

POLE ATTACHMENT AGREEMENT

BETWEEN

THE CITY OF CELINA, OHIO

AND

CROWN CASTLE FIBER LLC

October __, 2019

Pole Attachment Agreement
Table of Contents

1			
2			
3			
4	POLE ATTACHMENT AGREEMENT	1	
5	ARTICLE I	2	
6	SCOPE OF AGREEMENT	2	
7	1.1 Service Area.....	2	
8	1.2 Authorization.....	2	
9	1.3 Assignment.....	2	
10	1.4 Facility Removal.....	2	
11	1.5 Authorizations Required.....	3	
12	1.6 Term.....	3	
13	ARTICLE II.....	3	
14	2.1 Permit Application Confidentiality.....	3	
15	2.2 Make-ready Survey.....	4	
16	2.3 Grant or Denial of Access.....	4	
17	2.4 Make-ready.....	5	
18	2.5 Multiple Applications.....	6	
19	2.6 Modifications and Cost Allocation.....	6	
20	2.7 Pole Maintenance.....	7	
21	2.8 Drop Poles.....	8	
22	2.9 Continuous Operation.....	8	
23	2.10 Compliance with and Supplements to Safety Codes.....	8	
24	2.11 Non-Interference with Municipality Facilities.....	9	
25	2.12 Attachment of Pole-Mounted Antennas.....	9	
26	ARTICLE III.....	9	
27	INSPECTIONS.....	9	
28	3.1 Post-Installation and Safety Inspections.....	9	
29	3.2 Facilities Inventory.....	9	
30	3.3 Inventory Disparity.....	10	
31	ARTICLE IV	11	
32	ABANDONMENT OF JOINT POLES AND REMOVAL OF ATTACHMENTS	11	
33	4.1 Notice.....	11	
34	4.2 Pole Removal, Abandonment or Relocation.....	11	
35	ARTICLE V.....	12	
36	POLE ATTACHMENT FEE AND PROCEDURE FOR PAYMENTS	12	
37	5.1 Pole Attachment Fee.....	12	
38	5.2 Billing Cycle.....	12	
39	5.3 Payment Due Date.....	12	
40	ARTICLE VI	12	
41	LIABILITY AND INSURANCE	12	
42	6.1 Indemnity and Allocation of Liability.....	12	
43	6.2 Consequential Damages.....	13	
44	6.3 Insurance Requirements.....	13	
45	ARTICLE VII	14	
46	TERMINATION AND DEFAULTS.....	14	

1	7.1	Default.	14
2	7.2	Termination Effective Date.	14
3	7.3	Opportunity to Cure.	14
4	7.4	Refunds.	15
5	ARTICLE VIII.....		15
6	MISCELLANEOUS PROVISIONS.....		15
7	8.1	Conduct of the Parties.	15
8	8.2	Survival.	15
9	8.3	Waiver.....	15
10	8.4	Entire Agreement.	15
11	8.5	Notice.....	16
12	8.6	Compliance with Laws and Regulations.	17
13	8.7	Applicable Law; Disputes.....	17
14	8.8	Severability.	17
15	8.9	Force Majeure.	18
16	9	Exhibits.	18
17	Schedule A – Pole Attachment Application		20
18	Schedule B - Pole Attachment Specifications		22
19	Schedule C - Fee Schedule		23
20			
21			

1 **POLE ATTACHMENT AGREEMENT**

2 **BETWEEN**

3 **The City of Celina, Ohio**

4 **AND**

5 **Crown Castle Fiber LLC**

6
7
8 THIS POLE ATTACHMENT AGREEMENT ("Agreement"), entered into on this ____ day of
9 _____, 2019, by and between **The City of Celina, Ohio**, a municipal corporation organized
10 and existing under the laws of the State of Ohio, having its principal office located at 225 N Main
11 St., Celina, OH 45822, (hereinafter "Municipality") and **Crown Castle Fiber LLC**, a limited
12 liability company organized and existing under the laws of the State of New York, (hereinafter
13 "Licensee"), sometimes referred to collectively as the Parties or individually as "Party";
14

15 WHEREAS, Licensee furnishes communications services, and desires to place and
16 maintain all facilities, including but not limited to aerial cables, antennas, transceivers, amplifiers,
17 equipment, wires, and associated hardware, installed by Licensee, (hereinafter cumulatively
18 referred to as "Facilities") on Poles, as hereinafter defined, throughout the areas now or hereafter
19 served by Municipality's electric system; and
20

21 WHEREAS, Municipality is willing to permit, subject to the terms and conditions set forth
22 herein, attachment of Licensee's Facilities to its poles, where Municipality has the right to grant such
23 attachments and where such use will not interfere with Municipality's own primary core utility service
24 requirements, or the existing attachments of others authorized to use the poles of Municipality,
25 provided, however, Municipality shall not discriminate against Licensee in the event Municipality
26 provides communications services to the public generally competitive to those provided by Licensee.
27

28 NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions
29 herein contained, the Parties do hereby mutually covenant and agree as follows:
30

ARTICLE I
SCOPE OF AGREEMENT

1.1 Service Area.

This Agreement shall be in effect in all areas where Municipality provides electric utility service in Mercer County, Ohio and shall apply to all electric utility poles solely owned or controlled by Municipality (hereinafter "Poles").

