

**PERMIT AND CONSENT ACCESS TO AND USE OF RIGHT-OF-WAY
WITHIN THE TOWNSHIP**

This License Agreement (Agreement), which shall be effective as of the date of the last signature ("Effective Date"), is by and between the Charter Township of Bloomfield, a Michigan municipal corporation ("Township"), whose address is 4200 Telegraph Road Bloomfield Township, MI 48303, and _____, ("Company").

RECITALS

A. Company desires to use public-right-of way in the Township ("ROW") for the installation and use of "Small Wireless Facilities" for the purposes of and defined in the Small Wireless Communications Facilities Deployment Act, Act No. 365 of the Public Acts of 2018, as amended (the "Act"), and Permits that allow access to and ongoing use of the ROW under the Act.

B. Pursuant to its proprietary ownership, jurisdiction, authority, and/or control of the ROW, and the right to approve licenses and permits for the use of the ROW under the Michigan Constitution, applicable statutes, and the Township Charter and Ordinances, the Township has agreed to allow Company access to and the use of the ROW under the Terms and Conditions of this Agreement, which Company has accepted.

C. In exchange for the Township providing access to and use of the ROW, the Company agrees to compensate the Township consistent with the schedule of fees attached as Exhibit D.

**THE TOWNSHIP AND COMPANY THEREFORE AGREE TO THIS AGREEMENT
AND ALL OF ITS TERMS AND CONDITIONS:**

Section 1. DEFINITIONS.

The following words or phrases have the meanings indicated:

Public Right-of-Way ("ROW") shall mean the area on, below, or above a public roadway, Highway, street, alley, bridge, sidewalk, or utility easement dedicated for compatible uses. Public right-of-way does not include any of the following:

- (i) A private right-of-way.
- (ii) A limited access highway.
- (iii) Land owned or controlled by a railroad as defined in section 109 of the railroad code of 1993, 1993 PA 354, MCL 462.109.
- (iv) Railroad infrastructure.

Small Wireless Facilities shall mean the Company's wireless facility that meets both of the following requirements:

- a. Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements would fit within an imaginary enclosure of not more than 6 cubic feet.
- b. All other wireless equipment associated within the facility is cumulative not more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

Poles or Utility Poles shall mean a pole or similar structure that is or may be used in whole or in part for cable or wireline communications service, electric distribution, lighting, traffic control, signage, or a similar function, or a pole or similar structure that meets the height requirements in section 13(5) of the Act and is designed to support small cell wireless facilities. Utility pole does not include a sign pole less than 15 feet in height above ground.

- A utility pole in the ROW installed or modified on or after the effective date of this act shall not exceed 40 feet above ground level, unless taller height is agreed to by the Township.
- A small cell wireless facility in the ROW installed or modified after the effective date of this act shall not extend more than 5 feet above a utility pole or wireless support structure on which the small cell wireless facility is collocated.

Services shall mean those services provided using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile location, by or through the Small Wireless Facilities as set forth in MCL 460.1301 et seq, and as specifically identified in the attached detailed plans and specifications. If the Township grants the provision of any other services by the Company in writing, upon such grant, the definition of "Services" shall automatically be revised to include any such grant of additional services.

Collocation shall mean installing, mounting, maintaining, modifying, operating or replacing Small Wireless Facilities on or adjacent to a Wireless Support Structure or Pole. Collocate does not include make-ready work or the installation of a new utility pole or new wireless support structure.

Section 2. GRANT.

- a. *Installation of Small Wireless Facilities.* Township hereby grants a non-exclusive license to Company for access to and ongoing use of the ROW to collocate Small Wireless Facilities or to install, modify or replace Poles in those portions of the ROW identified (by number) on the Location Map that is attached as Exhibit A in compliance with this Agreement, the Township's Code, and the standard terms contained on the Township's permit.
 - i. *Location of Small Wireless Facilities.* The Township may grant or deny the location and installation of any small wireless facility on a Pole prior to installation, if the location would:

