

## Small Wireless Facilities Right-of-Way Use and Franchise Agreement

This **Small Wireless Facilities Right-of-Way Use and Franchise Agreement** (“Use Agreement”) is dated as of \_\_\_\_\_, \_\_\_\_\_, (the “Effective Date”), and entered into by and between Section 5 of the Village of Chevy Chase, Maryland, a municipal corporation of the State of Maryland (the “Village”), and \_\_\_\_\_, a \_\_\_\_\_ (“Company”), having an address at \_\_\_\_\_.

WHEREAS, the Village controls, maintains, and holds in trust, for the benefit of the public, the Public Ways within the Village borders; and

WHEREAS, Company desires to locate, construct, operate, and maintain in the Public Ways, in accordance with regulations promulgated by the Federal Communications Commission (“FCC”), and the Maryland Public Service Commission (“PSC”), a network of Small Wireless Facilities and related Equipment (“Network”) in the Public Ways of the Village; and

WHEREAS, the Village is willing to permit Company’s non-exclusive use at approved locations in its Public Ways, in accordance with the terms and conditions of this Use Agreement and pursuant to permits issued by the Village for the installation of Company’s Network in the Public Ways; and

NOW, THEREFORE, in consideration of these recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

**1. DEFINITIONS.** The definitions set forth on **Appendix A** shall apply to the provisions of this Use Agreement. Terms not defined therein but defined in the Village Code shall have the meaning set forth in the Village Code.

**2. TERM.** This Use Agreement shall become effective upon the later of its execution by the Company and its approval of the Village Council and submission to the Village by the Company of a certificate of liability insurance and, to the extent such FCC authorization is required, proof of FCC licensure or authorization to operate Small Wireless Facilities in a geographic area that includes the Village, and, if not terminated in accordance with other provisions of this Use Agreement, shall continue in effect for a term of ten (10) years and, unless terminated by either party, shall automatically be renewed for two (2) additional five (5) year terms. Either party may terminate this Use Agreement at the end of the initial term or a successive term by giving written notice of intent to terminate the Use Agreement at the end of the then-current term.

### **3. SCOPE OF USE AGREEMENT.**

**3.1. Permitted Uses.** This Use Agreement is limited to the uses specifically set forth herein, and no other use of the Public Way shall be allowed without the Village’s express written consent. The Village hereby grants the Company for the period of the Term, subject to the terms and conditions of this Use Agreement, a non-exclusive license to install, operate, repair, maintain, remove and replace Small Wireless Facilities or other Facilities on or over, and to attach such Facilities to Poles located in, the Public Way owned or controlled by the Village, for the provision of Communications Services, provided; however, that such grant is expressly limited to those Facilities and locations in the Public Ways for which the Company receives a permit from the Village. Before offering or providing any Communication Services using the Facilities, the Company shall obtain any and all required regulatory approvals, permits, authorizations and licenses for the offering or provision of such Communication Services from appropriate Federal, State, and local authorities, and shall submit to the Village evidence of all such approvals, permits, authorizations or licenses.

**3.2. Conditions and Limitations.** Nothing in this Use Agreement shall abrogate the right of the Village (itself or through its contractors) to construct, operate, maintain, repair or remove any public works or public improvement of any description. Any and all rights expressly granted to Company under this Use Agreement, which shall be exercised at Company’s sole cost and expense, shall be subject to the prior and continuing right of the Village under applicable Laws to use any and all parts of the Public Way concurrently with any other person or entity, and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Way. Nothing in this Use Agreement shall

be deemed to grant, convey, create, or vest in Company an interest in any structure, real estate or land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Use Agreement shall be subject to the reasonable prior review and approval of the Village and shall after approval be subject to regulation by the Village, in compliance with local, State and Federal law.

