

**MASTER LICENSE AGREEMENT  
FOR ATTACHMENT OF SMALL WIRELESS FACILITIES ON UTILITY POLES and  
WIRELESS SUPPORT STRUCTURES IN PUBLIC RIGHTS-OF-WAY**

This Master License Agreement (the “MLA”) dated this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, is made by and between the City of Worcester, a Massachusetts municipal corporation acting by and through its Commissioner, Department of Public Works & Parks (“City”), and \_\_\_\_\_, with its principal offices located at \_\_\_\_\_ (“Licensee”). City and Licensee shall be referred to hereafter individually as a “Party” and collectively as the “Parties.”

**RECITALS**

- A. Licensee desires to install/modify, operate and maintain Small Wireless Facility(ies) in the Right-Of-Way for the purpose of operating said Small Wireless Facility(ies) in order to provide Worcester residents, businesses and visitors with a more robust and reliable wireless experience and access to advanced Wireless Services and applications; and
- B. The City is willing, in accordance with applicable law, including but not limited to Section 29 of chapter 12 of the Revised Ordinances of 2008 (the “Ordinance”) and the rules and regulations promulgated thereunder, to issue one or more non-exclusive licenses, permits and other authorizations, as applicable, authorizing the installation, operation, and maintenance, and the modification and the removal of Licensee’s Small Wireless Facility(ies) within the Right-Of-Way, provided however, that the City may refuse to issue or condition issuance of, on a non-discriminatory basis, such a license(s) where there is insufficient capacity for the requested Small Wireless Facility or for reasons of safety, reliability and generally applicable engineering requirements, inconsistency with other municipal purposes including but not limited to public travel and municipal infrastructure, such as water and sewer lines, electric, gas and cable access, public safety, emergency communications, whether provided by law, license or contract, and for such other reasons as set forth in local, state or federal law.
- C. The parties intend that this MLA and any Site SubLicense granted hereunder shall supersede any and all pole attachment agreements for Small Wireless Facilities (written or oral) between the parties at the locations identified herein.
- D. This MLA is intended to provide an increased predictability for the Licensee because the terms and conditions of the MLA are established for its term, balanced with the overall public interests of the City.

**AGREEMENT**

THE PARTIES AGREE as follows:

**ARTICLE 1: DEFINITIONS**

For the purposes of this MLA, the following terms shall have the following meanings:

- 1.1 “Affiliate,” when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership control with Licensee.
- 1.2 “Applicable Codes” means Massachusetts building, plumbing and electrical code, uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, and the National Electric Code, National Electric Safety Code, and the rules, regulations and provisions of the Federal Communications Commission, the Occupational Safety and Health Administration, and any other Massachusetts or federal agency regulating wireless communications;
- 1.3 “Emergency” means a condition that poses a clear and immediate danger to life or health or of a significant loss of property or that requires immediate repair or replacement in order to restore electric service to a customer.
- 1.4 “Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any practices, methods and acts which, in the exercise of good judgment in light of the facts known at the time the decision was made, could have expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition.
- 1.5 “Site SubLicense” means that written authorization from the City to the Licensee (Wireless Services Provider or Wireless Infrastructure Provider), to locate a Small Wireless Facility within the Right-Of-Way, where said Site SubLicense shall identify the particular location for the placement and conditions of said Small Wireless Facility. Such Site SubLicense is required whether or not the Utility Pole or Wireless Support Structure on which the Small Wireless Facility is attached is owned by the City. A Site SubLicense may not license more than a single Small Wireless Facility. The executed MLA and applicable Site SubLicense shall constitute the license agreement, as required by the Ordinance.
- 1.6 “Qualified Electrical Worker” means a worker meeting all training, licensing, and experience requirements of all applicable federal, state, and local work rules, including OSHA 1910.269.

All other defined terms used herein shall have the same meaning as set forth in the Ordinance or in the body of this MLA.

## **ARTICLE 2: SCOPE OF MLA AND SITE SUBLICENSE**

- 2.1 MLA Is Required. The execution of this MLA is a precondition to Licensee’s authorization to locate (e.g., installation, operation and other related activities) a Small Wireless Facility within the Right-Of-Way. Upon the execution of this MLA and during its Term, the terms and conditions set forth herein shall be automatically incorporated by reference into each and every Site SubLicense issued by the City to Licensee for a Small Wireless Facility within the Right of Way. This MLA alone does not constitute the grant of any permission to locate or operate a Small Wireless Facility within the Right of Way. A Site SubLicense will be issued only following the receipt, review and approval of an Application from a Wireless Services Provider or Wireless Infrastructure Provider, directly or by its qualified contractor. While other permits (e.g., street opening permits, electrical permits) may be issued to the Applicant, this MLA and

any Site SubLicense shall only be issued to the Wireless Services Provider or Wireless Infrastructure Provider ultimately responsible for the Small Wireless Facility. No work may commence within the Right of Way without a Site SubLicense for the operation of such Small Wireless Facility.

An approved Small Wireless Facility shall be governed by this MLA, the permit(s) issued by the Department of Public Works & Parks and other local permitting authorities authorizing the installation of the Small Wireless Facility (whether held by the Licensee or by a contractor qualified to perform the installation), and a Site SubLicense for a particular location, subject to any and all siting requirements for the particular Small Wireless Facility.

This MLA does not constitute a license to provide cable service as defined in Section 602 of the Communications Act of 1934, as amended, 47 U.S.C. § 522(6), within the meaning of G.L. c. 166A.

- 2.2 Grant of Site SubLicense. In accordance with this MLA, Licensee's approved Application, any and all permits and other authorizations required by local, state and federal laws, regulations, orders and requirements, the City will grant Licensee a revocable, nonexclusive Site SubLicense authorizing Licensee to operate and maintain a Small Wireless Facility on a Utility Pole or Wireless Support Structure within the Right-Of-Way at the particular location(s) identified in the Application and approved by the Commissioner (or a designee), and in accordance with the requirements established by local law and as set forth herein. Except as expressly provided, no other license or permit will authorize the placement of any Wireless Facilities or any other equipment or materials in or on the Right-Of-Way.
- 2.3 All Rights Nonexclusive. Notwithstanding any provision to the contrary, all rights expressly or impliedly granted to Licensee under this MLA and any Site SubLicense(s) shall be subject and subordinate to the continuing right of the City to use, and to allow any other Person(s) to use, any and all parts of the Right-Of-Way, and any and all other deeds, easements, grants of location, conditions, covenants, restrictions, encumbrances, license or contract obligations and claims of title (collectively, "Encumbrances" ) which may affect the Right-Of-Way now or at any time during the term of this MLA, including without limitation any existing or future Encumbrances granted, created or allowed by the City. Primary uses of the Right-Of-Way shall include public travel and municipal infrastructure, which includes, for example, water and sewer lines and electric, gas and cable infrastructure and service, use by nearby properties, public safety, emergency communications, Utility Pole attachments, any and all access provided by law, easement, license contract or otherwise, compliance with the legal, contract and license requirements of third parties, and for such additional reasons as provided for in local, state or federal law.
- 2.4 Necessity of Authorizations. Neither this MLA nor any Site SubLicense granted under it shall relieve Licensee from its obligation to obtain and maintain any and all necessary other permits from other City departments and any and all permits, licenses and authorizations from other entities, owners and agencies with jurisdiction over Licensee's Small Wireless Facility(ies) prior to commencing any installation, maintenance or operation activities.
- 2.5 Wireless Services. Any Wireless Infrastructure Provider or Wireless Services Provider constructing, intending to construct, or facilitate the construction of a Small Wireless Facility

