

## Small Cell Phase 1 Application

The following permit application is required for the authorization of placement and operation of small cell infrastructure within the limits of the City of Providence pursuant to The City of Providence Small Wireless Facility Siting Rules (the “Rules”).

### Part 1 - Business Information

Business Name:

Business Address:

Business Office Phone Number:

Business Point of Contact Name:

Business Point of Contact Phone Number:

**Part 2 - Small Cell Infrastructure:** The City will issue a permit for up to 15 approved attachment locations per organization during phase 1 of our implementation program, from May 24, 2019 until the implementation of phase 2. This initial phase will be used to clarify our understanding of the impact that small cell infrastructure will have on our City. In conjunction with an RFI, the City seeks to establish a plan for further implementation with consideration for the unique needs of the City as well as related initiatives such as equitable access.

Following the establishment of standards for further implementation in phase 2, attachments placed during phase 1 may remain if those placements are consistent with newly implemented standards. Further, if they do not, organizations will be provided with the opportunity to update attachments agreed to during phase 1 to meet new standards.

Eligibility of applicants - Each applicant must apply for the implementation of its own system/network and must apply individually and be unaffiliated with any other applicants.

Cost:

Application Processing Fee - A fee of \$100, to be paid upon submission of the application, is required to process an application. An applicant may file a consolidated application and receive a single license to collocate up to 15 Small Wireless Facilities at multiple locations within the City's jurisdiction.

Annual Fees -

In addition to the application processing fee, the licensee must pay an annual recurring fee of \$150.00 for each collocation of a Small Wireless Facility on a **Regulated Pole** as defined in the Rules.

In addition to the application processing fee, the licensee must pay an annual recurring fee of \$1,500.00 for each collocation of a Small Wireless Facility on a **City Structure** as defined in the Rules.

### **Part 3- Attestations**

**Please read the following and initial indicating you both accept and will make the following commitments and attestations, and recognize these are all required conditions for your company to be approved to install small cell infrastructure in the City of Providence (City).**

1. The applicant, including all of its employees, operatives, and vendors shall not place or install any infrastructure affiliated with small cell within any public right-of-way without first obtaining authorization from the Director of the Department of Public Works during phase 1 of our implementation program, executing a License Agreement attached as Schedule 1 and receiving a License attached as Exhibit B pursuant to the Rules. \_\_\_\_\_
2. All infrastructure installed by applicants must have and clearly display a unique, permanent identification number consistent with the License. The applicant will provide the City, as an addendum to this application, a list with all the unique identification numbers and locations proposed for launch and intended for use in the City. \_\_\_\_\_
3. The applicant shall place a customer service contact phone number, answered 24 hours a day, 7 days a week, on all poles with installed infrastructure. The number must connect the public to local management and operations teams. Licenses shall be conditional upon documentation of a physical staffed operations center within the City. \_\_\_\_\_
4. The applicant agrees to share all usage data with the City at no cost in order to be eligible for authorization. \_\_\_\_\_
5. The applicant's proposed locations shall demonstrate equitable distribution throughout the City as determined at the City's discretion. \_\_\_\_\_
6. The applicant must include a plan specifying how infrastructure will be inspected and maintained for operability. Any inoperable location cannot be substituted with another without the submission of a new application and authorization from the Director of Public Works. \_\_\_\_\_
7. The Director of Public Works may order infrastructure to be removed if it interferes with other necessary functions of the City of Providence. Removal under these circumstances must be performed within 10 business days. If the applicant does not remove the infrastructure as ordered, the City will do so. The costs of removal shall be paid to the City by the applicant within sixty (60) days after written notice to the applicant by the City.
8. The applicant must read and abide by additional rules set forth in the City of Providence Small Wireless Facility Siting Rules and terms of the License Agreement. \_\_\_\_\_
  - a. Note: The City seeks to establish a relationship with a neutral third party for the management of Small Wireless Facilities. During phase 1, the City will act in place of this third party.

