

GUIDELINES FOR PLACEMENT AND MAINTENANCE OF WIRELESS FACILITIES

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WIRELESS FACILITIES GUIDELINES

1. OVERVIEW OF GUIDELINES

1.1 Basis for Adoption; Definitions.

This manual is adopted pursuant to Section 13.11.F.3 *Powers of Zoning Administrator*, of the Code of Ordinances of the City of Myrtle Beach for the management of wireless facilities in and outside of the rights-of-way. Among other things, the guidelines include a process for pre-approval of designs for wireless facilities on City-owned or controlled structures, and also sets out designs for particular areas in the City. These designs fall into two categories

- Designs for placement of wireless facilities on existing utility poles – (Discussed in Section 3.2).
- Designs for placement of wireless facilities on city-owned or controlled infrastructure (Discussed in Section 7).

To minimize the time from application submission to approval on privately-owned structures, applicants are encouraged to take advantage of the pre-approval process, and to use designs that have been pre-approved by the City, or other designs that are exempted from permitting, or subject to administrative review. The City will be happy to consider designs for use of street light poles or traffic signals that are not identical to the approved designs, but as one of the purposes of approving designs is to maintain a uniform look for City-owned and controlled structures – an important goal for the City – significant departures from the designs are unlikely to be approved unless the designs have attributes that allow the City to better serve its proprietary goals and interests.

Terms defined in Section 13.11 have the same meaning in these guidelines. Terms not defined there shall have the same meaning as in federal laws and guidelines governing the placement of personal wireless facilities. References to particular statutes and regulations refer to the same as they may be amended.

1.1.1 Applicable laws and standards.

“Applicable laws and standards” means all applicable engineering and safety laws, guidelines and standards governing the installation, maintenance and operation of any facility or structure in the public right-of-way, and the performance of all work in or around any facility or structure, and includes but is not limited to: the most current versions of the National Electric Safety Code (“NESC”), the Manual on Uniform Traffic Control Devices (“MUTCD”), the National Electrical Code (“NEC”), the guidelines of the Federal Communication Commission (“FCC”) and the Occupational Safety and Health Administration (“OSHA”); uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, highway engineering manuals,

guidelines, design standards and guidance adopted by the SCDOT to ensure the safety of travelers, the provisions of these guidelines, City building and zoning codes, and other requirements or guidelines of the City or other Federal, State or County authority applicable to the facility, structure or work to be performed.

1.1.2 Installation.

“Installation” means and includes installation, maintenance, modification, replacement, and location and relocation.

1.1.3 Occupant.

“Occupant” means a person who owns or controls, through any arrangement a wireless facility or part of a wireless facility in the rights-of-way; or a person on whose behalf work is being performed in connection with a wireless facility in the rights-of-way.

1.1.4 Permittee.

“Permittee” means the person who is authorized to perform work related to a wireless facility.

1.1.5 Stealth Facility.

“Stealth facility” means any wireless facility that is integrated as an architectural feature of an existing building to which it will be affixed; or any wireless facility that is camouflaged or concealed; so that (1) the presence of the base station and tower (if any) is virtually invisible to the casual observer; or (2) the wireless facility is camouflaged, through stealth design, so as to blend in with its surroundings to such an extent that it is not identifiable by the casual observer as a wireless facility. Examples of stealth facilities include wireless facilities which are disguised to resemble public art or markers such as: flagpoles, indigenous trees, rocks, signage, street lights, information kiosks, or bus stop shelters. To qualify as “stealth” design, the item in question must match the type of item that it is mimicking in size, scale, shape, dimensions, color, materials, function and other attributes as closely as possible, and be placed in a manner and at a location appropriate to the item that it is mimicking. The elements that make a facility a stealth facility are concealment elements.

1.1.6 Substantial Change.

“Substantial change” has the same meaning as that term as defined by 47 C.F.R. § 1.40001(b)(7).¹

1.2 Protection of Public and Public Property

These guidelines are enacted pursuant to the City’s authority over land use, and the City’s role with respect to the rights-of-way.

These guidelines are intended to minimize disruption, visual impact or inconvenience to the public, preserving the public health, safety and welfare; while complying with all applicable laws and standards, and establishing standards that, if satisfied, will permit rapid deployment of wireless facilities.

¹As of the date these guidelines were adopted, the guidelines provided: (7) Substantial change. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings’ rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) It entails any excavation or deployment outside the current site;

(v) It would defeat the concealment elements of the eligible support structure; or

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

The guidelines describe how the City will receive and process applications to install wireless facilities. The goal of these guidelines is to clarify the process for applying and obtaining approval to install, maintain and operate wireless facilities in the City of Myrtle Beach.

In addition, the goal is to establish particular design standards for placement of wireless facilities on structures owned or controlled by the City of Myrtle Beach, primarily traffic signals and street lights. Placement on those facilities is not subject to the City's Zoning Code, but the City has adopted a policy of exercising its proprietary powers in a manner consistent with that Code.

1.3 Overview of Guidelines

These guidelines address the installation of wireless facilities including the installation of base stations and support structures that may be required in connection with those facilities. Installation of wireline and electrical lines to the wireless facility will be governed by the City's general ordinances and manuals for placement of wireline facilities. However, in order to prevent disruption of the rights-of-way, the City may deny or withhold permits for installation of wireline facilities designed solely to serve wireless facilities that require franchises or permits, and have not obtained those permits.

The City's Code requires different types of permits, depending on the work required. The permits may include building permits, electrical permits and the like. A wireless permit issued pursuant to Section 1311 of the City Code authorizes the placement of a wireless facility at a particular location, and establishes conditions on the use at that location, but the wireless permit is not in lieu of other permitting requirements. In addition, users of the rights-of-way must obtain a franchise from the City.

Under Section 1311, there are categories of wireless facilities: that are exempted from the duty to obtain a wireless permit (but remain subject to the duty to obtain any required building or electrical permit). There are three types of requests for placement of wireless facilities: (1) eligible facilities requests; (2) applications that are subject to administrative review; and (3) applications that require a special exception. The latter will require an applicant to show either that the City is required by federal law to issue a wireless permit, or that notwithstanding the variation from the standards, and applying the standards for special exception under the City Code, it is in the best interests of the community to grant a special exception. It is *not* likely, for example, that in areas where utilities have been placed underground, the City would approve placement of new wireless support structures in the rights of way absent a very strong showing that what is proposed ought to be approved.

A wireless permit is not required for property in the rights-of-way that is owned or controlled by the City (in the rights-of-way, primarily traffic signals and street lights). Before using these facilities, or any City property off the rights-of-way (parks,

rooftops and so on) a wireless service or infrastructure provider must enter into an agreement with the City that establishes the terms and conditions under which the property can be used, including the designs that must be utilized.

1.3.1 General Conditions for Private Support Structures

In sum, an applicant that wishes to install a wireless telecommunications on privately or non-City controlled property, or to install their own wireless support structure must have:

- (a) an appropriate authorization to use the property to be occupied (in the rights-of-way, this would require a franchise from the City);
- (b) the permission of the person that owns any support structure that will be used by the wireless facility;
- (c) a wireless permit from the City for installation of a particular wireless facility at a particular location, unless the facility is subject to exemption; and
- (d) other permits that may be required by applicable laws and standards.

1.3.2 General Conditions for Publicly Owned or Controlled Support Structures

An applicant that wishes to install a wireless telecommunications on City-owned or controlled support structures in the public rights-of-way (generally, street lights and traffic signals) within the City of Wilmington must have:

- (a) an appropriate authorization to use the public rights-of-way;
- (b) an agreement with the City, and, where required with any other person that may have an interest in the support structure for use of the structure;
- (c) other, non-wireless permits that may be required by applicable laws and standards.

1.3.3 Other Permits/Licenses May Be Required.

Applicants should be aware that in some instances, different entities may control different parts of what is colloquially characterized as a “public right-of-way.” Thus, an applicant may require permission from the State or other person, to occupy the public right-of-way in addition to permission from the City. It is the applicant’s responsibility to determine what permits, licenses and other consents are required.

Wireless permits issued pursuant to these guidelines are not in lieu of leases, licenses or easements that may be required to use or occupy other public or private

property in the public rights-of-way. No wireless permit issued pursuant to these guidelines shall be valid in the absence of the same, and an applicant may be required to provide proof that it has any additional consents that may be required before a permit will issue.

The City will require a person that wishes to use facilities that the City owns or controls to enter into appropriate agreements with the City. As part of entering into the agreements, the City will be exercising rights that any proprietary owner exercises, including defining precisely what may be permitted, how it will integrate with the existing facilities, and the compensation for use. However, while the City retains all its rights with respect to permitting attachments to its properties, it does intend to adopt standardized conditions on use so that it may promptly respond to requests for use. Proposed agreement terms are set out in Section 7, along with the steps that should be taken to obtain an agreement for use of public facilities.

