



**AGENDA ITEM EXECUTIVE SUMMARY**

**Agenda Item Number: \*5.A**

<b>Title:</b>	Recommendation to approve a Master License Agreement with Chicago SMSA Limited Partnership (d/b/a Verizon Wireless) for installation of small cell wireless facilities located within the City of St. Charles and St. Charles Municipal Rights of Way in accordance with City Ordinance 2018-M-28
<b>Presenter:</b>	Paul Hopkins

**Meeting:** Government Services Committee

**Date:** April 26, 2021

Proposed Cost: \$ N/A

Budgeted Amount: \$ N/A

Not Budgeted:

**Executive Summary:**

City Ordinance 2018-M-28 requires any provider of small cell wireless facilities to obtain a Master Agreement between the City of St. Charles and the provider before any permits to install a small cell wireless facility can be filed.

**Attachments:**

\*St. Charles Small Wireless Facility ROW Permit \*Final Master Agreement Small Cell Wireless Facilities - Verizon

**Recommendation/Suggested Action:**

Recommendation to approve the Master Agreement for small cell wireless facilities installations between Chicago SMSA Limited Partnership (d/b/a/ Verizon Wireless) and the City of St. Charles.

# City of St. Charles

## Small Wireless Facility ROW Permit



Public Works – Electric Services Division  
2 East Main Street  
St. Charles IL 60174  
630.377.4407 (Office)  
<http://www.stcharlesil.gov>

***Please direct any and all questions to the City of St. Charles Electric Services Division:  
Monday through Friday (8 AM to 4:30 PM) at 630.377.4407***

A Small Cell ROW Permit is required for any antenna installation falling under City Ordinance 13.24 and State Act 100-585.

### **Application and Drawings Procedures:**

- ▶ The Permit and Application Process is found in 13.24.005 with complete list of required submittals.
- ▶ Additionally, the consult the “General Guidelines and Small Wireless Facility Design, Stealth and Concealment Standards” document.
- ▶ Two-2 copies required drawings or electronic submittal of drawings.
- ▶ An original copy of a Certificate of Liability Insurance per 13.24.018 with special provisions listing the City of St. Charles as additional insured.
  
- ▶ There are five possible Scenarios:
  - 1 – ComEd owned pole, City of St. Charles ROW
  - 2 – City owned wood utility pole in City of St. Charles ROW
  - 3 – City owned “highway” type streetlight pole
  - 4 – City owned “decorative” type streetlight pole
  - 5 – City owned pole (wood or streetlight) – non- City of St. Charles ROW

### **Application – Permit Fees: (All payments are to be made in either a check or cash)**

- ▶ A filing fee is to be paid at time of submission of application and plans for Scenarios 1, 2, 3 and 4 above. Payment is to be submitted either in check or cash – no electronic payments accepted. Fee per 13.24.005:
  - Request to collocate small cell wireless facility that includes the installation of a new pole - \$1,000.00
  - Request to collocate small cell wireless facility on an existing utility pole or wireless support structure - \$650.00
  - Request to collocate multiple small wireless facilities on existing utility poles or wireless support structures addressed in a single application - \$350.00 per small wireless facility.

- The City of St. Charles does not collect ROW permit fees for KDOT or IDOT ROW installations (Scenario #5). No submittal to the City is required for installation on a ComEd Pole in KDOT or IDOT ROW.

**Additional Requirements for Scenario 1 – ComEd Pole/St. Charles ROW:**

**See Applicable section of “General Guidelines and Small Wireless Facility Design, Stealth and Concealment Standards” document. Additionally, please note:**

- ▶ Requires written documentation of ComEd approval.
- ▶ Ground mounted ancillary equipment requires landscaping plan.

**Additional Requirements for Scenario 2 – St. Charles Wood Utility Pole:**

**See Applicable section of “General Guidelines and Small Wireless Facility Design, Stealth and Concealment Standards” document. Additionally, please note:**

- ▶ Requires Master Service Agreement between the City and the Provider.
- ▶ Ground mounted ancillary equipment requires landscaping plan.

**Additional Requirements for Scenario 3 – St. Charles “Highway” Type Streetlight Pole:**

**See Applicable section of “General Guidelines and Small Wireless Facility Design, Stealth and Concealment Standards” document. Additionally, please note:**

- ▶ Requires Master Service Agreement between the City and the Provider.
- ▶ Pole designs and antenna and associated equipment configurations may vary.
- ▶ Ground mounted ancillary equipment requires landscaping plan.

**Additional Requirements for Scenario 4 – St. Charles “Decorative” Type Streetlight Pole:**

**See Applicable section of “General Guidelines and Small Wireless Facility Design, Stealth and Concealment Standards” document. Additionally, please note:**

- ▶ Requires Master Service Agreement between the City and the Provider.
- ▶ Pole designs and antenna and associated equipment configurations may vary.
- ▶ Ground mounted ancillary equipment requires landscaping plan.

**Additional Requirements for Scenario 5 – St. Charles Pole/KDOT or IDOT ROW:**

**See Applicable section of “General Guidelines and Small Wireless Facility Design, Stealth and Concealment Standards” document. Additionally, please note:**

- ▶ Requires Master Service Agreement between the City and the Provider.

### **General Design and Inspection Requirements for work in the City ROW:**

- ▶ Please refer to the City of St. Charles Engineering Design and Inspection Policy Manual and Details for construction and design requirements. It can be found at the following web-address:

<http://www.stcharlesil.gov/departments/PublicWorks/CityEngineeringOffice/policy-manual.html>

### **Additional Design Requirements:**

- ▶ Asphalt and Concrete Pavement Repairs: All pavement repairs must be made in accordance with the Pavement Patch Detail located in the Engineering Design and Inspection Policy Manual.
- ▶ Temporary Pavement Patch (cold patch is not permitted): Flowable fill placement, if used, should not exceed more than 3-inches below the bottom of the existing pavement. After the flowable fill sets it must be capped with CA-06 stone and existing pavement section must be matched. The remaining void shall be filled with a temporary concrete patch. A layer of visquene shall be placed in-between the flowable fill and concrete patch to permit removal without disturbance to the flowable fill. The concrete shall be removed and replaced with bituminous material prior to the next May 1<sup>st</sup>.
- ▶ Curb cuts may be completed by removing the “barrier” portion of the existing curb. Approval of this method will be subject to inspection by the Development Engineering Office and completed at the owner’s risk. Excessive spauling after saw cutting might require removal of the existing curb per the City’s discretion at the applicant’s expense.
- ▶ Any temporary road closures shall be completed with proper traffic control as mandated by Illinois Department of Transportation (IDOT).
- ▶ The contractor shall coordinate all closures with the City of St. Charles Police Department (630-377-4435) and Tri-Com (630-377-9011).

### **General Comments:**

- ⇒ Inspections of the pole, wireless support structure, electric installation, and electric service installation will be through the Electric Division. Schedule inspections 24 hours in advance by calling 630.377.4407.
- ⇒ Underground fiber installations to the site may require a separate ROW permit through the Building and Code Enforcement Division Office. All inspections of pavement or curb repairs are to be scheduled with the Building and Code Enforcement Division Office (630.377.4406) a minimum of 24-hours in advance before bituminous, concrete or non-standard pavement is placed within the right of way. Scheduling these inspections is encouraged at the time your permit is issued.
- ⇒ All construction must be in accordance with the “Manual on Uniform Traffic Control Devices” (current edition).
- ⇒ All documents MUST be submitted to the City of St. Charles Electric Services Division, approved, and a permit issued prior to any work beginning.

- ⇒ All construction must be in accordance with the St. Charles Municipal Code, the City of St. Charles Engineering Design and Inspection Policy Manual (current edition), the Illinois Department of Transportation “Standards Specifications for Road and Bridge Construction” (current editions) and all final “Supplemental Specifications” published as of the date of this permit.
- ⇒ Applicant is responsible for contacting JULIE for utility locations (800.892.0123). You will be given a Dig Number; it is very important to retain this number for any references on these locations. Color code for the JULIE marking are as follows:

▪ Electric Utilities	Red
▪ Comcast (Cable)	Orange
▪ Northern Illinois Gas (NICOR)	Yellow
▪ Sewer Utilities	Green
▪ Telephone Utilities	Orange
▪ Water Utilities	Blue

**PLEASE NOTE:** Underground traffic signal utilities are NOT located when contacting J.U.L.I.E. When working near traffic signals or suspected underground traffic signal utilities, please contact the City for the current contractor’s contact information.



