

CITY/TWP/VILLAGE OF _____
SMALL WIRELESS FACILITIES PERMIT PURSUANT TO MCL
SECTION 460.1301 ET. SEQ

Name of Permit Holder

TERMS AND CONDITIONS

1 Definitions

- 1.1 Company shall mean _____, a corporation, organized under the laws of the State of _____ whose address is _____.
- 1.2 Effective Date shall mean the date set forth in Part 13.
- 1.3 Manager shall mean Municipality’s Manager or his or her designee.
- 1.4 Small Wireless Facilities Act shall mean the Small Wireless Communications Facilities Deployment Act, Act 365 of 2018 or any revisions or amendments thereto (the “Act”).
- 1.5 Municipality shall mean the City/Twp/Village of _____, a Michigan municipal corporation.
- 1.6 Permit shall mean this document.
- 1.7 Public Right-of-Way shall mean the area on, below, or above a public roadway, highway, street, alley, easement, or waterway, to the extent Municipality has the ability to grant the rights set forth herein. Public right-of-way does not include a federal, state, or private right-of-way or RR ROW.
- 1.8 Small Cell Wireless Facility or Facilities shall have the meaning as provided in the Act. This Permit does not cover the Company’s equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are installed in the right-of-way and separately permitted under the Metropolitan Extension Telecommunications Rights-of Way Oversight Act, Act No. 48 of the Public Acts of 2002, as amended.
- 1.9 Term shall have the meaning set forth in Part 7.

2 Grant

2.1 Municipality hereby grants a permit under the Act to Company for access to and ongoing use of the Public Right-of-Way to construct, install and maintain Small Wireless Facilities in those portions of the Public Right-of-Way and as further identified in Exhibit A on the terms set forth herein.

2.1.1 Exhibit A may be modified by written request by Company and approval by Manager.

2.1.2 Manager shall not unreasonably condition or deny any request for a modification of the Facilities described in Exhibit A, except as in those circumstances specifically enumerated in the Act.

2.2 Nonexclusive. The rights granted by this Permit are nonexclusive. Municipality reserves the right to approve, at any time, additional permits for access to and ongoing usage of the Public Right-of-Way by telecommunications providers and to enter into agreements for use of the Public Right-of-Way with and grant franchises for use of the Public Right-of-Way to telecommunications providers, cable companies, utilities and other providers.

3 Contacts, Maps and Plans

3.1 Company Contacts. The names, addresses and the like for engineering and construction related information for Company and its Telecommunication Facilities are as follows:

Company's Local Representative

Address

Phone

Email

Company's Location of Engineering Records:

Address

Phone

Email

Company's Engineering and Design Representative:

See Exhibit A Drawings attached thereto.

Company's Construction Vendor(s):

Address
Phone
Email

Company's 24 hour access:
Address
Phone
Email

The preceding information is accurate as of the Effective Date. Company shall notify Municipality in writing as set forth in Part 12 of any changes in the preceding information.

4 Use of Public Right-of-Way

No Burden on Public Right-of-Way. Company, its contractors, subcontractors, and the Telecommunication Facilities shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. If Municipality reasonably determines that any portion of the Telecommunication Facilities constitutes an unsafe burden or interference to Municipality, due to changed circumstances that impact usual travel or public safety on the ROW or obstruct the legal use of the Municipality's ROW, Company, at its sole expense, shall modify the Telecommunication Facilities or take such other actions as Municipality may determine in good faith is in the public safety interest to remove or alleviate the burden, and Company shall do so within a reasonable time period. Municipality shall attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.

- 4.1 No Priority. This Permit does not establish any priority of use of the Public Right-of-Way by Company over any present or future permittees or parties having agreements with Municipality or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to Municipality, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- 4.2 Restoration of Property. Company, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Company's sole

expense, in a manner approved by Municipality, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Telecommunication Facilities to a reasonably equivalent (or, at Company's option, better) condition as that which existed prior to the disturbance. In the event that Company, its contractors or subcontractors fail to make such repair within a reasonable time, Municipality may make the repair and Company shall pay the costs Municipality incurred for such repair.

