

CITY CLERK ORIGINAL

T-Mobile Site No.: PH10612I

C-8160
09/11/2012

LICENSE AGREEMENT FOR T-MOBILE WEST CORPORATION IN CITY RIGHT-OF-WAY

This License Agreement for **T-Mobile West Corporation** in City Right-of-Way ("Agreement") is executed to be effective the 11th day of September, 2012 ("Effective Date"), between the City of Glendale, an Arizona municipal corporation ("City"), and T-Mobile West Corporation, a Delaware corporation authorized to do business in Arizona ("Licensee").

WHEREAS, the City is the owner of certain right-of-ways located in the area of 6510 West Cactus Road, Glendale, Arizona ("License Area"), as more particularly described in Exhibit A attached hereto;

WHEREAS, the Licensee has installed and operates wireless communications antennas and related equipment (collectively the "Communications Equipment") in the License Area and has constructed certain improvements to such area, as depicted in the Site Plan (collectively the "License Area" as more fully set forth in Section 1; and

WHEREAS, the City is willing to grant to the Licensee a license to use the License Area for the operation of Licensee's ground equipment in accordance with the terms of this Agreement, subject to the approval of the Glendale City Council in connection with the public hearing requirements of A.R.S. § 9-551 *et seq.*, and all as implemented by the City Engineer or his or her designee, whose approvals shall not be unreasonably withheld.

NOW, THEREFORE, in consideration of the following mutual covenants, terms and conditions, it is agreed as follows:

1. LICENSE AREA.

The License Area includes and is limited to the areas depicted in Exhibit A. The License Area cannot be changed without the written consent of the City and Licensee.

2. CITY'S REPRESENTATIONS AND WARRANTIES.

A. The City represents and warrants to the Licensee that:

- i) The City, and its duly authorized signatory, have full right, power and authority to execute this Agreement on behalf of the City;
- ii) The City has good and unencumbered title to the License Area free and clear of any liens or mortgages, except those disclosed to the Licensee that will not interfere with Licensee's right to use the License Area; and
- iii) The City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.

B. The Licensee has studied and inspected the License Area and accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in subsection (A) immediately above, including any warranties or representations by the City as to its condition or fitness for any particular use. The Licensee has inspected the License Area

T-Mobile Site No.:

and obtained information and professional advice as the Licensee has determined to be necessary related to this Agreement.

3. GRANT OF LICENSE; TERM.

- A. Nothing in this Agreement will be construed as granting the Licensee the authority to use any property that is owned by any person or entity other than the City.
- B. The initial term of this Agreement shall be for a period of five (5) years ("Initial Term"), commencing on the Effective Date and ending on the fifth anniversary thereof, unless sooner terminated as stated herein. This Agreement may be renewed for no more than four (4) successive five (5)-year Renewal Terms unless City notifies Licensee in writing of City's intent to not renew this Agreement at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term due to:
 - i) A violation of any term of this Agreement not cured within thirty (30)-day notice;
 - ii) Any subsequent violation of the same term since the original Effective Date of this Agreement;
 - iii) For any of the reasons listed under Section 16; or
 - iv) For any operations or incidents the City Engineer or his or her designee considers to be a danger to public safety.
- C. Unless City notifies Licensee of its intent not to renew this Agreement, the Agreement shall automatically renew for each successive Renewal Term unless Licensee notifies City, in writing, of Licensee's intention not to renew this Lease, at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term.
- D. If Licensee continues to occupy the License Area after the expiration or termination of this Agreement, holding over will not be considered to operate as a renewal or extension of this Agreement, but shall be a month-to-month license and the Licensee must pay the City a monthly License Fee in an amount that is double the amount of License Fee that would otherwise be due under Section 4.
- E. Notwithstanding any provision in this Agreement to the contrary, or any negotiation, correspondence, course of performance, or dealing, or other statements or acts by or between the parties, Licensee's rights in the License Area are limited to the rights created by this Agreement, which create only a license in the License Area, which is revocable only as set forth expressly herein. The City and the Licensee do not by this instrument intend to create a lease, easement or other real property interest. The Licensee has no real property interest in the License Area. Licensee's sole remedy for any breach or threatened breach of this Agreement by the City will be an action for damages. Licensee's rights are subject to all covenants, restrictions, easements, agreements, reservations, and encumbrances upon, and all other conditions of title to, the License Area. Licensee's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions, and orders of any local, state or federal agency, now or later having jurisdiction over the License Area or the Licensee's use of the License Area.