# CITY OF ST CHARLES

## Application for Small Wireless Facility Right-Of-Way Permit

Department: Public Works – Electric Services Division Phone: (630) 377-4407

Application Date: \_\_\_\_\_ Permit # \_\_\_\_\_

### PLEASE PRINT ALL INFORMATION

I, \_\_\_\_\_, do hereby apply for a permit for the following described work located at \_\_\_\_\_ Estimated Cost: \_\_\_\_\_

Description of proposed work: \_\_\_\_\_

I hereby apply for a permit to install Small Wireless Facilities

#### Check List for Submittal of Application:

- Application Form – Completely Filled Out.
- Two-2 copies of the details of the proposed work or electronic submittal of required drawings.
- An original copy of a Certificate of Liability Insurance with special provisions listing the City of St. Charles as additional insured.
- Submittal fee payments is to be by cash or check payable to the City of St. Charles

General Contractor: \_\_\_\_\_

Contractor: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Telephone NO. \_\_\_\_\_

Telephone NO. \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

**Application Small Wireless Facility Right-Of-Way Permit  
Page 2**

**I, the undersigned, certify that if a permit is issued to me, I will comply with all applicable ordinances of the City of St. Charles and shall perform all work, or cause all work to be performed according to the provisions of said ordinances; the Illinois Department of Transportation "Standard Specifications" for Road and Bridge Construction" (current editions), and all final "Supplemental Specifications" published as of the date of this permit. I, or my agent, shall personally supervise the work and shall do, or cause to have done, said work according to plans, specifications and other written information supplied as a part of this application. I am familiar with the applicable ordinances and the provision thereof and in signing this application do willingly become responsible for all work accomplished under the permit by all contractors, tradesmen and workmen, and shall call for inspections as required at a minimum of 24-hours before they become due.**

**PRINT NAME:** \_\_\_\_\_ **SIGNATURE** \_\_\_\_\_

**REPORT OF THE BUILDING OFFICIAL**

**Remarks:** \_\_\_\_\_

**Accepted:** \_\_\_\_\_ **Rejected:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Signed:** \_\_\_\_\_

01.2018

<b>For Office Use</b>
<b>Received</b> _____
<b>Fee Paid \$</b> _____
<b>Receipt #</b> _____
<b>Check #</b> _____



## SMALL WIRELESS FACILITIES PERMIT APPLICATION

### APPLICANT INFORMATION

Applicant Name:

Date of Application:

Applicant is a:  Wireless Provider  Representative  Other (please specify):

### WIRELESS PROVIDER INFORMATION

Wireless Provider Name:

Wireless Provider Address:

City:

State:

ZIP Code:

Phone:

Email:

### CONTACT PERSON FOR THIS PROJECT

Contact Person Name:

Contact Person Address:

City:

State:

ZIP Code:

Phone:

Email:

### PROPOSED SITE LOCATION

Property Address:

Closest Intersection (Distance and Direction from):

Right of Way

Private Property

Zoning District:

PIN (if not right-of-way):

### EXISTING UTILITY POLE/WIRELESS SUPPORT STRUCTURE INFORMATION

Does the Project Involve a New Pole? Yes  No

Pole/Structure ID Number:

Height of Pole/Wireless  
Support Structure (feet):

Pole Color:

Pole Type:



Existing Attachment(s) on Utility Pole/Wireless Support Structure? (e.g., banners, light fixtures) Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please specify:		
Owner of Pole/Wireless Support Structure:		
Name of Pole/Wireless Support Structure Representative:		
Address:		
City:	State:	ZIP Code:
Office Phone:	Cell Phone:	E-mail:
<b>NOTE:</b> If the proposed Small Wireless Facility is to be attached to an existing pole owned by an entity other than the City, the Applicant/Wireless Provider must, with the application, provide legally competent evidence of the consent of the Owner of the Pole to the proposed collocation. Permission Received:    Yes <input type="checkbox"/> No <input type="checkbox"/>		

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ST. CHARLES  
SINCE 1834

# Electric Service Application – Small Wireless Facility

(Each individual service will require a complete and separate application)

Name: _____	Phone: _____
Original Signature: _____	Fax: _____
Contact Name: _____	Phone: _____
Application Date: _____	Requested Service Date: _____

<b>Service Voltage Requested</b>	<b>Small Wireless Facility</b>
<input type="checkbox"/> Single Phase 120/240 <input type="checkbox"/> Single Phase 120/208  <input type="checkbox"/> Three Phase <input type="checkbox"/> 120/208 <input type="checkbox"/> 277/480 <input type="checkbox"/> Other	
<b>Service Panel:</b>	
Present Rating (amps) _____	Proposed Rating (amps) _____ Proposed Connected KW: _____
Present Peak KW (Demand) _____	Estimated Peak KW (Demand) _____

<b>SERVICE ADDRESS</b>
(A complete and accurate service address is required before service may be installed)
Street Address: _____

<b>CUSTOMER BILLING INFORMATION</b>	
(This information will be used for utility billing purposes)	
Name: _____	
Street Address: _____	
City/State/Zip _____	Phone: _____
Authorized representative or agent: _____	
Title: _____	Phone: _____

**ELECTRIC DIVISION OFFICE USE**

Application Accepted By: \_\_\_\_\_

Date Application Received: \_\_\_\_\_

Date Payment Received: \_\_\_\_\_

Method of Payment: \_\_\_\_\_

Building Permit No.: \_\_\_\_\_

**ELECTRIC DEPARTMENT CHARGES**

Charges Calculated by: \_\_\_\_\_

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

<u>ITEM</u>	<u>ACCOUNT #</u>	<u>CHARGES (\$)</u>	<u>AMOUNT PAID</u>
Project Cost:	200999 45405	_____	_____
SECC (Metering):	200999 48503	_____	_____
Engineering:	200999 45206	_____	_____
Temp Connection:	200999 45407	_____	_____
	_____	_____	_____
	_____	_____	_____
Subtotal		_____	_____
<b>Total Amount of Charges:</b>		_____	_____

**Electric Project No.:** \_\_\_\_\_

\_\_\_\_\_

## **MASTER LICENSE AGREEMENT FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES LOCATED WITHIN THE CITY OF ST. CHARLES MUNICIPAL RIGHTS OF WAY**

This MASTER LICENSE AGREEMENT ("Agreement") is made and entered into by and between the City of St. Charles, an Illinois municipal corporation ("Licensor"), and Chicago SMSA Limited Partnership d/b/a Verizon Wireless, an Illinois limited partnership whose principal place of business is One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920, ("Licensee"). Licensor and Licensee are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

**WHEREAS**, the Licensor intends to promote the expansion of communications services in a manner consistent with, for example, the Small Wireless Facilities Deployment Act, the Illinois Cable and Video Competition Act, the Illinois Telephone Company Act, the Telecommunications Act of 1996, the Middle Class Tax Relief and Job Creation Act of 2012, the Simplified Municipal Telecommunications Tax Act, and Federal Communication Commission Regulations; and

**WHEREAS**, Public Act 100-585, known as the Small Wireless Facilities Deployment Act, approved by the Governor on April 12, 2018, with an effective date of June 1, 2018, acted to impose certain additional requirements on municipalities, including the Licensor, regarding the permitting, construction, deployment, regulation, operation, maintenance, repair and removal of certain defined Small Wireless Facilities both within public rights-of-way and in other locations within the jurisdiction of the Licensor; and

**WHEREAS**, the Small Wireless Facilities Deployment Act and Chapter 13.24 (Small Wireless Facilities) of Title 13 (Public Utilities) of the Municipal Code of the City of St. Charles, Illinois (the "Small Wireless Facilities Ordinance") provide that Small Wireless Facilities attached to a utility pole or wireless support structure owned by the Licensor within the public rights-of-way are subject to an attachment agreement; and

**WHEREAS**, the Corporate Authorities of the Licensor have determined that the establishment of an attachment agreement for Small Wireless Facilities mounted on utility poles or wireless support structures owned by Licensor in public Right-of-Ways, will properly facilitate and manage the deployment of Small Wireless Facilities within the Licensor's jurisdiction; and

**WHEREAS**, regulation of the deployment of said Small Wireless Facilities can be accomplished through the use of site-specific permitting, managed and controlled by staff, but only after a Licensee agrees to the terms of this Agreement; and

**WHEREAS**, the Licensee desires to install, maintain, and operate Small Wireless Facilities in and/or upon certain of Licensor's utility poles or wireless support structures.

**NOW THEREFORE**, based upon the consideration recited herein and the granting of Site Specific Permits, the Licensee and the Licensor agree to abide by the terms and conditions of this Agreement as follows:

1.0 **Recitals.** The recitals set forth above are incorporated herein and made part of this Agreement as representing the intent of the Parties, and as substantive covenants and conditions.