- 4.3 Marking. Company shall mark the Small Wireless Facilities with a sign not to exceed one square foot on each utility pole subject of this Permit providing the Company's name and provide a toll-free number for assistance.
- 4.4 Tree Trimming. Company may trim trees upon and overhanging the Public Right-of-Way so as to prevent the branches of such trees from coming into contact with the Small Wireless Facilities, consistent with any standards adopted by Municipality. Company shall dispose of all trimmed materials. Company shall minimize the trimming of trees to that essential to maintain the integrity of the Small Wireless Facilities. Except in emergencies, all trimming of trees in the Public Right-of-Way shall have the advance approval of Manager.
- 4.5 Installation and Maintenance. The construction and installation of the Small Wireless Facilities shall be performed pursuant to plans approved by Municipality. Company shall install and maintain the Small Wireless Facilities in a reasonably safe condition. Company may perform maintenance on the Small Wireless Facilities without prior approval of Municipality, provided that Company shall obtain any and all permits required by Municipality in the event that any maintenance will disturb or block vehicular traffic or as otherwise required by Municipality.
- 4.6 Compliance with Laws. Company shall comply with all laws, statutes, ordinances, rules and regulations regarding the construction, installation, and maintenance of its Small Wireless Facilities, whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Company shall secure all necessary permits, licenses and approvals from Municipality or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Municipality shall not unreasonably delay or deny issuance of any such permits, licenses or approvals. Company shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) and the National Electric Code (latest

edition). Company shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended. This section does not constitute a waiver of Company's or Municipality's right to challenge laws, statutes, ordinances, rules or regulations now in force or established in the future.

- 4.7 Street Vacation. If Municipality vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of Company's Facilities in the vacated Public Right-of-Way, Company shall, as a condition of this Permit, consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by Municipality or a court of competent jurisdiction. Company shall relocate its Facilities to such alternate route as Municipality and Company mutually agree, applying reasonable engineering standards.
- 4.8 Relocation. If Municipality requests Company to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Company shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as Municipality and Company mutually agree, applying reasonable engineering standards. The work shall be completed within a reasonable time period.
- 4.9 Public Emergency. Municipality shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Company if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Municipality shall attempt to provide notice to Company. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Company shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by Municipality.
- 4.10 Miss Dig. If eligible to join, Company shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 174 of the Public Acts of 2013, as amended, MCL § 460.721 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- 4.11 Identification. All personnel of Company and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Company's name, their

name and photograph. Company shall account for all identification cards at all times. Every service vehicle of Company and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Company's name and telephone number.

5 Indemnification

- 5.1 Indemnity.** Company shall defend, indemnify, and hold harmless the municipality and its governing body and its officers, agents, and employees against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees resulting from the Company's negligence during the installation, construction, repair, replacement, operation, or maintenance of any Facilities, wireless support structures, or utility poles to the extent caused by the Company, its contractors, its subcontractors, and the officers, employees, or agents of any of these. Company has no obligation to defend, indemnify, or hold harmless an authority or the governing body of a municipally owned electric utility, or the officers, agents, or employees of the authority or governing body against any liabilities or losses due to or caused by the sole negligence of the authority or the governing body of a municipally owned electric utility or its officers, agents, or employees.
- 5.2 Notice, Cooperation.** Municipality shall notify Company promptly in writing of any such claim and the method and means proposed by Municipality for defending or satisfying such claim. Municipality shall cooperate with Company in every reasonable way to facilitate the defense of any such claim. Municipality shall consult with Company respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.
- 5.3 Settlement.** Municipality shall not settle any claim subject to indemnification under this Part 5 without the advance written consent of Company, which consent shall not be unreasonably withheld. Company shall have the right to defend or settle, at its own expense, any claim against Municipality for which Company is responsible hereunder.

