

# ***POLE ATTACHMENT AGREEMENT***

**Between the  
Village of Springville  
And  
ErieNet Local Development Corporation**

**THIS AGREEMENT** made effective as of July 29, 2024 (this “Agreement”), by and between the **Village of Springville**, a municipal corporation organized and existing under and by virtue of the Laws of the State of New York and being one of its political subdivisions, having its principal place of business at 5 W. Main St PO BOX 17 Springville New York 14141, hereinafter called “**Village**”, and ErieNet Local Development Corporation, a New York not-for-profit corporation with offices at 1 Seneca Street, 29<sup>th</sup> Floor, Buffalo, New York 14203, hereinafter called “**Licensee**.”

**1. Certain Definitions.** For purposes of this Agreement, the following terms are defined:

- (a) “Affiliate” shall mean any Person controlling, controlled by or under common control with another person.
- (b) “Control” shall mean the power to control the business or affairs of a Person.
- (c) “Customer” shall mean any Person who contracts with Licensee for, or is in any manner provided with, the Telecommunications Services.
- (d) “Governmental Authority” shall mean any federal, state, or local government (excluding Licensor), or any agency or instrumentality thereof, having competent jurisdiction over Licensee, Licensee's Facilities, the Telecommunications Services, Licensor Poles, or Licensor Anchor Rods.
- (e) “Joint User” shall mean any Person (i) who owns poles or anchor rods, and (ii) who has extended or may hereafter extend joint use privileges to Licensor on such poles or anchor rods, and (iii) to whom Licensor has extended or may hereafter extend joint use privileges on poles or anchor rods.
- (f) “License Facilities” shall mean all cables, lines, pedestals, boxes and associated equipment, devices and hardware utilized by Licensee to provide the Telecommunications Services.
- (g) “Licensor Anchor Rods” shall mean all anchor rods. An anchor rod is a metal rod anchored in the ground to which a guy strand is attached. A guy strand is a metal I cable

of high tensile strength which is attached to a pole and anchor rod for the purpose of reducing stress on a pole. Now or hereafter owned in whole or in part by Licensor or by any Joint User.

(h) "Licensor Poles" shall mean all poles now or hereafter owned or controlled in whole or in part by Licensor or by any Joint User.

(i) "Other Licensee" shall mean any Person other than Licensee or a Joint User or Governmental Authority to whom Licensor has extended or may hereafter extend the right of attaching facilities to Licensor Poles or Licensor Anchor Rods.

(j) "Person" shall mean an individual association, partnership, corporation, or other legally recognized entity.

(k) "Telecommunications Services" shall mean all telecommunications services provided by Licensee authorized by law, regulation, or certification.

**2. License.** Subject to the terms hereof, Licensor grants to Licensee a non-exclusive license to use such Licensor Poles and Licensor Anchor Rods as reasonably approved by Licensor on the application for pole attachments, a copy of which is attached hereto as **Exhibit "A"** and made part of this Agreement, and notwithstanding the foregoing, the license herein granted to Licensee shall not:

(a) grant or vest in Licensee title to any Licensor Poles or Licensor Anchor Rods,

(b) require Licensor or any Joint User to construct, retain, extend, replace, or maintain any Licensor Pole or Licensor Anchor Rod not otherwise necessary or required for Licensor's or any Joint Owner's own business and service requirements,

(c) limit, restrict or prohibit Licensor from entering into additional licenses with Other Licensees, provided such additional licenses do not interfere with the rights granted to Licensee herein,

(d) modify, amend, or otherwise adversely affect any existing agreements between Licensor and any Joint User or Governmental Authority, or

(e) extend to any Licensor Poles or Licensor Anchor Rods where the placement of Licensee Facilities would result in a forfeiture or termination of the rights of Licensor or any Joint User to use or occupy the property on which the Licensor Poles or Licensor Anchor Rods are located.

Licensor represents and warrants to Licensee that Licensor has full power and authority to grant the foregoing license.

**3. Term.** This Agreement and the license herein granted to Licensee shall continue in effect for a period of twenty (20) years commencing with the date hereof (the "Term"). After expiration of the Term, this Agreement shall continue in effect until such time as either party gives the other sixty (60) days prior written notice of termination.

