



**BOARD OF SUPERVISORS AGENDA ITEM REPORT  
CONTRACTS / AWARDS / GRANTS**

Award  Contract  Grant

Requested Board Meeting Date: June 12, 2018

\* = Mandatory, information must be provided

or Procurement Director Award

**\*Contractor/Vendor Name/Grantor (DBA):**

Simply Bits, LLC, an Arizona Limited Liability Company ("Simply Bits" or "Company")

**\*Project Title/Description:**

Master Agreement for Small Cell Wireless Communications Equipment in Right-of-Way and on County Facilities. Lic-0290.

**\*Purpose:**

The Master Agreement establishes terms and conditions under which Simply Bits may install, operate and maintain small cell wireless telecommunications equipment and related ground equipment on (A) "County Facilities", which are: 1) County-owned street light poles and traffic light poles in or above the public right of way ("ROW") and 2) other County-owned structures in the ROW that County determines to be suitable for use of such equipment; and (B) "TP Poles" which are third-party poles in the ROW that are suitable for use of such equipment; and (C) "CO Poles" which are company supplied and company owned poles, within unincorporated Pima County ROW.

**\*Procurement Method:**

Exempt pursuant to Pima County Code Section 11.04.020.

**\*Program Goals/Predicted Outcomes:**

To stipulate the terms and conditions under which Simply Bits may install, operate and maintain small cell wireless telecommunications equipment within unincorporated Pima County via the subject Master Agreement.

**\*Public Benefit:**

The Master Agreement sets forth the terms which will govern Simply Bits' right to occupy County right of way to operate and maintain small cell wireless telecommunications equipment for its cell phone provider companies wishing to locate on such equipment at the locations for which permits are granted in unincorporated Pima County ROW.

**\*Metrics Available to Measure Performance:**

Simply Bits to provide certificate of insurance and pay fees and rates as stipulated in the Master Agreement; obtain permits as required; comply with highway safety and construction standards; exercise care and restore County roadways or facilities as warranted; and provide written notice of change to use of facility.

**\*Retroactive:**

No.

*TO: COB 5-25-18 (1)  
Vers.: 1  
pgs.: 16*

**Contract / Award Information**

Document Type: CTN Department Code: PW Contract Number (i.e., 15-123): 18\*0171

Effective Date: 6/12/2018 Termination Date: 6/11/2028 Prior Contract Number (Synergen/CMS): \_\_\_\_\_

Expense Amount: \$\* \_\_\_\_\_  Revenue Amount: \$ 0.00

**\*Funding Source(s) required:**

Funding from General Fund?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

Contract is fully or partially funded with Federal Funds?  Yes  No

**\*Is the Contract to a vendor or subrecipient?**

Were insurance or indemnity clauses modified?  Yes  No

*If Yes, attach Risk's approval*

Vendor is using a Social Security Number?  Yes  No

*If Yes, attach the required form per Administrative Procedure 22-73.*

**Amendment / Revised Award Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_

Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_

Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_

Prior Contract No. (Synergen/CMS): \_\_\_\_\_

Expense or  Revenue  Increase  Decrease Amount This Amendment: \$ \_\_\_\_\_

Is there revenue included?  Yes  No If Yes \$ \_\_\_\_\_

**\*Funding Source(s) required:**

Funding from General Fund?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

**Grant/Amendment Information** (for grants acceptance and awards)  Award  Amendment

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Grant Number (i.e., 15-123): \_\_\_\_\_

Effective Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Amendment Number: \_\_\_\_\_

Match Amount: \$ \_\_\_\_\_  Revenue Amount: \$ \_\_\_\_\_

**\*All Funding Source(s) required:**

\*Match funding from General Fund?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Match funding from other sources?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Funding Source: \_\_\_\_\_

**\*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?**

Contact: Michael D. Stofko

Department: Real Property Services Telephone: 520-724-6667

Department Director Signature/Date:  5/17/2018

Deputy County Administrator Signature/Date:  5/21/18

County Administrator Signature/Date:  5/22/18

*(Required for Board Agenda/Addendum Items)*



CONTRACT	
NO.	<u>CTN-PW-18-171</u>
AMENDMENT NO.	_____
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

**PIMA COUNTY  
LICENSE**

**MASTER AGREEMENT FOR SMALL WIRELESS TELECOMMUNICATION EQUIPMENT  
IN RIGHT-OF-WAY AND ON COUNTY FACILITIES**

This Master Agreement for Small Wireless Telecommunication Equipment In Right-Of-Way and on County Facilities ("Agreement") is made as of the Effective Date (as defined in Section 29), between Pima County, Arizona, a political subdivision of the State of Arizona ("County") and Simply Bits, LLC, an Arizona limited liability company ("Company"). Each of County and Company is sometimes referred to as a "Party." Collectively, they are the "Parties."

**RECITALS**

A. Company desires to install, place, operate, manage, and maintain wireless telecommunications Equipment (defined in Section 1.2) and related Ground Equipment (defined in Section 1.4) on (A) "County Facilities," which are (i) County-owned street light poles and traffic light poles in or above the public right-of-way ("ROW") and (ii) other County-owned structures in the ROW that County determines to be suitable for use of Equipment, (B) "TP Poles," which are third-party poles in the ROW that are suitable for use of Equipment, and/or (C) "CO Poles," which are Company supplied and Company owned poles.