1.2 Authorization.

Subject to the provisions of this Agreement, Municipality grants to Licensee and Licensee accepts from Municipality a non-exclusive license to occupy, place and maintain its Facilities on Poles including the use of drop/service Poles. No use of Poles, however extended, or payment of fees or charges required under this Agreement, shall create or vest in Licensee any ownership of property rights in such poles or related easements. Licensee's rights herein shall remain a mere license.

1.3 Assignment.

Licensee may not assign its rights under this Agreement to any other entity without Municipality's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Licensee may assign its rights under this Agreement to an entity acquiring fifty-one percent (51%) or more of Licensee's stock or assets or any subsidiary or affiliated company in which Licensee holds a ten percent (10%) or greater interest or an entity controlling or under common control with Licensee without obtaining Municipality's consent. Municipality shall notify Licensee within thirty (30) days in the event it assigns its rights under this Agreement or if it transfers ownership of any or all of its poles to another entity.

1.4 Facility Removal.

Upon termination of this Agreement for any reason, and subject to the provisions of applicable law, Licensee, at the request of Municipality, shall remove at Licensee's expense, all Facilities from Poles in a reasonable time of not less than six (6) months and not more than two (2) years as determined by Municipality. In the event Licensee fails to remove all Facilities within

1 the time specified, Municipality may remove the Facilities at Licensee's expense. Municipality
2 shall incur no liability as a result of such action, except to the extent caused by the gross negligence
3 or the willful misconduct of Municipality (nothing in this Agreement shall be construed to require
4 Municipality to store or salvage all or any part of the facilities.

5
6 **1.5 Authorizations Required.**

7 Licensee shall secure all authorizations, franchises, licenses, permits, easements and
8 consents required for the construction, operation and maintenance of the Facilities. If any
9 authorizations, franchises, licenses, permits, easements or consents obtained by Licensee are
10 subsequently revoked or denied for any reason, Licensee shall retain the right to pursue all
11 available legal, regulatory, or equitable remedies in all state and federal courts or administrative
12 agencies before Municipality may revoke Licensee's permission to attach to Poles.

13
14 **1.6 Term.**

15 This Agreement shall become effective upon its execution (the "Effective Date") and shall
16 continue in effect until terminated hereunder. At any time on or after three (3) years following the
17 Effective Date, either party may, for its convenience, give notice to the other party of its intent to
18 terminate this Agreement (a "Termination Notice"). In such an event, this Agreement shall
19 terminate upon the later of (a) the termination date specified in the Termination Notice, if any, or
20 (b) the date that is two (2) years after the date of the Termination Notice. In the event that this
21 Agreement has terminated, the contract terms and conditions, including the applicable rates, shall
22 continue as stated herein for a period of six (6) months, or for such period as agreed by the parties
23 in writing, so long as the parties conduct good faith negotiations to renew the Agreement.

24
25 **ARTICLE II**
26 **PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS**
27

28 **2.1 Permit Application Confidentiality.**

29 Before making attachment to any pole or poles of Municipality, Licensee shall submit a permit
30 application (see Schedule A) and receive from Municipality a permit for such attachment.
31 Notwithstanding the foregoing, a permit application shall not be required for Licensee to perform
32 overloading; provided Licensee shall provide Municipality with ten (10) days advance notice of any

1 overlashing including details of the same. In addition, Licensee shall not be required to file a permit
2 application before making attachment to drop poles subject to the requirements stated in Section 2.8
3 below. All materials submitted by Licensee in connection with pole permit applications are to be
4 handled and reviewed only by employees or officials responsible for the coordination and
5 administration of joint-use requests or their supervisors or other officials. Such materials may be of
6 a confidential, proprietary, and commercially sensitive nature if so marked and shall not be disclosed
7 by Municipality or its employees for any reason to process and administer Licensee's pole permit
8 application request except as required by law. Municipality shall make additional copies of
9 Licensee's permit application materials only as necessary for administration of this Agreement or as
10 required by law.

11 12 **2.2 Make-ready Survey.**

13 When Municipality receives an application for attachment or notice for overlashing, a
14 make-ready survey shall be performed at Licensee's expense to determine the adequacy of the
15 existing poles and anchors to accommodate Licensee's Facilities. Municipality may perform the
16 field inspection portion of the make-ready survey and Licensee may be present if desired.

17 18 **2.3 Grant or Denial of Access.**

19 Except as otherwise provided by law, Municipality reserves the right to deny Licensee access
20 to any pole, on a non-discriminatory basis, where there is insufficient capacity on or in Poles or for
21 reasons of safety, reliability or generally applicable engineering standards, provided that before
22 Municipality denies access based on insufficient capacity, Municipality shall explore potential
23 accommodations in good faith and take reasonable steps to accommodate Licensee's request for
24 access, it being understood that the cost of all actions taken by Municipality to increase capacity for
25 Licensee's use shall be at Licensee's expense. In addition, Municipality shall not arbitrarily deny or
26 condition Licensee's permit application based upon Licensee's status as a provider of cable service,
27 broadband cable communications services or other lawful communications services. Municipality
28 shall either grant or deny access to its facilities in accordance with the timeline set forth in 47 C.F.R.
29 § 1.1420 If access is not granted by Municipality within the applicable time frame described above,
30 Municipality must confirm the denial of access in writing within that same applicable time frame.
31 Municipality's denial shall be specific and shall include relevant information supporting its denial. If

1 Municipality fails to meet these time periods, Licensee may remind Municipality in writing of that
2 fact. If Municipality does not grant or deny the application within fifteen (15) business days after
3 such reminder, Municipality's failure to act shall be construed as a grant of access.

