

**MASTER AGREEMENT  
FOR  
WIRELESS ANTENNA ON EXISTING STRUCTURE IN RIGHT OF WAY ("ROW")**

THIS MASTER AGREEMENT (this "Agreement") is effective as of the date of the latter signature below (the "Effective Date") and is by and between Cox Communications Arizona, LLC, a Delaware limited liability company, d/b/a Cox Communications ("Cox"), and the City of Mesa, an Arizona municipal corporation ("City"). City and Cox are at times collectively referred to as "Parties" or individually as a "Party".

RECITALS

- A. City, in its proprietary capacity, owns or holds a legal interest in public roads, streets and alleys and all other dedicated public rights-of-way, public utility easements, and public utilities and facilities easements, including air space of the City (collectively the "ROW").
- B. City is responsible for the management of the ROW within City's boundaries.
- C. Cox desires, and City is willing to permit Cox, to place its antennas, lines and cables ("Cox Facilities") on City-Owned Structures (as defined below) in the ROW, as well as other components and connections for services that are Permitted Uses (as defined below) pursuant to Site Licenses (as defined below) granted by City pursuant to the terms of this Agreement.
- D. Cox acknowledges that the primary purpose of the City-Owned Structures to which the antennas are to be attached remains as street light poles and Cox shall not interfere with such primary purpose of the City-Owned Structures.
- E. Under the Mesa City Code ("M.C.C."), encroachments and/or construction in City's ROW for Cox Facilities are prohibited except with the authorization of a ROW Permit for construction pursuant to M.C.C. Title 9, Chapter 1 and an approved Site License.
- F. M.C.C. Title 9, Chapter 1, sets out City's right and authority to coordinate the location, placement, installation and maintenance of public and private improvements, including wireless antennas, over, under and across ROW within City's corporate limits.
- G. City is willing to permit, pursuant to the terms and conditions of this Master Agreement and consistent with applicable law, Cox Facilities to be installed and mounted on the City-Owned Structures in the ROW pursuant to the terms and conditions of this Master Agreement, a Site License, and subject to all applicable conditions, limitations, and requirements of the Mesa City Code, applicable City policies, the Uniform Standard Specifications and Details for Public Works Construction sponsored and distributed by the Maricopa Association of Governments ("MAG") as amended, Mesa Standard Details and Specifications,

Mesa's Engineering and Design Standards, Mesa's Approved Product List and Technical Specifications, OSHA regulations, compliance with the FCC Radio Frequency Exposure Guidelines (FCC OET Bulletin 65) and all other applicable radio frequency emissions laws and regulations in effect from time to time [used only here and in Sec. 3.2. Therefore, not needed either place.).

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

1. DEFINITIONS

- 1.1 "Antenna(s)" means the physical structure, or structures, as depicted on the Site Plans, which are attached to (or incorporated into) the City-Owned Structure that transmits and/or receives communications exclusively for Permitted Uses by converting electric current to/from electromagnetic waves.
- 1.2 "Applicable Laws" means the federal, state, county, and City of Mesa laws, ordinances, rules, regulations; permit requirements, and regulations that apply to Cox's use of the Use Areas.
- 1.3 "Cable License" means the Cable Television Renewal License, as amended, effective October 19, 2003 between City and CoxCom, Inc., Cox's predecessor in interest ("Cox Cable License").
- 1.4 "Cable Route" as defined in Section 2.
- 1.5 "City-Owned Structure" means the vertical element owned by City and located in the ROW, to which Cox will attach an Antenna.
- 1.6 "City Property" means as defined in Recitals A and B.
- 1.7 "Cox Facilities" shall mean the Antennas, Equipment Cabinets, and all other cable, wire, equipment, conduit, screen walls, or other such element used by Cox for Permitted Uses including antennas, radios and cable owned by third parties in connection with its installation of the Antennas and related equipment on City-Owned Structures, the ROW and the Use Areas. The term Cox Facilities does not include cable, wire, equipment, conduit or other such elements that the Cox Cable License authorizes Cox to place in the ROW, and such equipment is not subject to this Agreement.
- 1.8 "Cox Improvements" means any installation or improvements conducted by Cox, including, but not limited to, the Cox Facilities.
- 1.9 "Equipment Cabinets" shall mean equipment that is ground mounted or placed on a concrete slab that contains Cox's improvements, personal property and facilities

to operate its Antenna(s) for Permitted Uses including: radio receivers, transmitters, related facilities, and/or cabinets, related cables and utility lines, location based power source (including a battery), the electrical meter and any other equipment necessary for the operation wireless antenna. The term Equipment Cabinet does not include equipment that the Cox Cable License authorizes Cox to place in the ROW, and such equipment is not subject to this Agreement.

- 1.10 "Fee" means as defined in Section 5.
- 1.11 "Hazardous Substances" means as defined in Section 12.
- 1.12 "Permitted Uses" means, and is limited to, Cox's right to construct, install, operate, maintain and repair the related support facilities (such as wireless antennas and equipment cabinets) but only for the provision of what is commonly known as cellular telephone and related data services (whether or not technically referred to as Personal Communications Service, or some other term) by the use of "personal wireless service facilities" (as such phrase is defined in §704 of the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), partially codified at 47 U.S.C. § 332(c) (7) (C) (2), hereinafter "1996 Act Section 704") and not for any other purpose.
- 1.13 "Qualified Service Provider" means a person, other than Cox, that has all applicable authorizations required to provide services that are Permitted Uses.
- 1.14 "Site License" means a revocable, nonexclusive permission to attach facilities to City-Owned Structures and encroach in the ROW, which does not create or confer any interest in real or personal property.
- 1.15 "Use Area" means the area that Cox is permitted to use pursuant to an approved Site License. The term Use Area includes the area depicted on the Site License that shows where the Antenna will be attached to the City-Owned Structure, and where the Equipment Cabinet and Cable Route will be located.

## 2. Permitted Use.

- 2.1. Whenever Cox seeks to attach Cox Facilities to City-Owned Structures or place Cox Facilities in the ROW, Cox shall submit an application to City for a Site License.
  - 2.1.1. Once the Site License application (including a site survey) is reviewed and approved by City, a Site License in substantially the form of Exhibit A can then be executed by the Parties. The City Manager or designee will have the authority to enter into Site Licenses. Any change to the site plan of an approved Site License is void unless City agrees to the change in writing through the Site License approval process.

2.1.2. The application for a Site License shall include the following:

2.1.2.1. A detailed site survey, construction drawings, public notice, and photo simulation.

2.1.2.2. The site survey and construction drawings shall depict the following:

2.1.2.2.1. the actual area for attachment of the Antennas to the existing structure;

2.1.2.2.2. the equipment specifics and sizes;

2.1.2.2.3. the actual areas for location of Equipment Cabinet(s) with clearances from existing infrastructure;

2.1.2.2.4. the location and size of all existing facilities and the ROW, including the lip of the street gutter, the edge of the street pavement, sanitary sewer lines, water lines, irrigation facilities, other utilities, landscaping, structures, street lights and traffic signals;

2.1.2.2.5. a cable route and length of cable (the "Cable Route") used for Permitted Uses from the Antenna to the Equipment Cabinet used by Cox for power source, voice and data communication lines between the Equipment Cabinet and the Antenna;

2.1.2.2.6. the existing ROWs, including dimensions and labels for each type of land interest;

2.1.2.2.7. equipment screen walls, screening materials and/or screening landscaping;

2.1.2.2.8. a sight visibility triangle;

2.1.2.2.9. clearance from existing structures, *i.e.* business signs;

2.1.2.2.10. a statement setting forth the maximum RF power level going into the antenna, the frequency range of the antenna, and the rated azimuth angle for any directional antennae;

2.1.2.2.11. identify replacement pole type and foundation referenced in the Mesa Standard Details and Specifications;

2.1.2.2.12. a legend or key to describe and distinguish the items, structures and elements on the Exhibit; and

2.1.2.2.13. the site survey and construction drawings shall be sealed by a professional registrant.

