

**THIS POLE ATTACHMENT AGREEMENT**, dated \_\_\_\_\_, 2018 (Agreement) is made and entered into by and between the CITY OF NAPERVILLE, a municipal corporation (the “City” or “Licensor”), and \_\_\_\_\_, an Illinois limited partnership authorized to do business in Illinois (“Licensee”), in reference to the following facts and circumstances:

**RECITALS:**

**WHEREAS**, The City owns, co-owns, manages, operates or has access to certain poles, wireless support structures, and/or real property which are located within the public right-of-way in Naperville; and

**WHEREAS**, The Licensee desires to install, maintain and operate small wireless facilities in and/or upon certain of the City’s utility poles, wireless support structures and/or real property; and

**WHEREAS**, in consideration of the terms and conditions contained below, the City is willing to grant to the Licensee a revocable license to place its facilities on or about certain poles, wireless support structures, and/or real property subject to the terms and conditions of this Agreement.

**WHEREAS**, Licensee hereby acknowledges that the City may require the use of certain poles, wireless support structures, and/or real property hereunder for the City’s purposes and that, in the event the City deems it useful or necessary, in its sole discretion, to utilize the City Improvement licensed to Licensee hereunder, Licensee shall vacate its use of the City Improvement as set forth herein.

**NOW THEREFORE**, in consideration of the following covenants, terms, conditions and provisions, the Parties mutually agree:

1. The City and Licensee are sometimes referenced individually as “Party” or collectively as “Parties” in this Agreement. Licensee shall comply with all the terms and conditions of Title 9 of the City’s Municipal Code (“Ordinance”).
2. PERMIT: This Agreement is in reference to Right-of-Way Permit # \_\_\_\_\_ between the City, by and through its Transportation, Engineering and Development department, and Licensee, dated \_\_\_\_\_, 20\_\_\_\_, (Permit). All the terms and conditions of the Permit are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Permit. In the event of a contradiction, modification or inconsistency between the terms of the Permit and this Agreement, the terms of this Agreement shall govern. In the event of a conflict between the Agreement, the Permit and the Ordinance, the documents control in the listed order (e.g., the Agreement controls over the Permit and the Permit controls over the Ordinance).

3. **COLLOCATION:** The street light pole ("Pole") owned by the City is located at:

Nearest Street Address:

City Light Pole Number:

Site Coordinates: Latitude  
Longitude

The pole and location is depicted on Exhibit 1 attached hereto and made apart hereof.

4. **TERM.** The term of this Agreement and associated Permit shall be for an initial period of five (5) years following the Effective Date. Unless terminated sooner in accordance with this Agreement, the Permit and this Agreement will automatically renew on the same terms and conditions as originally set forth for equivalent five (5) year duration(s). If, however, 50 ILCS 835 is repealed or sunsets, future renewals shall be subject to the applicable City Ordinance(s) in effect at the time of renewal.
5. **TERMINATION:** Termination of this Agreement and revocation of the associated Permit shall occur in the event of any of the following:
- a. Licensee breaches any material term or condition of this Agreement or Permit; or
  - b. Licensee evades or attempts to evade any material provision of this Agreement or Permit; or
  - c. Licensee makes a material misrepresentation of fact in this Agreement or Permit; or
  - d. Licensee fails to complete work by the date and in accordance with the terms specified in this Agreement or Permit, unless an extension is obtained or unless the failure to complete the work is beyond the Licensee's control; or
  - e. Licensee fails to take timely corrective action to address noted deficiencies.
  - f. Upon termination of this Agreement, for any reason, Licensee shall remove its wireless telecommunication facilities that are the subject of this Agreement within thirty (30) days of receiving notice.
6. **CONSIDERATION:** Under this Agreement the recurring rate shall be two hundred (\$200.00) dollars per year. Initial payment shall be received prior to Permit issuance by the City. Thereafter, payment shall be received annually on the Effective Date.

**7. MAKE READY WORK:**

- g. Licensee, at its sole cost and responsibility, shall perform a make ready analysis of the proposed Pole to ensure it is structurally capable of accommodating collocation and/or to determine and propose to City such make ready work necessary to enable the Pole to accommodate collocation. The City will make the final determination whether to permit the make ready work or require a new Pole. Licensee agrees to convey all title and interest in any new pole provided by Licensee to the City and provide a replacement pole for the City's use in the event of a knockdown. Make ready work will be done by Licensee at Licensee's sole cost.
- h. Licensee shall be responsible for entering into an agreement with existing other collocated entities to reimburse them for any costs that they incur in rearranging or transferring their facilities to accommodate Licensee's collocation.

