



Township Form Agmt 2021

**CALN TOWNSHIP
SMALL WIRELESS FACILITIES
RIGHT-OF-WAY USE AGREEMENT**

THIS SMALL WIRELESS FACILITIES RIGHT-OF-WAY USE AGREEMENT ("Agreement") is entered into this ____ day of _____, _____ ("Effective Date"), by and between Caln Township, with its principal offices at 253 Municipal Drive, Thorndale, PA 19372 (the "Township"), and _____ ("Licensee") with its principal offices at _____. The Township and Licensee are at times collectively referred to hereinafter as the "Parties".

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 the Law (defined in Section 18) and this Agreement, Township grants Licensee a nonexclusive license for the following:

(a) to access, use and occupy the Township'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 Small Wireless Facilities (as defined below)(the "Equipment") that enables Licensee's wireless communications ("Licensee's Use");

(b) to use, install and/or replace Township owned or controlled poles ("Township Poles") for Licensee's Use as specifically agreed upon by the Parties; and

(c) use, install and/or replace Licensee owned or third-party owned poles in the ROW for Licensee's Use.

For purposes of this Agreement, the "ROW" means the public rights-of-way owned, managed or controlled by the Township. For the purposes of this Agreement, Small Wireless Facilities means as defined by the Township's ordinances and by the Law. For the use of Township Poles, Licensee shall, in accordance with Section 4, secure the Township's approval of a Pole License. Licensee's Use for attachments to support structures in the ROW owned by Licensee or by a third party shall not require a Pole License; however, upon request, Licensee shall provide the Township with certification of authorization to attach to such third party structures,

and shall also require the issuance of a building permit (and related application fees and right-of-way access fees). The Township 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 and Amendments to Agreement. The term of this Agreement shall be for 10 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 one additional 10 year period. To the extent that the Licensee would like to expand the initial Small Wireless Facilities sites contemplated by this Agreement and as listed on **Exhibit A**, an amendment may be made to this Agreement to supplement Exhibit A to include such additional sites and the Term applicable to such additional sites will run from the date of execution of each such amendment. **Exhibit A** shall include a list of the Small Wireless Facilities subject to this Agreement and include the corresponding Fees payable to the Township for each facility so that the Township can easily track annual payments due.

3. Fees. Licensee shall pay to the Township the fees and costs set forth in the "Fee Schedule" attached hereto and made a part hereof as **Exhibit B**. Licensee shall pay the one-time application fee with submission of its Pole Application (as below defined). In addition, Licensee shall pay the initial recurring fee within thirty business days after the Commencement Date (as Commencement Date is defined in Section 4) and pay subsequent recurring fees on or before March 1st of every year thereafter. Upon agreement of the Parties, the initial recurring fee payment may be prorated based upon the timing of the Commencement Date during that initial first year. Licensee may make payments by check and sent to the Township's mailing address or through electronic transfer subject to the Township's approval and necessary bank routing instructions. Late payments shall be subject to a 20% late penalty fee and may also result in the Township seeking the remedies provided in the default and termination provisions of this Agreement.

4. Road Occupancy Permit and Building Permit as part of Pole License.

(a) Prior to installing any Equipment on a Township Pole, Licensee shall file a Road Occupancy Permit Application and a Building Permit Application or other similar building permit application as provided by the Township in order to process such application (collectively the "Pole Application"). Within the required review time periods established by the Law and by the Township's ordinances, the Township shall, in writing, approve or reject the Pole Application, otherwise the Pole Application shall be deemed approved. If the Township timely rejects the Pole Application, the review period will be suspended until Licensee cures the non-compliance. Upon approval, an approved Pole Application shall be deemed to be a licensed Township pole ("Pole License") and the Commencement Date shall be the date of approval.