within the Right-Of-Way shall comply with the terms and conditions of this MLA, as well as other applicable federal, state and local laws, regulations, requirements and orders, including but not limited to the requirements set forth in the Department of Public Works & Parks Permit Manual and City of Worcester's Standard Specifications and Details.

- 2.6 Site SubLicense Issuance Conditions. The City will issue a Site SubLicense to Licensee only when the City determines, in its sole judgment, reasonably exercised, that all applicable preconditions and requirements have been fully satisfied. The Licensee shall secure and pay for all licenses (including but not limited to the Site SubLicense), permits and other authorizations necessary for the proper execution and completion of the work, including but not limited to any and all requirements imposed by the owner of any Utility Pole or Wireless Support Structure not owned by the City. In making such determination(s), the City may (but is not required to) rely in whole or in part on the representations, certifications and statements made by the Licensee by its Application.
- 2.7 Reservation of Rights. The City will grant applications for installation, modification and operation of Small Wireless Facilities within the Right-Of-Way only in a manner it determines is consistent with the primary municipal purposes and interests and with generally accepted safety, operational, reliability and engineering requirements. Nothing in this MLA or in any Site SubLicense, other license or permit shall be construed to compel the City to construct, reconstruct, retain, extend, repair, place, replace, maintain or make space for the placement of Small Wireless Facilities on City Utility Poles, Wireless Support Structure or otherwise in the Right-Of-Way. Further, the City reserves the right to deny, issue with conditions, suspend or revoke this MLA and any Site SubLicense, other license, permit or other authorizations issued under it as necessary to ensure the safe and reliable function and maintenance of the City Utility Poles, Wireless Support Structures and the Right-Of-Way, the safety of the traveling public, and the safe and reliable function and maintenance of municipal infrastructure.
- 2.8 No Vesting Of Ownership. No MLA, Site SubLicense, permit, other authorizations, or use by Licensee of any Utility Pole, Wireless Support Structure or the Right-Of-Way shall create or vest in Licensee any ownership or property rights in any City Utility Poles, Wireless Support Structure or in the Right-Of-Way. Licensee is and shall remain a mere licensee. Nothing herein entitles the Licensee to damages under eminent domain or in the event that any public way is discontinued or abandoned.
- 2.9 Term. The term of this MLA shall be for a period of five (5) years, commencing on the date of execution by the City. It may be extended for an additional ten (10) years in increments of five (5) years by written agreement of the parties, where such agreement to extend shall not be unreasonably withheld.
- 2.10 City Utility Poles on Commonwealth Right of Way. If Licensee wishes to install or modify any Small Wireless Facility(ies) on any City Utility Pole or Wireless Support Structure that is in a Right-Of-Way owned by the Commonwealth of Massachusetts (through any of its departments or agencies), or any other governmental entity, the Licensee shall nevertheless comply with all provisions of this MLA and local laws, regulations, orders and requirements as they apply to the installation/modification, maintenance and operation of said Small Wireless Facility(ies) on said City Utility Pole or Wireless Support Structure, and further shall obtain any and all other applicable permits and authorizations whether from the City, the Commonwealth, and/or any

other applicable government or entity. Without limiting the generality of the foregoing, the Licensee shall pay the City the Fees, Rates and all other charges as set forth herein.

- 2.11 All Small Wireless Facilities. With regard to any Small Wireless Facility in the City, the Licensee shall comply with any and all laws, regulations, requirements and orders, including but not limited to those relating to public safety and municipal infrastructure.

### **ARTICLE 3: FEES AND RATES**

- 3.1 Application Fee. With its Application (whether for a new or a modification of any existing Small Wireless Facility), the Licensee shall pay the City the Application Fee required by the Department of Public Works & Parks Fee Schedule.
- 3.2 Annual Attachment Rate. The Licensee shall annually pay the City the Attachment Rate (referred in the Permit Manual as the “Annual License Rate”) for each Site SubLicense. The Licensee shall pay the initial Attachment Rate with its Application (whether for a new or a modification of any existing Small Wireless Facility). Thereafter, the Licensee shall, each year, pay the Attachment Rate by December 31 (or the first business day thereafter). If the Licensee fails to timely pay said Annual Attachment Rate, the Site SubLicense shall automatically expire. The Licensee acknowledges and agrees that for the first year and the last year, it shall not be entitled to any reimbursement of the annual Attachment Rate for a partial year.
- 3.3 Other Permits and Authorizations. Licensee shall obtain and pay the separate fee and charge applicable to other applicants for any and all other required permits and authorizations, whether required by the City or any other government or entity, to install, operate, maintain, modify and/or remove the Small Wireless Facility and any other equipment or material located within the Right-Of-Way.

### **ARTICLE 4: LICENSEE RESPONSIBILITY FOR OTHER COSTS**

- 4.1 All Activities and Fees at Licensee’s Sole Expense. All work regarding Licensee’s Small Wireless Facilities and all other activities related thereto shall be Licensee’s responsibility at its sole cost.
- 4.2 Electric Service. Licensee shall be solely responsible to arrange for, pay, maintain and provide a separately metered electric service with Massachusetts Electric Company for its Small Wireless Facility(ies).
- 4.3 Third Party Authorization. Licensee shall be solely responsible to obtain and maintain authorization from any third party (e.g., utility, private property owner, state or federal agency), arising from or related to its Small Wireless Facility. With regard to any third party, (including for example, Massachusetts Electric Company, Verizon Communications, Inc.,) if the City is required to make any payment or incurs any liability related or arising from Licensee’s Small Wireless Facility activities (whether attached to a Wireless Support Structure, City Utility Pole, a new Utility Pole or a Utility Pole not owned by the City), Licensee shall be solely responsible to timely make such payment and incur such liability on behalf of the City.

- 4.4 Risk of Loss or Damage. Licensee shall bear all risk of loss or damage to its Small Wireless Facility and other equipment and materials installed, operating or located in, on or under the Right-Of-Way from any cause. The City shall not be liable for any such loss or damage except to the extent that such loss or damage was caused by the City's gross negligence or willful misconduct.