6 Insurance

- 6.1 Coverage Required.** Prior to beginning any construction in or installation of the Small Wireless Facilities in the Public Right-of-Way, Company shall obtain insurance as set forth below and file certificates evidencing same with Municipality. See Exh B. Such insurance shall be maintained in full force and effect until the end of the Term. In the alternative, Company may satisfy this requirement through a program of self-insurance, acceptable to Municipality, by providing

reasonable evidence of its financial resources to Municipality. Municipality's acceptance of such self-insurance shall not be unreasonably withheld.

6.1.1 Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars (\$5,000,000).

6.1.2 Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars (\$500,000) and providing coverage for claims discovered within three (3) years after the term of the policy.

6.1.3 Automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000).

6.1.4 Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.

6.1.5 The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.

6.2 Additional Insured. Municipality shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to Municipality. Company shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.

- 6.3 Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.
- 6.4 Deductibles. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of \$50,000, they shall be approved by Manager in advance in writing. Company shall indemnify and save harmless Municipality from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.
- 6.5 Contractors. Company's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Company, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Company's policies).
- 6.6 Insurance Primary. Company's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Company's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

7 Term

- 7.1 Term. The term ("Term") of this Permit shall be until the earlier of:
- 7.1.1 Fifteen years (15) from the Effective Date; provided, however, that following such initial term there shall be three subsequent renewal terms of five (5) years. Each renewal term shall be automatic unless Municipality notifies Company in writing, at least twelve (12) months prior to the end of any term then in effect, that due to changed circumstances a need exists to negotiate the subsequent renewal with Company. Municipality shall not unreasonably deny a renewal term; or

- 7.1.2 When the Small Wireless Facilities have not been used to provide telecommunications services for a period of one hundred and eighty (180) days by the Company or a successor of an assign of the Company; or
- 7.1.3 When Company, at its election and with or without cause, delivers written notice of termination to Municipality at least one-hundred and eighty (180) days prior to the date of such termination; or
- 7.1.4 Upon either Company or Municipality giving written notice to the other of the occurrence or existence of a default by the other party under Sections 4.8, 6, 8 or 9 of this Permit and such defaulting party failing to cure, or commence good faith efforts to cure, such default within sixty (60) days (or such shorter period of time provided elsewhere in this Permit) after delivery of such notice; or
- 7.1.5 Unless Manager grants a written extension, one year from the Effective Date if prior thereto Company has not started the construction and installation of the Telecommunication Facilities within the Public Right-of-Way and two years from the Effective Date if by such time construction and installation of the Telecommunication Facilities is not complete.

8 Performance Bond or Letter of Credit

- 8.1 Municipal Requirement. Municipality will require Company to post a bond pursuant to the Act in the amount of one thousand and no/100 dollars (\$1,000.00) per Facility, prior to start of construction. See Bond attached as Exh C

9 Fees and Rates

- 9.1 Establishment; Reservation. The Act shall control the establishment of application fees and any annual right-of-way rates. The parties reserve their respective rights regarding the nature and amount of any fees or rates which may be charged by Municipality in connection with the Public Right-of-Way. The Parties currently acknowledge and agree that an application must be accompanied by a one-time application fee of \$200 in the event applicant intends to use an existing utility pole or, \$300 in the event the applicant intends to use a new or replacement of an existing pole, regardless of what entity actually replaces the pole. See Sec 15(3)(a-b). Pursuant to Section 13(3)(a) of the Act, Company shall pay \$20.00 per year for each utility pole or wireless support structure in the ROW, unless subdivision (b) applies. Section 13(3)(b) currently provides for an annual rate of \$125.00 if the utility pole or wireless support structure was erected on behalf of Company. In accordance with the Act, every 5 years from the effective date of the Act, the rates

provided in subsections 13(3)(a) and (b) are increased by 10% and rounded to the nearest dollar.

10 Removal

10.1 Removal; Underground. As soon as practicable after the Term, Company or its successors and assigns shall remove any Small Wireless Facilities from the Public Right-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the Public Right-of-Way. Company shall not remove any underground cable or other portions of the Small Wireless Facilities which requires trenching or other opening of the Public Right-of-Way except with the prior written approval of Manager. All removals shall be at Company's sole cost and expense.

