

BILL NO. _____

SUMMARY – An ordinance to amend Title 5 of the Clark County Code by deleting Chapter 5.02 - Cable Television Services, Including CATV and Open Video Services, and replacing it with a new Chapter 5.02 – Rights-of-Way Management - Wireless Communications Facilities; providing for application and issuance of master wireless use and site license approvals; setting standards for design, installation, operation, maintenance and removal of wireless communications facilities in the public rights-of-way; establishing fees for wireless communications facilities in the public rights-of-way; and providing for other matters properly related thereto.

ORDINANCE NO. _____
(of Clark County, Nevada)

AN ORDINANCE TO AMEND TITLE 5 OF THE CLARK COUNTY CODE BY DELETING CHAPTER 5.02, - CABLE TELEVISION SERVICES, INCLUDING CATV AND OPEN VIDEO SERVICES, AND REPLACING IT WITH A NEW CHAPTER 5.02 - RIGHTS-OF-WAY MANAGEMENT - WIRELESS COMMUNICATIONS FACILITIES; PROVIDING FOR APPLICATION AND ISSUANCE OF MASTER WIRELESS USE AND SITE LICENSE APPROVALS; SETTING STANDARDS FOR DESIGN, INSTALLATION, OPERATION, MAINTENANCE AND REMOVAL OF WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; ESTABLISHING FEES FOR WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK,
STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. Title 5 of the Clark County Code is hereby amended by deleting Chapter 5.02 in its entirety and adding a new Chapter 5.02 as follows:

CHAPTER 5.02 – RIGHTS-OF-WAY MANAGEMENT –
WIRELESS COMMUNICATIONS FACILITIES

Sections:

5.02.010 – Purpose.

The purpose of this Chapter of the Code is to:

- (A) Establish a local policy concerning Rights-of-Way management for Wireless Communications Facilities.
- (B) Permit and manage reasonable access, in a nondiscriminatory manner, to Rights-of-Way in unincorporated Clark County for Wireless Communications Facilities.
- (C) Manage physical capacity of the Rights-of-Way held in public trust by the County.
- (D) Establish design standards to provide for a consistent and aesthetically pleasing appearance of Wireless Communications Facilities in the County Rights-of-Way within specific, defined districts.
- (E) Recover public costs of permitting private use of County Rights-of-Way.
- (F) Ensure all providers of Wireless Communications Facilities within the County comply with all ordinances, rules and regulations of the County.

5.02.020 – Implementation.

The provisions of this chapter shall become effective on July 1, 2019.

5.02.030 - Definitions.

For the purpose of this Chapter of the Code, the following words and terms defined in this Section shall apply. Terms, phrases, words, and their derivations shall have the meanings set forth herein, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "must", "shall" and "will" are mandatory and "may" is permissive.

5.02.030.010 – Abandoned

"Abandoned" means the relinquishing of Facilities owned by a Licensee or when a Licensee intends to permanently cease all business activity associated with its Wireless Communications Facilities within the Rights-of-Way.

5.02.030.020 – Affiliate

"Affiliate" means each person or entity which falls into one or more of the following categories: (a) each person or entity having, directly or indirectly, a controlling interest in a Licensee; (b) each person or entity in which a Licensee has, directly or indirectly, a controlling interest; or (c) each person or entity that, directly or indirectly, is controlled by a third party which also directly or indirectly controls a Licensee. An "Affiliate" shall in no event mean any creditor of a Licensee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, a Licensee.

5.02.030.030 – Applicant

"Applicant" means the person who submits a completed Application and required supporting materials as set forth in this Chapter for a Business License, a Master Wireless Use License Agreement, a Wireless Site License Approval, or a permit to install and operate a Wireless Communications Facility.

5.02.030.040 - Application

"Application" means all written documentation, statements, representations and warranties provided to the County, in accordance with this Chapter, by a Person, which may be relied upon by the County in making its determination of whether to grant or deny a Business License, a Master Wireless Use License Agreement, a Wireless Site License Approval, or a permit to install and operate a Wireless Communications Facility.

5.02.030.050 – Assignment or Transfer

“Assignment” or “Transfer” means any transaction in which: (a) any ownership or other right, title or interest of more than 50% in a Licensee or its Network is transferred, sold, assigned, leased or sublet, directly or indirectly, in whole or in part; (b) there is any change or transfer of control of a Licensee or its Network; (c) the rights and/or obligations held by a Licensee under a Master Wireless Use License Agreement are transferred, directly or indirectly, to another party; or (d) any change or substitution occurs of more than 50% of the managing general partners of a Licensee, if applicable. An “Assignment” shall not include a mortgage, pledge or other encumbrance as security for money owed nor shall it

include the use of a Licensee's Equipment by third parties or attachment of third-party owned Equipment to Municipal Facilities by a Licensee.

5.02.030.060 – Business License

"Business License" means the written authorization required by the County for any person who commences, carries on, engages in, or conducts a business, occupation, trade, or employment, as delineated in Title 6 of the Code, within unincorporated areas and unincorporated towns within Clark County, Nevada.

5.02.030.070 – Clark County Code, Code or County Code

"Clark County Code" or "Code" or "County Code" means the titles, chapters and sections of the Clark County Code and ordinances referenced herein, or their successor titles, chapters and sections, adopted by the County Commission, and as amended from time to time.

5.02.030.080 – Commence Construction or Commence Installation

"Commence Construction" or "Commence Installation" means that time and date when the first connection is physically made to a Municipal Facility for overhead facilities, when trenching is initiated for underground facilities, or when foundations are excavated for transmission facilities, whichever occurs first, if applicable, provided the appropriate permits are issued for such work.

5.02.030.090 – Commence Operation

"Commence Operation" means that time and date, after construction or installation completion, when the Facility is first used to provide service.

5.02.030.100 – Commercial Mobile Radio Service, CMRS or Commercial Mobile Service

“Commercial Mobile Radio Services” or “CMRS” or “Commercial Mobile Service” means the commercial mobile service as defined in 47 United States Code § 332(d) that is authorized to be provided by persons licensed by or registered with the PUCN.

5.02.030.110 – Construction Completion or Installation Completion

“Construction Completion” or “Installation Completion” means that time and date when all Facilities have been installed and all public Rights-of-Way and properties have been restored to their former appearance and condition in a manner acceptable to the County.

5.02.030.120 - County

“County” means the County of Clark, a political subdivision of the State of Nevada.

5.02.030.130 – County Commission

“County Commission” means the Board of County Commissioners of the County.

5.02.030.140 – County Manager

“County Manager” means the County Manager appointed by County Commission to perform such administrative functions of the County government as may be required of him/her by the County Commission, or his/her designee.

5.02.030.150 – Decorative Streetlight Pole

“Decorative Streetlight Pole” means any Streetlight Pole that: (a) is made from a material other than metal; or (b) incorporates artistic design elements not typically

found in standard metal Streetlight Poles. Decorative Streetlight Poles may not be used for the Network without prior written approval by County. The term Decorative Streetlight Pole includes any historically or architecturally significant or designated Streetlight Poles owned by the County located in ROW.

5.02.030.160 – Director of Business License or Director of Public Works

"Director of Business License" or "Director of Public Works" means the County departmental director of the department specifically named, or his/her designee.

5.02.030.170 - Equipment

“Equipment” means the radio units, conduits, antennas, backhaul equipment, and any other device, whether referred to singly or collectively, to be installed and operated by a Licensee as part of its Wireless Communications Facility.

5.02.030.180 – Federal Communications Commission or FCC

The “Federal Communications Commission” or “FCC” means the independent agency of the United States government created by federal statute to regulate interstate communications by radio, television, wire, satellite, and cable, and its predecessors and successors.

5.02.030.190 – Gross Revenue

“Gross Revenue” shall mean and include any and all income and other consideration of whatever nature in any manner actually collected from any third party and received by a Licensee or its Affiliates from or in connection with the provision of a Network enabling Commercial Mobile Radio Services or Telecommunications Services via Equipment within County Rights-of-Way, either directly by a Licensee or indirectly through its Affiliates or by its wireless

service provider customers, to customers of such Network within the County, including any imputed revenue derived from commercial trades and barter equivalent to the full retail value of goods and services provided by a Licensee. Gross Revenue shall not include: (a) sales, ad valorem, or other types of “add-on” taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid to or collected for federal, state, or local government; (b) non-collectable amounts due a Licensee or its Affiliates; (c) refunds or rebates; (d) non-operating revenues such as interest income or gain from the sale of an asset; (e) any payments, reimbursements or pass-throughs from any third party to a Licensee for utility charges, taxes and other pass-through expenses, or in connection with maintenance work performed or Equipment installed by a Licensee; (f) site acquisition, construction management or supervision fees related to the installation of a Licensee’s Facilities; and (g) contributions of capital by any third party to reimburse a Licensee in whole or in part for the installation of a Licensee’s Facilities.

5.02.030.200 – Information Service

“Information Service” has the same meaning as that term is defined in 47 United States Code § 153(24).

5.02.030.210 - Laws

“Laws” means any and all applicable statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, or orders of the County or other governmental agency having joint or several jurisdiction over the parties to a Master Wireless Use License Agreement,

or Wireless Site License Approval as such laws may be amended from time to time.

5.02.030.220 – Licensee

“Licensee” means a Person who has obtained a fully executed Master Wireless Use License Agreement with the County and is eligible to apply for a Wireless Site License Approval.

5.02.030.230 – Master Wireless Use License Agreement or MLA

“Master Wireless Use License Agreement” or “MLA” means an agreement between a person and the County that generally defines the terms and conditions which govern their relationship with respect to a Licensee’s construction, installation, and operation of Wireless Communications Facilities in the County’s Rights-of-Way or on Municipal Facilities.

5.02.030.240 – Municipal Facilities

“Municipal Facilities” means Streetlight Poles, Decorative Streetlight Poles, lighting fixtures, or electroliers owned by the County that are located within the ROW and may refer to such facilities in the singular or plural, as appropriate to the context in which used. Municipal Facilities do not include traffic signal poles, school zone flashers, pedestrian bridges or any related appurtenances or shared power sources.

5.02.030.250 - Network

“Network” means the Equipment installed or operated by a Licensee to serve its customers in the County.

5.02.030.260 - Person

"Person" means a natural person, any form of business or social organization and any other nongovernmental legal entity, including, but not limited to, the estate of a natural person, a corporation, partnership, association, trust, or unincorporated organization. The term "person" does not include a government, governmental agency, or political subdivision of a government.

5.02.030.270 – Public Improvement

"Public Improvement" means new or existing roadways and pavements, sidewalks, curbs and gutters, landscaping, street lights, foundations, poles and traffic signal conduits, water mains, sanitary and storm sewers, tunnels, subways, people movers, viaducts, bridges, underpasses, and overpasses, or other public facilities across, along, over or under any street or streets, or other such improvements which are to be used by the general public.

5.02.030.280 – Public Utilities Commission of Nevada or PUCN

"Public Utilities Commission of Nevada" or "PUCN" means the Public Utilities Commission of the State of Nevada, and its predecessors and successors.