**8. TRANSFER OF MAINTENANCE:**

- i. Prior to performing any work (initial installation, repair, modification, maintenance, removal or replacement) on City's Pole, Licensee shall be required to accept a transfer of maintenance. For work on street light poles, the Licensee shall be required to accept a maintenance transfer of the individual pole at which co-location is approved. The transfer of maintenance shall only be made to an IDOT approved electrical contractor with IMSA Traffic Signal Level II certified employees. Upon completion of the work, City shall accept a maintenance of transfer back, subject to any repairs deemed necessary at City's sole discretion, to be performed by Licensee at Licensee's own expense.
- j. Licensee shall request a maintenance transfer from City a minimum of seven (7) days in advance of planned work.

**9. INTERFERENCE:**

- k. Licensee acknowledges that through this Agreement and Permit, it has a non-exclusive right to collocate on city-owned infrastructure. If said collocation interferes with existing or future frequencies used for public safety or roadway facility communications, Licensee shall cure such interferences in accordance with City's Ordinance. Said cost to cure shall be at the sole expense of Licensee.
- l. Licensee will install, operate, and maintain Licensee's wireless telecommunications facilities in accordance with applicable regulations established by the City of Naperville Department of Public Works and

Departments of Public Utilities – Electric and all other applicable laws, ordinances and regulations so as not to cause interference (as that term is defined in the rules and regulations of the Federal Communications Commission), with any other transmitting or receiving equipment, or disrupt, as determined solely by the City, any electrical distribution or receiving equipment, whether or not such equipment is located on the licensed site. If Licensee's wireless telecommunications facilities cause interference with other transmissions, City shall send written notice of the interference to the Licensee. Licensee shall promptly take all reasonable steps to cure such interferences in accordance with the City's Ordinance. Said cost to cure shall be at the sole expense of Licensee. If Licensee is unable to eliminate the interference within a reasonable period of time, Licensee agrees to remove the wireless telecommunications facilities from the City's pole and this license shall be terminated.

- m. For purposes of this Agreement, "interference" may include, but is not limited to, any use of the City pole or surrounding property that causes electronic or physical obstructions with, or degradation of, the communications signals from the Licensee's facilities.
- n. In the event the City shall require access to the Pole in order to maintain or restore the Pole's primary function as a light pole, the City shall notify Licensee at \_\_\_\_\_ and Licensee shall de-energize its facilities within forty-eight (48) hours of notification by the City and shall promptly notify the City when Licensee's facilities have been de-energized. In the event any maintenance or repair performed by the City shall reasonably require cooperation of the Licensee, Licensee shall respond to any request for Licensee's cooperation within forty-eight (48) hours.

#### **10. COMMENCEMENT AND NOTIFICATION:**

- o. Licensee shall notify City forty-eight (48) hours prior to the commencement of any activity to effect the installation of the permitted equipment and within seven (7) days following the completion of the installation to facilitate inspection by City.
- p. Licensee shall have access to the Pole during normal business hours (Monday through Friday, 7:00 a.m. to 3:30 p.m.) for the purposing of installing the wireless telecommunications facilities. Such access, including staging and means of ingress/egress shall be coordinated with the City's representative in such a manner as to provide the least possible interference to the City's operations.

