

EXHIBIT A

CITY OF LAGUNA NIGUEL

POLICY REGARDING PERMITTING REQUIREMENTS AND

DEVELOPMENT STANDARDS FOR COMMUNICATION FACILITIES WITHIN THE

PUBLIC RIGHTS-OF-WAY

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SECTION 1. GENERAL PROVISIONS

SECTION 1.1. PURPOSE AND INTENT

- (a) On September 27, 2018, the Federal Communications Commission (“FCC”) adopted its Declaratory Ruling and Third Report and Order, FCC 18-133 (the

“Report and Order”), in connection with two informal rulemaking proceedings entitled Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79, and Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84. The regulations adopted in the Report and Order significantly curtail local authority over wireless and wireline communication facilities reserved to State and local governments under sections 253 and 704 in the federal Telecommunications Act. Notwithstanding the limitations imposed on local regulation of communication facilities in public rights-of-way by the Report and Order, following the Ninth Circuit Court of Appeals decision in *City of Portland v. United States*, local agencies retain the ability to regulate the aesthetics of communication facilities, including location, compatibility with surrounding facilities, spacing, and overall size of the facility, provided the aesthetic requirements are reasonable (*i.e.* technically feasible) and published in advance. Although the provisions of the Report and Order may be further modified by judicial decisions, the City recognizes the practical reality that failure to comply with those portions of the Report and Order that remain in effect will likely result in greater harm to the City's interests than if the City ignores the FCC's ruling. Accordingly, the City Council adopts this Policy (“Policy”) as a means to accomplish such compliance that can be quickly amended or repealed in the future without the need to amend the City's Municipal Code.

- (b) The City of Laguna Niguel intends this Policy to establish reasonable, uniform and comprehensive standards and procedures for communication facilities that qualify as small wireless facilities, including deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's rights-of-way, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits from advanced wireless services with local values, which include without limitation the aesthetic character of the City. This Policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City's visual character from potential adverse impacts and/or visual blight created or exacerbated by communication facilities and related communications infrastructure; (3) protecting and preserving the City's environmental resources; (4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors.
- (c) This Policy is intended to establish clear procedures for application intake and completeness review. The City Council finds that chronically incomplete applications significantly contribute to unreasonable delay and create barriers to infrastructure deployment. Chronically incomplete applications unfairly prejudice other applicants who may be prepared to submit complete applications for

infrastructure in the same or substantially the same location. Chronically incomplete applications also unfairly prejudice the City's ability to act on such applications within the "presumptively reasonable" timeframes established by the FCC. The provisions in this Policy afford applicants and City staff opportunities for direct, real-time communication about completeness issues to mitigate incomplete applications prior to submittal. The provisions in this Policy also encourage applicants to timely respond to incomplete notices.

- (d) This Policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California law.
- (e) The City may update this Policy periodically to account for amendments to the policies or changes in State and federal laws. This Policy document contains procedures, requirements, formats, and methodologies that apply to a vast majority of projects; however, there may be unique circumstances where the Community Development Director may use their discretion to deviate from this Policy if necessary to comply with State or federal law. Additionally, this Policy is not intended to be exhaustive and therefore the City reserves the right to request additional project specific information in its evaluation that may not be identified or described in this Policy. The Community Development Director may also adopt departmental policies and procedures to further implement the provisions of this Policy.

SECTION 1.2. DEFINITIONS

- (a) **Undefined Terms.** Undefined phrases, terms or words in this Policy will have their ordinary meanings, unless otherwise defined in 47 C.F.R. Section 1.6002, or herein. If any definition assigned to any phrase, term or word in this Section 1.2 conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

(b) **Defined Terms.**

- (1) **“Accessory equipment”** means the same as “antenna equipment” as defined by FCC in 47 C.F.R. § 1.6002(c), as may be amended or superseded, including equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.
- (2) **“Amateur station”** means the same as defined by the FCC in 47 C.F.R. § 97.3, which defines the term as “a station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications.” This term includes amateur radio antennas and related facilities used for amateur radio services.
- (3) **“Antenna”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded, including an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services.
- (4) **“Approval authority”** means the City official(s) or designee responsible for reviewing applications for communication facility permits and vested with the authority to approve, conditionally approve or deny such applications as provided in this Policy.
- (5) **“Collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded, including mounting or installing an antenna facility on a pre-existing structure; and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- (6) **“Communication facility”** means the same as “small wireless facilities” as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded.
- (7) **“Concealed”** or **“concealment”** means stealth and camouflaging techniques that integrate the transmission equipment into the underlying support structure and/or the surrounding natural and/or built environment such that the equipment would look like something other than a wireless facility.
- (8) **“CPUC”** means the California Public Utilities Commission.