2.2. This Agreement gives Cox a non-exclusive right to occupy space on City-Owned Structures and/or ROW at a location or locations shown on an approved Site License and authorizes the use of the City-Owned Structures and/or ROW for the installation, operation, use and maintenance of the Cox Facilities. Cox, at its sole

expense, shall supply all material associated with the installation, maintenance of the Cox Facilities. Cox shall maintain Cox Facilities at all times. Prior to placement of Cox Facilities on any street light pole, Cox shall, at its sole cost replace the street light pole and foundation with a new street light pole and foundation as approved by City. Replaced poles will be returned to City at a designated location.

- 2.3. This Agreement does not provide Cox with any ownership or leasehold interests in the City-Owned Structures, replacement poles or ROW nor does this Agreement provide Cox with any of the City's rights to use the public property upon which the City-Owned Structures are located other than those expressly provided herein or in the Site License.
- 2.4. Cox is responsible for the study and inspection of the City-Owned Facilities and ROW to be utilized by Cox and shall determine the fitness for the use by Cox. City hereby expressly disclaims all warranties of merchantability and fitness for a particular purpose or absence of hazardous conditions associated with the City-Owned Structures and ROW. Cox accepts the City-Owned Structures and ROW "AS IS." Cox assumes all risk, costs and expenses related to the Cox Facilities and loss of service that may occur due to damage, destruction or collapse of any City-Owned Structure or due to any incompatibility of Cox's use with City's use, or other user's use, of the City-Owned Structures. Cox shall be solely responsible for the relocation of any Cox Facilities placed on a structure not owned by City or wrongly designated as a City-Owned Structure and/or ROW.
- 2.5. Notwithstanding any provision in this Agreement or the Site License to the contrary, City shall have the right at any time during the Term of this Agreement to require relocation of the Cox Facilities or any portion of them, at Cox's expense, to another location suitable for Cox's use. Cox shall be given at least ninety (90) days' notice of such relocation and shall fully cooperate in such relocation. If Cox fails to relocate as required by this section, Cox shall reimburse City for actual, direct and indirect damages incurred by the City as a result of such delays. City shall permit Cox to place a temporary Antenna facility (Cell on Wheels or similar installation) on the City Property or at some other location acceptable to Cox, at Cox's cost until such relocation is complete.
- 2.6. To the extent that Cox owns any fiber or conduits that are Cox Facilities and will be placed underground in the Use Area, and to the extent that State law requires it, Cox shall comply with Arizona Revised Statutes Title 40, Chapter 2, Article 6.3 by participating as a member of the Arizona Blue Stake Center (or other appropriate organization selected by the City). A copy of Cox's proof of membership shall be filed with the City.
- 2.7. Cox shall apply for and obtain an annual blanket permit for any maintenance and emergency work required during the Term of this Agreement and the term of any

Site License on any and all Cox Facilities that are installed in the ROW and/or on the City-Owned Structures.

- 2.8. Cox shall not attach any Cox Facility to a City-Owned Structure or place Cox Facilities in the ROW without an approved Site License.
  - 2.8.1. City may require Cox to remove any authorized attachment to a City-Owned Structure or placement of facilities in the ROW. If Cox has failed to remove the unauthorized facilities within thirty (30) days after notice, City may remove the unauthorized facilities without incurring any liability to Cox, including but not limited to liability for interruption of service. Cox shall reimburse City for its actual costs of removal of the unauthorized facilities.
  - 2.8.2. Placement of any unauthorized facilities on City-Owned Structures or the ROW without a Site License shall constitute trespass.
  - 2.8.3. The failure of the City to act to remove any unauthorized facilities shall not constitute permission or a de facto Site License in any manner nor shall subsequent issuance of a Site License operate retroactively.
- 2.9. Cox shall have the right to replace the Cox Facilities at any time during the term of a Site License to the extent that such Cox Facilities do not materially differ from those approved in the Site License. Any like for like modifications require ten (10) days' prior notice to City. Other modifications which are not like for like and/or change the size or appearance of the Cox Facilities require Cox to obtain a new or revised Site License.
- 2.10. Cox shall at all times during the term of a Site License, maintain the Cox Facilities in good repair and shall keep the Use Area free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or source of undue vibration, heat, noise or interference.
- 2.11. Within ten (10) days of the Effective Date of this Agreement, Cox will pay the City five thousand dollars (\$5,000.00) to (1) fund the purchase of two (2) RF Personal Monitors for monitoring radio frequency emissions from Cox Facilities during maintenance of City-Owned Facilities and ROW and (2) partially fund the City's safety program concerning RF emissions (the "City's Safety Program") in the vicinity of Cox Facilities. The cost of the City's Safety Program will be paid not only by Cox, but by others who place wireless antennae in the City's right-of-way. The City's Safety Program will, among other things, sponsor a safety report and training for City personnel who work around RF emissions. On each anniversary of this Agreement, Cox will make an additional payment of one thousand five hundred dollars (\$1,500.00) as and for the continuing operation of the City's Safety Program ("Annual Contribution"). The City may, from time to time, based on the actual cost of administering and maintaining the City's Safety

Program, raise or lower the amount of Cox's Annual Contribution. The City will raise or lower the Annual Contribution by the same amount for all other contributors to the City's Safety Fund.

- 2.12. Cox shall comply with any necessary zoning, building permit, traffic control, ROW management requirements, non-City utility permits, other permits as required, or other regulatory requirements ("Permits") that apply to Cox Facilities.
- 2.13. The Cox Facilities will be used solely by Qualified Service Providers for Permitted Uses, and Cox is not authorized to and shall not use the Cox Facilities to offer or provide any other services not specified herein. The Cox Facilities shall be owned by Cox, except that if agreed with Cox, a Qualified Service Provider may own the radios, the antennas or the related cables. Nothing in this paragraph shall diminish or alter Cox's obligations under this Agreement.

3. Installation of Cox Facilities; Utilities; Access.

- 3.1. This Agreement authorizes Cox, and no other person, to mount, operate, manage and maintain Cox Facilities in the ROW. This Agreement does not authorize a Qualified Service Provider to mount, operate, manage or maintain Cox Facilities in the ROW. Nothing herein precludes the City from entering into similar agreements for wireless antennae on existing structures in the right of way. At Cox's expense, Cox may connect the Cox Facilities to the cable system operated under the Cox Cable license. To the extent Cox provides cable services through the Cox Facilities, Cox shall meet its obligations under the Cable License including remitting the Renewal License Fees to City.
- 3.2. All work in the ROW will be performed only by Cox and its contractors and will be performed substantially in compliance with the Uniform Standard Specifications and Details for Public Works Construction sponsored and distributed by MAG, Mesa Standard Details and Specifications, Mesa's Engineering Design Standards, Mesa's Approved Product List and Technical Specifications, OSHA regulations, compliance with the FCC Radio Frequency Exposure Guidelines (FCC OET Bulletin 65) and all other applicable radio frequency emissions laws and regulations in effect from time to time.
- 3.3. Cox shall prepare and maintain record drawings of all Cox Facilities located on City-Owned Structures and in the ROW and furnish such record drawings at City's request. Locations of said encroachments shall be reported using State Plan Coordinate System Arizona Central Zone, North American Datum 1983 (NAD83) for horizontal position, and North American Vertical Datum 1988 (NAVD88) for vertical positions; or other public land survey system accepted by the City Engineer or designee. Cox shall furnish City copies of the record drawings in both hard copy and electronic formats, as requested by the City. The electronic copy shall be provided in Autocad 2004 DWG format or other current City electronic format. In the event the horizontal and vertical locations are not

known or provided as requested by City, Cox shall reimburse the City for actual costs associated with locating and potholing Cox's Facilities, in the event that Cox Facilities need to be located in connection with one of Mesa's projects.

