide the Wireless Service Provider a reasonable opportunity to modify. Should the Wireless Service Provider decide to do so, it must seek Utility's written permission in accordance with this Regulation. If the Wireless Service Provider elects to add to or modify its Wireless Communication Facilities, the Wireless Service Provider shall pay its fair share of the costs incurred by Utility in making the space on the Poles accessible to the Wireless Service Provider.

10.2.2. If the modification or replacement of a Pole is necessitated by the requirements of a Wireless Service Provider, the Wireless Service Provider shall be responsible for all costs caused by the modification or replacement of the Pole as well as the costs associated with the transfer or rearrangement of any other Attaching Entity's facilities. At the time the Wireless Service Provider submits a Permit Application to Utility, the Wireless Service Provider shall submit evidence in writing that it has made arrangements to reimburse all affected Attaching Entities for their costs caused by the transfer or rearrangement of their Facilities. Utility shall not be obligated in any way to enforce or administer the Wireless Service Provider's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Facilities pursuant to this Article.

10.2.3. If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than Utility or the Wireless Service Provider, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or replacement, as well as the costs for rearranging or transferring the Wireless Service Provider's Wireless Communication Facilities. The Wireless Service Provider shall cooperate with such third-party Attaching Entity to determine the costs of moving the Wireless Service Provider's facilities.

10.3. If the Pole must be modified or replaced for reasons unrelated to the use of the Pole by Attaching Entities or Utility (e.g., storm, accident, deterioration), Utility shall pay the costs of

such modification or replacement and the Wireless Service Provider shall pay the costs of rearranging or transferring its Wireless Communication Facilities.

**Article 11. Pole Replacements**

11.1. **Utility/City Not Required to Replace.** Nothing in this Regulation shall be construed to require City or Utility to replace its Poles for the benefit of a Wireless Service Provider.

11.2. **Ownership of Replacement Pole.** In all instances a replaced Pole will remain the property of City or Utility, as prior to this Regulation.

11.3. **Customized Poles.** Whenever a Wireless Service Provider uses a customized pole to install a Wireless Communication Facility on or within a Streetlight Pole, the Wireless Service Provider will provide an identical spare of the customized pole to the Utility at no cost.

**Article 12. Treatment of Multiple Requests for Same Pole**

If Utility receives a Permit Application for attachment of a Wireless Communication Facility from a Wireless Service Provider and a wireline attachment application from a third-party attaching entity for the same Pole and has not yet completed the Permitting of the initial applicant, and accommodating the respective requests would require modification of the Pole or replacement of the Pole, Utility will make reasonable and good faith efforts to allocate among the Wireless Service Provider and such third-party attaching entity the applicable costs associated with such modification or replacement.

**Article 13. Equipment Attachments**

13.1. Each Wireless Service Provider shall compensate City and Utility for the actual and documented cost, including engineering and administrative cost, for rearranging, transferring, and/or relocating Utility's Poles to accommodate the Wireless Service Provider's Equipment Attachments.

13.2. Each Wireless Service Provider shall reimburse the owner or owners of other facilities attached to City or Utility Poles for any actual and documented cost incurred by them for rearranging or transferring such facilities to accommodate the Wireless Service Provider's Equipment Attachments.

**Article 14. Authorized Contractors**

Wireless Service Providers shall only use authorized, qualified contractors approved by Utility to conduct Make-Ready Work (or any other work), such approval not to be unreasonably withheld, conditioned or delayed.

**Article 15. Guys and Anchor Attachments**

Utility shall install all guy wires and anchors at the Wireless Service Provider's sole cost to sustain any unbalanced loads caused by the Wireless Service Provider's Attachments. The Wireless

Service Provider shall bear all costs associated with the Utility's maintenance, replacement, or reinstallation of required guy wires and anchors.

**Article 16. Installation of Grounds**

When Utility is requested by a Wireless Service Provider to install grounds or make connections to Utility's system neutral, the Wireless Service Provider shall within sixty (60) days of demand reimburse Utility for the total actual and documented costs including engineering, clerical and administrative cost thereby incurred on initial installation only. All grounds installed by the Wireless Service Provider shall be in accordance with Utility's standard grounding practices.