- (9) **“Decorative pole”** means any pole that includes decorative or ornamental features and/or materials intended to enhance the appearance of the pole. Decorative or ornamental features include, but are not limited to, fluted poles, ornate luminaires and artistic embellishments. Cobra head luminaires and octagonal shafts made of concrete or crushed stone composite material are not considered decorative or ornamental.
- (10) **“FCC”** means the Federal Communications Commission or its duly appointed successor agency.
- (11) **“FCC Shot Clock”** means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended or superseded.
- (12) **“Ministerial permit”** means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City's jurisdiction. Ministerial permits may include, without limitation, any building permit, construction permit, electrical permit, encroachment permit, excavation permit, traffic control permit and/or any similar over-the-counter approval issued by the City's departments.
- (13) **“OTARD”** means any “over-the-air reception device” subject to 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and certain fixed wireless antennas not greater than one meter in diameter.
- (14) **“Personal wireless services”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, including commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.
- (15) **“Personal wireless service facilities”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded, including facilities for the provision of personal wireless services.
- (16) **“Public right-of-way”** means any land which has been reserved for or dedicated to the City for the use of the general public for public road purposes, including streets, sidewalks and unpaved areas.
- (17) **“RF”** means radio frequency or electromagnetic waves.

- (18) **“SCJPC”** means the Southern California Joint Pole Committee.
- (19) **“Section 6409”** means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended or superseded.
- (20) **“Small wireless facility”** or **“small wireless facilities”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded.
- (21) **“Utility provider”** means a CPUC approved provider of electrical power, natural gas, or other public utility. Southern California Edison and Southern California Gas Company are utility providers.
- (22) **“Wireless facilit(ies)”** means wireless facility as defined in California Government Code Section 65850.6(d)(2).

SECTION 2. COMMUNICATION FACILITIES

SECTION 2.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

- (a) **Applicable Facilities.** Except as expressly provided herein, the provisions of this Policy are applicable to all existing communication facilities that qualify as small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy communication facilities within the City's public rights-of-way.
- (b) **Required Permit.** A communication facility permit, subject to the approval authority's prior review and approval, is required for any applicable communication facility in the public rights-of-way.
- (c) **Request for Approval Pursuant to Section 6409.** Requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (H.R. 3630, P.L. 112-96) are not subject to this Policy, but shall be reviewed in accordance with Section 6409.
- (d) **Other Permits and Approvals.** In addition to a communication facility permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other City departments or divisions, approval by the electrical utility provider for utility pole attachments in compliance with SCJPC pole attachment rules. All applications for ministerial permits submitted in connection with a proposed communication facility must contain a valid communication facility permit issued

by the City for the proposed facility. Any application for any ministerial permit(s) submitted without such communication facility permit may be denied without prejudice. Furthermore, any communication facility permit granted under this Policy shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals.

(e) **Exemptions.** Notwithstanding anything in this Policy to the contrary, this Policy shall not be applicable to the following:

- (1) any wireless facility operated by the City for public purposes;
- (2) any wireless facility installed completely indoors and used to extend personal wireless services into a business or subscriber's private residence, such as a femto cell or indoor distributed antenna system;
- (3) OTARD antennas;
- (4) antennas and related transmission equipment used in connection with a duly authorized amateur station; or
- (5) any wireless facility or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D.
- (6) any other wireless facility where any regulation by the City is entirely preempted by State or federal law.

(f) **Administrative Orders and Regulations.** In addition to the requirements of this Policy, the City Council authorizes the approval authority to adopt such orders or regulations as the approval authority deems necessary or appropriate to protect and maintain public health, safety, welfare and convenience. All communication facilities must conform to all applicable orders and regulations issued by the approval authority, unless the approval authority, in its discretion, grants a prior written waiver to deviate, in whole or in part, any such order or regulation. Waivers by the approval authority shall be considered approved or denied on a competitively neutral and nondiscriminatory basis. The approval authority shall develop and publish guidelines to implement any waivers authorized by this section.

SECTION 2.2. COMMUNICATION FACILITY PERMIT APPLICATION REQUIREMENTS

(a) **Application Contents.** All applications for a communication facility permit must, at a minimum, include all the information and materials required in this subsection (a).

- (1) **Application Form.** The applicant shall submit a complete, duly executed communication facility permit application using the then-current City form which must include the information described in this subsection (a). Unless agreed to in advance in writing by the City, any and all applications and submittals must be addressed to the approval authority.
- (2) **Application Fee.** The applicant shall submit the applicable communication facility permit application fee (non-recurring) as established by City Council resolution. Batched applications must include the applicable communication facility permit application fee for each communication facility in the batch. The permit application fee is based on a typical application review of a facility. Should an application review take longer than typical due to unforeseen complexities, and the fee be inadequate for capturing the costs related to application review, the original fee shall be treated as a deposit and additional deposits shall be required until the cost of processing the application is recovered. If no permit application fee has been adopted, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a deposit estimated by the City to reimburse the City for its reasonable costs incurred in connection with the application within 10 business days after the City issues a written demand for reimbursement. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be returned to the applicant.
- (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project and project site, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all structures within 250 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, either as approved by the applicable utility provider or in a preliminary form if an approved plan is not yet available, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, CPUC regulations and orders including, but not limited

to, CPUC General Order 95 and 128, and the SCJPC pole attachment rules.