2.0 **Definitions.**

2.1 The capitalized terms used herein, unless specifically defined within Section 2.2 of this Agreement, are the terms defined in the Small Wireless Facilities Deployment Act (“Act”) and the Small Wireless Facilities Ordinance, as amended.

2.2 The following definitions are specific to this Agreement and are not found in the Act.

**“Act”** shall mean the Small Wireless Facilities Deployment Act.

**“Agreement” or “License Agreement”** shall mean this Agreement.

**“Annual License Fee”** means the annual rate described in Section 6.2 of this Agreement.

**“CFR”** means the Code of Federal Regulations.

**“Entity”** means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, unit of local government, a receiver, trustee, guardian or other representative appointed by order of court, or any other legally recognized organization, whether for-profit or not-for-profit. The Licensor shall not be considered a "Person" or "Entity" for purposes of this Agreement.

**“Effective Date”** means the date this Agreement is executed by the last Party to sign following approval by the Licensor’s City Council.

**“Law(s)”** means any applicable statute, administrative or judicial act, decision, charter, code, constitution, law, opinion of a court of competent jurisdiction, court order, ordinance, policy, regulation, including procedures and the conditions of certificates as prescribed by regulation, rule, schedule, specification, rates and tariffs as established in statute, rules, or regulation, or other requirement of the Licensor or any other unit of government or agency of a unit of government having joint or separate jurisdiction over the Licensee, now or hereafter in effect, during the term of this Agreement. The term Laws includes, but is not limited to, the City’s Small Wireless Facilities Ordinance, Chapter 13.22 (Construction of Utility Facilities in the Rights-of-Way) and Chapter 13.08 (Electricity) of the Municipal Code of the City of St. Charles, as well as the City’s adopted design standards for small wireless facility installations.

**“Licensor Representative”** means the then-current person at the Licensor that oversees administration of this Agreement, or his/her designee.

**“Permit Drawing and Specifications”** means documents submitted by a Licensee, in conformance with the requirements of the Licensor, for a Site-Specific Permit Application which depict the design, construction, installation, and maintenance of any Small Wireless Facility.

**“Site-Specific Location”** means a location which qualifies, under this Agreement, for the placement of, or which contains, Small Wireless Facilities allowed under a Site-Specific Permit.

**“Site-Specific Permit or Permit”** means a non-exclusive permit granted by the Licensor allowing the installation of Small Wireless Facilities at a Site-Specific Location.

**“Site-Specific Permit Application”** means the application for a permit for the installation of Small Wireless Facilities at a Site-Specific Location.

**“Unauthorized Communication Site”** means the installation of a Small Wireless Facility, Wireless Support Structure or Utility Pole within the corporate limits of the Licensor or the Licensor’s Comprehensive Planning Area without a permit or any Work not specifically authorized by the Corporate Authorities of the Licensor or in conformance with applicable law. An Unauthorized Communication Site shall not include any site where Licensee has, in good faith, performed Work as specifically authorized by an issued Site Specific Permit, applicable law, or otherwise authorized by the Corporate Authorities of Licensor.

**“Unauthorized Installation Charge”** means the penalty payable by Licensee to Licensor under this Agreement for an Unauthorized Communication Site.

**“Work”** means all design, construction, restoration, maintenance, removal, repair, relocation, or modification of any Small Wireless Facility, utility pole or wireless support structure installed by or on behalf of the Licensee.

### 3.0. **Term.**

3.1. **Initial and Extension Terms.** This Agreement shall apply to all Small Wireless Facilities proposed, permitted and installed at Site-Specific Locations on Utility Poles or Wireless Support Structures owned by the Licensor pursuant to the Small Wireless Facility Ordinance. The initial term of this Agreement shall be 5 years (“Initial Term”) commencing on the Effective Date, unless earlier terminated in accordance with this Agreement. The term of this Agreement shall be extended for an additional 5 year period (each, an “Extension Term”) commencing on the expiration of the initial term, provided that:

- 3.1.1. Licensee has not provided the Licensor with a written notice of its intent to terminate the Agreement at the end of the initial term without renewal; and
- 3.1.2. The Licensee is in compliance with the provisions of this Agreement and applicable Laws; and
- 3.1.3. There has not been any change in the Law that materially affects the provisions of this Agreement or its enforceability; and

- 3.1.4. The Licensor or Licensee has not otherwise terminated this Agreement in accordance with its provisions; and
- 3.1.5. The Act has not been repealed or been found to be unconstitutional by a court of law; and
- 3.1.6. The Act did not sunset on June 1, 2021.

Up to two (2) additional five (5) year extension terms (the “additional extension terms”) may be entered into by written mutual agreement of the Parties following the initial extension term, subject to 3.1.1 through 3.1.6 above, except that the notice from Licensee as specified in 3.1.1 will propose an additional extension term, and any such additional extension term shall be subject to the applicable City Code provisions or regulations in effect at the time of renewal. The Parties acknowledge that in the event this Agreement is not renewed by mutual agreement of the Parties for a first or second additional extension term, the Parties shall enter into a new agreement applicable to site-specific permits applied for after the termination date, subject to the applicable City Code provisions or regulations in effect at that time.

**3.2 New Agreement/Holdover.** A Licensee may enter into a new License Agreement with the Licensor no later than six (6) months before the expiration of the Agreement (or any extensions or additions thereof), based upon the License Agreement then in effect or in accordance with such other contract rates, terms and conditions, or ordinances that may be adopted by the Licensor from time to time. If upon expiration of the Agreement or any extension term or additional extension terms, the Parties fail to negotiate the renewal of a new License Agreement, and the Licensee fails to comply with Section 3.3, the Licensee shall be deemed to holdover and shall otherwise be liable to perform its obligations of the terms and conditions of the License Agreement as well as payment of the holdover amount set forth in Section 7.1 of this Agreement. No holdover shall exceed six (6) months.

**3.3 Non-Renewal.** If the Site Specific Permit is expired or is terminated, then the Licensee, at its option, shall do one of the following, except to the extent prohibited by applicable Laws:

- 3.3.1 Remove the Licensee’s Small Wireless Facilities at its sole cost and expense within sixty (60) days of the expiration date of the applicable Site Specific Permit. If the Licensee fails to remove the Small Wireless Facilities by said date, the Licensor may in its discretion remove said facility pursuant to Section 7.2 herein; or
- 3.3.2 Without cost or charge to the Licensor, abandon the Licensee’s Small Wireless Facilities in place, but only if the Licensor first approves the proposed abandonment, in writing; including conditions applicable to the abandonment. In the case of an approved abandonment in place, the Licensor may at its discretion remove said Small Wireless Facility pursuant to Section 7.2 herein; or
- 3.3.3 Sell the Licensee’s Small Wireless Facility to a qualified third-party subject to the Licensor’s prior written approval; which will not be unreasonably withheld.
- 3.3.4 Upon the occurrence of any circumstance set forth in this Section 3.3, this Agreement shall be deemed terminated except as to the indemnification

and hold harmless provisions which shall survive until all statutes of limitations and repose applicable to a casualty occurring during the license term have expired. If a Small Wireless Facility has time remaining on its Site Specific Permit term, then the provisions of this Agreement remain in place during the remaining time on those Site Specific Permits but there shall be no right to an extension unless a new License Agreement is negotiated.

**3.4 Termination.** Except as otherwise provided herein, either party may terminate this Agreement for cause, as defined herein, upon thirty (30) days written notice sent by the non-breaching party to other party. In the event of a termination for cause, the either party may exercise its legal rights and/or equitable remedies either under this Agreement or by any other means that may be provided by law or equity, including the right, in the case of the Licensor, without limitation, to recover any uncollected license or permit application fees that would be due and payable by the Licensee to the Licensor if this Agreement had not been terminated during the initial or extension term.

**3.4.1 A termination for cause means:** 1) The Licensee fails to cure a material default of this Agreement within thirty (30) days after it receives the Licensor's notice of default, or, if the default can be cured and such cure reasonably requires more than thirty (30) days to achieve, fails to commence and thereafter diligently continue such cure to completion within a reasonable period of time; or 2) Any agency exercising jurisdiction over the Licensee has by final order that is no longer subject to appeal, terminated or otherwise revoked the Licensee's approval, authorization, certification or license to provide the Wireless Services or Small Wireless Facilities; 3) The Licensee installs or causes to be installed five (5) or more Unauthorized Communication Sites during any five (5) year term. However, cooperation with other agencies/jurisdictions to comply with their laws and procedures (as set forth in Section 4.1.2 "Compliance with Laws" and Section 8.1 "Provision of Communication Services") shall not be an event of default or basis for termination, provided no installation is done before Licensor authorization. A termination or revocation that affects specific sites only will result in the termination of the applicable Site-Specific Permit(s) only, while a general termination or revocation affecting Licensee's ability to provide Wireless Services or Small Wireless Facilities in general will result in a termination of the entire Agreement.