**Article 17. Change in Utility Facilities that Forfeits Attachment Accommodations.**

**17.1. Notice of Change in City or Utility Facilities that Forfeits Attachment Accommodations.** Prior to changing any City or Utility Facility to which Wireless Communication Facilities are attached in such a manner that attachment will no longer be reasonably possible (including without limitation: abandonment, removal, relocation underground, replacement, or reconfiguration), the owner of such Wireless Communication Facilities shall be provided at least ninety (90) calendar days prior written notice by City or Utility, as appropriate. Provided that, notice may be less than ninety (90) calendar days as a result of the action of a third party and the ninety day notice period is not practical. If, following the expiration of the notice period, the owner of the Wireless Communication Facilities has not yet removed and/or transferred all of its Wireless Communication Facilities, City and/or Utility shall have the right, but not the obligation, to remove or transfer the Wireless Communication Facilities at the owner's expense and the owner shall be subject to the provisions of Article 19.

**17.1.1. Underground Relocation.** If Utility moves any portion of its aerial system underground pursuant to City requirements, Wireless Service Providers shall remove their Wireless Communication Facilities from any affected Poles within the notice period as established in 17.1 *supra* and must either relocate its affected Wireless Communication Facilities underground with Utility or find other means to accommodate its Wireless Communication Facilities. If a Wireless Service Provider does not remove its Wireless Communication Facilities, the Utility shall have the right to remove or transfer the Wireless Communication Facilities at the owner's expense. A Wireless Service Provider's failure to remove its Facilities as required under this Article 17.1 shall subject such Wireless Service Provider to the provisions of Article 19.

**17.1.2. Replace/Reconfigure Utility Facilities without Attachment Accommodations.** If Utility replaces or reconfigures any portion of its aerial facilities, Utility will make reasonable efforts to accommodate the existing attachments on the replaced/reconfigured Utility facilities by utilizing all available make-ready procedures subject to allocation of costs described in Section 10.2. If the Utility, at its sole discretion, reasonably determines the Attachments cannot be accommodated on the replaced/reconfigured Utility facilities, Wireless Service Providers shall remove facilities from the affected poles, within the notice period as described in 17.1 and must, at their own expense, find other means to accommodate their facilities. When Utility can accommodate some, but not all, of the existing Attachments, the Utility will allow reattachment in the order the Attachments

were originally installed, unless otherwise stipulated in this Regulation. If a Wireless Service Provider does not remove its Attachments within the notice period, Utility shall have the right to remove them at the Wireless Service Provider's expense. Failure to remove facilities as required under this Article 17.1.2 shall subject Wireless Service Providers to the provisions of Article 19.

**Article 18. Inspection**

18.1. **General Inspections.** City and Utility reserve the right to make periodic inspections, as conditions may warrant, of all Wireless Communication Facilities. Such inspections, or the failure to make such inspections, shall not operate to relieve any Wireless Service Provider of any responsibility or obligation or liability assumed under this Regulation.

18.2. **Periodic Safety Inspections.** Utility may at its option and expense perform a safety inspection in all or in part of the territory covered by this Regulation to identify any safety violations of all Attachments and Wireless Communication Facilities on Utility Poles ("Safety Inspection"). Wireless Service Providers shall correct any and all safety violations at their own expense per Section 18.3.

18.3. **Corrections.** In the event any Wireless Communication Facilities are found to be in violation of the Applicable Standards and such violation poses a potential Emergency, the owner of such Facilities shall use all reasonable efforts to correct such violation immediately. Should the owner fail or be unable to correct such potential Emergency immediately, City or Utility may correct the potential Emergency and bill the owner for the actual and documented costs incurred, including Overhead. If any Wireless Communication Facilities are found to be in violation of the Applicable Standards and such violations do not pose a potential Emergency, City or Utility shall, consistent with Article 19, give notice to the owner of the Wireless Communication Facilities, whereupon the owner shall have thirty (30) days from receipt of notice to correct any such violation, or up to ninety (90) days by agreement with City or Utility. In the event City, Utility or another Attaching Entity prevents an owner of Wireless Communication Facilities from correcting a non-Emergency violation, the timeframe for correcting such violation shall be extended one day for each day the owner was so delayed. No Wireless Service Provider will be responsible for the costs associated with violations caused by other Attaching Entities that are not affiliated with them or acting under their direction. In all circumstances, all of the Attaching Entities on each Pole and City or Utility will work together to maximize safety while minimizing the cost of correcting deficiencies, but the entity responsible for the violation will be responsible for the actual and documented cost of any necessary or appropriate corrective measures, including removal and replacement of the Pole and all transfers or other work incident thereto. If a Wireless Service Provider fails to Correct a non-Emergency violation within the specified time period, including any extensions, the provisions of Article 19 shall apply.