**3.3. No Waiver or Release.** Nothing in this Use Agreement shall be constructed as a waiver of any codes, ordinances or regulations of the Village or of the Village's right to require the Company or Persons utilizing the Facilities to secure the appropriate permits or authorizations for such use. Except as expressly set forth in this Use Agreement, nothing in this Use Agreement shall be construed as a waiver or release of the rights of the Village in and to the Public Way. In the event that any of the Public Way is eliminated, discontinued, closed or abandoned, all rights and privileges granted pursuant to this Use Agreement with respect to said Public Way, or any part thereof to be eliminated, discontinued, closed or abandoned, shall cease upon the effective date of such elimination, discontinuance, closing or abandonment. The Village shall use reasonable efforts to provide reasonable prior notice to the Company of any such elimination, discontinuance, closing or abandonment.

**3.4. Exercise of Police Power; Conflicts with Village Code.** All rights and privileges granted hereby are subject to the police power of the Village to adopt and enforce local laws, rules and regulations necessary to protect the health, safety and general welfare of the public consistent with any other requirements of Federal or State law. Expressly reserved to the Village is the right to adopt, now and in the future, in addition to the provisions of this Use Agreement and existing laws, ordinances and regulations, such additional laws and regulations as it may find necessary in the exercise of its police power, consistent with Federal and State law, and Company shall comply with all laws, ordinances and regulations, now existing and hereafter adopted whether local, State or Federal. In the event of a conflict between this Use Agreement and the Village Code of Ordinances, the Village Code shall prevail. Notwithstanding the preceding sentence, Company does not waive any right it may have to challenge any Village ordinance, resolution, or regulation adopted after the Effective Date of this Agreement as contrary to applicable Federal or State law.

**3.5. Attachment to Third-Party Property.** Subject to applicable law and to Company obtaining the written permission of the owner(s) of the affected Poles, the Village hereby authorizes and permits Company to enter upon the Public Way and, subject to the permission of the appropriate Pole owner and the Village's applicable design standards and requirements of the Village Code and regulations, to locate, place, attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Small Wireless Facilities in or on Poles located within the Public Way.

**3.6. No Interference.** Company, in the performance and exercise of its rights and obligations under this Use Agreement, shall not interfere in any manner with the existence and operation of the Public Way or any and all private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, cable television, and other telecommunications, utility, Village property or the original intent of the use of the Public Way, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Use Agreement.

**3.7. Enclosures.** Company shall not place Pedestals or Vaults in the Public Way without the Village's prior written permission. If permission is granted, all such installations shall be subject to, and in compliance with, the Applicable Standards and applicable Law. Such permission shall not be unreasonably withheld.

**3.8. Compliance with Laws.** Company shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Use Agreement.

**4. FEES AND CHARGES.** Company shall be solely responsible for the payment of all lawful Fees in connection with Company's performance under this Use Agreement, including those set forth below.

**4.1 Application Fee (one-time).** To reimburse Village's costs incurred relating to inspection and application processing, Company shall be charged a one-time, non-refundable Application Fee of five hundred dollars (\$500.00) for each Small Wireless Facility application for 5 or fewer locations in the Public Way, plus one hundred dollars (\$100) per additional location above 5, or one thousand dollars (\$1,000) per application for each

new Pole or support structure installed by Company. The Village reserves the right to adjust the Application Fee from time to time to cover actual and documented costs incurred in processing Applications.

**4.2. Right-of-Way Access Fee (recurring).** In order to compensate the Village for Company's entry upon and deployment of Small Wireless Facilities within the Public Way, and continued inspection and monitoring by the Village, and Public Way maintenance, Company shall pay to the Village, on an annual basis, a non-refundable fee of two hundred seventy dollars (\$270.00) per each Small Wireless Facility, or such other amount as may be adopted by resolution of the Village Council consistent with applicable Law (the "Right-of-Way Fee"). The Right-of-Way Fee shall be payable annually for the period commencing with the Effective Date and ending on the date of termination of this Use Agreement. The annual Right-of-Way Access Fee is due on each anniversary of the Effective Date and is due in full, without proration, for each Small Wireless Facility in place or in the process of installation in the Public Way on the day that the annual payment is due.

**4.3. Late Charge.** If the Village does not receive payment for any fee or other charge or amount owed by the Company within thirty (30) calendar days after it becomes due, Company shall pay interest to Village at the rate of one and one-half percent (1.5%) per month.