## 11. MAINTENANCE AND REPAIR:

- q. City will maintain its Poles and repair or replace its Poles as necessary to fulfill its own service requirements and as required by law. City's maintenance and repair will take precedence over all other collocators' maintenance and repair needs.
- r. Licensee shall, at its sole cost and expense, maintain its wireless telecommunication facilities in good and safe condition and repair. Additionally, Licensee agrees to maintain its wireless telecommunication facilities in such a manner so as not to endanger or interfere with the use of City Poles by City or others granted a right to collocate to said City Poles.
- s. Licensee shall use its best efforts to perform any maintenance and repair to its facilities between 8:00 a.m. and 5:00 p.m., and shall coordinate such work with the City's representative by contacting City Dispatch at 630-420-6187.
- t. Licensee shall immediately notify City Dispatch of any emergency work and shall advise the City of any potential impact to the general public.
- u. Licensee can be reached twenty-four hours a day, seven days a week at \_\_\_\_\_ if an emergency arises regarding the Pole.
- v. Licensee shall obtain a Permit for any maintenance or repairs requiring lane-closures of the public right-of-way.
- w. Licensee shall inspect its wireless telecommunication facilities collocated on City Poles annually. On February 1st of each year, Licensee shall submit to City a report documenting its inspections and any scheduled repairs for the proceeding 12-month period.
- x. Upon receipt of any notice from the City that any wireless telecommunication facilities of Licensee are interfering with or endangering any persons, equipment, property or facilities of the City or any other party including the general public, Licensee agrees that it will, at its sole cost and expense, take all necessary steps to correct such danger or interference within one (1) hour.
- y. The Licensee shall ensure that the proposed equipment installation shall not create an intersection sight distance obstruction for the motoring public on adjacent streets and driveways. The equipment shall be located in a manner that the lesser of the existing sight distance or the sight distance criteria established by the American Association State Highway and Transportation Officials (AASHTO) Policy on Geometric Design of Highways and Streets is maintained.
- z. In the event Licensee fails to correct or remedy such danger or interference within the timeframe noted in 11.e above, City will take all actions it deems necessary or appropriate to remedy such matter, including without limitation, the removal from City Poles of any wireless telecommunication facilities causing such danger or interference.
- aa. The City shall have no liability of any kind or nature whatsoever for any actions taken by City to remedy such danger or interference and, unless

such liability is caused by City's willful misconduct, Licensee shall pay City, upon demand, for all cost of such activities.

**12. AUDITS AND LIST OF ATTACHMENTS/FACILITIES WITH LOCATIONS:**

- bb. Licensee shall install its wireless telecommunication facilities only in the locations permitted by the City.
- cc. City may revoke Licensee's Permit to use a Pole for Licensee's non-compliance with a term or terms of this Agreement or Permit, subject to the notice and right to cure procedures for a DEFAULT.
- dd. Licensee shall maintain a list of its wireless telecommunication facilities located within the City right-of-way with locations and shall provide said list to City on February 1st each year.
- ee. Licensee shall affix signage on each wireless telecommunication facility identifying the wireless services provider, contact phone number and a equipment identification number.

**13. LEASING AND SUBLEASING:** Licensee acknowledges that collocating wireless telecommunication facilities on City Poles is for Licensee's exclusive use as a wireless services provider. Subleasing of Licensee's wireless telecommunication facilities is strictly prohibited.

**14. ABANDONMENT AND REMOVAL:** Any wireless telecommunication facility located within the City right-of-way that is not operated for a continuous period of twelve (12) months, shall be considered abandoned and the Licensee shall remove same within ninety (90) days of receipt of written notice from the City notifying the Licensee of such abandonment. Such notice shall be sent by certified or registered mail, return-receipt-requested, by the City to Licensee at the last known address of Licensee. If such facility is not removed within ninety (90) days of such notice, the City may remove or cause the removal of such facility by whatever actions are provided by law.

**15. ELECTRICAL SERVICE:** The City agrees to cooperate with Licensee to provide electrical service to the Licensee's wireless telecommunication facility. The electric service shall be metered and energy consumption paid by the Licensee monthly. Licensee shall be solely responsible for all costs incurred by Licensor related to the provision of electrical services to the Licensee's wireless telecommunication facility.

**16. DEFAULT:** Unless a specific provision of this Agreement provides otherwise, if a Party is in default of a material term of this Agreement, the non-defaulting Party shall give the breaching Party written notice of such breach. After receipt of such written notice, the breaching Party shall have 30 days in which to cure any breach, provided the breaching Party shall have such extended period, not to

exceed 90 days, as may be required beyond the 30 days if the breaching Party commences the cure within the 30-day period and thereafter continuously and diligently pursues to cure to completion. The non-breaching Party may maintain any action or effect any remedies for default against the breaching Party subsequent to the 30-day cure period, as potentially extended to 90 days based on circumstances.

**17. REMEDIES:** In the event of a default by either Party with respect to a material provision of this Agreement, without limiting, other than by the specific terms of this Agreement, the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate this Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state of Illinois. Further, upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice thereafter.