**3.4.2 Removal upon Termination for Cause.** Upon establishment of termination for cause and after the expiration of the time period set out in Section 3.4.1 above, Licensor may terminate such Site Specific Permits that are the cause of the termination for cause as set forth in Section 3.4.1. If the Licensee has failed within ninety (90) days from the Effective Date of termination for cause to remove or cause removal of the Licensee's Small Wireless Facilities which are subject to the termination for cause, the Licensor may at its discretion remove said Facility pursuant to Section 7 herein.

**3.5 Changes in the Law.** The Parties acknowledge that Communications Services, and Wireless Services and the law associated with communications services and wireless services is evolving at the Federal, State and local level. If during the initial term or extension term the Laws are superseded, preempted, adopted, amended or repealed in a manner that is binding on the Parties and that requires the Parties to alter existing Agreements, the Parties shall negotiate an amendment to this Agreement to the extent necessary to comply with any new Law affecting existing agreements.



#### 4.0. **Grant and Scope of License.**

4.1 **Grant of License.** Subject to the terms and conditions of this Agreement, the Licensor grants to the Licensee and, the Licensee accepts from the Licensor, a non-exclusive license to submit Site-Specific Permit Applications to install, and, upon installation pursuant to a valid Site-Specific Permit, to use, operate, maintain, repair, remove, reattach, reinstall, relocate, and replace Licensee's Small Wireless Facilities pursuant to said permit. All rights and obligations of the Licensee under this Agreement shall be exercised by the Licensee at its sole cost and expense unless otherwise agreed to in writing by the Parties or as otherwise required by the Laws.

4.1.1. **Site-Specific Permit.** The Licensee shall prior to performing any Work to install a Small Wireless Facility, submit a Site-Specific Permit Application to the Licensor, and receive from the Licensor a Site-Specific Permit to occupy the Site-Specific Location with the Small Wireless Facilities pursuant to the Small Wireless Facilities Ordinance.

4.1.2. **Compliance with Laws.** The installation, use, operation, maintenance, repair, removal, reattachment, reinstallation, relocation, and replacement of any Small Wireless Facilities shall comply with all Laws, including specifically, as applicable, the Small Wireless Facilities Ordinance, chapter 13.22 (Construction of Utility Facilities in the Rights-of-Way) and chapter 13.08 (Electricity) of the Municipal Code of the City of St. Charles, as well as the City's adopted design standards for small wireless facility installations, landscaping requirements for ground-mounted installations, and the City's safety protocols relative to its electric utility.

4.1.3. **License Only.** Nothing in this Agreement or in a Site-Specific Permit shall be deemed to grant, convey, create, or vest in the Licensee a property right or perpetual interest in the Utility Poles, Wireless Support Structures, land or the rights-of-way of the Licensor including, without limitation, any fee interest, leasehold interest, easement, or franchise right. Any interpretation of this license or a Site-Specific Permit by a Court, which would purport to create any fee, leasehold, easement, or franchise interest in the Licensee shall, twenty-four (24) hours after such determination, result in the Licensee's forfeiture of any and all rights under this Agreement or any Site-Specific Permit.

4.1.4 **No Warranty.** Neither the Licensor, nor any existing easement holder, franchisee, or other licensee shall be liable to the Licensee for failure of the Licensor or the others to secure legal authority from a grantor of an easement affecting the installation of Small Wireless Facilities. It shall be the obligation of the Licensee to ascertain any legal right held by any servient estate of an easement affecting the proposed or existing Small Wireless Facilities and to resolve those issues with the owner of the servient estate.

4.2. **Immunities.** Nothing in this Agreement shall be interpreted to override, compromise or waive any of the Licensor's statutory or common-law privileges or immunities which are all specifically reserved. There are no third-party beneficiaries of this Agreement.

4.3. **Authorized Use.** The Licensee shall use Licensee's Small Wireless Facilities for the sole purpose of providing Communications Services and Wireless Services and may only install, use, operate, design, construct, restore, maintain, remove, repair, relocate, or modify Licensee's Small Wireless Facilities as authorized by the Site-Specific Permit and/or applicable Laws.

**4.4. Control of Facilities.** Licensee's Wireless Service Providers may own the equipment installed in the Small Wireless Facilities, but in no event shall Licensee allow any other Entity to control the Licensee's Small Wireless Facilities or any portion thereof for any purpose not directly related to the Licensee's provision of Communications Services or Wireless Services. Licensee shall have no authority to assign, sell or transfer a Site-Specific Permit without the written consent of the Licensor, unless such assignment, sale or transfer is made to an affiliate of the Licensee. The Licensee is at all times liable and responsible for the obligations of this Agreement. Additionally, the Licensee shall require its Wireless Service Providers to acknowledge this Agreement and that any and all Wireless Service Providers shall be responsible for complying with the terms of this Agreement and any Site Specific Permits in the event the Licensee fails to do so.

**4.5. Condition of Premises.** As a material part of the consideration for this Agreement, Licensee takes and accepts the Licensor's Utility Poles, Wireless Support Structures and Rights-of-Way "as is" in the condition in which the Licensee finds them, with any and all latent and patent defects and with no express or implied warranties by the Licensor of merchantability, fitness, suitability, or fitness for any particular purpose. The Licensee shall have the right to inspect the Utility Poles, Wireless Support Structures, and Rights-of-Way prior to installing the Small Wireless Facilities. The Licensor will be responsible for the regular maintenance of the Utility Poles, Wireless Support Structures and Rights-of-Way and will keep the Utility Poles, Wireless Support Structures and Rights-of-Way in good repair as required by all Laws. The Licensee shall be responsible for repairing any damage to the Rights-of-Way, Wireless Support Structures, or Utility Poles that is disturbed or damaged as a result of the installation, construction, reconstruction, use, operation, maintenance, repair, removal, reattaching, reinstallation, relocation or replacement of the Small Wireless Facilities. The Licensor shall have the right to temporarily remove or require the Licensee to temporarily remove the Small Wireless Facilities in order to maintain the Utility Poles, Wireless Support Structures and Rights-of-Way, at the Licensee's sole cost and expense. In the event that the Small Wireless Facilities are temporarily removed in accordance with the preceding sentence and such removal shall last longer than seven (7) days, Licensor will work in good faith to identify an alternative location for Licensee to temporarily locate its Small Wireless Facilities in order to minimize interruption to Licensee's business which, subject to the approval of the Licensor, may include the installation of temporary poles or other methods which are necessary for Licensee to continue providing Wireless Services.

**4.6 Interruption of Service.** The Licensor shall not be liable to the Licensee, its customers, or anyone else for the interruption of service of the Licensee or any interference with the operation of the Licensee's Small Wireless Facilities. Notwithstanding the foregoing, Licensor shall use its best efforts to avoid the authorization of any other Entity to install equipment of the type and frequency that will cause harmful interference, measured in accordance with then-existing industry standards, to Licensee's then-existing Small Wireless Facilities unless the interruption is for public safety purposes, local government, or other public purpose. In the event that Licensee has a good faith belief that such interference is occurring, the parties shall work in good faith to minimize or cease the interference in a commercially reasonable manner.

**4.7 Electrical.** Licensee shall be permitted to connect Small Wireless Facilities to necessary electrical and telephone service, at Licensee's sole cost and expense. Electric service shall be provided by the City of St. Charles Municipal Electric Utility. Where practical, Licensee shall coordinate with the City of St. Charles Municipal Electric Utility to provide separate service to Licensee's Small Wireless Facilities for Licensee's use. In the event that Licensee cannot obtain a separate electrical service with a separate meter measuring usage, the Licensee and Licensor may negotiate a fixed energy fee agreement. In the event that Licensee uses existing utility service at an individual Utility Pole or Wireless Support Structure, the Parties agree to include an additional fee in the applicable Site Specific Permit which shall cover Licensee's utility usage. The Parties agree to reflect power usage and measurement issues in each applicable Site Specific Permit.

