

## RESOLUTION 2021 - 11

**A RESOLUTION OF THE TOWN COUNCIL OF THE MUNICIPALITY OF KINGSTON, LUZERNE COUNTY, PENNSYLVANIA A HOME RULE MUNICIPALITY, APPROVING A LICENSE AGREEMENT FOR SMALL WIRELESS INSTALLATIONS ON PUBLIC STRUCTURES WITH NORTHEAST PENNSYLVANIA SMSA LIMITED PARTNERSHIP d/b/a VERIZON WIRELESS**

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**WHEREAS**, the Charter of the Municipality of Kingston grants to the Municipal Council certain powers and duties as enumerated in Section 205 of said Charter, and;

**WHEREAS**, the Town Council of the Municipality of Kingston has the power to make appropriations, incur indebtedness, approve contracts and adopt the budget, and;

**WHEREAS**, Northeast Pennsylvania SMSA Limited Partnership d/b/a Verizon Wireless has requested a nonexclusive license as set forth in the proposed Master License Agreement attached to this Resolution, and;

**WHEREAS**, the proposed License Agreement shall be for an initial term of fifteen 15 years with further provision for one (1) fifteen (15) year renewal term, and;

**WHEREAS**, a fee shall be paid by Northeast Pennsylvania SMSA Limited Partnership d/b/a Verizon Wireless to the Municipality of Kingston as set forth in the License Agreement.

**NOW THEREFORE**, the Town Council of the Municipality of Kingston approves the execution of the attached Master License Agreement for the installation of wireless facilities on public structures as set forth in the proposed Agreement attached hereto and incorporated by reference.

**ENACTED AS A RESOLUTION** at a regular meeting of the Town Council of the Municipality of Kingston, Luzerne County, Pennsylvania held on the 6<sup>th</sup> day of April, 2021. This Resolution shall take effect immediately

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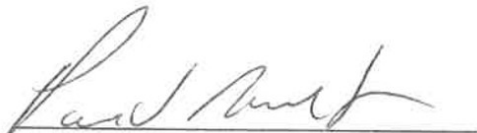
FOR THE TOWN COUNCIL

BY:   
Robert Thompson, President

ATTEST:

  
Julie Norton, Secretary

APPROVED:

  
Paul J. Roberts, Jr., Mayor

Date: 4-6-21

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**SMALL WIRELESS COMMUNICATIONS FACILITIES  
MASTER LICENSE AGREEMENT**

THIS SMALL WIRELESS COMMUNICATIONS FACILITIES MASTER LICENSE AGREEMENT ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date"), by and between the Municipality of Kingston, having an address of 500 Wyoming Avenue, Kingston, Pennsylvania 18704 ("City"), and Northeast Pennsylvania SMSA Limited Partnership d/b/a Verizon Wireless, having an address of One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("Licensee"). City and Licensee are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

In consideration of the covenants of this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. **Grant.** Subject to Laws (defined in Section 15) and this Agreement, City grants Licensee a nonexclusive license to (i) access, use and occupy the City's ROW (as defined below) 7 days a week, 24 hours a day, for the installation, construction, use, maintenance, operation, repair, modification, replacement and upgrade of equipment, technologies, frequencies and related fiber and materials reasonable necessary to access, connect, operate and provide power to its equipment ("Equipment") that enables Licensee's wireless communications ("Licensee's Use"); (ii) use, install and/or replace City owned or controlled poles for Licensee's Use; (iii) use, install and/or replace Licensee owned or third-party owned poles in the ROW for Licensee's Use; and (iv) attach Equipment to existing support structures in the ROW which are owned by Licensee or by a third party. For purposes of this Agreement, the "ROW" means the public rights-of-way owned, managed or controlled by the City. Use of City poles or installation of new Licensee owned poles shall, in accordance with Section 4, require the City's approval of a Pole License. Licensee's Use for attachments to existing support structures in the ROW owned by Licensee or by a third party, or the replacement of Licensee owned or third party owned poles in the ROW for Licensee's use shall not require a Pole License; however, upon request, Licensee shall provide the City a certification of authorization to attach to such third party structures. Even though the execution of a Pole License shall not be required for Licensee's Use for attachments to support structures in the ROW owned by Licensee or by a third party or for the replacement of Licensee owned or third party owned poles in the ROW for Licensee's Use, Licensee shall pay to the City fees in accordance with Paragraph 3 and the Fee Schedule attached as Exhibit A hereto. The City expressly reserves for itself the rights and uses of the ROW for its public purposes and for the public's health, safety and general welfare.