5.02.030.290 – Remediation Compliance Date

The Remediation Compliance Date shall be the date by which the Licensee is required to have its Wireless Communications Facilities in the ROW, either installed on a Municipal Facility or constructed by a Licensee or others, in compliance with the requirements of this Chapter, which is:

- (A) for Facilities within the Las Vegas Boulevard District, as defined in Subsection 5.02.030.310, the earlier of December 31, 2023, or the completion of the Public Works / Las Vegas Valley Water District repaving project of Las Vegas Boulevard scheduled to be completed by 2023;
- (B) for Facilities within the Central Communications District, as defined in Subsection 5.02.030.310, December 31, 2021; and
- (C) for Facilities within all other ROW Design Districts, as defined in Subsection 5.02.030.310, the date that the Licensee replaces or upgrades its Wireless Communications Facilities for a particular location.

5.02.030.300 – Right-of-Way, Rights-of-Way or ROW

"Right-of-Way" or "Rights-of-Way" or "ROW" means public property, including air space, dedicated, granted, held, prescriptively used, or authorized by patent of the United States of America, for County public Street, and public utility purposes, except as limited by any underlying grant and except public Streets predominantly used for public freeway or expressway purposes, including, without limitation, the Clark County 215 Bruce Woodbury Beltway, and except for any property owned, operated, maintained and/or administered by the Department of Aviation, including, without limitation, airport roadways, sidewalks and streetlights.

5.02.030.310 – ROW Design Districts

“ROW Design Districts” are geographic areas of the County where certain design standards and Wireless Site License Fees apply. The ROW Design Districts are identified as follows:

(A) District 1 - Las Vegas Boulevard District – The Las Vegas Boulevard District shall be the area beginning at the intersection of Las Vegas Boulevard South and Sahara Avenue and ending at the intersection of Las Vegas Boulevard South and Sunset Road.

(B) District 2 - Central Communications District - The Central Communications District shall be the area excluding the Las Vegas Boulevard District and beginning at the intersection of West Sahara Avenue and Sammy Davis Jr. Boulevard; then south on Sammy Davis Jr. Boulevard to Desert Inn Road; then west on Desert Inn Road to Valley View Boulevard; then south on Valley View Boulevard to Spring Mountain Road; then west on Spring Mountain Road to Arville Street; then south on Arville Street to West Russell Road; then east on West Russell Road to South Valley View Boulevard; then south on South Valley View Boulevard to West Sunset Road; then east on West Sunset Road to Eastern Avenue; then north on Eastern Avenue to East Russell Road; then west on East Russell Road to Paradise Road; then north on Paradise Road continuing north on to Swenson Street and continuing north on to Joe W. Brown Drive to Sahara Avenue;

then west on Sahara Avenue to the beginning point at Sammy Davis, Jr. Boulevard.

(C) **District 3 - Residential District** – The Residential District shall be the Single Family Districts established in Section 30.36.010 (1)(A) of the County Code that are outside of the Central Communications District.

(D) **District 4 – Commercial District** – The Commercial District shall be all Zoning Districts established in Section 30.36.010 of the County Code that are outside of the Central Communications District and excluding the Residential District, Rural District, Manufacturing District and Wireless Service Improvement District.

(E) **District 5 - Rural District** – The Rural District shall be the areas of the County identified as rural areas that are outside of the Central Communications District.

(F) **District 6 - Manufacturing District** – The Manufacturing District shall be all Zoning Districts established in Section 30.36.010 (3) of the County Code that are outside of the Central Communications District.

(G) **District 7 - Wireless Service Improvement District** – The Wireless Service Improvement District shall be the areas of the County identified as experiencing a lack of or insufficient wireless coverage that are outside of the Central Communications District.

The areas in each district are inclusive of the Rights-of-Way on both sides of the streets, excluding any rights-of-way that are located within the jurisdictional boundaries of an incorporated city. The ROW Design District that is associated with a particular Municipal Facility shall be the District closest to that Municipal Facility. If the Municipal Facility is equal distance from the boundaries of two different ROW Design Districts the more restrictive District will be applicable. The lower the District number means the ROW Design District is more restrictive (i.e., District 1 is more restrictive than District 2, District 2 is more restrictive than District 3, etc.).

5.02.030.320 – Smart Pole

“Smart Pole” means a structure designed to blend into the surrounding environment and constructed so that all of the Equipment is located internally inside the pole and is not visible on the exterior of the structure.

5.02.030.330 - Street

"Street" means the surface, the air space above the surface and the area below the surface of the full width of the Rights-of-Way, including sidewalks and thoroughfares, places or ways of any kind used by the public or open to the public as a matter of right for the purpose of vehicular traffic or vehicular and pedestrian traffic, except for those on property owned, operated, maintained and/or administered by the Department of Aviation.

5.02.030.340 – Streetlight Pole

“Streetlight Pole” shall mean any standard-design metal pole that has a mast arm for the support of a light fixture, is owned by the County, and is used for street

lighting purposes. Streetlight Pole does not include traffic signal poles, school zone flashers, or any related appurtenances, nor any pole supporting a streetlight that is made from any material other than metal.

5.02.030.350 – Telecommunications Services

“Telecommunications Services” means telecommunications services as defined in 47 U.S.C. § 153(53).

5.02.030.360 – Wireless Communications Facility or Facilities or WCF

"Wireless Communications Facility" or "Facilities" or “WCF” means antennas, transmitters, poles, pipes, wires, cables, conduits, amplifiers, instruments, equipment, and other appliances used in connection therewith or appurtenant thereto to provide Commercial Mobile Radio Services or Telecommunications Services via Equipment.

5.02.030.370 – Wireless Service Provider

“Wireless Service Provider” means a Person who provides Personal Wireless Services as defined in 47 U.S.C. § 332(c)(7)(C)(i).

5.02.030.380 – Wireless Site License Approval or SLA

“Wireless Site License Approval” or “SLA” means an approval applied for by a Licensee and issued by the County that specifically defines the terms and conditions which govern their relationship with respect to a Licensee’s construction, installation, and operation of Wireless Communications Facilities for each specific site in the County’s Rights-of-Way or on Municipal Facilities. All of the terms and conditions of Master Wireless Use Agreements shall be incorporated by reference into each SLA executed between the parties.

5.02.040 - Business License Required.

No Master Wireless Use License Agreement will be approved until an Applicant has first obtained a Business License issued by the Director of Business License, after Application and compliance with all applicable requirements of Title 6 of the County Code. The Application processing fee for a Business License is as set forth in County Code Title 6. In addition to the requirements of Title 6 of this Code, an Application for a Business License by an Applicant proposing to use the County Rights-of-Way shall include:

- (A) A statement setting forth all agreements and understandings existing between the Applicant and any person with respect to the Applicant's acting as an agent or representative of another person regarding use of Rights-of-Way;
- (B) For a corporation, a list of officers and directors of the Applicant;
- (C) For a partnership, a list of all partners and their relative interests in the partnership;
- (D) A statement of whether any of the persons listed in Subsections (a), (b) and (c) of this Section has had a franchise, Rights-of-Way license or similar agreement declined, suspended or revoked, and, if so, the government agency issuing this decision, the date, time, place and reasons given; and
- (E) A copy of the order and certificate of public convenience and necessity from the PUCN, if such certificate is required by the laws of the state of Nevada or, if applicable, a copy of the letter of registration from the PUCN.

5.02.050 – Master Wireless Use License Agreement Required.

No person shall be eligible to apply for a Wireless Site License Approval to construct, install, operate, or maintain Wireless Communications Facilities in, over, or under any Rights-of-Way or

on municipal property without obtaining a Master Wireless Use License Agreement granted by the County Commission.

5.02.060 - Application for a Master Wireless Use License Agreement.

The following procedures will apply to all Applications for new Master Wireless Use License Agreement or renewals thereof:

- (A) The Applicant shall make a written request to the County Manager for a Master Wireless Use License Agreement on an Application form, which may be updated from time to time, and is available at the Business License Department office.
- (B) In addition to other information required by the Application for a Master Wireless Use License Agreement, the Applicant will provide:
 - (1) A copy of all certificates or letters of registration issued by the PUCN pertaining to Applicant's activity.
 - (2) A copy of all Clark County business licenses pertaining to Applicant's activity in the Rights-of-Way.
- (C) An Applicant shall pay to the County the Master Wireless Use Agreement Application Fee provided in Section 5.02.210. Failure to pay the Application fees will cause the Application(s) to be deemed incomplete, and the County will not process such Application(s) until the Application fees are paid.
- (D) When an Application is certified as complete by the County Manager and a Master Wireless Use License Agreement has been finalized, the MLA shall be presented before the County Commission for approval or denial. Upon County Commission approval and full execution of a Master Wireless Use License

Agreement, an Applicant is deemed to be a Licensee and is then eligible to apply for a Wireless Site License Approval.

5.02.070 – Wireless Site License Approval Required.

No person shall construct, install, operate, or maintain Wireless Communications Facilities in, over, or under any Rights-of-Way or on Municipal Facilities without obtaining a Wireless Site License Approval issued by the County. A written Wireless Site License Approval is required for each Wireless Communications Facility. Wireless Site License Approvals authorize a Licensee’s installation of a Wireless Communications Facility in the Public Rights of Way and are non-exclusive.

5.02.080 - Application for a Wireless Site License Approval.

The following procedures will apply to all Applications for new Wireless Site License Approval or renewals thereof:

- (A) **Wireless Site License Application.** The Department of Public Works shall prepare and make publicly available an Application form requesting information necessary for the County to consider an Application for installation of a Wireless Communications Facility on Municipal Facilities or on third party or Licensee owned structures in the Rights-of Way, including, but not limited to, a list of persons, if known at the time of the Application, that will be using the Applicant’s or Applicant’s customer’s Facilities in the Rights-of-Way to provide Wireless Communications Services.

- (B) **Wireless Site License Application Fee.** Licensee shall pay to the Department of Public Works the Wireless Site License Application Fee listed in Section 5.02.210. Failure to pay the Application fees will cause the Application(s) to be deemed incomplete, and the County will not process such Application(s) until the Application fees are paid.
- (C) **County Decision.** If the Application is approved, the Department of Business License shall issue an SLA. If the Application is denied, the Department of Business License shall notify a Licensee in writing identifying the specific reasons why the Application is not in compliance with the MLA or the Code. Delivery of either the SLA or a denial notification as provided for in this Section may be made to a Licensee by electronic methods such as e-mail to the e-mail address referenced in the SLA Application.
- (D) **Execution by the County.** The Board of County Commissioners authorizes the Director of Business License or the Director's designee to sign and execute SLAs on behalf of the County.

5.02.090 – Master Wireless Use License Agreement and Wireless Site License Approval

Conditions.

A Master Wireless Use License Agreement, and any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement, shall incorporate all provisions of this Chapter of the Code.

- (A) Any Master Wireless Use License Agreement granted pursuant to this Chapter, and any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement, shall be nonexclusive.
- (B) All provisions of this Chapter and a Master Wireless Use License Agreement and any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement shall be binding upon the Licensee, its successors, or assignees.
- (C) A Master Wireless Use License Agreement and any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement shall be construed in favor of the County and no privilege or exemption shall be inferred from the granting of any Master Wireless Use License Agreement unless it is specifically mentioned in this Chapter of the Code or in the Master Wireless Use License Agreement.
- (D) The granting of any Master Wireless Use License Agreement pursuant to this Chapter of the Code and any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement shall be a privilege and shall not impart to a Licensee any right of property in any Rights-of-Way. SLAs shall be construed to have granted the nonexclusive permission and authority to use specific portions of the Right-of-Way and Municipal Facilities as identified in an SLA and as provided in this Chapter of the Code for the construction, operation, and maintenance of Facilities underground, on the surface, or above ground. In no event shall this Chapter of the Code or any MLA or SLA be construed to have granted permission or authority to use any facilities outside of Rights-of-Way.