T-Mobile Site No.:

4. LICENSE FEE; INTEREST; DESIGN REVIEW FEES; COSTS.

- A. The Licensee shall pay, without notice and free from all claims, deductions and setoffs against the City, a License Fee in the amount of Fifteen Thousand Dollars (\$15,000) plus all appropriate taxes beginning on the Effective Date, and each subsequent year of the term of this Agreement, up to and including the expiration or earlier termination thereof.
- B. The License Fee will increase by three percent (3%) annually on the anniversary of the Effective Date.
- C. The License Fee amount is due on the first day of the anniversary date month of the Effective Date of this Agreement. Licensee shall pay the License Fee due for the current year in advance on the first business day of each anniversary month. If the Effective Date is not on the first day of a month, the Licensee's License Fee will be prorated accordingly.
- D. If the Licensee fails to pay any License Fee in full when due, then after ten (10) business days, the Licensee is responsible for interest on the unpaid principal balance at the rate of eighteen percent (18%) per annum from the due date until payment is made in full.
- E. Upon submission of plans in connection with the approval of this Agreement, Licensee shall pay the City applicable fees in accordance with the City's Community Development Fee Schedule or other similar fee schedule approved by the City.
- F. The Licensee shall pay the City actual costs for inspections, materials testing and other costs incurred by the City not to exceed One Thousand Dollars (\$1,000) related to the construction, repair, alteration or relocation of the Communications Equipment. All costs shall be paid in full within thirty (30) days of invoice.

5. UTILITIES.

Licensee is responsible for obtaining and paying for all utilities necessary to operate the Communications Equipment.

6. USE RESTRICTIONS.

- A. Subject to the interference provisions set forth in Subsection E, Licensee shall at all times use reasonable efforts to minimize any impact that its use of the License Area will have on other uses of the License Area.
- B. The Licensee shall not remove, damage or alter in any way any improvements or personal property of the City upon the License Area without City's prior written approval. The Licensee shall repair any damage or alteration to the City's property caused by Licensee's use of the License Area to the same condition that existed before the damage or alteration.
- C. Whenever the Licensee performs construction activities within the License Area, the Licensee shall obtain all necessary construction permits and promptly, upon completion of construction, restore the remaining License Area to the condition existing prior to construction to the satisfaction of the City Engineer or his or her designee. If the Licensee

T-Mobile Site No.:

fails to restore the License Area as required, the City may take all reasonable actions necessary to restore the License Area, and the Licensee, within twenty (20) days of demand and receipt of an invoice, together with reasonable supporting documentation, will pay all of the City's reasonable costs of restoration.

- D. Licensee shall use the License Area solely for constructing, installing, operating, maintaining, repairing, modifying and removing the Communications Equipment. The Communications Equipment are limited to the equipment and facilities listed in Exhibit A and other items as may be approved by the City, in its sole discretion, in writing.
- E. Licensee shall have a non-exclusive right for ingress and egress and utilities across the City right-of-way, seven (7) days a week, twenty-four (24) hours a day, for the construction, installation, operation, maintenance, modification, and removal of the Communications Equipment. In no event shall the City's use of the License Area be unreasonably interrupted by the Licensee's work.
- F. The Licensee shall at all times have on call and at the City's access an active, qualified and experienced representative to supervise the Communications Equipment. The Licensee's representative must be authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Communications Equipment. The 24-hour telephone number for Licensee is 888-662-4662.
- G. Licensee shall keep the License Area maintained, orderly and clean at all times.
- H. Licensee acknowledges that:
 - i) The Licensee's use of the License Area is subject and subordinate to, and shall not adversely affect, the City's use of the License Area; and
 - ii) The City reserves the right to further develop, maintain, repair or improve the License Area.
- I. Licensee shall not install any signs in the License Area other than required safety or warning signs or other signs necessary for the use of the License Area as requested or approved by the City. Licensee bears all costs pertaining to the erection, installation, maintenance and removal of all of its signs.

