

replacement of the Pole and all transfers or other work incident thereto. If a Wireless Service Provider fails to Correct a non-Emergency violation within the specified time period, including any extensions, the provisions of Article 19 shall apply.

18.3.1. If any facilities of City and/or Utility are found to be in violation of the Applicable Standards and specifications and City and/or Utility has caused the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, but City and/or Utility shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the Pole provided, however, that Utility shall not be responsible for a Wireless Service Provider's transfer or rearrangement costs.

18.3.2. If one or more Attaching Entity caused the violation, then such Attaching Entities shall pay the Corrective costs incurred by all who have Attachments on the Pole, including any Wireless Service Provider, and Utility will make reasonable effort to cause the Attaching Entity to make such payment.

18.3.3. If there exists a violation of Applicable Standards and it cannot be determined which Attaching Entity on the Pole caused such violation or there is a mixture of the Attaching Entities causing the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, and all Attaching Entities who may have caused such violation will share equally in such costs.

Article 19. Failure to Rearrange, Transfer or Correct

19.1. Unless otherwise agreed, as part of City's or Utility's written notice of a need for a Wireless Service Provider to rearrange, transfer, remove or Correct violations, City or Utility will indicate whether or not City or Utility is willing to perform the required work.

19.2. If City or Utility indicates in the notice that it is willing to perform the work, the Wireless Service Provider shall have thirty (30) days to notify City or Utility in writing of its election to have City or Utility perform the work or that the work will be performed by an entity other than City or Utility.

19.2.1. If the Wireless Service Provider requests that City or Utility perform the work, the Wireless Service Provider shall reimburse City or Utility for the actual and documented cost of such work, including Overhead.

19.2.2. If the Wireless Service Provider either fails to respond or indicates that the work will be performed by an entity other than the City or Utility, then until such work is complete and City or Utility receives written notice of the completion of such work, the Wireless Service Provider shall be subject to a daily continuing violation fee as specified in Appendix A, per Attachment, per day commencing on the day after expiration of the time period for completion of the work as specified in this Regulation.

19.2.3. Notwithstanding a Wireless Service Provider's election under Article 19.2.2 to perform the required work by an entity other than City or Utility, commencing on the thirtieth (30th) day after expiration of the time period for completion of the work as

specified in this Regulation, City or Utility may perform the required work at the Wireless Service Provider's expense, or may delegate such authority to another Attaching Entity or a qualified contractor and impose all applicable penalties under Exhibit A.

19.2.4. If a Wireless Service Provider was required to perform work under this Article 19 and fails to perform such work within the specified timeframe, and City or Utility performs such work, City or Utility may charge the Wireless Service Provider its actual and documented costs, including Overhead, for completing such work.

19.3. If Utility indicates in the notice that it is unwilling or unable to perform the work, then until such work is completed and Utility receives written notice of the completion of such work, the Wireless Service Provider shall be subject to a daily penalty as specified in Exhibit A, per Attachment, per day commencing on the day after expiration of the time period for completion of the work as specified in this Regulation.

19.4. Wireless Service Providers shall provide timely written notification to City or Utility upon completion of work necessary to Correct a violation or deficiency. All applicable daily penalties and fees will continue to accrue until City's or Utility's receipt of such notice of completion. Notice of completion shall be delivered by the same means as it was received from City or Utility.

Article 20. Actual Inventory

20.1. At intervals of three (3) years or more, City or Utility may inventory all Attachments on City or Utility's Facilities made by a particular Wireless Service Provider. Such inventory shall be made jointly by all parties and shall be at the cost of the Wireless Service Provider, such costs to be actual and documented, unless Utility is also performing an inventory of any other Attaching Entity with Attachments on such Poles, and then the actual and documented cost shall be shared proportionately among all such Attaching Entities based upon the number of Attachments.

20.1.1 Utility may at any time perform an inventory at its own expense to verify the number of reported Attachments. Wireless Service Providers shall pay the costs of such inventory if its unauthorized or unreported Attachments exceeds five percent (5%) of the Wireless Service Provider's Attachments that are authorized and reported.