4
5 **2.4 Make-ready.**

6 (A) Whenever any pole to which Licensee seeks attachment or occupancy can and must
7 be modified or replaced solely to accommodate Licensee's Facilities, Municipality will provide
8 Licensee with a detailed estimate of make-ready work it believes to be necessary to prepare the pole
9 for Licensee's Facilities; such estimate shall include an estimate of the time that will be needed to
10 complete the work. Municipality will provide Licensee with such estimate in accordance with the
11 timeline set forth in 47 C.F.R. § 1.1420. After receiving this estimate, if Licensee still desires to make
12 the attachments, Licensee shall notify Municipality within fourteen (14) days of receiving such
13 estimate of such continuing desire to attach or occupy, and shall pay to Municipality any required
14 advance payment for the reasonable and actual cost of such make-ready work, which may include
15 engineering, materials (including poles and associated hardware), cost of removal (less any salvage
16 value), and the expense of transferring Municipality's facilities, as well as the attachments of other
17 preexisting occupants, from the old to the new poles if required solely to accommodate Licensee's
18 Facilities. Where the advance payment of estimated expenses made to Municipality by Licensee for
19 both non-replacement make-ready and replacements is less than the reasonable and actual cost of
20 work described above, Licensee agrees to pay Municipality the amount in excess of the amount of
21 the advance payment. Where the advance payment of estimated expenses made to Municipality by
22 Licensee exceeds such reasonable and actual costs, Municipality agrees to refund the difference to
23 Licensee. Municipality shall promptly commence the requested make-ready and pole replacement
24 work, and shall complete all requested make-ready and pole replacement work within the time period
25 specified in 47 C.F.R. § 1.1420. Licensee shall not be responsible for any make ready costs required
26 to cure pre-existing violations of the NESC or other applicable requirements.

27 (B) Notwithstanding the above, at its option, and with the consent of Municipality,
28 Licensee may choose a contractor, which meets industry standard qualifications and criteria, to
29 perform make-ready work on its behalf. Municipality's consent shall not be unreasonably withheld,
30 conditioned, or delayed. In secured areas where safety or system reliability concerns are an issue,
31 Municipality may require an escort to supervise the work of Licensee's agents. Municipality shall

1 also retain the right to perform post-installation inspections, at Licensee's expense, to ensure
2 Licensee's agents' work meets Municipality's standards.

3 (C) Municipality shall be responsible for notifying other parties with existing attachments
4 or occupancy and coordinating the make-ready work necessary in order to accommodate Licensee's
5 attachments.

6 7 **2.5 Multiple Applications.**

8 Unless otherwise required by applicable laws or contracts with third parties in existence prior
9 to January 1, 2013, when applications to occupy the same pole have been received from two or more
10 prospective occupants, including Licensee, before any one of them is given a permit, and, if to
11 accommodate their respective facilities it would be necessary to rearrange existing facilities or replace
12 the pole, each such prospective occupant shall bear the applicable costs of rearrangement or
13 replacement incurred in conjunction with its own application(s).

14 15 **2.6 Modifications and Cost Allocation.**

16 If a pole to which Licensee has previously made an attachment or occupancy is to be modified
17 or replaced due to the requirements of another attaching entity, including Municipality, except when
18 such modification is for the purpose of performing routine maintenance or to respond to an emergency
19 situation, Municipality shall provide Licensee with forty-five (45) days' notice of the proposed
20 modification or replacement so that Licensee can determine whether it wishes to add to or modify its
21 existing attachment or occupancy in connection with the proposed modification or replacement. In
22 the event Licensee decides to add to or modify its existing attachment or occupancy in connection
23 with the proposed modification or replacement, Licensee shall give notice to Municipality of its intent
24 within thirty (30) days of receipt of notice from Municipality. Any such additions or modifications
25 desired by Licensee shall be made at Licensee's sole cost. The allocation of further costs of pole
26 modification or replacement shall be as follows:

27 (A) In the event that Municipality replaces or modifies a pole in order to accommodate
28 the Municipality's own requirements or to ensure compliance with regulatory, legal, or technical
29 standards applicable to Municipality, Municipality shall bear the costs of replacement or modification
30 and Licensee shall bear the costs to transfer or rearrange Licensee's attachments;

1 **(B)** In the event that Municipality replaces or modifies a pole solely to accommodate the
2 new attachments of Licensee or to accommodate modifications of Licensee's attachments, Licensee
3 shall bear the costs of such replacement or modification as well as the cost of transferring or
4 rearranging the attachments of Licensee and other attachers on the pole;

5 **(C)** In the event that Municipality replaces or modifies a pole to accommodate the new or
6 modified attachments of other attachers, such attacher shall bear the cost of replacement or
7 modification as well as the cost of transferring or rearranging the attachments of all attachers on the
8 pole; provided, however, that in the event that an agreement with such an attacher existing as of
9 January 1, 2013 hereof provides for an alternative allocation of costs, the terms of that agreement
10 shall control.