18.3.1. If any facilities of City and/or Utility are found to be in violation of the Applicable Standards and specifications and City and/or Utility has caused the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, but City and/or Utility shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the Pole provided, however,

that Utility shall not be responsible for a Wireless Service Provider's transfer or rearrangement costs.

18.3.2. If one or more Attaching Entity caused the violation, then such Attaching Entities shall pay the Corrective costs incurred by all who have Attachments on the Pole, including any Wireless Service Provider, and Utility will make reasonable effort to cause the Attaching Entity to make such payment.

18.3.3. If there exists a violation of Applicable Standards and it cannot be determined which Attaching Entity on the Pole caused such violation or there is a mixture of the Attaching Entities causing the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, and all Attaching Entities who may have caused such violation will share equally in such costs.

**Article 19. Failure to Rearrange, Transfer or Correct**

19.1. Unless otherwise agreed, as part of City's or Utility's written notice of a need for a Wireless Service Provider to rearrange, transfer, remove or Correct violations, City or Utility will indicate whether or not City or Utility is willing to perform the required work.

19.2. If City or Utility indicates in the notice that it is willing to perform the work, the Wireless Service Provider shall have thirty (30) days to notify City or Utility in writing of its election to have City or Utility perform the work or that the work will be performed by an entity other than City or Utility.

19.2.1. If the Wireless Service Provider requests that City or Utility perform the work, the Wireless Service Provider shall reimburse City or Utility for the actual and documented cost of such work, including Overhead.

19.2.2. If the Wireless Service Provider either fails to respond or indicates that the work will be performed by an entity other than the City or Utility, then until such work is complete and City or Utility receives written notice of the completion of such work, the Wireless Service Provider shall be subject to a daily continuing violation fee as specified in Appendix A, per Attachment, per day commencing on the day after expiration of the time period for completion of the work as specified in this Regulation.

19.2.3. Notwithstanding a Wireless Service Provider's election under Article 19.2.2 to perform the required work by an entity other than City or Utility, commencing on the thirtieth (30<sup>th</sup>) day after expiration of the time period for completion of the work as specified in this Regulation, City or Utility may perform the required work at the Wireless Service Provider's expense, or may delegate such authority to another Attaching Entity or a qualified contractor and impose all applicable penalties under Exhibit A.

19.2.4. If a Wireless Service Provider was required to perform work under this Article 19 and fails to perform such work within the specified timeframe, and City or Utility performs such work, City or Utility may charge the Wireless Service Provider its actual and documented costs, including Overhead, for completing such work.

19.3. If Utility indicates in the notice that it is unwilling or unable to perform the work, then until such work is completed and Utility receives written notice of the completion of such work, the Wireless Service Provider shall be subject to a daily penalty as specified in Exhibit A, per Attachment, per day commencing on the day after expiration of the time period for completion of the work as specified in this Regulation.

19.4. Wireless Service Providers shall provide timely written notification to City or Utility upon completion of work necessary to Correct a violation or deficiency. All applicable daily penalties and fees will continue to accrue until City's or Utility's receipt of such notice of completion. Notice of completion shall be delivered by the same means as it was received from City or Utility.

#### **Article 20. Actual Inventory**

20.1. At intervals of three (3) years or more, City or Utility may inventory all Attachments on City or Utility's Facilities made by a particular Wireless Service Provider. Such inventory shall be made jointly by all parties and shall be at the cost of the Wireless Service Provider, such costs to be actual and documented, unless Utility is also performing an inventory of any other Attaching Entity with Attachments on such Poles, and then the actual and documented cost shall be shared proportionately among all such Attaching Entities based upon the number of Attachments.

20.1.1 Utility may at any time perform an inventory at its own expense to verify the number of reported Attachments. Wireless Service Providers shall pay the costs of such inventory if its unauthorized or unreported Attachments exceeds five percent (5%) of the Wireless Service Provider's Attachments that are authorized and reported.

#### **Article 21. Unauthorized Attachments**

If the City discovers unauthorized Wireless Communication Facilities or Wireless Support Structures in the public right-of-way, or Utility discovers Unauthorized Attachments placed on its Poles or other Facilities, the following fees may be assessed, and procedures will be followed:

21.1. City or Utility, as appropriate, shall provide specific written notice of each violation and the owner of the unauthorized Wireless Communication Facilities, Wireless Support Structures or Attachment shall be given thirty (30) days from receipt of notice to contest an allegation that the Wireless Communication Facilities, Wireless Support Structures, or Attachment is unauthorized. If the owner cannot be ascertained, the City or Utility will post a notice of violation on the Wireless Communication Facilities, Wireless Support Structures or Attachment believed to be unauthorized.