- (E) A Licensee shall at all times during the term of the Master Wireless Use License Agreement and any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement be subject to all lawful exercise of the police power by the County. This includes any and all ordinances, rules or regulations which the County has adopted or may adopt, upon notice to a Licensee of at least thirty (30) days before adoption and an opportunity for the Licensee to be heard before adoption if requested by a Licensee within fifteen (15) days after receipt of the notice, and which apply to the public generally and to the Licensee. Any conflict between the provisions of this Chapter of the Code and any other present or future lawful exercise of County police powers shall be resolved in favor of the County police powers.
- (F) Any privilege claimed under this Chapter of the Code, any Master Wireless Use License Agreement, or any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement shall be equal to the privilege claimed under of any other Wireless Use License under this Chapter of the Code or Nevada Revised Statutes Chapters 709 and 711 and shall be subordinate to any other prior lawful occupancy of the Rights-of-Way.
- (G) Any right or power in, or duty assigned to any officer or employee of the County by virtue of this Chapter of the Code shall be subject to transfer by the County Commission to any other officer or employee of the County.
- (H) A Master Wireless Use License Agreement and any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement shall be subject to all requirements of County ordinances, rules, regulations, and

specifications heretofore or hereafter enacted or established to the maximum extent allowed by law.

(I) A Licensee shall not construct, install, operate, or maintain any Wireless Communications Facility in, over, or under any County Rights-of-Way or on Municipal Facilities without obtaining any and all necessary federal, state, and County licenses or permits.

(J) A Licensee shall maintain records and allow for audits as provided in County Code Title 6.

(K) Licensee shall be solely responsible for obtaining all additional necessary Rights-of-Way and easements, leases, licenses or approvals, either public or private, which may be necessary prior to the beginning of construction of a Wireless Communications Facility.

(L) In the County's sole discretion, specific units of the County's Municipal Facilities and Rights-of-Way may be determined by the County to be necessary for the County's exclusive existing or future use and will be unavailable for use by others.

(M) In the event of the early termination of any SLA by the County, the County will reimburse Licensee the unused portion of the applicable Wireless Site License Fee after proration based on the number of whole months remaining until the next June 30 for which payment was made in advance by the Licensee.

(N) Licensee shall have the right to terminate any SLA upon ninety (90) days prior written notice to the County. In the event of early termination by the Licensee, the Licensee shall not be entitled to any reimbursement of the applicable Wireless

Site License Fee. Removal of the applicable Equipment following termination of an SLA by Licensee shall be completed pursuant to Subsection 5.02.200 (G) of the County Code.

5.02.100 - Conditions of Rights-of-Way and Wireless Communications Facilities

Installation.

- (A) A Licensee shall comply with all improvement, design, and construction guidelines and standards contained in the Design Standards in Section 5.02.110 and the improvement standards adopted in Title 30 of the Clark County Code.
- (B) Any Wireless Communications Facility in the ROW, either installed on a Municipal Facility or constructed by a Licensee or others, shall be brought into compliance with the requirements of this Chapter by the Remediation Compliance Date, except where retroactive application of new standards is prohibited by federal, state, or local law. The County shall review each installation that has been installed prior to December 1, 2018, and provide a remediation plan detailing the action needed to bring the Wireless Communications Facility into compliance. Wireless Communications Facilities not brought into compliance by the Remediation Compliance Date, shall be removed at the Licensee's cost and the Licensee must pay the Failure to Comply with a Remediation Plan Fee listed in Section 5.02.210. The Director of Business License may, at the Director's sole discretion, extend the time in which the Licensee must comply and/or suspend the Remediation Plan Fee for good cause.

- (C) Prior to any work being performed within the Rights-of-Way, a Licensee shall obtain an encroachment permit pursuant to the applicable provisions of Title 30 of the County Code.
- (D) When the public improvement designs prepared by a Licensee are more detailed than, or are not covered by, the standards adopted in Design Standards in Section 5.02.110 or in Title 30 of the Clark County Code, plans and specifications for construction, reconstruction, installations, and repairs of Public Improvements shall be sealed by a Nevada registered professional engineer.
- (E) Except in the case of an emergency, a Licensee, who is the initiator of a project in a Street or easement upon which property within the Residential District are located and maintained, shall notify residents who are located adjacent to the proposed project at least seven (7) days prior to the date that the Licensee proposes to commence construction. Such notice shall be by one of the following: (i) written notice in person, (ii) by posted notice on the Street where the proposed project is scheduled to be built (which notice is to be large enough to be clearly read by passing motorists), (iii) by door hanger, or (iv) by mail, with a description of the proposed project and the name of the Licensee together with its business phone number.
- (F) All Public Improvement work performed by a Licensee in Rights-of-Way shall be inspected, completed and accepted in accordance with Design Standards in Section 5.02.110 and the improvement standards adopted in Title 30 of this Code.
- (G) It is specifically declared that it is not intended by any of the provisions of any part of this Chapter of the Code to create for the public, or any member thereof, a

third-party beneficiary hereunder, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of this Chapter of the Code. The duties, obligations, and responsibilities of the County with respect to third parties shall remain as imposed by the general law of the state of Nevada.

(H) Any inspections or subsequent approvals undertaken by the County pursuant to this Chapter of the Code are undertaken solely to ensure compliance with this Chapter of the Code and are not undertaken for the safety or other benefit of any individual or group of individuals as members of the public. Provisions in this Chapter of the Code dealing with inspection or approval by the County do not expand the County's general law duties.

(I) In the case of damage caused by a Licensee to any Rights-of-Way, a Licensee shall at no cost or expense to the County repair, replace and restore the damaged area in accordance with current improvement standards adopted in Title 30 of this Code.

(J) A Licensee shall not acquire any vested right or interest in any particular Rights-of-Way location for any of its facilities constructed, operated, or maintained in any existing or proposed Rights-of-Way, even though such location was approved by the County.

(K) Whenever, in case of emergency, it becomes necessary to remove any of a Licensee's Facilities, no charge shall be made by a Licensee against the County for loss, damage, restoration, and repair.

(L) A Licensee shall place identification markers on all its Wireless Communications Facilities located in the Rights-of-Way. The County shall publish specifications

for identification markers to be used in connection with Wireless Communications Facilities and identification markers that meet the specifications shall be deemed approved by the County. A Licensee shall be responsible for periodically inspecting its Wireless Communications Facilities to ensure they are tagged with approved permanent identification markers. Should the County encounter any of Licensee's Wireless Communications Facilities without approved permanent identification markers, the County may notify Licensee, provided that the County can identify the Facilities as belonging to Licensee. The County's notification to the Licensee will be in writing, which may be by electronic methods, including e-mail to the e-mail address referenced in the Application for the applicable Facilities, and identify the Wireless Communications Facilities requiring permanent identification markers, and Licensee will have one hundred twenty (120) days from receipt of notice to place such markers.

(M) Reconstruction, removal or relocation of a Licensee's Facilities to accommodate a Public Improvement shall be provided for in the following manner:

(1) The County or Las Vegas Valley Water District, Kyle Canyon Water District, Big Bend Water District or Clark County Sanitation District shall issue to a Licensee written notice of a need to reconstruct, remove, or relocate any of Licensee's Facilities which may be in conflict with an existing or proposed Public Improvement in order to accommodate the installation, maintenance, or use of the Public Improvement. Such written notice shall include project information equivalent in detail to fifty percent

(50%) or more of final design for the Public Improvement. A Licensee shall, within thirty (30) days after receiving such written notice from the County, or District as described in this paragraph, present to the Director of Public Works a notice of intent to reconstruct, remove, or relocate said facilities, and shall, within six (6) months after receipt of written notice from the County or district, or such shorter time period as may be reasonable, reconstruct, remove, or relocate said facilities. Upon request from a Licensee identifying a recommended location for its Facilities, the Director of Public Works shall provide that location or an alternate location within the Rights-of-Way for a Licensee, if space is available.

- (2) Within thirty (30) days after receipt of such written notice from the County, or District as described in paragraph (M)(1) of this Section, a Licensee may present a written application and supporting documentation to the Director of Public Works for an extension of time in which to complete reconstruction, removal or relocation of its facilities. The Director of Public Works may grant additional time beyond the time period provided that the additional time requested is due to service, equipment, or material delivery constraints beyond the control and without the fault or negligence of a Licensee, or that the project described in the written notice is of such a size that the work to be performed by a Licensee cannot be completed within the allowable time.
- (3) If after the issuance of the initial written notice, the County, or District, as described in paragraph (M)(1) of this Section, makes a substantial change

in the design of the public improvement project, including, but not limited to, changes in elevation, changes affecting Rights-of-Way alignment and widths of alignment, the County or District, as described in paragraph (M)(1) of this Section, shall notify a Licensee of the details of the substantial change. If a Licensee determines that such change would cause a delay in reconstruction, removal or relocation of its facilities beyond the time provided, a Licensee may, within thirty (30) days from receipt of notice of such change, petition the Director of Public Works for an extension of time in which to complete reconstruction, removal or relocation of facilities. If the additional time is requested due to service, equipment, or material delivery constraints beyond the control of a Licensee, or if the Public Improvement design change is of such a scope that the work to be performed by a Licensee cannot be completed within the time period allowed, the Director may grant an extension of time. If the request for extension of time is denied, a Licensee may appeal the denial to the County Manager within thirty (30) days from receipt of notice of denial. The decision of the County Manager shall be final.

(4) The County or District, as described in paragraph (M)(1) of this Section, shall provide a Licensee with a final design of the public improvement as soon as it becomes available.

(5) If Licensee fails to reconstruct, remove, or relocate its Facilities as required by this Section within the time period agreed upon, the County may reconstruct, remove, or relocate said Facilities and charge the cost of

reconstruction, removal, or relocation to a Licensee. The County will not be held liable for any losses or damages due to reconstruction, removal, or relocation of such Facilities.

5.02.110 – ROW Design Standards for ROW Design Districts

Sections 5.02.120, 5.02.130 and 5.02.140 contain the purposes and design requirements for Wireless Communications Facilities to be installed and operated in the ROW Design Districts. In addition to the standards outlined in those Sections, all development shall be subject to any applicable requirements in Title 30 of the Code.

5.02.120 – ROW Structure Types Defined

(A) Type 1 - Exterior Installations.

Type 1 - Exterior Installations are Wireless Communications Facilities in which the antennas, cables and lines, and radio equipment may be mounted to the exterior of a Municipal Facility or third-party structure without any concealment or stealth materials required.

(B) Type 2 - Concealed Installations.

Type 2 - Concealed Installations are Wireless Communications Facilities in which a Licensee is required to conceal the antennas to the extent technologically feasible in a manner that is designed to match the color and design of the Municipal Facility or third-party structure to which the Wireless Communications Facility is being installed.

(C) Type 3 - Replacement Smart Poles.

