



**THIS POLE ATTACHMENT AGREEMENT** (“Agreement”), dated \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”) is made and entered into by and between the CITY OF NAPERVILLE, a municipal corporation (the “City”) with its principal place of business located at 400 S. Eagle Street, Naperville, IL 60540, and \_\_\_\_\_ (“Licensee”) with its principal place of business located at \_\_\_\_\_, in reference to the following facts and circumstances:

RECITALS:

**WHEREAS**, The City owns, manages, operates or has access to certain utility poles as defined in 50 ILCS 840 and/or wireless support structures 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 as defined in 50 ILCS 840 and/or wireless support structures; 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 utility poles as defined in 50 ILCS 840 and/or wireless support structures subject to the terms and conditions of this Agreement.

**WHEREAS**, Licensee hereby acknowledges that the City may require the use of certain utility poles as defined in 50 ILCS 840 and/or wireless support structures, 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 Permit(s) # \_\_\_\_\_ the City, through its Transportation, Engineering and Development department to 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 City owned utility pole (“Pole”) is located at:

Nearest Street Address: \_\_\_\_\_

City Pole Number: \_\_\_\_\_

Site Coordinates: Latitude \_\_\_\_\_

Longitude \_\_\_\_\_

The utility pole and location is depicted on Exhibit 1 attached hereto and made a part hereof.

4. **TERM:** The term of this Agreement and associated Permit shall be for an initial period of five (5) years commencing January 1 through December 31 of the year following signature of this Agreement. 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).
5. **TERMINATION:** Termination of this Agreement and revocation of the associated Permit, in each case, solely with respect to the location(s) causing the events in subsections (a) – (f) of this Section, 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 facilities that are the subject of this Agreement within ninety (90) days of receiving notice.

6. **CONSIDERATION:** Under this Agreement the recurring rate shall be two hundred and seventy (\$270.00) dollars per year. Initial payment shall be paid by Licensee to City within thirty (30) days of the issuance of the Permit by the City and shall be prorated through the end of the calendar year. Thereafter, payment shall be paid by Licensee to City annually on or before January 15th of each year.

7. **MAKE READY WORK:**

- a. Licensee, at its sole cost and responsibility, shall perform a make ready analysis of the 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 utility pole.
- b. Licensee agrees to convey all title and interest in any new utility pole provided by Licensee to the City and provide a replacement utility pole for the City's use in the event of a knockdown. Make ready work, including any pole replacement, shall be scheduled within 60 days of payment of the good-faith estimate by the Licensee at the Licensee's sole cost and expense.
- c. Make-ready work shall be coordinated with the City's Electric Utility and can be scheduled by calling the Utility Operations Manager at 630-420-6754. If for any reason, the City is unable to complete make-ready work within 60 days of initial contact with the Electric Utility Operations Manager, the City shall either make a request in writing for an extension of the time period to complete make-ready work or allow the Licensee to complete the make-ready work by hiring a City approved contractor.

8. **TRANSFER OF MAINTENANCE:**

- a. Effective the date any work by Licensee (initial installation, repair, modification, maintenance, removal or replacement) begins on City's Pole, Licensee shall be required to accept a transfer of responsibility for proper operation and maintenance of all existing and proposed lighting systems which are part of, or which may be affected by the work (a "Transfer of Maintenance"). For work on utility poles, the Licensee shall be required to accept a Transfer of Maintenance of the individual pole at which collocation is approved. For street light poles, the Transfer of Maintenance shall only be made to an IDOT approved electrical contractor with IMSA Traffic Signal Level II certified employees. For electric utility poles, the Transfer of Maintenance shall only be to an electrical contractor using certified line workers qualified to work on medium voltage facilities. Upon

completion of the work, City shall (i) accept a Transfer of Maintenance back, subject to any repairs necessary as a result of Licensee actions with regard to such utility pole, to be performed by Licensee at Licensee's own expense, and (ii) accept ownership of the pole upon acceptance of the Transfer of Maintenance back.

- b. Licensee shall request a Transfer of Maintenance and preconstruction inspection of the City's Pole from City a minimum of seven (7) days in advance of planned work.

**9. INTERFERENCE:**

- a. 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.
- b. Licensee will install, operate, and maintain Licensee's facilities in accordance with applicable regulations established by the City of Naperville Department of Public Works and Departments of Public Utilities – Electric (to the extent not preempted by state or federal law) and all other applicable laws, ordinances and regulations so as not to cause unacceptable interference (as that term is defined in the rules and regulations of the Federal Communications Commission), with a public safety agency's communications equipment or the City's electric utility equipment, determined by the City and measured in accordance with industry standards and the Federal Communications Commission's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency. Upon receipt of any notice from the City that any facilities of Licensee are interfering as provided herein, Licensee shall take all reasonable steps necessary to correct and eliminate the interference, including, but not limited to, powering down the small wireless facility and later powering up the small wireless facility for intermittent testing, if necessary; the City may terminate a permit for a small wireless facility based on such interference if the wireless provider is not making a good faith effort to remedy the problem in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

- c. For purposes of this Agreement, “interference” may include, but is not limited to, any use of the utility pole or surrounding property that causes electronic or physical obstructions with, or degradation of, the communications signals from the Licensee’s facilities.
- d. In the event the City shall require access to the Pole to maintain or restore the Pole’s primary function, the City shall notify Licensee at 1-800-638-2822 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.
- e. 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.

