

## Wireless Facility Standard ~~Terms and Conditions~~ of Approval

All wireless facilities approved pursuant to Chapter 17.46 or deemed approved by the operation of law shall be automatically subject to these Wireless Facility Standard ~~Terms and Conditions~~ of Approval adopted by the Planning Commission by resolution no. \_\_\_ dated \_\_\_\_\_, unless modified by the reviewing authority in an approval decision as authorized by code Section 17.46.090(B).

### A. **General.**

1. **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless pursuant to another provision of the Municipal Code or these conditions, it expires sooner or is terminated. Unless an extension or renewal has been granted, the permittee must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of any structure supporting the wireless facility that is owned by City, a utility, or another entity, need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least ninety (90) days prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility may remain in place under this permit until the City takes final action on the application.
2. **Future Collocations.** The permittee shall be willing to allow other carriers and site operators to collocate transmission equipment with the wireless facility, to the extent such facility or portions thereof are owned or controlled by the permittee, whenever technically feasible and aesthetically desirable in accordance with applicable provisions in the City's Municipal Code.
3. **CPUC GO-159A Certification.** Within 15 business days after the City issues a permit, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the City Clerk, Director and City Administrator.
4. **City's Standing Reserved.** The City's grant or grant by operation of law of a permit does not waive, and shall not be construed to waive, any standing by the City to challenge any provision in federal or state law or any interpretation thereof.
5. **Compliance with Approved Plans.** Prior to submission of a building permit application, the permittee must incorporate this permit, all conditions associated with this permit and any approved photo simulations into the project plans (the "**Approved Plans**"). The permittee must construct, install and operate the wireless facility in strict compliance, as determined by the approval authority, with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or

required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the approval authority's prior review and approval.

6. **Build-Out Period.** This permit will automatically expire 36 months from the approval date (the "**Build-Out Period**") unless the permittee commences installation of the wireless facility. The permittee may request in writing, and the Director may grant in writing, one six-month extension to the Build-Out Period if the permittee submits, at least 30 days prior to the automatic expiration date in this condition, justifiable cause for granting the six-month extension. If the Build-Out Period finally expires, the permit shall be automatically void but the permittee may submit a new application, which includes without limitation all application fees, for the same or a substantially similar project.
7. **Pre-Installation Requirements.** In addition to obtaining all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use, the permittee shall, prior to commencement of any installation or construction, attend a pre-grading meeting with the Public Works Department regarding temporary Best Management Practices ("**BMPs**") pertaining to discharges from the construction site. Before the permittee can proceed with installation or construction of the approved wireless facility, the Public Works Department must inspect and approve the permittee's installation of such temporary BMPs.
8. **Post-Installation Certifications/RF Emissions Compliance.** Within 60 calendar days after the permittee commences full, unattended operations at the wireless facility, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the wireless facility has been installed and/or constructed in strict compliance with the Approved Plans and Laws. Such documentation shall include, without limitation, as-built drawings prepared by a California licensed civil engineer, GIS data, site photographs and a written report, signed by an RF engineer under penalty of perjury, certifying that: (1) the installation is operated in compliance with 47 U.S.C. § 324 (use of minimum power); and (2) the installation complies with all applicable FCC rules and regulations for human exposure to RF emissions and will not cause members of the general public to be exposed to RF levels that exceed the maximum permission exposure levels deemed safe by the FCC.
9. **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences, hardscape and landscape features, in a neat, clean, safe and code