21.2. In addition to all other fines or penalties that may be assessed by a court of law, the owner of an unauthorized Wireless Communication Facilities, Wireless Support Structures or Attachment shall pay double rent and fees for a period of three (3) years, or since the date of the last inventory of Attachments (whichever period is shortest), at the rates in effect during such periods.

21.3. The owner of an unauthorized Wireless Communication Facilities, Wireless Support Structures or Attachment shall submit a Permit Application in accordance with this Regulation

within thirty (30) days of receipt of the notice described in this Article 21, or such longer time as may be agreed by the City or Utility.

21.4. In the event a Wireless Service Provider fails to submit a Permit Application within thirty (30) days, or such longer time as mutually agreed to by the parties after an inventory, the provisions of Article 19 shall apply.

21.5. **No Ratification of Unauthorized Use.** No act or failure to act by City or Utility with regard to any unpermitted Wireless Communication Facilities, unpermitted Wireless Support Structures, or Unauthorized Attachments shall be deemed as ratification or waiver of any requirement under this Regulation. Unless the parties agree otherwise, a Permit for a previously Unauthorized Attachment shall not operate retroactively or constitute a waiver by Utility of any of its rights or privileges under this Regulation or otherwise, and the Wireless Service Provider shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

#### **Article 22. Reporting Requirements.**

In addition to the inventory provisions described in Article 20 above, when a Wireless Service Provider pays its annual fees, the Wireless Service Provider shall also provide the following information to City and Utility:

22.1. All Attachments that have become nonfunctional during the relevant reporting period. The report shall identify the Pole on which the nonfunctional Attachment is located, indicate the approximate date the Attachment became nonfunctional, and shall provide a schedule for removal.

22.2. Any equipment the Wireless Service Provider has removed from Poles during the relevant reporting period. The report shall identify the Pole from which the equipment was removed and indicate the approximate date of removal. This requirement does not apply where a Wireless Service Provider is surrendering a Permit.

#### **Article 23. Liability and Indemnification**

23.1. **Liability.** City and Utility reserve to themselves the right to maintain and operate their Poles in the manner that will best enable them to fulfill their service requirements. As a condition of every permit, Wireless Service Providers must agree that its use of City's and Utility's Facilities is at the sole risk of the Wireless Service Provider. Notwithstanding the foregoing, City and Utility shall exercise reasonable precaution to avoid damaging Wireless Communication Facilities and shall report to Wireless Service Providers the occurrence of any such damage caused by its employees, agents or contractors. Subject to Section 23.5, City and Utility will reimburse Wireless Service Providers for all reasonable costs incurred during the physical repair of facilities damaged by the gross negligence or willful misconduct of City and/or Utility.

23.2. **Indemnification.** As a condition of every permit, Wireless Service Providers, as well as their agents, contractors, and subcontractors, ("Wireless Service Provider Indemnitors") shall be required to defend, indemnify, and hold harmless City and Utility and their respective officials,



officers, board members, council members, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by Utility under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of Utility and all other costs and expenses of litigation) ("Covered Claims") arising in any way or in connection with the negligent construction, maintenance, repair, presence, use, relocation, transfer, removal or operation of Wireless Communication Facilities and/or Wireless Support Structures by a Wireless Service Provider or their officers, directors, employees, agents, contractors, or subcontractors, except to the extent that City's or Utility's negligence or willful misconduct gives rise to such Covered Claims. Covered Claims shall include, but are not limited to, the following:

23.2.1. Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;

23.2.2. Cost of work performed by Utility that was necessitated by a Wireless Service Provider's failure, or the failure of a Wireless Service Provider's officers, directors, employees, agents, contractors, or subcontractors to install, maintain, use, transfer, or remove their Wireless Communication Facilities in accordance with the requirements and specifications of this Regulation, or from any other work this Regulation authorizes Utility to perform on behalf of a Wireless Service Provider;

23.2.3. Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by a Wireless Service Provider, or a Wireless Service Provider's officers, directors, employees, agents, contractors, or subcontractors pursuant to this Regulation;

23.2.4. Liabilities incurred as a result of a Wireless Service Provider's violation, or a violation by a Wireless Service Provider's officers, directors, employees, agents, contractors, or subcontractors of any law, rule, or regulation of the United States, any state, or any other governmental entity or administrative agency.