- 3.4. If the Cox Facilities are not located in the precise location depicted in the Site License or the As-Built Drawings, Cox shall be responsible, and shall reimburse City, for all costs and damages incurred in locating the Cox Facilities and all delay costs incurred to locate (and if necessary relocate) the Cox Facilities.
- 3.5. Cox shall screen all pad and ground mounted Equipment Cabinets that are used for Permitted Uses with a screen wall and landscaping as approved by City with the Site License. Screening shall blend with or enhance the surrounding area with the use of artistic and/or architectural detail and shall take into account scale, form, texture, materials and color and shall conceal the equipment as much as possible. The screening shall be noted on the site survey and construction drawings to be reviewed by City.
- 3.6. Cox shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. If any lien is filed against City Property as a result of acts or omissions of Cox or Cox's employees, agents or contractors, Cox shall discharge the lien or bond the lien off in a manner reasonably satisfactory to City within thirty (30) days after Cox receives written notice that the lien has been filed.
- 3.7. Cox shall, at Cox's expense, keep and maintain the Cox Facilities on City-Owned Structures and/or in the ROW and their attachment to the City-Owned Structure in a commercially reasonable condition and repair during the term of the Site License, normal wear and tear and casualty excepted.
- 3.8. Cox shall install separate meters for any utilities used by Cox and shall pay for all utilities supplied to, used, or consumed as a result of the operation of Cox's Facilities, including without limitation (as applicable) all gas, electric, sanitation, and telephone installation and monthly use charge. Cox shall comply with all City of Mesa Ordinances, permit requirements, Utility Terms and Conditions, and regulations related to utility services. All third party equipment needed to service the Cox Facilities shall be required to apply for and obtain separate permits.
- 3.9. In the event of an emergency, maintenance, accident or condition that causes the City to replace or remove the Cox Facilities, Cox at its sole expense shall be responsible for the reconnection to a utility.
- 3.10. Cox is not allowed to place a backup power supply (generator or battery, permanent or temporary) on the City-Owned Structures and/or in the ROW without the prior written consent of City pursuant to an approved Site License.

- 3.11. Cox shall purchase and store extra street light poles in anticipation of emergency or routine replacement of street light poles utilized by Cox or City. All replacement poles shall be approved by City prior to installation.
- 3.12. All Cox Facilities shall be identified by a permanently installed plaque or marker, no larger than four (4) inches by six (6) inches, clearly identifying Cox Communication's name, address, email address, and emergency phone number.
- 3.13. If Cox abandons use of any Cox facilities, or any portion thereof, installed under or pursuant to an approved Site License, Cox shall remove all of the Cox Facilities installed pursuant to the approved Site License immediately, but no event later than three (3) days, at Cox's expense and restore the City-Owned Structure and ROW, including Cox Facilities installed sub-grade, better than or equal to the condition that existed prior to construction and installation of the Cox Facilities.

4. Interference, Testing and Reservation.

- 4.1. Cox shall not use the City-Owned Structures or the ROW in any way which interferes with the use of any portion of the City Property by City. In the event City determines that Cox's use of the City-Owned Structures or the ROW interferes with the City's use of the City Property, City shall notify Cox of such interference and Cox shall have fifteen (15) days to remedy the interference. If Cox does not remedy the interference, such action shall be deemed a material breach by the Cox and City shall have the right to terminate the Site License.
- 4.2. Cox shall not install, operate, or allow the use of equipment, methodology or technology that interferes or is likely to interfere with the optimum effective use or operation of City's existing or future fire, law enforcement, Police, Public Safety, municipal, emergency or other communication equipment, methodology or technology (including, but not limited to, voice, data or other carrying, receiving or transmitting equipment). If such interference should occur, Cox shall immediately discontinue using the equipment, methodology or technology that causes the interference until Cox takes corrective measures to alter the Cox Facilities to eliminate such interference. Any such corrective measures shall be made at no cost to City.
- 4.3. Both City and Cox shall be allowed to conduct radio frequency emission and interference studies from time to time to determine whether Cox's use of the Cox Facilities will interfere with City's use of the City-Owned Structures or the ROW. In the event that such a study indicates that Cox's use will potentially interfere with City's use of the City-Owned Structures or the ROW, Cox shall have sixty (60) days to remedy the interference to City's satisfaction. If the problem is not so remedied in sixty (60) days, then City may require Cox, at Cox's full expense, to relocate the Cox Facilities so as to remove or minimize the interference, to the extent City deems necessary. City shall permit Cox to place a temporary Antenna

(Cell on Wheels or similar installation) on the City-Owned Structures, the ROW or at some other location acceptable to Cox and City, during relocation of Cox Property.

- 4.4. City may, at its expense, perform tests as necessary to determine compliance of the Cox Facilities on the City-Owned Structures or in the ROW with Federal radio frequency exposure limit rules, 47 C.F.R. Section 1.1310, or subsequent Federal rules as amended from time to time.
- 4.5. Cox shall conduct an initial test for compliance with Federal radio frequency exposure limit rules prior to placing the Cox Facilities (or that of any sub-lessees of Cox) on the City-Owned Structures or in the ROW into commercial operation, and Cox shall perform additional tests upon any significant change in the Cox Facilities on the City-Owned Structures or in the ROW, such as sublicenses to third parties for them to install communications equipment on the City-Owned Structures or in the ROW. All such testing shall be performed by a qualified radio engineer, and a copy of the test results shall be provided to all Parties. If such tests show noncompliance with applicable radio frequency exposure limit rules then in effect, then all Cox Facilities on the City-Owned Structures or in the ROW shall be shut down (except for work necessary to bring it into compliance) until subsequent tests again show compliance with such rules.
- 4.6. City does not grant, and reserves for itself, its lessees, successors and assigns, (i) all mineral rights, seismic rights and rights to oil, gas, water, other hydrocarbons or minerals on, as to, under or about any portion of the City Property; (ii) rights to generate electricity from the wind or wind power on, as to or about any portion of the City Property; and (iii) the right to grant to others the rights hereby reserved.
- 4.7. City shall have the right to operate, replace and maintain all City Owned Structures in such manner as best serves City's service requirements including, but not limited to, the right to allow the attachment of additional facilities. Cox agrees to shut down communications and electrical equipment during any time City is maintaining, testing or replacing the City-Owned Structure within four (4) business days from the date of notice. Cox will send a technician with an RF Monitor to show readings prior to the site being deactivated, and show readings after the site is deactivated to confirm that the equipment is deactivated as shown by the placement of lockout and tag out devices. If Cox fails to send a technician within four (4) business days from the date of notice, Cox shall reimburse City for its costs related to the delay including time and labor expenses.
- 4.8. City reserves the right to abandon any of its City-Owned Structures. City shall give Cox no less than one-hundred eighty (180) days' notice of its intent to abandon a City-Owned Structure to allow Cox to remove and relocate the Cox Facilities.

5. Fees.

- 5.1. Cox shall pay the application fee for each Site License at the time of submittal of a Site License application.
- 5.2. Cox shall pay all applicable permit fees at the time of issuance of a construction permit for each Site License, including by way of illustration and not limitation, all applicable taxes, traffic control fees, and technology fees that are adopted by the City from time to time.
- 5.3. City and Cox agree that as consideration for Cox's right to use the City-Owned Structures or the ROW pursuant to an approved Site License, Cox shall pay to City the applicable fees set forth in the Schedule of Fees on Exhibit B, attached hereto and incorporated herein (the "Fee") for each Site License.
  - 5.3.1. The Fee for each Site License shall be increased annually by three percent (3%) on each anniversary date of the Effective Date of the individual Site License for the duration of the term of the Site License.
  - 5.3.2. Except as otherwise provided for above, the Fee shall be paid to City in advance, on or before the anniversary date of the Effective Date, without prior demand and without any deduction or offset whatsoever.
  - 5.3.3. In the event that Cox does not timely remove Cox Facilities under Section 6.2.3, the Fee and Conduit Fee shall be increased by an additional fifty percent (50%) over the amount of the Fee and Conduit Fee that would otherwise be payable under this Agreement.
  - 5.3.4. Fees paid by Cox are non-refundable.
- 5.4. If payments as described in this Section 5 are late, Licensee shall pay interest at a the rate of ten percent (10%) per annum from the date the fee became past due and computed monthly.