(b) Township 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;

(iv) the design documents attached to the Pole Application do not comply with this Agreement or with the Township's pole attachment laws for traffic light poles, show interference with the Township's public safety radio system, traffic signal light system, or other communications components, or do not comply with the Design Guidelines as below defined;

(v) the Pole Application does not include a load bearing study;

(vi) the Pole Application conflicts with the Township's Small Wireless Facilities Ordinance and Design Guidelines; or

(vii) the Township has reserved space on Township Poles for future public safety uses or for Township electric utility uses. Such reservation may preclude collocation of Small Wireless Facilities if the Township reasonably determines that the Township Poles cannot accommodate both uses, or if the collocation cannot be accommodated due to physical limitations of the Township Poles.

(c) Any aesthetic or other design criteria for Small Wireless Facilities and poles upon which Small Wireless Facilities are attached (collectively, the "Design Guidelines") which are adopted by the Township 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 reasonably in advance, 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 which shall be designed in compliance with the Township's Small Wireless Facilities Ordinance and Design Guidelines, or may work with the Township to agree upon a mutually acceptable design.

(d) Licensee shall be responsible for any electricity service required for its Small Wireless Facilities which shall be paid in the manner marked below (parties to select which one is applicable):

_____ Licensee shall be solely responsible for arrangement and payment for electric service necessary in connection with its Equipment. If necessary and permitted by the electric provider, Licensee may install an electric meter on the Township Pole or the ground adjacent to the Township Pole.

_____ Licensee desires to utilize Township's electrical service serving Licensee's Equipment for a particular installation. Commencing on the first (1st) day of the month following the date that Licensee first utilizes the Township's electrical service to provide power for the Equipment, Licensee shall pay to Township a flat utility usage fee of _____ dollars (\$_____) per month until such use is discontinued by Licensee or can be separately metered.

(e) Individual Pole Licenses may be terminated prior to the expiration of the term of this Agreement as follows:

(i) by the Township, 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; provided no such failure, however, will be deemed to exist if the Party has commenced to cure the default within such period and provided such efforts are diligently continued;

(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.

(f) Following expiration or termination of any Pole License, Licensee shall remove all Equipment from the Township Pole and, other than reasonable wear and tear, repair and restore the Township Pole and the ROW to its prior condition, unless the Township authorized otherwise. In the event that Licensee removes any Township Poles pursuant to this Agreement, the Township 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 (b) or (c) of Section 1 shall not be subject to removal under this Agreement but shall at all times remain subject to the Township Code. If Licensee does not properly remove all Equipment within ninety(90) days of expiration or termination of the Pole License, the Township may elect to remove the Equipment and collect the costs of such removal from the Licensee in any manner permitted by law which may include no furthering permitting of future wireless facilities to the Licensee by the Township.

5. Permits/Municipal Code. While the requirements of the Township 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. Township may only impose on the permit those conditions that are permitted by the Law 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.

6. Interference.

(a) Licensee will not cause interference to Township traffic, public safety or other communications signal equipment in the ROW. Township will not cause interference to Licensee's Equipment or Licensee's Use. Each party to this Agreement shall endeavor to correct any interference to other networks created by its RF emissions promptly and shall coordinate and cooperate with each other relating to the same.

(b) If interference occurs, the non-interfering Party shall notify the interfering Party via telephone to Licensee's Network Operations Center at _____ or to Township offices and the Parties shall work together to cure the interference as soon as commercially possible.

7. Installation, Maintenance, Repairs and Modifications.

(a) Technical Requirements and Specifications. At its own expense, Licensee shall erect, install, repair and maintain its Equipment in safe condition and good repair in accordance with (1) the requirements and specifications of Safety Codes; (2) the Township Code and the Township's

reasonable standards, and (3) any current or future rules or orders of the FCC, the State public utility commission, or any other federal, state or local authority having jurisdiction. Changes to the requirements, specifications, standards, rules and orders in subsections (1), (2) and (3) shall not apply retroactively unless required by the Law.