## **ARTICLE 5: PROCEDURES**

- 5.1 Application Procedure. Licensee's complete Small Wireless Facilities Application shall be submitted to the Department of Public Works & Parks, Engineering and Architectural Services Division, Attention: Permitting, and shall comply with the requirements of the Department of Public Works and Parks, Permit Manual and the City of Worcester's Standard Specifications and Details and such other rules and regulations as may be adopted from time to time. The Application shall also comply with any and all regulations and requirements of City departments, including e.g., the Department of Inspectional Services and the Department of Emergency Communications.
- 5.2 Authorization Required. Licensee shall not install, modify or operate any Small Wireless Facilities on any Utility Pole or Wireless Support Structure (new or existing), commence any work or otherwise locate any materials or equipment within the Right-Of-Way without first (a) fully completing the Application and receiving approval therefore, (b) executing this MLA, (c) obtaining a Site SubLicense granted under this MLA, as well as any and all permits, and other authorizations, (d) fully satisfying any and all preconditions identified on (b) and (c) above and (e) satisfying all applicable requirements set forth in local, state and federal laws, regulations, ordinances, rules and requirements, as may be amended from time to time, including but not limited to the regulations and requirements set forth in the City of Worcester, Department of Public Works & Parks, Standard Specifications & Details, and the Permit Manual, City of Worcester, MA, Department of Public Works. It is the Licensee's sole burden and responsibility to ensure that its Application complies with the requirements of this MLA and that it has met all other requirements for its activities and operation arising from and related to its Small Wireless Facilities within the Right-Of-Way.
- 5.3 City's Issuance Not Waiver. The City's acceptance, approval and/or issuance of a Site SubLicense, permit, or other authorizations of any kind or nature shall in no event relieve Licensee of its sole responsibility for its submittal, any errors and/or omissions, any representations, warranties, or assertions whatsoever. Without limiting the generality of the foregoing, Licensee's use of a Small Wireless Facility design included in the City's regulations as a permissible design shall not limit the Licensee's obligation to determine and to affirmatively certify that it has determined that such design is safe and appropriate at the proposed location and for Licensee's use.

## **ARTICLE 6: INSTALLATION OF LICENSEE'S SMALL WIRELESS FACILITIES**

- 6.1 Commence Installation Only After Obtaining Licenses and Permits. Only after Licensee has obtained a Site License and all other required licenses, permits and other authorizations, may Licensee proceed to install/modify the Small Wireless Facilities. Any such installation/modification shall be in compliance with Licensee's approved Application and any additional requirements of the Commissioner, and be performed by Qualified Workers,

including for example, Qualified Electrical Workers, and others possessing the applicable licenses, certifications and experience appropriate to perform the relevant tasks. Once such work commences, it shall be performed continuously until completion, unless the City approves a delay in writing.

- 6.2 New Utility Pole Costs. If a new Utility Pole or Wireless Support Structure (whether the replacement of an existing City Utility Pole or Wireless Support Structure, or a new location) is required to accommodate the installation of Licensee's Small Wireless Facilities, Licensee shall pay all costs related thereto, including but not limited to:
- 6.2.1 If Licensee is permitted to replace a City Utility Pole or Wireless Support Structure, such work and costs shall include the transfer of all existing attachments, connections and facilities, satisfaction of all requirements relating to the utility connection(s), and removal and delivery to the City for reuse of the old Utility Pole;
  - 6.2.2 On any new Utility Pole, the City may require that the Licensee install, maintain and operate (keep lit) a street light similar to the style and wattage as the surrounding luminaires, at Licensee's sole cost; and
  - 6.2.3 On any replaced City Utility Pole or Wireless Support Structure (at the same location), the Licensee shall allow the City to attach such signage, equipment and other attachments as were attached to the existing City Utility Pole or Wireless Support Structure and further shall allow the City, without conditions or charge, to install, repair, replace and maintain and operate the same above as well as a street light. In its Application, the Licensee shall include such signage, equipment and other attachments in its determination of the suitability of such City Utility Pole or Wireless Support Structure (e.g., weight, wind load, line of sight, etc.); and
  - 6.2.4 (a) For any new Utility Pole or Wireless Support Structure or replaced City Utility Pole/Wireless Support Structure on which the City requires a street light, Licensee hereby authorizes the City to install, repair, replace, maintain and operate said street light; and (b) Licensee further agrees that if the City determines that it requires access to any area of the new Utility Pole/Wireless Support Structure or replaced City Utility Pole/Wireless Support Structure where Licensee's equipment is located, the City may contact Licensee (using the information provided in Section 6.4, or such other contact information as Licensee may in writing provide), and Licensee shall, within three (3) business days, make available a qualified employee or contractor to coordinate and assist the City's employee and/or contractor with said work so that the Licensee, not the City, is handling (e.g., moving, deactivating/activating) Licensee equipment and/or materials. If the City's work requires wiring of other work in close proximity to Licensee's equipment/materials, Licensee's employee or contractor shall assist the City's employee or contractor as needed to ensure that such work is performed safely with respect to Licensee's equipment/materials; and (c) Each Party shall be responsible for its respective costs incurred by this Section 6.2.4, including but not limited to labor, materials, and equipment. Additionally, the City shall be responsible for the electricity costs for operating its street lights; and (d) For the purposes of this Section 6.2, a replaced City Utility Pole or Wireless Support Structure shall include instances where an existing City Utility Pole or Wireless Support Structure is removed and replaced with a new Utility Pole or Wireless Support Structure that is located within ten (10) feet of the previous location.

- 6.3 No Reimbursement for Third Party Charges. Licensee shall not be entitled to reimbursement from the City of any amounts paid to the City, Massachusetts Electric Company, or any other third party, for Pole replacements or for rearrangement of attachments on the City's Utility Poles made necessary because of the City's use or the use by any third party resulting from such replacement or rearrangement.
- 6.4 Emergency Contact Information. Licensee shall maintain a current twenty-four (24) hour contact number on file with the City for each wireless site.