Licensee shall be permitted at any time during the Term of each Site Specific Permit, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Utility Pole), a temporary power source, and all related equipment and appurtenances within the Utility Pole, or elsewhere on the Utility Pole in such locations as reasonably approved by Licensor, where such temporary power installation is compliant with all applicable National Electrical Code and National Electrical Safety Code provisions. Licensee shall have the right to install conduits connecting the temporary power source and related appurtenances to the Utility Pole. In the event such conduits affect the life expectancy of the Utility Pole, an additional fee that reflects the replacement cost of the Utility Pole may be assessed by Licensor after providing written notice to Licensee. Disconnection of the power to a Small Wireless Facility due to non-payment of the annual license fee, safety violations, or as a remedy for non-compliance with other provisions of this Agreement does not constitute grounds for Licensee to establish temporary power to the Facility.

#### **4.8 General Restrictions.**

**4.8.1. Removal, Relocation or Replacement of Utility Pole.** In the event Licensor, in its reasonable discretion deems it necessary to remove, relocate or replace a Utility Pole, Licensor shall notify Licensee at least one hundred eighty (180) days prior of the need to remove or relocate its Small Wireless Facility. In such event, Licensor shall provide options for alternative locations for Licensee relocation of equipment which shall be in a mutually agreeable location ("Alternative Premises"). Licensee shall be solely responsible for all costs related to the relocation of its Small Wireless Facility to the Alternative Premises. In the event that a suitable Alternative Premises cannot be identified, Licensee may terminate the applicable Site Specific Permit. Upon Licensor providing notice identifying an available Alternative Premises, the Licensee shall initiate the process to transfer its Small Wireless Facility within sixty (60) days. Should Licensee fail to initiate the transfer process within sixty (60) days or to relocate the Small Wireless Facility to the Alternative Premises within ninety (90) days, then Licensor may remove the Small Wireless Facility and store it until Licensee can retake possession. Licensee shall be responsible for Licensor's reasonable costs for removing and storing such a Small Wireless Facility, provided that Licensor complies with this Section. Failure to timely relocate in conformance with the terms of this section is a default and may result in

termination of the Site-Specific Permit. Licensor may, in its discretion, terminate power to a Small Wireless Facility location if not timely relocated in conformance with the terms of this section. In the event of an emergency, which for purposes of this Agreement shall be considered any imminent threat to health, safety and welfare of the public, Licensor must provide as much notice of the removal, relocation or replacement of a Utility Pole as reasonably practical under the circumstances.

**4.8.2. Damage to Utility Pole.** In circumstances where the Utility Pole is damaged, the Licensor shall have the right to remove the Utility Pole shall notify the Licensee of the damaged Utility Pole and need to immediately retrieve the Small Wireless Facility, at Licensee's sole cost and expense, from the Utility Pole location as soon as reasonably practicable. In the event the Small Wireless Facility presents an immediate threat to traffic safety following the damage, the Licensor may, in its sole discretion, transport the Small Wireless Facility to a City facility to be held for pick-up by Licensee. The Licensor shall have discretion to replace the Utility Pole, as set forth in Section 4.8.1. In the event a Utility Pole is determined to be rotted or otherwise structurally compromised, Licensor shall notify the Licensee of the condition and of the replacement of the Utility Pole, and Licensee shall, upon such notification, be responsible for initiating the transfer or removal of its Small Wireless Facility from the existing Utility Pole to the replacement Utility Pole within sixty (60) calendar days and completing said transfer or removal within ninety (90) days. The Licensee shall be solely responsible for all costs related to the removal, transfer and/or reinstallation of its Small Wireless Facilities. If the utility pole needs to be replaced due to third-party damage, and the utility pole to be replaced is or was a non- standard design or type in order to accommodate the Licensee's Small Wireless Facility, and recovery from the liable party who damaged the pole is not available, the Licensee shall be solely responsible for the incremental costs of the replacement utility pole over the cost of a standard pole. In the event a non-standard or custom pole needs to be replaced due to damage, Licensee has the right, at its sole cost and expense, to install a new custom pole as if it were a new installation without a full application or application fee, so long as the pole design is approved by Licensor's Public Works Manager and the pole and equipment do not vary significantly from the previously approved pole design and equipment. Custom replacement poles involving a pole design that vary in significant respects from a previously approved pole design, equipment or pole location shall be processed as a new application. The replacement pole will continue as the property of Licensor.

**4.8.3. Right-of-Way Only.** This Agreement shall only apply to Site-Specific Permits for Small Wireless Facilities located on Licensor Utility Poles and Wireless Support Structures that are located entirely within the Right-of-Way.

## **5.0. Other Rights and Obligations of Licensee.**

**5.1. Rights and Obligations after Installation of Small Wireless Facilities.** Except as set forth in this Section or as allowed by applicable Laws, should Licensee wish to modify the form, fit, or function of any Small Wireless Facility during the term of this

Agreement, Licensee may request, in writing, the Licensor's approval and authorization to add, attach, install, move, repair, replace, or otherwise alter or change the Licensee's Small Wireless Facilities in a manner consistent with this Agreement and with the Act and the Small Wireless Facilities Ordinance. All written requests for this purpose shall be filed with the Licensor's Representative, who may revise the Site-Specific Permit for such Work subject to appropriate reasonable conditions, or require a new permit. All Work on the Utility Poles shall comply with the applicable Laws, including the Municipal Code.

5.1.1. **Routine Maintenance.** The Licensee shall not be required to obtain approval or a permit to perform routine maintenance. However, the Licensee shall notify the Licensor, in writing, of any routine maintenance at least forty-eight (48) hours in advance of the maintenance. Written notice of routine maintenance shall be provided as set forth in Section 13.19, by phone to [REDACTED] or by e-mail transmission to [REDACTED]. Where routine maintenance is on a Small Wireless Facility on a Licensor Utility Pole, however, or Licensor coordination is necessary to safely perform routine maintenance, Licensee shall give at least fourteen (14) days' notice to allow Licensor to review the maintenance proposal and, if necessary, to prepare the site or otherwise schedule coordination activities. Licensor work necessary to make a site safe for the Licensee shall be billable to the Licensee. Under no conditions shall the Licensor be responsible to de-energize the electric on the system or to other customers in order for Licensee to conduct routine maintenance of Small Wireless Facilities. Routine maintenance performed by Licensee without complying with the notice requirements of this section shall be a default and may result in termination of the applicable Site-Specific Permit.

5.1.2. **Replacement of Small Wireless Facilities.** If the Licensee is seeking to replace a Small Wireless Facility with a Small Wireless Facility that is substantially similar and the same size, or smaller, than the existing Small Wireless Facility, the Licensee does not need to receive written authority or any additional permits from the Licensor. At least ten (10) days prior to the planned replacement, the Licensee shall notify the Licensor of the planned replacement and provide the Licensor with (i) the equipment specifications for the replacement of equipment, which shall include the equipment type and model numbers for the antennas and all other wireless equipment associated with the replacement Small Wireless Facility; and (ii) information sufficient to establish that the replacement Small Wireless Facility is substantially similar. The Licensee shall provide all information necessary and requested by the Licensor to establish to the Licensor that the replacement Small Wireless Facility is substantially similar.

5.1.3. **Micro Wireless Facilities.** The installation, placement, maintenance, operation, or replacement of Micro Wireless Facilities, as defined in the Act, that are suspended on cables that are strung between existing utility poles in compliance with applicable safety codes do not require an application or authorization from the Licensor. However, the Licensee shall still notify the Licensor, in writing, of any work on Micro Wireless Facilities under this subsection at least forty-eight (48) hours in advance of that work.

5.1.4 **Traffic Plan.** If any of the work performed in this Section involves activities that affect traffic patterns or require lane closures, the Licensor or other applicable authority with jurisdiction over the right-of-way may require the Licensee to obtain a Right-of-Way permit.

5.2. **Due Care.** Licensee shall at all times use due care to insure that no damage, beyond reasonable wear and tear, is caused to Utility Poles, Wireless Support Structures, Rights-of-Way, or Licensor Facilities, conduits, or any other portion of the Licensor's or others' property, including but not limited to: ground surfaces, landscaping, paved surfaces, swales, sewer drainage features, fibers, wires, cables, poles and/or conduits lawfully located on or about Utility Poles, or other physical structures on which the Licensee intends to attach and/or install Licensee's Small Wireless Facilities. Any damage which is caused by the Licensee shall be reported to the Licensor's emergency contact listed in Section 13.19 herein and in writing to the affected Party within forty-eight (48) hours of the damage. Licensee shall install, use, operate, maintain, repair, remove, reattach, reinstall, relocate, and replace its Small Wireless Facilities in safe condition and good repair and in compliance with the requirements and conditions of this Agreement, and applicable Laws. Licensee shall ensure that its employees, agents or contractors that perform work in connection with its Small Wireless Facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.

