

SMALL WIRELESS COMMUNICATIONS FACILITIES MASTER LICENSE AGREEMENT

THIS SMALL WIRELESS COMMUNICATIONS FACILITIES MASTER LICENSE AGREEMENT ("Agreement") is entered into this ____ day of _____, 20[___] ("Effective Date"), by and between the [City/Town] of _____, Massachusetts, a municipality organized under the laws of The Commonwealth of Massachusetts and acting by and through its [_____] ("Municipality"), and [_____] a [_____] having an address of [_____] ("Licensee"). Municipality and Licensee are at times collectively referred to hereinafter as the "Parties" or individually as a "Party."

In consideration of the covenants of this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. Grant. The Municipality grants Licensee the nonexclusive license for the sole purpose to (i) access, use and occupy the Municipality's ROW (as defined below) for the installation, construction, use, maintenance, operation, repair, modification, replacement and upgrade of Small Wireless Facilities (defined in Section 12, and sometimes referred to herein as the "Facilities") that enables Licensee to transport, transmit and receive signals carrying voice and data communication as authorized by the Massachusetts Department of Telecommunications and Cable and Federal Communications Commission ("Licensee's Use"); (ii) use, install and/or replace Municipality-owned or controlled poles ("Municipality Poles") for Licensee's Use; and (iii) use, install and/or replace Licensee, Licensee affiliate or Licensee vendor owned ("Licensee Poles") or third-party owned poles in the ROW for Licensee's Use subject to obtaining a utility easement or other suitable form of written permission of the third-party owner and providing to the Municipality documentation in a form reasonably acceptable to the Municipality of such permission from the individual utility or property owner (the poles identified in subclauses (ii) and (iii) are sometimes collectively referred to herein as "Poles"). For purposes of this Agreement, "ROW" means the public way and other areas now or hereafter existing that are owned by or otherwise subject to the jurisdiction and control of the Municipality. Use of Poles by Licensee shall require the Municipality's approval for a Grant of Location pursuant to G.L. c.166, §22 as further described in Section 4. The Municipality expressly reserves for itself the rights and uses of the ROW for its public purposes and for the public's health, safety and general welfare. Neither Licensee's use of the ROW or other Municipality-owned property, nor anything in this Agreement, shall be deemed to grant, convey, create, or vest in Licensee a real property interest in any portion of the ROW or other Municipality-owned property, including, but not limited to, any fee, leasehold or easement interest in any land. All Municipality-owned property, including without limitation the Municipality Poles, shall remain the property of the Municipality. Licensee, on behalf of itself and any permitted successor, or assign, recognizes and understands that this Agreement may, subject to applicable laws, create interest subject to taxation and that Licensee, its successor, lessee or assign may be subject to the payment of such taxes.

2. Term of Agreement. The term of this Agreement shall be for [] years beginning on the Effective Date (the "Term"). [Unless either Party provides written notice to the other Party at least ninety (90) days prior to expiration of the Term that such Party will not renew the Term, the Term will automatically renew for an additional [] () year period.] [MGF1]After its expiration or earlier termination, the terms this Agreement shall continue to apply to all Grants of Location granted by the Municipality hereunder until the expiration or termination of such Grant of Location(s).

3. Fees. Licensee shall pay to the Municipality the fees and costs set forth in the "Fee Schedule" attached hereto and made a part hereof as Exhibit A (the "Fees"). Licensee shall pay the one-time petition fee with submission of a petition for a Grant of Location for installation of a Small Wireless Facility on one or more Poles ("Petition"). Licensee shall pay the initial recurring fee per Pole on or before the Commencement Date (defined in Section 4(e)) and pay subsequent recurring fees on or before each anniversary of the Commencement Date. Licensee may make payments by check made out to the order of the [City/Town of] and sent to the following address or through electronic transfer subject to the Municipality's approval and necessary bank routing instructions.