23.2.5. Environmental harm arising from or due to the release, threatened release or storage of hazardous substances on, under, or around Utility's Poles and Facilities or City public rights-of-way attributable to an Indemnitor.

### **23.3. Procedure for Indemnification.**

23.3.1. City or Utility shall give prompt written notice of any claim or threatened claim to the appropriate Indemnitors, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit, or proceeding filed by a third party against City or Utility, City or Utility shall give the notice to Indemnitors no later than fifteen (15) calendar days after City or Utility receives written notice of the action, suit, or proceeding.

23.3.2. City, Utility or Wireless Service Provider's failure to give the required notice will not relieve any Indemnitor from its obligation to indemnify City, Utility or Wireless

Service Provider unless, and only to the extent, that an Indemnitor is materially prejudiced by such failure.

23.3.3. Indemnitor will have the right at any time, by notice to City, Utility or Wireless Service Provider (as appropriate), to participate in or assume control of, the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to the indemnified party. City, Utility or Wireless Service Provider agree to cooperate fully with Indemnitor. If Indemnitor assumes control of the defense of any third-party claim, City, Utility or Wireless Service Provider shall have the right to participate in the defense at its own expense. If Indemnitor does not assume control or otherwise participate in the defense of any third-party claim, Indemnitor shall be bound by the results obtained by City, Utility or Wireless Service Provider with respect to the claim.

23.3.4. If Indemnitor assumes the defense of a third-party claim as described above, then in no event will City, Utility or Wireless Service Provider admit any liability with respect to, or settle, compromise or discharge, any third-party claim without Indemnitor's prior written consent.

23.4. **Environmental Hazards.** As a condition of every permit, Wireless Service Providers shall represent and warrant that their use of Utility's Poles and/or Facilities and/or City public rights-of-way will not generate any Hazardous Substances, that it will not store or dispose on or about City's or Utility's Poles and/or Facilities or transport to City's or Utility's Facilities any hazardous substances and that no Wireless Communication Facilities or Wireless Support Structures will constitute or contain or generate any hazardous substance in violation of federal, state, or local law now or hereafter in effect, including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect, including any amendments. As a condition of every permit, Wireless Service Providers must further represents and warrants that in the event of breakage, leakage, incineration, or other disaster, its Wireless Communication Facilities would not release any Hazardous Substances.

23.5. **No Consequential Damages.** As a condition of every permit, Wireless Service Providers shall be required to agree that, notwithstanding any other provision of this Regulation, neither any entity receiving a permit or any entity issuing a permit shall be liable to one another for any consequential, incidental, indirect, liquidated, or special damages or lost revenue or lost profits to any person arising out of this Regulation, or any Permit issued under this Regulation, or any performance or nonperformance of any provision of this Regulation, even if such entity has been informed of the possibility of such damages.

23.6. **Municipal Liability Limits.** No provision of this Regulation is intended, or shall be construed, to be a waiver for any purpose by City or Utility of any applicable state limits on municipal liability or governmental immunity. No indemnification provision contained in this Regulation under which an Indemnitor indemnifies City or Utility shall be construed in any way to limit any other indemnification provision contained in this Regulation, or constitute insurance under state law.

**Article 24. Duties, Responsibilities, and Exculpation**

24.1. **Duty to Inspect.** As a condition of every permit, Wireless Service Providers shall acknowledge and agree that City and Utility do not warrant the condition or safety of Utility's Facilities and City's public rights-of-way, or the premises surrounding the Facilities, and that all Wireless Service Providers have an obligation to inspect Utility's Poles or premises surrounding such Facilities, prior to commencing any work on Utility's Poles or entering the premises surrounding such Facilities.

24.2. **Knowledge of Work Conditions.** As a condition of every permit, Wireless Service Provider shall warrant that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that the Wireless Service Provider will undertake and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.

24.3. **Duty of Competent Supervision and Performance.** As a condition of every Permit authorizing attachment to a Distribution Pole, Wireless Service Providers shall acknowledge that its agents, employees, contractors, and subcontractors will work near electrically energized lines, transformers, or other City or Utility Facilities, that energy generated, stored, or transported by Utility Facilities will not be interrupted except in Emergencies, and that Wireless Service Providers have the duty to ensure that their employees, agents, contractors, and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, agents, contractors, and subcontractors; employees, agents, contractors, and subcontractors of Utility; and the general public, from harm or injury while performing work permitted pursuant to this Regulation. Wireless Service Providers must furnish its employees, agents, contractors, and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. When circumstances necessitate de-energization any part of Utility's equipment, Wireless Service Providers shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

24.4. **Requests to De-energize.** Typically, Utility shall only de-energize its electric facilities in response to Emergency situations, and any such de-energizations shall be at Utility's sole discretion. Wireless Service Providers shall be responsible for all costs related to any request to de-energize any equipment or lines in accordance with Article 3.8.