B. Company agrees to comply with County's ROW or other use requirements for licensing the installation, placement, operation and maintenance of its Equipment on County Facilities, TP Poles and/or CO Poles. At Company's sole cost and expense, Company must perform all activities on County Facilities and TP Poles and/or CO Poles relating to any of the Equipment and any Ground Equipment.

C. This Agreement does not apply to County-owned property, like County buildings or County-owned communications towers that are not located in the ROW.

The Parties agree as follows:

1. County Facility; Equipment Permitted; Definitions.

1.1 This Agreement sets out the terms and conditions on which Company may install, place, operate, manage and maintain certain Equipment on County Facilities, TP Poles and/or CO Poles.

1.2. Under this Agreement the wireless telecommunications equipment ("Equipment") that is permitted on County Facilities, TP Poles and/or CO Poles at any approved site ("Site") consists of and is limited to:

1.2.1 Above-ground and ground-based equipment that is used solely for transmitting, processing and receiving voice and data wireless telecommunications services in the operation of facilities that comprise at each Site an antenna array through which third parties provide Personal Wireless Service (defined in Section 1.5) ("Antenna Array"). Equipment

includes radios approved by the Federal Communications Commission ("FCC") to provide Personal Wireless Service ("Licensed or Unlicensed Radios"); and

1.2.2 One or more fiber optic or ethernet cables leading from the Antenna Array at each Site along a common route, to the extent feasible, to the ground-based equipment that supports and directly connects to the Site. Except as approved by County, the fiber optic or ethernet cables must run inside of the pole (or stealth antenna structure) and then underground to ground-based equipment (of Company or an Affiliate) that serves the Site, unless the ground equipment is located directly next to the pole and/or the pole is not metal or hollow in nature. Each fiber optic or ethernet cable includes appurtenant conduit, manholes, handholes, pull boxes, fittings, access points, and similar supporting furnishings and improvements.

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

1.4 The term "Ground Equipment" means any ground-mounted cabinet or other enclosure (including cabling and other materials that connect to the Antenna Arrays) that Company requests to install, operate, manage and maintain in the ROW at a Site.

1.5 The term "Personal Wireless Service" means any FCC-licensed or unlicensed commercial wireless telecommunications services including cellular, personal communications services, specialized mobile radio, enhanced specialized mobile radio, and common carrier wireless exchange access services.

1.6 The term "Qualified Service Provider" means a person, other than Company, that has all applicable FCC and other authorizations required to transmit, process and receive Personal Wireless Services through Licensed or unlicensed Radios.

## 2. Equipment; Limitations.

2.1 Equipment that may be permitted includes: antennas attached to existing or replacement vertical elements or poles; antennas mounted to a vertical element that is stealth or otherwise concealed; antennas mounted on new vertical elements or poles that are neither stealth, nor concealed; and ground equipment associated with any approved Equipment including but not limited to electrical meters, solar panels and battery backup units.

2.2 Subject to County approval as provided herein, this Agreement authorizes Company to mount, operate and maintain Antenna Arrays on County Facilities, TP Poles and/or CO Poles. For all Sites that include poles owned or controlled by a third party, Company shall maintain in effect the third party's approval to use the poles or other structures.

2.3 An Antenna Array that accommodates more than five (5) co-located tenants must be approved by the County Administrator or his designee. Except as the County agrees in its sole discretion, the size of Antenna Arrays at each County Facility, TP Pole and/or CO Pole will be limited to antennae and radios that are used to provide Personal Wireless Service with each occupying no more than six (6) cubic feet for all antennas or antennas that would fit into an imaginary box with total volume of six (6) cubic feet per ARS Sections 11-1801, et seq. on a single County Facility or a TP Pole or CO Pole.

2.4 Replacement poles or stealth antenna structures may be installed at a Site at Company's expense with County approval (which may include accommodation or co-location of

County or third-party antenna arrays) where no suitable existing street light or traffic light poles or other technically suitable County or third-party structures are available in the vicinity of the Site. Company may proceed at its sole cost and expense to replace the County Facility. A replacement pole that Company includes in the Network Design is subject to acceptance and approval by County, and remains a County Facility pursuant to ARS §11-1803(B)(2).

2.5 Where no suitable existing street light or traffic light poles or other technically suitable County or third party structures are available in the vicinity of the Site, County may authorize Company to install a new pole (including a free-standing monopole) at a Site. Company may install the new pole at a Site at Company's expense with County approval (which may include accommodation or co-location of County or third party antenna arrays). A new pole that Company includes in the Network Design is subject to acceptance and approval by County. Co-location of County equipment on the pole, pursuant to Section 5.2 below, (at County expense) shall be at no rental to County. Upon expiration or termination of this Agreement, Company shall dedicate such pole to County as a County Facility.

2.6 The Antenna Array must be finished to match the color of the pole or as reasonably approved by County.

2.7 Screening may be required for the placement of Ground Equipment per ARS Sections 11-1801 et seq. requirements. Ground Equipment shall not obstruct public thoroughfares, pedestrian pathways (i.e., trails, sidewalks, etc.), or sight visibility triangles. If screening is required, Ground Equipment shall be powder coated to match nearby site walls, building color, or with neutral earth tones to blend with the environment where no built elements are nearby, unless waived by the County Administrator. A concrete masonry wall or wall of alternate non-transparent material as approved by the County, matching the existing surroundings shall be constructed around the Ground Equipment in order to screen the Ground Equipment from view from any public access points.