- compliant condition in accordance with the Approved Plans and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee shall regularly inspect the site to determine whether any maintenance is needed. The permittee shall perform any maintenance requested by the City for compliance with this condition within a reasonable time specified by the Director in a written notice to the permittee. Routine maintenance within residential zones shall be restricted to normal construction work hours specified in the City's Municipal Code. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
10. **Landscape Features.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the City. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
11. **Compliance with Applicable Laws/RF Emissions Exposure Limits.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("**Laws**") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this permit, including any Laws applicable to human exposure to RF emissions. This permit is not granting the permittee any rights to make any portion of the adjacent properties inaccessible to the general public or to hinder future lawful development of adjacent properties as a mitigation measure to ensure the wireless facility will comply with Laws applicable to human exposure to RF emissions. The permittee understands that if site conditions change in the future due to lawful development on adjacent property, the permittee may need to modify or remove its wireless facility or obtain adjacent property owner consent to mitigation measures on the adjacent property if required to maintain compliance with any Laws applicable to human exposure to RF emissions. If the Director finds good cause to believe that the wireless facility is not in compliance with any Laws applicable to human exposure to RF emissions, the Director may require the permittee to submit a written report, signed by an RF engineer under penalty of perjury, that: (1) the installation is operated in compliance with 47 U.S.C. § 324 (use of minimum power); and (2) the installation complies with all applicable FCC rules and regulations for human exposure to RF emissions and will not cause members of the general public to be exposed to RF levels that exceed the maximum permission exposure levels deemed safe by the FCC. The permittee expressly

acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws.

12. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the City. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part. The permittee shall, at its sole cost and expense, repair and restore any and all damages to public and private properties that result from any activities performed in connection with the installation or maintenance of a wireless facility. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. If the permittee fails to complete such repair within the number of days stated on a written notice by the Director may (but shall not have the obligation to) cause such repair to be completed at permittee's sole cost and expense.
13. **Noise.** If the Director finds good cause to believe that ambient noise from a facility violates applicable provisions in the City's Municipal Code, the Director, in addition to any other actions or remedies authorized by the permit, the City's Municipal Code or other applicable Laws, may require the permittee to commission a noise study by a qualified professional to evaluate the facility's compliance.
14. **Interference with City Communications Systems.** The permittee shall not permit the wireless facility authorized under this permit to interfere with any City communication systems. In the event that the wireless facility authorized under this permit is causing interference with any City communication systems, the City may notify the permittee and may order the facility to be powered down until such time as the interference has been mitigated. Any mitigation required shall be at the permittee's sole cost and expense.
15. **Inspections; Emergencies.** The City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the

wireless facility upon reasonable prior notice to the permittee.

Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies threatening actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.

16. **Fire Safety Hazard Protocol.** If the Fire Safety Authority finds good cause to believe that the wireless facility presents an immediate fire risk, electrical hazard or other threat to public health and safety in violation of any applicable Laws, the Fire Safety Authority may notify the permittee and may order the facility to be powered down until such time as the fire threat has been mitigated. Any mitigation required shall be at the permittee's sole cost and expense.
17. **Abandonment.** The permittee shall notify the Director when the permittee intends to abandon or decommission the wireless facility authorized under this permit. In addition, the wireless facility authorized under this permit shall be deemed abandoned if the wireless facility is determined by the Director not to be operating and the permittee fails to resume operations within 90 days from a written notice from the Director. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee, property owner and/or structure owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable Laws, which includes without limitation the City's Municipal Code. The permittee, property owner and/or structure owner may request an extension up to 180 days to complete restoration after a wireless facility is abandoned or deemed abandoned, which the Director may grant for good cause shown. If the removal and restoration obligations under this condition are not complied with within the required period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee, property owner and structure owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
18. **Permittee's Contact Information.** Prior to final inspection and at all times relevant to this permit, the permittee shall keep on file with the Community Planning and Building Department basic contact and site information. This information shall include, at a minimum, the following:
  - a. the name, physical address, notice address (if different from physical address), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) property owner, (iii) structure

owner, (iv) site operator, (v) equipment owner, (vi) site manager and (vii) agent for service of process;

- b. the regulatory authorizations held by the permittee and, to the extent applicable, property owner, structure owner, site operator, equipment owner and site manager as may be necessary for the facility's continued operation;
- c. the facility's site identification number and/or name used by the permittee and, to the extent applicable, property owner, structure owner, site operator, equipment owner and site manager; and
- d. a toll-free telephone number to the facility's network operations center where a live person with power-down control over the facility is available 24 hours-per-day, seven days-per-week.

Within 10 business days after a written request by the City, the permittee shall furnish the City with an update that includes all the most-current information described in this condition or any form provided by the City for such updates. Any notices from the City to the permittee shall be deemed given when delivered to the most current address(es) for the permittee on file with the City.