Type 3 - Replacement Smart Poles are structures required within the Central Communications District. Type 3 - Replacement Smart Poles shall be designed so that, to the extent technologically feasible, all of a Licensee's Equipment, including all antennas, cables, lines, radios, and utility equipment necessary for a complete assembly to be integrated into and located in the interior of a pole. Type 3 - Replacement Smart Poles shall be of similar architectural features and be substantially similar in appearance to the Municipal Facility being replaced or and shall include exact replacement of the lighting fixtures, or substantially similar as approved by Public Works, if there are lighting fixtures installed on the existing Municipal Facility.

(D) Type 4 - New Smart Poles.

Type 4 - New Smart Poles are structures allowed when a Licensee is authorized to install a new structure in the Rights-of-Way. The Type 4 - New Smart Poles shall be designed so that, to the extent technologically feasible, all of a Licensee's Equipment, including all antennas, cables, lines, radios, and utility equipment necessary for a complete assembly to be integrated into and located in the interior of a pole. Type 4 - New Smart Poles shall be of similar architectural features and be substantially similar in appearance to the Municipal Facility adjacent to the proposed Wireless Communications Facility and shall include the exact lighting fixtures, or

substantially similar as approved by Public Works, if there are Lighting Fixtures installed on the adjacent Municipal Facility.

(E) Type 5 - Multicarrier Smart Poles.

Type 5 - Multicarrier Smart Poles are structures required when a Licensee is replacing an existing Municipal Facility within the Las Vegas Boulevard Design District. Each Type 5 - Multicarrier Smart Poles shall be designed to accommodate more than one Licensee to a shared antenna, provided that a shared antenna is technologically feasible, and the Equipment for the operation of a Wireless Communications Facility for more than one Licensee. Type 5 - Multicarrier Smart Poles shall be designed for all of a Licensee's Equipment, including all antennas, cables, lines, radios, and utility equipment necessary for a complete assembly to be integrated into and located in the interior of a pole. The mast arm and luminaire must be the same make and model as the unit(s) being replaced. Type 5 - Multicarrier Smart Poles shall be of similar architectural features and be substantially similar in appearance to the Municipal Facility being replaced and shall include exact replacement of the Lighting Fixtures if there are Lighting Fixtures installed on the existing Municipal Facility.

5.02.130 – GENERAL ROW DESIGN STANDARDS.

The following ROW Design Standards apply to the development of Wireless Communications Facilities in all ROW Design Districts:

(A) Use of Existing Structures.

In accordance with Section 5.02.150, Municipal Facilities are preferred. Use of available and suitable Municipal Facilities in the Rights-of-Way is required if they are located within three hundred (300) linear feet from a Licensee's proposed Wireless Communications Facility. If an existing Municipal Facility is located within three hundred (300) linear feet from a Licensee's proposed Wireless Communications Facility and cannot accommodate the Licensee's proposed installation, the Municipal Facility shall, upon the County's approval, be replaced and shall comply with any Design Standards in this Chapter applicable to the ROW Design District in which the proposed Wireless Communications Facility is located.

(B) Replacement of Municipal Facilities.

(1) Subject to the ROW Design Standards that apply to a specific ROW Design District where a Licensee's proposed Wireless Communication Facility is located, the replacement Municipal Facilities shall be substantially similar in appearance to the Municipal Facility being replaced and shall include exact replacement of the lighting fixtures, or substantially similar as approved by Public Works, if there are lighting fixtures installed on the existing Municipal Facility.

(2) Any Type 3 - Replacement Smart Pole, Type 5 - Multicarrier Smart Pole, and any Municipal Facility replaced to increase the structural capacity or other authorized reasons shall be installed at

Licensee's sole cost. Upon completion of installation, the Licensee shall transfer ownership of a Type 3 - Replacement Smart Pole, Type 5 - Multicarrier Smart Pole, or replaced Municipal Facility to the County. Licensee(s) shall be responsible for the maintenance costs of a Type 3 - Replacement Smart Pole, Type 5 - Multicarrier Smart Pole, or replaced Municipal Facility during the Licensee's occupancy, except that any light fixture shall be maintained by the County after it is installed.

(C) New Smart Poles Installed in the Rights-of-Way.

(1) When a Type 4 - New Smart Pole is authorized by this Chapter, the Type 4 - New Smart Pole shall be designed to be architecturally compatible with the surrounding Municipal Facilities and land uses in and immediately adjacent to the ROW Design District, or otherwise integrated to blend in with existing characteristics of the site to the extent technologically feasible.

(2) When a Type 4 - New Smart Pole is authorized by this Chapter, the Type 4 - New Smart Pole shall also comply with the ROW Design Standards that apply to the specific ROW Design District where the Licensee's proposed Wireless Communication Facility is located.

(D) Separation.

Except in the Wireless Performance Improvement Districts, a Wireless Service Provider shall not operate, occupy, broadcast from, or otherwise use a Wireless Communications Facility in the Rights-of-Way that is

located within three hundred (300) linear feet of another Wireless Communications Facility that the Wireless Service Provider is operating, occupying, broadcasting from, or otherwise using in the Rights-of-Way. In addition, each Municipal Facility that a Licensee obtains a Wireless Site License Approval for must be located at least three hundred (300) linear feet from any other Municipal Facility for which the Licensee has a Site License Approval. In the event of a violation of either requirement in this Section, the County shall have the option to terminate one or both Wireless Site License Approvals and require the Licensee to remove their Wireless Communications Facility within sixty (60) days. The requirements of this Subsection on separation do not apply in the Wireless Service Improvement Districts.

(E) Minimum Mounting Heights.

(1) Antennas. Any antennas allowed under this Section shall be mounted in such a manner that the bottom of the antennas will be at least fifteen (15) feet above grade.

(2) Equipment Cabinets. Any equipment cabinet allowed by this Section to be mounted to the exterior of a Municipal Facility or a third-party structure, shall be: (i) mounted in such a manner that the bottom of the equipment cabinet is at least eight (8) feet above grade; or (ii) integrated into the interior of the Municipal Facility or third-party structure.

(F) Compliance with Special Overlay Zoning Districts.

A Licensee shall comply with any of the requirements of Special Overlay regulations that are required by Title 30 of the Clark County Code to be imposed on adjacent properties.

5.02.140 – ROW DESIGN STANDARDS APPLYING TO SPECIFIC ROW DESIGN DISTRICTS

The following ROW Design Standards apply to the development of Wireless Communications Facilities in the specific ROW Design District listed. Notwithstanding the provisions of this Section, Type 5 – Multicarrier Smart Poles are allowed in all ROW Design Districts.

(A) LAS VEGAS BOULEVARD ROW DESIGN DISTRICT.

(1) Pole Type Allowed.

Type 5 - Multicarrier Smart Poles are required in the Las Vegas Boulevard Design District.

(2) Height Limit.

Type 5 - Multicarrier Smart Poles shall not exceed five (5) feet in height over the Municipal Facility that is being replaced.

(3) Antennas.

The antennas shall be completely concealed by integration into the interior of a Type 5 - Multicarrier Smart Pole to the extent technologically feasible and designed to match the existing Municipal Facility or third-party structure.

(4) Equipment.

All radios, utilities, and other Equipment shall be completely concealed to the extent technologically feasible by integration into the interior of a Type 5 - Multicarrier Smart Pole.

(5) Cables and Lines.

All cables and lines shall be completely concealed to the extent technologically feasible by integration into the interior of a Type 5 - Multicarrier Smart Pole.

(B) CENTRAL COMMUNICATIONS ROW DESIGN DISTRICT.

(1) Pole Type Allowed.

Type 3 - Replacement Smart Poles are required. Type 4 - New Smart Poles are allowed only when there is no Municipal Facility or third-party structure that can accommodate a Licensee's proposed Wireless Communications Facility.

(2) Height Limit.

A Type 3 - Replacement Smart Poles, and, if authorized, Type 4 - New Smart Pole, shall not exceed five (5) feet over the existing Municipal Facility or third-party structure being replaced, or of those in the ROW that are nearest to the proposed location in the event a Type 4 – New Smart Pole is authorized.

(3) Antennas

The antennas shall be completely concealed by integration into the interior of the Type 3 - Replacement Smart Pole or, if authorized, the Type 4 - New Smart Pole to the extent technologically feasible and designed to match the existing Municipal Facility or third-party structure.

(4) Equipment.

All radios, utilities, and other Equipment shall be completely concealed to the extent technologically feasible and designed to match the existing Municipal Facility or third-party structure by integration into the interior of the Type 3 - Replacement Smart Pole or, if authorized, the Type 4 - New Smart Pole.

(5) Cables and Lines.

All cables and lines shall be completely concealed to the extent technologically feasible by integration into the interior of the Type 3 - Replacement Smart Pole or, if authorized, the Type 4 - New Smart Pole.

(C) RESIDENTIAL ROW DESIGN DISTRICT.

(1) Pole Type Allowed.

Type 2 - Concealed Installations are required in Residential ROW Design Districts when there are existing Municipal Facilities or third-party structures present and capable of accommodating a Licensee's proposed Wireless Communications Facility. Type 4 -

New Smart Poles are allowed if there are no existing Municipal Facilities or third-party structures within three hundred (300) linear feet from a Licensee's proposed location of a Wireless Communications Facility location that can accommodate the proposed Wireless Communications Facility.

(2) Height Limit.

Type 2 - Concealed Installations and, if authorized, Type 4 - New Smart Poles, shall not exceed five (5) feet over the existing Municipal Facility or third-party structure being replaced, or of those in the ROW that are nearest to the proposed location in the event a Type 4 – New Smart Pole is authorized.

(3) Antennas.

All antennas shall be enclosed in a canister or concealed to the extent technologically feasible, and designed to match the existing Municipal Facility or third-party structure. The canister housing the antennas shall be painted to match the existing Municipal Facility or third-party structure and shall not exceed six (6) cubic feet in volume and shall be mounted at the center and top of the existing Municipal Facility or third-party owned structure.

(4) Equipment.

All radios, utilities, and other Equipment, except antennas, cables, and lines, shall be placed in a single cabinet mounted to the Municipal Facilities or third-party owned structures. The single

cabinet shall not extend beyond thirty (30) inches from the vertical pole of the Municipal Facility or third-party structure and the dimensions shall not exceed twenty-four (24) cubic feet in volume. The single cabinet shall be painted to match the existing Municipal Facility or third-party structure.

(5) Cables and Lines.

All cables and lines exteriorly installed, including any utility lines and cables, shall be placed in conduits that shall not exceed three (3) inches in diameter and shall be flush mounted to the Municipal Facility or third-party structure. The conduits shall be painted to match the existing Municipal Facility or third-party structure.

(D) COMMERCIAL ROW DESIGN DISTRICT.

(1) Pole Type Allowed.

Type 2 - Concealed Installations are required in Commercial ROW Design Districts when there are existing Municipal Facilities or third-party structures present and capable of accommodating a Licensee's proposed Wireless Communications Facility. Type 4 - New Smart Poles are allowed if there are no existing Municipal Facilities or third-party structures within three hundred (300) linear feet from a Licensee's proposed location of a Wireless Communications Facility location that can accommodate the proposed Wireless Communications Facility.

(2) Height Limit.

A Type 2 - Concealed Installations and, if authorized, Type 4 - New Smart Poles, shall not exceed five (5) feet over the existing Municipal Facility or third-party structure being replaced, or of those in the ROW that are nearest to the proposed location in the event a Type 4 – New Smart Pole is authorized.