7. HAZARDOUS WASTE.

The Licensee shall not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the License Area in violation of the Arizona Hazardous Waste Management Act, A.R.S. § 49-901 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*, or any other federal, state or local law pertaining to hazardous waste or toxic substances. Licensee shall not use the License Area in a manner inconsistent with any regulations, permits or approvals issued by any state agency. The Licensee shall defend, indemnify and hold the City harmless against any loss or liability incurred by reason of any hazardous waste or toxic substance release on or affecting the License Area to the extent caused by the Licensee, and shall immediately notify the City of any hazardous waste or toxic substance release at any time discovered or existing upon the License Area. Licensee shall promptly

T-Mobile Site No.:

and without request provide the City with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or problems in the License Area.

8. LICENSEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

- A. The following provisions govern all improvements, repairs, installation and other construction, removal, demolition, or similar work of any description by the Licensee related to the Communications Equipment or the License Area (collectively referred to as the "Licensee's Improvements"):
- i) The City is not obligated to compensate the Licensee in any manner for any of Licensee's Improvements or other work provided by the Licensee during or related to this Agreement. The Licensee shall timely pay for all labor, materials and work and all professional and other services related to Licensee's Improvements and defend, indemnify, and hold harmless the City against the same.
 - ii) All work performed by the Licensee must be in a workmanlike manner, and be diligently pursued to completion and in conformance with all building codes and similar requirements. Licensee's Improvements shall be commensurate with high quality industry standards as approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed.
 - iii) The Licensee acknowledges that as of the Effective Date of this Agreement, the City has not approved or promised to approve any plans for the Licensee's Improvements, except for those improvements already in place as of the Effective Date or to the extent expressly stated in this Agreement.
 - iv) The Licensee shall make no structural or grading alterations, or similar structural modifications or additions or other significant construction work to the License Area without having first received the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Review shall include all improvements, equipment, fixtures, paint and other construction work of any description as described in all plans delivered by the Licensee to the City. All such plans and construction are subject to inspection and final approval by the City as to materials, design, function and appearance.
 - v) The Licensee shall keep as-built records of any future modifications of the Licensee's Improvements and furnish copies of records to the City, at no cost to the City, upon completion of improvements and any changes to the same. Licensee shall participate as a member of the Blue Stake Center under A.R.S. § 40-360.21, *et seq.*, regarding underground facilities, and submit proof of participation to the City Engineer or his or designee upon request.
 - vi) All of the Licensee's Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located in the License Area.

T-Mobile Site No.:

- vii) The Licensee shall properly mark and sign all excavations and maintain barriers and traffic control in accordance with applicable laws, regulations, and best management practices.
- B. The following procedure governs the Licensee's submission to the City of all plans for the License Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:
- i) The Licensee shall coordinate with the City as necessary on significant design issues prior to submission of plans.
 - ii) Upon execution of this Agreement, the City and the Licensee shall each designate a project manager to coordinate the parties' participation in designing and constructing Licensee's Improvements. The City's property manager or designee will serve as project manager for the City. Each project manager shall devote time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's project manager will not be exclusively assigned to this Agreement or the Licensee's Improvements.
 - iii) No plans are considered finally submitted until the Licensee delivers to the City a formal certification if required by building codes by an engineer licensed in Arizona, acceptable to the project manager, to the effect that all of the Licensee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. The certification shall be accompanied by and refer to any backup information and analysis as the project manager may reasonably require.
 - iv) No plans are considered approved until stamped "APPROVED" and dated by the City's project manager.
 - v) Licensee acknowledges that the City Engineer or his or her designee's authority with respect to the License Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other governmental approvals and to satisfy all governmental requirements pertaining to the project and may not rely on the City to initiate or suggest any particular process or course of action.
 - vi) The City's issuance of building permits shall not be considered valid unless the plans have been approved as stated in Subparagraph (iv) above. The City's project manager shall be reasonably available to coordinate and assist the Licensee in working through issues that may arise in connection with such plan approvals and requirements.
 - vii) The Licensee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and shall schedule its performances and revise its plans as necessary to timely obtain all approvals and make payment of all applicable fees.
 - viii) Any delay in City's review of or marking Licensee's plans with changes necessary to approve the plans, or approve the revised plans in accordance with the City's normal

T-Mobile Site No.:

plan review procedures, will not be considered approval of the plans but may operate to extend Licensee's construction deadlines. The City agrees to use reasonable efforts to review, mark or approve Licensee's plans in a prompt and timely manner and in conformance with established policies and procedures.

- ix) The Licensee shall provide the City with two (2) complete sets of detailed plans and specifications of the work as completed.
- x) The parties shall use reasonable efforts to resolve any design and construction issues to their mutual satisfaction, but in the event of an impasse for any reason, final decision authority regarding all design and construction issues shall rest with the City in its discretion.

9. LICENSEE'S INITIAL CONSTRUCTION.

No later than eighteen (18) months after the Effective Date, the Licensee shall install the Communications Equipment in the License Area in accordance with all of the specifications contained in the Exhibit A. Equipment already in place from previous authorization will also be reflected in Exhibit A.

10. MAINTENANCE.

- A. The Licensee has, at its own cost, all responsibilities for improvements to and maintenance of the Communications Equipment in the License Area during the term of this Agreement.
- B. Licensee, at its expense, shall use reasonable efforts to minimize the visual and operational impacts of the equipment as required by any City Ordinance, permit, or other permission necessary for the installation or use of the License Area.

11. CO-LOCATION.

- A. Subject to subsection (B) below, the Licensee shall at all times use reasonable efforts to cooperate with the City or any third parties with regard to the possible co-location of additional equipment, facilities, or structures in and around the License Area ("Co-location"). If a Co-location is feasible, the City may, in its sole discretion, negotiate a Co-location license agreement with any third party on terms as the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement. Licensee's consent in connection with the final determination of Co-location of a third party is not required. Any License Fee or fees paid by an additional Co-locator belong solely to the City.
- B. Prior to permitting the installation of a Co-location by any third party in or around the License Area which may interfere with the Licensee's operations, the City shall give the Licensee thirty (30) days' notice of the proposed Co-location so that the Licensee can determine if the Co-location will interfere with the Communications Equipment. If the Licensee determines that interference is likely, the Licensee shall, within the notice period, give the City a detailed written explanation of the anticipated interference, including supporting documentation as may be reasonably necessary for the City to evaluate the Licensee's position. The City and the Licensee shall promptly use reasonable efforts to resolve any interference problems before the City permits a Co-location to the third party. If a subsequent licensee is permitted to operate

T-Mobile Site No.:

near the License Area, and the subsequent licensee's operations materially interfere with Licensee's Communications Equipment, then the City shall direct the subsequent licensee to remedy the interference within seventy-two (72) hours. If the interference is not resolved within this period, then the City will direct the subsequent licensee to cease its operation until the interference is resolved. These same procedures apply to any interference caused by the Licensee with respect to any Co-location existing and as configured prior to the installation of Licensee's Communications Equipment.

