

# ORDINANCE

O-4-2024

BOROUGH OF NORTH CALDWELL, ESSEX COUNTY

## AN ORDINANCE OF THE BOROUGH OF NORTH CALDWELL AUTHORIZING A LICENSE AGREEMENT WITH PSE&G

**WHEREAS**, the Borough of North Caldwell (the "Borough" or "Licensee") desires to enter into an agreement with Public Service Electric & Gas Company ("PSE&G" or "Licensor") for a License and Right of Way; for that certain real property identified as Lot 6 in Block 1100 in the Borough of North Caldwell; and

**WHEREAS**, Licensor is the owner of certain real property identified as Lot 6 in Block 1100 in the Borough of North Caldwell, County of Essex, New Jersey, as shown on the Borough Tax Map (the "Property"); and

**WHEREAS**, Licensee desires to use the License and Right of Way to access and maintain the current existing water tower on Borough property and for the construction and maintenance of a cell tower on Borough property; and

**WHEREAS**, Licensor is willing to allow Licensee, its agents, contractors, employees, successors or assignees access to drive on the Property; and

**WHEREAS**, the Borough and PSE&G have negotiated a License Agreement to use the License and Right of Way to access and maintain the current existing water tower on Borough property and for the construction and maintenance of a cell tower on Borough property; and

**WHEREAS**, the Borough hereby finds and declares that it is in the best interest of the Borough and its residents to receive said License and Right of Way and enter into the License Agreement (the "Agreement") with PSE&G in the form substantially the same as attached hereto as **Exhibit "A"**; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, by the Governing Body of the Borough of North Caldwell, County of Essex, State of New Jersey as follows:

### **Section 1.**

The foregoing recitals are hereby incorporated as if set forth in full herein.

### **Section 2.**

The Mayor in consultation with Borough staff and professionals, shall receive a License, pursuant to the provisions of the License Agreement to be entered into by the Borough and PSE&G, and may execute such Agreement any documents in furtherance of that action.

### **Section 3.**

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this Ordinance shall not be affected thereby and shall remain in full force and effect.

### **Section 4.**

All ordinances or parts of ordinances or resolutions inconsistent or in opposition to the provisions of this Ordinance are hereby repealed in their entirety.

**Section 5.**  
This Ordinance shall take effect as provided by law.

**Introduced:** February 27, 2024  
**Public Hearing:**  
**Adopted:**

Moved By:  
Seconded By:

COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT	COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT
WEINSTEIN					KESSLER				
ATLAS					REES				
FLORIA-CALLORI					TILTON				

ATTESTED:

APPROVED:

\_\_\_\_\_  
TAMI MICHELOTTI, BOROUGH CLERK

\_\_\_\_\_  
JOSHUA RAYMOND, MAYOR

**LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** ("Agreement"), made this 30<sup>th</sup> day of January, 2024, between **PUBLIC SERVICE ELECTRIC AND GAS COMPANY**, a corporation of the State of New Jersey, having its principal office at 80 Park Plaza, Newark, New Jersey 07102, hereinafter called "**LICENSOR**", and **BOROUGH OF NORTH CALDWELL**, having an office at 141 Gould Avenue, North Caldwell, New Jersey 07006, hereinafter called "**LICENSEE**".

**WITNESSETH:**

**WHEREAS**, Licensor is the owner of certain real property identified as Lot 6 in Block 1100 in the Borough of North Caldwell, County of Essex, New Jersey, as shown on that certain Tax Map identified as Exhibit A attached hereto and made a part hereof (the "PSE&G Property"); and

**WHEREAS**, Licensee desires to use the PSE&G Property to access and maintain the current existing water tower (the "Tower") and for the construction and maintenance of a cell tower on Licensee's property in the locations shown on Exhibit B; and

**WHEREAS**, Licensor is willing to allow Licensee, its agents, contractors, employees, successors or assignees access to drive on the PSE&G Property; and

**NOW THEREFORE**, for the purposes set forth above and the recitals and mutual promises contained herein, which the parties acknowledge constitute good and valuable consideration, the parties agree as follows:

1. Licensor hereby grants to Licensee a license (this "License") to use the PSE&G Property in the locations provided herein for the purpose of access to the Tower and for the construction and maintenance of a cell tower on Licensee's property for an indefinite term. This License may be terminated for any or no reason by either party with ninety (90) days written notice.