(3) Antennas.

All antennas shall be enclosed in a canister or concealed to the extent technologically feasible, and designed to match the existing Municipal Facility or third-party structure. The canister housing the antennas shall be painted to match the existing Municipal Facility or third-party structure and shall not exceed six (6) cubic feet in volume and shall be mounted at the center and top of the existing Municipal Facility or third-party structure.

(4) Equipment.

All radios, utilities, and other Equipment, except antennas, cables, and lines, shall be placed in a single cabinet mounted to the Municipal Facilities or third-party owned structures. The single cabinet shall not extend beyond thirty (30) inches from the vertical pole of the Municipal Facility or third-party structure and the dimensions shall not exceed twenty-four (24) cubic feet in volume. The single cabinet shall be painted to match the existing Municipal Facility or third-party structure.

(5) Cables and Lines.

All cables and lines exteriorly installed, including any utility lines and cables, shall be placed in conduits that shall not exceed three (3) inches in diameter and shall be flush mounted to the Municipal Facility or third-party structure. The lines and cables shall be painted to match the existing Municipal Facility or third-party structure.

(E) RURAL ROW DESIGN DISTRICT.

(1) Pole Type Allowed.

Type 1 - Exterior Installations and Type 2 - Concealed Installations are allowed in a Rural ROW Design Districts when there are existing Municipal Facilities or third-party structures are present that can accommodate a Licensee's proposed Wireless Communications Facility. Type 4 - New Smart Poles are allowed if there are no existing Municipal Facilities or third-party structures within three hundred (300) linear feet from a Licensee's proposed location of a Wireless Communications Facility location that can accommodate the proposed Wireless Communications Facility.

(2) Height Limit.

Type 1 - Exterior Installations and, if authorized, Type 4 - New Smart Poles, shall not exceed ten (10) feet over the existing Municipal Facility or third-party structure being replaced, or of

those in the ROW that are nearest to the proposed location in the event a Type 4 – New Smart Pole is authorized.

(3) Antennas.

The antennas shall be flush mounted and not extend beyond six (6) inches from the vertical pole of the Municipal Facility or third-party structure and shall not exceed three (3) cubic feet in volume.

(4) Equipment.

All radios, utilities, and other Equipment, except antennas, cables, and lines, shall be placed in a single cabinet mounted to the Municipal Facilities or third-party owned structures. The single cabinet shall not extend beyond thirty (30) inches from the vertical pole of the Municipal Facility or third-party structure and the dimensions shall not exceed twenty-four (24) cubic feet in volume. The single cabinet shall be painted to match the existing Municipal Facility or third-party structure.

(5) Cables and Lines.

All cables and lines exteriorly installed, including any utility lines and cables, shall be placed in conduits that shall not exceed three (3) inches in diameter and shall be flush mounted to the Municipal Facility or third-party structure. The conduits shall be painted to match the existing Municipal Facility or third-party structure.

(F) MANUFACTURING ROW DESIGN DISTRICT.

(1) Pole Type Allowed.

Type 1 - Exterior Installations and Type 2 – Concealed Installations are allowed in Manufacturing ROW Design Districts when there are existing Municipal Facilities or third-party structures are present that can accommodate a Licensee’s proposed Wireless Communications Facility. Type 4 - New Smart Poles are allowed if there are no existing Municipal Facilities or third-party structures within three hundred (300) linear feet from a Licensee’s proposed location of a Wireless Communications Facility location that can accommodate the proposed Wireless Communications Facility.

(2) Height Limit.

For Type 1 - Exterior Installations and, if authorized, Type 4-New Smart Poles, shall not exceed five (5) feet over the existing Municipal Facility or third-party structure being replaced, or of those in the ROW that are nearest to the proposed location in the event a Type 4 – New Smart Pole is authorized.

(3) Antennas.

The antennas shall be flush mounted and not extend beyond six (6) inches from the vertical pole of the Municipal Facility or third-party structure and shall not exceed three (3) cubic feet in volume.

(4) Equipment.

All radios, utilities, and other Equipment, except antennas, cables, and lines, shall be placed in a single cabinet mounted to the Municipal Facilities or third-party owned structures. The single cabinet shall not extend beyond thirty (30) inches from the vertical pole of the Municipal Facility or third-party structure and the dimensions shall not exceed twenty-four (24) cubic feet in volume.

(5) Cables and Lines.

All cables and lines exteriorly installed, including any utility lines and cables, shall be placed in conduits that shall not exceed three (3) inches in diameter and shall be flush mounted to the Municipal Facility or third-party structure. The lines and cables shall be painted to match the existing Municipal Facility or third-party structure.

(G) WIRELESS SERVICE IMPROVEMENT ROW DESIGN DISTRICTS.

(1) Pole Type Allowed.

Type 1-Exterior Installations and Type 2 – Concealed Installations are allowed in Wireless Service Improvement ROW Design Districts when there are existing Municipal Facilities or third-party structures are present that can accommodate a Licensee’s proposed Wireless Communications Facility. Type 4-New Smart Poles are allowed if there are no existing Municipal Facilities or third-party structures within three hundred (300) linear feet from a Licensee’s

proposed location of a Wireless Communications Facility location that can accommodate the proposed Wireless Communications Facility.

(2) Height Limit.

A Type 1 - Exterior Installations and, if authorized, Type 4 - New Smart Poles, shall not exceed ten (10) feet over the existing municipal facility or third-party structure being replaced, or of those in the row that are nearest to the proposed location in the event a Type 4 – New Smart Pole is authorized.

(3) Antennas

The antennas shall be flush mounted and not extend beyond six (6) inches from the vertical pole of the Municipal Facility or third-party structure and shall not exceed three (3) cubic feet in volume.

(4) Equipment.

All radios, utilities, and other Equipment, except antennas, lines, and cables, shall be placed in a single cabinet mounted to the Municipal Facilities or third-party owned structures. The single cabinet shall not extend beyond thirty (30) inches from the vertical pole of the Municipal Facility or third-party structure and the dimensions shall not exceed twenty-four (24) cubic feet in volume.

(5) Cables and Lines.

All cables and lines exteriorly installed, including any utility lines and cables, shall be placed in conduits that shall not exceed three

(3) inches in diameter and shall be flush mounted to the Municipal Facility or third-party structure. The lines and cables shall be painted to match the existing Municipal Facility or third-party structure.

5.02.150 - Preference for Municipal Facilities.

In any situation where a Licensee has a choice of attaching its Equipment to either Municipal Facilities or third-party-owned property in the ROW, it is the County's preference that a Licensee attach its Equipment to the Municipal Facilities, provided that: (a) such Municipal Facilities are at least equally functionally suitable for the operation of the Network, and (b) the Use Fee and installation costs associated with such attachment over the length of the term are equal to or less than the fee or cost to a Licensee of attaching to the alternative third-party-owned property. If no suitable Municipal Facilities or third-party-owned structures are functionally suitable within three hundred (300) linear feet from the proposed Wireless Communications Facility, a Licensee may, at its sole cost and expense, install a new structure in the Right-of-Way as part of the Licensee's Wireless Communications Facility. A new structure proposed by a Licensee shall be subject to the application procedure in Section 5.02.080. Licensee shall pay all of the applicable fees in Section 5.02.210, which shall be calculated in the same manner and amounts as if the Licensee was locating its Wireless Communications Facility on a Municipal Facility at the proposed location. In addition, any new structure proposed by a Licensee must comply with all standards and specifications contained in Section 5.02.110.

5.02.160 – Collocation Capital Contribution.

If a License proposes to locate a Wireless Communications Facility on a Municipal Facility that has been replaced or modified by another Licensee within the last three (3) years, the original Licensee that funded the original modification or replacement shall be entitled to recover fifty percent (50%) of the cost of the modification or replacement (“Capital Contribution”) from the subsequent Licensee. The subsequent Licensee shall request documentation of the cost of the Capital Contribution from the original Licensee, who shall provide said documentation within thirty (30) days from the request. The subsequent Licensee shall pay the original Licensee the Capital Contribution and present proof of the payment of the Capital Contribution to the Department of Business License before installation of their Wireless Communications Facility. If there are more than one subsequent Licensee that propose to locate on a Municipal Facility that has been replaced or modified by a Licensee within the last three (3) years, the cost of the modification or replacement shall be shared equally among all Licensees on the particular Municipal Facility.

5.02.170 - Interference.

(A) **No Interference with Rights-Of-Way and Its Uses.** A Licensee in the performance and exercise of its rights and obligations under a Master Wireless Use License Agreement shall not interfere in any manner with the existence and operation of any and all public and private Rights-of-Way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communications facilities, electroliers, cable television, location monitoring services, public safety and other

telecommunications, or utility, if the installation predates the execution of a Licensee's Wireless Site License Approval for such Municipal Facility, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws, MLA, or this Code. Upon detection of such interference not affecting any public safety equipment such as police, fire department and 911 dispatches, the County shall give a Licensee written notice of suspected interference. A Licensee shall be given seventy-two (72) hours after receipt of notice to investigate and confirm said interference, and if Licensee confirms it is the cause of said interference, then cease said interference. All operations by a Licensee shall be in compliance with all FCC requirements.

(B) Interference with the Operations of Public Safety Equipment Prohibited.

Any of a Licensee's Equipment installed pursuant to this Code must accept any interference caused by and may not cause any interference to the operation of any public safety equipment such as police, fire department and 911 dispatches. If any such interference occurs, a Licensee shall immediately investigate and confirm said interference, and if Licensee confirms it is the cause of said interference, then cease operation of the interfering Equipment and not operate the interfering Equipment until the interference is resolved. In the event the County's public safety equipment is deemed to interfere with a Licensee's ability to operate the Wireless Communications Facility, then a Licensee may terminate the Wireless Site License Approval without penalty.

5.02.180 - Compliance with Laws.

A Licensee shall comply with all applicable Laws in the exercise and performance of its rights and obligations under its Master Wireless Use License Agreement and this Chapter of the Code.

5.02.190 - No Authorization to Provide Other Services; Ownership; Access to Rights-of-Way; Cost of Construction.

A Licensee represents, warrants and covenants that its Equipment installed pursuant to its Master Wireless Use License Agreement or this Chapter of the Code, will be utilized solely for providing a Network to enable the provision of the Telecommunications Services identified herein and any Information Services that may be provided over the Network, and a Licensee is not authorized to and shall not use its Equipment to offer or provide any other services not specified herein. All Equipment shall be owned by a Licensee, except that by agreement with a Licensee, a third-party Wireless Service Provider customer of a Licensee (“Provider”) may own the radios, antenna arrays and related cabling. A Master Wireless Use License Agreement authorizes a Licensee, or its designated agent with prior notification to the County, and no other person, to mount, operate, manage and maintain Equipment in the ROW. A Master Wireless Use License Agreement with a Licensee does not authorize a Provider to enter or access the ROW or to mount, operate, manage or maintain Equipment: (a) on Municipal Facilities, (b) on poles owned by third parties or (c) on poles owned by a Licensee. All construction, maintenance, and other activities relating in any way to the construction, installation, repair, maintenance, operation, service, replacement, removal or otherwise relating to the Equipment must be performed by a Licensee (or its contractors or agents) entirely at a Licensee’s expense. This includes without limitation any restoration of affected County or third-party improvements to

their condition before a Licensee attached its Equipment, reasonable wear and tear and casualty damage excepted. Examples of restoration include landscaping and re-painting of a pole where welding or strapping may have occurred

5.02.200 – Construction.