11
12 **2.7 Pole Maintenance.**

13 **(A)** Licensee, at its own expense and risk and by the terms of this Agreement, shall place,
14 transfer, and rearrange its own attachments on Poles or place guys to sustain any unbalanced pole
15 loads caused by its own attachments, and perform any tree trimming or cutting incidental thereto.
16 Licensee at all times shall perform such work promptly and in such manner as not to interfere with
17 the service of Municipality or by other pole occupant, except to the extent Licensee reasonably
18 determines that an emergency situation requires such work to be performed in a manner in which
19 interference cannot be reasonably avoided.

20 **(B)** In the event Municipality determines, in Municipality's reasonable judgment, that a
21 particular condition or situation is an emergency, Municipality may arrange to relocate, replace,
22 remove, renew or disconnect Licensee's Facilities and, if reasonable under the circumstances, transfer
23 them to substituted poles or perform any other work in connection with Licensee's Facilities that may
24 be required during the emergency. Municipality shall provide Licensee with the notice of the situation
25 as soon as reasonably practicable so that Municipality and Licensee, if possible, may coordinate their
26 responses to the emergency.

27 **(C)** Licensee shall be responsible for trimming and cutting all trees, shrubbery, and other
28 vegetation in the vicinity of its Facilities as necessary for the operation of its own Facilities and at its
29 own expense. This shall be done with not less than two (2) business days' notice to Municipality and
30 in a manner not to interfere with or damage any existing attachments. For routine maintenance,
31 property owner(s) must be provided with not less than two (2) business days' notice of any tree

1 trimming or vegetation cutting on such property owners' property to be performed by Licensee, unless
2 Licensee reasonably determines that an emergency situation requires such work to be performed in a
3 manner that advance notice is not possible; in an emergency, Licensee shall provide notice of the
4 situation as soon as reasonably practicable.
5

6 **2.8 Drop Poles.**

7 Notwithstanding any other provision, after initial construction of its Facilities, Licensee shall
8 have the right to attach non-current carrying service drops to drop poles without prior application,
9 provided that there is adequate space to accommodate Licensee's attachment, Licensee shall forward
10 a notice of attachment quarterly for billing adjustments.
11

12 **2.9 Continuous Operation.**

13 Licensee shall not intentionally interfere with the normal operation of Municipality's
14 equipment during Licensee's performance of any construction or maintenance, and that Licensee is
15 to provide and use all protective equipment and practices necessary for the protection of Licensee's
16 employees and equipment and to prevent interferences with normal operation of Municipality's
17 facilities, equipment and services.
18

19 **2.10 Compliance with and Supplements to Safety Codes.**

20 Licensee shall place its Facilities attached to Municipality poles in a safe condition and in
21 thorough repair, and in compliance with the requirements and specifications set forth in applicable
22 Federal and State law, the National Electrical Safety Code in effect as of the time of attachment
23 ("NESC") and the applicable rules and regulations of the Occupational Safety and Health Act. In
24 the event the NESC is updated, all new Facilities installed by Licensee after the effective date of the
25 updated NESC shall comply with the applicable requirements of the updated NESC, unless such
26 changes to the NESC require application to existing facilities. Municipality shall apply to Licensee
27 only such specifications, standards and practices as are uniformly applied to all third parties attached
28 to Poles.
29

1 **2.11 Non-Interference with Municipality Facilities.**

2 Licensee at all times shall ensure that its agents, servants, employees, and contractors neither
3 take nor attempt to take any action whatsoever to interfere with Municipality's wires, attachments,
4 and other facilities attached to or supported by poles covered by this Agreement. Each Party shall
5 exercise reasonable precautions to avoid damage to the facilities of the other.
6

7 **2.12 Attachment of Pole-Mounted Antennas.**

8 Licensee may secure the right to attach antennas to Poles ("pole-mounted antennas") in
9 accordance with the terms of Schedule "B" attached hereto and made a part hereof. If a signed
10 Schedule "B" is not attached hereto, Licensee is not permitted to attach pole-mounted antennas
11 pursuant to this Agreement and Municipality is under no duty or obligation to execute such
12 Schedule.
13

14 **ARTICLE III**
15 **INSPECTIONS**
16

17 **3.1 Post-Installation and Safety Inspections.**

18 Municipality reserves the right to inspect each new Licensee installation on Poles and in the
19 vicinity of Municipality's lines. Municipality also reserves the right to make reasonable periodic
20 inspections as such conditions may warrant, to determine if Licensee's construction complies with
21 the approved shop drawings, construction drawings, and/or applicable safety codes or laws.
22

23 **3.2 Facilities Inventory.**

24 **(A)** Licensee and Municipality acting in cooperation for purposes of rendering bills shall
25 tabulate the total number of Licensee attachments on Poles. This tabulation shall be based on a
26 perpetual inventory of permits and/or inspections.