**4. Fees and Charges.** Licensee agrees to pay to Licensor the fees and charges delineated on Exhibit "B" attached hereto and made part of this Agreement, and such other costs or expenses as allowed herein. Any such fees, charges, costs, or expenses payable by Licensee hereunder shall be due thirty (30) days after Licensee's receipt of Licensor's written invoice therefor. The fees and charges shall be invoiced and paid annually. All other costs and expenses shall be invoiced periodically by the Licensor. All payments made by Licensee later than the due date shall be subject to an interest charge of three percent (3%) per month or any fraction thereof.

**5. Drawings.** Prior to any use (other than ordinary maintenance and repair of Licensee Facilities) of a Licensor Pole or a Licensor Anchor Rod, Licensee shall deliver to Licensor drawings, plans, or schematics (collectively "Drawings") reflecting and describing Licensee's use of such Licensor Pole or Licensor Anchor Rod, including the type and placement of Licensee Facilities to be attached thereto. All such Drawings shall be subject to Licensor's approval, which approval shall not be unreasonably withheld or delayed. Licensor agrees to cooperate with Licensee in connection with Licensee's preparation of the Drawings. Licensee acknowledges and agrees that it shall not be unreasonable for Licensor to withhold its approval of Drawings where:

- (a) Licensee's use of such Licensor Anchor Rod would violate the terms of the license under paragraph 2 above,
- (b) the available capacity of such Licensor Pole or Licensor anchor Rod is required for the exclusive use of Licensor or a Joint User, Governmental Authority or existing Other Licensee, and such Licensor Pole or Licensor Anchor Rod may not reasonably be rearranged or replace to accommodate Licensee Facilities,
- (c) in Licensor's reasonable opinion, such Licensor Pole or Licensor Anchor Rod is inadequate to support Licensee Facilities and such Licensor Pole or Licensor Anchor Rod may not reasonably be supported or a new Licensor Pole or Licensor Anchor Road substituted thereof, or
- (d) in Licensor's reasonable opinion, Licensee Facilities cannot be constructed or installed without rearrangement of existing facilities of Licensor, any Joint User, Governmental Authority or Other Licensee then utilizing such Licensor Pole or Licensor Anchor Rod.

If the Licensor shall withhold its approval of any Drawings under subparagraphs (b), (c) or (d) above, Licensee shall have the right to obtain Licensor's approval by paying all reasonable costs and expenses associated with the rearrangement, replacement, support, or

substitution of, or the rearrangement of existing facilities utilizing such Licensor Pole or Licensor Anchor Rod. If Licensor shall fail to approve or disapprove any Drawings, without response or the showing of due diligence toward approving or disapproving said Drawings, within sixty (60) days after delivery to Licensor, such Drawings shall be deemed approved by Licensor.

Notwithstanding the necessity of Drawings, a service drop attachment may be made prior to obtaining Licensor's approval, however, Licensee shall submit such service drop attachment request within seven (7) days following the service drop attachment as consistent with the Public Service Commission ("PSC") order.

(b) **Make-Ready Work.** Prior to any construction or installation, Licensor shall determine the availability of space on Licensor Poles by considering its present and future communication needs. Licensor shall notify Licensee in writing of the cost of rearranging existing facilities or any other work required to accommodate the construction or installation of Licensee Facilities on Licensor Poles within forty-five (45) days from receipt of such application. Such rearrangement and other work, including any necessary survey, engineering analysis, inspections, and initial post-construction inspection, shall constitute the "Make Ready Work." Licensee shall have thirty (30) days from the receipt of such notification to accept the cost of the Make-Ready Work. All required Make-Ready Work shall be performed by Licensor immediately, and not greater than sixty (60) days, following Licensor's receipt of payment. Licensee shall also reimburse Other Licensees for any expenses incurred in rearranging their facilities to accommodate Licensee Facilities.

(c) **Construction and Installation.** Licensee shall, at its expense, construct and install Licensee Facilities in accordance with the Drawings approved by Licensor and in accordance with the requirements and specification of the National Electric Code, the National Electrical Safety Code, and any other requirements imposed by any Governmental Authority (collectively the "Requirements and Specifications") as lawful.

(d) **Maintenance and Repair.** Licensee shall, at its own expense, keep and maintain Licensee Facilities in good condition and repair and in accordance with the Requirements and Specifications in effect at the time such Licensee Facilities were constructed and installed. Licensor shall at its expense, keep and maintain (or cause any Joint User to keep and maintain) all Licensor Poles and Licensor Anchor Rods in good condition and repair and shall replace (or cause any Joint User to replace) Licensor Poles and Licensor Anchor Rods when necessary.