**10. COMMENCEMENT AND NOTIFICATION:**

- a. 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 thirty (30) days following the completion of the installation to facilitate inspection by City.
- b. Licensee shall have access to the Pole Monday through Friday, 9:00 a.m. to 3:00 p.m. or any other time approved by the City Engineer for the purposing of installing the facilities. Such access, including staging and means of ingress/egress shall be coordinated with the City’s Director of Public Works or his/her designee in such a manner as to provide the least possible interference to the City’s operations.

**11. MAINTENANCE AND REPAIR:**

- a. City will maintain its Pole and repair or replace its Pole 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.
- b. Licensee shall, at its sole cost and expense, maintain its facilities in good and safe condition and repair. Additionally, Licensee agrees to maintain its facilities in such a manner so as not to endanger or interfere with the use of the Pole by City or others granted a right to collocate to said Pole.

- c. City agrees to allow Licensee access to any licensed site during ordinary business hours (8:00 a.m. – 5:00 p.m. Monday through Friday) for regular maintenance and repairs, and twenty-four (24) hours a day, seven (7) days a week for emergency repairs. If maintenance or repairs require lane-closures or affect traffic patterns, such access shall be limited to 9:00a.m.-3:00p.m. Monday through Friday. The City shall have priority access to any pole in the event both parties require emergency repairs to the pole or its surroundings.
- d. In the event maintenance and repair will require the interruption of traffic for more than 3 hours, Licensee shall request a Transfer of Maintenance and preconstruction inspection from City a minimum of three (3) days in advance of planned work.
- e. Licensee shall obtain a Right-of-Way Permit for any maintenance or repairs requiring lane-closures or affecting traffic patterns of the public right-of-way.
- f. Licensee shall use its best efforts to perform any maintenance and repair to its facilities between 9:00 a.m. and 3:00 p.m. or any other time approved by the City Engineer, and shall coordinate such work with the City's Director of Public Works or his/her designee by contacting City Dispatch at 630-420-6187.
- g. Licensee shall immediately notify City Dispatch of any emergency work and shall advise the City of any potential impact to the general public.
- h. Licensee shall inspect its facilities collocated on City utility poles annually. By February 1st of each year, Licensee shall submit to City a report documenting its inspections and any scheduled repairs for the proceeding twelve (12) month period.
- i. Upon receipt of any notice from the City that any facilities of Licensee are 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 reasonable steps to correct such danger or interference within (i) four (4) hours if such notice is received during normal business hours, or (ii) twenty-four (24) hours if such notice is received outside of normal business hours, or within such alternative time frame agreed upon in writing by the City. If, in the City's determination, such danger is imminent, the City may take any action with regard to such facility as the City determines in its sole discretion is prudent to eliminate such danger.
- j. 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 or gross negligence, Licensee shall pay City, within sixty (60) days after receipt of written demand from City, for all reasonable cost of such activities.
- k. Licensee shall be available for emergency repairs at 1-800-638-2822 twenty-four (24) hours a day.

- I. Subject to clause (e) of this Section, the City shall not require an application, approval, or permit, or require any fees or other charges, from Licensee, for:
  - i. routine maintenance; or
  - ii. the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if Licensee notifies the City at least 10 days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with the requirements of the City's Ordinance; or
  - iii. the installation, placement, maintenance, operation, or replacement of small wireless facilities that are suspended on cables that are strung between existing utility poles in compliance with applicable safety codes, provided this provision does not authorize such facilities to be suspended from municipal electric lines, if any.

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

- a. Licensee shall install its facilities only in the locations permitted by the City.
- b. City may revoke Licensee's Permit to use 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.
- c. Licensee shall maintain a list of its facilities located within the City right-of-way with locations and shall provide said list to City by February 1st each year at City's written request no more than once a year with a 90 day prior written notice.
- d. Licensee shall affix a 4" x 6" decal on each Pole identifying the wireless services provider, contact phone number and an equipment identification number. The City in its sole discretion shall approve the decal.