12. ASSIGNMENT.

- A. Licensee may assign this Agreement, upon thirty (30) days' written notice to the City, to any person or entity controlling, controlled by or under common ownership with the Licensee or Licensee's parent company, or to any person or entity that, acquires the Licensee's business and assumes all obligations of the Licensee under this Agreement. All other assignments require City approval. For assignments requiring City approval, the City may, as a condition of approval, postpone the effective date of the assignment and require that any potential transferee submit reasonable evidence of its financial ability to fully perform under the terms of this Agreement to the City at least thirty (30) days' prior to any transfer of the Licensee's interest.
- B. The Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and the Communications Equipment, and may assign this Agreement and the Communications Equipment to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), so long as the Mortgagees agree to be bound by the terms of this Agreement. If so, the City shall execute consent to leasehold or other financing as may be reasonably required by Mortgagees. In no event will the Licensee grant or attempt to grant a security interest in any of the real property underlying the License Area.
- C. Subject to Subsections (A) and (B) above, Licensee shall not assign or sublease any of its interest under this Agreement, nor permit any other person to occupy the License Area.

13. PERFORMANCE BOND.

The Licensee shall, no later than thirty (30) days after the Effective Date, provide the City with a cash deposit, letter of credit, or performance bond in the amount of Five Thousand Dollars (\$5,000). The performance bond shall be conditioned upon the Licensee's faithful performance of all of its obligations under this Agreement. The bond shall be executed by a surety company duly authorized to do business in the State of Arizona and acceptable to the City's Risk Manager.

14. REGULATORY AGENCIES, SERVICES, FINANCIALS AND BANKRUPTCY.

- A. The Licensee shall provide to the City:
 - i) All relevant petitions, applications, communications and reports submitted by the Licensee to the Arizona Corporation Commission, inclusive of any requirements under A.R.S. § 40-441 *et seq.*, or other state or federal authority having jurisdiction that directly relates to Licensee's operations in the License Area;

T-Mobile Site No.:

- ii) Licensing documentation concerning the License Area. Copies of responses from regulatory agencies to the Licensee shall be available to the City upon request. To the extent permitted by Arizona's Public Records Law, A.R.S. § 39-121 *et seq.*, the City will treat all documentation and information obtained pursuant to this Section 14 as proprietary and confidential.
- B. The Licensee shall provide the City, without request, copies of any petition, application, communications, or other documents related to any filing by the Licensee of bankruptcy, receivership, or trusteeship.

15. DEFAULT; TERMINATION BY CITY.

- A. The City may terminate this Agreement for any of the following reasons upon thirty (30) days' written notice to the Licensee:
 - i) Failure of the Licensee to perform any obligation under this Agreement, after the Licensee fails to cure default within the notice and cure period. However, if cure cannot reasonably be implemented within the notice period, the Licensee must commence and diligently pursue to cure within ninety (90) days of the City's notice.
 - ii) The taking of possession for a period of ten (10) days or more of substantially all of Licensee's personal property in the License Area by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.
 - iii) The filing of any lien against the License Area due to any act or omission of the Licensee that is not discharged or fully bonded within thirty (30) days of receipt of actual notice by the Licensee.
- B. The City will give the Licensee a written notice of the Licensee's failure to timely pay the License Fee required under this Agreement or any other charges required to be paid by the Licensee pursuant to this Agreement. If Licensee does not cure the default within fifteen (15) days after receiving the notice, the City may terminate this Agreement or exercise any other remedy allowed by law or equity.
- C. If the Licensee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City may, upon written notice to the Licensee, immediately terminate this Agreement or secure the required insurance at Licensee's expense.
- D. Failure by a party to take any authorized action upon default by the other party does not constitute a waiver of the default nor of any subsequent default by the other party. Acceptance of the License Fee and other fees by the City for any period after a default by the Licensee is not considered a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.
- E. Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns and all others similarly situated as to the License Area.