5.3. **Identification of Facilities.** Licensee shall identify its Small Wireless Facilities, including, without limitation, its fibers, wires, and cables and equipment enclosures with appropriate durable visible identification tags that describe the Licensee's name, number, color, identification, code, size, and manufacture of Licensee's Small Wireless Facilities. Licensee shall consult with the Licensor Representative to make certain that such identification tags are specific to the Licensee so as not to be confused with other Entities lawfully within the area of Licensee's Small Wireless Facilities. Licensee shall comply with J.U.L.I.E protocol and shall have sole responsibility to locate Licensee's Small Wireless Facilities. Upon a change in ownership or control of Small Wireless Facilities, the new Entity shall provide updated identification tags within fourteen (14) days.

5.4. **Interference.** Licensee agrees that its license is subject at all times to the Licensor's right to use its Utility Poles and Wireless Support Structures as set forth in this Agreement. The Licensee's operation of Small Wireless Facilities shall not interfere with the frequencies used by a public safety agency for public safety communications, both present and future frequencies. Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency. In the event any after-installed Licensee's Small Wireless Facilities cause such interference, and after Licensor has notified Licensee in writing of such interference, Licensee, at its sole expense, will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, powering down such Small Wireless Facilities and later powering up such Small Wireless Facilities for intermittent testing. The Licensor may terminate a permit for a Small Wireless Facility based on such interference if the Licensee is not making a good faith effort to remedy the problem. With respect to interference with public safety frequencies, good faith effort must be action 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. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the

provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

5.4.1 Subject to the provisions of Section 5.4, Licensee agrees to use its best efforts to minimize any interference caused by its Small Wireless Facilities to any of Licensor's or other Entity's equipment which has been installed prior to Licensee's install of its Small Wireless Facility. In the event that Licensor has a good faith belief that Licensee's Small Wireless Facilities are causing interference in accordance with this Section 5.4.1, the parties shall work in good faith to minimize or cease the interference in a commercially reasonable manner.

5.5. **Utility Worker Safety.** Licensee will comply with all applicable utility worker safety guidelines for work on or near the Small Wireless Facility, including the FCC's regulations, all relevant OSHA standards and all NESC pole designated work zones for equipment and working space.

6.0. **Costs and Application Process.**

6.1. **Make Ready Work.**

6.1.1. For Licensor's Utility Poles that support aerial facilities used to provide communications services or electric service, the Licensee shall comply with the process for make-ready work under 47 U.S.C. 224 and its implementing regulations. The Licensee shall be responsible for all costs associated with make-ready work. The good faith estimate of the municipality for any make-ready work necessary to enable the Utility Pole to support the requested collocation shall include municipality pole replacement, if necessary.

6.1.2. For Licensor's Utility Poles that do not support aerial facilities used to provide communications services or electric service, the Licensor shall prove a good-faith estimate for any make-ready work necessary to enable the Utility Pole to support the requested collocation, including pole replacement, if necessary, and shall provide the good faith estimate within ninety (90) days after receipt of a complete application. The Licensee shall be responsible for all costs associated with make-ready work. For Utility Poles with a non-standard design or type in order to accommodate the Licensee's Small Wireless Facility, Licensee shall be responsible for building or otherwise obtaining the Utility Pole based on the agreed upon design and transferring ownership of the Utility Pole to Licensor.

6.1.3. Fees for make-ready work, including any Licensor Utility Pole replacement, shall not exceed actual costs or the amount charged to Communications Providers for similar work. Make-ready work can include fees and expenses incurred for review by consultants, unless the Licensor's Utility Pole does not support aerial facilities used to provide communications services or electric service.

6.1.4 Make-ready work may include work needed to accommodate additional public safety communications needs that are associated with the deployment of public safety equipment for attachment within one (1) year of the application.

6.1.5. City fiber optic lines may only be relocated or adjusted by City personnel.

6.2. **Annual License Fee.** The Licensees shall pay, on an annual basis, an Annual License Fee for each Site-Specific Location in the amount of \$200 or an amount allowed by applicable law and set forth in the City's Small Wireless Facilities Ordinance. In establishing the Annual License Fee, Licensor shall comply with applicable Laws.

6.3 **Timing of Annual License Fee Payments.** Upon the final inspection of an initial Site-Specific Permit site, and receipt of a notice that the Permit site is approved by Licensor, the Licensee shall pay the full Annual License Fee for that Site-Specific Location within sixty (60) days of the permit issuance. Annual License Fees, for each Site-Specific Location, shall thereafter be due and payable by the Licensee on January 1<sup>st</sup> of each year.

6.4 **Late Payment Interest.** Any Annual License Fees not paid within sixty (60) days of due date will be assessed a rate of 10% per annum from the due date.

6.5. **Failure to Pay.** Licensee's failure to pay any costs or Annual License Fees under this Agreement within thirty (30) days of the due date shall constitute a material default. Licensee's obligation to pay all previously incurred costs, fees, and Right-of-Way fees shall survive the expiration or earlier termination of this Agreement. If a failure to pay has not been cured within thirty (30) days of the due date, the Licensee shall remove Licensee's Small Wireless Facilities within the timeframe specified in Section 3.3.1. Licensee's failure to remove within the time required will authorize the Licensor at its discretion to remove said facility pursuant to Section 7 herein.

6.6 **Application Process.** Licensee shall submit applications for Site Specific Permits in accordance with the requirements of applicable Laws, including the City's Code of Ordinances. Licensor shall process requests for the collocation of Small Wireless Facilities or Site Specific Permits in accordance with the requirements of applicable Laws, including the City's Code of Ordinances.

## 7.0 **Removal of Small Wireless Facilities.**

7.1. **Licensee's Obligation to Remove.** The Licensee has an obligation to remove its Small Wireless Facilities, and restore the Utility Pole, Wireless Support Structures, and Rights-of-Ways to their original condition, reasonable wear and tear and casualty damage excepted. This obligation arises: (1) upon the termination or expiration of any Site Specific Permit; (2) when the Licensee is no longer using a Small Wireless Facility to provide Wireless Services; or (3) when the Licensee abandons the Small Wireless Facilities. All of the equipment and Small Wireless Facilities of the Licensee shall remain the personal property of Licensee and Licensee shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws. If Licensee remains on the Property after termination of the Site Specific Permit for a period of less than six months, Licensee shall pay a holdover fee in the amount of \$250 per year until such time as the removal of the Small Wireless Facilities is completed. If Licensee remains on the Property for more than six months after termination of the Site Specific Permit, Licensee shall pay a holdover fee in the amount of \$250 per month until such time as the removal of the Small Wireless



Facilities is completed. The Licensor shall have the authority at any time to order and require Licensee to remove and abate any Small Wireless Facilities that are in violation of applicable Laws.

**7.2. Licensor's Authority to Remove Small Wireless Facilities.** In the event that the Licensee fails to remove a Small Wireless Facility within ninety (90) days from the termination or expiration of a Site Specific Permit, or from the date of written notice from the Licensor demanding the removal for abandonment as specified in the City's Small Wireless Facilities Ordinance, the Licensor shall have the right to take such action as it deems necessary to remove the Small Wireless Facility, including the authority to engage the services of an independent contractor or through any code provisions regarding the abatement of nuisances. All notices of removal or abandonment shall be sent by certified or registered mail, return receipt requested, by the Licensor to the Licensee at the last known address of the Licensee. If Licensor removes a Small Wireless Facility pursuant to this Agreement, the Licensee shall pay the Licensor within 30 days, the Licensor's actual and reasonable cost of removal of the Small Wireless Facility and for any other losses or damages incurred by the Licensor by such undertaking. This obligation shall survive termination or expiration of this Agreement. Alternatively, pursuant to the requirements of Chapter 13.22 (Construction of Utility Facilities in the Rights-of-Way) of the Municipal Code of the City of St. Charles, the Licensor may use any bond or letter of credit deposited by the Licensee to cover the cost of any removal. If the Licensor removes the Licensee's Small Wireless Facility in accordance with this Agreement, the Licensor shall, where practical, take possession of and hold the Small Wireless Facility at its facilities for a period up to 30 days and notify Licensee that it may take possession of such Small Wireless Facilities from Licensor's facilities at any time prior to the expiration of that time period. The Licensor shall have no obligation to pay or reimburse the Licensee for any Small Wireless Facility removed by the Licensor in accordance with this Agreement.