1.3.4 Modifications.

It is anticipated that these Guidelines and the proposed terms in Section 7 related to wireless facilities will require revisions from time to time, and the City reserves the right to modify these guidelines at any time, through the required administrative process, as well as require existing wireless facilities to comply with the requirements when necessary to protect the health or welfare of the public, or where required to avoid an unlawful discrimination within the meaning of Federal law. The revisions may include adding or deleting pre-approved designs to these guidelines, on its own initiative, or upon request. Interested parties will be given an opportunity to comment on proposed changes prior to their adoption.

2. APPLICATIONS FOR PLACEMENT OF WIRELESS FACILITIES.

2.1 Types.

2.1.1 An application may be submitted as an eligible facilities request pursuant to the requirements in Section 3.1.

2.1.2 An application may be submitted for administrative approval pursuant to the requirements in Section 3.2. This would include, for example, an application for approval of a pre-approved design.

2.1.3 An application may be submitted seeking permission to install a wireless facility that requires a special exception pursuant to the requirements in Section 3.3.

2.2 Submissions.

2.2.1 How submitted.

Applications must be submitted electronically to <http://www.cityofmyrtlebeach.com>, with all text in a searchable format accessible using standard commercial software, such as Microsoft Office and Adobe Acrobat without the need for the City to convert the materials; all maps should be in ESRI geodatabase formats, and for all technical drawings or if work was performed in a CAD environment, the CAD base map must be provided, along with files in the DWG or DGN formats. If an Applicant submits information in a form that cannot be read or searched by the City, the application will be treated as incomplete.

Required fees must be submitted electronically along with the application if that service is available. Otherwise, required fees must be hand-delivered to the City on the same day the application is submitted electronically to the City, such fees being delivered to:

Myrtle Beach, SC

Applications may only be submitted on days and at times that the City is open for business.

The foregoing rules also apply to supplementary submissions and communications regarding a pending application.

Complete applications and fees associated with any permit that the Applicant contends must be acted upon by the same date as the wireless application must be filed on the same date as the application for a wireless permit, and if any is not included, or the application for any permit is incomplete, all applications may either be denied or declared incomplete.

NOTICE: All work in the public right-of-way authorized by a permit must be completed within nine (9) months after the permit is issued. Permits expire automatically, and if expired, a new permit application must be submitted, along with all relevant fees. The permit may specify times and dates during which work may be performed.

2.3 Fees.

2.3.1 Amounts.

Except as otherwise provided under South Carolina law applicant must pay costs reasonably incurred by the City in reviewing the application.

2.3.2 City Manager Set Fees

The City Manager may set the fees for review, and shall review the fees periodically, and raise or lower those fees based on costs the City expects to incur.

2.3.3 Fees For Facilities Outside of the Rights-of-Way

Until and unless the City Manager directs otherwise, the initial fee for review will be \$1,000 for each wireless facility. If additional costs are incurred by the City in connection with the review, as may occur if the City is required to hire additional staff or third parties to review applications within time frames established by applicable law, City may require applicants to pay those additional costs.

2.3.4 Fees For Facilities Within the Rights of Way.

An applicant that is not a telecommunications company, or that is a telecommunications company that does not have physical facilities in the rights-of-way in Myrtle Beach must submit an initial fee of \$1,000 with its application. If additional costs are incurred by the City in connection with the review, as may occur if the City is required to hire additional staff or third parties to review applications within time frames established by applicable law, City may require applicants to pay those additional costs.

2.3.5 Waiver of Fees.

Prior to submitting an application, an applicant may seek a waiver of the fee requirement if it believes that because of the nature of the requests and number of requests submitted, the cost to the City of reviewing the application City may be lower. City may grant that waiver subject to such conditions as may be appropriate to protect the City's interest consistent with State law.

2.4 Content

2.4.1 Applicants and General Requirements.

Applications forms will be made available online at <http://www.cityofmyrtlebeach.com>. However, whether or not application forms are complete, it is the applicant's responsibility to provide all the information required by the City Code and by these guidelines.

An application must be signed by all persons that will own or operate any part of the facility that is the subject of the application. Each application must provide a clear location and an identifying number or name for each wireless facility. Each person signing the application will be responsible for the accuracy of the application.

The application must show that the facilities and work proposed in the application will comply with all requirements in the City Code, these guidelines, and applicable law.

Applications must be accurate, and must include detailed descriptions of the work that is the subject of the application. An application shall include pre-construction work, construction work and restoration work required, along with a description of

the facilities and property that are the subject of or affected by the applications, and a pre- and post-construction description of the same.

Each application (except an eligible facilities request) should include a map showing the area within and outside the rights-of-way, where a wireless facility could be placed while still satisfying the wireless service objectives of the Applicant. Search area maps prepared in the course of identifying proposed locations will satisfy this requirement.

If an application is part of a planned network deployment that will involve multiple sites, the deployment must be described, and the total number of facilities that are projected to be required must be identified.

2.4.2 Information required.

In addition to providing the information required by Section 2.4.1, applicant must provide all information required for the type of approval sought. For example, less information is required for an eligible facilities request, than is required for an administrative approval, and additional information is required if applicant seeks a special exception or claims denial would result in an effective prohibition.

2.4.3 Public Disclosure and Location Information.

The City will make applications available to the public electronically.

2.4.4 Additional Information.

The City may request from any person on the application additional information relevant to determining whether the application should be granted, denied or conditioned. Failure to timely provide the information may be grounds for denying the application.

2.4.5 Incompleteness.

2.4.5.1 The City may issue a notice of incompleteness if the Applicant fails to comply with any requirement in this Section 2. Within thirty (30) days after receiving an application, or if shorter, the time by which a City must notice incompleteness under applicable federal regulations, the City will determine whether the application is complete. If incomplete, the City will send a written notice identifying the reasons the application is incomplete, citing to the relevant requirements of the Myrtle Beach City Code, these guidelines, and applicable laws and standards. The City may, alternatively, reject an application that it deems materially incomplete, and provide a written denial of the application, identifying the grounds for the rejection.

2.4.5.2 The Applicant must, submit supplementary materials to remedy the deficiencies identified in the notice of incompleteness within ten(10) days after receiving notice.

2.4.5.3 The City will review supplemental materials submitted in response to a notice of incompleteness for completeness. If the supplemental materials fail to remedy the deficiencies identified in the notice of incompleteness, the City will, within ten (10) days after receiving the supplemental materials, or if shorter, the time by which a City must notice incompleteness under applicable federal guidelines, send a further written notice of incompleteness consistent with Section 2.4.5.1.

2.4.5.4 If supplementary materials are not submitted in the time specified in section 2.4.5.2, or the application remains incomplete thirty (30) days after the date the application was submitted, considering the supplementary materials submitted, the City may reject the application by sending a letter to the Applicant identifying the application and the reasons for rejection.

2.4.5.5 Times for action on an application after notice of incompleteness will be reset or tolled and calculated in accordance with applicable FCC regulations. The City and Applicant may agree on an extension of the times provided in this Section 2.4.5, provided that the extension does not prevent the City from meeting any federal or state deadlines for action on an application.

2.5 Pre-Application Requests and Meetings.

The City is willing to hold pre-application meetings with persons interested in submitting applications for wireless facilities, to answer questions about the application process and the permits required in connection with a project, or to review overall project plans. No fee is required for such a meeting. A meeting is not mandatory, but it is highly recommended.

The City will, for no fee, answer written questions about the application process. If a potential Applicant will be subject to a special service fee, Applicant should request a meeting with the City to establish what fee will be required as part of the submission.

2.6 Pre-Approval of Designs.

Under the City Code, pre-approved designs are subject to administrative review and do not require an applicant to obtain a special exception or prove that denial would result in an effective prohibition of service. There are other types of wireless permits requests that are also subject to administrative review, but the “pre-approved” designs will be most important for those who wish to place new wireless

facilities in the rights-of-way. Volumetric design standards for placements on existing utility poles (or their replacements) in the rights-of-way are set out in Section 3.2. In addition, the City has separately approved designs for placement of wireless facilities on City-owned structures in the rights-of-way, discussed in Section 7.

We refer to both the designs for use of private and public property as “safe harbors” Any person may at any time propose designs that they believe should be included as “safe harbor” designs, or propose modifications to the safe harbor for facilities in or outside of the rights-of-way by submitting a request for approval of a safe harbor design. While the City encourages innovative designs, and particularly designs that may be disguised as public art, or that may serve multiple functions (kiosks and beachway entrances, for example) the volumetric standards in Section 3.2.3 may provide guidance to those seeking to propose alternative designs.

Please note that a “safe harbor” design is only valid for placement on the type of facility, and in the zoning districts or area of the City specified.

A request for pre-approval of a design is not an application to install a wireless facility, and should not be submitted on the application forms. A request for pre-approval of designs must be submitted to the Zoning Administrator, and contain the following information:

[ADDRESS]

ATTN: PROPOSED FACILITY AT [LOCATION AND IDENTIFIER TO BE INSERTED BY APPLICANT]

2.6.1 Detailed engineering drawings showing the dimensions of all components associated with the wireless facility.

2.6.2 Photo-simulation to scale of the proposed wireless facility and associated structure, before and after installation from at least two different angles (so that all equipment associated with the wireless facility are identifiable).