## **ARTICLE 7: FACILITY REMOVAL; FACILITY RELOCATION**

- 7.1 Removal Upon Expiration of any Site SubLicense. After the expiration of any Site SubLicense granted under this MLA, the Licensee shall, within twenty-one (21) calendar days written notice from the City, safely remove any and all Small Wireless Facilities and related equipment and materials from the Right-Of-Way, whether regarding a Wireless Support Structure, City Utility Pole, a new Utility Pole or an attachment to a Utility Pole not owned by the City. Licensee shall continue to make all required payments under said Site SubLicense and Licensee shall be subject to all other obligations and requirements of the MLA and said Site SubLicense until all Small Wireless Facilities and related materials and equipment are removed and all restoration is complete to the reasonable City's satisfaction, reasonable wear and tear excepted. If Licensee fails to complete this removal and restoration on or before the twenty-first (21st) day following such expiration, then the City, upon five (5) calendar days written notice to Licensee, may, at the City's sole election but not obligation, remove any and all Small Wireless Facility (or portion thereof) and any equipment and/or materials from the Right-Of-Way related to said Site SubLicense and Licensee shall have no recourse against the City. Licensee shall pay to the City the actual costs and expenses related thereto, including without limitation the costs of the removal and any storage of Licensee's property after removal, within ten (10) calendar days of a written demand for this payment from the City. If Licensee fails to make payment within the period set forth herein, any Small Wireless Facility (or portions thereof), materials or equipment remaining on or about the Right-Of-Way or stored by the City shall be deemed Abandoned and the City may dispose of such property in such manner as it may choose and Licensee shall have no recourse against the City. The provisions of this paragraph shall survive the expiration of said Site SubLicense and/or this MLA.
- 7.2 Removal Upon Termination of MLA. After the expiration of this MLA, the Licensee shall, within twenty-one (21) calendar days written notice from the City, safely remove any and all Small Wireless Facilities and related equipment and materials installed pursuant to this MLA from the Right-Of-Way, whether regarding a Wireless Support Structure, City Utility Pole, a new Utility Pole or an attachment to a Utility Pole not owned by the City. Licensee shall continue to make all required payments under this MLA and Licensee shall be subject to all other obligations and requirements of this MLA until all Small Wireless Facilities and related materials and equipment are removed and all restoration is complete to the reasonable City's satisfaction, reasonable wear and tear excepted. If Licensee fails to complete this removal work on or before the twenty-first (21st) day, then the City, upon five (5) calendar days written notice to Licensee, may, at the City's sole election but not obligation, remove any and all Small Wireless Facility (or portion thereof) and any equipment and/or materials from the Right-Of-Way related to this MLA and Licensee shall have no recourse against the City. Licensee shall pay to the City the actual costs and expenses related thereto, including without limitation the



costs of the removal and any storage of Licensee's property after removal, within ten (10) calendar days of a written demand for this payment from the City. If Licensee fails to make payment within the period set forth herein, any Small Wireless Facility (or portions thereof), materials or equipment remaining on or about the Right-Of-Way or stored by the City shall be deemed Abandoned and the City may dispose of such property in such manner as it may choose and Licensee shall have no recourse against the City. The provisions of this paragraph shall survive the expiration of this MLA.

7.3 Termination of MLA and/or Site SubLicense. In the event of Licensee's failure to comply with and default of either the MLA and/or Site SubLicense(s), the time period set forth in this Article 7 to facilitate such removal shall not apply and is not intended be aggregated with the time periods provided in Article 18.

7.4 Removal or Relocation of Wireless Facilities at City's Request. On sixty (60) calendar days written notice, the City, at any time and from time to time, may require Licensee to remove, rearrange or relocate all or any portion of any Small Wireless Facility(ies) (including related equipment and/or materials) located within the Right-Of-Way at Licensee's expense if the City determines, in its reasonable discretion, that the removal, rearranging or relocation is needed to facilitate or accommodate activity consistent with the City's use and/or obligations of its Right-Of-Way, including for example, the construction, completion, repair, or relocation or maintenance of City infrastructure, a City project or City facility, a determination that a Small Wireless Facility interferes with or adversely affects proper operation of the light poles, traffic signals, or City-owned communications systems, a relocating or change in use of the Right-Of-Way, to comply with a third party license or contract requirements, or for other good reason consistent with the public safety and the uses of the Right-Of-Way and municipal infrastructure. Notwithstanding the 60 day notice period above, the City may provide shorter advance notice if circumstances or third parties reasonably require a reduced notice period or Emergency removal or relocation of a Small Wireless Facility or related equipment or materials. The City shall work reasonably with Licensee to accommodate a relocation of the Small Wireless Facility at another reasonably equivalent location. The costs for any such removal, rearrangement and/or relocation of Licensee's Small Wireless Facilities or a change to or replacement of a City Utility Pole or Wireless Support Structure (including any related costs for tree cutting or trimming required to clear the new location of the City's cables or wires) shall be equitably allocated between the City, Licensee and/or other third party(ies), as applicable, as set forth below:

A. Without limiting the Licensee's obligations set forth elsewhere in this MLA, if the City intends to change or replace a City Utility Pole or Wireless Support Structure solely for its own benefit, it shall be responsible for the costs related to the change or replacement of said City Utility Pole or Wireless Support Structure, and Licensee shall be responsible for the costs associated with the removal, rearrangement or relocation of its Small Wireless Facilities.

B. If the change or replacement of a City Utility Pole or Wireless Support Structure is necessitated by the requirements of Licensee (whether incident to a Modification, new Application, or otherwise), Licensee shall be responsible for the costs related to the change to or replacement of the City Utility Pole or Wireless Support Structure, the costs associated with the removal, rearrangement or relocation of its Small Wireless Facilities, and the costs associated with the removal, rearrangement or relocation of any existing third party's facilities.

Licensee must submit to the City evidence, in writing, that it has made arrangements to reimburse all affected third parties for the cost to transfer or rearrange such third party's facilities. The City shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of a third party's facilities pursuant to this provision.

C. If the change to or the replacement of a Utility Pole or Wireless Support Structure or a removal, rearrangement or relocation of Licensee's Small Wireless Facility is the result of an additional attachment or the change to an existing attachment sought by a third party attaching entity ("third party attacher"), the Licensee shall nevertheless be solely responsible for any and all costs, including but not limited to its labor, materials and equipment, including but not limited to damages, injury, interruption in service, Interference, costs of relocation, removal or rearrangement or other dispute.

D. If Licensee fails to remove its Small Wireless Facility as required by the City within the prescribed period, such failure shall constitute grounds for termination of the Site SubLicense, and further the City may take all reasonable and appropriate action, as set forth elsewhere in this MLA, and/or otherwise available pursuant to Law, and/or may remove such Small Wireless Facility, equipment and/or material at Licensee's sole risk and cost and Licensee shall have no recourse against the City.

- 7.5 Future City Licenses. City shall have no responsibility to condition future Licenses, permits or other authorizations or their impact on Licensee or its Small Wireless Facility. The Licensee shall be solely responsible to resolve any and all matters with any third party attacher in a commercially reasonable manner and without liability or cost to the City. Licensee further agrees to cooperate with such third party attacher to reasonably facilitate the removal, relocation and/or rearranging of the Licensee's Small Wireless Facilities as needed.
- 7.6 Accidental Damage. If a City Utility Pole or City Wireless Support Structure must be repaired or replaced for reasons unrelated to its use for Small Wireless Facilities (e.g., storm, accident, deterioration), the City shall pay to repair or replace the City Utility Pole or City Wireless Support Structure; provided however, Licensee shall be responsible for all costs relating to its Small Wireless Facility(ies), including, e.g., repairing, replacing, installing, rearranging and/or transferring.
- 7.7 Removal or Relocation of Wireless Facilities No Longer In Use. If Licensee Abandons any Small Wireless Facility, Licensee shall immediately obtain the necessary permits and other authorizations, at Licensee's sole expense, safely remove it and any related equipment and materials, and fully restore the City property to the reasonable satisfaction of the City, reasonable wear and tear excepted.
- 7.8 Right to Remove a Wireless Facility. Licensee shall have the right to remove any Small Wireless Facility installed in the Right-Of-Way, provided that it shall furnish the City with at least ten (10) calendar days prior notice, obtain any and all applicable permits and other authorizations and coordinate with the City regarding the timing and logistics of the removal.