2. Term of Agreement. The term of this Agreement shall be for 15 years beginning on the Effective Date (the "Term"). Unless either Party provides written notice to the other Party at least ninety 90 days prior to expiration of the Term that such Party will not renew the Term, the Term will automatically renew for 1 additional 15 year period. After the expiration or earlier termination of this Agreement, it shall apply to all Pole Licenses entered into hereunder until the expiration or termination of such Pole Licenses.

3. Fees. Licensee shall pay to the City the Fees and costs set forth in the "Fee Schedule" attached hereto and made a part hereof as Exhibit A for the use, installation and/or replacement of City owned or controlled poles for Licensee's Use; for any use, installation and/or replacement of Licensee owned or third-party owned poles in the ROW for Licensee's Use; or for attachments to support structures in the ROW owned by Licensee or by a third party in conjunction with Licensee's Use. For facilities involving the use, installation and/or replacement of City owned or controlled poles for Licensee's Use or the installation of new Licensee owned poles in the ROW for Licensee's Use, Licensee shall pay: (i) the one-time application fee with submission of the City Pole Application; (ii) the initial recurring fee (if any) on or before the Commencement Date (defined in Section 4(e)); and (iii) subsequent recurring fees on or before each anniversary of the Commencement Date. For facilities involving attachments to support structures in the ROW owned by Licensee or by a third party in conjunction with Licensee's Use or for the replacement of Licensee owned or third-party owned poles in the ROW for Licensee's Use, Licensee shall pay: (i) the initial recurring fee (if any) on the first day of the month following the issuance of a permit by the City for the attachment of Equipment for Licensee's Use within the ROW; and (ii) subsequent recurring fees on or before each anniversary of the issuance of such permit. Before any recurring fees are paid, City shall provide Licensee a completed, current Internal Revenue Service Form W-9 and state and local withholding forms if required. Licensee may make payments by check made out to the order of the Municipality of Kingston and sent to the following address or through electronic transfer subject to the City's approval and necessary bank routing instructions.

Municipality of Kingston  
Attn: Manager  
500 Wyoming Avenue  
Kingston, PA 18704

4. Pole License.

(a). Prior to installing any Equipment on a City owned or controlled pole or a new

Licensee owned pole, Licensee shall file a city pole application in the form attached hereto and made a part hereof as Exhibit B ("Pole Application") for one or more poles. Within 60 days of receipt, the City shall, in writing, approve or reject the Pole Application, otherwise the Pole Application shall be deemed accepted. If the City timely rejects the Pole Application, the review period will be suspended until Licensee cures the non-compliance. Upon acceptance or approval, a City Pole Application shall be deemed to be a city pole license ("Pole License").

(b). City may reject a Pole Application only for one or more of the following reasons, which must be specified with reasonable detail in the rejection: (i) concerns about structural capacity, safety, reliability, or generally applicable engineering practices; (ii) the Pole Application is incomplete; (iii) the proposed Equipment exceeds the height, dimension or other parameters for small wireless facilities under applicable Law ("Small Wireless Facilities"); (iv) the design documents attached to the Pole Application do not comply with this Agreement or with the City's pole attachment laws for traffic light poles, show interference with the City's public safety radio system, traffic signal light system, or other communications components, or do not comply with the Design Criteria; or (v) the Pole Application does not include a load bearing study.

(c). Any aesthetic or other design criteria for Small Wireless Facilities and poles upon which Small Wireless Facilities are attached (collectively, the "Design Criteria") which are adopted by the City shall only apply if the criteria are (i) reasonable, (ii) applied equally and in a non-discriminatory manner to other types of infrastructure deployments within the ROW, (iii) objective and published in advance of a Small Wireless Facility request/application submitted herein, and (iv) comply with applicable federal and state Laws. If pole reinforcement or replacement is necessary, Licensee shall provide engineering design and specification drawings demonstrating the proposed alteration to the pole. Changes made to the City's Design Criteria shall not be imposed or otherwise applied retroactively unless required by Laws.

(d). Licensee shall pay for any electricity service for Small Wireless Facilities. As permitted by the electric provider, Licensee may install an electric meter on the City pole or the ground adjacent to the City pole.