1. Materially interfere with the safe operation of traffic control equipment.
 2. Materially interfere with sight lines or clear zones for transportation or pedestrians.
 3. Materially interfere with compliance with the Americans with Disabilities Act of 1990, Public Law 101-336, or similar federal, state, or local standards regarding pedestrian access or movement.
 4. Materially interfere with or endanger the use of Township safety path, sidewalks, bike paths, walkways, parks, or recreational areas used by Township residents.
 5. Materially interfere with maintenance or full unobstructed use of the Township's public utility infrastructure.
 6. Materially interfere with maintenance or full unobstructed use of the Township's drainage infrastructure as it was originally designed, or not be located a reasonable distance from the drainage infrastructure to ensure maintenance.
 7. Fail to comply with spacing requirements as set forth in the Charter Township of Bloomfield's Small Cell Wireless Facilities Ordinance
 8. Fail to comply with applicable codes.
 9. Fail to comply with design and concealment requirements as set forth in the Charter Township of Bloomfield's Small Cell Wireless Facilities Ordinance.
- ii. *Installation of New Poles.* For new Poles, the Township may propose an alternate location within the ROW or on property or structures owned or controlled by the Township within 75 feet of the proposed location to either place the new Pole or collocate on an existing structure. Company shall use the alternate location if it does not impose unreasonable technical limits or significant additional costs.
- iii. *Map and List of Small Wireless Facilities.* Company shall maintain in a form acceptable to the Township, a current map and list of the location of all Small Wireless Facilities used by Company pursuant to this Agreement and located in the ROW; Company shall provide such list to the Township within ten (10) business days upon receipt of request for same; and Company shall, whether or not requested by the Township, provide an updated list and map promptly after any permitted work is completed.
- iv. *Permits; Compliance with Agreement and the Act.* Company shall obtain all required permits and grants of the Township and any of its departments or agencies, and any other agency with jurisdiction over the Small Wireless Facilities, services or the property on which the Small Wireless Facilities are or will be located, prior to performing any work under this Agreement and shall comply with all of the terms and conditions set forth in these permits. Company shall not mount, construct, install, maintain, locate, operate, place, protect, reconstruct, reinstall, remove, repair, or

replace any Small Wireless Facilities on any Pole, except as expressly authorized by and in strict compliance with this Agreement and the Act, and shall not without further and separate authorization, otherwise locate more than one Small Wireless Facility or other related facility on any single Pole.

- b. *Changes in Location.* If the Small Wireless Facilities or their locations on the Poles located in the ROW deviate in any material way from the specifications attached hereto as Exhibit A, then Company shall first obtain a grant for any such deviation from the owners of the Poles located on the ROW and shall provide the Township with written evidence of such authorization. Upon receiving such authorization, the Exhibit A Location Map may be modified by written request by Company and approval by the Bloomfield Township Supervisor, or their designee(s), to modify approved locations and/or add additional locations. Said approval shall not be unreasonably conditioned or denied for new locations on existing Poles. Upon written request to modify Exhibit A, the Township shall approve or deny the request in writing within sixty (60) days for requests to modify an existing facility or Pole, or in ninety (90) days for requests to replace an existing Pole. In acting on an Exhibit A modification request, to the extent allowed by law, Township may consider the factors enumerated in Section 2(a)(i).
- c. *Changes to Small Wireless Facilities and Equipment.* If Company proposes to install different but comparable Small Wireless Facilities or equipment on Poles and locations that have already been approved by the Township, the Exhibit B Facilities Plans and Specifications for a location may be modified by written request by Company and approval by the Bloomfield Township Supervisor, or their designee(s). Small Wireless Facilities located in the ROW under this Agreement may not be altered, expanded, or changed in appearance without Township approval, which shall not be unreasonably withheld. The Township's approval remains subject to any state or federal statute, rule, or law that allows such modifications without Township approval, or restricts or limits the Township's authority in that regard. Upon written request to modify Exhibit B, the Township shall approve or deny the request in writing within sixty (60) days of the request. Nothing in this subsection shall be construed as requiring a permit or fees for the replacement of a Small Wireless Facility with another Small Wireless Facility that is not larger or heavier and is in compliance with all applicable codes and the Act.
- d. *Appeal to Township Board of Trustees.* Any decision by the Bloomfield Township Supervisor, or his/her designee(s), on a request for a modification of Exhibit A or Exhibit B for a location may be appealed by Company to the Board of Trustees.
- e. *Attachments.* Company shall not allow attachment of wires or any other facilities of a third party to Small Wireless Facilities owned or controlled by Company without Township's prior written approval of the required modification of Exhibit B under Section 2(c). Company shall allow attachment of third-party wires and facilities to Company owned poles that can structurally accommodate the attachments if the third party complies with all relevant state and federal law, and the third party has a license and all required permits from the Township for the attachments.