19. **Indemnification.** The permittee and, if applicable, owners (other than the City) of the property and the structure upon which the wireless facility is installed, shall defend, indemnify and hold harmless the City, City Council and the City's boards, board members, commissions, commissioners, agents, officers, officials, employees and volunteers (collectively, the "**City Indemnitees**") from any and all (a) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings brought against any City Indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this permit, and (b) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this permit or the wireless facility (collectively, "Claims"). If the City becomes aware of any Claims, the City will promptly notify the permittee and the owners of the property and the structure (if applicable) and shall reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the permittee and the property owner and/or structure owner (as applicable) shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. Such indemnification obligations will survive the expiration, revocation or other termination of this permit.

20. **Insurance.** The permittee shall obtain and maintain insurance policies as follows:
- a. **Commercial General Liability Insurance.** Insurance Services Office Form CG 00 01 covering Commercial General Liability (“CGL”) on an “occurrence” basis, with limits not less than \$2,000,000 per occurrence or \$4,000,000 in the aggregate. If a general aggregate limit applies, the general aggregate limit shall apply separately to this project/location. CGL insurance must include coverage for the following: Bodily Injury and Property Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground (“UCX”) exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; (ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/completed operations liability; or (iv) contain any other exclusion contrary to the conditions in this permit.
  - b. **Automotive Insurance.** Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if permittee has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
  - c. **Workers’ Compensation Insurance.** The permittee shall certify that it is aware of the provisions of California Labor Code § 3700, which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and further certifies that the permittee will comply with such provisions before commencing work under this permit. To the extent the permittee has employees at any time during the term of this permit, at all times during the performance of the work under this permit the permittee shall maintain insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
  - d. **Professional Liability Insurance.** The permittee shall maintain Professional Liability (Errors and Omissions) Insurance appropriate to the permittee’s profession, with limit no less than \$1,000,000 per occurrence or claim. This insurance shall be endorsed to include contractual liability applicable to this permit and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the permittee. “Covered Professional Services” as designed in the policy must specifically include work performed under this permit.

- e. **Claims-Made Policies.** If the permittee maintains any required insurance under a claims-made form, the permittee shall maintain such coverage continuously throughout the permit term and, without lapse, for at least three years after the permit term expires so that any claims that arise after the expiration in connection with events that occurred during the permit term are covered by such claims-made policies.
- f. **Umbrella or Excess Liability Policies.** If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for CGL or automotive insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be “pay on behalf,” with defense costs payable in addition to policy limits. Permittee shall provide a “follow form” endorsement or schedule of underlying coverage satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
- g. **Additional Insured; Separation of Insureds.** The relevant CGL and automotive insurance policies shall name the City, its elected/ appointed officials, commission members, officers, representatives, agents, volunteers and employees as additional insureds. The required insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees.
- h. **Primary Insurance; Waiver of Subrogation.** The required insurance shall be primary with respect to any insurance programs covering the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees. All policies for the required CGL, automotive and workers’ compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage or harm covered by such policies
- i. **Term; Cancellation Notice.** The permittee shall maintain the required insurance throughout the permit term and shall replace any certificate, policy, or endorsement which will expire prior to that date. The permittee shall use its best efforts to provide 30 calendar days’ prior written notice to the City of the cancellation or material modification of any applicable insurance policy; provided, however, that in no event shall the permittee fail to provide written notice to the City within 10 calendar days after the cancellation or material modification of any applicable insurance policy. The permittee shall promptly take action to prevent cancellation or

suspension, reinstate cancelled coverage or obtain coverage from a different qualified insurer.