24.4.1. Wireless Service Providers may request nonemergency de-energization with 24 hours' notice. Wireless Service Providers shall be responsible for all costs related to any request to de-energize any equipment or lines in accordance with Article 3.8. Before Utility de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating a Wireless Service Provider's request.

24.5. **Interruption of Service.** If a Wireless Service Provider causes an interruption of service by damaging or interfering with any equipment of Utility, such Wireless Service Provider shall, at its own expense, immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify Utility immediately.

24.6. **Duty to Inform.** As a condition of every permit to attach to a Utility Pole, Wireless Service Providers shall warrant that they understand the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on Utility's Poles and other Facilities by such Wireless Service Provider's employees, agents, contractors, or subcontractors, including the inherent danger in working in close proximity to electric facilities.

## **Article 25. Insurance**

25.1. **Policies Required.** As a condition of every permit, Wireless Service Providers shall keep in force and effect all insurance policies as described below:

25.1.1. **Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Arkansas law at the time of the application of this provision for each accident. This policy shall include a waiver of subrogation in favor of City and Utility. Wireless Service Providers shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

25.1.2. **Commercial General Liability Insurance.** Policy on form ISO CGL 00 01 or equivalent will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations (not excluding injury or harms caused by RF emissions), personal injury, blanket contractual liability coverage, broad form property damage, independent contractor's coverage with limits of liability of \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence. City and/or Utility shall be added as an additional insured on ISO CG 20 10 or equivalent.

25.1.3. **Automobile Liability Insurance.** Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles. Limits of liability of \$1,000,000 each occurrence, \$1,000,000 aggregate.

25.1.4. **Umbrella Excess Liability Insurance.** Coverage is to be in excess of employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability of \$5,000,000 each occurrence, \$5,000,000 aggregate. Wireless Service Provider may use any combination of primary and excess to meet required total limits.

25.1.5. **Property Insurance.** Wireless Service Providers shall be responsible for maintaining property insurance on its own facilities, buildings, and other improvements, including all equipment, fixtures, and utility structures, fencing, or support systems that may be placed on, within, or around Utility Facilities to protect fully against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.

Notwithstanding the forgoing, Wireless Service Provider may, in its sole discretion, self insure any of the required insurance under the same terms as required by this Regulation. In the event Wireless Service Provider elects to self-insure its obligation under this Regulation to include City and Utility as an additional insured, the following conditions apply: (i) City and Utility shall promptly and no later than thirty (30) days after notice thereof provide Wireless Service Provider with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Wireless Service Provider with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) City or Utility shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Wireless Service Provider; and (iii) City and Utility shall fully cooperate with Wireless Service Provider in the defense of the claim, demand, lawsuit, or the like.

25.2. **Qualification; Priority; Contractors' Coverage.** The insurer must be eligible to do business under the laws of the state of Arkansas and have an "A minus" or better rating in Best's Guide. Such required insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of a Wireless Service Provider shall carry, in full force and effect, workers' compensation and employers' liability, commercial general liability, and automobile liability insurance coverages of the type that Wireless Service Providers are required to obtain under this Article 25 with reasonable and prudent limits.

25.3. **Certificate of Insurance; Other Requirements.** As a condition of every permit, Wireless Service Providers will furnish Utility with a certificate of insurance ("Certificate"). The Certificate shall reference this Regulation and workers' compensation and property insurance waivers of subrogation required by this Regulation. Utility and City shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of required insurance if not replaced during the term of this Regulation. Utility and City, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be included as Additional Insureds under all of the required auto and general liability policies, except workers' compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles or self-insured retentions. Upon request, Wireless Service Providers shall obtain Certificates from its agents, contractors, and their subcontractors working hereunder and provide a copy of such Certificates to Utility.

25.4. **Limits.** The limits of liability set out in this Article 25 may be increased or decreased by consent, which consent will not be unreasonably withheld by either Utility or any Wireless Service Provider, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal, or other governmental compensation plans, or laws that would materially increase or decrease a Wireless Service Provider's exposure to risk.