Article 21. Unauthorized Attachments

If the City discovers unauthorized Wireless Communication Facilities or Wireless Support Structures in the public right-of-way, or Utility discovers Unauthorized Attachments placed on its Poles or other Facilities, the following fees may be assessed, and procedures will be followed:

21.1. City or Utility, as appropriate, shall provide specific written notice of each violation and the owner of the unauthorized Wireless Communication Facilities, Wireless Support Structures or Attachment shall be given thirty (30) days from receipt of notice to contest an allegation that the Wireless Communication Facilities, Wireless Support Structures, or Attachment is unauthorized. If the owner cannot be ascertained, the City or Utility will post a notice of violation on the Wireless Communication Facilities, Wireless Support Structures or Attachment believed to be unauthorized.

21.2. In addition to all other fines or penalties that may be assessed by a court of law, the owner of an unauthorized Wireless Communication Facilities, Wireless Support Structures or Attachment shall pay double rent and fees for a period of three (3) years, or since the date of the last inventory of Attachments (whichever period is shortest), at the rates in effect during such periods.

21.3. The owner of an unauthorized Wireless Communication Facilities, Wireless Support Structures or Attachment shall submit a Permit Application in accordance with this Regulation within thirty (30) days of receipt of the notice described in this Article 21, or such longer time as may be agreed by the City or Utility.

21.4. In the event a Wireless Service Provider fails to submit a Permit Application within thirty (30) days, or such longer time as mutually agreed to by the parties after an inventory, the provisions of Article 19 shall apply.

21.5. **No Ratification of Unauthorized Use.** No act or failure to act by City or Utility with regard to any unpermitted Wireless Communication Facilities, unpermitted Wireless Support Structures, or Unauthorized Attachments shall be deemed as ratification or waiver of any requirement under this Regulation. Unless the parties agree otherwise, a Permit for a previously Unauthorized Attachment shall not operate retroactively or constitute a waiver by Utility of any of its rights or privileges under this Regulation or otherwise, and the Wireless Service Provider shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

Article 22. Reporting Requirements.

In addition to the inventory provisions described in Article 20 above, when a Wireless Service Provider pays its annual fees, the Wireless Service Provider shall also provide the following information to City and Utility:

22.1. All Attachments that have become nonfunctional during the relevant reporting period. The report shall identify the Pole on which the nonfunctional Attachment is located, indicate the approximate date the Attachment became nonfunctional, and shall provide a schedule for removal.

22.2. Any equipment the Wireless Service Provider has removed from Poles during the relevant reporting period. The report shall identify the Pole from which the equipment was removed and indicate the approximate date of removal. This requirement does not apply where a Wireless Service Provider is surrendering a Permit.

Article 23. Liability and Indemnification

23.1. **Liability.** City and Utility reserve to themselves the right to maintain and operate their Poles in the manner that will best enable them to fulfill their service requirements. As a condition of every permit, Wireless Service Providers must agree that its use of City's and Utility's Facilities is at the sole risk of the Wireless Service Provider. Notwithstanding the foregoing, City and Utility shall exercise reasonable precaution to avoid damaging Wireless Communication Facilities and shall report to Wireless Service Providers the occurrence of any such damage caused by its employees, agents or contractors. Subject to Section 23.5, City and

Utility will reimburse Wireless Service Providers for all reasonable costs incurred during the physical repair of facilities damaged by the gross negligence or willful misconduct of City and/or Utility.

23.2. **Indemnification.** As a condition of every permit, Wireless Service Providers, as well as their agents, contractors, and subcontractors, (“Wireless Service Provider Indemnitors”) shall be required to defend, indemnify, and hold harmless City and Utility and their respective officials, officers, board members, council members, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by Utility under any Workers’ Compensation Laws or under any plan for employees’ disability and death benefits), and expenses (including reasonable attorney’s fees of Utility and all other costs and expenses of litigation) (“Covered Claims”) arising in any way or in connection with the negligent construction, maintenance, repair, presence, use, relocation, transfer, removal or operation of Wireless Communication Facilities and/or Wireless Support Structures by a Wireless Service Provider or their officers, directors, employees, agents, contractors, or subcontractors, except to the extent that City’s or Utility’s negligence or willful misconduct gives rise to such Covered Claims. Covered Claims shall include, but are not limited to, the following:

23.2.1. Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;

23.2.2. Cost of work performed by Utility that was necessitated by a Wireless Service Provider’s failure, or the failure of a Wireless Service Provider’s officers, directors, employees, agents, contractors, or subcontractors to install, maintain, use, transfer, or remove their Wireless Communication Facilities in accordance with the requirements and specifications of this Regulation, or from any other work this Regulation authorizes Utility to perform on behalf of a Wireless Service Provider;

23.2.3. Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by a Wireless Service Provider, or a Wireless Service Provider’s officers, directors, employees, agents, contractors, or subcontractors pursuant to this Regulation;

23.2.4. Liabilities incurred as a result of a Wireless Service Provider’s violation, or a violation by a Wireless Service Provider’s officers, directors, employees, agents, contractors, or subcontractors of any law, rule, or regulation of the United States, any state, or any other governmental entity or administrative agency.

23.2.5. Environmental harm arising from or due to the release, threatened release or storage of hazardous substances on, under, or around Utility’s Poles and Facilities or City public rights-of-way attributable to an Indemnitor.

23.3. Procedure for Indemnification.

23.3.1. City or Utility shall give prompt written notice of any claim or threatened claim to the appropriate Indemnitors, specifying the factual basis for such claim and the amount of

the claim. If the claim relates to an action, suit, or proceeding filed by a third party against City or Utility, City or Utility shall give the notice to Indemnitors no later than fifteen (15) calendar days after City or Utility receives written notice of the action, suit, or proceeding.

23.3.2. City, Utility or Wireless Service Provider's failure to give the required notice will not relieve any Indemnitor from its obligation to indemnify City, Utility or Wireless Service Provider unless, and only to the extent, that an Indemnitor is materially prejudiced by such failure.

23.3.3. Indemnitor will have the right at any time, by notice to City, Utility or Wireless Service Provider (as appropriate), to participate in or assume control of, the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to the indemnified party. City, Utility or Wireless Service Provider agree to cooperate fully with Indemnitor. If Indemnitor assumes control of the defense of any third-party claim, City, Utility or Wireless Service Provider shall have the right to participate in the defense at its own expense. If Indemnitor does not assume control or otherwise participate in the defense of any third-party claim, Indemnitor shall be bound by the results obtained by City, Utility or Wireless Service Provider with respect to the claim.

23.3.4. If Indemnitor assumes the defense of a third-party claim as described above, then in no event will City, Utility or Wireless Service Provider admit any liability with respect to, or settle, compromise or discharge, any third-party claim without Indemnitor's prior written consent.

23.4. **Environmental Hazards.** As a condition of every permit, Wireless Service Providers shall represent and warrant that their use of Utility's Poles and/or Facilities and/or City public rights-of-way will not generate any Hazardous Substances, that it will not store or dispose on or about City's or Utility's Poles and/or Facilities or transport to City's or Utility's Facilities any hazardous substances and that no Wireless Communication Facilities or Wireless Support Structures will constitute or contain or generate any hazardous substance in violation of federal, state, or local law now or hereafter in effect, including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect, including any amendments. As a condition of every permit, Wireless Service Providers must further represents and warrants that in the event of breakage, leakage, incineration, or other disaster, its Wireless Communication Facilities would not release any Hazardous Substances.

23.5. **No Consequential Damages.** As a condition of every permit, Wireless Service Providers shall be required to agree that, notwithstanding any other provision of this Regulation, neither any entity receiving a permit or any entity issuing a permit shall be liable to one another for any consequential, incidental, indirect, liquidated, or special damages or lost revenue or lost profits to any person arising out of this Regulation, or any Permit issued under this Regulation, or any performance or nonperformance of any provision of this Regulation, even if such entity has been informed of the possibility of such damages.