- f. *Nonexclusive.* The rights granted by this Agreement are nonexclusive. Township reserves the right to approve, at any time, additional licenses for access to and ongoing usage of the ROW by other wireless or telecommunications providers and to enter into agreements for use of the ROW with and/or grant Permits for use of the ROW to wireless providers, telecommunications providers, cable companies, utilities and other providers.
- g. *Limited Authorization.* This Agreement does not authorize the placement of Small Wireless Facilities or any other equipment on sites, structures or facilities other than those specifically identified herein. This Agreement does not relieve Company of its burden of seeking any necessary permission from other governmental agencies which may have jurisdiction regarding Company's proposed use. Company further acknowledges that it cannot use any historically or architecturally significant poles located within the ROW or other street furniture, except as may be otherwise expressly authorized in a specific permit issued by the Township.
- h. *Reservation of Powers.* The Township reserves any and all powers it may have, now or in the future under applicable local, state, or federal law, to regulate the Small Wireless Facilities, their use, or the use of the ROW or of other Township property. Company shall be subject to all present and future ordinances of the Township and its Board of Trustees, boards and commissions. Nothing in this Agreement shall be construed as a waiver of any codes, ordinances or regulations of the Township or of the Township's right to require Company to secure the appropriate permits or authorizations for exercising the rights set forth in this Agreement.
- i. *All Permitted Activities Fees at Company's Sole Expense.* Notwithstanding any other provision of this Agreement, the construction, operation, maintenance, removal and replacement of Facilities, and all other activities permitted hereunder and all fees or obligations of Company under this Agreement, shall be Company's sole responsibility at Company's sole cost and expense.
- j. *Permit.* Company shall obtain, at its sole expense, all applicable permits as are required by Township or any other agency to perform the work and ongoing use, as described in this Agreement, of poles located on the ROW.
- k. *No Real Property Interest Created.* Neither Company's use of the Public Rights-of-Way, nor anything contained in this Agreement, shall be deemed to grant, convey, create, or vest in Company a real property interest in any portion of the ROW or any other Township property, including but not limited to, any fee or leasehold interest in any land or easement. Company, on behalf of itself and any permitted successor, lessee, or assign, recognizes and understands that this Agreement may create an interest subject to taxation and that Company, its successor, lessee or assign may be subject to the payment of such taxes.
- l. *All Rights Nonexclusive.* Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to Company under this Agreement shall be non-exclusive, and shall be subject and subordinate to (1) the continuing right of the Township to use, and to allow any other Person or Persons to use, any and all parts of the ROW,

exclusively or concurrently with any other Person or Persons, and (2) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title (collectively, "Encumbrances") which may affect the ROW now or at any time during the term of this Agreement, including without limitation any Encumbrances granted, created or allowed by the Township at any time.

Section 3 CONTACTS, MAPS AND PLAN

- a. *Company Contacts.* The names, addresses and contact information for engineering and construction related information for Company and its Facilities are as follows:

The address, e-mail address, phone number and contact person (title or name) at Company's local office (in or near Municipality) is:

If Company's engineering drawings, as-built plans and related records for the Facilities will not be located at the preceding local office, the location address, phone number and contact person for them is:

The name, title, address, e-mail address and telephone numbers of Company's engineering contact person(s) with responsibility for the design, plans and construction of the Facilities is:

The address, phone number and contact person (title or department) at Company's home office/regional office with responsibility for engineering and construction related aspects of the Facilities is:

Company shall at all times provide the Township with the phone number at which a live representative of Company (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency. This number is:

The preceding information is accurate as of the Effective Date. Company shall notify Municipality in writing as set forth in Section 13 of any changes in the preceding information.

- b. *As-Built Records.* Company, without expense to Township, shall, upon 48 hours' notice, give Township access to all "as-built" maps, records, plans and specifications showing the Small Wireless Facilities or portions thereof in the ROW.

Section 4. USE OF PUBLIC RIGHT-OF-WAY

- a. *No Burden on Public Right-of-Way.* Company, its contractors, subcontractors, and the Small Wireless Facilities shall not unduly burden or interfere with the present or future use of any of the ROW. The Small Wireless Facilities shall be installed and maintained so as to not endanger or injure persons or property in or about the ROW. If Township reasonably determines that any portion of the Small Wireless Facilities constitutes an undue burden or interference, due to changed circumstances, Company, at its sole expense, shall modify the Small Wireless Facilities or take such other actions as Township may determine is in the public interest to remove or alleviate the burden, and Company shall do so within a reasonable time period. Township shall attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.
- b. *No Priority.* This Agreement does not establish any priority of use of the ROW by Company over any present or future licensees or parties having agreements with Township or Permits for such use. In the event of any dispute as to the priority of use of the ROW, the first priority shall be to the public generally, the second priority to Township, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other licensees, agreement or Permit holders, as determined by Township in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- c. *Restoration of Property.* Upon completion of each task or phase of work to be performed by Company under this Agreement, Company, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Company's sole expense, in a manner approved by Township, any portion of the ROW that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the 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 sixty (60) days after written notice, the Township may make the repair and Company shall pay the costs Township incurred for such repair. The provisions of this paragraph shall survive the expiration, completion or earlier termination of this Agreement.
- d. *Marking.* Company shall mark the Small Wireless Facilities as follows: Aerial portions of the Small Wireless Facilities shall be marked with a marker which shall state Company's name and provide a toll-free number to call for assistance. Underground portions of the

Small Wireless Facilities shall have a stake or other appropriate above ground markers with Company's name and a toll-free number indicating that there is buried equipment below. Any signage required by this section shall not be used for advertising purposes and shall not exceed 1 square foot in area.