2.8 Company shall allow only a Qualified Service Provider to use the Equipment to provide Personal Wireless Service. All Equipment shall be owned by Company (or an Affiliate), except that by agreement with Company, a Qualified Service Provider may own and/or operate the Licensed or unlicensed Radios, antenna arrays and related equipment. Company is not authorized to and shall not use the Equipment to offer or provide any other services not specified herein.

2.9 In addition to its other obligations under this Agreement, Company has the responsibility to obtain the approval of the third-party owner or controller of a TP Pole for use of and attachment to the third-party's pole and to meet the terms and conditions of this approval including removal or replacement of the TP Pole and provision of electric power to the attached Equipment.

2.10 Except as set forth in Section 2.8, this Agreement does not authorize, and Company shall neither permit nor obligate itself to permit, a Qualified Service Provider to mount, operate, manage or maintain Equipment (i) on County Facilities or (ii) on TP Poles.

3. Site Selection. Company will propose Sites in a manner and form agreed to by the Parties. Company will separately propose County-owned or controlled Sites and third party owned or controlled Sites. Sites with both County and third-party owned or controlled poles or other structures shall be applied for singly.

3.1 County staff will inform Company within thirty (30) business days whether it approves the location of the proposed Site(s). Such approval is only for the purposes of approval by staff of the proposed site locations under this Agreement and does not constitute approval by County of engineered site plans, issuance of a required building permit, design review or other zoning or regulatory approval.

3.2 In proposing a Site with poles or other structures owned or controlled by a third party, Company shall maintain on file with the County documents showing, and shall aver in each application, that it has the approval of the third party owning or controlling the poles or other structures at the Site to use them as Company proposes.

3.3 Attached as **Exhibit B** incorporated by this reference is an illustrative rendition of a CO Pole and ground mounted equipment.

4. Construction Requirements. Construction at a Site may not begin until the following conditions are satisfied:

4.1 A Permit for Construction or Removal has been issued pursuant to the Pima County Code. A separate permit is required each time construction activity for Equipment is performed on County Facilities, TP Poles and/or CO Poles under this Agreement. If antenna arrays or ground equipment are replaced within the same footprint, as required by ARS Sections 11-1801 et seq., Company will not need an additional permit.

4.2 All development review, zoning, and other required approvals have been granted.

4.3 Any and all other requirements of this Agreement and all applicable laws, rules, and regulations are satisfied.

5. Use Limitations.

5.1 All construction, maintenance, and other activities relating in any way to the construction, installation, repair, maintenance, operation, service, replacement, removal or otherwise relating to the Equipment, including without limitation any restoration of, affected County or third-party improvements must be performed by Company or its Affiliate (or its contractors or agents) entirely at Company's or its Affiliate's expense. This Agreement does not waive any rule or regulation pertaining to installation, construction, maintenance, or operation of the Equipment. This Agreement does not authorize Company to place anything other than the permitted Equipment at any Site or on County Facilities, TP Poles and/or CO Poles. Company is responsible to provide for electricity or other utility services required for the Equipment on County Facilities. Company agrees to pay all charges for such utilities and services directly to the supplier thereof. County will not be liable in any way to Company for any failure or defect in the supply or character of utilities furnished to the Equipment by reason of any requirement, act or omission of the provider of such service or for any other reason.

5.2 Company may without charge allow County to place County equipment on a pole to which Company Equipment is attached and that is a CO Pole.

5.2.1 County's equipment shall be purchased, installed and maintained, at the expense of County, and must be kept and maintained at all times in a good state of repair and maintenance and in compliance with all laws, rules and regulations of any and all governmental authorities. Company assumes no responsibility for the licensing, operation or maintenance of the County's equipment.

5.2.2 County shall arrange for and pay for power to its equipment.

5.2.3 County agrees not to damage Company's Equipment or any personal property or fixtures thereon in any way. County shall be responsible and liable for any such damages.

5.2.4 Installation of any County Equipment upon a pole shall be conditioned upon review and approval of a structural report and completed plans submitted by County, which approval of Company shall not be unreasonably withheld. If Company determines that improvements to the pole are necessary to support County's equipment, then Company may

condition approval of County's equipment upon completion of the improvements. Any pole improvements shall be completed by Company, or its contractors, at County's expense.

5.2.5 County agrees that its equipment shall not cause interference to the use or enjoyment of the property of Company and other licensees located at the Premises, including but not necessarily limited to interference with radio communication facilities. If County's equipment causes interference to Company's use or enjoyment, County agrees immediately to cease operations until such interference is removed by County, at its sole expense.

5.2.6 Company must approve in writing all contractors and personnel County selects to install, maintain and operate the equipment, which approval shall not be unreasonably withheld. County shall maintain and operate its system so as not to damage or interfere with Company's use of the pole and Equipment. County shall require its contractors to provide Company with certificates of insurance for commercial general liability and commercial automobile liability showing the current status of all insurance policies, which shall meet all the requirements County imposes on Company under Section 26.1. Company shall be included as an additional insured as its interest may appear on the commercial general liability and automobile liability insurance policies.