A Licensee shall comply with all applicable federal, State, and County technical specifications and requirements and all applicable State and local codes related to the construction, installation, operation, maintenance, and control of a Licensee’s Equipment installed in the ROW and on Municipal Facilities in the County.

(A) **Commencement of Installation and Operation.** Licensee shall complete construction and begin operation of a Wireless Communications Facility licensed by an SLA within one (1) year of the date of execution of the SLA. An SLA may, at the sole discretion of the Director of Business License, be cancelled or otherwise revoked if the Wireless Communications Site licensed by the SLA has not Commenced Operations within one (1) year after the date of full execution of the SLA.

(B) **Obtaining Required Permits.** The attachment, installation, or location of the Equipment in the ROW shall require permits from the Department of Public Works and any other agency or department as applicable. A Licensee shall apply for the appropriate permits and pay any standard and customary permit fees. County shall respond within a reasonable time to a Licensee’s requests for permits and shall otherwise cooperate with a Licensee in facilitating the deployment of the Network in the ROW in a reasonable and timely manner. Permit conditions may

include, without limitation: (a) approval by the County of traffic control plans prepared by a Licensee for a Licensee's work in the County's ROW, (b) approval by the Nevada Department of Transportation (NDOT) of traffic control plans prepared by a Licensee for a Licensee's work within ROW controlled by NDOT, and (c) adherence to time restrictions for work in streets as specified by the County and/or NDOT.

(C) Relocation and Displacement of Equipment. By executing an MLA, a

Licensee understands and acknowledges that County may require a Licensee to relocate one or more of its Wireless Communications Facilities. A Licensee shall, at the County's direction, upon sixty (60) days' prior written notice to a Licensee (or with less notice that is reasonable in the event of an emergency) relocate such Wireless Communications Facilities at a Licensee's sole cost and expense whenever County reasonably determines that the relocation is needed for any of the following purposes:

- (1) if required for the construction, modification, completion, repair, relocation, or maintenance of a County or other public agency project other than a project covered by Subsection 5.02.100 (M);
- (2) because Wireless Communications Facilities are interfering with or adversely affecting proper operation of County owned Streetlight Poles, traffic signals, communications, or other Municipal Facilities;
- (3) to protect or preserve the public health or safety; or
- (4) the Wireless Communications Facilities are not in compliance with this Chapter of the Code or any other applicable local, state, or federal

regulation. In any such case, County shall use reasonable efforts to afford a Licensee a reasonably equivalent alternate location. If a Licensee shall fail to relocate any Equipment as requested by the County within a reasonable time under the circumstances in accordance with the foregoing provision, County shall be entitled to remove or relocate the Wireless Communications Facilities at a Licensee's sole cost and expense, without further notice to a Licensee. A Licensee shall pay to the County actual costs and expenses incurred by the County in performing any removal work and any storage of a Licensee's property after removal within thirty (30) days of the date of a written demand for this payment from the County. To the extent the County has actual knowledge thereof, the Department of Public Works will inform a Licensee within a reasonable time of the displacement or removal of any Municipal Facilities on which any Equipment is located. If the Municipal Facility is damaged or downed for any reason, and as a result is not able to safely hold the Equipment, the County will have no obligation to repair or replace such Municipal Facility for the use of a Licensee's Equipment. A Licensee shall bear all risk of loss as a result of damaged or downed Municipal Facilities pursuant to Subsection 5.02.200(H) below and may choose to replace such Municipal Facilities pursuant to the provisions of Subsection 5.02.100(I) above.

(5) when there is a public demand on the County-owned power source which would exceed the capacity of the service point. In this case the Licensee shall relocate or find an alternate source of power.

(D) **Relocations at a Licensee's Request.** In the event a Licensee desires to relocate any Equipment from one Municipal Facility to another, a Licensee shall so advise the County. The County will use reasonable efforts to accommodate a Licensee by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Code.

(E) **Damages Caused by a Licensee.** A Licensee shall, at its sole cost and expense and to the satisfaction of the County: (a) remove, repair or replace any of its Equipment that is damaged, becomes detached or has not been used for a Network enabling the provision of Telecommunications Services after the initial installation of the Equipment and commencement of the operations of the Equipment for a period of more than ninety (90) days; and/or (b) repair any damage to ROW, Municipal Facilities or property, whether public or private, caused by a Licensee, its agents, employees or contractors in their actions relating to attachment, operation, repair or maintenance of Equipment. If a Licensee does not remove, repair or replace such damage to its Equipment or to the ROW, Municipal Facilities or other property, the County shall have the option, upon thirty (30) days' prior written notice to a Licensee, remove or cause to be removed the Equipment on behalf of a Licensee and shall charge a Licensee for the actual costs incurred by the County. If such damage causes a public health or safety emergency, as determined by the County, the County may immediately

perform reasonable and necessary repair or removal work (but not any technical work on a Licensee's Equipment) on behalf of a Licensee and will notify a Licensee as soon as practicable. Upon the receipt of a written demand for payment by the County, a Licensee shall within thirty (30) days of such receipt reimburse the County for such costs. The terms of this provision shall survive the expiration, completion or earlier termination of an MLA or SLA.

(F) **Change in Equipment.** If a Licensee proposes to install Equipment which is different in any material way from the pre-approved configurations and Equipment specifications, then a Licensee shall submit a new Application for a Wireless Site License Approval that details the proposed modifications using the same process detailed above in Section 5.02.080. If the new Application for a Wireless Site License Approval is approved, an amended Wireless Site License Approval shall be issued in accordance with this Chapter. Notwithstanding the foregoing, the County's approval for modifications shall not be required (and no Application will be required to be submitted), except that all permits shall be obtained that are necessary to perform work within the ROW, in connection with routine maintenance or modifications that consist of upgrades or replacements of:

(i) "like-kind" Equipment which is the same (or smaller in size) in appearance, dimensions, and weight, or (ii) Equipment which is wholly contained within a Licensee's equipment cabinets so long as the weight does not exceed the approved permitted design.

(G) **Removal of Equipment.** Upon the expiration or earlier termination of an MLA, a Licensee shall promptly, safely and carefully remove the Equipment from all

Municipal Facilities and ROW within sixty (60) days. Upon the expiration or earlier termination of an SLA, a Licensee shall promptly, safely and carefully remove the Equipment from the Municipal Facilities installed pursuant to that SLA within sixty (60) days. Such obligation of a Licensee shall survive the expiration or earlier termination of an MLA or SLA. If a Licensee fails to complete this removal work on or before the sixty (60) days subsequent to the issuance of notice pursuant to this Section, then the County, upon written notice to a Licensee, shall have the right at the County's sole election, but not the obligation, to perform this removal work and charge a Licensee for the actual costs and expenses, including, without limitation, reasonable administrative costs. A Licensee shall pay to the County actual costs and expenses incurred by the County in performing any removal work and any storage of a Licensee's property after removal within thirty (30) days of the date of a written demand for this payment from the County. After the County receives the reimbursement payment from a Licensee for the removal work performed by the County, the County shall promptly make available to a Licensee the property belonging to a Licensee and removed by the County pursuant to this Section at no liability to the County. If the County does not receive reimbursement payment from a Licensee within such thirty (30) days, or if County does not elect to remove such items at the County's cost after a Licensee's failure to so remove prior to sixty (60) days subsequent to the issuance of notice pursuant to this Section, or if a Licensee does not remove a Licensee's property within thirty (30) days of such property having been made available by the County after a Licensee's payment of removal reimbursement as

described above, any items of a Licensee's property remaining on or about the ROW, Municipal Facilities, or stored by the County after the County's removal thereof may, at the County's option, be deemed abandoned and the County may dispose of such property in any manner by Law. Alternatively, the County may elect to take title to abandoned property, provided that a Licensee shall submit to the County an instrument satisfactory to the County transferring to the County the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of an MLA or SLA.

(H) **Risk of Loss.** A Licensee bears all risks of loss or damage or relocation or replacement of its Equipment and materials installed in the ROW or on Municipal Facilities pursuant to an SLA from any cause, and the County shall not be liable for any cost of replacement or of repair to damaged Equipment, including, without limitation, damage caused by the County's removal of the Equipment, except to the extent that such loss or damage was caused by the willful misconduct or negligence of the County, including, without limitation, each of its elected officials, department directors, managers, officers, agents, employees, and contractors, subject to the limitation of liability provided in Section 5.02.270 below. Nothing herein shall prohibit a Licensee from pursuing a claim against a third party that causes any damage to its Equipment installed in the ROW or on Municipal Facilities.

(I) **Access.** Prior to a Licensee accessing its Equipment for non-emergency purposes, Licensee shall provide telephonic notice to the Public Works Department at (702) 455-6000 or through other means as directed by the Public

Works Department and a Traffic Control Plan will be required. In the event of an emergency (e.g. an actual Equipment outage is occurring), a Licensee will, if time permits, attempt to provide prior telephonic notice to the Public Works Department. In the event a Licensee is unable to provide such notice, a Licensee will notify the Public Works Department within two (2) business days following the access.

(J) **Workmanlike Manner.** A Licensee shall be responsible for doing all work in a good and workmanlike manner and must not adversely affect the structural integrity of the Municipal Facilities or other facilities or other users' facilities or equipment in the installation and maintenance of its Wireless Communications Facilities.

5.02.210 - Compensation.

A Licensee shall be solely responsible for the payment of all lawful fees in connection with a Licensee's performance under its MLA or SLAs as follows:

(A) **Use Fee.** In order to compensate the County for a Licensee's entry upon and deployment of Equipment within the ROW or on any Municipal Facilities, a Licensee shall pay to the County, on a quarterly basis, an amount equal to five percent (5%) of Gross Revenues (the "Use Fee") collected during each calendar quarter of each year, unless a Licensee is licensed pursuant to Chapter 6.13 of the Code and is remitting fees as a provider of Personal Wireless Services. A Licensee shall make any payment of the Use Fee that may be due and owing within forty-five (45) days after each calendar quarter of each year. Within forty-

five (45) days after the termination of the MLA, the Use Fee shall be paid for the period elapsing since the end of the last quarter period for which the Use Fee has been paid and for any past due amounts. Along with each payment of the Use Fee, Licensee shall furnish to the County a statement, executed by an authorized officer of a Licensee or his or her designee, showing the amount of Gross Revenues for the period covered by the payment. If a Licensee discovers any error in the amount of compensation due, the County shall be paid within thirty (30) days of discovery of the error or determination of the correct amount. Any overpayment to the County through error or otherwise shall be refunded or offset against the next payment due. Acceptance by the County of any payment of the Use Fee shall not be deemed to be a waiver by the County of any breach of an MLA occurring prior thereto, nor shall the acceptance by the County of any such payments preclude the County from later establishing that a larger amount was actually due or from collecting any balance due to the County.

(B) Wireless Site License Fees. In addition to the Use Fee required in Section 5.02.210(A), a Licensee shall pay, on a quarterly basis, a Wireless Site License Fee for each Wireless Communications Facility contained in a Wireless Site License Approval.