- e. *Tree Trimming.* Company may trim trees upon and overhanging the ROW so as to prevent the branches of such trees from coming into contact with the Facilities, consistent with any standards adopted by Township. 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 ROW shall have the advance approval of the Road Commission for Oakland County, or their designee(s).
- f. *Installation and Maintenance.* The construction and installation of the Small Wireless Facilities shall be performed pursuant to plans approved by Township. Company shall install and maintain the Small Wireless Facilities in a reasonably safe condition. If the existing Poles in the ROW are overburdened or unavailable for Company's use, or the facilities of all users of the Poles are required to go underground then Company shall have the right to request a modification under Section 2 for an alternate location. Company may perform maintenance on the Small Wireless Facilities without prior approval of Township, provided that Company shall obtain any and all permits required by Township in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by Township.
- g. *Coordination.* Company shall coordinate its construction and all other work in the ROW with any Township programs or projects Company is notified of in the Township's review comments on a Company construction permit application.
- h. *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 Township or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Township 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 right to challenge laws, statutes, ordinances, rules or regulations now in force or established in the future.
- i. *Street Vacation.* If Township vacates or consents to the vacation of a ROW within its jurisdiction, and such vacation necessitates the removal and relocation of Company's Facilities in the vacated ROW, Company shall, as a condition of this Agreement, consent

to the vacation and removal of its Small Wireless Facilities at its sole cost and expense when ordered to do so by Township or a court of competent jurisdiction. Company shall relocate its Small Wireless Facilities to such alternate location as Township and Company mutually agree, applying reasonable engineering standards.

- j. *Relocation or Removal of Small Wireless Facilities at Township's Request.* Company understands and acknowledges that the Township, at any time and from time to time, may require Company to remove or relocate upon a written request from the Township on ten (10) business days notice at Company's sole cost and expense, portions of the Small Wireless Facilities whenever Township reasonably determines that the removal or relocation is needed: (1) to facilitate or accommodate the construction, completion, repair, relocation, or maintenance of a Township project, (2) because the Small Wireless Facility interferes with or adversely affects proper operation of the light poles, traffic signals, Township-owned communications systems or other Township facilities, (3) because of a sale or vacation of the ROW by the Township, (4) because there is a change in use of the ROW by the Township provided such use similarly affects similarly licensed users in the ROW, (5) because there is damage to and/or removal of the light pole, or (6) to preserve and protect the public health and safety, in a manner not inconsistent with 47 U.S.C. § 332(c)(7). Company shall at its own cost and expense remove, relocate and/or adjust the Small Wireless Facility, or any part thereof, to such other location or locations in the ROW, or in such manner, as appropriate, as may be designated or granted, in writing and in advance, by the Township. Such removal, relocation, adjustment shall be completed within the time prescribed by the Township in its written request and in accordance with the terms of this Agreement. Company shall not be in default hereunder if it has taken appropriate action as directed by the Township to obtain such grant. If Company fails to remove, relocate, adjust or support any portion of the Small Wireless Facility as described by the Township within the prescribed time, Township may take all reasonable, necessary, and appropriate action, as stated in Section 11.
- k. *Public Emergency.* Township shall have the right to sever, disrupt, dig-up or otherwise destroy Small Wireless Facilities of Company if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Township 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 Township.
- l. *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 § 460.721et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- m. *Underground Relocation.* If Company has its Small Wireless Facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider

relocates its system underground, this Agreement shall terminate as to any pole that is no longer used except by Company for its Small Wireless Facilities, which shall be promptly removed at Company's sole cost and expense. For any pole that this Agreement is terminated for under this subsection, Company may request a modification under Section 2 for an alternate location.

- n. *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.

Section 5. INDEMNIFICATION

- a. *Non-Liability of Township Officials, Employees and Agents.* No elective or appointive board, commission, member, officer, employee or other agent of the Township shall be personally liable to the Company, its successors and assigns, in the event of any default or breach by the Township or for any amount which may become due to Company, its successors and assigns, or for any obligation of Township under this Agreement.
- b. *Obligation to Indemnify the Township.* Company, its successors and assigns, shall hold harmless, defend, protect and indemnify the Township, including, without limitation, each of its elected and/or appointed boards, commissions, departments, officers, agents, employees and contractors, from and against any and all actions, losses, liabilities, expenses, claims, demands, injuries, damages, fines, penalties, costs, judgments or suits including, without limitation, reasonable attorneys' fees and costs (collectively, "Claims") of any kind allegedly arising directly or indirectly from: (i) any act by, omission by, or negligence of Company or its contractors or subcontractors, or the officers, agents, or employees of any of them, while engaged in the performance of the work or conduct of the activities authorized by this Agreement, or while in or about the ROW or any other Township property for any reason connected in any way whatsoever with the performance of the work, conduct of the activities or presence of the Small Wireless Facilities authorized by this Agreement, or allegedly resulting directly or indirectly from the presence, construction, installation, maintenance, replacement, removal or repair of the Small Wireless Facilities, (ii) any accident, damage, death or injury to any contractor, subcontractor, or any officer, agent, or employee of either of them, while engaged in the performance of the work, conduct of the activities or presence of the Small Wireless Facilities authorized by this Agreement, or while in or about the ROW, for any reason connected with the performance of the work or conduct of the activities authorized by this Agreement, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the work authorized by this Agreement, (iii) any accident, damage, death or injury, to real or personal property, good will, and Person(s) in, upon or in any way allegedly connected with the work or activities authorized by this Agreement or the presence of the Small Wireless Facilities from any cause or claims arising at any time including, without limitation, injuries or damages allegedly caused, directly or