**5. CONSTRUCTION.** Company shall comply with all applicable Federal, State, and Village codes, regulations specifications, and requirements, if any, related to the construction, installation, operation, maintenance, and control of Company's Facilities installed in the Public Way. If Company does not repair the site as required herein, the Village shall have the option, upon thirty (30) days' prior written notice to Company, to perform or cause to be performed such reasonable and necessary work on behalf of Company and to charge Company for the costs incurred by the Village at the Village's standard rates, as well as a reasonable administrative fee to coordinate inspections, reviews and issuance of permits or denials. Upon the receipt of a demand for payment by the Village, Company shall promptly reimburse the Village for such costs. Company shall not attach, install, maintain, or operate any Equipment in or on the Public Way and/or on Municipal Facilities without the prior approval of the Village for each location. The Village's costs shall be a lien on the property and shall be collectible in the same manner as are Village taxes or by suit at law.

**5.1. Location List; Annual Certification.** On the first anniversary of the Effective Date, Company shall furnish to the Village a list indicating the location(s) of each of its Small Wireless Facilities in the Public Way, and shall update that list annually. Company shall also provide annually, from the date of this Use Agreement, an updated "as-built" map clearly indicating each Facility, which shall specifically identify the owner of underlying Pole or other support structure (*i.e.*, Company or Pepco). Also, a construction plan shall be provided annually, from the date of this Use Agreement, specifically describing, through maps, illustrations, diagrams, construction drawings and written description, construction or other significant work planned for the following calendar year. Each year on or before July 1, Company shall submit an affidavit to the Village which shall list, by location, all Small Wireless Facilities it owns or operates within the Village's Public Way, and shall certify: (1) each such installation that remains in use; (2) such in-use facility remains covered by required insurance; (3) each such installation has been properly maintained over the last 12 months, and (4) each such installation which is no longer in use.

**5.2. Professional Certification.** Prior to installing any new Attachment, or modifying any existing Attachment in a manner resulting in additional weight or volume being placed on a Pole, and unless otherwise waived in writing by the Village, as part of the Company's permit application process and at Company's sole expense, and prior to installing any new Pole or other support structure, a qualified and experienced professional engineer must certify that Company's Facilities will be attached to the identified Poles or new Poles or other support structures will be installed, in the correct locations and in compliance with the Applicable Standards, the Village's permit conditions, and the specifications set forth in the Company's application. The Village may require Company's professional engineer to conduct a post- construction inspection that the Village will verify by means that it deems to be reasonable, certifying that the proposed Attachments were made, or new Poles installed, in compliance with the Applicable Standards, the Village's permit conditions, and the specifications set forth in the Company's application.

**5.3. Damage to Public Way.** Whenever the installation, removal or relocation of Company's Facilities is required or permitted under this Use Agreement, and such installation, removal or relocation shall cause the Public Way to be damaged or harmed in any way, including cosmetic damage, Company, at its sole cost and expense, shall promptly repair and return the Public Way in which the Facilities are located to a safe and satisfactory condition in

accordance with applicable Laws. If Company does not repair the site as just described, then the Village shall have the option, upon thirty (30) days' prior written notice to Company, to perform or cause to be performed such reasonable and necessary work on behalf of Company and to charge Company for the proposed costs to be incurred or the actual costs incurred by the Village at the Village's standard rates, except that for repairs needed to protect public health or safety, the Village can proceed with the repair on an emergency basis after providing Company with prior notice. Upon the receipt of a demand for payment by the Village, Company shall promptly reimburse the Village for such costs. The Village's costs shall be a lien on the property and shall be collectible in the same manner as are Village taxes or by suit at law.

## **6. SPECIFICATIONS.**

6.1. **Installation.** When a permit is issued pursuant to this Use Agreement, Company's Small Wireless Facilities and other Equipment shall be installed and maintained in accordance with the plans and specifications approved by the Village. Company shall submit to the Village an initial installation plan, and any subsequent work plans concerning installations not addressed in the initial work plan, which shall include fully dimensioned site plans and specifications that are drawn to scale and show (1) the specific Equipment, (2) the specific proposed location(s), dimensions, and height of such Equipment (including specific identification of each Attachment to a Company-installed or third-party Pole or other structure located in the Public Way); (3) the proposed type of construction materials for all structures, and (4) any other details that the Village may reasonably request which are also applicable to other entities installing facilities in the Public Way.