(e). The term of each Pole License shall be 10 years beginning on the first day of the month following the date that is 180 days from the date of the fully approved or fully executed (as applicable) Pole License ("Commencement Date"). Unless Licensee provides written notice to the City prior to the expiration of the then current term that Licensee will not renew any Pole License, each Pole License will automatically renew for 3 consecutive 5 year periods.

(f). A Pole License may be terminated prior to the expiration of its term: (i) by City upon written notice to Licensee, if Licensee fails to pay any amount when due and such failure continues for 30 days after Licensee's receipt of notice; (ii) by either Party upon written notice to the other Party, if such other Party fails to comply with this Agreement and the party has failed to initiate a cure within 60 days after receipt of written notice; (iii) by Licensee at any time for any reason or no reason; or (iv) by Licensee in the event that Licensee fails to timely obtain or maintain, or is not satisfied with any governmental approval applicable to Licensee.

(g). Following expiration or earlier termination of any Pole License, Licensee shall remove all Equipment from the City owned or controlled poles and, other than reasonable wear and tear, repair and restore the City owned or controlled poles and the ROW to its prior condition, unless the City authorized otherwise. In the event that Licensee removes any City poles pursuant to this Agreement, the City shall retain ownership of any poles Licensee or its contractor removes, and shall provide directions to Licensee for their reuse or disposal. Equipment installed pursuant to clauses (ii) or (iii) of Section 1 shall not be subject to removal under this Agreement but shall at all times remain subject to the Code (as defined below).

5. Permits/Municipal Code. While the requirements of the City's Code ("Code") are in addition to the requirements of this Agreement, Licensee shall be required to apply for and obtain only those permits that are required of other occupants of the ROW. City may only impose on the permit those conditions that are permitted by applicable Laws and necessary to protect structures in the ROW, to ensure the proper restoration of the ROW, to provide for protection and the continuity of pedestrian and vehicular traffic, and otherwise to protect the safety of the public's utilization of the ROW. Within 180 days after the Effective Date, City will consider revisions to the Code to conform with this Agreement and applicable Law.

6. Interference.

(a). Licensee will not cause interference to City traffic, public safety or other communications signal equipment in the ROW. City agrees that City will not cause interference to Licensee's Equipment or Licensee's Use.

(b). If interference occurs, the non-interfering Party shall notify the interfering Party via telephone to Licensee's Network Operations Center at (800) 621-2622) or to City at (570-288-4576), and the parties shall work together to cure the interference as soon as commercially possible.

7. Maintenance and Modifications. Licensee shall keep and maintain all Equipment in commercially reasonable condition and in accordance with any applicable and non-discriminatory maintenance requirements of City. Licensee may conduct testing and maintenance activities, and repair and replace damaged or malfunctioning Equipment at any time. Licensee may maintain, repair, replace and make like-kind modifications to any Small Wireless Facility that do not materially change the size, height and weight of the Small Wireless Facility or exceed the structural capacity of the supporting structure without requiring additional applications, permits or other City approval. Licensee shall obtain all required permits and prior approvals from the City for all other work.

8. Removal and Relocation. No later than 180 days after receipt of written notice from City, Licensee shall remove and may relocate the Equipment to an alternative location made available by City due to: (i) construction, expansion, repair, relocation, or maintenance of a street or other public improvement project; or (ii) maintenance, upgrade, expansion, replacement, or relocation of City traffic light poles and/or traffic signal light system; or (iii) permanent closure of a street or sale of City property. The City shall require removal or relocation only if necessary. If Licensee fails to remove or relocate any Equipment within 180 days, City shall be entitled to remove the Equipment at Licensee's expense. The Parties shall cooperate to the extent possible to assure continuity of service during any relocation. City shall use best efforts to provide a reasonably equivalent location that affords Licensee substantially similar engineering objectives.

9. Indemnity/Damages. Licensee shall indemnify, defend and hold the City, its employees, officers, elected officials, agents and contractors (the "Indemnified Parties") harmless from and against all injury, loss, damage, liability, costs or expenses arising from any third party claims resulting from Licensee's Use or Licensee's breach of this Agreement. Licensee's indemnity shall not apply to any liability resulting from the negligence or willful misconduct of the City or other Indemnified Party. The City shall give prompt written notice to Licensee of any claim for which the City seeks indemnification. Licensee shall have the right to investigate these claims. Licensee shall not settle any claim without reasonable consent of the City, unless the settlement (i) will be fully funded by Licensee, and (ii) does not contain an admission of liability or wrongdoing by any Indemnified Party. Neither party will be liable under this Agreement for consequential, special, punitive or indirect damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

10. Insurance.

(a). Licensee and its subcontractors shall carry the following insurance: (i)

commercial general liability insurance in an amount of \$3,000,000 per occurrence and \$4,000,000 general aggregate and which provides coverage for bodily injury, death, damage to or destruction of property of others, including loss of use thereof, and including products and completed operations; (ii) Workers' Compensation Insurance as required by law; and (iii) employers' liability insurance in an amount of \$500,000 bodily injury each accident, \$500,000 disease each employee, and \$500,000 disease policy limit.