indirectly, in whole or in part, by radio wave transmission or electromagnetic fields emitted by the Small Wireless Facilities, (iv) any release, or threatened release, of any hazardous material caused in whole or in part by Company in, under, on or about the property subject to this Agreement or into the environment, or resulting directly or indirectly from the Small Wireless Facilities or the work or activities authorized by this Agreement, (v) any violation by Company of the terms and conditions hereof, or any misrepresentation made herein or in any document given by Company in connection herewith, and (vi) any direct or indirect interference by Company or the Small Wireless Facilities, except to the extent that such claims arise from interference with use or placement of Small Wireless Facilities in the public way caused by the sole negligence or willful misconduct of the Township, but such agreement shall not waive the Township's right to governmental immunity.

- c. *Scope of Indemnity.* Company shall hold harmless, indemnify and defend the Township as required in this Section 5, including without limitation, each of its elected and/or appointed commissions, boards, departments, officers, agents, employees and contractors, except only for claims resulting from the sole negligence or willful misconduct of the Township. Company specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Township from any claim which actually or potentially falls within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered in writing to Company by the Township and continues at all times thereafter. Company agrees that the indemnification obligations assumed under this Agreement shall survive expiration or other termination of this Agreement.
- d. *No Liability for Damage, Death or Bodily Injury.* Neither Township nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Company, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the Small Wireless Facilities or activities authorized by this Agreement, the condition of any Township property subject to this Agreement or Company use of any Township property, except as otherwise provided herein and permitted by law.
- e. *Waiver of Claims regarding Fitness of Poles or Other Municipal Properties or Structures Located in Public Right-of-Ways.* Company acknowledges that the Township has made no warranties or representations regarding the fitness, availability or suitability of any Poles or other Township properties or structures for the installation of the Small Wireless Facilities, or for any other activities permitted under this Agreement, and that, except as expressly provided herein, any performance of work or costs incurred by Company or provision of Services contemplated under this Agreement by Company is at Company's sole risk. Company on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, the Township and its agents, and their respective heirs, successors, administrators, personal representatives and assigns, from any and all Claims, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Poles located on the ROWs, other Township property affected by this Agreement or any law or regulation applicable thereto.

- f. *Waiver of All Claims.* Company acknowledges that this Agreement is terminable by the Township under certain limited circumstances as provided herein, and in view of such fact Company expressly assumes the risk of making any expenditures in connection with this Agreement, even if such expenditures are substantial, and Company expressly assumes the risk of selling its Services which may be affected by the termination of this Agreement. Without limiting any indemnification obligations of Company or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, Company fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, Township, its departments, commissions, officers, boards, and employees, and all persons acting by, through or under each of them, under any present or future laws, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that the Township exercises its right to terminate this Agreement, as specifically provided herein.
- g. *No Liability for Consequential or Incidental Damages.* Company expressly acknowledges and agrees that the Township will not be liable for any consequential or incidental damages, including, but not limited to, lost profits and loss of good will, arising out of termination of this Agreement or disruption to the Small Wireless Facilities or Company's permitted activities hereunder. The Township would not be willing to enter into this Agreement in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of Township or its agents, and Company expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Company or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, Company fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages (including without limitation, lost profits and loss of good will), and covenants not to sue for such damages, Township, its Board of Trustees, departments, boards, commissions, officers, and employees, and all persons acting by, through or under each of them, arising out of this Agreement or the work and activities authorized hereunder, including, without limitation, any interference with uses conducted by Company pursuant to this Agreement, regardless of the cause, and whether or not due to the negligence or gross negligence of Township or its agents.
- h. *Notice, Cooperation.* Township shall notify Company promptly in writing of any such claim and the method and means proposed by Township for defending or satisfying such claim. Township shall cooperate with Company in every reasonable way to facilitate the defense of any such claim Township shall consult with Company respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.
- i. *Settlement.* Township shall not settle any claim subject to indemnification under this Section 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 Township for which Company is responsible hereunder.

Section 6. INSURANCE.