6. Term and Renewal.

- 6.1. This Agreement shall become effective on the date of approval by the Mesa City Council. The initial term of this Agreement shall be ten years (10) years and shall commence on the Effective Date (the "Initial Term"). Upon expiration of the Initial Term, the Agreement shall automatically be extended for two (2) additional five (5) year terms (the "First Renewal Term") unless City or Cox terminates it at the end of the Initial Term by giving the Licensor written notice of the intent to terminate at least ninety (90) days prior to the end of the Initial Term.
- 6.2. Except as otherwise provided herein, this Agreement may be terminated, without any penalty or further liability as follows:

- 6.2.1. Cox shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice, so long as Cox has not begun any construction or installation of Cox Facilities pursuant to an approved Site License.
- 6.2.2. Upon twelve (12) months written notice by Cox if despite diligent effort by Cox, Cox is unable to obtain, maintain, or otherwise forfeits, cancels or has been canceled, or allows to expire without renewing any license (including, without limitation, an FCC license), permit or any governmental approval necessary for the installation and/or operation of the Facilities;
- 6.2.3. Following the termination or expiration of this Agreement or at such later time as may be allowed under this Agreement, Cox, at City's written request, shall within sixty (60) days remove the Cox Facilities and restore the ROW or City-Owned Structures where the Cox Facilities are located to a condition equal to or better than the ROW immediately adjacent to where the Cox Facilities are located. Additionally, Cox's removal and restoration will not be deemed complete until it is approved by City, and such approval may not be unreasonably denied.
- 6.2.4. If Cox fails to remove the Cox Facilities and restore the property as required above, City at its election may: (i) remove the Cox Facilities and restore the property and Cox shall be financially liable and pay (within thirty (30) days of invoice) all costs for such removal and restoration; or (ii) give notice to Cox that City will retain the Cox Facilities, and in such event Cox's right, title and interest in the Cox Facilities owned by Cox or an Affiliate shall immediately vest in City. Cox hereby releases City from all damages as a result of the removal and disposal of the Cox Facilities pursuant to the terms of this paragraph.
- 6.2.5. The provisions of this Section shall survive the expiration or any termination of this Agreement.
- 6.3. Site Licenses shall be valid for a term of ten (10) years but in no event will any Site License term extend beyond the term of this Master Agreement.
  - 6.3.1. Cox may terminate a Site License upon ninety (90) days prior written notice to City and removal of all Cox Facilities authorized pursuant to the terms of this Site License.
  - 6.3.2. City may terminate a Site License upon ninety (90) days prior written notice to Cox.
  - 6.3.3. A Site License may be immediately terminated upon any of the following:

- 6.3.3.1. In the event Cox neglects or refuses to comply with the terms of this Master Agreement, including but not limited to, procuring and maintaining insurance coverage as required by Section 9;
- 6.3.3.2. In the event Cox fails to make any payment of the Fee or other sums to City when due, and does not cure such default within ten (10) days after receipt of written notice from City of such failure;
- 6.3.3.3. Failure to complete installation and/or construction of the Cox Facilities pursuant to the approved Site License within three (3) months after approval of the Site License;
- 6.3.3.4. Cox's failure to operate the Cox Facilities pursuant to the approved Site License (except during specific periods expressly excused by this Agreement) for a period of six (6) months during any twelve (12) month period; or
- 6.3.3.5. Upon the institution by or against Cox of insolvency, receivership or bankruptcy proceeding or any other proceedings for the settlement of Cox's debts; upon the assignment by Cox for the benefit of creditors; or upon Cox's dissolution or ceasing to do business.

## 7. Default and Right to Cure.

- 7.1. Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, City shall have the right, but not the obligation, to terminate this Agreement on written notice pursuant to Section 6 above to the addresses and person listed in Section 10 to take effect immediately, if Cox fails to perform any material covenant for a period of thirty (30) days after receipt of written notice thereof to cure; provided, however, Cox shall have such period of additional time (not to exceed 90 total days) if the nature of such cure reasonably requires additional time and Cox has commenced the cure process and is diligently pursuing its completion.
- 7.2. Cox shall be in default if it (i) fails to make any payment of the Fee or other sums to City when due, and does not cure such default within ten (10) days after receipt of written notice from City of such failure; (ii) abandons or vacates the use of City-Owned Structures, ROW or Use Areas; (iii) is adjudicated as bankrupt or makes any assignment for the benefit of creditors; (iv) if Cox becomes insolvent; or (v) defaults in maintaining any insurance required by this Agreement. Notwithstanding the preceding sentence, such failure shall not be a default if within thirty (30) days after notice from City; Cox provides to City the required insurance and the required evidence thereof. Such insurance must cover the lapsed coverage period so that there is no gap in the insurance coverage required by this Agreement.

- 7.3. In the event of a default, City shall have the right, at its option, in addition to and not exclusive of any other remedy City may have by operation of law or equity, without any further demand or notice, terminate any Site License pursuant to Section 6.
- 7.4. If suit shall be brought by City for recovery of possession of the Use Area, removal of Cox Facilities, or a Site License recovery of any Fee or any other amount due under the provisions of this Agreement, or because of the breach of any other covenant, and City prevails upon such suit, then Cox shall pay to City all reasonable expenses incurred therefor, including reasonable attorney fees actually incurred.
- 7.5. In the event of any default of this Agreement by Cox, City may at any time, after notice has been given as set forth in subsection (a) above, cure the default for the account of and at the expense of Cox. If City is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney fees in instituting, prosecuting or defending any action to enforce City's rights under this Agreement, the sums so paid by City, with all interest, costs and damages shall be deemed to be the Fee otherwise due and shall be added to the Fee and shall be due from Cox to City on the first day of the month following the incurring of the respective expenses.

8. Taxes and Liens.

- 8.1. Taxes and Assessments. Cox shall pay or cause to be paid, before delinquency, any and all taxes and assessments which are attributable to the Cox Improvements. Cox shall protect and hold harmless City, City-Owned Structures, ROW and the Use Areas from all liability for any and all such taxes and assessments and charges together with any interest, penalties or other charges thereby imposed, and from any sale or other proceeding to enforce payment thereof.
- 8.2. Government Property Lease Excise Tax. Cox shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-6201 et seq. or similar laws in force from time to time. Pursuant to A.R.S. § 42-6206, failure by Cox to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting Cox of any interest in or right of occupancy of the Use Areas.
- 8.3. Liens. Cox shall keep and hold City, the City-Owned Structures, ROW and the Use Areas harmless from and against any liens or claims arising out of any work performed, materials furnished or obligations incurred by Cox, and shall indemnify and hold City harmless against the same, together with all costs of suit and reasonable attorney's fees incurred by City in connection therewith.

- 8.4. Cox Payments Cumulative. All amounts payable by Cox hereunder or under any tax, assessment or other existing or future obligation shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or set off against each other in any manner.