### **Part 4: Supplemental Acknowledgements**

By signing below, I attest to all of the information contained on this application and any of the supplemental materials requested are correct and factual and understand that if any of the information or responses included as part of the application is found to be misleading, the City may

revoke the applicant/applicant's permit. I also attest that I have read the City of Providence Small Wireless Facility Siting Rules in their entirety and attest to follow all required state and local regulations related to the permitting and authorization of small cell infrastructure.

**Part 5: License Agreement for Non-exclusive use of City Poles & Structures**

After an application is processed and approved, the license agreement attached as Schedule 1 will be required to be executed by each applicant.

Applicant Signature:

Date signed:

FOR OFFICE USE ONLY

\_\_\_Approved      \_\_\_Denied

Application Processing Fee: \$100 (*Due with application*)

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Number of approved locations on regulated poles: \_\_\_\_\_ x \$150 = Permit Balance Due \_\_\_\_\_

Number of approved locations on city structures: \_\_\_\_\_ x \$1,500 = Permit Balance Due \_\_\_\_\_

Total balance due: \$\_\_\_\_\_

*(Due following approval of permit)*

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Approved or Denied by: \_\_\_\_\_,

Director of Public Works

SCHEDULE B

**LICENSE AGREEMENT FOR NON-EXCLUSIVE USE OF CITY POLES & STRUCTURES**

This License Agreement for Non-Exclusive Use of poles and structures in the City of Providence (“Agreement”) is made as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between THE CITY OF PROVIDENCE, a municipal corporation organized and existing under the laws of the State of Rhode Island, having its principal place of business at 25 Dorrance Street, Providence, Rhode Island 02903 (“City”) and \_\_\_\_\_, a \_\_\_\_\_, having a mailing address of \_\_\_\_\_ (“Company”). The Company and the City may hereinafter be referred to individually as a “Party”, and, collectively, as the “Parties.”

WHEREAS, the Company desires to attach the equipment specified in Exhibit A (collectively, the “Attachments”) on specified poles in the public way controlled and maintained by the City (collectively, the “Regulated Poles”) and on other City property (“City Structures”); and

WHEREAS, the City intends to authorize the proposed attachments and approve these terms to address rights and obligations regarding the installation, operation and maintenance of the Attachments not fully addressed in the City’s Small Wireless Facility Siting Rules (the “Rules”); so

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and the City agree to the following terms and conditions:

- 1.1 License to Use Regulated Poles and City Structures.** During the term of this Agreement from May 24, 2019 until the implementation of phase 2, and subject to its terms and conditions, the City hereby grants to the Company a license to mount, construct, install, maintain, locate, operate, place, upgrade, protect, reconstruct, reinstall, remove, repair, and replace, at the Company’s sole cost and expense, the Attachments on Regulated Poles and City Structures, for the purpose of providing service to Company's customers. Other than as expressly permitted herein, the Company shall not construct or place any structures or improvements in, on, under or about the Regulated Poles or City Structures, nor shall the Company make any alterations or additions to any of existing structures or improvements on the Regulated Poles. Any small wireless facilities installed on a Regulated Pole or a City Structure without a license issued under the Rules will be subject to a fine of not less than \$500 per day of wrongful attachment and the unauthorized attachments will be subject to removal at the owner’s expense.

- 1.2 **Limited Privilege.** This Agreement gives the Company a license and not ownership or a leasehold, easement or other property interest in the Regulated Poles and City Structures. This Agreement does not grant or create any franchise rights. The Company accepts the Regulated Poles and City Structures in their “AS IS” condition, without representation or warranty, and subject to all applicable laws, rules and ordinances governing the use of them for the Company’s intended purpose.

THE PRIVILEGE GIVEN TO THE COMPANY UNDER THIS AGREEMENT IS EFFECTIVE ONLY TO THE EXTENT OF THE RIGHTS OF THE CITY IN THE REGULATED POLES AND CITY STRUCTURES. THE COMPANY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE CITY HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENT OR FUTURE USE OF THE REGULATED POLES OR CITY STRUCTURES FOR THE COMPANY’S INTENDED PURPOSE.