(e) **Rearrangement.** In the event that after Licensee Facilities have been constructed or installed on or with respect to a Licensor Pole or Licensor Anchor Rod, Licensor or any Joint User or Governmental Authority shall, in connection with its own business or service requirements, need to attach new or additional

facilities to such Licensor Pole or Licensor Anchor Rod in such a manner as to require rearrangement of existing Licensee Facilities, Licensee shall either (i) rearrange such Licensee Facilities at its cost, (ii) relocate such Licensee Facilities at its cost to another Licensor Pole or Licensor Anchor Rod designated by Licensor and reasonably acceptable for such purpose or (iii) remove such Licensee Facilities. In the event that after Licensee Facilities have been constructed or installed on or with respect to a Licensor Pole or Licensor Anchor Rod, any existing Other Licensee shall, in connection with its own business or service requirements, need to attach additional facilities to such Licensor Pole or Licensor Anchor Rod in such a manner as to require rearrangement of the existing Licensee Facilities, Licensee will either rearrange such Licensee Facilities or relocate such Licensee Facilities to another Licensor Pole or Licensor Anchor Rod designated by Licensor and reasonably acceptable for such purposes, all at the cost and expense of such Other Licensee. Licensee shall not be required to rearrange or relocate Licensee Facilities to accommodate any Other Licensee which was granted a license or privilege to use any Licensor Pole or Licensor Anchor Rod after the date of this Agreement.

10. **Inspection.** Licensor shall have the right to inspect Licensee Facilities at any time upon thirty (30) days prior written notice to Licensee, except in such cases where safety considerations or emergency justify the need for immediate inspection, in which case, Licensor shall provide Licensee with written notice as soon as practicable.

11. **Security.** Licensee shall furnish security in the form of a performance bond, irrevocable letter of credit, or other form reasonably acceptable<sup>1</sup> to Licensor in the amount of twenty-five thousand dollars (\$25,000). There shall be recoverable by Licensor from this security all unpaid fees, charges, costs, expenses, damages, or losses suffered or incurred by Licensor resulting from the failure of Licensee to faithfully comply with this Agreement.

12. **Insurance.** Licensee shall maintain and keep in effect during the Term insurance coverage as set forth in **Exhibit "C"** attached hereto and made part of this Agreement.

13. **Indemnification.** Licensee hereby indemnifies and agrees to hold harmless Licensor from and against any and all loss, damage, cost, expense, or liability to the extent it arises or results from the negligence or willful misconduct of Licensee in connection with the installation, construction, maintenance, or repair of Licensee Facilities or otherwise from any Licensee Default (as hereafter defined). Licensor hereby indemnifies and agrees to hold harmless Licensee from and against any and all loss, damage, cost, expense, or liability to the extent it arises or results from the negligence or willful misconduct of Licensor in connection with Licensor Poles and Licensor Anchor Rods or otherwise from any Licensor Default (as hereafter defined). In no event shall either

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<sup>1</sup> Note to Draft: Please confirm which other forms of security are acceptable to the Village.

party be liable for any punitive, consequential, incidental, special damages or lost profits incurred or alleged to have been incurred by anyone. Any party seeking indemnification hereunder (the “Indemnitee”) shall promptly notify the other party (the “Indemnitor”) of the nature and amount of such claim and the method and means proposed by the Indemnitee for defending or satisfying such claim. The Indemnitee shall consult with the Indemnitor respecting the defense and satisfaction of such claim, including the selection of and direction to legal counsel, and the Indemnitee shall not pay or settle any such claim without the prior written consent of the Indemnitor, which shall not be unreasonably withheld.

14. **Licensee Default.** In the event:

(a) Licensee shall fail to pay any undisputed sums due to Licensor when due hereunder and such failure shall continue for a period of thirty (30) days after written notice from Licensor to Licensee, or

(b) Licensee shall fail to observe or perform any of the other terms or provisions of this Agreement and such failure shall continue for a period of thirty (30) days after written notice from Licensor to Licensee (or such longer period as may be necessary if such failure cannot reasonably be cured within such thirty (30) day period and if Licensee undertakes such cure within such thirty (30) day period and thereafter diligently proceeds, in good faith, to cure such failure),

(collectively, a “Licensee Default”), Licensor may, in addition to any and all other remedies allowed by law, terminate this Agreement upon thirty (30) days written notice to Licensee.