6.2. **Approval by Village.** Company shall not attach, install, maintain, or operate any Small Wireless Facilities in or on the Public Way until plans for such work have been approved by the Village, and all necessary permits have been properly issued. Any significant deviation from the installation plan as set forth in the application (including, for example, a change of node location) made in the course of construction shall require the written consent of the Village, upon which the Village shall act promptly, and may require modification of an existing, or issuance of a new, permit. Approval of plans and specifications and the issuance of any permits by the Village shall not release Company from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications and/or permits. Company shall be responsible for notifying the Village and all other relevant parties immediately upon discovery of such omissions and/or errors and with obtaining any amendments for corrected Village-approved permits, as may be necessary.

6.3. **Maintenance of Facilities.** Company shall, at its own expense, make and maintain its Attachment(s) and Facilities in safe condition and good repair, in accordance with all Applicable Standards. Notwithstanding anything in this Use Agreement to the contrary, Company shall not be required to update or upgrade its Attachments if they met Applicable Standards at the time they were made, unless such updates or upgrades are required by any revised Applicable Standards. Company shall use its commercially reasonable efforts to coordinate construction and maintenance of its Facilities with the Village to minimize unnecessary disruption. Prior to commencing construction, installation or maintenance activities, Company shall acquire all required Village permits. Company shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. If the Village gives Company written notice of a failure by Company to maintain its Facilities, Company shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.

6.4. **Tagging; Access to Records.** Company shall Tag all of its Attachments to Poles and other support structures, as specified by the Village and applicable Federal and State regulations, which will allow for ready identification of the type of Attachment and its owner. The Village may periodically inspect Company's Facilities to ensure they are tagged with approved permanent identification markers. The Village shall have the right, upon reasonable notice, to access and inspect the Company's books and records related to its Facilities in the Village, to confirm compliance with this Use Agreement.

6.5. **RF Emissions.** Company is solely responsible for the radio frequency ("RF") emissions emitted by its Small Wireless Facilities and associated Equipment and their compliance with applicable FCC rules. . Company is jointly responsible for ensuring RF exposure from its emissions, in combination with the emissions of all other contributing sources of RF emissions, is within the limits permitted under all applicable rules of the FCC. To the

extent required by FCC rules, Company shall install appropriate signage to notify workers and third parties of the potential for exposure to RF emissions.

**6.6. Protective Equipment.** Company and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and facilities.

**6.7. Maximum Permissible Exposure Report.** Within 30 days of its delivery to Montgomery County ("County"), Company shall furnish the Village a copy of any report to the County concerning RF emissions that relates, in whole or in part, to Company's Facilities located in the Village. Within thirty (30) days of Company's submission to the FCC of any reports on maximum permissible exposure to RF emissions relating, in whole or in part, to Company's Facilities in the Village, Company shall submit a copy of that report to the Village. Failure to provide the report or failure to comply, in a timely manner, with FCC standards for limiting human exposure to radio frequency emissions shall be an event of default.

**6.8. Emergency Contact Information.** Company shall provide emergency after-hours contact information to the Village to ensure proper notification in case of an Emergency. Information will include 24/7 telephone and cell phone information, and a list of duty managers by district and escalation procedures.

**6.9. Violation of Specifications.** If Company's Facilities, or any part of them, are installed, used, or maintained in violation of this Use Agreement, and Company has not corrected the violation(s) within thirty (30) days from receipt of written notice of the violation(s) from the Village, the provisions of Section 13 shall apply. When the Village believes, however, that such violation(s) pose an Emergency, the Village may perform such work and/or take such action as it deems necessary without first giving written notice to Company. As soon as practicable afterward, the Village will advise Company of the work performed or the action taken. Company shall be responsible for all actual and documented costs incurred by the Village in taking action pursuant to this Section. Company shall indemnify the Village for any such work. The Village's costs shall be a lien on the property and shall be collectible in the same manner as are Village taxes or by suit at law.