9. Insurance.

- 9.1. Insurance Responsibility. Prior to any access to City-Owned Structures and/or ROW, Cox shall procure and maintain for the duration of any Site License the following insurance:

- 9.1.1. Commercial General Liability and Environmental Liability. Commercial general liability insurance with a limit of Two Million Dollars (\$2,000,000) for each occurrence, a limit of Two Million Dollars (\$2,000,000) for bodily injury and property damage annual aggregate, and a limit of Five Million and No/100 Dollars (\$5,000,000.00) general aggregate limit including premises operations, independent contractors, products, completed operations, contractual liability, and personal and advertising injury. The policy shall contain a "separation of insureds" clause. If environmental pollution or environmental hazards are excluded from the General Liability policy a separate Pollution Insurance Policy shall be required with the same limits as required for the General Liability coverage.
- 9.1.2. Commercial Automobile Liability. Automobile liability insurance with a combined single limit of One Million and No/100 Dollars (\$1,000,000.00) for each occurrence covering all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Cox's use of the Use Areas. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and off-loading.
- 9.1.3. Workers' Compensation. Such workers' compensation as is required by law and employer's liability insurance with a limit of One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) disease for each employee, Five Hundred Thousand Dollars (\$500,000) policy limit for disease. All contractors and subcontractors must provide like insurance.
- 9.1.4. Other Insurance. Any other insurance City may reasonably require for the protection of City, the City-Owned Structures, the Right-of-Way and the Use Areas, Cox, or the activities carried on or about the City-Owned Structures, the Right-of-Way and Use Areas. Additionally, City may elect by notice to Cox to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that City

reasonably determines to affect the prudent amount of insurance to be provided.

- 9.2. Form of All Insurance. All insurance provided by Cox with respect to the premises shall meet the following requirements:
- 9.2.1. "Occurrence" coverage is required. "Claims made" insurance is not permitted.
  - 9.2.2. All general liability policies shall include City and City's employees, officials, representatives, volunteers, officers, and agents as an additional insured as their interest may appear under this Agreement. Each such policy shall include cross-liability/separation of insureds. Cox may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Cox may maintain.
  - 9.2.3. Cox must clearly show, by providing copies of insurance certificates on an annual basis, that all insurance coverage required by this Agreement is provided.
  - 9.2.4. Cox may provide the required insurance coverage through a self-insured program and such approval may be subject to additional requirements and be given or withheld in City's sole discretion and revoked by City at any time.
  - 9.2.5. Cox's insurance shall be the primary insurance as to the risks it covers, and City's insurance shall be secondary.
  - 9.2.6. The workers' compensation shall waive rights of recovery (subrogation) against City and the Additional Insureds.
  - 9.2.7. Cox shall be solely responsible for any self-insured amount or deductible.
  - 9.2.8. All policies shall require that notices be given to City in the manner specified for notices to City under this Agreement.
- 9.3. Acceptable Insurers. Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A-VII, unless otherwise approved in writing by City.
- 9.4. City's Election to Provide Insurance. City is not required to carry any insurance covering or affecting the Use Areas or use of City's property related to this Agreement. Any insurance or self-insurance maintained by City shall not contribute to Cox's insurance.

- 9.5. Representation of Coverage Adequacy. By requiring insurance herein, City does not represent that coverage and limits will be adequate to protect Cox. Failure to demand evidence of compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Cox from, nor be construed or deemed a waiver of, Cox's obligation to maintain the required insurance at all times during the performance of the Agreement.
- 9.6. Use of Subcontractors. Before Cox allows any contractor, subcontractor or other person to occupy, use or work on or about the Use Area pursuant to this Agreement, Cox shall comply with the following: Cox shall cause such person to provide to City the same worker's compensation and automobile liability insurance with respect to such contractor, subcontractor, or other person's acts that this Agreement requires Cox to provide to City herein.

10. Notices.

- 10.1. All notices, requests, demands and other communications shall be in writing and are effective upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. City or Cox may from time to time designate any other address for this purpose by providing written notice to the other Party.

If to City, to:

City of Mesa  
Engineering Department  
P.O. Box 1466  
Mesa, Arizona 85211-1466

If to Cox, to:

Cox Communications Arizona, LLC  
1550 West Deer Valley Road  
Building C  
Phoenix, Arizona 85027  
Attn: Senior VP & SW Region Manager

With a copy to: Cox Communications, Inc.  
Attn: VP Government Affairs  
6205-B Peachtree-Dunwoody Road  
Atlanta, Georgia 30328

- 10.2. Notice for all operational and emergency contacts shall initially be as follows. City and Cox shall each notify the other as the following change from time to time:

If to Cox, for general operational matters:      Cox Emergency Services contact:

Cox Communications Arizona, LLC  
1550 West Deer Valley Rd, Bldg C  
Phoenix, Arizona 85027  
Attn: SVP & SW Region Manager

Network operations center –  
1-877-897-2475

If to City, for general operational matters:

City Emergency Services contact:

Lori Greco  
Right of Way Manager  
City of Mesa  
P.O. Box 1466  
Mesa, Arizona 85211-1466

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

11. Indemnification.

- 11.1. In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, except to the extent caused by or arising out of the negligence or willful misconduct of City and the City Parties (as defined herein), Cox shall pay, indemnify, defend and hold harmless City and City's employees, officials, representatives, volunteers, officers, and agents (the "City Parties") for, from and against any and all claims, allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with reasonable attorney fees, court costs, and the cost of appellate proceedings) related to or arising out of: (i) Cox's (or its agents, contractors, representatives, or employees) (the "Cox Parties") use of, or construction or maintenance on, the Cox Facilities, the City-Owned Structures, the Right-of-Way and the Use Areas; (ii) any negligent act, error, mistake or omission by Cox or the Cox Parties in the performance of this Agreement; and/or (iii) Cox's (or its agents, contractors, representatives, or employees) failure to fully comply with the terms, conditions, and requirements of this Agreement. As a condition to City's executing this Agreement, Cox specifically agrees that to the extent any provision of this paragraph is not fully enforceable against Cox for any reason whatsoever, this paragraph shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law.
- 11.2. Except to the extent caused by or arising out of the negligence or willful misconduct of the Cox Parties, City shall pay, indemnify, defend and hold harmless Cox and the Cox Parties for, from and against any and all claims, allegations, demands, judgments, assessments, taxes, impositions, expenses,

proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with reasonable attorney fees, court costs, and the cost of appellate proceedings) related to or arising out of: (i) the use of the City-Owned Structures and Right-of-Way (excluding the Use Areas) by City and the City Parties; and/or (ii) any negligent act, error, mistake or omission by City or the City Parties in the performance of this Agreement.

11.3. Risk of Loss. Notwithstanding any provision to the contrary, except to the extent caused by or arising out of the active negligence or willful misconduct of City and City Parties, Cox assumes the risk of any and all loss, damage or claims related to Cox's use of the City-Owned Structures, ROW, Use Area or other property owned by City, Cox or third parties. Cox shall be responsible for any and all damage to its property and equipment related to this Agreement.

11.4. Indemnities and Insurance Cumulative. Cox's obligations to indemnify do not diminish in any way Cox's obligations to insure; and Cox's obligations to insure does not diminish in any way Cox's obligations to indemnify. Cox's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Cox under or connected with this Agreement. The amount and type of insurance coverage required by this Agreement will in no way be construed as limiting the scope of the indemnities in this paragraph.

11.5. Survival. The terms, conditions, obligations, and requirements (including but not limited to the indemnity, duty to defend, and hold harmless obligations) in this Article 11 shall survive the expiration or termination of this Agreement.

12. Environmental Laws.

Cox, its officers, agents, affiliates, contractors and subcontractors and employees, shall not introduce or use any Hazardous Substance on the City-Owned Structures, Right-of-Way and Use Areas in violation of any applicable law. "Hazardous substance" means any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term pursuant to any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease. Except to the extent caused by or arising out of the negligence or willful misconduct of City or the City Parties, Cox agrees to defend, indemnify and hold harmless City from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that City may suffer or incur due to the existence or discovery of any Hazardous Substances on the City-Owned Structures, Right-of-Way and Use Areas or the

migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment, that relate to or arise from Cox's activities, or those of its officers, agents, affiliates, contractors and subcontractors and employees. The indemnification in this section specifically includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 12 shall survive the termination or expiration of this Agreement. For purposes of this Agreement, "Hazardous substance" shall not include a backup support battery for Cox's Facilities, which shall be expressly permitted herein.