**18. INDEMNIFICATION:** Licensee shall indemnify and hold City harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of City's improvements or right-of-way associated with such improvements by Licensee or its employees, agents, or contractors arising out of the rights and privileges granted under this Agreement and PA 100-0585. Licensee has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of City or its employees or agents. Licensee hereby further waives any claims that Licensee may have against the City with respect to consequential, incidental, or special damages, however caused, based on the theory of liability. City in this paragraph shall be construed to mean the City, its officials, officers, agents and employees. Nothing contained herein shall be construed as prohibiting the City, its officials, directors, officers and employees from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. The City's participation in its defense shall not remove the Lessee's duty to indemnify, defend, and hold the City harmless, as set forth above. Any indemnity as provided in this Lease shall not be limited by reason of the enumeration of any insurance coverage herein provided. Lessee's indemnification of City shall survive the termination or expiration of this Lease. The City does not waive, by

these indemnity requirements, any defenses or protections under the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1 *et seq.*) or otherwise available to it, or to the Lessee, under the law.

**19. INSURANCE:**

- ff. Lessee shall maintain workers' compensation insurance in the statutory amount, a commercial general liability insurance policy with a limit of Two Million (\$2,000,000) dollars per occurrence for bodily injury and property damage and Four Million (\$4,000,000) dollars general aggregate, and Lessee shall have the duty to provide Lessor with certificates of insurance reasonably required by the City upon the commencement of the Term, as well as renewal certificates of insurance within fifteen (15) days of the expiration of any insurance policy required.
- gg. The Lessee's General Liability insurance policy required above shall include the City, its officers, and employees as an additional insured as their interest may appear under this Agreement. The Certificate of Insurance shall state: "The City of Naperville, its officers, and employees are included as an additional insured as defined in the commercial general liability insurance policy."
- hh. Upon receipt of notice from its insurer(s) Lessee shall provide the City with at least thirty (30) days prior written notice of cancellation, or material change.
- ii. The insurance required to be purchased and maintained by the Lessee shall be provided by an insurance company licensed, authorized or permitted to provide insurance in the State of Illinois and which is reasonably acceptable to City.
- jj. All policies shall be primary and non-contributory with any insurance or program of self-insurance that may be maintained by the City.
- kk. Lessee shall, at its own cost and expense, at all times throughout the Term of the Agreement, carry all-risk property insurance or properly self-insure for its owned property at the site.
- ll. Licensee may self-insure all or a portion of the insurance coverage and limit requirements required by City. If Licensee self-insures it is not required, to the extent of the self-insurance, to comply with the requirement for the naming of additional insureds under this Section. If Licensee elects to self-insure it shall provide to City evidence sufficient to demonstrate Licensee's financial ability to self-insure the insurance coverage and limits required by City.



20. **BOND:** Licensee shall deposit with City prior to the Effective Date of the Agreement a bond in a form provided by the City in the amount of twenty thousand (\$20,000) dollars per wireless telecommunication facility to guarantee the safe and efficient removal of any equipment from any Collocation subject to this Agreement. Such bond shall be perpetual and may not be cancelled without a release signed by the City. Licensee shall maintain the bond throughout the duration of the installation on the City's Pole. The funds may also be used to restore the City right-of-way to original condition, if Licensee fails to do so.
21. **SEVERABILITY:** In the event that any portion or section of this Agreement is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of the Agreement, which shall remain in full force and effect.
22. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of Illinois. The venue for resolving any disputes under this Agreement shall be the judicial circuit court for DuPage County.
23. **EXECUTION IN COUNTERPARTS:** This Agreement may be executed in multiple counterparts, including by counterpart facsimiles or scanned email counterpart signature, each of which shall be deemed an original, and all such counterparts once assembled together shall constitute one integrated instrument.
24. **AUTHORIZATION:** Licensee certifies and warrants that it has the authority to enter into this Agreement.
25. **MISCELLANEOUS:** This Agreement contains all Agreements, promises and understandings between the City and Licensee regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the City or the Licensee in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such party shall have the right to enforce such rights at any time.
26. **NOTICES:** All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further

that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

CITY OF NAPERVILLE:

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ATTN: City Manager, City of Naperville  
400 S. Eagle Street  
Naperville, IL 60540

LICENSEE:

Name  
Company  
Address  
City, State Zip  
Phone Number

Copy to:  
Name  
Company  
Address  
City, State Zip  
Phone Number

**IN WITNESS WHEREOF**, the Parties hereto have set their hands and affixed their respective seal the day and year first above written.

**CITY OF NAPERVILLE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**LICENSEE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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