#### **8.0. Installation and Replacement of Small Wireless Facilities.**

**8.1. Provision of Communication Service.** This Agreement shall include new types of Small Wireless Facilities that may evolve or be adopted using wireless technologies. Licensee shall, at its expense, comply with all Laws in connection with the use of the Rights-of-Ways or other property. For Site-Specific Locations in the Right of Way, said locations may be used by Licensee, seven (7) days a week, twenty-four (24) hours a day, only for the installation, use, operation, maintenance, repair, removal, reattachment, reinstallation, relocation, and replacement of Small Wireless Facilities approved by a Site-Specific Permit by the Licensor from time to time for Communication Services or Wireless Services, and not for any other purpose whatsoever.

**8.2. Ongoing Inspections.** The Licensor shall have the ongoing right to inspect any Site-Specific Location or Work related to the Licensee's Small Wireless Facilities as it deems appropriate.

**8.3. Unauthorized Installation Charge.** No action or inaction by the Licensor with respect to unauthorized use of any Right-of-Way or other Licensor property shall be

deemed to be a ratification of an unauthorized use or waiver of any provision of this Agreement.

8.4. **Removal.** Licensee may in its discretion remove its Small Wireless Facilities at its own cost and expense provided that it has given the Licensor Representative notice of the removal and has been issued any necessary permits to do so. Upon removal, Licensee shall not be responsible for the payment of any future Annual License Fee, however, the Licensee shall not be entitled to any refund for License Fees previously paid.

8.5. **Failure to Restore or Remove.** The Licensor may, in accordance with the terms of this Agreement or as otherwise authorized by law, at the Licensee's sole cost and expense, remove Small Wireless Facilities or cause their removal without liability on the part of the Licensor, and may restore the Right-of-Way, and the Licensee shall pay the Licensor, within thirty (30) days, the Licensor's actual and reasonable cost of removal and/or restoration and for any other losses or damages incurred by the Licensor by such undertaking. This obligation shall survive termination or expiration of this Agreement. Licensor may, in its discretion, terminate power to a Small Wireless Facility if not timely removed in accordance with this Agreement.

#### 9.0 **Indemnity, Waiver, Risk of Loss.**

9.1. **Licensee Indemnification.** The Licensee agrees to defend, indemnify and hold the Licensor and its elected and appointed officials and officers, employees, agents and representatives (the "Indemnified Parties") harmless from and against any and all injuries, claims, demands, judgments, damages, liability, losses and expenses, including reasonable attorney's fees and costs of suit or defense from personal injury, bodily injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the Licensor's Utility Poles or Rights-of-Way associated with such improvements by the Licensee or its employees, agents, contractors, subcontractors, arising out of the rights and privileges granted under applicable Laws or this Agreement; provided, however that the Licensee has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the Licensor or its employees or agents.

9.2. **Waiver.** The waiver by a Party of any breach or default or violation of any provision, by any other party, shall not be deemed to be a waiver or continuing waiver by that Party of any subsequent breach or default or violation of the same or any other provision.

9.3. **Risk of Loss.** The Licensee shall assume all responsibility for promptly reimbursing the Licensor, or its franchisees, for any of their losses or expenses associated with damages caused by the acts or omissions of the Licensee, its employees, agents and/or contractors or subcontractors in the Rights-of-Way, including without limitation to any poles or conduits, sewers, gas, water, electric lines, fiber or cable communication lines, caused by the installation, use, operation, maintenance, repair, removal, reattachment, reinstallation, relocation, and replacement of the Licensee's Small

Wireless Facilities. The Licensee shall provide immediate notification to the Licensor or the affected Entity upon the occurrence of any such damage.

9.4. **Limitation.** Notwithstanding the foregoing, neither Party shall have any liability to the other under this Agreement or otherwise for special, punitive or consequential damages, including without limitation, damages for lost profits or business interruption.

#### 10.0. **Insurance Requirements and Securities.**

10.1. The Licensee's financial integrity is of interest to the Licensor; therefore, the Licensee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the Licensee's sole expense, insurance coverage, which will satisfactorily insure the Licensee and, where appropriate, the Licensor against claims and liabilities which may arise out of the installation, use, operation, maintenance, repair, removal, reattachment, reinstallation, relocation, and replacement of Small Wireless Facilities. Such insurance shall be issued by companies licensed to do business in the State of Illinois, with an A.M. Best's rating of no less than A-VII, and subject to the approval by the Licensor, not to be unreasonably withheld or delayed, unless the Licensee is self-insured.

10.1.1 At all times during the period in which a wireless provider's facilities are located on City infrastructure, improvements or in Right-of-Way, the wireless provider shall, at its own sole cost and expense, carry the following insurance coverages:

- (A) Property insurance for its property's replacement cost against all risks;
- (B) Workers' compensation insurance within statutory limits as required by law;

and

(C) (1) Commercial general liability insurance with respect to its activities on the City infrastructure, improvements or rights-of-way, including coverage for bodily injury and property damage, with limits of: Ten million dollars (\$10,000,000) per occurrence for bodily injury and property damage and Ten million dollars (\$10,000,000) general aggregate.

(2) The wireless provider shall include the Indemnified Parties as additional insureds on a primary and non-contributory basis, as their interest may appear under this Agreement and applicable Laws, on the commercial general liability policy and shall provide the Licensor with certificates of insurance on ACORD form or its equivalent, and blanket additional insured endorsements in a form reasonably acceptable to the Licensor, as proof of inclusion of the Indemnified Parties in a commercial general liability policy prior to the collocation of any Small Wireless Facility, and shall keep updated certificates and blanket additional insured endorsements proof of inclusion on file with the City at all times that the provider maintains Small Wireless Facilities within the City.

(D) A wireless provider may self-insure all or a portion of the insurance coverage and limits required by the City. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement that the City be named an additional insured. A wireless provider that self-insures shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance limits required by the City.

10.1.2. The insurance required shall be maintained by the Licensee throughout the terms of the Agreement, and such other period of time during which the Licensee is

operating without a license hereunder, or is engaged in the removal of its Small Wireless Facilities.

10.1.3. Not later than thirty (30) days prior to any cancellation of the insurance required, the Licensee shall obtain and furnish to the Licensor certificates of insurance evidencing replacement of the required insurance policies. Licensee shall also provide the Licensor with thirty (30) days prior written notice of any such cancellation.

#### 11.0. **Emergency Contacts.**

11.1. **Licensee's Duty to Maintain Current Emergency Contacts.** Licensee will maintain the emergency contact information current at all times with the Licensor Representative.

#### 12.0. **Representations and Warranties.**

12.1. **Representations and Warranties of the Parties.** As of the Effective Date, each Party represents and warrants to the other Party that:

12.1.1. It is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation;

12.1.2. The execution, delivery, and performance of this Agreement and its exhibits are within its powers, have been duly authorized by all legally necessary actions, and do not violate any of its governing documents, any contracts with any joint owners to which it is a party, or any Law;

12.1.3. This Agreement and its exhibits and any other document executed and/or delivered in accordance with this Agreement constitute a legally valid and binding obligation, enforceable against it in accordance with its covenants, terms, conditions, and provisions;

12.1.4. It has not filed and it is not now contemplating the filing for bankruptcy protection and, to its knowledge, no action is threatened against it which would result in it being or becoming bankrupt;

12.1.5. There is not, to its knowledge, pending or threatened against it or any of its affiliates, any legal or administrative proceedings that could materially and adversely affect its ability to perform its obligations under this Agreement; and

12.1.6. No "event of default" or potential "event of default" with respect to it has occurred or is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement.

12.2 **Representations and Warranties of the Licensee.** The Licensee represents and warrants to the Licensor that:

12.2.1. The Licensee has all approvals, authorizations, certifications, licenses, and franchises required by the State of Illinois, the FCC and/or any other agency to provide the Communications Service and Wireless Service; and

12.2.2. The Licensee is not aware of any facts or circumstances that would call into doubt the continuing validity of any such approvals, authorizations, certifications, licenses, or franchises; and

- 12.2.3. There is not pending or, to the Licensee's knowledge, threatened against the Licensee or its parent corporation or any of its subsidiaries or affiliates, any legal or administrative proceedings that could materially and adversely affect the validity of such licenses, authorizations, or franchises; and
- 12.2.4. All Work to be performed by the Licensee pursuant to this Agreement will be (i) performed in a good and workmanlike manner, consistent with any Permit specifications, manufacturer's specifications, prevailing industry standards, applicable Laws, and the provisions of this Agreement, and (ii) that it will be free from defects.

13.0. **Miscellaneous Provisions.**

13.1. **No Bar to Other Relief.** Nothing contained in this Agreement will prevent or otherwise restrict either Party from pursuing its rights at law or in equity, including injunctive relief and specific performance, in the event of a default and a material breach by the other Party.