- 1.3 **Non-exclusive Privilege.** The authorization granted in this Agreement shall be non-exclusive. Except as specifically set forth in this Agreement, nothing contained in this Agreement shall be construed to limit, alter, or waive the City’s right to enter into agreements authorizing persons or entities other than the Company to access and use Regulated Poles or City Structures.

## **Section 2 Use of City Poles and Structures.**

### **2.1 The Company's Installation of Attachments on Regulated Poles and City Structures.**

At least sixty (60) days before installing the Attachments on the Regulated Poles or City Structures, the Company will submit to the City for approval a License Application in form administered by the Department of Public Works, Engineering Division. Upon approval of the application, the City shall issue the license attached as Exhibit B ("License").

The Company will place all its equipment as high as reasonably possible, except as otherwise provided by the Rules. Solid stainless steel bands matching the color of the Regulated Pole or City Structure will be used to band all equipment. The volume of the equipment shall not exceed twenty-eight cubic feet. The Company will give the City an emergency response plan identifying staff with authority to resolve problems or complaints resulting from the Company's use of the Regulated Pole or City Structure.

No small wireless facility shall emit any buzz, hum, or other sound that is clearly audible to a person standing at the closer of (a) ten feet from the Regulated Pole or City Structure or; (b) at the property boundary nearest the pole.

### **2.2 Replacing Regulated Poles and Attachments Installed on Regulated Poles.**

The Company will evaluate each Regulated Pole and City Structure for structural feasibility. If manufacturers for legacy facilities cannot provide enough specific details to conduct a structural inspection or if a Regulated Pole or City Structure is damaged such that the attachment is no longer feasible, the Company may propose an aesthetically similar replacement pole subject to City requirements and approval. The Company will work with the City's preferred pole manufacturer and pay for all costs associated with any proposed and approved replacement poles. Upon completion of installation of any replacement, the ownership of such replacement shall automatically vest in City.

The Company may, but shall not be obligated to, trim trees and vegetation only as necessary to comply with applicable electrical codes as applied in the City.

The Company may update or replace the Attachments from time to time subject to requirements for a public way work permit, without any other City approval, as long as the

update or replacement maintains the existing form, fit, and function and does not increase the weight load or occupy a larger space or draw more electrical power than the Attachment being replaced (“minor modification”). If any modification to the Attachments will create a greater weight load, occupy a greater space or draw more electricity (“major modification”), before installing such a major modification, the Company shall ensure that the proposed replacement Attachments (a) are approved by the City, such approval not to be unreasonably withheld, conditioned, or delayed, in any event beyond twenty (20) days; and (b) do not pose a risk to the Regulated Pole or City Structure or to the public.

If no Regulated Pole or City Structure is available for the Company’s use, and the Company wishes to install a new pole or structure, that installation must be approved by the City.

- 2.3 The Company’s Use of Regulated Poles or City Structures is Subject to the City’s Use.** The City uses the Regulated Poles and City Structures to protect the public safety and provide for its welfare. The Company’s authorization and entitlements under this Agreement are always and entirely subject and subordinate to the City’s use for municipal purposes as provided by Article V, sections 23-107 and 23-108 of the Providence Code of Ordinances. The Company shall not do anything that could damage the Regulated Poles, City Structures or any other City property, or interfere with the City’s use for its purposes.

Any proposal for any permanent alteration of any City property must be identified on plans approved by the City. No City property may be removed without City approval in writing. If the Company damages or interferes with any City property or interest it shall notify the City immediately. At the City’s request and on the City’s schedule, the Company will, at its sole expense, promptly alter or remove any and all Attachments to remedy any such damage or interference. If the Company fails to complete the work on time, the City may perform the work at Company’s cost. The installation shall not cause radio frequency radiation that violates any applicable standards or could put City workers or contractors in danger or expose them to emissions that require special conditions, training, or safeguards. An on/off switch must be provided for each Small Cell Facility or else the City reserves the right to disconnect the small cell device at the base of the pole during maintenance activity, without notice.