10.2 Removal; Above Ground. As soon as practicable after the expiration of the Term, provided that the Parties are not negotiating in good faith for a renewal of the Term, with such hold over not exceeding 60 days, Company, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by Manager, remove from the Public Right-of-Way all above ground elements of its Small Wireless Facilities, including but not limited to poles, pedestal mounted terminal boxes and any and all other support or other small wireless related equipment.

10.3 Schedule. The schedule and timing of removal shall be subject to approval by Manager. Unless extended by Manager, removal shall be completed not later than twelve (12) months following the Term. Portions of the Small Wireless Facilities in the Public Right-of-Way which are not removed within such time period shall be deemed abandoned and, at the option of Municipality exercised by written notice to Company as set forth in Part 12, title to the portions described in such notice shall vest in Municipality.

11 Assignment. Company may assign or transfer its rights under this Permit, or the persons or entities controlling Company may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the ownership or control of Company's business, or by other means, subject to the following:

11.1 No such transfer or assignment or change in the control of Company shall be effective under this Permit, without Municipality's prior approval (not to be unreasonably withheld), during the time period from the Effective Date until the completion of the construction of the Small Wireless Facilities in those portions of the Public Right-of-Way identified on Exhibit A.

11.2 After the completion of such construction, Company must provide notice to Municipality of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,

11.2.1 Any transferee or assignee of this Permit shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Permit, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Municipality with the information required under Section 3.1; and shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary, and

11.2.2 In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Company's ability to perform under the terms and conditions of this Permit and comply with applicable law; and Company shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary.

11.3 Company may grant a security interest in this Permit, its rights thereunder or the Telecommunication Facilities at any time without notifying Municipality.

12 Notices

12.1 Notices. All notices under this Permit shall be given as follows:

If to Municipality, to

Address

Phone

Email

with a copy to

Michael J. Watza

Kitch Drutchas Wagner Valitutti & Sherbrook

1 Woodward Ste 2400

Detroit Mi 48226

If to Company, to:

Address

Phone

Email

with a copy to:

Address

Phone

Email

12.2 Change of Address. Company and Municipality may change its address or personnel for the receipt of notices at any time by giving notice thereof to the other as set forth above.

13 Other items

13.1 No Cable, OVS. This Permit does not authorize Company to provide commercial cable type services to the public, such as “cable service” or the services of an “open video system operator” (as such terms are defined in the Federal Communications Act of 1934 and implementing regulations, currently 47 U.S.C. §§ 522 (6), 573 and 47 CFR § 76.1500).

13.2 Duties. Company shall faithfully perform all duties required by this Permit.

13.3 Effective Date. This Permit shall become effective when issued by Municipality and Company has provided any insurance certificates and bonds required in Parts 6 and 8, and signed the acceptance of the Permit.

13.4 Authority. This Permit satisfies the requirement for a permit under the Act.

13.5 Amendment. Except as set forth in Section 2.1 this Permit may be amended by the written agreement of Municipality and Company.

13.6 Interpretation and Severability. The provisions of this Permit shall be liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision or section of this Permit be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining conditions of this Permit. If any provision in this Permit is found to be partially overbroad, unenforceable, or invalid, Company and Municipality may nevertheless enforce such provision to the extent permitted under applicable law.

13.7 Governing Law. This Permit shall be governed by the laws of the State of Michigan.

13.8 Reservation of Rights. Each party to this Permit expressly reserves all their rights with respect to the applicable law or changes in the law and specifically reserves the right to amend and or terminate this Permit and all related agreements, policies and procedures undertaken in furtherance hereof.

City of _____

Attest:

By: _____
Clerk

By: _____
Its: _____
Date: _____

“Company accepts the Permit granted by Municipality upon the terms and conditions contained therein.”

_____, Inc.

By: _____

Its: Title _____

Date: _____

Exhibit A

Node Name	Type of Installation	Application Fee	Annual Fee

See attached for drawings for each individual node.

Exhibit B

Proof of Insurance/Dec sheet

Exhibit C

Bond



www.kitch.com

Michael J. Watza
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SHERBROOK
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