Company has provided and will continue to maintain all necessary insurance information which shall be applicable and cover Company's Small Wireless Facilities, actions, and operations under this Agreement and be confirmed by the written insurance policies filed with the Township Clerk.

- a. *Amounts and Coverages.* Company and each of its subcontractors or others working on its behalf, will maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:
 - i. Workers' Compensation, with Employer's Liability with statutory limits, and any applicable Federal insurance of a similar nature of not less than one million dollars (\$1,000,000) each accident.
 - ii. Commercial General Liability Insurance with limits not less than five million dollars (\$5,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Owners and Contractors' Protective, Broadform Property Damage, Products Completed Operations.
 - iii. Business Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including owned, non-owned and hired auto coverage, as applicable.
 - v. Professional Liability/Errors and Omissions Coverage, when applicable, as determined by the Township, in the minimum amount of one million (\$1,000,000) Dollars, per occurrence, and two million (\$2,000,000) Dollars aggregate.
- b. *Required Provisions.* General Liability and Automobile Liability Insurance shall be endorsed to provide for the following:
 - i. Name as additional insureds: The Township, its officers, agents and employees.
 - ii. That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- c. *Advance Notice of Cancellation.* All policies shall be endorsed to provide: thirty (30) days advance written notice to Township of cancellation or intended non-renewal, using the contact information provided in Section 13.
- d. *Claims-Made Policies.* Should any of the required insurance be provided under a claims-made form, Company shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of six (6) years beyond the Agreement expiration, to the effect that, should any occurrences during the Agreement term give rise

to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

- e. *General Aggregate Limit.* Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.
- f. *Receipt of Insurance Policies.* Insurance Policies, in the form and with insurers reasonably satisfactory to the Township, evidencing all coverages above shall be furnished to the Township before commencing any operations under this Agreement.
- g. *Effect of Approval of Insurance.* Approval of the insurance by the Township shall not relieve or decrease the liability of Company hereunder.
- h. *Effect of Lapse of Insurance.* This Agreement shall terminate immediately, after written notice to Company and an opportunity to cure of three (3) business days, upon any lapse of required insurance coverage.

Section 7. TERM.

The term ("Term") of this Agreement shall be until the earlier of:

- a. Three years (3) from the Effective Date; provided, however, that following such initial term there shall be three subsequent renewal terms of two (2) years. Each renewal term shall be automatic unless Township notifies Company in writing, at least one (1) year 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. Township shall not unreasonably deny a renewal term; or
- b. When the Small Wireless Facilities have not been used to provide the Services for a period of 180 days by the Company or a successor of an assign of the Company; or
- c. When Company, at its election and with or without cause, delivers written notice of termination to Township at least 180 days prior to the date of such termination; or
- d. By Township after written notice to Company and after opportunity to meet with representatives of the Township, if the Township reasonably determines that Company's continued use of the ROW will adversely affect public health or safety; or
- e. Upon either Company or Township giving written notice to the other of the occurrence or existence of a default under this Agreement by the other party and such defaulting party failing to cure, or commence good faith efforts to cure, such default within 30 days (or such shorter period of time provided elsewhere in this Agreement) after delivery of such notice.

In the event of termination of this Agreement as herein provided, Company shall immediately cease all work being performed under this Agreement, excepting only that work necessary for Company to remove all Facilities from the ROW as provided in Section 11 below. Termination of this Agreement by the Township as herein provided shall constitute the withdrawal of any grant, consent or authorization of the Township for Company to perform any construction or other work under this Agreement in the ROW or on public property excepting only that work necessary for Company to remove all Facilities and leave all work site areas in a clean and safe condition and in accordance with Section 11 below. Upon any such early termination, the Township shall promptly remit to Company a prorated portion of the annual license fee paid to the Township, if any.

Section 8. PERFORMANCE BOND OR LETTER OF CREDIT.

Company shall post a bond (or letter of credit) as specified in the attached Exhibit C.

Section 9. FEES.

- a. *Annual Fees.* Company shall pay Township an annual fee in advance on or before the Effective Date and each anniversary date thereafter for each Township approved location of Small Wireless Facilities shown on the Exhibit A, regardless of whether Company has installed the Small Wireless Facilities at that location, with the amount of the fee to be determined in accordance with the Fee Schedule that is attached as Exhibit D, and the payment to be made by delivery to the Township Treasurer, or to such other person or location as the Township designates in writing at least one (1) month prior to a payment due date.
- b. *Late Fees.* A payment of the annual fee received by the Township more than 15 days after it is due shall include an administrative late charge equal to five (5%) percent of the required payment and shall incur interest at five (5%) percent, compounded monthly, for the outstanding balance due to the Township.
- c. *Application Fee.* In order to compensate the Township for the Company's initial entry upon and deployment of Small Wireless Facilities within the ROW, the Company shall pay to the Township an Application Fee for each Small Wireless Facility, as set forth in the Fee Schedule that is attached as Exhibit D.