[CITY/TOWN]
[DEPARTMENT]
[Attn: [NAME/TITLE]]
[ADDRESS]

4. Grant of Location.

(a) Licensee shall not construct, modify or operate a Small Wireless Facility or install a Pole [MGF2]in the ROW without first obtaining the required Grant of Location by the Municipality by submitting a Petition, in the form required by the Municipality at the time of submission thereof, along with payment of the requisite Fees. A Petition may be filed for multiple Poles concurrently. In accordance with the requirements of Law, including without limitation G.L. c.166, §22 and the Municipality's Grant of Location Regulations, as such may be amended and supplemented, the Municipality's [BoS/Council] shall, in writing, either approve or deny the Petition.

(b) Any aesthetic or other design criteria for Small Wireless Facilities published in advance of the Municipality's receipt of the applicable Petition shall apply to the Facilities and/or Poles permitted to be installed pursuant to the Grant of Location (the "Design Criteria"). If Pole reinforcement or replacement is necessary, Licensee shall provide engineering design drawings and specifications depicting the proposed alteration to the Pole. For avoidance of doubt, the Parties acknowledge and agree that any Design Criteria or other Municipality requirements applicable to Small Wireless Facilities are permissive if such are technically feasible and reasonably directed to avoid or remedy the intangible public harm of unsightly or out-of-character deployments.

(c) Licensee shall bear the entire cost and expense of all placement, installation, construction, maintenance and operation of Facilities and, if applicable, Poles, and shall hold the

Municipality harmless from any such costs and expenses. Licensee shall also be solely responsible for payment of any electricity service for Small Wireless Facilities. As permitted by the electric provider and Municipality, as applicable, Licensee may install an electric meter on the Pole or the ground adjacent to the Pole so long as such installation does not violate the terms hereof.

(d) The term of each Grant of Location for a Municipality Pole shall be for the term set forth in such approved Grant of Location, such term following the date that the respective Grant of Location is executed (the "Commencement Date").

(e) A Grant of Location may be terminated prior to the expiration of its term by the Municipality: (i) upon written notice to Licensee, if Licensee fails to pay any amount when due and such failure continues for 30 days after Licensee's receipt of notice or such; (ii) if such Facility is either deemed abandoned or is thereafter removed in accordance with subparagraph (h) hereunder ; (iii) in the event that Licensee fails to timely obtain or maintain any governmental approval applicable to Licensee; or (iv) as otherwise specified in accordance with the terms of the Grant of Location.

(f) The Municipality shall retain ownership of any Municipality Poles, and shall provide written directions to Licensee setting forth Licensee's obligation to reuse or dispose of such Municipality Pole and the period of time that Licensee must complete such undertakings.

(g) Not less than ten (10) business days prior to the first installation of Facilities and/or Poles within, over or under the ROW, pursuant to the applicable Grant of Location, Licensee shall provide Municipality with security for the proper removal of such Facilities and/or Poles and restoration of such ROW in the form of a bond in accordance with the Regulations, issued by a surety company acceptable to the Municipality in a form acceptable to Municipality. Such bond shall be issued in the amount prescribed in the applicable Grant of Location, such amount not to exceed one hundred twenty five percent (125%) of the related removal and restoration costs as demonstrated by Licensee, and shall be maintained by Licensee, at its expense, in full force and effect until the one hundred eightieth (180th) day after expiration of the Term or earlier termination of this Agreement. Licensee agrees and acknowledges that it will obtain a bond which allows for the use of the bond to cover incidental expenses and costs, damages and fees not covered by any insurance policies. If the bond is cancelled or not extended, Licensee shall replace it with another at least ten (10) days prior to expiration and if Licensee fails to do so the Municipality shall be entitled to present its written demand for payment of the entire face amount of such bond and to hold the funds so obtained as a security deposit. Any unused portion of any such security deposit shall be returned to Licensee upon replacement of the bonds or deposit of cash security in the full amount required.