13. Assignment.

13.1. This Agreement shall not be assigned by Cox without the express written consent of the City. Notwithstanding the foregoing, the transfer of the rights and obligations of Cox (i) to an Affiliate or (ii) to any successor in interest or entity acquiring fifty percent (50%) or more of Cox's stock or assets (collectively "Exempted Transfers") shall not require the consent of the City, provided that with regard to a successor in interest or entity acquiring fifty percent (50%) or more of Cox's stock or assets, Cox reasonably demonstrates to the City's lawfully empowered designee the following criteria (the "Exempted Transfer Criteria"): (a) such transferee will have a financial strength after the proposed transfer sufficient to fully perform Cox's obligations hereunder; (b) any such transferee assumes all of Cox's obligations hereunder, including all obligations and/or defaults under this Agreement occurring prior to the transfer (whether known or unknown), signed by Cox's and its transferee's respective officers duly authorized to do so, on a notarized form approved by the City; (c) the experience and technical qualifications of the proposed transferee, either alone or together with Cox's management team, in the provision of Telecommunications Service, evidences an ability to operate the Cox Facilities; (d) the transferee provides the City with a copy of an appropriate certificate of public convenience and necessity from the PUC authorizing it to operate the Cox Facilities; and (e) the transferee has a valid City business license. Cox shall give at least thirty (30) days' prior written notice (the "Exempted Transfer Notice") to the City of any such proposed Exempted Transfer and shall set forth with specificity in such Exempted Transfer Notice the reasons why Cox believes the Exempted Transfer Criteria have been satisfied. The City shall have a period of thirty (30) days ("Exempted Transfer Evaluation Period") from the date that Cox gives the City its Exempted Transfer Notice to object in writing to the adequacy of the evidence contained therein. Notwithstanding the foregoing, the Exempted Transfer Evaluation Period shall not be deemed to have commenced until the City has received from Cox and the proposed transferee any and all additional information as the City may reasonably require in connection with its evaluation of the Exempted Transfer Criteria as set forth in the Exempted Transfer Notice, so long as the City gives Cox notice in writing of the additional information the City requires within fifteen (15) days after the City's receipt of the original Exempted Transfer Notice. If the City fails to act upon Cox's Exempted Transfer Notice within the Exempted Transfer

Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by the City that Cox has in fact established compliance with the Exempted Transfer Criteria to the City's satisfaction.

- 13.2. "Affiliate" means each person or entity which falls into one or more of the following categories: (a) each person or entity having, directly or indirectly, a controlling interest in Cox; (b) each person or entity in which Cox has, directly or indirectly, a controlling interest; or (c) each person or entity that, directly or indirectly, is controlled by a third party which also directly or indirectly controls Cox. For purposes of this Agreement, "controlling," "controlled," and "control" or "controls" means an equity or financial interest of more than fifty percent (50%). An "Affiliate" shall in no event include any creditor of Cox solely by virtue of its status as a creditor which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, Cox.
- 13.3. "Assignment" or "Transfer" means any transaction in which: (a) any ownership or other right, title or interest of more than fifty percent (50%) in Cox or its Cox Facilities is in the aggregate transferred, sold, or assigned, directly or indirectly, in whole or in part; (b) there is any change or transfer of control of Cox or its Cox Facilities; (c) any change or substitution occurs in the managing members of Cox, if applicable. An "Assignment" shall not include a mortgage, pledge or other encumbrance as security for money owed, or the transfer of any right, title, or interest in Cox or the Cox Facilities to an Affiliate.
- 13.4. Any person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code, 11 USC Sections 101, et seq., shall be deemed without further act to have assumed all of the obligations of Cox arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to City an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to City, shall be the exclusive property of City, and shall not constitute property of Cox or of the estate of Cox within the meaning of the Bankruptcy Code. Any monies or other considerations constituting City's property under the preceding sentence not paid or delivered to City shall be held in trust for the benefit of City and be promptly paid to City.

14. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors, personal representatives and assigns.

15. Dispute Resolution.

- 15.1. Except as otherwise provided in this Agreement, any controversy between the Parties arising out of this Agreement or breach thereof, is subject to the mediation process described below.
- 15.2. A meeting will be held promptly between the Parties to attempt in good faith to negotiate a resolution of the dispute. Individuals, representing the Parties, with decision making authority (or, in the case of a City which is a public body, the authority to recommend decisions to City's Board or legislative body) will attend the meeting regarding the dispute. If within twenty (20) days after such meeting the Parties have not succeeded in resolving the dispute (subject to approval by City's Board or legislative body), they will, within twenty (20) days thereafter submit the dispute to a mutually acceptable third Party mediator who is acquainted with dispute resolution methods. City and Cox will participate in good faith in the mediation and in the mediation process. The mediation shall be nonbinding. Neither Party is entitled to seek or recover punitive damages in considering or fixing any award under these proceedings.
- 15.3. The costs of mediation, including any mediator's fees, and costs for the use of the facilities during the meetings, shall be born equally by the Parties. Each Party's costs and expenses will be borne by the Party incurring them.
- 15.4. If the matter has not been resolved by mediation within one hundred eighty (180) days of a request for mediation, then the Parties may pursue any legal remedies available to them.

16. Force Majeure.

If a Party is delayed or hindered in, or prevented from the performance required under this Agreement (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrections, war, acts of God or other reasons of like nature, not the fault of the Party delayed in performing work or doing acts, and where reasonable measures by such Party could not have avoided or mitigated the effects of such acts, then such Party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay. In the event that Cox invokes this provision because damage to the City-Owned Structures, Right-of-Way and Use Areas has hindered, delayed, or prevented Cox from using the Use Area, Cox may immediately erect a temporary antenna facility on the Use Area necessary to resume service, provided that such temporary facility does not unreasonably interfere with City's use of the City-Owned Structures, ROW and Use Areas or ability to repair or restore the City Property. If, in City's sole and absolute discretion, it elects to repair or restore the City-Owned Structures, ROW and Use Areas, upon completion of such repair or restoration, Cox is obligated to repair the Antenna and the Equipment Cabinet in accordance with the terms of this document.

17. Non-Waiver.

Failure of City to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but City shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Cox to City after a breach of this Agreement shall not be deemed a waiver of such breach unless expressly set forth in writing.

18. Miscellaneous.

- 18.1. Except for indemnification pursuant to Sections 11 and 12, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.
- 18.2. Each Party agrees to furnish to the other, within twenty (20) days after request, such truthful estoppel information as the other may reasonably request.
- 18.3. This Agreement together with all attached exhibits constitutes the entire Agreement and understanding of the Parties, and supersedes all offers, negotiations and other licenses or agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by both Parties.
- 18.4. Each Party agrees to cooperate with the other in executing any documents necessary to protect its rights or use of the City-Owned Structures, ROW and Use Areas.
- 18.5. This Agreement shall be construed in accordance with the laws of the State of Arizona.
- 18.6. If any term of this Agreement is found to be void or invalid, such finding shall not affect the remaining terms of this Agreement, which shall continue in full force and effect. The Parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable. Any questions of particular interpretation shall not be interpreted against the draftsman, but rather in accordance with the fair meaning thereof. No provision of this Agreement will be deemed waived by either Party unless expressly waived in writing signed by the waiving Party. No waiver shall be implied by delay or any other act or omission of either Party. No waiver by either Party of any

provision of this Agreement shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