5.2.7 Company assumes no responsibility for the licensing, operation, and/or maintenance of County's equipment.

5.2.8 Company shall not be liable for injury or damage to any person or property occurring within or on a Pole under use by County unless caused by or resulting from the negligence of the Company, its servants, agents or employees.

5.2.9 Maintenance of County's equipment shall be in accordance with the reasonable standards and requirements of Company and shall be done under Company's supervision. Scheduling of any work will be coordinated with Company.

5.2.10 All of County's equipment mounted on the pole must be attached securely to the tower with approved mounts, hangers, and clamps as directed by Company. All cables and wires entering or exiting equipment must do so in a manner approved by Company.

5.3 Company must replant any trees or other significant vegetation removed during construction on a Site, in a location and a manner reasonably satisfactory to County; provided, Company shall not be responsible for maintaining any vegetation after planting.

5.4 Work at the Site must be performed in a good and workmanlike manner and in accordance with all applicable requirements of local ordinances, including zoning, and all rules, regulations, and requirements of all departments, boards, bureaus, officials, and authorities having jurisdiction thereof.

5.5 Company must timely pay all contractors, subcontractors, mechanics, laborers, or materialmen providing materials or services with respect to the Site and must not permit any lien to attach to the County Facilities or any interest therein and must indemnify and defend County against all legal costs and charges resulting from any such lien.

5.6 Company shall commence construction at a Site within six (6) months after County approval of site permits and complete construction at a Site within four (4) months after commencement or per ARS Sections 11-1801 et seq. requirements whichever is greater.

6. Term. This Agreement will terminate ten (10) years from the Effective Date. The parties may jointly agree to extend the term of this Agreement for up to two (2) successive five (5)-year periods, but any extensions require the written agreement of both Parties in their sole discretion.

6.1 Upon termination of this Agreement by either Party, within thirty (30) days after termination Company must remove from County Facilities, TP Poles and/or CO Poles all

Equipment installed under this Agreement and restore the County Facilities to their preexisting condition, reasonable wear and tear excepted. Nothing in this Agreement limits County's rights to cause Company to remove any of the Equipment pursuant to the terms of this Agreement. All of the Equipment shall be deemed and remain Company's personal property and is not fixtures. Company has the right to remove the Equipment at its sole expense on or within thirty (30) days after the expiration or earlier termination of this Agreement, and Company shall repair any damage to County Facilities caused by that removal, reasonable wear and tear excepted.

7. Fees. Except as otherwise provided in this Agreement, including but not limited to Section 8, no payment by Company to County under this Agreement is refundable for any reason. Company shall pay to County the following amounts:

7.1 Fees and Rates as set forth in Exhibit A

7.2 Unless otherwise notified by County under Section 23, Company shall deliver all payments to County that are not made at the point of service in the ordinary course of business to:

Pima County Revenue Management  
130 W. Congress St  
Mail Stop: DT-BAB6-401  
Tucson, Arizona 85701

8. Abandonment of Equipment. Subject to the procedures set forth herein, any Equipment installed under this Agreement that remains on any Site after the termination of this Agreement, whether the termination occurs by lapse of time or otherwise, will constitute and be construed abandoned equipment. Subject to the procedures set forth herein, County has the right to remove any such abandoned Equipment and Company will reimburse County for County's actual costs incurred in removing and disposing of the Equipment.

9. Assignments. This Agreement shall not be assigned by Company without the express written consent of the County. Notwithstanding the foregoing, the transfer of the rights and obligations of Company (i) to an Affiliate or (ii) to any successor in interest or entity acquiring fifty percent (50%) or more of Company's stock or assets (collectively "Exempted Transfers") shall not require the consent of the County, provided that with regard to a successor in interest or entity acquiring fifty percent (50%) or more of Company's stock or assets: (a) such transferee will have a financial strength after the proposed transfer sufficient to fully perform Company's obligations hereunder; (b) any such transferee assumes all of Company's obligations hereunder, including all obligations and/or defaults under this Agreement occurring prior to the transfer (whether known or unknown), signed by a Company representative authorized to do so; (c) the experience and technical qualifications of the proposed transferee, either alone or together with Company's management team, in the provision of telecommunications service, evidences an ability to operate the Company Facilities; and (d) the transferee has a valid County business license. Notwithstanding the foregoing, the consent or approval of County is not required for any contract or license entered into between Company and any third-party related to such third party's use of Company's Equipment.