## **7. INDEMNIFICATION AND WAIVER.**

**7.1. Indemnification by Company.** Company shall indemnify, defend and hold harmless the Village, its elected/appointed officials, departments, employees, agents and representatives from any and all claims, demands, suits and actions, including attorneys' fees and court costs connected therewith, brought against the Village, its elected/appointed officials, departments, employees, agents or representatives and arising from Company's use of the Public Way, the installation, operation or maintenance of its Facilities, or any act or omission of Company, its agents, officers or employees related thereto.

**7.2. Waiver of Claims.** Company shall use the Public Way at its own risk and the Village shall not be responsible for any damages thereof due to any cause. Neither the Village nor any other user of the Public Way shall be liable to Company for any interruption of Company's services, including but not limited to the failure of Company's equipment to perform as intended, arising in any manner. Company waives any and all claims, demands, causes of action, and rights it may assert against the Village on account of any loss, damage, or injury to any of its Facilities or any loss or degradation of any Communication Services provided over those Facilities.

**7.3. Waiver of Punitive and Consequential Damages.** Both parties hereby waive the right to recover punitive and consequential damages from the other party; however, this provision does not apply to indemnity.

**7.4. Enforcement.** The Village shall be entitled to an award of its expenses, including reasonable attorney's fees, incurred in enforcement of this Use Agreement.

**8. ENVIRONMENTAL.** Company shall protect, defend, indemnify, and hold the Village harmless from and against any and all claims, costs, and expenses related to environmental liabilities resulting from Company's occupancy, use, development, maintenance, or restoration of the Public Way or installation operation or maintenance of its Facilities, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary Village response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, Company's

officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies. Notwithstanding the foregoing or any other provision in this Agreement, Company shall not be liable or responsible for any environmental condition, including the release of Hazardous Substances, that existed before the commencement of Company's activities under this Agreement, or that otherwise does not result from the activities of Company.

**9. GOVERNMENTAL IMMUNITY.** No provision of this Use Agreement is intended, or shall be construed, to be a waiver for any purpose by the Village of any applicable governmental immunity State or limits on liability. No indemnification provision contained in this Use Agreement under which Company indemnifies the Village shall be construed in any way to limit any other indemnification provision contained in this Use Agreement.

**10. INSURANCE.**

10.1. Company shall obtain and maintain at all times during the term of this Use Agreement, Commercial General Liability insurance and Commercial Automobile Liability insurance protecting Company in an amount not less than Two Million Dollars (\$2,000,000) per occurrence (combined single limit), including bodily injury and property damage, and with respect to the Commercial General Liability policy, in an amount not less than Three Million Dollars (\$3,000,000) in the annual aggregate for each personal injury liability. Such insurance shall contain a waiver of the right of subrogation against the Village. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the Village has received at least thirty (30) days' advance written notice of such cancellation or change. Company shall be responsible for notifying the Village of such change or cancellation. Prior to the commencement of any work pursuant to this Use Agreement, Company shall file with the Village proof that the required insurance has been obtained.

10.2. **Insurer Criteria.** Any insurance provider of Company shall be admitted and authorized to do business in the Commonwealth of Maryland and shall carry a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A" Overall and a Financial Size Category of "X" (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

**11. NOTICES.**

11.1. All notices which shall or may be given pursuant to this Use Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email transmission, if a hard copy of the same is followed by delivery through the U. S. mail or by overnight delivery service as just described, addressed as follows:

If to the Village:

Village Manager  
Section 5 of the Village of Chevy Chase  
P.O. Box 15140  
Chevy Chase, Maryland 20815

If to the Company:

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

11.2. **Date of Notices; Changing Notice Address.** Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email,

or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

**12. ASSIGNMENT.** Company shall not assign its rights or obligations under this Use Agreement, nor any part of such rights or obligations, without the prior written consent of the Village, which consent shall not be unreasonably withheld. The parties agree that all obligations of the Company as set forth herein shall be binding upon the permitted assigns.