- 2.4 Customer-Owned Equipment.** Company may include customer-owned equipment in its Attachments, so long as the inclusion does not expand the size or weight of any Attachment, and Company retains control over and remains solely responsible for the maintenance and operation of the Attachment, as a whole.

- 2.5 Risk of Loss or Damage.** The Company bears all risk of loss or damage to the Attachments from any cause, except the gross negligence or willful misconduct of the City.

- 2.6 **Hazardous Materials.** Neither Party shall cause or allow any of its agents to cause, any hazardous materials to be brought upon, kept, used, stored, generated, released or disposed of in, on, under or about the Regulated Poles or City Structures in violation of applicable laws. The Company shall immediately notify the City when the Company learns of, or has reason to believe that, such a release of hazardous materials has occurred. Each Party shall further comply with all applicable laws regarding hazardous materials and shall take all action necessary or desirable to mitigate the release or minimize the spread of contamination.
- 2.7 **Electrical Connections and Related Work.** The Company shall arrange and install all internal electrical components and hook-ups necessary to install the Attachments in accordance with the applicable provisions of the electrical code governing installations in the State of Rhode Island and the City of Providence. The Company may use City owned street lighting circuits to obtain power for the Attachments subject to its assumption of the obligation for all applicable charges and requirements for all electricity used at that Regulated Pole or City Structure.
- 2.8 **Emergencies.** When emergency pole replacements or repairs are required or other emergency situations exist, the City shall notify Company as soon as practicable, but in no event later than twenty-four (24) hours after the emergency, identifying the specific nature of the emergency and which City property is affected, and providing an update on status of impact as reasonably required.
- 2.9 **Worker Qualifications; Responsibility for Agents and Contractors.** Each Company shall ensure that each and every one of its workers and, to the extent that it may employ agents or contractors, their workers, are adequately trained and skilled in accordance with all applicable industry, utility and governmental standards and regulations. The City may deny access to its property for any worker who is not so qualified, or does not act in a safe and professional manner.

### Section 3 **Term and Termination.**

- 3.1 **Term.** The term of this Agreement is until the Company notifies the City of its intent to terminate, which notice shall be provided at least one hundred and twenty (120) days prior to termination unless otherwise indicated herein.

**3.2 The Company Shall Remove Attachments.** The Company will retain ownership of the Attachments unless otherwise provided in this Section. The Company may at any time remove the Attachments and shall give the City notice of such removal within thirty (30) days after removal. Within six (6) months after the termination of this Agreement, the Company shall remove the Attachments restoring the City property and surroundings to substantially the same condition they were in prior to use by the Company, ordinary wear, tear and casualty damage excepted. If the Company fails to remove the Attachments within six (6) months after termination, the Attachments shall be deemed abandoned and the City may remove them at the Company's cost. Company hereby grants the City title to any abandoned Attachments.

#### **Section 4 Use Fee.**

The Company shall pay the City no more than either a flat fee of \$150 per installed Small Wireless Facility per year installed on Regulated Poles ("Installed Pole Use Fee") or the rate produced by applying the formula adopted by the Federal Communications Commission for telecommunications attachments under 47 U.S.C. §224(e) before the first day of each calendar year as determined by the City each year. The Company will pay an annual recurring fee of the greater of one thousand five hundred dollars (\$1,500.00) or a reasonable fee to be determined by the City based on the specific City Structure and application proposed, for each collocation of a Small Wireless Facility on a City Structure. Payments received after December 31st shall be considered late payments and shall be subject to late charges of one and one half percent (1.5%) interest per month assessed on the first day of each month payment is late. The Company shall also pay any and all fees for the use of any and all electricity at the Regulated Pole or City Structure.