- (4) **Site Plan.** The applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer or land surveyor. The survey must identify and depict all existing boundaries, encroachments, buildings, walls, fences and other structures within 75 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.
- (5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed communication facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the communication facility from a vantage point approximately 50 feet from the proposed support structure or location.
- (6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail why the proposed communication facility qualifies as a "small wireless facility" as defined by the FCC in 47 C.F.R. § 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met. Bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a "structure" as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed communication facility meets each required finding as provided in Section 2.4 of this Policy.
- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed communication facility, as well as any collocated communication facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer. The RF report must include the actual frequency and power levels (in watts effective radiated power) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas

with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

(8) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law. As an illustration and not as a limitation, such evidence may include the applicant's certificate of public convenience and necessity ("CPCN") or wireless identification registration ("WIR"). To the extent that the applicant has received an environmental approval prior to submitting the application, the applicant shall submit the approved mitigated negative declaration, or other, formal environmental approval, to provide the services and construct the communication facility proposed in the application.

(9) **Municipal Facility License Agreement.** When the installation is proposed on a City-owned structure, the City requires the applicant to enter into the City-adopted form of municipal facility license agreement for the rights to use the subject structure. In such cases, the City may require and the applicant shall submit a partially-executed license agreement on a form prepared by the City that states the terms and conditions for such use by the applicant. No changes shall be permitted to the City's form license agreement except as may be approved by the City. Any unpermitted changes to the City's form license agreement shall be deemed a basis to deem the application incomplete. Refusal to accept the terms and conditions in the City's license agreement shall be an independently sufficient basis to deny the application. The City may, but is not required to, enter into a master agreement upon an applicant's request, when multiple facilities are proposed.

(10) **Property Owner's Authorization.** The applicant must submit a written authorization signed by the non-City property owner that authorizes the applicant to submit a permit application in connection with the subject property and, if the communication facility is proposed on a utility provider-owned support structure, including support structures owned by the electrical utility, submit a written final utility design authorization from the utility. If required by the SCJPC for a pole attachment, the applicant must provide sufficient information to the electrical utility to permit it to file a Notice of Intention to Place Wireless Antenna.

(11) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer licensed by the State of California for the proposed communication facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-

emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer(s) that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable noise limits.

(12) **Justification for Non-Preferred Location or Structure.** If a facility is proposed anywhere other than the most preferred location or the most preferred structure as described in Section 2.6, the applicant shall demonstrate with clear and convincing written evidence all of the following:

- (A) A clearly defined technical service objective and a map showing areas that meets that objective; and
- (B) A technical analysis that includes the factual reasons why a more preferred location(s) and/or more preferred structure(s) is not technically feasible.

Bare conclusions that are not factually supported do not constitute clear and convincing written evidence. To the extent that the applicant seeks an administrative variance pursuant to Section 2.8, the applicant shall also demonstrate that the application meets the required findings for an administrative variance.

(b) **Additional Requirements.** The City Council authorizes the approval authority to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the approval authority finds necessary, appropriate or useful for processing any application governed under this Policy. All such requirements and materials must be in written form and be published in writing and/or on the City's website to provide all interested parties with prior notice.

SECTION 2.3. COMMUNICATION FACILITY PERMIT APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

(a) **Requirements for a Duly Filed Application.** Any application for a communication facility permit will not be considered duly filed unless submitted in accordance with the requirements in this subsection (a).

(1) **Submittal Appointment.** Unless the City establishes an alternative submittal procedure pursuant to Section 2.3(c), all applications must be submitted to the City at a pre-scheduled appointment with the approval authority. Potential applicants may generally submit either one application or up to five separate applications together as a batched application per appointment. Potential applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants for any other development project. The approval authority shall use reasonable efforts to offer an appointment within five working days after

the approval authority receives a written request from a potential applicant. Any purported application received without an appointment, whether delivered in-person, by mail or through any other means, shall not be considered duly filed, whether the City retains, returns or destroys the materials received.

- (2) **Pre-Submittal Conferences.** The City encourages, but does not require, potential applicants to schedule and attend a pre-submittal conference with the approval authority for all proposed projects that involve communication facilities. A voluntary pre-submittal conference is intended to streamline the review process through informal discussion between the potential applicant and staff that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues.
- (b) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete applications, any application governed under this Policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the approval authority within sixty (60) calendar days after the approval authority deems the application incomplete in a written notice to the applicant. As used in this subsection (b), a "substantive response" means a response that includes the materials identified as incomplete or missing, in the approval authority's notice. The approval authority, in the approval authority's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 60th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.
- (c) **Additional Procedures.** The City Council authorizes the approval authority to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants, as the approval authority deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.
- (d) **Federal Shot Clocks.** Applications shall be processed in compliance with the following federally established timelines:
 - (1) Subject to tolling provisions in this subsection "d", the City shall have sixty (60) days from the date of receipt of an application for a small wireless facility permit to collocate one or more small wireless facilities on a

structure, within which to act on the application. The foregoing period shall be ninety (90) days for applications to install one or more small wireless facilities involving no collocation, or where small wireless facilities identified in the application will be both collocated and not collocated.