2.6.3 A description of the areas where the Applicant believes the design should be approved for use (by zoning classification).

2.6.4 A general description of all the equipment that is necessary to the wireless facility and where it appears in the detailed drawing and photo-simulation.

2.6.5 The concealment elements that would be associated with the design, and a clear identification of any changes Applicant believes could be made to the design (if any) under 47 U.S.C. Section 1455 without the discretionary review of the City.

The Zoning Administrator may approve a design for inclusion in the safe harbors, or modify the pre-approved design after consulting with boards and commissions that may have design approval authority within certain districts, and complying with other applicable requirements of the City Code.

3. CONSIDERATION OF APPLICATIONS FOR WIRELESS FACILITIES.

3.1 Eligible Facilities Request – Requirements.

An application for an eligible facilities request may only be granted if:

3.1.1 The Applicant submits a complete application and demonstrates that the request qualifies as an eligible facilities request; and

3.1.2 The application satisfies the requirements of Section 3.5.

3.2 “Safe Harbors” for Private Structures in Rights-of-Way

An application to install a wireless facility is subject to administrative review if all the following requirements of Section 3.2 are satisfied:

3.2.1 General Requirements.

An application to install a wireless facility must meet the following requirements, in addition to all other requirements set forth in this Section 3.2:

3.2.1.1 A proposed wireless facility must:

3.2.1.1.1 consist of a design that has been pre-approved in accordance with Section 2.6 and complies with Section 3.2.2; or that complies with the specifications set forth in Section 3.2.3; and

3.2.1.1.2 satisfy the requirements of Section 3.5.; and

3.2.1.1.3 comply with all applicable laws and standards. Without limitation, the obligation to comply with applicable laws and standards requires that all elements of the wireless facility once installed, must comply with AASHTO “clear zone,” “lateral offset” and “breakaway” requirements, if applicable.

3.2.1.2 The Zoning Administrator must find that the wireless facility does not create a risk to persons or properties.

3.2.1.3 The wireless facility must not violate the noise ordinances of the City if fully utilized, and considering the measurable noise at the proposed site generated by existing wireless facilities, if any. For example, if a wireless facility includes space for three (3) radio

units, each of which must be cooled, the Applicant must show that even when fully occupied, the facility would not violate the City's noise ordinances.

3.2.1.4 Except for stealth facilities, the design of which has been pre-approved by the City, uses prohibited by the City Code are not subject to administrative review.

3.2.1.5 Each wireless facility must include concealment elements (such as, by way of example, size and proportion limits, coloration and shielding) such that its physical dimensions cannot be increased except with the discretionary consent of the City.

3.2.2 Pre-Approved Designs – Additional Requirements.

3.2.2.1 A proposed wireless facility using a pre-approved design must use a design that has been approved for the particular area within which the wireless facility is to be placed.

3.2.2.2 Where multiple designs are approved for an area, a proposed wireless facility must use the design most appropriate to the location where the facility is to be placed, taking into account safety issues, aesthetic impacts and surrounding facilities.

3.2.3 Volumetric Specifications.

The volumetric limits proposed here are for placement of wireless facilities on existing or replacement utility poles in the rights-of-way. A wireless facility that satisfies the requirements of this section and section **Error! Reference source not found.**-3.2.2 is subject to administrative review. The facilities can be placed on utility poles in any zoning district other than the Coastal Protection Overlay Zone, the Airport Hazard Zone, and the Booker T. Washington Neighborhood Overlay Zone.

For purposes of this section, a “replacement” utility pole is a pole that has been installed to replace, or which will replace an existing utility pole in the rights-of-way in order to accommodate a wireless facility. The existing pole will then be promptly removed by its owner. An application will be treated as an application for a new support structure in the rights-of-way, and is not subject to administrative review unless there is a clear plan and timetable for removal existing pole. Because City-owned and controlled street lights and traffic signals are not subject to the same review process, the term “utility pole” does not refer to them, and the volumetric limits do not apply directly.

3.2.3.1 Any replaced poles along with all top-mounted wireless facilities must be no taller above ground level than the lesser of 38’6” or 10’ taller than the original pole unless the City approves an exception. The replacement pole, including all required guying, may not

intrude on any sidewalk or passageway more than the existing utility pole, and except for proposed designs for replacement utility poles that totally encapsulate equipment may in no case be more than ten (10) percent larger in circumference than the existing utility pole, considering the actual dimensions of the pole. Guy wiring must be comparable to that of the pole being replaced.

3.2.3.2 Only one base station may be installed unless the size of the base station elements, considered cumulatively as if the wireless facilities were a single base station, meet the size requirements under these guidelines.

3.2.3.3 In cases where the antenna is top-mounted, the antenna(s) and equipment associated with the base station(s) may be enclosed within the supporting structure, or in single or stacked vertical shrouds that are designed to appear like a continuous vertical extension of the utility pole, so that it is not readily apparent that it is an enclosure. The enclosure, including connectors, may not extend more than six (6) feet above the utility pole, and should not be more than six (6) cu. ft. in volume.

3.2.3.4 Alternatively, a single antenna may be installed as a side mount so long as the antenna is not wider in diameter than fifteen (15") inches and no taller than two (2) feet, mounted as close to the pole as possible to minimize its visual impact.

3.2.3.5 Designs may propose other elements of the base station to be enclosed within the utility pole. Alternatively, where pole side-mounting is proposed on any utility pole, the design must contemplate the equipment housing utility pole being centered and placed on a single side of the utility pole. The term equipment housing includes all parts of the wireless facility other than the antenna, electric meter, vertical cable runs, disconnect switches, and vertical supporting structures. Equipment housings mounted on poles and not hidden by appropriate concealment elements are limited to six (6) cu. ft., and should be no greater than fifteen (15) inches wide and fifteen (15) inches deep so that the housing is not readily visible to a casual observer on the opposite side of the pole. Equipment housing should be of a uniform depth so that it appears, as far as possible like part of the pole. Sizes are intended to be cumulative, reflecting the sizes of the equipment housings for all wireless facilities installed on a particular utility pole.

3.2.3.6 Exterior mounted equipment housings shall be placed to avoid interfering or creating any hazard to any other use of the rights-of-way, and with the lowest edge of any exterior mounted equipment at least ten (10) feet above ground level. Equipment should

not project over any street unless above the level approved for placement of wires across streets.

3.2.3.7 The location chosen for all elements of the wireless facility must otherwise maintain the integrity and character of the neighborhoods and corridors in which the facilities are located; which, without limitation requires that each element of the wireless facility must be placed to minimize visibility from adjoining properties, with special care taken in residential areas to avoid placement directly in front of windows or doors, and to avoid placement of any proposed ground-mounted equipment cabinets on property frontage in residential areas.

3.2.3.8 The scale and appearance of the wireless facilities, and any support structures to be installed, must be consistent with the general character of the neighborhood.

3.2.3.9 Ground-mounted equipment and enclosures associated with a wireless facility shall be permitted only where it is consistent with the portion of the corridor in which it is to be placed, and shall be undergrounded, located in alleys or otherwise shielded (as appropriate to the corridor) to be as unobtrusive as possible. In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic. Above-ground, ground-mounted equipment and enclosures associated with wireless facilities for a particular wireless facility may have maximum dimensions of fifty (50) inches (H) by thirty-six (36) inches (W) by twelve (12) inches (D), except where part of a stealth facility acceptable to the City for placement in the corridor.

3.2.3.10 Wiring and cabling shall be neat and concealed within a pole where possible or placed within a conduit flush to the support structure.

3.2.3.11 Electric meters are not permitted if a flat rate service is available. If electrical use must be metered, the electric meter must be installed inside the utility pole where that is permissible and possible given the other size limitations of these guidelines. If not possible, any required meter shall be installed in the public utility easement, and underground unless prohibited by other applicable guidelines. Otherwise, the meter with the smallest permissible form factor may be installed to the exterior of the utility pole, on the same side as the equipment housing.

3.2.3.12 All parts of the wireless facility must be appropriately colored to minimize visibility. All pole-mounted equipment and antenna enclosures must be non-reflective, and shall be colored to have the least visual impact possible. Any ground-mounted equipment shall be colored consistent with its surroundings.

3.2.3.13 If painted, the paint type must be durable, weather-resistant, matte or flat, and colored in keeping with the corridor and supporting structure to minimize visibility.

3.2.3.14 No writing, symbol, logo or other graphic representation which is visible from the nearby street or sidewalk shall appear on any exterior surface unless required by agreement with the City, applicable law and standards, or as a City-approved concealment element, except that the Applicant shall tag all attachments to poles to allow for ready identification of the type of attachment, the owner and emergency contact information, subject to ongoing City inspection to ensure appropriate tagging. Identification tags shall be limited to four (4) inches by six (6) inches.

3.2.3.15 Base stations (excluding approved stealth facilities) must, except at intersections, be at least two hundred fifty (250) feet from the nearest base station occupied or controlled by the same occupant, on utility poles or wireless support structures in the rights-of-way.