(1) Determination of Wireless Site License Fee. The amount of each Wireless Site License Fee is determined by the ROW Design District in which it is located. The ROW Design District for each Wireless Communications Facility will be clearly identified in each Wireless Site License Approval.

(2) Wireless Site License Fee Due for Each ROW Design District.

The quarterly amount due for each Wireless Communications Facility located in each ROW Design District, as follows:

(a) Las Vegas Boulevard District: Nine Hundred Ninety Dollars (\$990).

(b) Central Communications District: Nine Hundred Ninety Dollars (\$990).

(c) Residential District: Four Hundred Seventy-Five Dollars (\$475).

(d) Commercial District: Four Hundred Seventy-Five Dollars (\$475).

(e) Rural District: One Hundred Seventy-Five Dollars (\$175).

(f) Manufacturing District: Four Hundred Seventy-Five Dollars (\$475).

(g) Wireless Service Improvement District: One Hundred Seventy-Five Dollars (\$175).

(3) Commencement of Wireless Site License Fees. The Wireless

Site License Fee Commencement Date shall be one hundred and eighty (180) days after the Wireless Site License Approval has been issued.

(4) Initial Quarterly Fee. The first quarterly Wireless Site License

Fee shall be the calendar quarter following the Wireless Site License Fee Commencement Date as determined in Section

5.02.210(B)(3) above. Subsequent quarterly fees shall be due the first day of each calendar quarter.

(5) **Annual Fee Adjustment.** Effective on July 1, 2020, and continuing annually thereafter, the Wireless Site License Fee shall be increased by an amount equal to two percent (2%) of the Wireless Site License Fee for the immediately preceding year, rounded to the nearest whole dollar.

(6) **Electric Power Fee.** The Wireless Site License Fee is inclusive of any charges for the use of the County's electric power, up to 225 maximum watts for each equipment or device as identified by the plate rating.

(C) **Business License Fee.** The Use Fee in this Section includes any business license fee based on Gross Revenues pursuant to the applicable business licensing provisions of County Code Title 6.

(D) **Wireless Master Use License Agreement Application Fee.** The Master Wireless Use License Agreement Application Fee due shall be One Thousand Dollars (\$1,000) for each Application.

(E) **Wireless Site License Application Fee.** The Wireless Site License Application Fee due for each Wireless Site License Application shall be Two Hundred Fifty Dollars (\$250) and payable for the Department of Public Works.

(F) **Work Performed by County on Behalf of a Licensee.** All work performed by the County when a Licensee fails to perform said work in a timely manner, as required by this Code or the provisions of an MLA or SLA, may be subject to an

additional fifteen percent (15%) administrative fee of the actual costs of the work performed by the County.

(G) **Annual Inspection Fee:** The Annual Inspection Fee shall be Five Hundred Dollars (\$500) per Wireless Communications Facility inspected.

(H) **Unauthorized Equipment Fee:** In the event Licensee fails to comply with Section 5.02.260 below, County may assess up to One Thousand Dollars (\$1,000) per unauthorized Equipment unit that was not authorized by the designated SLA.

(I) **Unauthorized Wireless Communications Facility Fee:** In the event Licensee fails to comply with Section 5.02.260 below, County may assess up to One Thousand Dollars (\$1,000) per unauthorized Wireless Facility that was installed without a valid, fully executed SLA.

(J) **Failure to Comply with a Remediation Plan Fee:** As provided in Section 5.02.100(B), a Licensee shall pay the County Five Hundred Dollars (\$500) for every thirty (30) days that it fails to comply with a Remediation Plan within the prescribed timeframe.

5.02.220 – Incentive Agreements.

The Director of Business License is authorized to negotiate agreements (“Incentive Agreements”) with Licensees to incentivize the development of Wireless Communications Facilities in a manner which is in the County’s public interest or in locations determined by the County, in the County’s sole discretion, to be an area that is underserved or lacking dependable and consistent radio and wireless services for use by the public. The incentive agreements

negotiated and executed pursuant to this Section may alter the compensation and fees contained in Section 5.02.210 as specified in the MLA.

5.02.230 - Payment.

All fees due under the provisions of this Chapter, a Master Wireless Use License Agreement, or Wireless Site License Approvals, including, but not limited to, the Wireless Site License Application Fees, the Wireless Site License Fees, and the Use Fees shall be paid electronically or by check made payable to the Department of Business License and mailed or delivered to the Director of Business License. Each payment, either electronically or manually tendered, shall include a description of the reason for the payment. Any payment made for a specific site shall include the County's identification name and number for that site. The place and time of payment may be changed at any time by County upon sixty (60) days' written notice to a Licensee. Mailed payments shall be deemed paid upon the date such payment is officially postmarked by the United States Postal Service. If postmarks are illegible to read, the payment shall be deemed paid upon actual receipt by the County's Director of Business License. A Licensee assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

5.02.240 - Delinquent Payment.

If a Licensee fails to pay any amounts due pursuant to the provisions of this Chapter, a Master Wireless Use License Agreement, or Wireless Site License Approvals within forty-five (45) days from the due date, a Licensee will pay, in addition to the unpaid fees, a sum of money equal to two percent (2%) of the amount due for each month and/or fraction thereof during which the

payment is due and unpaid. The remedy provisions set forth in this Section are not exclusive, and do not preclude the County Manager or designee from pursuing any other or additional remedy if payments become overdue by more than sixty (60) days.

5.02.250 - Annual Inspection.

The County will at intervals of not more often than once every year, unless there is a reasonable basis for additional inspections, perform inspections of any of Licensee's Wireless Communications Facilities licensed under an SLA for the purpose of verifying that the Equipment that is installed is the installation approved in the SLA. Such inspections shall be made by the County or its designated contractor, and shall be at the cost of Licensee at the rate prescribed in Subsection 5.02.210(G). If Wireless Communications Facilities are found to be in noncompliance, the provisions of Section 5.02.260 shall apply.

5.02.260 - Unauthorized Wireless Communications Facilities and Equipment.

If, during the term of a Licensee's Master Wireless Use License Agreement, the County discovers unauthorized Wireless Communications Facilities or Equipment placed on or within Municipal Facilities attributable to a Licensee, the fees listed in Section 5.02.210 may be assessed and the procedures listed below will be followed.

(A) **Notice.** The County shall provide specific written notice of each violation discovered.

(B) **Back Wireless Site License Fee and Penalties.** Licensee shall pay back Wireless Site License Fees for all unauthorized Wireless Communications Facilities or Equipment for a period of one (1) year, or since the date of installation

(whichever period is shortest), at the Wireless Site License Fees in effect during such periods. If Licensee is found to have: (a) repeated instances of unauthorized Wireless Communications Facilities or Equipment demonstrating a deliberate or consistent pattern of unauthorized Wireless Communications Facilities or Equipment; or (b) a significant number of poles (comprising 5% or more of Licensee's total operating sites licensed in accordance with this Chapter) with unauthorized attachments, Licensee shall be considered to be in material breach and such unauthorized attachments shall constitute an event of default pursuant to Section 5.02.300.

(C) **Application Required.** Licensee shall submit a new SLA in accordance with Section 5.02.080 of this Code within sixty (60) days of receipt of notice from the County of any unauthorized Wireless Communications Facilities or Equipment, or such longer time as mutually agreed to by the parties after an inventory. If an Application is denied, Licensee shall have sixty (60) days after Licensee's receipt of the denial to remove the unauthorized Wireless Communications Facilities or Equipment. In the event Licensee fails to submit an SLA Application within sixty (60) days, or such longer time as mutually agreed to by the parties after an inspection, or fails to remove the unauthorized attachments within sixty (60) days, the provisions of unauthorized Wireless Communications Facilities or Equipment Fees in Subsections 5.02.210 (H) and 5.02.210 (I) shall apply.

(D) **No Ratification of Unauthorized Use.** No act or failure to act by the County with regard to any unauthorized Wireless Communications Facilities or Equipment shall be deemed as ratification of the unauthorized use. Unless the

parties agree otherwise, a License for a previously unauthorized Wireless Communications Facilities or Equipment shall not constitute a waiver by the County of any of its rights or privileges under this Code or of an MLA or SLA or otherwise, and Licensee shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

5.01.270 - Indemnification.

- (A) To the maximum extent permitted by Nevada law, a Licensee shall indemnify, hold harmless, and defend the County, its officers and employees, individually and collectively, from all damages, fines, liens, suits, claims, demands, actions, reasonable costs of investigation and litigation, reasonable attorneys' fees and expenses, reasonable consultants' fees and expenses, and reasonable expert witnesses' fees and expenses, judgments or liability of any kind arising out of or in any way connected with the installation, construction, operations, maintenance, or condition of the Network. A Licensee is not required to indemnify or hold harmless the County, its officers and employees as provided herein, to the extent caused by, resulting from or arising out of the active negligence or intentional actions of one or more officers or employees of the County.
- (B) A Licensee shall assume all risks in the operation of the system and shall be solely responsible and answerable for any and all injuries to persons or property arising out of the existence or performance of the Licensee's rights, duties, actions, or any and all other activities existing or performed under the provisions of this Chapter, a Master Wireless Use License Agreement, or Wireless Site

License Approvals executed pursuant to this Chapter. The amounts and types of required insurance coverage, as set forth in Section 5.02.290 (Insurance) of this Chapter of the Code, shall in no way be construed as limiting the scope of indemnity set forth in this Section.

(C) A Licensee shall have no recourse whatsoever against the County for any loss, cost, expense, or damage arising out of the enforcement or lack of enforcement of any provision or requirement of the provisions of this Chapter, a Master Wireless Use License Agreement, or Wireless Site License Approvals executed pursuant to this Chapter.

(D) A Licensee shall indemnify, hold harmless, and defend the County, its officers and employees, individually and collectively, from damages which are incurred by or attributed to the County, including but not limited to costs, expenses, fees, and the actual amount of damage, arising from delays of such reconstruction, removal, or relocation work of a Licensee, beyond the time period provided for completion of such work, except to the extent that this provision is addressed otherwise in the provisions of this Chapter, a Master Wireless Use License Agreement, or Wireless Site License Approvals executed pursuant to this Chapter

(E) The County shall be liable for the cost of repair (or, if repair is not feasible, replacement) to damaged Equipment only to the extent arising from the willful misconduct of County, its employees, agents, or contractors and shall in no event be liable for indirect or consequential damages. County's total liability for willful misconduct shall be limited to the Wireless Site License and Use Fees paid by a Licensee to the County in the year under which such liability arises.

5.02.280 - Security for Performance.

As security for compliance with the terms and conditions of a Licensee's Wireless Master Use License Agreement and applicable County Code provisions, a Licensee shall, no later than ten (10) days after the issuance of the first SLA by the County to install an Equipment Network, and prior to any use of the ROW, provide security to the County in the form of one of the following: (i) cash deposited with the County, (ii) an irrevocable pledge of certificate of deposit, (iii) an irrevocable letter of credit, or (iv) a performance bond, payable in each instance to the County, in a minimum amount of seventy-five thousand dollars (\$75,000), effective as of December 1, 2018, to remain in full force and effect for the term of a Wireless Master Use License Agreement, any or all of which may be claimed by the County as payment for fees, liquidated damages and penalties, in accordance with the MLA, and to recover losses resulting to the County from a Licensee's failure to perform. If bonds are used to satisfy these security requirements, they shall be in accordance with the following:

- (A) All bonds shall, in addition to all other costs, provide for payment of reasonable attorneys' fees.
- (B) All bonds shall be issued by a surety company authorized to do business in the State of Nevada, and which is listed in the U.S. Department of the Treasury Fiscal Service (Department Circular 570, Current Revision): companies holding certificates of authority as acceptable sureties on federal bonds and as acceptable reinsuring companies.
- (C) A Licensee shall require the attorney-in-fact who executes the bonds on behalf of the surety to affix thereto a certified and current copy of his or her power of attorney.