- j. **Certificates.** Before the City issues any permit, the permittee shall deliver to the Director insurance certificates and endorsements, in a form satisfactory to the Director, that evidence all the coverage required above. In addition, the permittee shall promptly deliver complete copies of all insurance policies and endorsements upon a written request by the Director.
  - k. **Insurer Rating.** Unless approved in writing by the City, all required insurance shall be placed with insurers authorized to do business in the State of California and with a current A.M. Best rating of at least A-:VIII.
21. **Removal Bond.** Prior to issuance of any building permits, the permittee shall post a bond issued by a surety and in an amount and a form acceptable to the City Attorney. The permittee must provide to the City at least one written estimate of removal and restoration costs from a qualified contractor with experience in wireless facilities or other infrastructure removal. The written estimate must cover the cost to remove all equipment and other improvements, including without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable Laws. The bond shall be valid for the term of this permit plus the greater of one year or the time required to complete the removal and restoration in accordance with this condition. If at any time after construction the Director finds good cause to believe that the bond required in this condition no longer adequately covers the removal and restoration costs, the Director may require by written notice that the permittee provide an updated estimate and increase the bond amount to cover any increase.
22. **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the permit application, permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the permit (collectively, "**Records**"). If the permittee does not maintain such Records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing Records will be construed against the permittee. The requirements in this condition shall not be construed to create any obligation on the City to create or prepare any

Records not otherwise required to be created or prepared by other applicable Laws. Compliance with this condition shall not excuse the permittee from any other similar record-retention obligations under applicable Laws.

23. **Permit Revocation.** This permit may be revoked in accordance with the provisions and procedures in code Section 17.66.050.
24. **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the permit or the wireless facility, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
25. **Successors and Assigns.** The conditions terms contained in this permit will bind and inure to the benefit of the City and permittee and their respective successors and permitted assigns.
26. **Severable Conditions.** If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (a) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (b) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (c) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.
27. **No Waiver.** No failure or omission by the City to timely notice or promptly enforce compliance with any permit condition shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with this permit.
28. **No Possessory Interest.** No possessory interest is created by this permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, permittee acknowledges that City has given to permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against permittee's right to possession, occupancy, or use of any public

property pursuant to any right of possession, occupancy, or use created by this permit.

**B. For Facilities in the Public Right-of-Way, the following additional conditions apply.**

1. **Future Undergrounding Programs.** During the term of the permit, if other public utilities are required to underground their facilities in the segment of the public rights-of-way where the permittee's wireless facility is located, the permittee must also underground its wireless facility, except for any components of the facility that are exempted under the applicable undergrounding program. Such undergrounding shall occur at the permittee's sole cost and expense, except as may be reimbursed through tariffs approved by the California Public Utilities Commission for undergrounding costs or other available funding mechanisms.
2. **Electric Meter Upgrades.** If the wireless facility includes a separate or ground-mounted electric meter pedestal and the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee, on its own initiative and at no cost to City, shall arrange for removal of the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall obtain any required encroachment and/or other ministerial permit(s). Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
3. **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may (a) change any street grade, width, or location; (b) add, remove, or otherwise change any improvements in, on, under, or along any street owned by the City or any other public agency, which includes, without limitation, any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles, and utility systems for gas, water, electric, or telecommunications; and/or (c) perform any other work deemed necessary, useful, or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this permit. If the Director determines that any City work will require the permittee's wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's wireless facility within a reasonable time after the Director's notice, the City may (but

will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's wireless facility without prior notice to permittee when the Director determines that City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 business days after a written demand for reimbursement and reasonable documentation to support such costs.

**C. For Eligible Facilities Requests, the following condition C.1 replaces condition A.1. above, and additional conditions C.2 and C.3 apply.**

1. **Permit Term.** The City's grant or any approval deemed granted by operation of law of an EFR administrative design review approval constitutes a federally-mandated modification to the subject tower or base station. The City's grant or any approval deemed granted by operation of law of this EFR administrative design review approval will not extend the existing permit term, if any, for the wireless tower or base station to be modified. Accordingly, the term for this EFR administrative design review approval shall be coterminous with the existing permit or other prior regulatory authorization for the subject tower or base station and any renewals thereof.
2. **Permit subject to conditions of existing permit.** The City's grant or any approval deemed granted by operation of law of an EFR administrative design review approval shall be subject to the terms and conditions of the existing permit for the subject tower or base station.
3. **City's Standing Reserved.** The City's grant or any approval deemed granted by operation of law of an EFR administrative design review approval does not waive, and shall not be construed to waive, any standing by the City to challenge 47 U.S.C. Section 1455(a), any FCC rules that interpret 47 U.S.C. Section 1455(a) or any eligible facilities request.