- (2) Unless otherwise agreed upon in writing by the applicant and City, for an initial application to install one or more small wireless facilities, if the City notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the time for the City to act on the application is tolled, and the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the City to render the application complete.
- (3) For any resubmitted application following the City's notice of deficiency, the time for the City to act on the application shall be tolled for the number of days from:
 - (A) The day after the date when the City notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and identifies the missing documents or information that need to be submitted based on the City's original request under subsection "(d)(2)", above, until;
 - (B) The date when the applicant submits all the documents and information identified by the City to render the application complete, provided the notice pursuant to subsection "(d)(3)(A)", above is served on or before the 10th day after the date when the applicant makes a supplemental submission in response to the City's request under subsection "(d)(2)", above.
- (4) The "shot clock date" or starting date for a small wireless facility application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified in this subsection "d", provided, that if the date calculated in this manner is a local, State, or federal holiday within the City or State ("legal holiday"), the shot clock date is the next business day after such date. The term "business day" means any week day that is not a legal holiday of the City or State.
- (5) Timelines for processing applications for installation on any utility owned pole, including poles owned by the electrical utility, shall be governed by applicable FCC, CPUC, and/or SCJPC rules.

SECTION 2.4. APPROVALS AND DENIALS

- (a) **Review by Approval Authority.** The approval authority shall review a complete and properly filed application for a communication facility and may act on such application without prior notice or a public hearing.
- (b) **Required Findings.** The approval authority may approve or conditionally approve a complete and duly filed application for a communication facility permit when the approval authority finds:
 - (1) The proposed project meets the definition for a “small wireless facility” as defined by the FCC;
 - (2) The proposed facility would be in the most preferred location and on the most preferred support structure; or the proposed facility is in a less preferred location or on a less preferred support structure and the applicant has demonstrated through a meaningful comparative analysis that no more preferred location or support structure would be technically feasible and potentially available;
 - (3) The proposed facility complies with all applicable design and location standards in this Policy, the Laguna Niguel Municipal Code and any other applicable regulations;
 - (4) The applicant has shown that it can obtain any wireline communications and electrical service connections necessary to operate the communication facility and the project plans show the proposed route for all such connections between their source and the communication facility;
 - (5) The applicant has demonstrated that the proposed project will be in compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions.
- (c) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or California laws and judicial decisions, nothing in this Policy is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any communication facility permit application as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the general plan and any applicable specific plan, the Code, and/or this Policy.
- (d) **Decision Notices.** Within five calendar days after the approval authority acts on a communication facility permit application or before the applicable FCC Shot Clock expires (whichever occurs first), the approval authority shall notify the applicant by written notice. If the approval authority denies the application (with or without prejudice), the written notice must contain the reasons for the decision.

(e) **Appeals.** Notwithstanding any provision in the Laguna Niguel Municipal Code to the contrary, any decision by the approval authority shall be final and not subject to any administrative appeals.

SECTION 2.5. STANDARD CONDITIONS OF APPROVAL

(a) **General Conditions.** In addition to all other conditions adopted by the approval authority, permits issued under this Policy shall be automatically subject to the conditions in this subsection (a).

(1) **Permit Term.** Unless otherwise provided in a written agreement, the permit will automatically expire ten (10) years and one day from its issuance unless California Government Code § 65964(b) or other state or federal law authorizes the City to establish a shorter term for public safety or other reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this communication facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.

(2) **Permit Renewal.** Within one (1) year before the expiration date of the permit, the permittee may submit an application and fee for permit renewal. To be eligible for renewal, the permittee must demonstrate that the subject communication facility is in compliance with all the conditions of approval associated with this permit and all applicable provisions in the Laguna Niguel Municipal Code and this Policy that exist at the time the decision whether to renew the permit is rendered. The approval authority shall have discretion to modify or amend the conditions of approval for permit renewal on a case-by-case basis as may be necessary or appropriate to ensure compliance with this Policy. Upon renewal, this permit will automatically expire ten (10) years and one day from its issuance.

(3) **Post-Installation Certification.** Within sixty (60) calendar days after the permittee commences full, unattended operations of a communication facility approved or deemed-approved, the permittee shall provide the approval authority with documentation reasonably acceptable to the approval authority that the communication facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, and site photographs.

(4) **Build-Out Period.** Each communication facility permit will automatically expire one (1) year from the approval date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved communication facility, which includes without limitation any

construction or other permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, the communication facility or its use. If this build-out period expires, the City will not extend the build-out period, but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.

- (5) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions of the communication facility permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee shall be subject to the provisions of Laguna Niguel Municipal Code Title 11, Division 8, Article 6 to remove or remediate any graffiti or other vandalism at the site.
- (6) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject property, the communication facility or any use or activities in connection with the use authorized by the communication facility permit, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Laguna Niguel Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in the Laguna Niguel Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation.
- (7) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Laguna Niguel Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent any actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal

government agency or official with authority to declare a state of emergency within the City. The approval authority may issue a stop work order for any activities that violate this condition in whole or in part.