15. **Licensor Default.** In the event Licensor shall fail to observe or perform any of the terms and provisions of this Agreement and such failure shall continue for a period of thirty (30) days after written notice from Licensee to Licensor (or such longer period as may be necessary if such failure cannot reasonably be cured within such thirty (30) day period and if Licensor undertakes such cure within such thirty (30) day period and thereafter diligently proceeds, in good faith, to cure such failure) (“Licensor Default”), Licensee may, in addition to any and all other remedies allowed by law (i) specifically enforce this Agreement (and the license herein granted) against Licensor, or (ii) terminate this Agreement upon thirty (30) days written notice to Licensor.

16. **Removal.** Licensee may at any time upon written notice to Licensor remove Licensee Facilities from one or more Licensor Poles and Licensor Anchor Rods without terminating or otherwise affecting the license herein granted and the right of Licensee to use all other Licensor Poles and Licensor Anchor Rods. In such event, Licensee shall not thereafter be liable for any fees, charges, costs, or expenses under this Agreement with respect to those Licensor Poles and Licensor Anchor Rods from which Licensee Facilities were removed. Any such removal shall not prevent Licensee from thereafter reattaching Licensee Facilities to such Licensor Poles or Licensor Anchor Rods, subject however, to Licensor approval

of new Drawings respecting such reattachment in accordance with this Agreement.

17. **Termination.** Upon termination of this Agreement, Licensee shall, at its expense, have the option to remove Licensee Facilities and restore the Licensor Poles to a condition reasonably satisfactory to Licensor, or to abandon Licensee Facilities. Failure to remove Licensee Facilities within one-hundred eighty (180) days shall be deemed an abandonment by Licensee. In the event of an abandonment, Licensor shall be allowed to either (a) remove Licensee Facilities at the sole cost and expense of Licensee or (b) take control of Licensee Facilities as property of Licensor, without compensation, and in no event shall either party have any claim for damages against the other on account of the taking over of Licensee Facilities, nor shall Licensee have any obligation to Licensor for the abandonment of Licensee Facilities upon Licensor taking control of Licensee Facilities.

18. **Assignment.** Licensee may not assign or otherwise transfer this Agreement or the license herein granted without the prior written consent of Licensor, which consent shall not be unreasonably withheld or delayed; provided, Licensee shall not be required to obtain the consent of Licensor to any assignment or transfer of this Agreement or the license herein granted to any Affiliate of Licensee, any purchaser of all or substantially all of the assets of Licensee, or any Person with which or into which Licensee may merge or consolidate.

19. **Force Majeure.** The time of performance of any duty or obligation of Licensor or Licensee hereunder (except with respect to the payment of legal fees, charges and other amounts payable by Licensee to Licensor hereunder) shall be extended for the period during which performance was delayed or impeded by reason of strikes, lock outs, labor troubles, inability to procure materials or building permits, failure of power, restrictive governmental laws or regulations, riots, insurrections, war, fire, casualty, earthquake, acts of God, or other reasons of a like nature not the fault of a the party performing such duty or obligation.

20. **Confidentiality.** Unless by mutual agreement, or to the extent directed by a court of competent jurisdiction, Licensor and Licensee shall not disclose this Agreement or the terms hereof to any Person other than such party's Affiliates or such party's officers, employees, and consultants, who are similarly bound hereby. Notwithstanding the foregoing, (i) Licensee acknowledges that Licensor is a municipal corporation bound by public disclosure laws of the State of New York and that compliance with those laws shall not constitute a breach of this Agreement, and (ii) Licensor acknowledges that Licensee is a local development corporation bound by public disclosure laws of the State of New York and that compliance with those laws shall not constitute a breach of this Agreement.

21. **Notices.** All notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by overnight commercial air courier (such as Federal Express), electronic mail, or sent by registered or certified mail, postage prepaid, return receipt requested, to the parties at their addresses set forth below

or to such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if delivered personally, on the first business day after dispatch if sent by overnight commercial air courier, or on the fifth (5<sup>th</sup>) business day after posting if sent by mail.

IF TO LICENSEE: ErieNet Local Development Corporation.  
1 Seneca Street, 29<sup>th</sup> Floor  
Buffalo, NY 14203  
Attn: Melissa Hartman, Executive Director

With a copy to: Harris Beach PLLC  
726 Exchange Street, Suite 1000  
Buffalo, New York 14210  
Attn: Robert G. Murray, Esq.

IF TO LICENSOR: Village of Springville  
5 W. Main St  
PO Box 17  
Springville NY  
14141

22. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

23. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the Laws of the State of New York. Nothing herein shall prevent either party from pursuing its rights under current and future federal or state laws.