## ARTICLE 8: WORK STANDARDS

- 8.1 Work Plan. With its Application for Small Wireless Facility, Licensee shall furnish a map and written detailed proposal describing the work to be performed and the facilities, methods and materials (if any) to be installed ("Work Plan") to the Commissioner for review and will not perform any work until it has entered into this MLA, been granted the Site SubLicense and received all permits and other authorizations. In addition, prior to conducting any work in the Right-Of-Way, Licensee shall provide to the City a current emergency response plan identifying staff who have authority to resolve, twenty-four (24) hours a day, seven (7) days a week, problems or complaints resulting, directly or indirectly, from the Small Wireless Facility installed pursuant to this MLA and any Site SubLicense granted hereunder. Within seven (7) calendar days following installation of the Small Wireless Facility, Licensee shall deliver to the Commissioner as-built drawings certified by a Massachusetts professional engineer.
- 8.2 Repair or Replacement of Damaged Facilities or Property. Licensee shall promptly repair or replace, to City's reasonable satisfaction, any damage to the Right-Of-Way or other City property arising from or related to the Small Wireless Facilities. Licensee shall perform such remedial or replacement work, including but not limited to replacement of City equipment or materials, at no expense to the City, except to the extent such damage was caused by the gross negligence or willful misconduct of City.
- 8.3 Change to Work Plans. If the Commissioner determines that the health or safety requires a change to the approved Work Plan, the Commissioner may require such a change, and Licensee shall perform the work in accordance with such required change at Licensee's sole expense. The Commissioner shall provide Licensee with a written description of the public health or safety issue necessitating the change, and the time within which Licensee shall make the change required.
- 8.4 No Disruption. Licensee shall not unreasonably disrupt in any manner any public or private facilities or infrastructure existing now or in the future, including but not limited to public travel, parking, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, telecommunications facilities, utility, and municipal property, without the express written approval of the owner or owners of the affected property or properties, except as required by applicable Laws or this MLA.
- 8.5 Restoration of Damaged Property. Licensee shall be responsible for repair and restoration of any damage to City facilities arising from or related to its Small Wireless Facility, except to the extent such damage is caused by the City's gross negligence.
- 8.6 Double Poles. Licensee's installation of any Small Wireless Facilities shall not create, or lead to the creation of, any "double poles" (also known as "side by side poles") poles in the Right-Of-Way.
- 8.7 Map of Facilities. Licensee shall maintain and provide to the City, in a form reasonably acceptable to the City, a current map and the address and GPS location of all Small Wireless Facilities it installs/modifies pursuant to this MLA, any Site SubLicense and/or any permit or

other authorizations. The map shall also link to a file(s) in a format acceptable to the City containing as-built engineering/construction drawings for all such Small Wireless Facilities.

## **ARTICLE 9: MODIFICATIONS TO SMALL WIRELESS FACILITIES**

- 9.1 Determination of Modification. Licensee may modify (which term shall include upgrades) any Small Wireless Facility it installs pursuant to this MLA, the Site SubLicense, permits, and other authorizations, *provided that* (a) such modification satisfies the requirements set forth in the Ordinance, section (c)(5), (b) Licensee notifies the City by submitting a completed Application to the Department of Public Works & Parks identifying the proposed changes to its Small Wireless Facility and certifies in accordance with the requirements of the Department of Public Works & Parks Permit Manual that: (1) such modification of the Small Wireless Facility complies with Ordinance, Section (c)(5); (2) such changes will not exceed the maximum structural load or negatively impact the structural integrity of the Utility Pole or Wireless Support Structure or infrastructure on or within which the Small Wireless Facility is located, and (3) such changes will not interfere with the use of the Utility Pole or Wireless Support Structure or municipal infrastructure by the City, or by any other party authorized to use or maintain equipment on the pole or infrastructure. If the Licensee's proposed modification does not satisfy all of said requirements, the Licensee shall submit a completed Application and obtain any and all necessary permits and other authorizations for such modification, including a new Site SubLicense prior to performing any modification work.

## **ARTICLE 10: WORK IN AND ACCESS TO THE RIGHT OF WAY**

- 10.1 Scheduled installation and Maintenance of Licensee Facilities. Not less than ten (10) calendar days prior to the commencement of any work in the Right-Of-Way, Licensee shall provide the City written notification of all contractors proposed to be performing work and the work to be performed relating to any Small Wireless Facility location. No work shall commence until the City provides its acceptance in writing of such work schedule, with such approval to not be unreasonably withheld, conditioned or delayed.
- 10.2 Qualified Workers. Licensee warrants that all of Licensee's employees, agents and contractors working on the Small Wireless Facility are fully licensed and qualified to perform their work, including but not limited to being fully Qualified Electric Workers.
- 10.3 Emergency Access. If Licensee requires Emergency access to its Small Wireless Facility(ies), Licensee shall provide the City prior notice by complying with the requirements of Department of Public Works & Parks Permit Manual and the Worcester Police. The City agrees not to unreasonably delay, restrict or deny Licensee access to its Small Wireless Facilities for Emergency repairs.
- 10.4 Restoration of Work Site Areas. Upon the Licensee's completion of each task or phase of work, Licensee shall promptly restore all work site areas to a condition reasonably satisfactory to the Commissioner and in accordance with applicable regulations and construction standards, reasonable wear and tear excepted.
- 10.5 Repair or Replacement of Damaged Facilities or Property. Licensee shall immediately repair or replace, at Licensee's expense and to the City's reasonable satisfaction, any City property

that has been damaged related to the installation/modification, maintenance or operation of Licensee's Small Wireless Facility(ies), except to the extent such damage was caused by the gross negligence or willful misconduct of the City.