T-Mobile Site No.:

16. TERMINATION.

- A. This Agreement may be terminated for any of the following reasons:
- i) By either party upon issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the License Area and remaining in force for a period of thirty (30) consecutive days;
 - ii) By either party upon the inability of the Licensee to use any substantial portion of the License Area for a period of thirty (30) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy;
 - iii) By either party upon ninety (90) days' written notice, if the Licensee is unable to obtain or maintain any license, permit or governmental approval necessary for the construction, installation, or operation of the Communications Equipment or the Licensee's business;
 - iv) By Licensee, if the License Area or Communications Equipment are destroyed or damaged so as in Licensee's party's reasonable judgment the use of the Communications Equipment is substantially and adversely affected; or
 - v) Upon thirty (30)-day written notice by Tenant if the License Area or the Licensee's equipment is, or becomes unacceptable, under Tenant's design or engineering specifications for its communications facilities or the communications system to which the equipment belongs.
- B. In order to exercise the termination provisions above, the party exercising termination must not itself be in default under the terms of this Agreement beyond any applicable grace or cure period and, if not otherwise stated above, provide reasonable written notice to the other party.

17. INDEMNIFICATION.

The Licensee shall defend, indemnify and hold harmless the City and its elected or appointed officials, agents, boards, commissions and employees (hereinafter referred to collectively as the "City" in this Section) from all loss, damages, or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of the Licensee or its agents, employees, and invitees in connection with the Licensee's operations in the License Area and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that arise out of the failure of the Licensee to comply with any provision of this Agreement. The City shall in all instances be indemnified by Licensee against all losses, damages or claims not directly attributable to the negligence or fault of the City. The City shall give the Licensee prompt notice of any claim made or suit instituted that may subject the Licensee to liability under this Section, and Licensee shall have the right to compromise and defend the same to the extent of its own interest. The City shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of the City's selection and at the City's sole cost without relieving the Licensee of any obligations under this Agreement. Licensee's obligations under this Section survive any termination of this Agreement or the Licensee's activities in the License Area.

T-Mobile Site No.:

18. INSURANCE.

- A. The Licensee shall procure and at all times maintain the following types and amounts of insurance for its operations in the License Area:
- i) Commercial general liability and property damage insurance in the minimum amount of Five Million Dollars (\$5,000,000) combined single limit, Five Million Dollars (\$5,000,000) aggregate such limit may be satisfied by a combination of primary and umbrella policies. Licensee may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Licensee may maintain; and
 - ii) Any other insurance, as the City's Risk Manager may determine, to be necessary for the Licensee's operations and is commercially reasonable.
- B. Insurance shall:
- i) Be from a company rated at least A- by AM Best;
 - ii) Name the City as an additional insured on the commercial general liability insurance policy as evidenced by a certificate of insurance and maintain coverage through the term of the Agreement;
 - iii) Require a twenty (20)-day written notice to the City prior to cancellation (ten (10) days due to non-payment);
 - iv) Include contractual liability coverage subject to standard policy provisions and exclusions; and
 - v) Be primary and non-contributory with respect to all other available sources, as relates to Licensee's negligence.
- C. Licensee shall provide appropriate certificates of insurance to the City for all insurance policies required by this Section. Absence of City request for proof of initial or renewal coverage does not waive any insurance requirements under this section.

19. DAMAGE OR DESTRUCTION.

The City has no obligation to reimburse the Licensee for the loss of or damage to fixtures, equipment or other personal property of the Licensee, except for loss or damage caused by the negligence or fault of the City or its officers, employees or agents. The Licensee may insure such fixtures, equipment, or other personal property for its own protection if it so desires.