10. Nature of Rights. County grants no exclusive rights under this Agreement. County does not warrant County's title to County's Facilities. Subject to Section 12 of this Agreement, County agrees not to install, or permit others to install, equipment on County Facilities that will interfere with the operation or maintenance of Company's Equipment. Under this Agreement Company agrees not to use any County Facilities contrary to or beyond any limits of County's rights in such County Facilities. Company will hold no real property rights of any sort under this Agreement. Company will have no power to create a lien upon County Facilities or other



County property. Company agrees not to record or file, or permit to be recorded or filed, any document affecting or mentioning the County Facility unless the document mentions the County Facility solely for the purpose of identifying personalty located there not owned by County. Any document permitted to be filed or recorded must contain this sentence in the body of the document:

PURSUANT TO A MASTER AGREEMENT FOR WIRELESS TELECOMMUNICATION EQUIPMENT IN RIGHT-OF-WAY AND ON COUNTY FACILITIES WITH PIMA COUNTY, ARIZONA, NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, NO PARTY TO THIS DOCUMENT CLAIMS ANY REAL PROPERTY INTEREST IN ANY PIMA COUNTY RIGHT-OF-WAY OR OTHER REAL PROPERTY MENTIONED IN THIS DOCUMENT.

The rights of anyone using County Facilities pursuant to this Agreement are derivative of Company's rights under this Agreement. This Agreement controls any variation between this Agreement and any other agreement concerning the Equipment to which Company is or may be a party. County is not bound by any agreement to which County is not a party.

11. No Warranties. County Facilities are made available by County "as is" without any warranty of any description regarding conflicting uses, physical condition, legal condition or any other circumstance affecting in any way its suitability, fitness or availability for Company's use.

12. Relocation. Company specifically agrees that Company's sole remedy for any requirement by County for removal or relocation of Equipment from County Facilities that is necessary for the development of a County project will be exclusively pursuant to this Agreement and Company specifically disclaims and waives any rights to any reimbursement from County for relocation of Equipment which is necessary for the development of a County project.

In making decisions whether County may install, add to, reduce, reconfigure, remove, abandon, repair, replace or otherwise modify the County Facilities or any existing or future improvements in the County Facilities which are related to a County project, County will have the right to disregard the consequences of any modification of the County Facilities on the Equipment, and County will have no liability for relocation of the Equipment that might be necessary as a result of its work on the County Facilities. Without limitation, if any Equipment is required to be relocated as a result of a County project, Company will have no right to object to, or make a claim against County for the cost of relocation. If County requires the removal or relocation of the Equipment, County shall provide Company with at least one hundred twenty (120) days' prior written notice of the required completion date for such removal or relocation.

13. Taxes. Company will indemnify, pay, defend and hold County harmless against any personal or real property tax imposed on Company's Equipment regardless of how calculated or denominated.

14. Equipment Modifications. Unless specifically waived by County in writing, Company shall notify County of any modification of Equipment, and County may require Company to obtain new approvals as if the Equipment were being installed at a new Site. Notwithstanding the prior sentence, no new approval will be required for Equipment modifications to the extent that: (i) such modification to the Equipment involves only substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of the Equipment, as previously approved by County; or (ii) such modification involves replacement of the Equipment or a component of the Equipment with Equipment or a component that is the same, or smaller in weight and dimensions as the approved Equipment or component.

15. Conflicting Improvements and Technology. Company may not install or permit colocation of Equipment by a third party which would interfere in any way with any County or other public communications equipment.

16. Hazardous Materials. Company may not produce, dispose, transport, treat, use or store any hazardous waste or materials or toxic substance or any substance upon or about the County Facilities and TP Poles in violation of the Arizona Hazardous Waste Management Act, A.R.S. § 49-901 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., or any other federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Toxic Substances"). Company may not use the County Facilities and TP Poles in a manner inconsistent with regulations issued by the State of Arizona, or in a manner that would require a permit or approval related to Toxic Substances from the Arizona Department of Health Services or any governmental agency other than County. Company will pay, indemnify, defend and hold County harmless against any loss or liability incurred by reason of any Toxic Substance produced, disposed, or used by Company on or affecting the County Facilities and TP Poles attributable in any way to any activity by Company pursuant to this Agreement, and must immediately notify County of any Toxic Substance at any time discovered or existing upon the County Facilities and TP Poles in violation of applicable law. Company must cause any on-Site or off-Site storage, treatment, transportation, disposal or other handling of Toxic Substance by Company in connection with the County Facilities and TP Poles to be performed by persons, equipment, facilities and other resources who are properly trained, authorized, licensed and otherwise permitted to perform those services.

17. Force Majeure. If a Party is delayed or hindered in, or prevented from performance by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of like nature not the fault of the Party delayed in performing, then that Party is excused from performance for the period of delay that may not exceed sixty (60) days.

18. Default.

18.1 Any failure by Company or County to perform that is not cured within thirty (30) days after notice by the other Party of that failure will be a default. In the event of default, either Party will have any remedies that are permitted by applicable law. In the event of default by Company, in addition to termination of this Agreement and any other available remedies, County will have the right to perform Company's obligations at Company's expense. Such right will not include the right of County to operate the Equipment at a Site or the associated ground-based equipment, unless County determines that, due to an emergency, County needs to cure Company's non-performance to protect the public health, safety and welfare.

18.2 Should County fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Agreement, such failure or delay may not be deemed a waiver, release or modification of the requirements of this Agreement or of any of its terms or provisions. Company's failure to fulfill any obligation, or violation of any provision or covenant, of this Agreement may not be construed as changing the terms of, or prevent County from enforcing any provision of this Agreement. The acceptance of payments by County for any period after a default by Company may not be deemed a waiver of County's right to exercise its remedies under this Agreement for breach. Expiration or other termination of this Agreement will not terminate Company's obligations or liability for breach arising prior to, or at the time of expiration or termination.