### **13. TERMINATION AND DEFAULT.**

13.1. **Default.** An Event of Default (each of the following being an "Event of Default") shall be deemed to have occurred hereunder by Company if Company shall breach any material term or condition of this Use Agreement; or Company shall fail to perform, observe or meet any material covenant or condition made in this Use Agreement; or at any time, any representation, warranty or statement made by Company herein shall be incorrect or misleading in any material respect.

13.2. **Remedies.** Upon the occurrence of any one or more of the Events of Default, Village, at its option, in addition to and not in lieu of any other remedies provided for herein, shall be entitled to proceed to exercise any and all actions it may have in law or at equity, including drawing down upon a bond for any fees, costs, expenses or penalties that Company has not paid, and in addition, at its option, the Village may terminate this Use Agreement upon providing notice to Company, provided, however, the Village may take such action or actions only after first giving Company written notice of the Event of Default and a reasonable time within which Company may cure or commence diligent efforts to cure such Event of Default, which period of time shall be not less than thirty (30) calendar days, except that the period of time shall not be less than ten (10) calendar days for any monetary amounts past due and owing by Company to the Village, or for failure to maintain adequate insurance or bonds, as provided for herein.

13.3. **Removal Due to Termination or Abandonment.** Following the termination of this Use Agreement for any reason, or in the event Company ceases to operate and abandons the Network, Company shall, within one hundred twenty (120) days, at its sole cost and expense, remove all of its Facilities from the Public Way and restore the area affected by its Facilities to its condition at the commencement of this Use Agreement, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by Company to the Public Way or the adjacent property, or as otherwise required by the Village. If not so removed within that time period, the Village shall have the right to remove Company's Facilities, and Company agrees to pay the actual and documented cost thereof, within forty-five (45) days after it has received an invoice from the Village.

**14. MISCELLANEOUS PROVISIONS.** The provisions which follow shall apply generally to the obligations of the parties under this Use Agreement.

14.1. **Nonexclusive Use.** Company understands that this Use Agreement does not provide Company with exclusive use of the Public Way and that the Village shall have the right to permit other providers of the same, similar or other services to install equipment or devices in the Public Way. The Company understands that other governmental or quasi-governmental agencies, public utilities, franchisees and other similar entities may conduct activities, such as excavation, construction, demolition and installation of other facilities in the public right-of-way. The Company agrees that the Village shall not be responsible for any damage caused by the aforesaid entities to the Attachments and other Facilities installed by Company pursuant to this Use Agreement;

14.2. **Waiver of Breach.** The waiver by either party of any breach or violation of any provision of this Use Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Use Agreement.

14.3. **Contacting Company.** Company shall be available to the staff employees of the Village twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of Facilities. The Village may contact \_\_\_\_\_ at telephone number \_\_\_\_\_ regarding such problems or complaints.

14.4. **Governing Law; Jurisdiction.** This Use Agreement shall be governed and construed by and in accordance with the laws of the State of Maryland. If suit is brought by a party to this Use Agreement, the parties agree that any lawsuit shall be brought in either State or Federal court of competent jurisdiction and venue in Maryland.

14.5. **Change of Law.** If any Laws that govern any aspect of the rights or obligations of the parties under this Use Agreement shall change after the Effective Date and such change preempts any aspect of such rights or obligations as inconsistent with the then-effective Laws, then the parties agree to promptly amend or replace this Use Agreement as reasonably required to accommodate and/or ensure compliance with any such change in Law, provided, however, that if such change in Law deprives either party of a substantial benefit of its bargain under this Use Agreement, then such party shall have the right to terminate this Use Agreement by providing notice to the other party.

14.6. **Consent Criteria.** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Use Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

14.7. **Representations and Warranties.** Each of the parties to this Use Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform that Party's respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

14.8. **Amendment of Use Agreement.** This Use Agreement may not be amended except pursuant to a written instrument signed by both parties.

14.9. **Entire Agreement.** This Use Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Use Agreement which are not fully expressed herein.