(h) If a Small Wireless Facility is not operated, or not in compliance, with a Grant of Location for a continuous period of ninety (90) days, or the Licensee fails to pay the applicable Recurring Fee for a period of ninety (90) days, such Small Wireless Facility shall be considered abandoned, and if written notice is provided by Municipality to Licensee ordering removal thereof, the Licensee shall comply with such order within thirty (30) days after receipt thereof. If Licensee fails to remove the Small Wireless Facility in accordance with such order within the

thirty (30) day period, the Municipality may proceed to remove such Small Wireless Facility and the Licensee, or its permitted successor, shall immediately reimburse the Municipality for all related costs and expenses. Licensee shall submit to Municipality on or before January 10 of each year throughout the term of the applicable Grant of Location, in a form reasonably acceptable to the Municipality, a current map and list of the location(s) of Small Wireless Facilities and a report as to the operational status of such Facilities indicating, among other things, continuity of operations of such Facilities, each signed by an authorized representative of the Licensee under the pains and penalties of perjury.

5. Construction and Maintenance.

(a) Licensee shall exercise due care, caution, skill and expertise in performing all work under this Agreement, including the applicable Grant of Location(s), and shall take further steps to safeguard and maintain in a clean and workmanlike manner, all work site areas, including the ROW. All work Licensee undertakes in the ROW and other Municipality-owned property, including without limitation the Municipality Poles, pursuant to this Agreement shall at all times be performed by workers in accordance with generally accepted industry practice and in compliance with all applicable federal, state and local laws including, without limitation, regulations and judicial decisions, all Municipality technical specifications and requirements, and all applicable national, state and local building, electrical and safety codes (collectively, "Laws").

(b) Licensee further agrees to obtain, at its sole expense, all applicable permits required by the Municipality, the Department of Telecommunications and Cable, the Federal Communications Commission, or any other agency in accordance with applicable law and this Agreement, prior to commencing construction activity under this Agreement.

(c) Licensee shall keep and maintain all Facilities and Poles that are authorized pursuant to this Agreement in full compliance with Laws, and in such condition that they shall not constitute a danger to the health, safety and welfare of the public. Licensee may conduct testing and maintenance activities, and repair and replace damaged or malfunctioning Small Wireless Facilities at any time. Licensee may maintain, repair, replace and make like-kind modifications to any Small Wireless Facility that do not materially change the overall size, height and weight of the Small Wireless Facility requiring additional applications, permits or other Municipality approval pursuant to a Petition, other than any required electrical permit. Licensee shall obtain all required permits and prior approvals from the Municipality prior to commencing such maintenance or repair.

(d) If the placement, installation, construction, maintenance, operation, removal or relocation of Facilities or Poles by Licensee disturbs or alters the ROW, Licensee, at its own expense shall restore such ROW to their original condition in accordance with Municipality standards and requirements, normal wear and tear not caused by Licensee excepted. The provisions of this Paragraph shall survive the expiration, completion or earlier termination of this Agreement.

(e) Licensee agrees that the placement, installation, construction, maintenance, operation and removal of Facilities and Poles installed in the ROW shall be carried out in such locations and in such manner so as not to unreasonably disrupt or interfere with public or private facilities, including without limitation third party-owned Poles, existing now or in the future, including but not limited to water, gas, sewer, traffic signal, street light, poles, other utilities and conduits and Municipality property. Licensee shall be responsible for repair and restoration of any damage to any facilities belonging to the Municipality, including without limitation Municipality Poles, to the extent that Licensee causes disruption resulting from such damage. In no instance shall the installation of any Facilities, including without limitation any related ground-mounted infrastructure, block pedestrian walkways in the ROW, result in violation of the Americans with Disabilities Act or impair access to Municipality-owned infrastructure.

(f) If the installation of Facilities or Poles results in the creation of a double utility pole, Licensee agrees that it will cooperate in good faith with the Municipality in efforts to get the utilities and other companies having attachments on the original pole to relocate the attachments to the new pole so that the double utility pole can be eliminated as soon as practicable.