18.3 If a notice and opportunity to cure period is not otherwise specified in this Agreement, Company will have thirty (30) business days after receipt of written notice to cure

any breach, unless County has agreed to an extension of time in writing. However, if the nature of the cure reasonably requires more than thirty (30) business days and Company commences the cure within the thirty (30)-business day period and continuously and diligently pursues the cure to completion, then Company will have such extended period as is reasonably required. In no event will the cure period exceed one hundred twenty (120) business days unless specifically authorized in writing by County.

19. Miscellaneous. Any consent required from County must be obtained in writing from the County Administrator. The County Administrator may designate other County officials to give approvals, consents and waivers and take other actions provided for herein. This Agreement will be governed by Arizona law without regard to choice of law rules. This Agreement constitutes the entire agreement between the parties and supersedes all related prior negotiations, understandings, or agreements. This Agreement does not waive or suspend any law, regulation, or rule relating to Company activities. This Agreement does not create any partnership, joint venture or similar relationship between County and Company. All County reviews, inspections and approvals are solely for County's benefit.

20. Government Property Lease Excise Tax. A.R.S. § 42-6206 requires notice that Company will be responsible for any and all government property lease excise taxes described in A.R.S. § 42-6201 *et seq.* or similar laws. Although it is not anticipated at the inception of this Agreement, if Company later constructs any structures to which lease excise taxes apply, then failure by Company as lessee to pay the tax(es) after notice and an opportunity to cure is an event of default that could result in divesting Company of any interest in or right of occupancy of the County Facilities.

21. Conflict of Interest. This Agreement is subject to cancellation within three (3) years after its execution pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of County or Company, at any time while this Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement with respect to the subject matter of the Agreement.

22. Legal Worker Requirements; Nondiscrimination.

22.1. County is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Company agrees that:

- A. Company and each subcontractor it uses under this Agreement warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A).
- B. A breach of warranty under paragraph A shall be deemed a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- C. County retains the legal right to inspect the papers of Company or subcontractor employee(s) who perform work under this Agreement to ensure that Company or subcontractor is complying with the warranty under paragraph A.

22.2. Company agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. During the performance of this Agreement, Company shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.



25.4.1 At least thirty (30) days before a performance bond is required, Company will give County notice containing a copy of the proposed form of performance bond, along with a copy to County's Finance Director.

25.4.2 Company will cause the original performance bond to be delivered to County's Finance Director.

25.4.3 Company will pay all costs associated with the performance bond, regardless of the reason or manner such costs are required.

25.5 Within ten (10) business days after County gives Company notice that County has drawn on the performance bond, Company will cause the performance bond to be replenished to its prior amount.

25.6 Subject to the cure provisions in Section 18.3 of this Agreement, County may draw on the performance bond upon the occurrence of any event of default that result in a loss or expense to County, including but not limited to Company's failure to timely make monetary payments required under this Agreement.

25.7 Upon termination or expiration of this Agreement, upon Company's written request, County will release the performance bond within sixty (60) days but only after County determines that all obligations under this Agreement have been satisfied, including but not limited to any obligations to remove Equipment and restore County Facilities to their prior condition.

25.8 County will also have such additional rights regarding the performance bond as may be provided elsewhere in this Agreement.

## 26. Insurance.

26.1. Types of Insurance Required. Company must procure, before beginning any operations or activities under this Agreement, and maintain throughout the Term, the following insurance from an insurance company or companies reasonably acceptable to the County:

- Commercial General Liability insurance with coverage at least as broad as ISO form CG 001 or equivalent in an amount not less than \$2,000,000.00 covering the Company's operations and activities under this Agreement, endorsed to include the County as an additional insured, as its interest may appear.
- Commercial Automobile Liability insurance with coverage at least as broad as ISO form CA 001 or equivalent in an amount not less than \$1,000,000.00 for Company's vehicles actually used in the operations under the Agreement (i.e., not used for simple commuting).
- Workers' Compensation insurance with statutory limits, with Employers' Liability coverage in an amount not less than \$1,000,000 per injury, illness, or disease.

26.2. Certificates and Proof of Insurance. Company must provide the County with copies of certificates of insurance showing the current status of all insurance policies. The County shall be included as an additional insured as its interest may appear on the commercial general liability and automobile liability insurance policies. Company must deliver to the County satisfactory proof that worker's compensation insurance has been procured to cover all persons employed by Company in connection with this Agreement.

All certificates of insurance to be provided to County shall bear the County's Contract Number and Site Location and shall be addressed to:

Pima County Telecom Contracts Administrator  
201 N. Stone Avenue, 6<sup>th</sup> Floor  
Tucson, AZ 85701-1215

26.3. **Waiver of Subrogation.** Each Party waives its claims and subrogation rights against the other for losses typically covered by property insurance.

26.4. **Changes to Insurance Requirements.** The County may review and reasonably alter coverage and amount of insurance required hereunder. The County will notify Company in writing of any changes to the aforesaid insurance requirements, and Company will have sixty (60) days to comply with the requirements as changed. Such action will not require a formal amendment to this Agreement, but may be made by administrative action.