Payments must be made payable to Department of Finance, with "Small Cell Wireless Application Fee" indicated in the subject line and sent addressed to 25 Dorrance Street, Room 207, Providence, RI 02903.

#### **Section 5 Indemnity, Insurance & Remedies.**

The Company shall include the City as an additional insured in any general or auto liability policy required and provide certificates evidencing the insurance limits of \$2 million per occurrence and \$5 million aggregate for commercial general liability and \$1 million combined single limits for auto liability before installing any Attachments. Workers' Compensation Insurance for statutory obligations imposed by Workers' Compensation or Occupational Disease Laws, including Employer's Liability Insurance with a minimum limit of \$500,000. The Company may self-insure with adequate proof of capacity at the City's

discretion. The required certificates of insurance shall include substantially the following statement: "The insurance covered by this certificate shall not be canceled or materially altered, except after thirty (30) days written notice has been received by the City of Providence." Insurance coverage shall be in a form and with an insurance company approved by the City which approval shall not be unreasonably withheld. Any insurance company providing coverage under this Agreement must be authorized to do business in the State of Rhode Island.

Neither Party will be liable under this Agreement for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption, loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the Party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

#### **Section 6 Compliance with Applicable Law.**

The Company hereby represents that it is authorized to transact business in Rhode Island.

The Company warrants and represents that it has obtained all necessary and appropriate authority and approval from all applicable city, federal and state agencies or authorities to provide all facilities and services it intends to provide within the City and will provide evidence of such authority upon request.

Company shall, at its expense, conduct and cause to be conducted all activities allowed hereunder in a safe and reasonable manner and in compliance with all applicable laws of any governmental or other regulatory entity and maintain in force at all times all business and other licenses or approvals necessary to conduct the activities hereunder.

#### **Section 7 No Costs to City.**

The Company shall bear all costs or expenses of any kind or nature in connection with its use of the Regulated Poles and City Structures and of any electricity supplied to the Regulated Pole or City Structure. Company shall keep the Regulated Poles and City Structures free and clear of any liens or claims of lien to the extent arising out of or in any way connected with its use.

#### **Section 8 Assignment.**

Company may assign this Agreement to any parent, subsidiary, affiliate, or any person, firm, or corporation that controls, is under the control of, or is under common control with the Company, or to any entity into which the Company is merged or consolidated or which

acquires all or substantially all of the assets of the Company that are subject to this Agreement.

Otherwise, this Agreement may only be assigned by the Company if/as approved by the City in writing.

This Agreement shall be binding upon and inure to the benefit of the assignees.

**Section 9 No Joint Ventures or Partnership; No Authorization.**

This Agreement does not create a partnership or joint venture. The Company is not a state actor with respect to any activity conducted by the Company.

**Section 10 Notices.**

Except as otherwise expressly provided herein, any notices given under this Agreement shall be effective only if in writing and given by sending first class mail or certified mail with a return receipt requested, or conveying by a nationally-recognized overnight courier that guarantees next day delivery and provides a receipt therefore, with postage prepaid, addressed as follows (or such alternative address as may be provided in writing):

**THE CITY:** Department of Public Works  
City of Providence  
700 Allens Avenue  
Providence, Rhode Island 02905  
Attn: Director

With a copy to:

City Solicitor  
City of Providence  
444 Westminister Street, Suite 220  
Providence, Rhode Island 02903

**THE COMPANY:**

With a copy to:

Notices herein shall be deemed given three (3) days after the date when they shall have been mailed if sent by first class or certified mail or the next day if sent by overnight courier.

Either Party hereto may change the addressee and/or location for notice by thirty (30) days' prior written notice to the other Party.

## **Section 11 Default and Termination**

**11.1 Default.** A breach of any warranty or covenant under this Agreement, a breach of any performance requirements in section 2, or a failure to make payment under section 4 are all defaults.