6. Interference.

In the event any Facilities or Licensee Uses causes Interference, and after the Municipality has notified Licensee of such Interference, Licensee will take all commercially reasonable steps to correct and eliminate the Interference. If the Interference issue is determined to be caused by Licensee and more than twenty-four (24) hours have elapsed from the date the Municipality gave notice of such Interference, the Municipality may require Licensee to discontinue use of the Facilities or Licensee's Use causing the Interference issue. Notwithstanding anything in this Agreement to the contrary, it is expressly agreed and understood that, if any of Licensee's Facilities or Licensee's Use causes Interference with any systems impacting the Municipality's emergency preparedness, law enforcement activities or other urgent public safety obligation, the Municipality may take any and all such steps as it is empowered to take under its police power authority, which may include immediately discontinuing the electricity supplied to such Facilities of Licensee's Use, until such Interference problems are resolved. "Interference" in the context of spectrum licensed by the Federal Communications Commission refers to material adverse effects resulting from transmitting outside of the licensed spectrum or otherwise in violation of the authority granted by the license of the party alleged to be causing the Interference. In the context of unlicensed spectrum, Interference means the material adverse effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a pre-existing radio communication system, manifested by any material performance degradation, misinterpretation, or loss of information which could be extracted in the absence of such unwanted energy.

7. Removal and Relocation.

No later than ninety (90) days after receipt of written notice from Municipality stating that a Pole that is the subject of a Grant of Location is planned for removal due to: (i)

construction, expansion, repair, relocation, or maintenance of a street or other public improvement project; or (ii) maintenance, upgrade, expansion, replacement, or relocation of Municipality traffic light poles and/or traffic signal light system; (iii) permanent closure of a street or sale of Municipality property, or (iv) or the expiration of the Term or earlier termination of this Agreement or applicable Grant of Location, Licensee shall remove such Facilities and, if applicable, Pole. If Licensee fails to remove or relocate any such Facilities or Pole within the ninety (90) day period, Municipality shall be entitled to remove such Facilities or Pole at Licensee's expense. The Parties shall cooperate to the extent possible to assure continuity of wireless service during any relocation, if applicable. If applicable, Licensee may relocate the Facilities or Pole to an alternative location and Municipality shall use its best efforts to provide a reasonably equivalent location that affords Licensee's Use and to expedite the approval of a Grant of Location for such alternative location.

8. Indemnity/Damages.

(a) Licensee, its successors and assigns, shall indemnify, defend and hold the Municipality, its employees, officers, elected and appointed officials, boards, commissions, agents and contractors (the "Indemnified Parties") harmless from and against all injury, loss, damage, liability, costs, penalties, suits, injury, claim, demand, judgment, liability, damage or expenses, including without limitation reasonable attorneys' fees and costs of any kind arising directly or indirectly out of or resulting from (i) any act by, omission by, or negligence of Licensee or its contractors or subcontractors, or its carriers, or the officers, agents, or employees of any of them, while engaged in the performance of the work or conduct of the activities authorized by this Agreement, or resulting directly from the placement, installation, construction, maintenance, operation and removal of Facilities, Poles or Licensee's Use in the ROW, or otherwise in the performance of this Agreement; and (ii) any accident, damage, death or injury to any Licensee contractor, subcontractor, or its carrier, or any officer, agent or employee of either of them, while engaged in the performance of the work, or while conducting the activities authorized by this Agreement, or for any reason connected with the performance of the work or conduct of the activities authorized by this Agreement, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the work authorized by this Agreement; and (iii) any accident, damage, death or injury, to real or personal property and person(s) that occurs in, upon or is in any way connected with the work or activities authorized by this Agreement to the extent caused by Licensee; and (iv) any violation by Licensee of the terms and conditions hereof or any permit or approval issued by the Municipality in connection with the Facilities, Poles, or Licensee's Use pursuant hereto, or any misrepresentation made by Licensee in this Agreement or in any document given by Licensee in connection with this Agreement; and (v) any claims that any Facilities or Licensee's Use infringes a patent, copyright, trade secret, or other property right of a third party. Licensee shall not be obligated to hold harmless, defend or indemnify Municipality for any injury, claims, demands, judgments, liabilities or damage to the extent that they are due solely to the gross negligence or willful misconduct of Municipality, or any of its officers, council members, boards, commissions, employees, or agents. Licensee agrees that the indemnification obligations assumed under this Paragraph 8(a) shall survive expiration or other termination of this Agreement.