25.5. **Prohibited Exclusions.** No policies of insurance required to be obtained by a Wireless Service Provider or its contractors or subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this Regulation with City or Utility except as to infringement of patents or copyrights or for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage for

injuries to City's or Utility's employees or agents, or (4) exclude coverage of liability for injuries or damages caused by the Wireless Service Provider's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

25.6. **Deductible/Self-insurance Retention Amounts.** Wireless Service Providers shall be fully responsible for any deductible or self-insured retention amounts contained in their insurance or for any deficiencies in the amounts of insurance maintained.

#### **Article 26. Assignment**

26.1. **Limitations on Assignment.** Wireless Service Providers shall not assign any permits granted under this Regulation, nor any part of such permits, without the prior written consent of Utility and City, which consent shall not be unreasonably withheld; provided, however, Wireless Service Provider may assign its rights and obligations to an Affiliate without consent upon prior written notice. Permits may only be assigned to a properly licensed and authorized Wireless Service Provider, or an Affiliate duly authorized to act on behalf of a properly licensed and authorized Wireless Service Provider.

26.2. **Obligations of Assignee/Transferee and Permittee.** No assignment or transfer under this Article 26 shall be allowed until the assignee or transferee becomes a signatory to the permit issued under this Regulation and assumes all associated obligations arising under this Regulation. Wireless Service Providers who seek to assign or transfer a permit shall furnish Utility or City with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee.

26.3. **Sub-permitting.** Wireless Service Providers shall not sub-permit, sub-license, lease, or otherwise allow any third parties to place Attachments on Utility's Facilities. Any such action shall constitute a violation of this Regulation and any permit held by such Wireless Service Provider. The authorized use of Wireless Communication Facilities by third parties that involves no additional Attachment is not subject to this Article 26.3.

#### **Article 27. Failure to Enforce**

Failure of City, Utility or a Wireless Service Provider to take action to enforce compliance with any of the terms or conditions of this Regulation or to give notice or declare this Regulation or any permit granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Regulation, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Regulation.

#### **Article 28. Receivership, Foreclosure or Act of Bankruptcy.**

As a condition to every permit, Wireless Service Providers shall consent to termination by Utility and/or City of any and every permit one hundred twenty (120) days after the filing of bankruptcy or the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the Wireless Service Provider whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless such receivers or trustees shall

have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Regulation granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all violations and deficiencies under this Regulation.

**Article 29. Removal of Attachments.**

Wireless Service Providers may at any time remove their Attachments from any Facility of City or Utility, but any such removal must be done with prior written notice and in coordination with Utility to disconnect a power supply. No refund of any fee will be due on account of such removal.

**Article 30. Performance Bond.**

As a condition to permitting, Wireless Service Providers shall furnish a performance bond executed by a surety company reasonably acceptable to City and Utility which is duly authorized to do business in the state of Arkansas in the amount of fifty thousand dollars (\$50,000.00) for the duration of this Regulation as security for the faithful performance of this Regulation and for the payment of all persons performing labor and furnishing materials in connection with this Regulation.

**Article 31. Severability.**

If any provision or portion thereof of this Regulation is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Regulation to either party, such provision shall not render unenforceable this entire Regulation. Rather, the parties intend that the remaining provisions shall be administered as if the Regulation did not include the invalid provision.

**Article 32 Governing Law**

As a condition of each permit, Wireless Service Providers shall consent that all actions or proceedings arising directly or indirectly from this Regulation shall be commenced and litigated only in the Circuit Court of Pulaski County, Arkansas or the Eastern District of Arkansas federal court with jurisdiction over North Little Rock, Arkansas, and consent to the jurisdiction over the above-listed courts, in all actions or proceeding arising directly or indirectly from this Regulation with all disputes based on Arkansas law.

In the event that any legislative, regulatory, judicial, or other action (“New Law”) affects the rights or obligations of the Parties, or establishes rates, terms or conditions for the construction, operation, maintenance, repair or replacement of Attachments on Utility Poles or in the public right-of-way, that differ, in any material respect from the terms of this Regulation, then either Party may, upon thirty (30) days’ written notice, require that the terms of this Regulation be amended to conform to the New Law on a going forward basis for all existing and new Attachments, unless the New Law requires retroactive application. In the event that the Parties are unable to agree upon such new terms within 90 days after such notice, then any rates contained in the New Law shall apply from the 90th day forward until the negotiations are completed or a Party obtains a ruling regarding the appropriate conforming terms from a

commission or court of competent jurisdiction. Except as provided in the proceeding, all terms in the existing Regulation shall remain in effect while the Parties are negotiating.