Section 10. WORK STANDARDS.

- a. *Performance of Work.* Company shall use and exercise due care, caution, skill and expertise in performing all work under this Agreement and shall take all reasonable steps to safeguard and maintain in clean and workmanlike manner, all work site areas, including, without limitation, the Poles located on the ROW and other existing facilities and property. All work to be undertaken by Company in the ROWs shall at all times be performed by workers in accordance with generally accepted industry practice.
- b. *Work Plan.* Prior to performing any work necessary under this Agreement, Company shall present a map and written proposal describing the work to be performed and the Small

Wireless Facilities, methods and materials (if any) to be installed ("Work Plan") to the Township for review and will not perform any work until it has received Township authorization of the Work Plan. In addition, prior to conducting any work in the ROW, Company shall provide to the Township a current emergency response plan identifying staff who have authority to resolve, twenty-four (24) hours a day, seven (7) days a week, problems or complaints resulting, directly or indirectly, from the Small Wireless Facilities installed pursuant to this Agreement. As soon as is reasonably practical following installation of the Small Wireless Facilities, Company shall deliver as-built drawings to the Township.

- c. *No Underground Work Without Written Authorization.* Company hereby represents, warrants and covenants that Company shall perform no excavation, trenching, coring, boring, or digging into the ground or installation of any equipment or other material into the ground, or any other underground work in connection with the work to be performed or Services to be provided by Company under this Agreement, except to the extent expressly approved by the Township. Company further represents, warrants and covenants that it shall not otherwise disturb or disrupt the operation or maintenance of any sanitary sewers, storm drains, gas or water mains, or other underground conduits, cables, mains, or facilities
- d. *Repair or Replacement of Damaged Facilities or Property.* Upon written request, Company agrees to repair or replace to Township's reasonable satisfaction any Township-owned facilities or Township-owned property that the Township determines has been damaged, destroyed, defaced or otherwise injured as a result of the work performed or Services provided by Company under this Agreement. Company shall perform such work at no expense to the Township, except to the extent such damage, destruction, defacement, or injury was caused by the sole negligence or willful misconduct of Township.
- e. *Modification of Work Plans.* If during the term of this Agreement, the Township determines that the public health or safety requires a modification of or a departure from the Work Plan submitted by Company and granted, the Township shall have the authority to identify, specify and delineate the modification or departure required, and Company shall perform the work allowed under this Agreement in accordance with the Township-specified modification or departure at Company's sole expense. The Township shall provide Company with a written description of the required modification or departure, the public health or safety issue necessitating the modification or departure, and the time within which Company shall make, complete or maintain the modification or departure required.
- f. *Notification of Start and Completion of Work.* Company shall notify the Township at least 48 hours before starting work and shall notify the Township that the work is completed no more than 48 hours after the work is complete.
- g. *Time Restrictions.* All work shall be performed Mondays through Saturdays between 7:00 a.m. and 6:00 p.m. unless prior written approval is obtained from the Township.

Section 11. REMOVAL OF SMALL WIRELESS FACILITIES.

Upon one hundred and eighty (180) days' written notice by the Township pursuant to the end of the Term, Company shall promptly, safely and carefully remove the Small Wireless Facilities from all Poles and other places located in the ROW. Such obligation of Company shall survive the expiration or earlier termination of this Agreement. If Company fails to complete this removal work on or before the one hundred and eighty (180) days subsequent to the issuance of notice pursuant to this Section, then the Township, upon written notice to Company, shall have the right at the Township's sole election, but not the obligation, to perform this removal work and charge Company for the actual costs and expenses, including, without limitation, reasonable administrative costs. Company shall pay to the Township the costs and expenses incurred by the Township in performing any removal work and any storage of Company's property after removal (including any portion of the Small Wireless Facilities) within fifteen (15) business days of the date of a written demand for this payment from the Township. The Township may, in its discretion, obtain reimbursement for the above by making a claim under Company's performance bond. After the Township receives the reimbursement payment from Company for the removal work performed by the Township, the Township shall promptly return to Company the property belonging to Company and removed by the Township pursuant to this Section at no liability to the Township. If the Township does not receive the reimbursement payment from Company within such fifteen (15) business days, or if Township does not elect to remove such items at the Township's cost after Company's failure to so remove prior to one hundred and eighty (180) days subsequent to the issuance of notice pursuant to this Section, any items of Company's property, including without limitation the Small Wireless Facilities, remaining on or about the ROW or stored by the Township after the Township's removal thereof may, at the Township's option, be deemed abandoned and the Township may dispose of such property in any manner allowed by Law, and in accordance with any legal rights of persons other than the Township who own Poles located in the public way and used by Company. Alternatively, the Township may elect to take title to such abandoned property, whether the Township is provided by the Company, an instrument satisfactory to the Township transferring to the Township the ownership of such property, or not. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

Section 12. ASSIGNMENT.