(b) No elective or appointive board, commission, member, officer, employee or other agent of the Municipality shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by the Municipality or for any amount which may become due to Licensee, its successors and assigns, or for any obligation of the Municipality under this Agreement.

(c) Neither the Municipality nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Licensee or any third party public utility or other person(s), their officers, agents, employees, contractors or subcontractors, or any of their employees, or for any bodily injury or death to such persons, resulting or arising from the Facilities, Poles, Licensee's Use or activities authorized by this Agreement, the condition of any Municipality property subject to this Agreement or Licensee's Use of any Municipality property, except to the extent caused by the Municipality's gross negligence or willful misconduct.

(d) In no event shall either Party be liable to the other Party for any punitive, consequential, incidental, or special damages.

9. Insurance[MGF3].

(a). Licensee and its subcontractors shall carry the following insurance: (i) commercial general liability insurance in an amount of \$3,000,000 per occurrence and \$4,000,000 general aggregate and which provides coverage for bodily injury, death, damage to or destruction of property of others, including loss of use thereof, and including products and completed operations; (ii) Workers' Compensation Insurance as required by law; (iii) employers' liability insurance in an amount of \$500,000 bodily injury each accident, \$500,000 disease each employee, and \$500,000 disease policy limit (iv) property damage liability insurance in an amount of \$1,000,000 per occurrence; and (v) automobile liability insurance in an amount of \$1,000,000 per accident including, but not limited to, all owned, leased, hired or non-owned motor vehicles used in conjunction with the rights granted under this Agreement . At the reasonable recommendation of the Municipality's risk manager, the Municipality may at any time revise insurance coverage requirements and limits required by this by this Section 9(a). Licensee agrees that within thirty (30) days of receipt of written notice from the Municipality, Licensee will implement all such revisions requested by the Municipality. The policy or policies of insurance shall be endorsed to provide that no material changes in coverage, including, but not limited to, cancellation, termination, non-renewal or amendment, shall be made without thirty (30) days' prior written notice to the Municipality

(b). The insurance coverages identified in this Section 9: (i) except the workers' compensation insurance, shall include the Municipality as an additional insured; (ii) will be primary and non-contributory with respect to any self-insurance or other insurance maintained by the Municipality; (iii) contain a waiver of subrogation for the Municipality's benefit; and (iv) will be obtained from insurance carriers authorized and permitted to write such insurance in the Commonwealth of Massachusetts having an A.M Best rating of at least A-VII.

(c). Within thirty (30) days following approval of this Agreement and prior to commencing any operations hereunder, Licensee shall provide the Municipality with a

Certificate of Insurance signed by a producer or authorized representative of each insurance company producing required coverage as proof that Licensee has obtained the types and amounts of insurance required herein. In addition, Licensee shall, on demand, to provide evidence that it has maintained such insurance coverage in full force and effect. Licensee will provide the Municipality with thirty (30) days prior written notice of cancellation upon receipt of notice thereof from its insurer(s). Renewal certificates shall be furnished to the Municipality no later than thirty (30) days prior to expiration of the preceding policy

(d). The insurance requirements set forth in this Section 9 and any recovery by the Municipality of any sum by reason of any insurance policy required under this Agreement shall in no way be construed or effected to limit, or in any way affect, Licensee's liability to the Municipality or other persons as provided by this Agreement or Law.

10. Assignment.

(a) Assignment without approval. Licensee shall have the right to assign this Agreement and all rights and obligations accorded Licensee to a wholly-owned subsidiary or a parent entity of Licensee without the prior written consent of Municipality, unless Licensee is in default or breach of its obligations under this Agreement. In the event Licensee assigns this Agreement hereunder, Licensee shall provide Municipality with prior written notice of such assignment, and shall first deliver to the Municipality the following: (1) a bond as required in Section 4(g) issued in the name of the transferee; (2) an Assignment and Assumption Agreement between the Municipality and the transferee that shall require said assignee to be bound to the terms of the applicable Grant of Location and this Agreement; and (3) certificates of insurance as required in Section 9 naming transferee as insured.