27 **(B)** Within one (1) year from the start date of this Agreement, Municipality shall
28 conduct an initial inventory of Licensee's attachments to verify the number of poles on which
29 Licensee has attached its equipment and may conduct subsequent inspections as set forth herein.
30 Subject to the provisions of Section 3.3, all such attachments found in the initial inventory shall
31 be deemed authorized provided that Licensee shall forthwith cure violations of the requirements
32 of Section 2.10 caused by such attachments that are attributable to Licensee. Municipality shall

1 provide thirty (30) days' notice of any such initial inventory so that Licensee may be present and
2 observe such inventory. The cost of such inventory of Licensee's attachments to Poles shall be
3 Licensee's responsibility, provided that Licensee has an opportunity to identify to the Municipality
4 contractors that are eligible to perform such work pursuant to Municipality's usual criteria, such
5 eligible contractors to be included in any requests for proposals or invitations to bid issued by
6 Municipality for such inventory. .

7 (C) 1. Subsequent to the initial inventory described above, inventories of Licensee's
8 attachments to Poles may be conducted, at Licensee's expense, no more often than once every five
9 (5) years, in Municipality's discretion, either by Municipality or an independent contractor for the
10 performance of such physical inventory through the Municipality's usual process for acquisition of
11 such services supplemented by Licensee as noted above.

12 2. Municipality may, at its discretion, conduct inventories in addition to those
13 described above in Section 3.2(C)1, but Licensee shall not be responsible for any of the costs of any
14 such inventory.

15 (D) Subsequent to the initial inventory, the Parties may, if mutually agreed, determine the
16 number of attachments from existing maps and/or attachment records provided that such maps or
17 records exist and provided that each Party agrees that results with reasonable accuracy can be
18 achieved. If the Parties agree to this method, any maps and/or records belonging to one of the Parties
19 and utilized to count attachments shall be made accessible to the other Party and the number of
20 attachments shall be determined through a mutual and cooperative effort of both Parties. The results
21 of attachment counts performed in this manner shall be treated, for the purpose of determining rentals
22 and other charges due for unauthorized attachments, as if results were achieved by an actual jointly
23 conducted physical inventory.

24 25 **3.3 Inventory Disparity.**

26 (A) Except for attachments identified in the initial inventory described above in Section
27 3.2, in the event the number of poles to which Licensee has attached its Facilities differs from the
28 number shown in Municipality records, Municipality may demand from Licensee, for each pole with
29 an unauthorized attachment, an unauthorized attachment penalty not in excess of an amount
30 approximately equal to the otherwise applicable annual pole attachment fees for the number of years
31 since the most recent inventory or five (5) years, whichever is less. This penalty shall be imposed in

1 lieu of any amounts recoverable for unpaid annual fees. Upon thirty (30) days' notice from
2 Municipality to Licensee of the location of an unauthorized attachment, Licensee shall either apply
3 for a permit or remove its attachment. If Licensee fails to either apply for a permit or remove its
4 attachment within thirty (30) days, Municipality shall have the right to remove the unauthorized
5 attachment at the sole risk and expense of Licensee.

6 (B) If the total number of poles results in a decrease in the number of poles to which
7 Licensee has attached for any year during such period, Municipality shall refund to Licensee the fees
8 previously paid for such poles for such years. If the duration of such period of non-attachment cannot
9 be determined, it will be presumed that such Facilities shall have been non-attached for a period of
10 two (2) years.

11
12 **ARTICLE IV**
13 **ABANDONMENT OF JOINT POLES AND REMOVAL OF ATTACHMENTS**
14

15 **4.1 Notice.**

16 Licensee, at any time, may remove its Facilities from any Pole(s) of Municipality, and shall
17 give Municipality written notice within thirty (30) days of such removal. Licensee will pay
18 Municipality a pro-rated annual fee amount for the portion of the payment period during which
19 Licensee attached to Pole(s).

20
21 **4.2 Pole Removal, Abandonment or Relocation.**

22 If Municipality desires at any time to remove, abandon or relocate any Pole(s), it shall give
23 Licensee notice in writing to that effect at least 90 days prior to the date on which it intends to abandon
24 or relocate such pole. If, at the expiration of such period, Municipality has no attachments on such
25 Pole(s) but Licensee has not removed all of its attachments from such Pole(s), Municipality may in
26 its sole discretion and in accordance with applicable law, transfer the Pole(s) to Licensee, abandon
27 the Pole(s) or remove the Pole(s). In the event Licensee agrees to accept such Pole(s), Licensee shall
28 hold Municipality harmless from all obligation, liability, damages, costs, expenses or charges incurred
29 thereafter, and not arising out of any prior event or occurrence theretofore as a result of any
30 attachments to such Pole(s). In the case of relocation, Licensee shall assure that its facilities are
31 removed in a timely manner no later than ninety (90) days from the receipt of Municipality's notice
32 such that such relocation may not be delayed thereby.

1
2 **ARTICLE V**
3 **POLE ATTACHMENT FEE AND PROCEDURE FOR PAYMENTS**
4

5 **5.1 Pole Attachment Fee.**

6 The initial annual pole attachment fee to be paid by Licensee shall be \$8.54 per attached pole
7 as set forth in Schedule C. No separate annual pole attachment fee shall be charged for overlashng
8 provided the same does not require pole modifications. Said rate may be adjusted annually as set
9 forth on Schedule C.
10