- (8) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the permitted improvements and equipment. City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee expressly waives any claims and releases the City in advance from any and all liabilities for such actions taken by the City as authorized herein. The permittee, if present, may observe the City's officers, officials, staff, contractors or other designees while any such inspection or emergency action occurs.
- (9) **Permittee's Contact Information.** Within ten (10) days from the final approval, the permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the communication facility, which includes without limitation such person's full name, title, direct telephone number, 24/7 emergency telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the City with updated contact information if either the responsible person or such person's contact information changes.
- (10) **Indemnification and assumption of risk.** To the maximum extent permitted by law, the permittee shall defend, indemnify and hold the City, City Council and the City's boards, commissions, agents, contractors, officers, officials, employees and volunteers (collectively, the "indemnitees"), harmless with respect to any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, stop notices, demands, lawsuits, writs and other actions proceedings ("claims") brought against any of the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this permit, and (ii) other claims of any kind or form, whether for personal or bodily injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this communication facility permit or the communication facility. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee who shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the

City's defense, and the permittee shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this section are a material consideration that motivates the City to approve this communication facility permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this communication facility permit.

The permittee understands and agrees that by locating its communication facility in the public rights-of-way, there is a real risk that some or all its facility may be damaged or destroyed. By accepting the communication facility permit and locating its facility in the public right-of-way, the permittee nevertheless expressly and knowingly assumes all such potential risks, including all costs of repair and replacement, to the extent such damage or destruction is caused by the acts or omissions of any third party, or by City agents when acting pursuant to Section 2.5(a)(8), above.

- (11) **Performance bond to remove communication facilities within public rights-of-way.** Before the City issues any construction permits required to commence construction in connection with this permit, the permittee shall post a performance bond from a surety in a form acceptable to the approval authority in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in communication facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the communication facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws and substantially to their original condition. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the approval authority shall take into consideration any information provided by the permittee regarding the cost to remove the communication facility to a standard compliant with applicable laws. The permittee shall identify the surety or bond company and provide the draft or proposed performance bond for review upon the City's request. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject communication facility in accordance with this condition.
- (12) **Permit Revocation.** The approval authority may recall this approval for review at any time due to complaints about noncompliance with applicable laws or any approval conditions attached to this approval after notice and

an opportunity to cure the violation is provided to the permittee. If the noncompliance thereafter continues, the approval authority may initiate permit revocation proceedings in accordance with Laguna Niguel Municipal Code section 9-1-113.9. Notwithstanding the preceding sentence, the City Council shall have the authority to make a final decision in the permit revocation proceeding in the first instance or on appeal.

- (13) **Records retention requirements for all communication facilities within public rights-of-way.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the permitted communication facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee. The permittee may keep electronic records; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicting provisions in the permittee's electronic copies, and complete originals will control over all other copies in any form.
- (14) **Abandoned Communication Facilities.** A communication facility shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a communication facility is abandoned or deemed abandoned, the permittee shall completely remove the communication facility and all related improvements and shall restore all affected areas to their original condition to the satisfaction of the approval authority and compliant with all applicable laws, which includes without limitation the Laguna Niguel Municipal Code. In the event that the permittee does not comply with the removal and restoration obligations under this section within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee shall be liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
- (15) **Landscaping.** To the satisfaction of the approval authority, the permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size, and same species,

as the damaged tree unless otherwise approved in writing by the approval authority. The permittee shall, at all times, be responsible to maintain any replacement landscape features, and to maintain all plants, shrubs and trees in a healthy, thriving condition.

- (16) **Cost reimbursement applicable to communication facilities within public rights-of-way.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the communication facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and monitoring, and any other recurring and non-recurring costs reasonably related to or caused by the request for authorization and the permit to construct, install and/or operate the communication facility; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs ten (10) days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the communication facility until and unless any outstanding costs have been reimbursed to the City by the permittee.
- (17) **Future undergrounding programs applicable to communication facilities within public rights-of-way.** Notwithstanding any term remaining on any communication facility permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's communication facility is located, the permittee must also underground its equipment, except the antennas and any approved electric meter or related electric-service equipment required by the utility provider to remain above ground, at approximately the same time, and in compliance with all applicable CPUC orders, rules, and regulations. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition; provided, however, that the approval authority may approve an alternative stealth/concealment plan for such equipment that complies with the City's then current design regulations. Communication facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a utility provider's pole, or streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the CPUC for undergrounding costs.
- (18) **Electric meter upgrade requirements applicable to communication facilities within public rights-of-way.** If the communication facility

includes a separate or ground-mounted electric meter pedestal and the electrical utility adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.