Company may assign or transfer its rights under this Agreement, 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:

- a. No such transfer or assignment or change in the control of Company shall be effective under this Agreement, without Township'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 ROW identified on Exhibit A.

- b. After the completion of such construction, Company must provide notice to Township of such transfer, assignment or change in control no later than 30 days after such occurrence; provided, however,
 - i. Any transferee or assignee of this Agreement shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Agreement, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Township with the information required under Section 3(a); and shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Township reasonably deems necessary, and
 - ii. 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 Agreement and comply with applicable law; and Company shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Township reasonably deems necessary.
- c. Company may grant a security interest in this Agreement, its rights thereunder or the Facilities at any time without notifying Township.

Section 13. NOTICES.

- a. Notices. All notices under this Agreement shall be given as follows:

If to Township:

Charter Township of Bloomfield:
Attn: Supervisor
4200 Telegraph Road
Bloomfield Township, MI 48302

with a copy to:

Charter Township of Bloomfield
Attn: Clerk
4200 Telegraph Road
Bloomfield Township, MI 48302

and

Charter Township of Bloomfield
Attn: Planning, Building & Ordinance Department
4200 Telegraph Road
Bloomfield Township, MI 48302

and

Charter Township of Bloomfield
Attn: Engineering & Environmental Services Department
4200 Telegraph Road
Bloomfield Township, MI 48302

If to Company:

- b. Change of Address. Company and Township 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.

Section 14. OTHER ITEMS.

- a. *No Cable, OVS.* This Agreement 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).
- b. *No Wireline Backhaul Facility.* This Agreement does not authorize Company to install, place, modify, maintain or operate a "wireline backhaul facility," as defined in Section 11 of the Act, in the ROW.
- c. *Duties.* Company shall faithfully perform all duties required by this Agreement.
- d. *Amendment.* Except as set forth in Section 2, this Agreement may only be amended by written agreement of the Township and Company.
- e. *Interpretation and Severability.* The provisions of this Agreement 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 Agreement 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 Agreement. If any provision in this Agreement is found to be partially overbroad, unenforceable, or invalid, Company and Township may nevertheless enforce such provision to the extent permitted under applicable law.
- f. *Governing Law.* This Agreement shall be governed by the laws of the State of Michigan.

WITNESSES

CHARTER TOWNSHIP OF BLOOMFIELD,
a Michigan municipal corporation

By: _____

Its:
Supervisor _____

Dated: _____

WITENSS

CHARTER TOWNSHIP OF BLOOMFIELD,
A Michigan municipal corporation

By: _____

Its:
Clerk _____

Dated: _____

COMPANY

By: _____

Its: _____

Dated: _____

Exhibit A
Location Map
Public Right-of-Way (“ROW”) to be Used by Small Wireless Facilities

The ROW locations that Company is granted access to and the use of are shown on the attached Location Map, which as provided in Section 2 of the Agreement to which this Exhibit is attached, may be modified from time to time to add or remove locations.

Exhibit B
Small Wireless Facilities Plans and Specifications

For each numbered Small Wireless Facilities location shown on Exhibit A, the plans and specifications for those Facilities are attached.

Company acknowledges and agrees that the overall height of any new poles and antennas shall be strictly limited to _____, and the overall height of any replacement poles shall be strictly limited to _____, including the antenna or other equipment.

Exhibit C
Bond

As authorized under Section 8 of the Agreement that this Exhibit is attached to and part of a Bond conforming to these specifications and requirements is required in the amount of \$1,000 per Small Wireless Facility as representing an amount that does not exceed the reasonable cost to provide for the removal of abandoned or improperly maintained Small Wireless Facilities, to repair the ROW, and to recoup unpaid rates or fees.

The bond shall be in the form of an irrevocable bank letter of credit form or surety bond form approved by the Township and shall be posted with the Township before any work in the ROW may begin.

**Exhibit D
Fee Schedule**

Application Fees

Application Fees for Deployments in ROW MCL 460.1315(2)(o)

Per small wireless facility	\$200.00*
Per small wireless facility requiring a new or replacement pole	\$300.00

Zoning Approval Fees for Deployments Outside of ROW MCL 460.1317(4)

New wireless support structures or modification of existing wireless support structure	\$1,000.00
New small wireless facility or modification of existing small wireless facility	\$500.00

Annual Rates

Annual Rates are calculated by adding the ROW Rate to the Pole Rate

Rates for Deployments in ROW MCL 460.1313(3)

Per utility pole or wireless support structure on which Company has collocated a small wireless facility	\$20.00/year
Per utility pole or wireless support structure erected by or on behalf of Company on or after March 12, 2019	\$125.00/year