(b) Equipment Maintenance, Repairs 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 Township. Licensee may conduct testing and maintenance activities, and repair and replace damaged or malfunctioning Equipment at any time but shall notify the Township of any such work being done which might disrupt vehicular or pedestrian traffic. 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 Township approval. Licensee shall obtain all required permits and prior approvals from the Township for all other work subject to the terms of this Agreement.

(c) Pole Repairs and Replacements. To the extent a Township Pole for which Licensee has a Pole License requires repair or replacement as a result of Licensee's activities or proposed installation or alteration, the Licensee shall promptly repair or replace such pole, unless otherwise agreed by the Parties in writing. If Township becomes aware of damage to a Township Pole that supports the Equipment, Township shall notify Licensee's Emergency Contact as soon as practicable. The Parties will use reasonable efforts to coordinate any necessary responses. In the event of any damage to a Township Pole that impacts Licensee's Use, Licensee will repair or replace the pole with a like-kind pole at its own expense. Licensee may reinstall its Equipment after a damaged pole has been repaired or replaced. Licensee may temporarily use an alternative pole or structure reasonably acceptable to the Parties during repair or restoration of a Township Pole.

(d) Emergency Events. Township reserves the right to take all reasonable actions in the case of an emergency to protect the public health and safety of its citizens, and to ensure the safe operation of its rights of way and public facilities. The Parties will use reasonable efforts to coordinate any emergency responses. In case of an emergency affecting the Equipment or Licensee's Use, Licensee may access the ROW and perform necessary repairs to its Equipment and to the pole, including the right to install a replacement pole, without first obtaining any otherwise necessary permit(s) or authorization(s). All emergency work in the ROW shall be conducted in a safe and good workmanlike manner and in accordance with the Law.

(e) Emergency Contacts. Licensee's network operations center may be reached 24/7 at _____. The Township's 24/7 emergency contact information can be found on the Township's website or by calling _____. Each Party will maintain the emergency contact information current at all times with the other Party.

8. Removal and Relocation. No later than 180 days after receipt of written notice from the Township, Licensee shall remove and may relocate the Equipment to an alternative location made available by Township 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 Township traffic light poles and/or traffic signal light system; or (iii) permanent closure of a street or sale of Township property. The Township shall require removal or relocation only if necessary. If Licensee fails to remove or relocate any Equipment within 180 days, Township 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. Township shall use best efforts to provide a reasonably equivalent location that affords Licensee substantially similar engineering objectives.

9. Default and Termination.

(a) Licensee's Default and Township's Remedies. If Licensee does not cure its Default, in addition to remedies otherwise set forth in this Agreement, the Township may elect any of the following remedies:

- (i) suspend Licensee's access to the Small Wireless Facilities and Equipment to which the Default pertains;
- (ii) terminate the specific Pole License to which the Default pertains and remove Equipment;
- (iii) require Licensee's obligation to which the Default has been declared to be specifically performed; or
- (iv) pursue any rights or remedies available to the Township at law or in equity

(b) Township's Default and Licensee's Remedies. If the Township does not cure its Default, then thereafter, Licensee may elect the following remedies:

- (i) terminate the specific Pole License to which the Default pertains; and/or
- (ii) maintain an action at law against Township for damages directly incurred by Licensee arising directly from Township's uncured Default.

10. Indemnity/Damages. Licensee shall indemnify, defend and hold the Township, its employees, officers, elected officials, agents and contractors (the "Indemnified Parties") harmless from and against all injury, loss, damage, liability, costs or expenses to the extent 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 Township or other Indemnified Party. The Township shall give prompt written notice to Licensee of any claim for which the Township seeks indemnification. Licensee shall not settle any claim without reasonable consent of the Township, 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.

11. Insurance.

(a) Licensee shall carry, and endeavor to require its subcontractors to carry, the following insurance: (i) commercial general liability insurance per ISO form CG 00 01 or its equivalent 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; (iii) employers' liability insurance in an amount of \$1,000,000 bodily injury each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit; and (iv) owned,

hired and non-owned Automobile bodily injury liability insurance of not less than \$3,000,000 Combined Single Limit, Bodily Injury and Property Damage.