- 18.7. The persons who have executed this Agreement represent and warrant that they are duly authorized to execute this Agreement in their individual or representative capacity as indicated.
- 18.8. This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- 18.9. All Exhibits referred to herein or attached hereto are incorporated herein for all purposes.
- 18.10. If Cox is represented by any broker or any other leasing agent, Cox is responsible for all commission fees or other payment to such agent, and agrees to indemnify and hold City harmless from all claims by such broker or anyone claiming through such broker.
- 18.11. Cox shall conduct its activities in coordination with City as necessary to maintain good relations with all governmental and other entities having jurisdiction over the Use Area, all other occupants of the Use Area, and the occupants of surrounding real property (this is not intended to, nor shall it, create any third party beneficiaries' rights under this Agreement). Cox shall immediately give to City notice of any actual or threatened dispute, violation or other dispute relating to the City-Owned Structures, ROW and Use Areas. Cox is not an agent for City.
- 18.12. Cox shall at all times comply with all Applicable Laws. Further, Cox's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Cox. This Agreement does not impair City's power to enact, apply or enforce any laws or regulations, or exercise any governmental powers affecting in any way Cox, the City-Owned Structures, ROW or Use Areas.
- 18.13. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any Party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Cox.
- 18.14. The paragraph headings contained herein are for convenience and reference and not intended to define or limit the scope of any provision of this Agreement. The

recitals set forth above are made a part of this Agreement and incorporated herein for all purposes.

- 18.15. No person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. City shall have no liability to third parties for any approval of plans, Cox's construction of improvements, Cox's negligence, Cox's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Cox), or otherwise as a result of the existence of this Agreement.
- 18.16. The Parties are aware of Sections 6003 and 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, preliminarily codified at 47 U.S.C. §§ 1403 and 1455(a) ("Section 6003" and "Section 6409(a)"), are aware that such Sections have not yet been interpreted and applied by the courts, have differing views on the Sections' potential applicability to this Agreement, and have consulted their respective legal counsel with respect to same. City may contend, among other things, that Sections 6003 and 6409(a) are unconstitutional under the Commerce Clause, Fifth and Tenth Amendments to the U.S. Constitution, do not apply to units of government acting in a proprietary capacity or if applied to Antennas in the public rights of way may jeopardize the public health, safety and welfare. The resolution of such contentions, which may not come to pass, is premature. In order to reach agreement on the terms of this Agreement, and only for the purposes of it, the Parties agree on a covenant not to sue as follows:

"Cox, and its successors and assignees will not sue or contend, in any court, or before any agency or in any proceeding, that Sections 6003 or 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, preliminarily codified at 47 U.S.C. §§ 1403 and 1455(a), apply to or affect approvals required to be obtained from Landlord pursuant to this Agreement. For the purposes of the preceding: Sections 6003 or 6409(a) include any rule, order, guidance, interpretation or decision to the extent based on either or both such Sections, and; agency includes the Federal Communications Commission."

- 18.17. Drug Free Workplace Program. Cox is hereby advised that City, to ensure the safety and health of employees and the public working on City contracts/projects, has adopted a policy establishing a drug free workplace for itself and as a requirement for contractors doing business with City. Cox shall require a drug free workplace for all employees working under this Agreement. Cox and its employees and agents who are working under this Agreement shall not manufacture, distribution, dispensation, possession or unlawfully use a controlled substance in the workplace. Cox shall prohibit and ensure that its employees do not possess or use, and its employees and agents shall not use and shall not be under the influence of, intoxicating substances and/or illegal drugs while installing, constructing or maintaining Cox's Improvements.

- 18.18. Compliance with Federal Immigration Laws and Regulations. Cox agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit City or its agents to inspect personnel records to verify such compliance. Cox shall ensure and keep appropriate records to demonstrate that all employees have a legal right to live and work in the United States. To the extent A.R.S. §§ 23-214 and 41-4401 are applicable under this Agreement, the following shall apply: Under the provisions of A.R.S. §41-4401, Cox hereby warrants to City that Agreement and each of its subcontractors will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and complies with A.R.S. §23-214(A) (the “Consultant’s Immigration Warranty”). A breach of this Immigration Warranty shall constitute a material breach of this Agreement and shall subject Agreement to penalties up to and including termination of this Agreement at the sole discretion of City. City may, in its sole discretion, inspect the papers of, and/or conduct random verification of the employment records of, Cox or its subcontractors’ employees who provide services under this Agreement to ensure compliance with this Immigration Warranty. Cox agrees to assist City in regard to any inspection of records or random verification performed. Neither the Cox nor any of its subcontractors shall be deemed to have materially breached this Immigration Warranty if the Cox or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).
- 18.19. Statutory Cancellation Right. In addition to its other rights hereunder, City shall have the rights specified in A.R.S. § 38-511.
- 18.20. Surviving Provisions. All warranties, representations, and duties to indemnify, defend, and hold harmless by Cox shall survive the termination or expiration of this Agreement. Additionally, Cox’s obligations to restore the Use Area and any other obligations or sections of this Agreement that reasonably should survive shall survive the termination or expiration of this Agreement.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

**CITY:**

City of Mesa

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

Printed Name: Christopher J. Brady

Its: City Manager, or Designee

Date: \_\_\_\_\_

**COX:**

Cox Communications Arizona, LLC,  
a Delaware limited liability company,  
d/b/a Cox Communications

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

Printed Name: Susan Anable

Its: Vice President, Public Affairs – Southwest Region

Date: \_\_\_\_\_

**EXHIBIT A**  
**FORM OF SITE LICENSE**

## Wireless Site License

Company Name:

Cox Communications, LLC

Site Name \_\_\_\_\_

Site Address \_\_\_\_\_

This Wireless Site License (this "Site License") is effective this \_\_\_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date"), by and between the City of Mesa, an Arizona municipal corporation ("City") and Cox Communications LLC, a Delaware limited liability company, d/b/a Cox Communications with an address at << address >> (telephone number << >>) ("Cox"). City and Cox are at times collectively referred to as "Parties" or individually as a "Party".

### 1. Site License Terms.

- 1.1. To the extent possible, the provisions of the Master Agreement between Cox and City are incorporated herein by reference as though fully set forth. Capitalized terms used but not defined in this Site License shall have the meanings defined in the Master Agreement.
- 1.2. Any improvements or equipment that does not conform to the terms of this Site License and the Master Agreement are strictly prohibited even if approved by City.
- 1.3. The volume of the use area, equipment, conduit, and the above ground portion pad and/or ground mounted as shown in the Site Survey as << >> cubic feet with << >> antennas.
- 1.4. Cox shall give City a written notice containing a list of the radio frequencies Cox is using at the Use Area and shall give written notice to City of any change in frequencies.

2. Fees. Cox shall pay to City the Site License Application Fee and the Fee for the attachments to City-Owned Structures and ROW use, as set forth in the Master Agreement. The Fee will be paid for the first year as of the Effective Date of this Site License.

The Fees for the first year will be as follows and shall increase by 3% annually:

### 3. Permits and Inspections.

- 3.1. All permits and approvals for the installation and construction of the Cox Facilities must be obtained by Cox prior to the start of any construction pursuant to the terms of this Site License.
- 3.2. Cox shall be solely responsible for the actual costs of a third party structural analysis of the City-Owned Structure permitted in this Site License and for any other required inspections of the Cox Facilities.

4. Term of Site License. The term of this Site License begins as of the Effective Date and shall on << >>.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

**CITY:**

City of Mesa

By: \_\_\_\_\_  
Printed Name: Beth Huning  
Its: City Engineer  
Date: \_\_\_\_\_

**COX:**

Cox Communications LLC,  
a Delaware limited liability company,  
d/b/a Cox

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT B**  
**FEE SCHEDULE**

# **CITY OF MESA**

Sample

## **ANNUAL FEES FOR WIRELESS COMMUNICATION FACILITIES (WCF) IN THE ROW**

Site License Fees are \$500 per site.