11 **5.2 Billing Cycle.**

12 The billing cycle will be executed on an annual basis.
13

14 **5.3 Payment Due Date.**

15 Pole attachment fees shall be invoiced annually. Each year Municipality will submit to the
16 Licensee an invoice for the annual rental period no later than the thirty-first (31st) day of the month
17 which is six (6) months after the month of execution hereof. The invoice will reflect the number
18 of attachments as of the first day of such billing month. Invoices shall be considered delinquent if
19 not paid within thirty (30) days of receipt. Licensee may withhold invoiced amounts disputed in
20 good faith. If Municipality does not receive any undisputed fee or other undisputed billable
21 amount within thirty (30) days after it becomes due, Licensee shall pay interest for each day to
22 Municipality at a rate of ten percent (10%) per annum, based upon a three hundred sixty (360) day
23 year. Any amounts withheld and later determined to have been owing shall be subject to the same
24 interest rate.
25

26 **ARTICLE VI**
27 **LIABILITY AND INSURANCE**
28

29 **6.1 Indemnity and Allocation of Liability.**

30 The Parties shall exercise reasonable care to avoid interference with or interruption in the
31 provision of the other's services. The Parties shall exercise reasonable care to avoid damage to the
32 facilities of each other, to the facilities of other attaching entities on Poles or to other persons or their

1 property. When any liability is incurred by either or both of the Parties hereto for damages for injuries
2 to the employees or for injury to the property of either Party, or for injuries to other persons or their
3 property, arising out of the attachment of facilities under this Agreement, or due to the proximity of
4 the facilities of the Parties covered by this Agreement, the liability for such damages, as between the
5 Parties hereto, shall be as follows:

6 (A) Except as otherwise provided by law and in this Article VI, each Party hereby assumes
7 all responsibility for any and all loss for damage caused by the negligence or willful misconduct of
8 such Party to the facilities of the other.

9 (B) Each Party shall be liable for all damages for such injuries to third persons or third
10 person's property caused by its negligence or willful misconduct in accordance with law.

11 12 **6.2 Consequential Damages.**

13 Notwithstanding the above, neither Party shall be liable to the other for any indirect, special
14 or consequential damages, including, but not limited to, loss of profits or revenues, interruption of
15 customer service or interference with business operations.

16 17 **6.3 Insurance Requirements.**

18 Licensee shall carry and keep in force, while this Agreement is in effect, insurance contracts,
19 policies and protection in a reliance company or companies reasonably satisfactory to Municipality
20 in amounts and for coverage deemed necessary for its protection by Licensee, but in no event for
21 amounts or coverage less than the following minimum requirements:

22 (A) Commercial General Liability Insurance (including, but not limited to premises,
23 operations, explosion, collapse and underground hazard, broad form property damage,
24 products/completed operations, contractual liability, independent contractors, personal injury) with
25 limits of at least \$1,000,000 combined single limit bodily injury and property damage for each
26 occurrence and \$2,000,000 general aggregate.

27 (B) Licensee shall also carry and keep in force, while this Agreement is in effect, Workers'
28 Compensation insurance in compliance with the applicable law and employer's liability insurance
29 with minimum limits of \$1,000,000 per occurrence.

30 (C) Licensee shall furnish Municipality with certificates of insurance showing that such
31 insurance is in force and provide thirty (30) days' prior written notice of cancellation for any reason

1 and ten (10) days' notice for non-payment of premium to the Municipality. Neither acceptance nor
2 knowledge (by and of Municipality) of the procurement of Licensee of insurance protection of lesser
3 scope than that required to be procured by them under this Agreement shall in any manner or for any
4 purpose constitute or be deemed a waiver by Municipality of the requirements imposed respecting
5 insurance protection, nor shall any such acceptance or knowledge of insurance protection of lesser
6 scope in any manner or for any purpose lessen or modify or constitute a limiting interpretation of the
7 scope of the matters covered by and obligations of Licensee under this Agreement.

8 (D) Municipality shall be an additional insured on the general liability policy.

9
10 **ARTICLE VII**
11 **TERMINATION AND DEFAULTS**
12

13 **7.1 Default.**

14 If Licensee shall default in any material obligation under this Agreement, Municipality may,
15 in the event Licensee fails to cure such default in accordance with Section 7.3 below, in its sole
16 reasonable discretion either (i) terminate Licensee's use of the particular Poles covered by this
17 Agreement which are the subject of the default or (ii) terminate this Agreement in its entirety.

18
19 **7.2 Termination Effective Date.**

20 Any termination of this Agreement in its entirety shall be effective by written notice from one
21 Party to the other, and termination shall be effective upon one hundred eighty (180) days' notice. Any
22 termination regarding particular poles shall be effective in ninety (90) days.

23
24 **7.3 Opportunity to Cure.**

25 Prior to exercising any right to terminate this Agreement in its entirety pursuant to Section
26 7.1, Municipality shall provide notice to Licensee and Licensee will have an opportunity to cure
27 within sixty (60) days, or within such time frame as is reasonable to affect a cure which cannot be
28 completed within sixty (60) days. If Licensee cures the default during this time or commences such
29 cure which may not be completed within sixty days, a default will no longer exist and Municipality
30 may not terminate this Agreement. Prior to exercising any right to terminate the use of any particular
31 pole pursuant to Section 7.1, Municipality shall provide notice to Licensee and Licensee shall have

1 thirty (30) days or within such time frame as is reasonable to affect which cannot be completed in
2 thirty (30) days, to affect a cure.

3
4 **7.4 Refunds.**

5 In the event this Agreement is terminated because of Licensee's default or noncompliance,
6 Municipality shall refund to Licensee any unused prepaid charges or attachment fees based on the
7 average date of removal of the attachments.