27. **Indemnification.** Company agrees to indemnify, defend, save and hold harmless, Pima County, any jurisdiction or agency issuing permits for any work included within this Agreement, and its elected or appointed officials, agents, boards, commissions, employees and volunteers (hereinafter referred to as "Indemnitee") from and against any and all suits, claims, demands, actions, liabilities, damages, losses, or expenses of any nature or kind whatsoever, including but not limited to court costs, attorneys' fees, and costs of claim processing, investigation and litigation (hereinafter collectively referred to as "Claims") for personal injury (including death) or property damage caused, or alleged to be caused in whole or in part, by the negligence or willful acts or omissions of Company (or an Affiliate or a Qualified Service Provider) or any of Company's (or their) directors, officers, agents, employees, or volunteers, except to the extent such Claims result from the negligent or willful acts or omissions of the Indemnitee. This indemnity includes any claims or amount arising or recovered under the Workers' Compensation Laws or arising out of the failure of Company to conform to any federal, state or County law, statute, ordinance, rule, regulation, or court decree. It is agreed that Company will be responsible for primary loss, investigation, defense, and judgment costs where this indemnification is applicable. In consideration of receiving this Agreement, Company agrees to waive all rights of subrogation against County, its officers, agents and employees for losses arising from Company's activities under this Agreement. For clarity this includes work by Company (or an Affiliate) on any Equipment owned by a Qualified Service Provider. In no event, to the extent permitted by law, will Company be liable to County for consequential, indirect, speculative or punitive damages.

28. **Governing Law.** This Agreement, and the rights and obligations of the parties, will be governed by, and construed and interpreted in accordance with, the laws of the State of - Arizona, Pima County (including Pima County Code 10.50.190 governing wireless structures and facilities), and any applicable Federal laws. Any action brought to interpret or enforce any provision of this Agreement, or otherwise related to or arising from this Agreement, must be commenced and maintained in the state or federal courts of the State of Arizona in Pima County, and each of the Parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

29. **Effective Date.** This Agreement shall be effective on the date it is signed by all of the parties hereto (the "Effective Date"). This Agreement shall be considered signed by County on the date that it is executed by the Chairman of the Pima County Board of Supervisors.

30. **Underground Facilities.** Company will comply with Arizona Revised Statutes §§40-360.21 through 40-360.32 in the design and construction of its facilities, including the Equipment and Ground Equipment, within Pima County right of way.

31. **County Use of Company's Equipment and Ground Equipment.** At Company's sole discretion, County may place County equipment upon the Company's Equipment or Ground Equipment, and may use up to two (2) strands of Company's fiber and/or conduit for County use,

at no rental cost to County, provided:

31.1. County shall provide prior written notice to Company, and shall comply with any reasonable requirements of Company to insure that County does not materially and adversely affect Company's design capacity and structural integrity of the Equipment or Ground Equipment; and

31.2. County's equipment shall be purchased, installed and maintained, at the expense of County, and must be kept and maintained at all times in a good state of repair and maintenance and in compliance with all laws, rules and regulations of any and all governmental authorities. Company assumes no responsibility for the licensing, operation or maintenance of the County's equipment; and

31.3 County shall arrange for and pay for power to its equipment; and

31.4 County agrees not to damage Company's Equipment or Ground Equipment, including the fiber and/or conduit, or any personal property or fixtures thereon in any way. County shall be responsible and liable for any such damages; and

31.5 County agrees that its equipment shall not cause interference to the use or enjoyment of the property of Company, including but not necessarily limited to interference with radio communication facilities. In the event that County's equipment causes such interference to such use or enjoyment, County agrees to immediately cease operations until such interference is removed by County, at its sole expense; and

31.6 County, at its cost and expense, agrees to relocate County's equipment to another location on the Equipment or Ground Equipment, in the event that the Company deems it necessary to use the space for Company's own purpose. The site of such relocation shall be by mutual agreement in writing between County and Company; and

31.7 Company must approve of, in writing, all contractors and personnel chosen by County to install, maintain and operate the County's equipment, which approval shall not be unreasonably withheld; and

31.8 All installations and operation by County shall meet with all applicable Rules and Regulations of the Federal Communications Commission and all applicable codes and regulations of the municipality, county and state concerned. Company assumes no responsibility for the licensing, operation, and/or maintenance of County's equipment; and

31.9 Company shall not be liable for injury or damage to any person or property under use by County unless caused by or resulting from the negligence of Company, its servants, agents or employees.

31.10 Maintenance of the County's equipment shall be in accordance with the reasonable standards and requirements of Company, and shall be done under Company's supervision. Scheduling of any and all work will be coordinated with Company.

EXECUTED as of the Effective Date.