#### **ARTICLE 11: MAINTENANCE OF LICENSEE'S SMALL WIRELESS FACILITIES**

- 11.1 Licensee is responsible for the maintenance of its Small Wireless Facilities, including all materials and equipment, at its sole cost. Licensee shall provide the City a minimum of ten (10) calendar days' advance notice to the Commissioner, Department of Public Works & Parks (or his designee) of Licensee's need to perform routine or scheduled maintenance on Small Wireless Facilities.
- 11.2 Both parties agree that, in the event of widespread interruptions of the City's and Licensee's Facilities (e.g., a major storm or force majeure event) in connection with damage to the City's Utility Poles or City's Wireless Support Structure, the Parties shall use reasonable efforts to support restoration of their respective property. In the event of localized interruptions (e.g., motor vehicle accidents), the City shall endeavor to notify Licensee of the incident and may, in its sole discretion, take any action it deems necessary to clear the Right-Of-Way and protect public safety and Licensee shall have no recourse against the City. Licensee shall promptly reimburse the City for all costs incurred in such an event to the extent incurred in connection with Licensee's Small Wireless Facility.

#### **ARTICLE 12: SPECIFICATIONS**

- 12.1 Specifications. All Licensee's Small Wireless Facilities shall be installed/modified, operated and maintained in accordance with all Applicable Codes, Good Utility Practice, and any and all applicable federal, state, and local laws and regulations. All fees, notices, permits, licenses, and other authorizations, approvals, certifications and Site SubLicenses required for the installation/modification, maintenance and operation of Licensee's Small Wireless Facilities, shall be obtained and paid for by Licensee and shall be provided to the City at no charge and upon request by the City, prior to the start of any work.
- 12.2 Protective Equipment. Licensee, its employees and contractors, shall use adequate protective equipment to ensure the safety of people and property.

#### **ARTICLE 13: OBSTRUCTION**

- 13.1 Licensee Shall Not Cause Obstruction. Licensee shall not operate its Small Wireless Facilities in a manner that obstructs (a) the City's use of, (b) the public's use of, (c) the use by any authorized third party of the Right-Of-Way, or (d) any improvement thereon. Further, the Licensee shall not operate its Small Wireless Facilities in a manner that obstructs a third party's attachment or the City's attachment to the subject Utility Pole or Wireless Support Structure. For the purposes of this Article, the term "obstruct" includes, but is not limited to, blocking of access, emergency communications interference, impeding public travel, interfering with any municipal infrastructure, access pursuant to the ADA, line of sight, or any obstruction to access or use of underground services, whether City owned or those of third parties.

- 13.2 Obligation to Remedy. If any such obstruction occurs, Licensee shall remedy such obstruction as soon as possible but no later than within seventy-two (72) hours after telephone notice to Licensee's emergency contact number or email notice to Licensee's designated contact (notwithstanding Section 19.2). If Licensee fails for any reason to eliminate the obstruction, the City shall have the right to suspend or terminate, in its sole discretion, the Site SubLicense(s) related to the Small Wireless Facility(ies) causing such obstruction, and Licensee shall immediately cease operation of such Facility(ies).
- 13.3 Emergency. Notwithstanding any provision to the contrary, in the event of an Emergency, the City may, in its sole discretion, take such action it deems necessary in order to avert or remedy the Emergency and Licensee shall have no recourse against the City. In such an Emergency, the City shall give notice to Licensee's emergency contact number or email as soon as reasonably possible.
- 13.4 Restrained Access. If the City or other authorized third-party requires access to the Utility Pole or Wireless Support Structure and such access is restrained as a result of the Licensee's Small Wireless Facility, Licensee and the City shall work cooperatively and promptly to support access requirements at no cost to the City.

#### **ARTICLE 14: INTERFERENCE**

- 14.1 Interference. Licensee shall not install or operate any Small Wireless Facility, or any component thereof, whether temporarily or permanently, that interferes with the public safety/emergency communication systems of the City, Commonwealth, or similar agencies or entities. Without limiting the requirements otherwise set forth herein, Licensee shall comply with any and all regulations and requirements of the Director of the Department of Emergency Communications to protect public safety communications. The Licensee acknowledges and agrees that this prohibition shall apply to each and every Small Wireless Facility that, at its maximum output, reduces, impedes, interferes, or interrupts the emergency communications frequencies used by the City or any other public safety agency. Without limiting the generality of the above, the Licensee shall reasonably cooperate with such testing as the City may request.

#### **ARTICLE 15: INSURANCE**

- 15.1 Coverage Required by Permit Manual. The Licensee shall secure and maintain, at its own expense, and keep in effect during the full term of this MLA or the entire period during which the Small Wireless Facility remains in the Right-Of-Way, whichever is longer, a policy or policies of insurance consistent with the requirements of the Department of Public Works & Parks Permit Manual.
- 15.2 Insurance To Include Indemnification Coverage. Additionally, such policy shall include coverage for the Licensee's obligation to indemnify and hold the City, its agents, and employees, harmless on account of claims for damages to persons, property or premises arising out of its installation, operation, maintenance, modification and repair of its Small Wireless Facility, and as otherwise set forth herein. The City of Worcester, Massachusetts shall be named as an additional insured for all coverage except workers compensation.

- 15.3 No Work Allowed Without Insurance. A Licensee shall not install or operate a Small Wireless Facility in the Right-Of-Way without all insurance required under the Department of Public Works & Parks Permit Manual and this MLA, nor shall a Licensee allow any contractor or subcontractor to commence work in the Right-Of-Way until all insurance required of the contractor and subcontractor has been obtained and proof of the same submitted to the City. The required insurance must be obtained prior to the commencement of any work and maintained for the entire Term of this MLA or the period the Small Wireless Facility remains in the Right-Of-Way, whichever is longer. If the Licensee, its contractors or subcontractors do not have the required insurance, the City may terminate or suspend any Site SubLicenses, permits, other authorizations and/or this MLA and may order such entities to stop any activities and/or operation in the Right-Of-Way until satisfactory insurance has been obtained and proof of the same submitted to the City.
- 15.4 Insurance Cancellation. Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the City prior to the expiration of the policy term. These certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) calendar days prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of Massachusetts. The City may amend its requirements pertaining to insurance from time to time.
- 15.5 Third Party Owner. The above insurance requirements shall be in addition to any requirements of the owner of any Utility Pole or Wireless Support Structure not owned by the City. Licensee shall provide the City with written evidence of Licensee's compliance from said owner.

## **ARTICLE 16: INDEMNIFICATION**

- 16.1 Indemnification. To the fullest extent allowed by law, the Licensee, whether Wireless Infrastructure Provider or Wireless Services Provider or both (for this paragraph, collectively referred to as "Provider") installing, operating, maintaining, modifying and/or removing a Small Wireless Facility(ies) shall indemnify, defend and hold harmless the City, and its officials, agents, and employees from and against all suits, actions or claims of any character brought because of any injury or damage received or sustained by any person, persons or property arising out of, or resulting from, said Provider's breach of any provision of law, including but not limited to Department of Public Works & Parks, Standard Specifications & Details and the Department of Public Works & Parks Permit Manual, or any asserted negligent act, error or omission of the Provider, or its agents or employees, arising from or relating to its Small Wireless Facility(ies), except to the extent of the City's negligence or willful misconduct. The indemnifications required hereunder shall not be limited by reason of the specification of any particular insurance coverage for this MLA, any Site SubLicense, permit or other authorizations. The Provider's obligations under this provision shall not terminate with the expiration or termination of its MLA or any Site SubLicense, but shall survive it.
- 16.2 Patent Infringement. Without limiting the generality of Section 16.1 above, Licensee shall be solely responsible and indemnify the City for any and all claims that any Small Wireless Facility infringes a patent, copyright, trade secret, or other property right of a third party. This paragraph shall survive expiration or other termination of this Agreement.