(b). The insurance coverages identified in this Section: (i) except the workers' compensation insurance, shall include the City as an additional insured as their interests may appear under this Agreement; (ii) will be primary and non-contributory with respect to any self-insurance or other insurance maintained by the City; (iii) contain a waiver of subrogation for the City's benefit; and (iv) will be obtained from insurance carriers having an A.M Best rating of at least A-VII.

(c). If requested, Licensee shall provide the City with a Certificate of Insurance to provide evidence of insurance. Licensee will endeavor to provide the City with thirty (30) days prior written notice of cancellation upon receipt of notice thereof from its insurer(s).

11. Assignment. Licensee may assign this Agreement, any City Pole License, and/or related permits to any entity which (i) is an affiliate, subsidiary or successor of Licensee; or (ii) that acquires all or substantially all of the Licensee's assets in the market. Licensee shall provide the City notice of any such assignment. Otherwise, Licensee shall not assign or transfer this Agreement or the rights granted hereunder without the City's consent.

12. Notices. Notices required by this Agreement may be given by registered or certified mail by depositing the same in the United States mail or with a commercial courier. Unless either party notifies the other of a change of address, notices shall be delivered as follows:

If to City:

Municipality of Kingston  
500 Wyoming Avenue  
Kingston, Pennsylvania 18704  
Attn: Mayor

With a copy to:

Municipality of Kingston  
500 Wyoming Avenue  
Kingston, Pennsylvania 18704  
Attn: Manager



If to Licensee:

Northeast Pennsylvania SMSA  
Limited Partnership  
d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attention: Network Real Estate

With a copy to:

Northeast Pennsylvania SMSA  
Limited Partnership  
d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey  
Attention: Legal Department

Notices shall be deemed effective upon delivery or refusal of delivery.

13. Change of Law. If any state or federal Law sets forth a term or provision that is inconsistent with or different than this Agreement, then the Parties agree to promptly amend the Agreement to effect the term or provision set forth under such Law.

14. Taxes. If City is required by Law to collect any federal, state, or local tax, fee, or other governmental imposition (each, a "Tax") from Licensee with respect to the transactions contemplated by this Agreement, then City shall bill such Tax to Licensee in the manner and for the amount required by Law. Licensee shall pay such billed amount of Tax to City, and City shall remit such Tax to the appropriate tax authorities as required by Law. Licensee shall have no obligation to pay any Tax for which Licensee is exempt. Otherwise, Licensee shall be responsible for paying all Taxes that are the legal responsibility of Licensee under Laws.

15. Laws. The Parties shall comply with applicable laws including, without limitation, regulations and judicial decisions, Federal Communications regulations and order [and, if applicable, insert the State Small Cell Law citation] ("Law" or "Laws"). Notwithstanding anything else in this Agreement, City shall treat Licensee in a manner that is competitively neutral, nondiscriminatory, consistent with all applicable Laws, and is no more burdensome than other users of the ROW or City poles.


16. Miscellaneous. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania and all other applicable Laws. The provisions of this Agreement may be waived or modified only by written agreement signed by both parties. This Agreement may be executed in counterparts. A scanned or electronic copy shall have the same legal effect as an original signed version. If one or more provisions in this Agreement is found to be invalid, illegal or otherwise unenforceable, all other provisions will remain unaffected and shall be deemed to be in full force and effect and the Parties shall amend this Agreement, if needed to effect the original intent of the Parties. This Agreement shall be binding upon and shall inure to the benefit of the

Parties hereto and their respective successors. Nothing in this Agreement shall be construed to grant Licensee an interest in the City's ROW or City assets located in the ROW. Neither Party shall be responsible for delays in the performance of its obligations caused by events beyond the Party's reasonable control. As to the subject matter hereof, this Agreement is the complete agreement of the Parties. The Parties represent and warrant that the individuals executing this Agreement are duly authorized.