8
9 **ARTICLE VIII**
10 **MISCELLANEOUS PROVISIONS**
11

12 **8.1 Conduct of the Parties.**

13 The parties agree to conduct themselves reasonably and in good faith in implementing the
14 terms of this Agreement.

15
16 **8.2 Survival.**

17 The obligations of the parties under this Agreement, to the extent that they arose while the
18 Agreement was in effect and remained unfulfilled at the time of termination, shall survive both the
19 termination of this Agreement and/or the termination of any permit or license granted hereunder.
20 Any such termination shall not release either party from any liabilities, claims, or obligations
21 arising hereunder including, but not limited to, indemnities which may have accrued or are
22 accruing prior to or at the time of termination.

23
24 **8.3 Waiver.**

25 Failure to enforce or insist upon compliance with any of the terms or conditions of this
26 Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions,
27 but the same shall be and remain at all times in full force and effect.

28
29 **8.4 Entire Agreement.**

30 This Agreement, and the Schedules and Exhibits attached hereto, embodies the entire
31 Agreement and understanding of the Parties with respect to the subject matter hereof and
32 supersedes all prior agreements between the Parties hereto for attachment of Licensee's Facilities

1 to Poles. This Agreement may be amended only upon the mutual agreement of both Parties. The
2 Parties agree that this Agreement does not relieve Licensee from complying with Municipality's
3 generally applicable rights of way franchising, construction or permitting requirements for users
4 of Municipality's rights of way or other public property or for companies providing service within
5 Municipality.

6
7 **8.5 Notice.**

8 Any notice hereunder may be given only in writing, by Certified, Registered or Return
9 Receipt Requested United States first class mail, postage prepaid or by a nationally recognized
10 overnight carrier service.

11
12 If given to Municipality, addressed to:

13 City of Celina
14 225 N Main St.
15 Celina, OH 45822
16 Attn: City Manager

17
18 With a copy to:

19 City of Celina
20 202 N Main St
21 PO Box 362
22 Celina, OH 45822-0362
23 Attn: George Moore, Law Director

24
25
26 If given to Licensee, addressed to:

27 Crown Castle Fiber LLC
28 2000 Corporate Drive
29 Canonsburg, PA 15317
30 Attn: Contracts Management
31

1 With a copy to:

2 Crown Castle Fiber LLC

3 2000 Corporate Drive

4 Canonsburg, PA 15317

5 Attn: Ken Simon, General Counsel

6
7
8 Any notice so given shall conclusively be deemed to have been served upon receipt.
9

10 **8.6 Compliance with Laws and Regulations.**

11 Each Party shall comply with all applicable federal, state and local statutes, ordinances,
12 resolutions, regulations, rules, judicial decisions, and administrative rulings (collectively "Rulings")
13 applicable to its performance under this Agreement provided, however, that Municipality shall not
14 enact, promulgate or enforce any such local Rulings that would modify in any substantive way the
15 terms of this Agreement. In the event of a change in any applicable federal or state law that requires
16 modifications to any of the provisions of this Agreement, such change shall be effective as required
17 by law.
18

19 **8.7 Applicable Law; Disputes.**

20 This Agreement shall in all respects be subject to and construed in accordance with and
21 governed by the laws of the United States and the State of Ohio. Any litigation brought by either
22 party shall be brought solely in the state or federal courts located within the State of Ohio.
23

24 **8.8 Severability.**

25 Except as otherwise provided herein, the invalidity or unenforceability of any particular
26 provision, or part thereof, of this Agreement shall not affect the other provisions, and this
27 Agreement shall continue in all respects as if such invalid or unenforceable provision had not been
28 contained herein.
29

1 8.9 **Force Majeure.**

Neither Municipality nor Licensee shall be liable for any delay or failure in performance of any part of this Agreement if due to a cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, governmental regulations, embargoes, work stoppages, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation carriers.

9 Exhibits.

This Agreement shall include all Schedules, Appendices and Exhibits referenced in this Agreement and attached hereto as if the Schedules, Appendices and Exhibits were part of the Agreement.

Schedule A - Pole Attachment Application

Schedule B - Pole Attachment Specifications

Schedule C - Fee Schedule

[SIGNATURES ON FOLLOWING PAGE]

1
2 IN WITNESS WHEREOF, the parties hereto have their respective officers who are duly
3 authorized to execute this Agreement below.

4
5 **MUNICIPALITY:**
6 **CITY OF CELINA, OHIO**
7

8
9 **Date:** _____

10 **By** _____

11 **Name** _____

12 **Title** _____
13
14
15
16

17 **LICENSEE:**
18 **CROWN CASTLE FIBER LLC**

19
20 **Date:** 9-24-19

21 **By** Amanda Etkin

22 **Name** Amanda Vetter

23 **Title** Interim Director Contract Mgmt
24
25

Schedule A – Pole Attachment Application

Pole Attachment Application for the City of Celina, Ohio

The applicant's rights, obligations, and remedies relating to this application are set forth in, and governed solely by, the Pole Attachment Agreement by and between the City of Celina, Ohio ("Municipality") and the applicant hereunder ("Licensee").

Incomplete applications will be returned to the Licensee without further action by the Municipality. Required information includes the completed application, proposed schedule, prints and maps, proposed route and project description.