## ARTICLE 17: LIMITATION OF LIABILITY

- 17.1 Waiver of Claims regarding Fitness of Utility Poles Located on Public Ways. The City makes no warranty or representation regarding the fitness, availability or suitability of any City Utility Pole, Wireless Support Structure, the Right-Of-Way, or other City owned or third party property for any of the Licensee's purposes pursuant to this MLA. Any and all costs incurred by Licensee for activities contemplated and/or conducted under this MLA by Licensee are at Licensee's sole risk.
- 17.2 **DISCLAIMER. THE CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE RIGHT-OF-WAY, ANY UTILITY POLES OR WIRELESS SUPPORT STRUCTURES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 17.3 Risk of Loss. Licensee expressly acknowledges that Licensee's Small Wireless Facilities are exposed to many risks beyond the reasonable control of the City, including but not limited to incidents caused by third parties and events of force majeure. Licensee shall assume any and all risk of loss (e.g., property damage and personal injury) that may arise in connection with these hazards, except to the extent caused by the City's gross negligence.
- 17.4 No Liability for Interruption of Service. Licensee waives any right it may have against the City for any interruption or disruption in any Small Wireless Facility located on any Utility Pole or Wireless Support Structure arising from or relating to the failure or disabling of such Utility Pole or Wireless Support Structure for any reason.
- 17.5 No Liability for Consequential Damages. The City shall not be liable for any consequential, indirect, incidental, or punitive damages, including, but not limited to, lost profits and loss of good will, or attorney's fees arising out of or related to the Licensee's use of the Right-Of-Way for Small Wireless Facilities.
- 17.6 Costs related to Claims. The Licensee shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in arising from or relating to this MLA or any Site SubLicense, including but not limited to, attorney's fees and costs to defend all claims or suits, in the name of the City when applicable and shall pay all costs and judgments which may issue thereon.

## ARTICLE 18: TERMINATION

- 18.1 City's Termination of MLA. In addition to the City's rights set forth elsewhere in this MLA:
- 18.1.1 The City shall have the right to terminate this MLA if Licensee fails to comply with the terms and conditions of this MLA or defaults in any of its obligations under this MLA and Licensee fails to correct such default or noncompliance within sixty (60) calendar days after written notice, or such lesser period as provided herein;
- 18.1.2 Notwithstanding any provision to the contrary, if Licensee's failure and/or default causes or exacerbates a threat to public safety, then Licensee shall immediately cure said failure



and/or default, and if Licensee fails to do so within five (5) calendar days, the City may terminate this MLA;

18.1.3 If Licensee is adjudged as bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver of its property is appointed, then the City may immediately terminate this MLA; and

18.1.4 At the termination of this MLA, all Site SubLicenses granted hereunder shall automatically terminate. Licensee shall not perform any further work or operate any Small Wireless Facility within the Right of Way that was subject to this MLA, excepting only as set forth in Section 18.4, below.

18.2 City's Termination of a Site SubLicense. In addition to the City's rights set forth elsewhere in this MLA:

18.2.1 The City shall have the right to terminate any Site SubLicense granted under this MLA if Licensee fails to comply with the terms and conditions of said Site SubLicense or defaults in any of its obligations under said Site SubLicense and Licensee fails to correct such default and/or noncompliance within thirty (30) calendar days after written notice, or such lesser period as provided herein;

18.2.2 Notwithstanding any provision to the contrary, however, if Licensee's failure and/or default causes or exacerbates a threat to public safety, then Licensee shall immediately cure, and if Licensee fails to do so within two (2) calendar days, the City may terminate such Site SubLicense, *provided however*, in the event of an Emergency, the cure period shall not apply and the City shall endeavor to provide such notice as may be appropriate to the circumstances;

18.2.3 At the termination of said Site SubLicense, Licensee shall not perform any further work or operate any Small Wireless Facility within the Right of Way that was subject thereto, excepting only as set forth in Section 18.4, below.

18.3 If any other permit or other authorizations required by any federal, state, or local government or Agency with respect to the any Small Wireless Facility(ies) is denied, revoked or canceled during the Term of this MLA, Licensee shall immediately so notify the City. Licensee shall have a period of sixty (60) calendar days (commencing on the date on which Licensee knew or should have known of the denial, revocation or cancellation) to fully cure and obtain such permit and/or other authorizations, *provided* that during said sixty day period Licensee ceases operations at the site(s) of the violation(s), the conditions at such site(s) are safe and secure, that Licensee makes prompt and diligent efforts to obtain such permit and/or other authorizations and that Licensee consistently informs the City in writing of such diligent efforts. Licensee is affirmatively required to furnish the City prompt written notice of any action or failure to act under which any permit or other authorizations related to the operation or use of any Small Wireless Facilities within the Right-Of-Way is denied, revoked or canceled or reinstated by any other entity. Notwithstanding any provision of this Section 18.3 to the contrary, if this provision conflicts with any provision of Applicable Law, then, to the full extent allowed by law, Licensee shall comply with the more stringent legal requirement.

- 18.4 Upon expiration or termination of this MLA and any Site SubLicense granted hereunder, Licensee shall promptly obtain all necessary permits and other authorizations, remove its Small Wireless Facility(ies) and related equipment and materials, as applicable, and fully restore the City's property in compliance with Article 7.

## ARTICLE 19: NOTICES

- 19.1 All notices or other communications required by this MLA or by any Site SubLicense granted hereunder shall be in writing and mailed by certified mail (return receipt requested), hand-delivery, overnight courier, or by facsimile or email to the following persons and addresses:

CITY:	Commissioner	COPY TO:	City Manager
	Department of Public Works & Parks		City Hall
	20 East Worcester Street		455 Main Street
	Worcester, Massachusetts 01604		Worcester, MA 01608

LICENSEE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 19.2 Each such notice shall be deemed delivered on the date delivered if by hand-delivery or overnight courier; on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed; and on the date of transmission with confirmed answer back if by facsimile or email. Any Party may change its address or other contact information at any time by giving the other Party named above, written notice of said change.