(D) All bonds prepared by a licensed nonresident agent must be countersigned by a resident agent per NRS 680A.300.

(E) All bonds shall guarantee the performance of all of a Licensee's obligations under the provisions of this Chapter or MLA, or SLA executed pursuant to this Chapter and all applicable laws.

(F) All bonds shall be substantially in the same form as approved by the County.

If at any time the County draws upon such performance security, a Licensee shall within thirty (30) days of notice from the County replenish such performance security to the original minimum amount required by this Section. If a Licensee's MLA is renewed or otherwise extended beyond its Initial Term, the minimum bond amount required by this Section shall be adjusted by an amount equal to the increase in the average annual Historic Consumer Price Index (CPI) for all Urban Consumers: U.S. City Average, Major Groups, CPI Detailed report, All Items Average, as published by the U.S. Department of Labor, Bureau of Labor Statistics, for the most recent calendar year ended on December 31 as compared to the calendar year ended on December 31 of the year immediately preceding the last adjustment or, if applicable, the original date of the MLA. Bond amount changes shall be effective as of July 1 following the Initial Term and each Renewal Term of a Licensee's Agreement and rounded up to the next one-thousand dollars (\$1,000.00).

5.02.290 - Insurance.

A Licensee shall obtain and maintain at all times during the term(s) of an MLA: (a) Commercial General Liability insurance in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for each personal injury liability and products-completed operations; and (b)

Commercial Automobile Liability insurance protecting Licensee in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, which limits of (a) and (b) may be met by a combination of primary excess or umbrella insurance. The Commercial General Liability insurance policy shall name the County, its commission members, officers, and employees as additional insureds for any covered liability arising out of a Licensee's performance of work under an MLA, SLA, or this Code. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced. A Licensee shall be responsible for notifying the County of such change or cancellation.

(A) **Filing of Certificates and Endorsements.** Prior to the commencement of any work pursuant to a Wireless Master Use License Agreement, a Licensee shall file with the County the required original certificate(s) of insurance with endorsements, which shall state the following:

- (1) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;
- (2) that a Licensee's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the County may possess, including any self-insured retentions the County may have; and any other insurance the County does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

(3) that a Licensee’s Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the County.

(4) The certificate(s) of insurance with endorsements and notices shall be mailed to the County Department of Business License.

(B) Workers’ Compensation Insurance.

A Licensee shall comply with the provisions of NRS Chapter 616A through 616D regarding industrial insurance and, if required to maintain coverage for employees, a Licensee shall obtain and maintain at all times during the term of its Master Wireless Use License Agreement statutory workers’ compensation and employer’s liability insurance in an amount not less than the greater of: (a) any amounts required by Nevada state law, or (b) One Million Dollars (\$1,000,000) and shall furnish the County with a certificate showing proof of such coverage.

(C) Insurer Criteria.

Any insurance provider of a Licensee shall be admitted and authorized to do business in the State of Nevada and shall carry a minimum rating assigned by A.M. Best & Company’s Key Rating Guide of “A” Overall and a Financial Size Category of “X” (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

(D) Severability of Interest.

Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the County. “Severability of

interest” or “separation of insureds” clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

5.02.300 – Default and Cure Period

- (A) **Default and Notification.** Except for causes beyond the reasonable control of a Licensee, if Licensee fails to comply with any of the material conditions and obligations imposed hereunder, and if such failure continues for more than thirty (30) days after written demand from the County to commence the correction of such noncompliance, the County shall have the right to revoke and terminate a Licensee’s Master Wireless Use License Agreement in addition to any other rights or remedies set forth in a Licensee’s Master Wireless Use License Agreement or provided by law.
- (B) **Cure Period.** If the nature of the violation is such that it cannot be fully cured within thirty (30) days due to circumstances not under a Licensee’s control, the period of time in which a Licensee must cure the violation may be extended by the County Manager in writing for such additional time reasonably necessary to complete the cure, provided that: (1) a Licensee has promptly begun to cure; and (2) a Licensee is diligently pursuing its efforts to cure in the County Manager’s reasonable judgment.
- (C) **Denial of Subsequent Permits.** Whenever a Licensee is in default in any of its obligations under its Master Wireless Use License Agreement or this Chapter of the Code, the County may deny further encroachment, excavation or similar permits until such time as a Licensee cures all of its defaults.

5.02.310 - Assignment.

A Master Wireless Use License Agreement, or any Wireless Site License Approval issued under a Master Wireless Use License Agreement, shall not be assigned by a Licensee without the express written consent of the County, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of a Licensee to an Affiliate or to any successor in interest or entity acquiring more than fifty percent (50%) of a Licensee's stock or assets by reason of a merger, acquisition or other business reorganization (collectively "Exempted Transfers") shall not require the consent of the County, provided that a Licensee reasonably demonstrates to the County's lawfully empowered designee the following criteria (the "Exempted Transfer Criteria"): (a) such transferee will have a financial strength after the proposed transfer at least equal to that of a Licensee immediately prior to the transfer; (b) any such transferee assumes all of a Licensee's obligations hereunder, including all obligations and/or defaults under an MLA or this Code occurring prior to the transfer (whether known or unknown), signed by a Licensee's and its transferee's respective officers duly authorized to do so, on a notarized form approved by the County; (c) the experience and technical qualifications of the proposed transferee, either alone or together with a Licensee's management team, in the provision of a Network enabling the provision of Telecommunications Services, evidences an ability to operate a Licensee's Network; (d) the transferee provides the County with a copy of an appropriate certificate of public convenience and necessity or letter of registration as applicable from the PUCN authorizing it to operate a Licensee's Network; and (e) the transferee has a valid County business license. A Licensee shall give at least thirty (30) days' prior written notice (the "Exempted Transfer Notice") to the County of any such proposed

Exempted Transfer and shall set forth with specificity in such Exempted Transfer Notice the reasons why a Licensee believes the Exempted Transfer Criteria have been satisfied. The County shall have a period of thirty (30) days (the “Exempted Transfer Evaluation Period”) from the date that a Licensee gives the County its Exempted Transfer Notice to object in writing to the adequacy of the evidence contained therein. Notwithstanding the foregoing, the Exempted Transfer Evaluation Period shall not be deemed to have commenced until the County has received from a Licensee and the proposed transferee any and all additional information as the County may reasonably require in connection with its evaluation of the Exempted Transfer Criteria as set forth in the Exempted Transfer Notice, so long as the County gives a Licensee notice in writing of the additional information the County requires within fifteen (15) days after the County’s receipt of the original Exempted Transfer Notice. If the County fails to act upon a Licensee’s Exempted Transfer Notice within the Exempted Transfer Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by the County that Licensee has in fact established compliance with the Exempted Transfer Criteria to the County’s satisfaction.

5.02.320 - Sublease.

- (A) A Licensee shall not sublet any interest under a Master Wireless Use License Agreement or Wireless Site License Approvals without the County's prior written consent.
- (B) Any sublease made without the County's prior written consent shall, at the County's option, be voided.

- (C) To obtain the County's consent to a sublease, a Licensee shall provide the County with written notice of: (1) the proposed effective date of the sublease, (2) a description of the portion of the premises to be sublet, (3) all of the material terms of the proposed sublease and the consideration therefor, and (4) any other information reasonably required by the County in order to evaluate the proposed sublease.
- (D) Within thirty (30) days after receiving a Licensee's notice of sublease, the County shall notify a Licensee in writing of its consent to the proposed sublease, or its refusal to consent to the proposed sublease and its reasons therefor. If the County does not provide written notice to a Licensee approving or disapproving any proposed sublease within thirty (30) days after receiving a transfer notice, the sublease shall be deemed disapproved.
- (E) The County shall not unreasonably withhold, condition or delay its consent to any proposed sublease.
- (F) Notwithstanding any subletting, a Licensee shall at all times remain fully and primarily responsible and liable for the payment of fees required under this Chapter of the Code, an MLA or an SLA and for compliance with all of a Licensee's other obligations under the provisions of this Chapter, a Master Wireless Use License Agreement, or Wireless Site License Approvals.

5.02.330 - Records Required by Code.

A Licensee will maintain complete records pursuant to the applicable provisions of Title 6 of the Clark County Code.

- (A) Additional Records. The County may require such additional information, records, and documents from a Licensee from time to time as are appropriate in order to reasonably monitor compliance with the terms of this Code, an MLA, or any SLAs. Additionally, the County may require a Licensee to provide supplemental information as needed.
- (B) Production of Records. A Licensee shall provide records within twenty (20) business days of a request by the County for production of the same unless the County agrees to additional time. Such records shall be made available for review in Clark County. If any person other than a Licensee maintains records on a Licensee's behalf, a Licensee shall be responsible for making such records available to the County for auditing purposes pursuant to this Section.

5.02.340 - Rights Reserved to the County.

Without limitation upon the rights which the County might otherwise have, the County does hereby expressly reserve the rights, powers, and authorities to exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the County; and to grant multiple nonexclusive licenses within the County to other persons for the operation of systems pursuant to this Chapter of the Code and as it may be amended.

5.02.350 - Severability.

If any provision, section, paragraph, sentence, clause, or phrase of this Chapter of the Code is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this Chapter of the Code. It is the intent of the

County Commission in adopting this Chapter of the Code that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision, and to this end, all provisions of this Chapter of the Code are declared to be severable.

5.02.360 - Notice.

All notices shall be sent to a Licensee at the address indicated in the Master Wireless Use License Agreement. A Licensee shall notify the County Manager of any change of address within ten (10) working days of such occurrence. Failure to provide notification and any resulting delay in receipt of notice, shall not excuse a Licensee from any obligation imposed by this Chapter of the Code or by its MLA or SLAs, nor shall it serve as cause for reduction or removal of any fine or penalty imposed by the County.

5.02.370 - Force majeure.

In the event a Licensee's performance of any of the terms, conditions or obligations required by this Chapter of the Code or an MLA or any SLAs is prevented by a cause or event beyond the control of a Licensee, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof.

SECTION TWO. If any provision, section, paragraph, sentence, clause, or phrase of this ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of the remaining parts of this ordinance. It is the intent of the County Commission in adopting this ordinance that no portion or provision thereof shall become inoperative or fail by reason of any

invalidity or unconstitutionality of any other portion or provision, and to this end all provisions of this ordinance are declared to be severable.

SECTION THREE. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the Clark County Code in conflict herewith are hereby repealed.

SECTION FOUR. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, together with the names of the County Commissioners voting for or against its passage, in a newspaper published in and having a general circulation in Clark County, Nevada, at least once a week for a period of two (2) weeks.

PROPOSED on the ____ day of _____, 2018.

PROPOSED BY: Commissioner _____

PASSED on the ____ day of _____, 2019.

AYES: _____