(b) The insurance coverages identified in this Section: (i) except the workers' compensation insurance, shall include the Township as an additional insured by endorsement 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 Township; (iii) contain a waiver of subrogation for the Township'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 Township with a Certificate of Insurance to provide evidence of insurance. Licensee will endeavor to provide the Township with thirty (30) days prior written notice of cancellation upon receipt of notice thereof from its insurer(s) unless timely replaced.

(d) Notwithstanding the foregoing, Licensee may self-insure any of the required insurance under the same terms as required by this Agreement if deemed acceptable by the Township.

12. No Liens. Licensee will not allow to exist any lien with respect to any Township Pole, structure or infrastructure or other Township property or facility resulting from any work performed by or on behalf of Licensee pursuant to this Agreement, or any act or claim against Licensee or any of its contractors, agents, or customers. Licensee will, at its sole expense, promptly bond or otherwise discharge any such lien within thirty (30) days of receipt of written notice from the Township of the existence of such lien.

13. Assignment. Licensee may assign this Agreement, any 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 Township written notice of any such assignment and provide the Township with any and all new contact information. Otherwise, Licensee shall not assign or transfer this Agreement or the rights granted hereunder without the Township's written consent.

14. Force Majeure. Time periods for performance under this Agreement shall be deemed extended day for day for time lost attributable to any delay resulting from any Event of Force Majeure or governmental Declarations of Emergency. Neither Party shall be responsible for delays in the performance of its obligations caused by events beyond the Party's reasonable control.

15. 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. Notices shall also be provided via electronic mail. Unless either party notifies the other of a change of address, notices shall be delivered as follows:

Licensee: _____

Township: _____

Notices shall be deemed effective upon delivery or refusal of delivery. Either party may change the

addressee and/or location for the giving of the notice to it by providing a thirty (30) days' prior written notice to the other Party.

16. 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.

17. Taxes. If Township 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 Township 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 Township, and Township 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 the laws

18. Laws. The Parties shall comply with applicable laws including, without limitation, regulations and judicial decisions, Federal Communications Commission regulations and orders, and state laws applicable to Small Wireless Facilities (the "Law" or "Laws"). Notwithstanding anything else in this Agreement, Township 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 Township Poles.

19. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania and all other applicable Law as above defined.

20. Modification and Execution in Counterparts. 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.

21. Severability and Binding Effect. 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 Township's ROW or Township assets located in the ROW.

22. Entire Agreement. 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.

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.

LICENSEE

By: _____

Printed Name:_____

Title: _____

Date:_____

CALN TOWNSHIP

By: _____

Printed Name:_____

Title: _____

Date:_____

EXHIBIT A

(Insert LIST OF SWF Sites, itemization of application fee paid and reoccurring fees due annually)

EXHIBIT B

FEE SCHEDULE

- (A) *One-time Application processing costs.* All applications for permits shall be accompanied by an application processing cost which shall be the following: 1) application costs for Small Wireless Facilities addressed in a consolidated application shall be \$500 which may include up to five Small Wireless Facilities, and an additional \$100 for each Small Wireless Facility beyond five, up to and including 30 total Small Wireless Facilities per one application, and 2) application costs of \$1,000 for a new pole (not a collocation) intended to support one or more Small Wireless Facilities.
- (B) *Reoccurring Fees/Compensation.* In addition to the application fee as specified above, every permit shall include the Applicant's agreement to pay a Right-of-Way access fee of \$200 per Small Wireless Facility per year, and/or other taxes and fees as may now or hereafter be lawfully imposed on other businesses within the Township. Additionally, if the Small Wireless Facilities is proposed to be located upon a Township-Owned Pole or Structure, and the Township consents to such Collocation, an additional annual fee of \$70 per Small Wireless Facility shall be payable to the Township for such placement.