3.3 Applications for Wireless Facilities Not Subject to Administrative Review.

An application for a wireless facility that is not an eligible facilities request and that falls outside the safe harbor may nonetheless be permitted if the Applicant shows to the satisfaction of the City that it satisfies the requirements of the City Code and:

3.3.1.1 The proposed wireless facility will conform to the requirements of this Section 3 to the extent possible. For example, if an Applicant shows that federal law requires the City to authorize it to install an antenna that extends higher than otherwise permitted under these guidelines, the Applicant may be required to install the shortest antenna that will avoid federal preemption, and may be required to comply with these guidelines for other elements of the wireless facility. For example, a showing that a higher antenna is required would not excuse a failure to show that the facility complies with the City's noise ordinances; and

3.3.1.2 Denial would result in an effective prohibition in the provision of personal wireless services within the meaning of federal law or otherwise violate applicable laws or standards, under circumstances such that deployment of the facilities must be authorized. The Applicant bears the burden of showing deployment must be authorized. Without limitation, unless prohibited by applicable law or standards, the Applicant must show it has reasonably considered different designs, form factors and locations on and outside of the rights-of-way, and chosen the one least intrusive. To the extent that

“effective prohibition” will occur if there is a significant impairment of a personal wireless service, the applicant will be expected to: identify the service or services that would actually be impaired, if any; identify its internal standards for measuring the quality of the service, and its own performance targets for each service; provide data on the current; or

3.3.1.3 The City determines it is in its interests to grant a special exception.

3.4 Administrative Consideration.

3.4.1 Administrative Consideration.

The Zoning Administrator will review the placement of wireless facilities subject to administrative review in accordance with Sections 13-11 of the City Code, although applicants reminded that this provision does not address other permits that may be required, or the franchising requirements of the City Code.

An application may be granted if it is determined (after all reviews are completed) that the application satisfies the requirements of the Myrtle Beach City Code, these guidelines, and applicable laws and standards; otherwise, it shall be denied, or may be granted subject to condition.

As FCC rules envision, if the City determines that the facility is not an eligible facilities request, the City will notify the company, and request it provide information that is missing from the application. This effectively starts a new FCC shot clock once the missing information is submitted. If an Applicant claims that its application is subject to administrative review under other provisions of the City Code, and the City concludes otherwise, the City will provide the Applicant an opportunity to make a showing that the application should nonetheless be granted as a special exception, as long as the Applicant and the City agree upon a schedule for submission of that information that will not result in a violation or presumptive violation of any state or federal law or regulation.

3.4.2 Special Exceptions.

The Zoning Administrator is also responsible for review of applications for wireless facilities that require a special exception. This review will also be conducted in accordance with Section 13-11 of the City Code, although applicants reminded that separate provisions of the City Code address the standards and process for granting special exceptions, which do apply except as Section 13-11 otherwise provides. As noted above, Section 13-11 does not address other permits that may be required, or the franchising requirements of the City Code.

3.4.3 Extensions.

The Zoning Administrator may enter into agreements or grant requests for extensions of time (including the time for filing an appeal), provided the extensions

do not prevent timely final action on an application under applicable law and standards.

3.4.4 Appeals.

The decision of the Zoning Administrator, whether on administrative review or for purposes of granting a special exception, may be appealed to the Zoning Board of Appeals. Because of the presumptive federal deadlines for action on an application, the City has provided for a very short period to file an appeal, as specified in the City Code. That time may be extended, if it can be extended without violating federal law.

3.4.5 Burden/Decisions.

As with any permit, it is the burden of the Applicant to show that it satisfies all relevant requirements, and is entitled to the wireless permit.

Any decision regarding an application will be in writing, and a decision will not be final until a written decision issues, and the decision is emailed or mailed to the applicant.

3.5 Denial Required for RF Non Compliance and Unsafe Facilities.

No wireless permit shall be issued or effective unless the Applicant has provided a certified engineering analysis by a qualified registered engineer in the State of South Carolina that demonstrates that the wireless facility will comply with FCC guidelines governing RF emission exposure. Each wireless facility shall at all times fully comply with applicable FCC guidelines for RF emissions, and failure to comply shall be treated as a material violation of the terms of any permit.

No wireless permit will issue in the following circumstances:

3.5.1 Where the City determines that the capacity no longer exists for additional facilities to be placed in the proposed location without jeopardizing the physical integrity of other facilities at the proposed location and/or the safe use of the rights-of-way by vehicle, bicycle, or pedestrian.

3.5.2 Where placement would violate or result in a violation of any applicable law or standard that applies to other users of the rights-of-way. A proposed installation impacting existing ADA elements, for example, must be denied if accessibility of the final design has not been demonstrated or other mitigation is not made available during construction. Applicants are cautioned to review requirements applicable to any zoning district within which a facility will be placed, and any overlay district.

3.5.3 Where the Applicant, or the entities required to sign the application do not have all authorizations required to occupy rights-of-way.

3.5.4 Where the application is incomplete.

3.5.5 Where the Applicant fails to accept the conditions of the permit, which shall be deemed to require compliance with the City Code, and which shall be deemed issued subject to these guidelines and applicable laws and standards.

3.5.6 For speculative facilities. An application must be from a provider of wireless telecommunications services, with concrete plans to provide services; or from a provider of wireless facilities, who has a contract requiring use of the wireless facility proposed.

3.5.7 Where the City receives conflicting applications for permits, or where work, if conducted by Permittees on the schedule proposed would create health or safety hazards or collectively result in undue disruption, the City may reject the applications as submitted and require Applicants to apply jointly for permits or to otherwise coordinate to eliminate the hazard or the disruption.

3.5.8 Sidewalks shall be maintained open and accessible. Unless it is not possible to do so, new or replacement support structures shall maintain a three (3) foot clearance from sidewalks and roadways or be located behind the sidewalk adjacent to the right-of-way line. New or replacement support structures must maintain a minimum five (5) foot clearance from the outside edge of driveway aprons and pedestrian connections.

4. CONDITIONS OF PERMIT FOR USE OF RIGHTS-OF-WAY

Any wireless permit for placement of facilities in the rights-of-way issued pursuant to these guidelines is subject to the following conditions in addition to any other requirements of applicable laws and standards, except as otherwise provided in a franchise with the City. In the event of a conflict between a franchise and these guidelines, the condition most protective of the City's interest will apply. Similar conditions may be established for wireless facilities off the rights-of-way, taking into account the nature of the installation, and the effect of the facility on the City or the public:

4.1 Length.

4.1.1 A permit, other than a permit issued in response to an eligible facilities request, shall be valid for the duration of franchise held by the Applicant, and subject to renewal thereafter. If a franchise does not specify a term, or the Permittee claims a right to occupy without a franchise issued by the City, the term of the permit will be ten (10) years for a wireless facility using a pre-approved design, and five (5) years otherwise, or such longer period as may be required by State law. Time periods will begin to run upon completion of installation of the wireless facility, but no later than six months after issuance of the permit. A permit may be renewed by the Zoning Administrator for five-year intervals if the Applicant's franchise (if any) is renewed and Applicant

submits a renewal application to the Zoning Administrator that demonstrates as follows:

4.1.1.1 it has complied with the conditions of the permit,
and

4.1.1.2 the design remains appropriate for the location, or if the Applicant demonstrates that denial of renewal would violate applicable law.

4.1.2 A permit for a modification for an eligible facilities request will only remain valid as long as the City is required by Federal law to approve eligible facilities requests; and if the facility is in compliance with all permit conditions; and will in any event expire when the underlying permit for the existing wireless facility it modifies expires.

4.2 Duty to Install and Maintain.

The wireless facility must be installed as approved, subject to such minor modifications as may be approved in writing by the City to address unanticipated installation issues that may arise in the course of construction.

The wireless facility, and the persons who own, manage or perform any work on the wireless facility, must comply with all the requirements of these guidelines, the wireless permit and other applicable laws and standards.

4.3 Additional Conditions to Protect Health and Safety.

The City may impose reasonable conditions upon the issuance of any wireless permit and the performance of the Permittee or Occupant in order to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.

4.4 Revocation.

The City may revoke a wireless permit, issue stop work orders, impose penalties or take any other action available to it at law or equity in the event of noncompliance with the permit, these guidelines or any other applicable law or standard.

If the City determines that a wireless permit was issued improperly, the permit may be revoked.

5. GENERAL RULES FOR RIGHT-OF-WAY USE

Any wireless permit for placement of facilities in the rights-of-way issued pursuant to these guidelines is subject to the following conditions in addition to any other requirements of applicable laws and standards, except as otherwise provided in a franchise with the City. In the event of a conflict between a franchise and these guidelines, the condition most protective of the City's interest will apply.

Where more than one entity is an occupant, as may be the case with a "neutral host" facility, the occupants may designate a single entity with responsibility to comply with these guidelines, as provided in Section 5.10.