**CATEGORY 1** – A single wireless antenna device mounted on an **EXISTING** vertical element (eg. pole) **OR** associated Ground Equipment with a wireless antenna device mounted on a third party vertical element. Ground equipment larger than 50 cu. ft. shall be based on Category 2 equipment fee rates. Each WCF site will be assessed fees as set forth below:

	Antenna Base Fee	Equipment Fee	Total WCF Annual Fee
A. Per Antenna location	\$3,469	N/A	\$3,469
B. Ground equipment (up to 50 cu. ft.)	N/A	\$3,469	\$3,469

**CATEGORY 2** – WCF with antenna(s) on an **EXISTING** vertical element (eg. Pole; co-located) **AND** any associated Ground Equipment. Each WCF site will have an Antenna Base Fee, plus a Ground Equipment Fee (if applicable) for cubic feet of ground equipment in the ROW, as set forth below:

	Antenna Base Fee	Equipment Fee	Total WCF Annual Fee
A. Total is 1 cu. ft. up to 50 cu. ft.	\$3,469	Included	\$3,469
B. Total is 51 cu. ft. up to 200 cu. ft.	\$3,469	\$6,459	\$9,928
C. Total is 201 cu. ft. up to 300 cu. ft.	\$3,469	\$9,672	\$13,141
D. Total is 301 cu. ft. up to 400 cu. ft.	\$3,469	\$12,868	\$16,337
E. Total is 401 cu. ft. or more	\$3,469	\$16,119	\$19,588

**CATEGORY 3** – WCF with antenna(s) mounted on a new vertical element that is stealth or utilizes alternate concealment when existing vertical elements are not available, **AND** any associated Ground Equipment. Each WCF site will have an Antenna Base Fee, plus a Ground Equipment Fee (if applicable) for cubic feet of ground equipment in the ROW, as set forth below:

	Antenna Base Fee	Equipment Fee	Total WCF Annual Fee
A. Total is 1 cu. ft. up to 50 cu. ft.	\$3,671	Included	\$3,671
B. Total is 51 cu. ft. up to 200 cu. ft.	\$3,671	\$6,459	\$10,130
C. Total is 201 cu. ft. up to 300 cu. ft.	\$3,671	\$9,672	\$13,343
D. Total is 301 cu. ft. up to 400 cu. ft.	\$3,671	\$12,868	\$16,539
E. Total is 401 cu. ft. or more	\$3,671	\$16,119	\$19,790

**CATEGORY 4** – WCF with antenna(s) on a new, (non-existing at the time of attachment) vertical element that is neither stealth nor concealed in appearance, and any associated Ground Equipment. Each WCF site will have an Antenna Base Fee, plus a Ground Equipment Fee (if applicable) for cubic feet of ground equipment in the ROW, as set forth below:

	Antenna Base Fee	Equipment Fee	Total WCF Annual Fee
A. Total is 1 cu. ft. up to 50 cu. ft.	\$4,954	Included	\$4,954
B. Total is 51 cu. ft. up to 200 cu. ft.	\$4,954	\$6,459	\$11,413
C. Total is 201 cu. ft. up to 300 cu. ft.	\$4,954	\$9,672	\$14,626
D. Total is 301 cu. ft. up to 400 cu. ft.	\$4,954	\$12,868	\$17,822
E. Total is 401 cu. ft. or more	\$4,954	\$16,119	\$21,073

**Note:** This schedule is not all inclusive and other fees may apply; these fees are subject to an annual adjustment



### **Annual Fees for Wireless Communication Facilities (WCF) in the ROW (Instructions)**

The annual encroachment fees for wireless communication facilities in the rights-of-way categories above shall be administered according to the following rules:

- 1) The fee structure shall apply to the installation of any antennas, antenna structure, ground equipment, electronics, cabinets, power supply, power supply installed for the purpose of the wireless communication facilities and other appurtenances required or associated with the operation of a WCF in the City's rights-of-way (ROW), City easements (CE), and public utility easements (PUE).
- 2) All WCF in the ROW, CE, and PUE must have a Wireless Communication License (WCL) submitted to the City for each WCF site installed and operated in the ROW, CE, and PUE.
- 3) WCF sites in ROW, CE, and PUE that are modified, upgraded, extended, or enhanced shall be subject to the most current fee schedule.
- 4) Antenna Structure and Base Fee – In cases where the existing vertical element is replaced for structural purposes with a pole designed to support the antennas and cabling, the WCF will be categorized as being installed on an existing vertical element. There may be a linear foot fee for fiber that runs outside the footprint.
- 5) Ground Equipment Fee – The ground equipment measurement is calculated by the size of a four-sided "box" (parallel sides of equal length) with a top panel that is parallel to the ground so that the box will cover the ground equipment from the top of the equipment to the ground (non-improved dirt surface), and from side-to-side, including any foundation or pad for the equipment. For situations where there is more than one ground equipment fixture or cabinet (adjacent to each other or within the same use area), the equipment fixtures, cabinets and generators are deemed to be part of the same contiguous ground equipment space and will be measured together within the same box. Any remote radio heads or remote radio units mounted to a cabinet, post, or wall in the same area with the ground equipment shall be included in the measurement for the ground equipment.
- 6) WCF sites that have antennas installed on a vertical element in ROW, CE, and PUE, but the ground equipment installed on private property will be assessed the applicable antenna fee.
- 7) WCF sites with antennas on a vertical element located on private property, but the ground equipment in the ROW, CE, and PUE will be assessed the applicable ground equipment fee.
- 8) WCF installation shall be reasonably coordinated and co-located with the City and other wireless providers' to accommodate co-location opportunities for common installation and placement. The applicant shall demonstrate that the engineering of the WCF and the placement of ground-mounted equipment will accommodate other wireless providers'.
- 9) The annual WCF in the ROW permit fee does not include fees and charges for any other City fees, taxes, permits, plan review fees, inspection fees, or any other services or approvals that maybe required by the City.

- 10) WCF applicants shall obtain an encroachment permit for installation and an annual maintenance/emergency permit to work in ROW after initial construction.

#### **WCF Guidelines for Construction of Facilities/Equipment:**

WCF located on existing or replaced street light poles, parking lot light poles, and street sign poles, are subject to the following criteria:

1. Each WCF shall be identified by a permanently installed plaque or marker, no larger than four (4) inches by six (6) inches, clearly identifying the wireless communications service provider's name, address, e-mail contact, and emergency phone number.
2. The replacement pole and WCF shall not increase the diameter of the existing pole by more than sixty (60) percent, not to exceed eighteen (18) inches total, or increase the height of the existing pole by more than six (6) feet. The height and diameter shall be at the discretion of the City;
3. Antennas shall be limited to snug-mount, canister-mount, and concealed antenna;
4. All cables shall be located inside the pole or within an encasement to hide all cables colored to match the pole and oriented to a side with the least visual impact and be rated for 600 volts;
5. Street light construction and pole replacement shall match build type of existing street light poles per Mesa Standard Details and Specifications M-70 through M-78.02;
6. This section shall follow the City's zoning requirements and general guidelines.
7. Equipment cabinet:
  - a. Shall be screened, pad mounted, inconspicuously placed away from signage and window views; low profile cabinets, placed adjacent to property line or clustered by existing facilities, or within a vault; placed two feet from proposed or existing sidewalk;
  - b. Equipment cabinet locations shall comply with the height and development standards of the underlying zoning district; setback shall meet the yard development standards and setback requirements of the underlying zoning district, except as otherwise permitted herein;
  - c. Equipment is required to be screened by a screen wall, painted, and/or landscaped. Screening shall blend with or enhance the surrounding context in terms of scale, form, texture, materials, and color. WCF shall be concealed as much as possible by blending into the natural and/or physical environment. All screening shall be at the discretion of the City.