*[Remainder of page intentionally left blank; signature page to follow.]*

IN WITNESS WHEREOF, the Parties have executed, or caused their respective duly authorized representatives to execute, this Agreement as of the day and year listed below.

**CITY:**  
**MUNICIPALITY OF KINGSTON**

  
By: \_\_\_\_\_  
Name: Paul Keenan  
Title: Administrator  
Date: April 6, 2021

**LICENSEE:**  
**NORTHEAST PENNSYLVANIA SMSA**  
**LIMITED PARTNERSHIP d/b/a VERIZON**  
**WIRELESS**  
By: **Cellco Partnership, its General Partner**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**  
**FEE SCHEDULE**

One-Time Application Fee	\$100.00 (if applicable)
City-Pole Recurring Fee	\$270.00 - per City pole, Licensee pole or third party attachment per year.

For purposes of determining the total annual fee applicable to a City Pole License for a partial calendar year in which the Commencement Date occurs in a month other than January, the total fee will be a pro-rated amount equal to the product obtained by multiplying 1/12th of the annual fee by the number of months remaining in such year.

For purposes of determining the total annual fee applicable to a Licensee or third-party attachment, or to the replacement of Licensee owned or third-party owned poles in the ROW, for a partial calendar year in which the issuance of a permit by the City for the attachment of Equipment occurs in a month other than January, the total fee will be a pro-rated amount equal to the product obtained by multiplying 1/12th of the annual fee by the number of months remaining in such year.

Except as provided in this Fee Schedule, the City shall not require any other or additional recurring fees, costs, or charges of any kind.

**EXHIBIT B  
Form of Application for City Pole License**

**City Pole License Application No. \_\_\_  
For Attachment of Wireless Communications Facilities to City  
Pole(s)**

**Applicant/Licensee:** \_\_\_\_\_

**Governing Agreement:** Wireless Communications Facilities Master License Agreement  
dated \_\_\_\_\_ ("Master License Agreement")

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

Pole Type	Verizon Site ID #	City Site ID #	Lat/Long Coordinate s	General Equipment Description	Application Fee (per Pole)	Annual Fee (per Pole)
[Streetlight]					\$	\$
<b>Total</b>					\$	\$

**\*Application and Annual Fees to commence and be paid consistent with the terms of the Master License Agreement. If application includes more than one (1) site, or a "batch" application, rejection of one (1) or more sites included in the batch application shall not constitute a rejection of all other acceptable sites.**

**APPLICANT SHALL PROVIDE THE FOLLOWING IF/AS APPLICABLE:**

- Site plan and engineering design and specifications for installation of Equipment, including the location of radios, antenna facilities, transmitters, equipment shelters, cables, conduit, point of demarcation, transport solution, electrical distribution panel, electric meter, and electrical conduit and cabling. Where applicable, the design documents should include specifications on design, pole modification, and ADA compliance.
- Load bearing study that determines whether the City pole requires reinforcement or replacement in order to accommodate attachment of Equipment. If pole reinforcement or replacement is warranted, the design documents should include the proposed pole modification.
- If the proposed installation will require reinforcement or replacement of an

- existing City pole, provide applicable design and specification drawings.
- The number, size, type and proximity to the facilities of all communications conduit(s) and cables to be installed.
- Description of the utility services required to support the facilities to be installed.
- All necessary permits and letters of authorization from all affected parties.
- List of the contractors and subcontractors, and their contact information, authorized to work on the project.

ATTACH CHECK OR MONEY ORDER IN AMOUNT OF APPROPRIATE APPLICATION FEE. THIS PROCESSING FEE IS NON-REFUNDABLE AND NON-TRANSFERABLE.

THE CITY WILL PROCESS THIS APPLICATION WITHIN 30 DAYS OF RECEIPT DATE, UNLESS AN AGREEMENT IS EXECUTED BY APPLICANT AND THE CITY TO EXTEND THE APPROVAL DATE.

APPLICANT SIGNATURE: [Handwritten Signature]  
 PRINTED NAME: Paul Keating  
 TITLE: Administrator

-----FOR CITY USE ONLY-----

RECEIPT DATE: \_\_\_\_\_ APPLICATION NO.: \_\_\_\_\_  
 APPROVED BY: \_\_\_\_\_  
 PRINT NAME: \_\_\_\_\_  
 TITLE: \_\_\_\_\_  
 CITY POLE LICENSE APPROVAL DATE: \_\_\_\_\_