Application Information

Application # _____ Date _____

Applicant Name _____

Applicant Representative _____

Phone _____ Fax _____ E-mail _____

Project Description (Attach if necessary)	No. of Municipality poles	No. of foreign poles	Planned Install Date

Proposed Cable Installation _____

Existing Cable Installation _____

No. of cables to install _____

Existing cable count _____

Fiber count _____

Existing pole count _____

Pole count _____

Cable(s) diameter _____

Cable diameter _____

Strand(s) diameter _____

Nearest street address of attachment	MAPSCO Grid No.	Municipality Grid No.

Applicant

By: _____

Name: _____

Municipality Review

Application Approved? Yes ___ No ___ Conditional (See attached report) ___

Make Ready Work Required? Yes ___ No ___

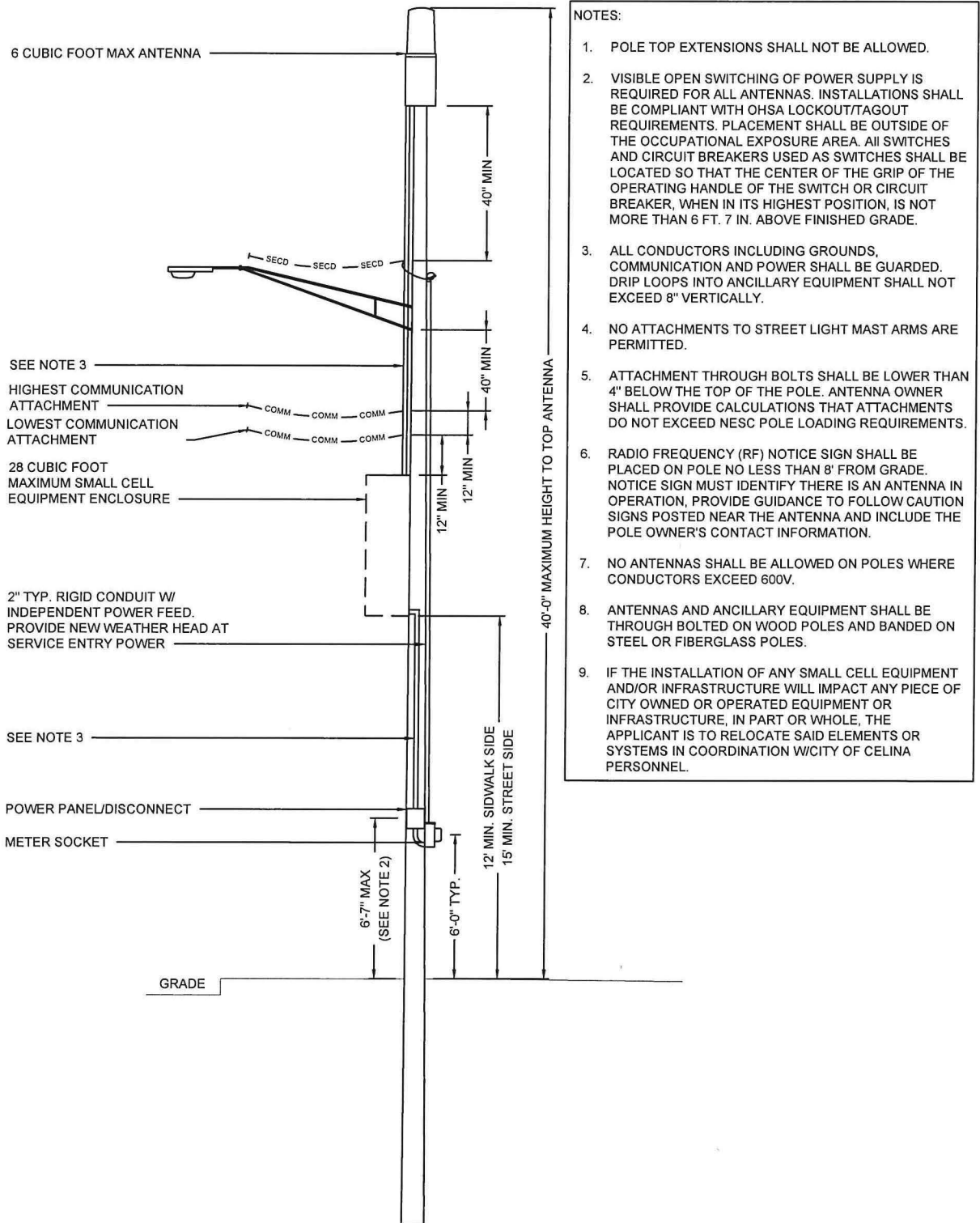
Actual Municipality pole count _____ Actual foreign pole count _____

Actual Install Date _____

Comments/Notes (attach if necessary)

Municipality Inspector (sign)	Phone	Fax	Email	Date

Schedule B - Pole Attachment Specifications



Schedule C - Fee Schedule

Per Pole/Per Year per Linear Foot

<u>YEAR</u>	<u>RATE</u>
2019	\$9.62
2020	\$9.82
2021	\$10.02
2022	\$10.23
2023	\$10.44
2024	\$10.65

The rate for each year after 2024 to increase at an annual rate of 2% over the prior year's rate.