5.1 Standards Apply.

All facilities in the rights-of-way, including wireless facilities, must comply with standards for construction and use designed to ensure protection of the rights-of-way, the public, and property. Occupants, and persons performing work on the wireless facilities on their behalf are reminded to review all applicable manuals and guidelines for placement of facilities in the rights-of-way, and to comply with all requirements under applicable law and standards for notification of utilities. A failure to comply with those standards is a violation of these guidelines. Further, Applicants are reminded to comply with all requirements for permits (excavation permits, building permits, electrical permits, traffic planning requirements and the like); a permit to install a wireless facility is not a substitute for these permits.

Without limitation, the following provisions apply to all work performed under any permit for a wireless facility and with respect to installation or continued occupancy of the rights-of-way, whether or not subject to a permit (as might be the case with installation of a wireless facility on strand).

The City may remove wireless facilities installed without the proper permits; require those facilities to be removed; issue stop work orders; impose penalties; revoke any permit associated with a wireless facility, or take any other action it is permitted to take for failure to comply with these guidelines, or other applicable laws and standards. A violation of these guidelines is a violation of any license, authorization, or franchise, and may be ground for the revocation of the same.

5.2 Registration, Maps and Inspection.

5.2.1 Any person who occupies the rights-of-way with a wireless facility must register with the City by filing a registration form, with the City. This form is required even if a person also has filed and obtained permits for placement of wireless facilities.

5.2.2 Each occupant shall keep, maintain and provide to the City accurate records and as-built drawings, drawn to scale and certified by a professional engineer as accurately depicting the location of all of occupant's facilities in the rights-of-way, and in an electronic format that will permit the City to import the information into its GIS systems. The City may specify any standard GIS

format for submission of the information. If an occupant believes that it is prohibited by law from providing the information to the City, with respect to any facility, it will notify the City of the limitations that apply, and if the City agrees that the occupant is prohibited by law from providing the information to the City, the occupant shall be permitted to provide such information as it may lawfully provide to the City.

5.2.3 All wireless facilities are subject to testing and inspection by the City to determine compliance with these guidelines, the permit authorizing a permittee to conduct work in the right-of-way, and applicable laws and standards. Each occupant must produce records and reports relevant to determining compliance with these guidelines, the permit authorizing a permittee to conduct work in the right-of-way and applicable laws and standards to a location, and by a time as is specified by the City. Material produced may be marked as confidential, or a trade secret in accordance with South Carolina law, and the City, or any person working on the City's behalf, will treat the materials produced consistent with the requirements of South Carolina law.

5.2.4 Occupants must, at City's request, inspect facilities and provide a written inspection report to the City. Such requests may require that Occupants include a report certified by a licensed registered engineer documenting compliance with FCC RF exposure guidelines. Without limitation, each occupant must install and maintain its wireless facilities in compliance with all FCC guidelines governing RF exposure.

5.2.5 The City may require additional inspections or testing where it has a reasonable basis for believing that an occupant's facilities do not comply with these guidelines.

5.3 Use Secondary.

The use of rights-of-way by any wireless facility is a secondary use, subordinate to the use by the public and by other governmental entities. Occupants and permittees must reduce interference with the public use of the rights-of-way to the greatest extent possible. Installation of wireless facilities must not interfere with or disturb the public use of roads, or the convenience of any landowner more than is unavoidable or more than is authorized under a permit authorization or agreement.

5.4 No Cost to City.

All work required to be performed in connection with a wireless facility shall be performed at no cost to the City, whether or not expressly stated otherwise or within these guidelines.

5.5 Other Conditions.

During construction authorized by a permit issued pursuant to these guidelines, the permittee must comply with the following:

5.5.1 Permits on site.

The permit, plans and the specifications of construction and materials shall be available at all times on site for inspection by the City.

5.5.2 Identification.

The name of the company performing work in the right-of-way must be prominently displayed on equipment or vehicles on site while the work is being performed in the right-of-way. Upon verbal request the contact information for a person who has primary supervisory or management responsibility for the work being performed in the right-of-way shall be available.

5.5.3 No disturbance of passage.

Vehicular and pedestrian traffic must be maintained through all phases of construction except as specifically permitted by the City.

5.5.4 No storage

No materials or equipment shall be stored in the right-of-way, without prior written approval by the City, including but not limited to storing of equipment or materials under any roadside tree, and in no event may any debris be left in the rights-of-way.

5.6 Facilities in Good Order.

Occupants' facilities shall be maintained in good order, with excess cabling and wiring, abandoned, damaged or defaced property promptly removed, replaced or repaired. No hazardous materials may be stored on site during work related to a wireless facility, or maintained at the wireless facility except with the express permission of the City. The occupant or permittee will ensure that the site is maintained in compliance with City standards for work in the rights-of-way, including but not limited to rules related to rubbish removal and coverage, traffic barriers, shielding, plating and warning signs, both during and at all times after installation.

5.7 No Property Right; Relocation and Removal.

5.7.1 Neither the issuance of a franchise, or authorization, or any wireless permit associated with construction of a wireless facility grants any property right to occupy a particular portion of the rights-of-way, and the City may require wireless facilities to be removed or relocated, temporarily or permanently where convenient to the primary purposes of the roadway.

5.7.2 Without limitation, wireless facilities must be permanently or temporarily protected, altered, removed or relocated so as not to interfere with construction, operation, maintenance, repair or removal or relocation of public improvements, publicly-owned utilities or transportation systems or other public projects, including but not limited to sidewalk or street widening or narrowing, or changing street grade. Upon notice, occupant shall be responsible for protecting, altering, removing or relocating its wireless facilities as necessary to eliminate any interference within a reasonable time, which time may be specified by the City, but shall not be less than 60 days. All such work will be at the expense of the Occupant, except as State law requires.

5.7.3 Without limitation, if the wireless facility, other than a stealth facility, or a facility located on a street light pole or traffic signal pole, is located in a corridor where the distribution system of the electric utility and the distribution lines of the incumbent local exchange carrier are relocated or required to be relocated underground, occupants must remove the wireless facility within a reasonable time specified by the City. Removal shall be at the occupant's expense, except as State law requires.

5.7.4 Without limitation, where a wireless facility presents an imminent hazard to persons or property, or in the event of an emergency, the City may protect, alter, remove or relocate wireless facilities.

5.7.5 Without limitation, in the event that any right-of-way is eliminated, discontinued, closed or de-mapped, any rights obtained pursuant to any permits issued with respect to such right-of-way shall cease upon the effective date of such elimination, discontinuance, closing or de-mapping. Except as may be required by State law, an occupant is required, at its expense, to remove all its wireless facilities from the right-of-way within a reasonable time specified by the City.

5.7.6 Without limitation, occupants shall temporarily relocate or remove wireless facilities to permit use of the rights-of-way by other entities holding a franchise from the City or State, or where a permit issued by the City (such as a permit for moving large structures) requires the movement of the facilities; and will promptly permanently move its wireless facilities to accommodate replacement or removal of utility poles. An occupant may require the person for whose benefit the work is being performed to bear the costs therefor, except as these guidelines, or applicable laws and standards or contracts otherwise require.

5.7.7 On expiration of any wireless permit, or authorization, or upon abandonment of use of a wireless facilities for six (6) or more months, the City may, in addition to seeking all other available legal remedies, direct the occupant to remove, at the occupant's sole cost and expense, the wireless facility, or any portion of the wireless facilities designated by the City. If the City requires removal for abandonment, the City will first provide notice to the

occupant, or the occupant's designee, and provide the occupant or occupant's designee an opportunity to show that the facility is in fact in use, or that it is entitled to a renewal of the expired franchise or permit. The City, in its discretion, may permit abandonment of a facility in place provided that title to the property is delivered free and clear to the City in a form acceptable to the City Solicitor.

5.7.8 Where removal is required, removal shall be commenced within thirty (30) days, or a longer period identified by the City, after the date the City directs the right-of-way Occupant to remove its Facilities and shall be substantially completed within ninety (90) days thereafter including all reasonably associated repair of the right-of-way and other property and equipment of the City. The City may extend the time to complete removal where justified by the amount of work required or where conditions prevent performance of the work. Notwithstanding the foregoing, in the case of emergencies, or where there is an imminent hazard to persons or property, the City may require immediate removal or perform the removal itself.

5.8 Restoration

In addition to complying with applicable laws and standards with respect to removal and restoration in the rights-of-way:

5.8.1 Removal and restoration after replacing support structures.

Where installation of a wireless facility requires replacement of a utility pole or other existing structure, the occupant is responsible for ensuring that the utility pole or structure no longer in use is promptly removed, and all property affected by the removal restored in accordance with the preceding paragraph.

5.8.2 Restoration upon removal of wireless facility.

When a wireless facility, or portion thereof is relocated or removed, property affected by the installation, removal or the relocation shall be fully repaired, replaced or restored promptly by the permittee or occupant, at permittee's and occupant's sole cost and expense and to the satisfaction of the City, and in accordance with the City's standards for repair, replacement or restoration. Except as specifically otherwise required, property must be restored or replaced to its prior condition and location, and rights-of-way must be restored to their prior conditions. Without limitation, this Section requires removal of any foundation or underground facilities that may have been placed in connection with the installation of the wireless facility.