SIMPLY BITS, LLC, an Arizona Limited Liability  
Company

By: Anthony Cavella 

Its: Managing Director

Date: 5/16/18

PIMA COUNTY, ARIZONA, a political  
subdivision of the State of Arizona

By: \_\_\_\_\_  
Richard Elias  
Chairman, Board of Supervisors

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Julie Castaneda, Clerk of Board

APPROVED AS TO CONTENT:

Daniel C. Hunt  
Dan Hunt, Chief Information Officer

APPROVED AS TO FORM:

Chris Straub  
Chris Straub, Deputy County Attorney,  
Civil Division

7080218v3



**EXHIBIT "A"**

**SCHEDULE OF FEES AND RATES FOR SMALL CELL INSTALLATIONS IN  
COUNTY ROW**

1. \$100 Fee for processing an Application and for conducting associated inspections for:
  - a. Installation, modification or replacement of a utility pole; or
  - b. Collocation of a Small Wireless Facility (SWF) on a utility pole or a Wireless Support Structure (WSS), which includes Ground-Mounted Equipment (GME). ARS §11-1802(B)
  
2. For collocations which are applied for in a single, consolidated Application under ARS §11-1804(B), \$100 Application Fee for up to the first five (5) SWF's addressed in the Application; and \$65 for each additional SWF addressed in the Application.
  
3. \$175 Rate for the collocation of a SWF on a utility pole or WSS not owned by PC and that does include GME. ARS §11-1802(D)(1)
  
4. \$20 Rate for the collocation of a SWF on a PC-owned utility pole that does not include GME. ARS §11-1802(D)(2)
  
5. \$175 Additional Rate for the collocation of a SWF on a PC- owned utility pole that does include GME. ARS §11-1802(D)(2)
  
6. \$175 for the installation of a utility pole and the collocation of a SWF that will not be owned by the County. ARS §11-1802(D)(3)

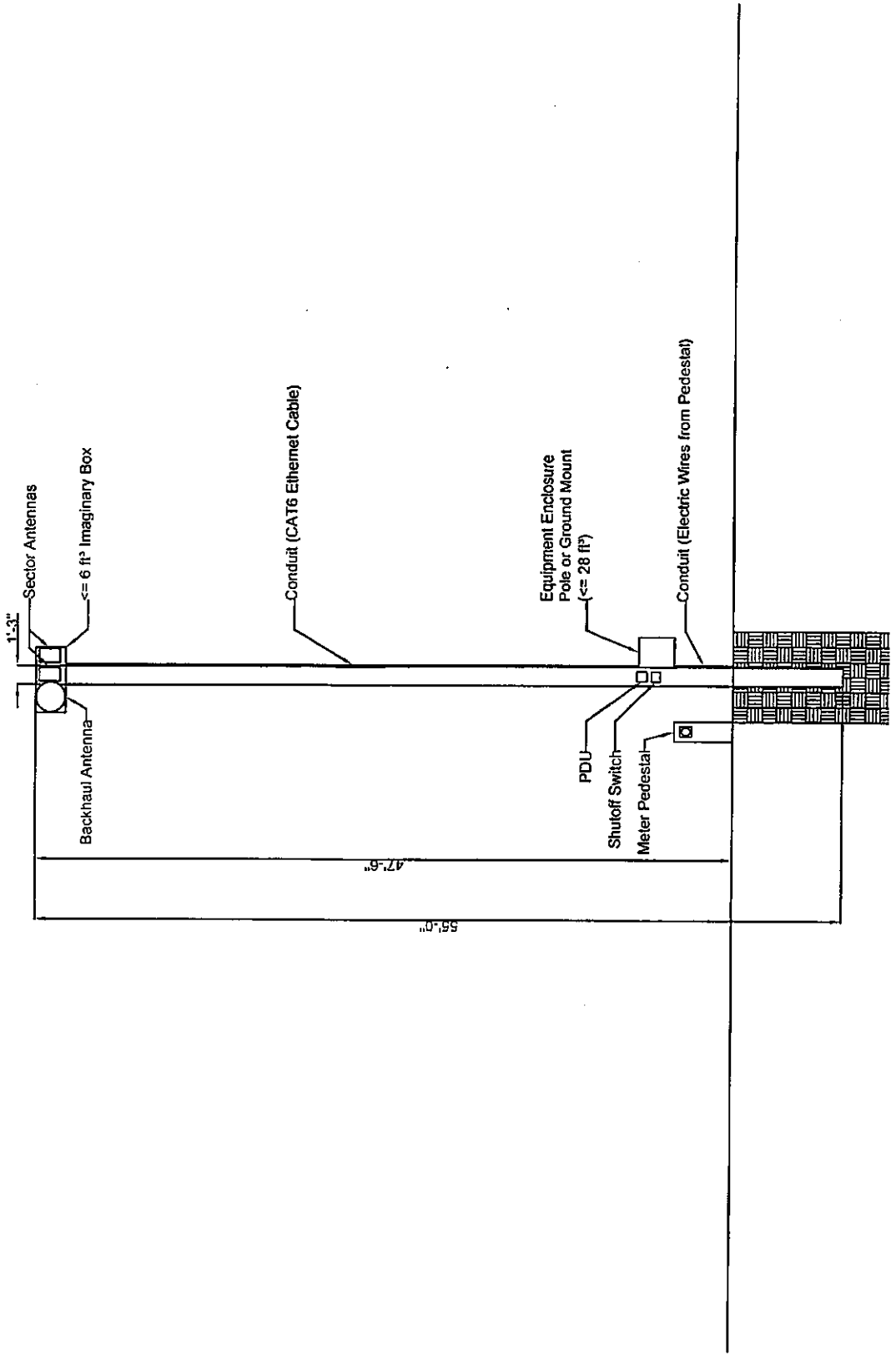


EXHIBIT B