14.10. **Duties Survive.** The duties described in this Use Agreement, including but not limited to indemnity, shall survive termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this license under seal, with the express intent of making a specialty, on this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

COMPANY:

Section 5 of the Village of Chevy Chase

\_\_\_\_\_  
(SEAL)

By:

\_\_\_\_\_  
(SEAL)  
Ashley Kavanaugh, Village Manager



## **Appendix A Definitions**

**Affiliate:** When used in relation to Company, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Company.

**Applicable Standards:** Means all applicable engineering and safety standards governing the installation, maintenance, operation of Facilities and the performance of all work in or around Poles and the Public Ways and includes the most current versions of the National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), the regulations of the Federal Communication Commission (“FCC”) (including but not limited to radio frequency emission standards) and the Occupational Safety and Health Administration (“OSHA”), and the provisions of the Village’s Right-of-Way regulations, building and zoning codes, each of which is incorporated by reference in this Agreement, and other reasonable safety and engineering requirements of the Village or any Federal State or County authority with jurisdiction over Poles or the Public Ways.

**Attachment(s):** Means Small Wireless Facilities that are placed directly on Poles, including radios, antenna, and associated cables and hardware, as approved in writing by the Director of Public Works and filed with the Department of Public Works prior to their placement on Poles.

**Authorizations:** Means the applicable permissions Company must obtain to deploy or operate the Network and/or provide Communications Services, which may include franchise or right-of-way use agreements; licenses, permits, zoning approvals; variances, exemptions, grants of authority to use private rights of way and/or easements or facilities, agreements to make attachments to poles, ducts, conduits, manholes, and the like; and any other applicable approval or authorization of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any applicable requirement by a governmental authority for the engagement in a business or enterprise or the provision of services.

**Base Station:** Means fixed communications equipment for reception and/or transmission of mobile services, such as microcell antennas and associated equipment (amplifiers, connective cabling, batteries), to support the facility.

**Communication Services:** Means wireless transmission and transport of personal wireless services and private mobile service, as those terms are defined in 47 U.S.C. §332, as amended from time to time, that are provided by Company or its Affiliates using the Network pursuant to, and authorized by, Federal or State law.

**County:** Means Montgomery County, Maryland.

**Emergency:** Means a situation that, in the reasonable discretion of the Village or Company, if not remedied immediately, poses an imminent threat to public health, life, or safety, damage to property or a service outage.

**Equipment:** Means the optical converters, power amplifiers, radios, multiplexers, microcells, remote radio heads, antennas, cables, wires, meters, pedestals, power switches, and related equipment, whether referred to singly or collectively, to be installed or operated by Company hereunder.

**Facilities:** Means Small Wireless Facilities, Equipment, and any Pole or other support structure that is installed or operated by Company in or on any Public Way.

**FCC:** Means the Federal Communications Commission or any successor federal agency.

**Law or Laws:** Means any and all applicable and lawful statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the Village, County, State, FCC, any other agency, department or branch of the Federal Government, or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement.

**Company:** Means the Company, and its lawful successors, permitted assigns and transferees, and may also be referred to in conjunction with the Village as the Party, Other Party, or Parties collectively.

**Network:** Means all of the Facilities owned or operated by Company and located within the Village.

**Pedestals/Vaults/Enclosures:** Means above or below-ground housings that are not attached to Poles but are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices, and/or to provide a service connection point.

**Pole:** Means a pole whether owned or controlled by the Company, or a third party and capable of supporting Attachments for Small Wireless Facilities.

**Public Way:** Means the space in, upon, above, along, across, and over the public rights-of-way and streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lands, and places, including all public utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the Village. This term shall not include (a) any County, State, or Federal rights-of-way or any property owned by any person or entity other than the Village, except as provided by applicable Laws or pursuant to any agreement between the Village and any such person or entity, or (b) any property owned by the Village, such as a park or property on which Village buildings are located, that is not a public right-of-way.

**Small Wireless Facility:** Means each of the Company's Equipment and Facilities that satisfies the definition of "small wireless facilities" in the FCC's rules, 47 CFR Section 1.6002(l).