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

**14. ABANDONMENT AND REMOVAL:** Any 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 in accordance with the City's Municipal Code Electric Service

Rules and Policies for commercial customers to the Licensee's 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 the City related to the provision of electrical services to the Licensee's 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 forty-five (45) days in which to cure any breach, provided the breaching Party shall have such extended period, not to exceed ninety (90) days, as may be required beyond the forty-five (45) days if the breaching Party commences the cure within the forty-five (45) 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 forty-five (45) day cure period, as potentially extended to ninety (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, solely with respect to the location(s) causing such default, 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. **INSURANCE:**

- a. Workers' Compensation and Employer's Liability insurance, as required by statute, with Employer's Liability limits of \$2,000,000 each accident, \$2,000,000 by disease policy limits, and \$2,000,000 by disease each employee. To the extent allowed by law, the policy must include a blanket waiver of subrogation in favor of the City.
- b. Commercial General Liability insurance written on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing equivalent coverage, with limits of:

- i. \$2,000,000 General Aggregate Limit
  - ii. \$2,000,000 Each Occurrence
  - iii. \$2,000,000 Each Occurrence – Personal Injury and Advertising Injury
  - iv. \$2,000,000 Products/Completed Operations Aggregate Limit
- c. Umbrella/Excess Liability insurance with limits of \$2,000,000 each occurrence and in the aggregate. 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.
- d. 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."
- e. 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 non-renewal of any required coverage that is not replaced.
- f. The insurance required to be purchased and maintained by the Lessee shall be provided by an insurance company eligible to provide insurance in the State of Illinois and which is reasonably acceptable to City.
- g. All policies shall be primary and non-contributory with any insurance or program of self-insurance that may be maintained by the City.
- h. 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.
- i. 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.

19. **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 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.

20. **SEVERABILITY:** In the event that any portion or section of this Agreement is determined to be invalid, illegal, unenforceable 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.
21. **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 Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.
22. **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.
23. **AUTHORIZATION:** Licensee certifies and warrants that it has the authority to enter into this Agreement.
24. **AMBIGUITY:** If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.
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:  
Attention: City Manager  
400 South Eagle Street  
Naperville, IL 60540

WITH COPIES TO:  
City of Naperville  
Attention: City Engineer and City Attorney  
400 South Eagle Street  
Naperville, IL 60540

**To Licensee (including bills):**

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**in each of the above cases (excluding bills), with a copy sent to:**

Attn: \_\_\_\_\_  
Re: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

27. **CHANGE OF LAW:** In the event that any legislative, regulatory, judicial, or other action ("new law") affects the rights or obligations of the Parties, or establishes rates, terms or conditions for the construction, operation, maintenance, repair or replacement of Wireless Installation on public infrastructure or in the right-of-way, that differ, in any material respect from the terms of this agreement, then either Party may, upon thirty (30) days' written notice, require that the terms of this agreement be renegotiated to conform to the new law on a going forward basis for all existing and new small cell installations, unless the new law requires retroactive application. In the event that the Parties are unable to agree upon

such new terms within 90 days after such notice, then any rates contained in the new law shall apply from the 90th day forward until the negotiations are completed or a Party obtains a ruling regarding the appropriate conforming terms from a commission or court of competent jurisdiction. Except as provided in the proceeding, all terms in the existing Agreement shall remain in effect while the parties are negotiating.

28. **CONFIDENTIALITY:** Unless otherwise authorized by this section, neither Party shall at any time disclose, provide, demonstrate or otherwise make available any confidential information of the other Party (“Confidential Information”). “Confidential Information” shall include any information of a confidential or proprietary nature so designated in writing as “confidential” by a Party when disclosed by a Party to this Agreement to the other Party, not including the financial terms or conditions of this Agreement. Each Party shall use its best efforts and shall cause its officers, directors, employees, lenders and agents (including retained attorneys and consultants) to whom such Confidential Information may be disclosed to safeguard the confidentiality of the other Party’s Confidential Information. At a minimum, such precautions shall include, but not be limited to, all precautions taken to ensure the confidentiality of such Party’s own Confidential Information. Confidential Information may be disclosed (a) with the non-disclosing Party’s prior written consent, or (b) as may be required by applicable law, including Open Records laws, or governmental authorities (including but not limited to disclosures necessary to obtain permits and other regulatory approvals); provided that the Party making such disclosures shall seek, and use all reasonable efforts, to obtain confidential treatment for the same. Notwithstanding anything in this Section 15 or elsewhere in this Agreement to the contrary, Licensee shall have the right, without the necessity of obtaining the City’s consent, to provide copies of this Agreement (with financial terms redacted) and the locations of Structures to third parties as may be necessary to obtain required authorizations, or where otherwise compelled by law.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the Effective Date entered on page 1 hereof.

**CITY OF NAPERVILLE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**LICENSEE**

\_\_\_\_\_  
\_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_  
Date: \_\_\_\_\_

## **EXHIBIT 1**

(Drawings showing Details and Location of Utility Pole- Attached)