(19) **Rearrangement and relocation requirements applicable to communication facilities within public rights-of-way.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the right to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this communication facility permit. If the Public Works Director determines that any City work will require the permittee's communication facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's communication facility within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's communication facility without prior notice to permittee when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within ten (10) days after a written demand for reimbursement and reasonable documentation to support such costs is mailed to the permittee.

(20) **Underground Service Alert.** The permittee shall maintain and keep current its membership in DigAlert throughout the term of any small cell permit granted under this Policy. Prior to any excavation performed in the streets, the permittee shall observe and perform all notice and other obligations required under applicable laws, which includes, without limitation, California Government Code § 4216, *et seq.*, as may be amended or superseded.

- (21) **City's Standing Reserved.** The City's grant or grant by operation of law of a permit pursuant to this Policy does not waive, and shall not be construed to waive, any standing by the City to challenge any (i) FCC rules or regulations that interpret the Telecommunications Act, the Spectrum Act or (i) any permit issued pursuant to this Policy.
- (22) **Successors and Assigns.** The conditions, covenants, promises and terms contained in this permit will bind and inure to the benefit of the City and permittee and their respective successors and assigns.
- (23) **Severable Conditions.** If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (A) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (B) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (C) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.

(b) **Modified Conditions.** The City Council authorizes the approval authority to modify, add or remove conditions to any permit as the approval authority deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in Section 2.5(a) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment need for compliance with the Municipal Code, the Zoning Code, this policy, generally applicable health and safety requirements and/or any other applicable laws.

SECTION 2.6. LOCATION REQUIREMENTS

- (a) **Preface to Location Requirements.** To better assist applicants and decisionmakers understand and respond to the community's aesthetic preferences and values, subsections (b) and (c) set out listed preferences for locations and support structures to be used in connection with communication facilities in an ordered hierarchy. Applications that involve less-preferred locations or structures may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures would be technically feasible as supported by clear and convincing documentary evidence provided to the approval authority. Subsection (d) identifies "prohibited" support structures on which the City shall not approve any communication facility permit application including any application filed by any competitor or potential competitor.
- (b) **Locational Preferences in the Public Rights-of-Way.** The City prefers communication facilities to be installed at least 150 feet from any residential

dwelling unit in locations, **ordered from most preferred to least preferred**, as follows:

- (1) any location abutting a non-residential zone or non-residential Specific Plan designation; along arterial streets, then collector streets, then local streets;
- (2) if abutting a residential zone, along arterial streets, then collectors;
- (3) if located in a residential area, a location that is as far as possible from any residential dwelling unit.

(c) **Support Structures in Public Rights-of-Way.** The City prefers communication facilities to be installed on support structures in the public rights-of-way, **ordered from most preferred to least preferred**, as follows:

- (1) Existing or replacement streetlight poles;
- (2) Existing or replacement wood utility poles;
- (3) New, non-replacement streetlight poles.

(d) **Prohibited Support Structures in Public Rights-of-Way.** The City prohibits communication facilities to be installed on the following support structures:

- (1) Decorative poles;
- (2) Signs;
- (3) Any utility pole scheduled for removal or relocation within 12 months from the time the approval authority acts on the communication facility permit application;
- (4) New, non-replacement wood poles;
- (5) Poles within street medians;
- (6) Traffic signals and related structure.

(e) **Replacement Pole Locations.** All replacement poles must be:

- (1) located as close to the removed pole's location as possible;
- (2) aligned with the other existing poles along the public rights-of-way; and

- (3) compliant with all applicable standards and specifications issued by the City, which may include, without limitation, requirements related to aesthetics, materials and safety.

SECTION 2.7. DESIGN STANDARDS

(a) General Standards.

- (1) **Stealth/Concealment.** All communication facilities must be stealth to the maximum extent feasible with concealment elements, measures and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses.
- (2) **Noise.** Noise emitted from communication facilities and all accessory equipment and transmission equipment must comply with all applicable City noise control standards.
- (3) **Least Visible Equipment.** The applicant must use the smallest and least visible antennas and accessory equipment possible to accomplish the coverage objectives.
- (4) **Lights.** Communication facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas and residential structures. Any light beacons or lightning arresters shall be included in the overall height calculation. The provisions in this subsection (a)(4) shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Policy. All new or replacement street lights and street light fixtures must be aimed and shielded so that their illumination effects are directed downwards and confined within the public rights-of-way in a manner consistent with any other standards and specifications as identified or required by the approval authority.
- (5) **Landscape Features.** Communication facilities shall not displace any other existing landscape features unless first approved by the approval authority and the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscaping and landscape maintenance must be performed in accordance with all applicable provisions of the Laguna Niguel Municipal Code. Landscape maintenance may be performed by the City at the applicant's cost and expense.

(6) **Site Security Measures.** Communication facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The approval authority shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on communication facilities shall be constructed from or coated with graffiti-resistant materials.