13.2. **Immediate Relief.** Except for challenges to the validity of this Agreement or portions hereof which are specifically waived and released, nothing in this Agreement shall be deemed or construed to prohibit a Party from obtaining judicial, regulatory, or other relief necessary in order to preserve the status quo or prevent the loss or violation of that Party's rights.

13.3. **Amendments.** This Agreement may not be amended except pursuant to a written instrument signed by the Parties.

13.4. **Assignment.** Except as provided in Sections 13.4.1 and 13.4.2, Licensee may not directly or indirectly assign, transfer, or convey to another Entity this Agreement or any Site Specific Permit, or any of the rights and obligations of the Licensee established by this Agreement or any Site Specific Permit without written approval of the Licensor. Any assignment or transfer of this Agreement or Site Specific Permit shall be void, and the Licensor may terminate this Agreement or Site Specific Permit if the Licensee attempts to assign or transfer this Agreement or Site Specific Permit without compliance hereof.

13.4.1. The Licensee may assign or transfer this Agreement or a Site Specific Permit to its parent corporation or any subsidiary corporation or affiliate or successor in interest, provided that such parent corporation, subsidiary corporation, affiliate, or successor in interest first agrees, in writing, to be fully bound by this Agreement or the Site Specific Permit and the exhibits and to jointly assume all of the Licensee's obligations and liabilities hereunder, whether arising before or after the date of such assignment or transfer. The Licensor Representative shall be notified of assignment or transfer.

13.4.2. If Licensee sells or otherwise transfers all or substantially all of its assets, then, upon the provision of written approval from the Licensor, which will not be unreasonably withheld, Licensee may assign or otherwise transfer this Agreement or Site Specific Permit(s) and the rights and obligations hereunder without the approval of the Licensor so long as the transferee is

not statutorily unfit to hold such a license and first agrees, in writing, to be fully bound by this Agreement and Site Specific Permit(s) and the exhibits and to jointly assume all of the Licensee's obligations and liabilities hereunder, whether arising before or after the date of such assignment or transfer. For the avoidance of doubt, if Licensee owns the underlying land at any site specific location, the mere sale or other transfer of the land shall not affect this License.

13.5. **Sublicensing.** The parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Small Wireless Facilities deployed by Licensee in the rights-of-way pursuant to this Agreement may be owned and/or operated by Licensee's third-party Wireless Service Providers and installed and maintained by Licensee pursuant to license agreements between Licensee and such Wireless Service Providers. Such Small Wireless Facilities shall be treated as Licensee's facilities for all purposes under this Agreement provided that (i) Licensee remains responsible and liable for all performance obligations under the Agreement with respect to such facilities, (ii) the Licensor's sole point of contact regarding such facilities shall be Licensee, and (iii) Licensee shall remain responsible and liable for the removal and relocation of such facilities per the Agreement. However, all Wireless Service Providers shall agree, in writing, to be fully bound by this Agreement and to jointly assume all of the Licensee's obligations and liabilities hereunder. Licensee shall not grant such Wireless Service Providers rights of access to such facilities. The Licensor acknowledges that Licensee may include third party-owned equipment in its initial installation of Small Wireless Facilities and that such inclusion shall not be considered a sublicense to a third party subject to the provisions of this section.

13.6. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

13.7. **Exhibits.** As of the Effective Date, all exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to and duly executed amendments to this Agreement, are by such reference incorporated in this Agreement and shall be deemed a part hereof as if fully set forth herein.

13.8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to its conflict of laws rules or principles.

13.9. **Headings.** The headings hereof are inserted for convenience of reference only, are not a part hereof, and shall have no effect on the construction or interpretation hereof.

13.10. **Independent Contractor.** Each Party to this Agreement acts as an independent contractor and not as an employee of the other Party. Nothing in this Agreement shall be construed to establish a partnership, joint venture, group, pool, syndicate, or agency relationship between the Licensor and the Licensee.

**13.11. Resolving Conflicting Provisions.** To the extent the provisions and any other authorizations and approvals required to be obtained by the Licensee from the Licensor are in conflict, the provisions of the Agreement, authorizations and approvals which impose(s) the higher or greater legal duty or obligation upon the Licensee shall take precedence.

**13.12. Rules of Construction.** Each Party and its counsel have reviewed this Agreement. Accordingly, the rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the construction and interpretation hereof.

**13.13. Severability.** If a court of competent jurisdiction finds or rules that a provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

**13.14. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and permitted assignees of the Parties and approved successors.

**13.15. Time of Action.** For the purposes hereof, the time in which an act is to be performed shall be computed by excluding the first day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday, or any day observed as an official holiday by the Licensor, the time for performance shall be extended to the following Business Day.

**13.16. Jurisdiction and Venue.** Exclusive jurisdiction and venue for any and all disputes related in any manner to this Agreement, regardless of their basis or nature, shall be in the Circuit Court of Kane County.

**13.17. No Recording.** Licensee shall not record this Agreement or any other document referred to herein without the written consent of the Licensor.

**13.18. Entire Agreement.** This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, warranties, agreements, or understandings (whether oral or written) between the Parties relating to the subject matter hereof which are not fully expressed herein.

**13.19. Notices.** All notices which shall or may be given pursuant to this Agreement shall be given, in writing, and shall be deemed validly given if delivered or sent by certified mail, return receipt requested, or by commercial courier, provided the commercial courier's regular business is delivery service, and addressed, as follows:

LICENSOR: The City of St. Charles  
Attn: Mark Koenen  
City Administrator  
2 E. Main Street

St. Charles, IL 60174

24/7 EMERGENCY CONTACT: 630-816-6007

Copy to: Klein Thorpe & Jenkins, Ltd.  
Attn: Michael Marrs  
20 N. Wacker Drive, Suite 1660  
Chicago, Illinois 60606-2903

Any notice to be sent to the Administrator shall be sent to the same address referred to above.

Licensee:  
Chicago SMSA Limited Partnership d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, NJ 07921  
Attention Network - Real Estate

24/7 EMERGENCY CONTACT: Phone Number: (800) 621-2622

Copy to:  
Chicago SMSA Limited Partnership d/b/a Verizon Wireless  
1515 E Woodfield Rd  
10th Floor  
Schaumburg, IL 60173  
Attention Network - Legal

**13.20. No Waiver.** A waiver by the Licensor of any breach of one or more of the terms of this Agreement shall not constitute a waiver of any subsequent or other breach of the same or other term, nor shall the failure on the part of the Licensor to require exact, full, and complete compliance with the terms contained herein be construed as changing the terms of this Agreement or as stopping the Licensor from enforcing full compliance with the provisions herein. No delay, failure, or omission of the Licensor to exercise any right, power, privilege, or option arising from any breach shall impair any right, power, privilege, or option, or be construed as a waiver or acquiescence of such breach or as a relinquishment of any right. No right, power, privilege, or option of the Licensor shall be construed as being exhausted by the exercise thereof in one or more of the instances. The rights, powers, privileges, and options given to the Licensor under this Agreement and by law shall be cumulative.

**13.21 Casualty.** In the event of damage by fire or other casualty to a Utility Pole or Wireless Support Structure on which Small Wireless Facilities are located that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Utility Pole or Wireless Support Structure Premises is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Licensee's operations at the Premises for more than forty-five (45) days, then Licensee may, at any time following such fire or other casualty, provided Licensor has not completed the restoration required



to permit Licensee to resume its operation at the Premises, terminate the Site Specific Permit upon fifteen (15) days prior written notice to Licensor. Any such notice of termination shall cause the Site Specific Permit to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the Site Specific Permit and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under the Site Specific Permit. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which Licensee's use of the Premises is impaired.

**13.22 Applicable Laws.** During the term of this Agreement, Licensor shall use and maintain the Utility Poles, Wireless Support Structures, and Rights-of-Way in compliance with all Laws. Licensee shall, in respect to the condition of the Small Wireless Facilities and at Licensee's sole cost and expense, comply with (a) all Laws relating solely to Licensee's specific and unique nature of use of the Small Wireless Facilities; and (b) all codes requiring modifications to the Small Wireless Facilities due to the improvements being made by Licensee to the Small Wireless Facilities.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the dates set forth below with their respective signatures, to be effective as of the date of the signature of the last Party to sign.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

LICENSEE:  
Chicago SMSA Limited Partnership  
d/b/a Verizon Wireless  
by Cellco Partnership, its General Partner

LICENSOR:  
City of St. Charles

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

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

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

Title: Mayor

Attest:

Attest:

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

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

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

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

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

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