5.9 Timing for Work.

All permits and plans required prior to restoration, repair and replacement must be obtained, and the work performed in accordance with those permits and City

direction. The work must be completed within the dates as specified in the permit. However, in the event of circumstances beyond the control of the permittee or occupant or when work was prohibited by unseasonable or unreasonable conditions, the City may extend the date for completion of the work upon receipt of a supplementary application for a permit extension which satisfies the restoration and repair requirements of City guidelines.

In the event of emergency repair, defined as that necessary to prevent loss of life or property and to restore a pre-existing service when a service interruption occurs, and where it is impractical to obtain the permit in advance, the occupant must notify the City of such emergency repair as soon as possible and the appropriate permit shall be obtained as soon as possible during the next City working day.

5.10 Designee.

Where a wireless facility will contain equipment of multiple occupants, each is obligated to comply with these guidelines. All occupants of the facility may designate a single person, also an occupant or permittee (the “designee”) to install and maintain the facilities on behalf of all other occupants of the facility. In such cases, the following conditions apply: (i) no occupant or permittee other than the designee may enter, or have the right to enter into the rights-of-way to perform any work related to the facilities; (ii) each occupant accepts joint and several liability for the acts and omissions of the designee; (iii) the City may treat the entirety of the facility as if it were owned by designee for all purposes, including but not limited to, removal or relocation; (iv) the designee has an authorization for installation and maintenance of the wireless facilities; (v) a breach of any occupant’s or permittee’s obligations (including a failure to pay any fees owed to the City) may be treated as a breach of the designee’s obligations.

5.11 No City Liability.

The City shall not be liable for any damage to or loss of any occupant’s wireless facilities (or the facilities of persons performing work on their behalf) within the right-of-way, except as may be required by State law and then subject to limits that may be established by law. Nothing in these guidelines is intended to waive any immunities that the City has, or to prevent the exercise of any rights the City has, including rights of eminent domain.

Occupants and those performing work for them shall be responsible to the City for all damages suffered by it, arising out of their acts and omissions, including but not limited to delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of the occupant or those performing work for them to timely perform any obligations under these guidelines.

6. SECURITIES.

6.1 Applicability.

The fee, liability insurance and indemnity provisions of these Guidelines shall remain in full force and effect during the entire period of removal and associated repair of all rights-of-way and other property and equipment of the City, and for not less than one hundred twenty (120) days after the restoration period and any guarantee and maintenance period associated with restoration of the rights-of-way.

6.2 Indemnity.

Before commencing any work, and as a condition of occupancy, each permittee and each occupant (Indemnitors) shall execute an indemnity in a form acceptable to the City Attorney which and shall provide that Indemnitor shall be liable for, and the Indemnitors shall indemnify, defend and hold the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors (the "Indemnitees") harmless from, any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, reasonable attorneys' fees and disbursements), that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of any work associated with the facilities (including but not limited to installation, operation, relocation, replacement or removal) or permits issued to Indemnitor for work in the rights-of-way performed by them, or on their behalf, or to cure an act or omission of the Indemnitors or persons acting on their behalf. This indemnity may be included as part of an authorization, and if included, shall be deemed a condition of any work performed in the rights-of-way. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made as set forth herein; then upon demand by the City, the Indemnitor shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, the Indemnitor's insurance carrier (if such claim, action or proceeding is covered by insurance) or by the Indemnitor's attorneys. The foregoing notwithstanding, upon a showing that the Indemnitee reasonably requires additional representation (because, for example, a conflict of interest exists which makes joint representation of the Indemnitee by Indemnitor's counsel inadvisable), such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, and the Indemnitor shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee. Insurance.

6.3 Insurance.

6.3.1 Specifications.

Each occupant shall have and maintain, at its own cost and expense, Commercial General Liability insurance and Business Automobile Liability (owned, non-owned and hired auto) insurance, taking effect within sixty (60) days of the adoption of these guidelines or, if later, the first date any work commences in the rights-of-way in connection with work associated with a wireless facility, and naming as

additional insureds the City, its officers, agents, employees, and independent contractors, in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence (combined single limit), for bodily injury, death and property damage, including contractual liability, personal injury and products-completed operations. The policy or policies providing such insurance shall be issued by a company or companies duly permitted to do business in the State of South Carolina and carrying a rating by Best's of not less than A-M. The foregoing minimum coverage shall not prohibit the occupant from obtaining a liability insurance policy or policies with coverage in excess of such minimum, and if the occupant maintains coverage higher than the minimum, the City requires and is entitled to coverage afforded by such higher limits. The occupant shall provide to the City a certificate or certificates of insurance evidencing all coverages required under these guidelines prior to undertaking, or causing anyone else to undertake any work on its behalf. The occupant shall supply to the City a copy of the applicable insurance policy or policies upon the City's request. If the permittee and occupant are not identical, permittee must also have insurance in the amounts specified above, and comply with the requirements of this Section, unless the occupant shows, to the City's satisfaction, that its insurance covers all acts and omissions of the permittee in connection with work under a permit, without exception.

An occupant or permittee may maintain the insurance coverage required herein by blanket and/or umbrella policies issued to it, so long as such policies have the effect of providing the same coverage required under these guidelines.

Occupants and permittees shall also maintain worker's compensation insurance for employees in an unlimited amount as required by South Carolina law and employer's liability coverage in the amount of no less than One Million (\$1,000,000.00).

The liability of the occupants and permittees to the City or any other person shall not be limited by said insurance policy or policies, or by the recovery of any amounts thereunder.

If a form of insurance coverage required to be maintained under these guidelines is no longer commonly carried by insurers, then such requirement shall be deemed to refer to the closest equivalent commonly carried by insurers.

6.3.2 Maintenance of coverage.

The permittee, if not identical to the occupant, and if required to obtain insurance under Section 6.3.1 shall maintain insurance in force until completion of the work for which a permit was issued (and any guarantee or maintenance period). Occupant shall continuously maintain in force an insurance policy meeting the requirements hereof until completion of removal of the wireless facilities to the extent such removal is required under these guidelines, and until restoration (and any guarantee and maintenance period) are completed. Each insurance policy shall contain an endorsement that the policy may not be canceled or not renewed

until thirty (30) business days after receipt by the City of a written notice of such intent to cancel or not to renew. Within fifteen (15) days after receipt by the City of any said notice, the insured shall obtain and furnish to the City a certificate of insurance evidencing a replacement insurance policy consistent with the terms of these guidelines, together with evidence demonstrating that the premiums for such insurance have been paid.

6.3.3 Insurance waiver.

City may waive the insurance requirements of this Section for an occupant if the only facilities that the occupant owns in the rights-of-way are within a wireless facility for which there is a designee as described in Section 5.10, and where the designee maintains insurance that covers the entirety of the wireless facility, including portions it does not own, and the designee's insurance otherwise satisfies the requirements of this Section. The waiver terminates automatically if the occupant places other facilities, wired or wireless, within the rights-of-way, or if the designee's insurance no longer satisfies the requirements of this Section 6.3.

7. REQUIREMENTS AND PROCEDURES FOR PLACEMENT OF WIRELESS FACILITIES ON STREET LIGHTS OR TRAFFIC SIGNALS

7.1 Additional Definitions.

7.1.1 Applicant.

Applicant in this Section 7 refers to the persons who seek to enter into agreements for the use of a TSP or SLP

7.1.2 Licensee.

Licensee is used to refer to a person who leases, licenses or obtains the consent of the City to use a TSP or SLP.

7.1.3 TSP.

Traffic signal poles owned by the City, and which the City is permitted to modify or replace and permit a third party to use.

7.1.4 SLP.

A dedicated street light pole owned or under the control of the City which the City is permitted to modify and permit a third party to use. A street light mounted on a utility pole is not an SLP.

7.2 Goals.

The City has determined that it wishes to make certain TSPs and SLPs under its ownership or control available for placement of wireless facilities for the purpose of providing personal wireless services. No person may use any TSP or SLP without entering into an agreement with the City. The City reserves the right to vary from these standard conditions as are in its best interests, and by making them available generally, is not guaranteeing that it will lease any particular TSP or SLP to any person, and is not undertaking a utility or common carrier obligation to make the facilities available for use. However, it wishes to publicly specify certain of the standard conditions and the processes it will use in leasing or licensing TSPs or SLPs it will own or control, but reserve the right to include additional or different conditions in any agreement regarding the use of its facilities. Even so, the specification of these standards is not an offer, and these standards, may be changed at any time, and create no rights in any person. The City may choose to make the TSPs or SLPs available to entities that do not provide personal wireless services, but may seek additional terms and conditions to ensure that the City's interests are served.

Agreements will generally take the form of Master License Agreements, with addenda identifying each TSP or SLP that a Licensee uses, and the approved design for that TSP or SLP, which shall be in the form of technical drawings and accurate photo-simulations. The design may not be altered without an amendment to the contract, consented to in writing by the City. If there is a conflict between the drawings and the photo-simulations, the City may require a Licensee to conform to the design it deems in the City's best interest.