24. **Entire Agreement.** This Agreement states the entire agreement between the parties and supersedes all prior agreements and understanding, whether oral or written, between the parties with respect to the subject matter hereof, and may not be amended or modified except by a written instrument executed by the parties hereto.

25. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute one in the same instrument.

[Signature page follows]

[Signature Page – Pole Attachment Agreement]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written:

**Village of Springville**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: Timothy P. Michaels

Title: Mayor

**ErieNet Local Development Corporation**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: Melissa Hartman

Title: Executive Director

**EXHIBIT "A"**

**APPLICATION FOR POLE ATTACHMENT**

To Licensor: Village of Springville  
5 W. Main St  
Springville, NY 14141

Application Number: \_\_\_\_\_

Agreement Date: \_\_\_\_\_

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In accordance with the above-mentioned agreement, Licensee hereby requests permission to place, replace, rebuild, reinforce, rearrange, and maintain attachments on the poles located at, all as more particularly depicted on the attached drawings.

Licensee: ErieNet Local Development Corporation.

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

By: \_\_\_\_\_

Name: Melissa Hartman

Title: Executive Director

## **EXHIBIT “B”**

### **FEES AND CHARGES**

Prior to attaching to the Licensor Poles, Licensee agrees to pay to Licensor an annual attachment fee in the amount of \$15.00 for each pole owned solely by Licensor and \$7.50 for each jointly owned pole.

**EXHIBIT "C"**

**MINIMUM GENERAL INSURANCE  
REQUIREMENTS**

The following insurance shall be maintained in continuous effect.

<u>Coverage Required</u>	<u>Minimum Limits Required</u>
A. Workers Compensation	New York Statutory
B. Comprehensive General Liability, Including Products, Completed Operations, & Contractual Liability and Naming the Licensor as "Additional Insured"	
Bodily Injury	\$ 1,000,000 Each
Property Damage *	Occurrence/Aggregate \$ 500,000 Each
OR	Occurrence/Aggregate
Bodily Injury and Property Damage* Combined	\$1,000,000 Each Occurrence/Aggregate
C. Automobile Liability, including All Owned, Non-Owned, and Hired Autos	
Bodily Injury and Property Damage Combined	\$1,000,000 Each Occurrence/Aggregate
D. Excess/Umbrella Liability (required only if limits for Coverage B or C are less than specified above)	
Bodily Injury and	\$2,000,000 Each Occurrence/Aggregate

\*Explosion, Collapse, and Underground hazard exclusions shall be deleted when any work

involves digging, excavating, or grading.

#### INSTRUCTIONS FOR PREPARING CERTIFICATE

1. A Certificate for the above required Coverage and Limits shall be completed and submitted at least two weeks prior to commencement of work or service to the Village of Springville 5 W. Main St PO Box 17 Springville NY 14141
2. A description of the operations, work, service, or contract requiring insurance shall be provided in the Certificate.
3. Certificates shall provide at least thirty (30) days advance written notice of cancellation, reduction, or non-renewal of coverage.



**JOINT POLE PROPOSAL FORM**

From: ErieNet LDC \_\_\_\_\_ Town: \_\_\_\_\_ C.O. District: \_\_\_\_\_ PROPOSAL NUMBER: \_\_\_\_\_

\_\_\_\_\_ Village: \_\_\_\_\_ Tax District: \_\_\_\_\_ Prepared: \_\_\_\_\_, 20\_\_\_\_\_

Prepared By: \_\_\_\_\_

Pole Owner Job Number: \_\_\_\_\_

We propose the action detailed below with respect to the poles or anchors listed. If such action is agreeable to you please indicate acceptance and return one (1) copy, otherwise indicate exceptions and return.

Item #	H P	P T #	Street Address	Line # ELC O	Pole # ELC O	I N S T	R E P L	R E M V	B U Y	Existing			Proposed			Basic Cost		Excess	Net Cost		
										O W N	Size/class	Y R	O W N	Size/class	EX HT	To ELC O	To ErieNet	Height To:	To Pole Owner	To ErieNet	
																	<b>Total Due:</b>				

The company indicated for any operations is hereby authorized to bill the other company for the indicated part of the cost of such operation

Remarks: \_\_\_\_\_  
 Sketch attached: \_\_\_\_\_  
 Submitted by: \_\_\_\_\_ Date: \_\_\_\_\_ Approved by: \_\_\_\_\_ Date: \_\_\_\_\_