20. SURRENDER OF POSSESSION.

Upon the expiration or termination of this Agreement, the Licensee's right to occupy the License Area and exercise the privileges and rights granted under this Agreement shall cease, and it shall surrender and leave the License Area in good condition, normal wear and tear excepted. Unless otherwise provided, all trade fixtures, equipment, and other personal property installed or placed by

T-Mobile Site No.:

23. TAXES AND LICENSES.

- A. The Licensee shall pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax, use tax or other exaction assessed or assessable as a direct result of its occupancy of the License Area under authority of this Agreement, including any tax assessable on the City, not including income taxes. If laws or judicial decisions result in the imposition of a real property tax on the interest of the City as a direct result of Licensee's occupancy of the License Area, the tax shall also be paid by the Licensee on a proportional basis for the period this Agreement is in effect.
- B. The Licensee shall, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all licenses and permits required for all activities authorized by this Agreement.

24. LITIGATION.

This Agreement is governed by the laws of the State of Arizona. If any litigation or arbitration between the City and the Licensee arises under this Agreement, the successful party is entitled to recover its reasonable attorney's fees, expert witness fees and other costs incurred in connection with the litigation, arbitration, or other claim resolution process.

25. RULES AND REGULATIONS.

The Licensee shall at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its operations and the License Area, including all laws, ordinances, rules, and regulations adopted after the Effective Date. The Licensee shall display to the City, upon request, any permits, licenses or other reasonable evidence of compliance with the law.

26. RIGHT OF ENTRY RESERVED.

- A. The City may, at any time, enter upon the License Area for any lawful purpose, so long as the action does not unreasonably interfere with the Licensee's use or occupancy of the License Area. The City shall have access to the Communications Equipment itself only in emergencies or upon reasonable notice to the Licensee.
- B. Without limiting the generality of the foregoing, the City and any furnisher of utilities and other services shall have the right, at their own cost, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the License Area at any time to make repairs, replacements or alterations that may, in the opinion of the City, be necessary or advisable and from time to time to construct or install over, in or under the License Area systems or parts and in connection with maintenance, use the License Area for access to other parts in and around the License Area. Exercise of rights of access to repair, to make alterations or commence new construction will not unreasonably interfere with the use and occupancy of the License Area by the Licensee.
- C. Exercise of any of the foregoing rights by the City or others pursuant to the City's rights does not constitute a removal of the Licensee, nor are grounds for any abatement of the License Fee or any claim for damages.

T-Mobile Site No.:

27. RELOCATION.

- A. The City shall not bear any cost of relocation of existing facilities, irrespective of the function served, where the City facilities or other facilities occupying the License Area or right-of-way in close proximity to the License Area, are already located and the conflict between the Licensee's potential Communications Equipment and existing facilities can only be resolved expeditiously, as determined by the City, by the movement of the existing City or other permitted facilities.
- B. The City shall not bear any cost of relocation of Licensee's Communications Equipment, where in the City's discretion, relocation is reasonable and necessary in connection with City right-of-way repairs, improvements or other capital projects affecting the License Area. The City shall provide Licensee no less than ninety (90) days' advance notice of a requirement to relocate. If the City becomes aware of a potential delay involving the Licensee's relocation, the City shall notify the Licensee within thirty (30) days of becoming aware of the potential delay. The Licensee may object in writing to the determination of relocation to the City Engineer or his or her designee within thirty (30) days of receipt of the notice to relocate. The City Engineer or his or her designee shall consider the objection and respond in writing to the Licensee within thirty (30) days of receipt of the objection. The City Engineer or his or her designee's determination is final. However, if Licensee is forced to relocate it may instead terminate this Agreement by giving the City a ten (10)-day notice.
- C. If Licensee's relocation effort delays construction of a public project causing the City to be liable for delay or other damages, the Licensee shall reimburse the City for those damages attributable to the delay created by the Licensee. If Licensee disputes the amount of damages attributable to the Licensee, the matter shall be referred to the Dispute Resolution Board as defined below. The Dispute Resolution Board shall consist of one member selected by the City, one member selected by the Licensee, and a third member agreed upon by both parties. The member agreed upon by both parties shall be chairperson of the Dispute Resolution Board. Expenses for the Dispute Resolution Board shall be shared equally by the City and the Licensee. The Board will hear the dispute promptly, and render an opinion as soon as possible, but in no case later than sixty (60) days after notification by the City of Licensee's allocated share of damages suffered by the City. All decisions of the Dispute Resolution Board are non-binding on the City or the Licensee; however the findings of the Dispute Resolution Board shall be admissible in any legal action. The City and the Licensee shall accept or reject findings of the Dispute Resolution Board within thirty (30) days after receipt of the findings. If damages are assessed by the Dispute Resolution Board, and accepted by the City and the Licensee, the Licensee shall pay the City within thirty (30) days. If the Licensee fails to pay the damages in full within thirty (30) days the Licensee is responsible for interest on the unpaid balance at the rate of eighteen percent (18%) per annum from that date until payment is made in full. Nothing herein prevents a mutual agreement between the City and the Licensee to use alternative dispute resolution for disputes related to other Agreement provisions.