The City, acting in its proprietary capacity as the owner or entity in control of a SLP or TSP, will only approve applications to install wireless facilities in appropriate locations, after considering factors appropriate to that capacity, including but not limited to the impact of the installation on its use of the structures, and the effect of the installation on design standards it may have adopted consistent with plans for development in particular areas.

An SLP in the rights-of-way owned by a utility is typically controlled by the City, and a wireless facility cannot be placed on those poles without a contract with the City, but also requires a contract with the utility. The City's consent (except as to compensation terms) will generally be subject to the terms and conditions that apply to SLPs the City owns. The consents and the Master Agreements are collectively referred to as "licenses" below.

7.3 Types of Licenses.

There may be two types of licenses into which the City will enter (collectively referred to as Licenses except when context requires otherwise):

7.3.1 A license authorizing modification or replacement of an SLP which the City does not own, but which is under its control. The contracts will require that ownership of the SLP remain with the electric utility from which the City obtains street lighting, unless ownership is transferred to City, and the City accepts ownership of the SLP. In addition to the requirements of this Section, use will be subject to such terms and conditions as may be established by the owner of the SLP, but the City will not grant consent where the terms conflict with those it establishes to protect its interests. The City may charge a fee for its consent, but rents will be paid to the owner of the SLP; or

7.3.2 A license authorizing modification or replacement of an SLP or TSP which the City owns. The City may charge rents for use of these SLPs or TSPs.

7.4 What SLPs and TSPs Will Be Available and to Whom.

The City will only consider requests for use from persons who intend to utilize the TSPs or SLPs for placement of a base station which that person will operate, and for which that person will be wholly responsible. A Licensee must also have the necessary authority from the City to occupy the rights-of-way, in the form of a license, franchise or consent. The City may, at its option, require every person who will own any part of the base station (other than the TSP or SLP, if owned by the City or by an electric utility) to be a Licensee, and will limit the right of any Licensee to sublease the TSP or SLP, without appropriate guarantees and protections that satisfactory to the City Attorney.

While the City may in its discretion grant or deny access to any SLP or TSP, Applicants are also alerted that certain structures may be subject to use restrictions now or in the future, as may be the case if facilities were installed subject to bond conditions, or easement conditions where there is an underlying easement at the location where the SLP or TSP is placed. Nothing here is meant to abrogate those conditions or limitations.

7.5 Submission and Timing.

A person who wishes to enter into a Master License Agreement, or to obtain an authorization to place a wireless facility on a particular TSP or SLP should submit a request to the Zoning Administrator, which request should be from the person that seeks to be the Licensee, describe the facilities that are to be installed, their location and the specific poles proposed and include an agreement to pay costs and the fee required. Any application must provide the same information that would be required for obtaining a wireless permit pursuant to the administrative review provisions of the City Code that apply to applications other than eligible facilities requests.

A person may negotiate a Master License Agreement prior to submitting a request for use of facilities.

7.6 Compensation.

7.6.1 An Applicant must agree to pay the City's actual costs in developing a license and coordinating all necessary contracts, and an additional fee to cover the City's actual costs in reviewing an application for use of any particular TSP or SLP, and of conducting an inspection of the wireless facilities and other facilities affected by its installation. An initial deposit of \$1,500 must be submitted to the City for development of the license, and a fee of \$500 for each TSP and SLP that the Applicant seeks to use. A monthly rent shall be applied to all Licensees. Rents are intended to reflect the fair value of the TSP and SLPs leased or licensed, and may be in cash or in kind. The City may waive or reduce fees where the Applicant shows that the placement will result in service improvements to low-income areas within the City. The City may permit payment of an alternative amount for a temporary period while the validity of any rent is being challenged, provided that the City has adequate security that the full rent to which it may be entitled is paid for the entire period the use of a TSP or SLP is reserved for any person.

7.6.2 Every license shall require the Licensee to pay any additional costs that the City may incur as a result of the use or application for use of a TSP or SLP by the Licensee or its customers. Without limitation, that includes: additional electrical bills that the City may incur if, by way of example and not limitation, use by the TSP or SLP affects the amount the City must pay for power; any and all costs associated with removing and replacing an SLP or TSP to accommodate a Licensee's facilities (including costs associated with reinforcing structures and with installation, removal, and modification of foundations); and costs of restoring the SLP and TSP to its original condition upon termination of the license. By way of example and not limitation, if replacement of an SLP involves installation of a structure that costs additional amounts to remove, restore or repair, or that requires additional or different equipment to remove or repair, the Licensee shall be required to bear all costs therefore

7.7 Use Secondary.

7.7.1 It shall be a condition of each license that a Licensee's use shall be secondary to the use by the City, and may not interfere with, or disrupt any current or future use by the City. The City may terminate any license and direct removal of all portions of the base station, and any meters or other electrical wiring serving the base station if the use does cause such interference or disruption, or if it will result in costs to the City for which the City may not be fully compensated, or if it may create additional liabilities to third parties.

7.7.2 The Licensee must move, remove, and relocate its facilities as necessary and in accordance with a timetable directed by the City where the City desires to repair, move or replace, or is required to repair, move or replace a SLP or TSP, and that work requires or will be advanced by movement,

removal or relocation of the wireless facilities. The City may terminate a license, and cause removal of all portions of the base station, and any meters or other electrical wiring serving the base station if the Licensee fails to move, remove or relocate in accordance with the City's directives. The City may charge the Licensee the costs that it incurs in connection with the performance of the work.

7.8 Quality of Work on City Property, Consistency with City Use.

All work related to the wireless facilities shall be performed in a safe, thorough and reliable manner, in compliance with these guidelines and all applicable laws and standards, using materials of good and durable quality, and in a manner and using materials consistent with the City's use of the SLPs and TSPs. If, at any time, it is reasonably determined by the City or any other governmental agency or authority of competent jurisdiction that any part of the wireless facilities is harmful to the public health or safety, then the Applicant shall, at its own cost and expense promptly correct any and all such harmful conditions.

7.9 Duration of License.

A license may be for a period of no less than five (5) and no more than ten (10) years, based on the City's evaluation of its interests in the structure. At the end of the term, the City may extend the license after considering whether the design of the wireless facility should be changed, or additional conditions imposed, based on updated technology or other relevant and applicable changes in the area where the facility is located.

7.10 Ongoing Maintenance.

Where a SLP or TSP is not replaced, the Licensee is responsible for paying for the maintenance of the portions of the base station it owns or controls, and any additional maintenance or inspection costs the City may incur as a result of the Licensee's use of the SLP or TSP. Where the City authorizes a replacement SLP or TSP, Licensee additionally may be required to bear all costs associated with maintenance of the replacement structure, not including the traffic signals, luminaires, monitors and control equipment and similar equipment of the City. It is the preference of the City that any maintenance be performed by the electric utility that serves the SLP; but in any event, any maintenance must be performed by qualified contractors approved by the City or by the City itself.

7.11 Installation Options.

For City-owned TSPs or SLPs, where the SLP or TSP must be modified or replaced in preparation for the installation of the wireless facility, the City may in its discretion either give the Licensee the option of performing any necessary work itself or through the use of qualified contractors authorized by the City, or the City may perform any necessary work itself, and charge the Licensee for actual costs.

7.12 Maintenance Obligations.

The City will not be responsible for maintenance of the Licensee's equipment. The City Department of Public Works must receive a minimum of three (3) days' notice before the Applicant performs any work on an SLP or TSP.

Where an SLP or TSP falls, or there is an imminent risk of failure, or an emergency where the SLP, TSP or Licensee's facilities create a hazard to persons or property, the Licensee must promptly disconnect, remove or relocate its base station as necessary to permit restoration of the SLP or TSP, and if it fails to do so, the City may disconnect, remove or relocate the base station, at the Licensee's expense. Upon completion of any repair work at that location, it will be the responsibility of the Licensee to reinstall the base station equipment or notify the City of its intent not to reinstall.

The Licensee must maintain its wireless facilities, or alter those facilities as necessary to avoid interference with the use of the SLP or TSP by the City.

It is the Licensee's responsibility to maintain electric service to the Licensee's equipment. Except as the City may otherwise agree, if the electric utility offers a flat rate for service to the wireless facilities, that rate should be used to avoid the need for a meter.

Each license must specify a telephone number and email address through which the City may contact the Licensee at all times to require the removal, relocation or disconnection of the base station equipment.

7.13 Design of Facilities.

7.13.1 The City may approve a design for use at one or more specified locations, or for a class of locations, which design shall be treated as an addendum to the license, and which will not be subject to changes without the City's written consent.

7.13.2 Designs must be consistent with the corridor within which the wireless facility will be placed, and should be such that there is a consistency in the appearance of the SLPs or TSPs, and so that there is no adverse impact on their primary functions.

7.13.3 The City has pre-approved designs for placement of wireless facilities on TSPs and SLPs, set forth in the Appendix to these Guidelines. While there may be special circumstances where the designs are not appropriate (for example, where the installation would create a safety risk, or where it would not fit with plans for a particular location as might occur if the street were being redesigned or widened), using a "safe harbor" design will significantly shorten the time required for approval, as the designs have already been generally reviewed by the City for use in the locations specified in the designs.