**Article 33. Incorporation of Recitals and Appendices.**

The recitals stated above and all appendices to this Regulation are incorporated into and constitute part of this Regulation.

**Article 34. Force Majeure.**

If City, Utility, or any Wireless Service Provider is prevented or delayed from fulfilling any term or provision of this Regulation by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Regulation, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected party shall endeavor to remove or overcome such inability as soon as reasonably possible.

**Article 35. Casualty.**

Wireless Service Provider may at any time remove Attachments or Wireless Communications Facilities from Utility Poles in the event of a casualty, fire or other harm affecting any Utility Poles ("Casualty Event"). City or Utility will provide notice to Wireless Service Provider of any Casualty Event as soon as reasonably possible thereafter. In the event of damage by a Casualty Event to a Utility Pole that cannot reasonably be expected to be repaired within forty-five (45) days following such Casualty Event or which City or Utility elects not to repair, or if such Casualty Event is reasonably expected to disrupt Wireless Service Provider's operations on the Utility Pole for more than forty-five (45) days, then Wireless Service Provider may, at any time following such casualty or harm; (i) terminate the applicable Permit upon fifteen (15) days' written notice to City or Utility; (ii) place a temporary facility, if feasible, at a location equivalent to Wireless Service Provider's current use of the Utility Pole until such time as the Utility Pole is fully restored to accommodate Wireless Service Provider's Attachment or Wireless Communications Facility; or (iii) permit Wireless Service Provider to submit a new Application for Permit for an alternate location equivalent to Wireless Service Provider's current use of the Utility Pole, and City or Utility shall waive the application fee and transfer all remaining rights to the new Utility Pole so long as such relocation was due to a Casualty Event not directly caused by Wireless Service Provider. Any such notice of termination shall cause the applicable Permit to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the applicable Permit. The Attachment Fees shall abate during the period of repair following such Casualty Event in proportion to the degree to which Wireless Service Provider's use of the Utility Pole is impaired. Wireless Service Provider will be entitled to collect all insurance proceeds payable to Wireless Service Provider on account thereof and to be reimbursed for any prepaid Attachment Fees on a pro rata basis.



## APPENDIX A – FEES

**Standard Application Fee ..... \$ 1,000.00**

*This fee applies to each Wireless Communication Facility or Wireless Support Structure proposed in an Application that complies with design standards set forth in Appendix B. This fee ensures that the City and Utility recover costs associated with administrative processing, design review, make-ready estimates, and initial post-installation inspection.*

**Non-Standard Application Fee ..... \$ 2,000.00**

*This fee applies to each Wireless Communication Facility or Wireless Support Structure proposed in an Application that does not comply with design standards set forth in Appendix B. This fee ensures that the City and Utility recover costs associated with administrative processing, design review, make-ready estimates, and initial post-installation inspection.*

**ROW Fee..... \$ 25.00/year**

*This fee applies per year to each Wireless Communication Facility or Wireless Support Structure installed in the right-of-way. This fee ensures that the City and Utility recover costs associated with administering and maintaining the public right-of-way.*

**Attachment Fee ..... \$ 200.00/year**

*This fee applies per year to each Wireless Communication Facility attached to a City or Utility Facility. This fee ensures that the City and Utility recover costs associated with administering and maintaining their Facilities.*

**Reinspection Fee ..... \$ 150.00**

*This fee applies to each Wireless Communication Facility or Wireless Support Structure that does not pass an initial inspection and requires re-inspection. This fee ensures that the City and Utility recover costs associated with administering and conducting reinspections.*

**Unauthorized Attachment Fee ..... \$ 400.00/year**

*This fee applies per year to each Wireless Communication Facility attached to a City or Utility Facility without proper authority. It is in addition to any penalty that may be assigned or adjudicated for violation of a City ordinance. This fee ensures that the City and Utility recover costs associated with locating and remediating Unauthorized Attachments.*

**Continuing Violation Fee ..... \$ 10.00/day**

*This fee applies per day to each Wireless Communication Facility attached to a City or Utility Facility in violation of the Permit or Applicable Standards for more than thirty (30) days after notice of the violation. It is in addition to any penalty that may be assigned or adjudicated for violation of a City ordinance. This fee ensures that the City and Utility recover costs associated with locating and remediating specific permit violations.*

## APPENDIX B – DESIGN STANDARDS

**B-1: Distribution Pole Attachment Design – not attached at time of filing**

**B-2: Streetlight Pole Replacement Design – not attached at time of filing**

**B-3: Traffic Pole Attachment Design – not attached at time of filing**