## ARTICLE 20: ASSIGNMENT

- 20.1 No Assignment. Licensee shall not assign or transfer its rights, title or interests in this MLA or any Site SubLicense granted hereunder nor shall Licensee delegate any of the duties and obligations undertaken by Licensee without first providing (a) written notification to the City, including providing the name and contact information of such assignee, (b) a description of the nature and extent of such assignment, and (c) written, unconditional acceptance by an authorized representative of said assignee of the terms and conditions of this MLA and all assigned Site SubLicenses granted hereunder.
- 20.2 No Sub-Licensing Without Consent. Without the City's prior written consent and a written acknowledgment by the sub-licensee to comply all requirements of this MLA and applicable Site SubLicense(s), Licensee shall not sub-license any rights under this MLA or any Site SubLicense granted hereunder to a third party or Affiliate. Any such action shall constitute a material breach of this MLA.

## ARTICLE 21: WARRANTIES

- 21.1 Solvency. The Licensee warrants to the City that it is solvent, it is not in bankruptcy proceedings or receivership, and it is not engaged in or threatened with any litigation or other

legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to exercise its rights and to perform its obligations under this MLA.

- 21.2 Corporate and Signatory Authorization. Licensee warrants to the City that it is duly authorized and existing as set forth in its Small Wireless Facility Application(s), has and is qualified to do business in Massachusetts, and has the full right and authority to enter into this MLA and any Site SubLicense granted hereunder. The person signing on behalf of Licensee is authorized to do so and the Small Wireless Facility(ies) installed pursuant to any Site SubLicense granted hereunder shall comply with all applicable FCC standards and requirements. Upon the City's written request, Licensee shall provide the City with evidence reasonably satisfactory to the City confirming the foregoing representations and warranties.

## **ARTICLE 22: MISCELLANEOUS PROVISIONS**

- 22.1 Performance of Work. Licensee shall use and exercise a high degree of care, caution, skill and expertise in performing all work and conducting all operations under this MLA and any Site SubLicense and/or permit(s) issued hereunder, and shall take all reasonable steps to safeguard and maintain in a clean and workmanlike manner, all work site areas, including, without limitation, the Small Wireless Facilities and any equipment and/or materials located within the Right-Of-Way.
- 22.2 Amendments. Neither this MLA nor any Site SubLicense granted hereunder shall be amended except in writing and by execution by authorized representatives of both parties.
- 22.3 No Waiver. The failure of a party to seek redress for violation of or to insist on strict performance of any of the covenants of this MLA or any Site SubLicense granted hereunder shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.
- 22.4 Severability. Should any part, term or provision of this MLA be determined by the courts to be invalid, illegal or in conflict with any federal or state law, the validity of the remaining portions or provisions shall not be affected thereby. In the event that federal or state decisional or legislative law permits the City to restrict use of the Right-Of-Way by Small Wireless Facilities, the City may terminate this MLA and/or any Site SubLicense granted hereunder upon ninety (90) calendar days advance notice to Licensee and Licensee shall be obligated to remove its Small Wireless Facilities without remedy against the City and as otherwise provided herein.
- 22.5 Governing Law/Venue. Except to the extent preempted by federal law, the laws of the Commonwealth of Massachusetts shall govern the validity, interpretation, construction and performance of this MLA and any Site SubLicense granted hereunder. The Parties agree that the venue shall be in any court of competent jurisdiction located in Worcester County, Massachusetts and waive any objection based on forum non conveniens with respect to any action arising out of or relating to this MLA.
- 22.6 Incorporation of Recitals and Appendices. The recitals stated above and all appendices to this MLA are incorporated into and constitute part of this MLA.

- 22.7 Compliance with Laws. The Parties shall comply with all applicable statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, Commonwealth of Massachusetts, City of Worcester and of any other public authority, which may be applicable to this MLA, any Site SubLicense granted hereunder and any related permit.
- 22.8 No Third Party Beneficiaries. This MLA and any Site SubLicense granted hereunder are solely by and between the parties that have executed it. The Parties state that the MLA and Site SubLicenses are intended for their mutual benefit alone and are not intended to confer any express or implied benefit on any other Person. To the fullest extent allowed by Law, this MLA and any Site SubLicense granted hereunder is not intended to confer third party beneficiary status on any Person.
- 22.9 Accident Prevention. Licensee shall exercise a high degree of care and precaution at all times for the protection of Persons and property on and near the Small Wireless Facility.
- 22.10 Independent Contractor Status. The Licensee and its employees, contractors, consultants and agents shall be and remain as independent contractors and not agents or employees of the City. Neither this MLA nor any Site SubLicense granted hereunder shall in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties hereto.
- 22.11 Non-Exclusivity. This MLA and any Site SubLicense granted hereunder are considered non-exclusive licenses between the parties. The City shall have the right to contract with other entities, including for the same kind of services provided hereunder.
- 22.12 Taxes. The Licensee shall pay all taxes as required by Law.
- 22.13 Conflict of Interest. The Licensee covenants that no person under its employ who presently exercises any functions or responsibilities in connection with this MLA has any personal financial interests, direct or indirect, with the City. The Licensee further covenants that, in the performance of this MLA and any Site SubLicense granted hereunder, no person having such conflicting interest shall be employed. Any such interests on the part of the Licensee or its employees must be disclosed in writing to the City.
- 22.15 Cumulative Remedies. All rights and remedies of either party hereto set forth in this MLA shall be cumulative, except as may otherwise be provided herein.
- 22.16 Hazardous Materials. Nothing in this MLA or in any Site SubLicense or other license, or permit shall grant the Licensee permission to store, use or locate any hazardous materials or oil within (in, under, on, above or about) the Right-Of-Way; provided that batteries that are detailed in the Application and approved (which may be subject to additional conditions) by the Commissioner will be allowed. Additionally, Licensee shall be responsible for any release, or threatened release, of any hazardous material or oil occurring after the date of this MLA exacerbated or caused, in whole or in part, by Licensee or its Small Wireless Facility(ies), except to the extent that such release or threatened release was caused by the City. This paragraph shall survive the expiration or other termination of this MLA.

- 22.17 No Waiver. Notwithstanding any provision to the contrary, nothing in this MLA or any Site SubLicense granted hereunder is intended nor shall it be interpreted to limit or waive the protections set forth in G.L. c. 258 or G.L. c. 84.
- 22.18 Interpret to Harmonize. This MLA shall be interpreted to harmonize with the Revised Ordinances, regulations, orders, and requirements otherwise applicable to Wireless Services Providers and Wireless Infrastructure Providers locating on Utility Poles and Wireless Support Structures in the Right-Of-Way. In the event of an irreconcilable conflict in such local laws, the provision that most protects public safety and is most consistent with the primary purpose of the Right-Of-Way as protecting public travel and municipal infrastructure shall prevail.

**IN WITNESS WHEREOF** the City and Licensee have executed this MLA in duplicate on the day and year first written above.

**CITY OF WORCESTER**

By its Commissioner  
Department of Public Works and Parks

\_\_\_\_\_  
by its duly authorized representative

\_\_\_\_\_  
Jay J. Fink, P.E.  
Commissioner

\_\_\_\_\_  
name  
title