If a Party fails to perform any other term or condition of this Agreement and that failure is not cured within sixty (60) days after written notice from the other Party specifying the failure the non-performing party is in default, except that no such failure to perform will be deemed a default if the non-performing Party commences to cure the default immediately upon notice and such efforts are prosecuted to resolve the non-performance with diligence. Delay in curing such a performance-related default will be excused if due to causes beyond the reasonable control of the Party. If the Party remains in default due to non-performance beyond this cure period, the other Party will have: (i) the right to cure the default and to be compensated for the costs of such cure from the defaulting Party, (ii) the right to terminate any license(s); and (iii) any and all other rights available to it under law and equity.

**11.2 Termination.** If either Party shall default the other Party may terminate the License(s) upon thirty (30) days' notice.

## **Section 12 General Provisions.**

**12.1 Modification Must be in Writing.** This Agreement may be amended or modified only by a writing signed by the Parties.

**12.2 Waiver Must be in Writing.** No waiver by any Party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver.

**12.3 Complete Agreement.** This instrument (including the exhibits hereto) contains the entire agreement between the Parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.

**12.4 Governing Law; Venue for Disputes.** The laws of the state of Rhode Island shall govern the formation, interpretation, and performance of this Agreement. The venue for all

litigation regarding the formation, interpretation and performance of this Agreement will be in Providence, Rhode Island.

**12.5 Change of Law.** If any federal, state, or local laws or regulations (including, but not limited to, those issued by the Federal Communications Commission or its successor agency) and any binding judicial interpretations thereof (collectively, “Laws”) that govern any aspect of the rights or obligations of the Parties under this Agreement shall change after the Effective Date and such change makes any aspect of such rights or obligations inconsistent with the then-effective Laws, then the Parties agree to promptly amend this Agreement as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change.

EACH PARTY REPRESENTS AND WARRANTS TO THE OTHER THAT IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS AGREEMENT, HAS HAD AN OPPORTUNITY TO REVIEW AND DISCUSS IT WITH COUNSEL OF ITS CHOOSING, AND AGREES TO COMPLY WITH AND BE BOUND BY ALL OF ITS PROVISIONS.

**CITY OF PROVIDENCE**

**[THE COMPANY]**

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

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

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

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

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

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

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

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

## EXHIBIT A

### DESCRIPTION OF ATTACHMENTS

Attachments include any wire, cable, strand, material, antennas, transmitters, receivers, and all other equipment or apparatus attached to a Regulated Pole or City Structure now or hereafter proposed for use by the Company in its License Application. Company's ground wires shall not be considered Attachments for any purposes under this Agreement. The Company's service drops shall not be considered Attachments for purposes of the Attachment License(s) or notice requirements contained in this Agreement.

EXHIBIT B

SMALL WIRELESS FACILITY ATTACHMENT LICENSE

Attachment License Number(s) \_\_\_\_\_ is hereby granted to make the Attachment(s) described in Exhibit A as \_\_\_\_\_ Attachments to Regulated Poles or City Structures.

DATE \_\_\_\_\_

COMPANY \_\_\_\_\_

By (Print Name) \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Email address \_\_\_\_\_

Telephone No. \_\_\_\_\_

NOTES:

1. Applications shall be submitted to the City.
2. Applications to be numbered in ascending order by Company, in a form:  
The City-\_\_\_\_\_ -yyyy-###.
3. The City will process in order of application numbers assigned by the Company.
4. This License is for a term from \_\_\_\_\_ to \_\_\_\_\_, subject to renewal at the City's discretion.

Agreement Number \_\_\_\_\_

Application Number \_\_\_\_\_(to be provided by Company)

ATTACHMENT DETAILS

Municipality \_\_\_\_\_

Street name and Pole/Structure No. and Location /Attachment Description:

Applications should be submitted to:

Department of Public Works  
Attn: Director  
City of Providence  
700 Allens Avenue  
Providence, Rhode Island 02905