7.13.4 Initial designs in the Appendix are for the Ocean Boulevard Target Area as defined in the Appendix. However, in other areas where utilities are underground, similar designs may be appropriate where there are similar TSPs or SLPs.

7.13.5 Additional designs for pre-approval as provided in these guidelines. Designs submitted that depart from the pre-approval will be reviewed considering factors set forth in this Section; the Code, and factors identified in Section 3. Base station equipment must be designed so that power usage by the base station can be shut off remotely, or from the base of the TSP or SLP. The Licensee shall install an equipment power cut-off switch as directed by the City for every SLP or TSP to which Licensee has attached a base station. The City will specify instances where these power cut-off facilities and associated equipment need to be pad-mounted. In ordinary circumstances, the City's authorized field personnel will contact the Licensee's designated point of contact to inform the Licensee of the need for a temporary power shut-down and the time by which the base station equipment must be powered down, which time shall be at least twenty-four (24) hours after notice is given. The Licensee will power down its antenna remotely, at the time specified, and will not power up until the Licensee receives notice from the City that the base station equipment may be powered up, which the City shall do promptly after completing activities which required the power down. Provided, however, that in the event of an emergency, the power down will be with such advance notice as may be practicable and, if circumstances warrant, employees and contractors of the City may accomplish the power down by operation of the power disconnect switch without advance notice to the Licensee and shall notify the Licensee soon as possible. In all such instances, once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power down shall restore power and inform the Company as soon as possible that power has been restored.

7.13.6 Backup power sources shall not be permitted unless such sources comply with the requirements in these guidelines, including requirements with respect to toxic materials.

7.13.7 Generally, the City will not approve designs that increase the height of the SLP or TSP by more than five feet.

7.13.8 As part of the installation of a base station on a SLP or replacement SLP, the City may require the Licensee to install a luminaire of the City's designation, at the Licensee's expense.

7.14 Base Station Location Requirements:

7.14.1 No more than one wireless facility will be licensed on any TSP or SLP such that once an SLP becomes a reserved pole, such SLP is not available for use by any other SLP Applicant as long as such SLP remains a reserved

pole. A single wireless facility may be a “neutral host” facility that can accommodate more than one provider of personal wireless services, but the wireless facility (excluding the supporting structure) must be under the sole control of the “neutral host.”

7.14.2 Due to City operational needs, TSPs on which a traffic signal controller equipment box is located (usually one pole per intersection with a traffic light) are not available for use for base stations.

7.14.3 Base station installations will only be permitted on TSPs that support a signal “arm” reaching into the roadbed, except that if at an intersection there are no TSPs with such a signal arm, then up to two TSPs without signal arms may be used for base stations at such intersection.

7.15 Replacement of City SLP.

The City shall only permit an Applicant to replace an SLP when the Applicant:

7.15.1 Demonstrates that the replacement is necessary to support the proposed wireless facility; and

7.15.2 Demonstrates that the replacement pole’s height (if different from that of the pole being replaced) is the shortest necessary to achieve the operational goals for the wireless facility.

7.16 Security and Indemnities.

Each license must contain indemnity and insurance requirements satisfactory to the City Attorney that survive the termination of the license through the removal of the wireless facility, and the restoration or affected facilities. Under no circumstances will the City provide a cross-indemnity.

7.17 No Guarantee of Suitability of Use.

Entry into a license, or approval or a placement upon a specific TSP or SLP is not a guarantee by the City that the SLP or TSP is suitable for use, or will remain suitable for use for the wireless facility.

7.18 Access to Books and Records; Report.

The City shall have the right to oversee, regulate and inspect the installation, construction and maintenance of the wireless facilities, and any part thereof, to ensure compliance with the license, and applicable guidelines and requirements.

Upon request, the Occupant or Designee as defined in section 5.10 will produce promptly books and records relevant to compliance with the same to the City at the City for inspection and copying. Such records may be in electronic form.

Generally, production must occur within thirty (30) days after a request except where conditions may require a more rapid response. The City will not unreasonably refuse to extend the time for response if the nature of the request is such that response within thirty (30) days would be unduly burdensome.

The Occupant or Designee as defined in section 5.10 shall maintain its facilities in conformance with applicable Federal, State, and Local laws and, upon receipt of written request from the City, the Occupant or Designee will prepare a written report demonstrating its compliance with the conditions of the installation, including its compliance with FCC RF guidelines.

7.19 Termination.

Wireless facilities must be removed from the TSP or SLP at the expiration or earlier termination of the license, or if base station equipment is abandoned. Base station equipment is deemed abandoned if not being used for the provision of personal wireless services for a period of six (6) months.

If the Licensee fails to comply with a license, permit, or applicable laws and standards the City may notify the Licensee of the deficiency, and if the deficiency is not cured within thirty (30) days, may terminate the license and direct removal of all portions of the base station, and any meters or other electrical wiring serving the base station.

If wireless facilities are not removed and the affected property restored within a reasonable period of time, which time shall be thirty (30) days unless otherwise agreed, the City may cause the work to be performed and charge Licensee for all costs incurred by it thereby.

As part of any removal, the Licensee must restore the TSP or SLP to its prior condition in all respects (including removing and replacing the foundations), except as the City may otherwise direct. If the Licensee fails to remove and restore, the City may do so, and charge the Licensee all costs it incurs thereby,

7.20 Allocation of Available City-Owned Pole Sites Among Multiple Potential Applicants

7.20.1 City has a limited number of SLPs and TSPs that may be useable for placement of base stations. The City will determine with whom it wishes to negotiate, based on its assessment of its best interests, and its obligations under state law.

7.20.2 Generally, the City will negotiate with Applicants for use of SLPs and TSPs on a first-come, first served basis, except applications received by the close of business on the same date, which will be treated as received at the same time. However, while requests for use of specific TSPs and SLPs may be submitted at any time, all applications received prior to or on February 1,

2019 will be treated as having been received on February 1, 2019 for purposes of resolving conflicting requests for use of SLPs. City may depart from the first-come, first-served approach if it determines it is in its interest to do so, or where it appears that particular entities are seeking to “over-reserve” in a manner that would allow it to capture and control the City’s valuable assets.

7.20.3 To be eligible to submit a request for use of an SLP or TSP, an Applicant and application must satisfy these guidelines, either have an franchise, or agree to enter into a franchise with the City, and have or agree to enter into an appropriate Master License Agreement with the City.

7.20.4 Applications must be complete, and must be accompanied by all required fees, and an agreement to pay costs as provided under these guidelines.

7.20.5 For each SLP or TSP and Applicant proposes to use, the application should include:

7.20.5.1 The design that the Applicant proposes and what modifications or replacements will be required for the existing SLP or TSP;

7.20.5.2 Proposed physical connection methods at the pole to utilities for power and backhaul (e.g., connection within a pole hand hole, external disconnect, etc.);

7.20.5.3 Detail of how the proposed construction will meet limitations on ground-mounted cabinets or equipment and other streetscape limitations included in these guidelines;

7.20.5.4 Whether the facility will utilize FCC-licensed frequencies, and if it will, proof of the relevant license(s);

7.20.5.5 Whether the facility will satisfy a requirement for personal wireless services, and if so proof that there is a plan for use of the facility;

7.20.5.6 Engineers’ reports that would be required for an application for administrative review, other than an eligible facilities request;

7.20.5.7 An engineer’s report, based on a review of the existing SLP or TSP, attesting as to the potential effects or risks of the proposed installation on the operations at the site (including RF interference risks);

7.20.5.8 A statement describing the benefits to the City of approving the Application.

7.20.6 If the City determines that the Applicant is proposing a wireless facility that may be appropriate for placement on an SLP or TSP, it will reserve the pole for the Applicant's use, pending completion of a Master License Agreement and a franchise (if needed), and notify the Applicant of the reservation. Otherwise, it will notify the Applicant of the denial of the reservation.

7.20.7 Within sixty (60) days of notice from the City that it will consider the application, the Applicant must agree to the terms of a Master License Agreement with the City, and an authorization, if required.

7.20.8 Within thirty (30) days of the date of the application, or the date the Applicant enters into the Master License Agreement or franchise, whichever is later, the Applicant and the City must agree upon a design addendum specifying what attachments or replacements will be permitted on the reserved pole. All applicable fees would be due and owing upon execution of that addendum for each pole or alternative location. As part of this process, the City shall require appropriate engineering certifications that the installation can be performed consistent with these guidelines, and without creating a hazard to persons or property, or interfering with the effective operation of the SLP or TSP.

7.20.9 The Applicant must complete construction on a reserved structure location within one (1) year of approval of the addendum.

7.20.10 A reservation may be terminated if an Applicant fails to satisfy any deadlines specified above (unless the City waives the same); if the Applicant's franchise expires or is terminated; or if the Applicant is failing to comply with requirements of these guidelines, or other applicable requirements; or the license terminates by passage of time or otherwise.

7.20.11 Reservations and cancellation of reservations shall be public information.

APPENDIX A: PRE-APPROVED DESIGNS FOR SLPs AND TSPs

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