(7) **Fire Safety.** All communication facilities shall include (A) a power shut off immediately accessible to fire service personnel, through a Knox box or similar rapid-access system, upon arrival at the scene of a fire and/or anticipated power surge due to power being turned off or on for any reason; (B) surge protection devices capable of mitigating a direct or partial direct lightning discharge; (C) surge protection devices capable of mitigating significant electrical disturbances that may enter the communication facility via conductive cables; (D) at least one-hour fire resistant interior surfaces to be used in the composition of all structures; and (E) monitored automatic fire notification and suppression systems for all communication facilities.

(8) **Signage; Advertisements.** All communication facilities must include signage or a tamper proof tag not to exceed one (1) square feet in sign area that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free, 24/7 emergency number to the owner/operator's network operations center. Communication facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, Occupational Safety and Health Administration or other United States governmental agencies for compliance with RF emissions regulations.

(9) **Compliance with Health and Safety Regulations.** All communication facilities shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, *et seq.*).

(10) **CPUC and SCJPC Rules, Regulations, and Orders.** Communication facilities must comply with all applicable rules, regulations and orders of the CPUC, as the same may be amended or superseded from time to time. Such CPUC rules, regulations and orders include, but are not limited to, General Order 95 and 128 which establish minimum separation from electrical lines. Communication facilities proposed to be attached to poles owned or operated by the electrical utility, must also comply with all applicable rules and regulations of the SCJPC.

(b) **Communication Facilities.**

(1) **Antennas.**

- (A) **Concealment.** All antennas and associated mounting equipment, hardware, cables, or other connectors must be completely concealed within an opaque antenna shroud, radome, or other enclosure approved by the approval authority. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure.
- (B) **Antenna Volume.** Each individual antenna may not exceed three cubic feet in volume.
- (C) **Placement.** Antennas should be placed above the pole, unless the approval authority finds that an alternative placement results in an aesthetically superior design based on site-specific circumstances.
- (D) **Overall Height.** No antenna may extend more than 5.5 feet above the support structure plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations. No new support structure, including the antenna(s), may exceed 35 feet in overall height.

(2) **Accessory Equipment.**

- (A) **Installation Preferences.** All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred: (i) underground in any area in which the existing utilities are primarily located underground; (ii) within the pole-top antenna shroud as shown in Exhibit 1; (iii) side-mounted to the pole; (iv) within the pole or support structure; (v) integrated into the base of the pole or support structure; or (vi) ground-mounted in a concealed manner. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically feasible as supported by clear and convincing documentary evidence provided to the approval authority.

Exhibit 1



(B) **Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Vault lids shall not exhibit logos or commercial advertisements. Applicants shall not be permitted to install an underground vault in a location that: (i) would cause any existing tree to be materially damaged or displaced or (ii) does not comply the City's minimum sidewalk standards and applicable law, which includes without limitation compliance with the ADA.

(C) **Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment that is not installed within the pole-top antenna shroud must be installed flush to the pole to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted between the accessory equipment and the pole shall be the minimum separation required by such regulations. All pole-mounted equipment and required or permitted signage must be placed and

oriented away from adjacent sidewalks and structures. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying support structure. Exposed cables or wires are prohibited.

- (D) **Base-Mounted Accessory Equipment.** All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.
- (E) **Ground-Mounted Accessory Equipment.** The approval authority shall not approve any ground-mounted accessory equipment including, but not limited to, any utility or transmission equipment, pedestals, cabinets, panels or electric meters, unless specific and unique conditions of the site would make ground mounting less aesthetically and visually intrusive to public view, than an otherwise preferred location, as documented in writing by the approval authority. On collector roads and local roads, the city prefers ground-mounted accessory equipment to be concealed as follows: (i) within a landscaped parkway or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; and (ii) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks. On arterial roads outside underground utility districts, ground-mounted accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets.
- (F) **Accessory Equipment Volume.** All accessory equipment associated with a communication facility authorized by the approval authority to be installed above ground level shall not cumulatively exceed: (i) nine (9) cubic feet in volume if installed in a residential district; or (ii) seventeen (17) cubic feet in volume if installed in a non-residential district. The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-

antenna accessory equipment. The volume calculation shall not include any equipment or other improvements placed underground.

- (3) **Streetlights.** The City may require applicants that propose to install communication facilities on an existing streetlight to remove and replace the existing streetlight with one substantially similar to the design(s) for communication facilities on streetlights described in any and all applicable City and/or electrical utility policies and standards, as applicable. To mitigate any material changes in the streetlighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.
- (4) **Wood Utility Poles.** To the extent permitted or allowed by the SCJPC pole attachment rules or regulations, applicants that propose to install communication facilities on an existing wood utility pole must install all antennas in a radome above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the radome and stand-off bracket. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.
- (5) **New, Non-Replacement Poles.** Applicants that propose to install a communication facility on a new, non-replacement pole must install a new streetlight substantially similar to the City's and/or electrical utility's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, then, subject to approval of the approval authority and electrical utility, if applicable, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.
- (6) **Encroachments over Private Property.** Communication facilities may not encroach onto or over any private or public property outside the public rights-of-way without the property owner's prior written consent.