28. CONFLICTS OF INTEREST.

This Agreement may be cancelled for conflicts of interest as described under A.R.S. § 38-511.

T-Mobile Site No.:

29. MISCELLANEOUS.

This Agreement constitutes the entire agreement between the parties concerning the subject matter stated and supersedes all prior negotiations, understandings and agreements between the parties concerning those matters. This Agreement shall be interpreted, applied, and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Agreement may be waived or modified except by a writing signed by the party against whom the waiver or modification is sought to be enforced. Electronic signature blocks do not constitute a signature for purposes of this Agreement. This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument. The terms of this Agreement are binding upon and inure to the benefit of the parties' successors and assigns.

[SIGNATURES ON NEXT PAGE]

T-Mobile Site No.: PH10612I

EXECUTED on the Effective Date above.

CITY OF GLENDALE, an Arizona
municipal corporation

Horatio Skeete
Horatio Skeete
Acting City Manager

ATTEST:

Pamela Hanna
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Craig Tindall
Craig Tindall, City Attorney

T-MOBILE WEST LLC
a Delaware limited liability company f/k/a
T-MOBILE WEST CORPORATION,
a Delaware corporation authorized to do business
in Arizona

By: Chad Simmons
Chad Simmons
Its: Interim Area Director,
Engineering & Operations

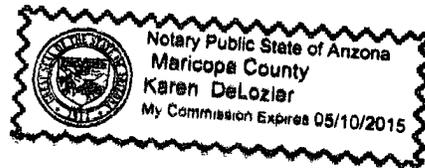
STATE OF Arizona)
County of Maricopa)ss

The foregoing document was acknowledged before me this 7 day of November, 2012, by Chad Simmons, in his or her capacity as Interim Area Director of T-Mobile West Corporation.

Karen DeLozier
Notary Public

My Commission Expires:

5/10/15



T-Mobile Site No.:

EXHIBIT A

SEE ATTACHED

EXHIBIT A

(Property Licensed for Use)

One area in Licensor's right-of-way sufficient to allow Licensee to place and operate a standard temporary wireless communications facility (a "Cellular Site") consisting of: (1) temporary antennas to be attached to an existing Salt River Project ("S.R.P.") utility pole; (2) temporary ground equipment to be placed to the north of the right-of-way; and (3) temporary cables and wires connecting the antennas and the ground equipment, to be placed partly in the right-of-way and partly to the north of the right-of-way. The Cellular Site shall include that certain S.R.P. pole located north of Cactus Road and south of S.R.P.'s Harmon substation at 6510 West Cactus Road and shall include reasonable access to such pole at all times for purposes of operating, maintaining and repairing the Cellular Site. The exact location of the utility connections for the Cellular Site shall be approved by Licensor, to the extent any portion of such connections may be located in the right-of-way. The exact location of the ground equipment and utility connections for the Cellular Site shall be approved by Licensor and S.R.P., to the extent any portion of such equipment and connections are located on S.R.P.'s property. All ground equipment shall be located inside the existing walls of the Harmon substation.