23.6. **Municipal Liability Limits.** No provision of this Regulation is intended, or shall be construed, to be a waiver for any purpose by City or Utility of any applicable state limits on municipal liability or governmental immunity. No indemnification provision contained in this Regulation under which an Indemnitor indemnifies City or Utility shall be construed in any way to limit any other indemnification provision contained in this Regulation, or constitute insurance under state law.

Article 24. Duties, Responsibilities, and Exculpation

24.1. **Duty to Inspect.** As a condition of every permit, Wireless Service Providers shall acknowledge and agree that City and Utility do not warrant the condition or safety of Utility's Facilities and City's public rights-of-way, or the premises surrounding the Facilities, and that all Wireless Service Providers have an obligation to inspect Utility's Poles or premises surrounding such Facilities, prior to commencing any work on Utility's Poles or entering the premises surrounding such Facilities.

24.2. **Knowledge of Work Conditions.** As a condition of every permit, Wireless Service Provider shall warrant that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that the Wireless Service Provider will undertake and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.

24.3. **Duty of Competent Supervision and Performance.** As a condition of every Permit authorizing attachment to a Distribution Pole, Wireless Service Providers shall acknowledge that its agents, employees, contractors, and subcontractors will work near electrically energized lines, transformers, or other City or Utility Facilities, that energy generated, stored, or transported by Utility Facilities will not be interrupted except in Emergencies, and that Wireless Service Providers have the duty to ensure that their employees, agents, contractors, and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, agents, contractors, and subcontractors; employees, agents, contractors, and subcontractors of Utility; and the general public, from harm or injury while performing work permitted pursuant to this Regulation. Wireless Service Providers must furnish its employees, agents, contractors, and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. When circumstances necessitate de-energization any part of Utility's equipment, Wireless Service Providers shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

24.4. **Requests to De-energize.** Typically, Utility shall only de-energize its electric facilities in response to Emergency situations, and any such de-energizations shall be at Utility's sole discretion. Wireless Service Providers shall be responsible for all costs related to any request to de-energize any equipment or lines in accordance with Article 3.8.

24.4.1. Wireless Service Providers may request nonemergency de-energization with 24 hours' notice. Wireless Service Providers shall be responsible for all costs related to any request to de-energize any equipment or lines in accordance with Article 3.8. Before Utility de-energizes any equipment or line, it shall provide, upon request, an estimate of

all costs and expenses to be incurred in accommodating a Wireless Service Provider's request.

24.5. **Interruption of Service.** If a Wireless Service Provider causes an interruption of service by damaging or interfering with any equipment of Utility, such Wireless Service Provider shall, at its own expense, immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify Utility immediately.

24.6. **Duty to Inform.** As a condition of every permit to attach to a Utility Pole, Wireless Service Providers shall warrant that they understand the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on Utility's Poles and other Facilities by such Wireless Service Provider's employees, agents, contractors, or subcontractors, including the inherent danger in working in close proximity to electric facilities.

Article 25. Insurance

25.1. **Policies Required.** As a condition of every permit, Wireless Service Providers shall keep in force and effect all insurance policies as described below:

25.1.1. **Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Arkansas law at the time of the application of this provision for each accident. This policy shall include a waiver of subrogation in favor of City and Utility. Wireless Service Providers shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

25.1.2. **Commercial General Liability Insurance.** Policy on form ISO CGL 00 01 or equivalent will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations (not excluding injury or harms caused by RF emissions), personal injury, blanket contractual liability coverage, broad form property damage, independent contractor's coverage with limits of liability of \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence. City and/or Utility shall be added as an additional insured on ISO CG 20 10 or equivalent.

25.1.3. **Automobile Liability Insurance.** Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles. Limits of liability of \$1,000,000 each occurrence, \$1,000,000 aggregate.

25.1.4. **Umbrella Excess Liability Insurance.** Coverage is to be in excess of employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability of \$5,000,000 each occurrence, \$5,000,000 aggregate. Wireless Service Provider may use any combination of primary and excess to meet required total limits.

25.1.5. **Property Insurance.** Wireless Service Providers shall be responsible for maintaining property insurance on its own facilities, buildings, and other improvements,