(7) **Backup Power Sources.** The approval authority may approve secondary or backup power sources on a case-by-case basis. The approval authority shall not approve any permanent backup power generators within the public rights-of-way; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.

(8) **Obstructions; Public Safety and Circulation.** Communication facilities and any associated equipment or improvements shall not physically interfere with or impede access to any: (A) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (B) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (C) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (F) access to any fire escape. Authorized above ground improvements must be setback a minimum of 2 feet from existing or planned sidewalks, trails, curb faces or road surfaces.

(9) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated communication facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.

(10) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.

(11) **Electric Meters.** Communication facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. The approval authority shall not approve

a separate ground-mounted electric meter pedestal unless required by the electrical utility.

(12) **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with communication facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain comparably sized replacement trees approved by the approval authority at the site for the duration of the permit term.

(13) **Lines of Sight.** No communication facility shall be located so as to obstruct pedestrian or vehicular lines-of-sight or sight distance, or in any other location determined by the City's traffic engineer as creating any risk to the public health and safety.

SECTION 2.8. ADMINISTRATIVE VARIANCE.

(a) **Preface.** The provisions in this section establish a procedure by which the City may grant an administrative variance to the standards in this Policy but only to the extent necessary to avoid conflict with applicable federal or state law. Each administrative variance is specific to the facts and circumstances in connection with each application. The applicant shall have the burden to prove to the approval authority that an administrative variance should be granted pursuant to this section. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an administrative variance. An administrative variance granted in one instance shall not be deemed to create a presumption or expectation that an administrative variance will be granted in any other instance.

(b) **Required Findings.** The approval authority shall not grant any administrative variance pursuant to this section unless the approval authority finds all the following:

- (1) the applicant has provided the approval authority with a reasonable and clearly defined technical service objective to be achieved by the proposed communication facility;
- (2) the applicant has provided the approval authority with a detailed written statement that explains why: (A) a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law or both; or (B) a provision in this Policy, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law;

- (3) the applicant has provided the approval authority with a written statement that contains a detailed and fact-specific explanation as to why the proposed communication facility cannot be deployed in compliance with the applicable provisions in this Policy, the Laguna Niguel Municipal Code and any other applicable regulations;
- (4) the applicant has provided the approval authority with a meaningful comparative analysis with the factual reasons why all alternative locations and/or designs identified in the administrative record are not technically feasible or potentially available to reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed communication facility;
- (5) the applicant has demonstrated that the proposed location and design is the least non-compliant configuration that will reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed communication facility, which includes without limitation a meaningful comparative analysis into multiple smaller or less intrusive facilities dispersed throughout the intended service area; and
- (6) the administrative variance is narrowly tailored such that any deviation from this Policy is only to extent necessary for compliance with federal or state law.

SECTION 2.9. PRE-APPROVED DESIGNS

- (a) **Preface.** To expedite the review process and encourage collaborative designs among applicants and the City, the City Council authorizes the approval authority to designate one or more pre-approved designs for communication facilities. This section sets out the process to establish or repeal a pre-approved design and the expedited review procedures and findings applicable to these applications.
- (b) **Adoption.** The approval authority, in the approval authority's discretion, may establish a pre-approved design when the approval authority finds that a proposed pre-approved design would be (i) in substantial conformance with the applicable development standards in this Policy and (ii) compatible with the areas in which the pre-approved design would be available. The approval authority shall post a public notice at City Hall and on the City's website. The notice must generally describe the pre-approved design, include a photograph or photo simulation, specify whether the pre-approved design would be limited or restricted in any areas. The pre-approved design shall become effective 15 days from the notice required in this section. A decision by the approval authority not to adopt a proposed pre-approved design or the approval authority's failure to act on a request for a proposed pre-approved design is not appealable.

- (c) **Repeal.** The approval authority may repeal any pre-approved design by notice posted at City Hall and on the City's website. The repeal shall be immediately effective. The approval authority's repeal, refusal to repeal or failure to act on a request to repeal a pre-approved design is not appealable.
- (d) **Nondiscrimination.** An established pre-approved design may be used by any applicant, whether the applicant originally initiated the pre-approval process or not. The approval authority's decision to adopt a pre-approved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the pre-approved plans. Any other vendor or manufacturer that fabricates a communication facility to the standards and specifications in the pre-approved design with like materials, finishes and overall quality shall be acceptable as a pre-approved design.
- (e) **Modified Findings for Approval.** For any complete permit application using a pre-approved design, the approval authority shall presume that the proposed project complies with the findings required under Sections 2.4(b)(1) and 2.4(b)(3). No such presumption shall be applicable to the required findings under Sections 2.4(b)(2) and 2.4(b)(4)-(5).

SECTION 3. VIOLATIONS

Any use or condition caused or permitted to exist that violates any provision in this Policy shall be and hereby is declared a public nuisance and may be subject to summary abatement and citations as set forth the Laguna Niguel Municipal Code, remedies provided under California Code of Civil Procedure Section 731, California Government Code Section 38773, and/or any other remedy available to the City.