(b) Assignment requiring approval. Licensee must obtain the prior written consent of Municipality in order to assign this Agreement, or any right or obligation under this Agreement, to a third party other than a wholly-owned subsidiary or parent entity of Licensee. Such consent shall not be unreasonably withheld, conditioned or delayed by Municipality; provided, however, that said assignee shall first undertake the obligations set forth in items (1) through (3), inclusive, of subparagraph(a) above.

11. Notices. Notices required by this Agreement may be given by registered or certified mail by depositing the same in the United States mail or with a commercial courier. Unless either party notifies the other of a change of address, notices shall be delivered as follows:

If to Municipality:

With a copy to:

KP Law, P.C.
101 Arch Street
Boston, MA 02110

Attn:

Attn:

If to Licensee:

With a copy to:

Notices shall be deemed effective upon delivery or refusal of delivery.

12. Definition of Small Wireless Facilities. “Small Wireless Facilities” are wireless telecommunications facilities that:

- (a) are mounted on structures 50 feet or less in height including their antennas; or
- (b) are mounted on structures no more than 10 percent taller than adjacent structures; or
- (c) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and
- (d) each antenna is located in an enclosure of no more than three cubic feet in volume; and
- (e) all antenna equipment (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
- (f) does not result in human exposure to radiofrequency radiation in excess of applicable safety standards set forth in 47 CFR 1.1307(b).

13. Taxes. If Municipality is required by Law to collect any federal, state, or local tax, fee, or other governmental imposition from Licensee with respect to the transactions contemplated by this Agreement, then Municipality shall bill such tax to Licensee in the manner and for the amount required by Law. Licensee shall pay such billed amount of such tax to Municipality, and Municipality shall remit such tax to the appropriate tax authorities as required by Law. Licensee shall be responsible for paying all taxes that are the legal responsibility of Licensee under Laws.

14. Miscellaneous. This Agreement shall be construed in accordance with, and governed by, the laws of The Commonwealth of Massachusetts without giving effect to its rules regarding conflict of laws. Each Party irrevocably submits to the jurisdiction of the state courts located within The Commonwealth of Massachusetts in connection with any and all of action between the Parties arising from or in relation to this Agreement. The provisions of this Agreement may be waived or modified only by written agreement signed by both parties. This Agreement may be executed in counterparts. A scanned or electronic copy shall have the same legal effect as an original signed version. If one or more provisions in this Agreement is found to be invalid, illegal or otherwise unenforceable, all other provisions will remain unaffected and shall be deemed to be in full force and effect and the Parties shall amend this Agreement, if needed to effect the original intent of the Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Nothing in this Agreement shall be construed to grant Licensee an interest in the

Municipality's ROW or Municipality assets located in the ROW. Neither Party shall be responsible for delays in the performance of its obligations caused by events beyond the Party's reasonable control. As to the subject matter hereof, this Agreement is the complete agreement of the Parties. The Parties represent and warrant that the individuals executing this Agreement are duly authorized.

[Remainder of page intentionally left blank; signature page to follow.]

IN WITNESS WHEREOF, the Parties have executed, or caused their respective duly authorized representatives to execute, this Agreement as of the day and year first above written.

[MUNICIPALITY],
by its _____],

[LICENSEE],
by its authorized representative

Printed Name:

Printed Name:

EXHIBIT A
FEE SCHEDULE

One-Time Application Fee \$500.00 for up to five (5) Small Wireless Facilities on an existing Pole, and an additional \$100.00 per Small Wireless Facility beyond five (5). If on a new Pole, \$1,000.00.

Municipality-Pole Recurring Fee \$270.00 per Pole per year, or any such higher rate permitted under FCC rules or Law.