2. Licensee's parking of vehicles shall comply with the regulations and requirements of every public or governmental body exercising control over the PSE&G Property, and secure and pay for all necessary governmental permits or consents and shall also comply with all governmental regulations all at Licensee's own cost and expense. There shall be no parking within seventy-five feet (75') of Licensor's High Voltage electrical transmission structures.

3. Licensee shall notify One Call Systems, Inc. at 800-272-1000 at least three (3) working days prior to the start of any work should any excavation be necessary on the PSE&G Property. All work and activities being done by the Licensee, its employees, agents, contractors and/or subcontractors or assigns, shall be performed in accordance with all provisions of the New Jersey Statute commonly known as the "High Voltage Proximity Act," codified at N.J.S.A. 34:6-47.1 to 47.9 inclusive, as amended and supplemented, concerning safety precautions to be taken in the proximity of certain electric conductors installed above ground, and in accordance with all rules and regulations promulgated by the Commissioner of Labor and Industry of New Jersey. Such work shall also be in accordance with the provisions of the Federal Occupational Safety and Health Act of 1970 and all applicable rules and regulations issued thereunder, potentially including but not limited to 29 CFR 1926.550 and in accordance and in compliance with the latest edition of the National Electrical Safety Code and applicable building codes.

4. Licensee, for itself, its agents, contractors, employees, successors or assigns, agrees to assume all risks of and liability for and to indemnify, protect and hold harmless and hereby releases Licensor, its successors and assigns, and each of its officers, agents, servants, employees, contractors and subcontractors from and against any and all liability, losses, injuries, deaths, claims, demands, actions, suits, judgments, damages, including damage or injury to real or personal property, including threatened or actual environmental harm, costs, expenses (including reasonable attorneys' fees), civil penalties and fines which, in any way, arise out of or are based on, related to or connected with the activities, work and/or use and occupancy of the PSE&G Property or any violation of any applicable codes, regulations, statutes, ordinances, orders, directives or standards by Licensee or any officer, servant, employee, licensee, invitee, contractor, successor, assignee or agent of Licensee relating to the use and operations of the PSE&G Property, whether or not caused by or due to any actual or alleged negligent act or omission by Licensor. Licensee does release, indemnify and hold harmless Licensor from any and all liability and potential liability under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. Sec. 9601, et seq., the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq., or similar theories of liability which may arise as a result of activities, work and/or use and occupancy of the PSE&G Property relative to the within document. As a part of fulfilling its obligation hereunder, Licensee waives any and all immunity rights or protections created by the Worker's Compensation Act and further agrees that its obligations to defend and indemnify Licensor shall apply to, but not be limited to, actions and other claims brought by Licensee's own employees, agents, contractors or subcontractors. Licensee's duty to indemnify and hold harmless Licensor shall exclude only those instances where the liability, loss, injury, death, damage or harm is due to Licensor's sole negligence.

(a) Licensee further agrees to provide and maintain at its own expense during the term of this Agreement the following insurance:

Commercial General Liability Insurance (occurrence form) providing coverage for premises operation, bodily injury, property damage, contractual liability covering the Licensee's obligations under this Agreement, and broad form property damage coverage with limits of One Million (\$1,000,000) Dollars for each occurrence with an annual aggregate of Two Million (\$2,000,000) Dollars.

Commercial Automobile Liability Insurance, if applicable, providing coverage for all owned, non-owned and hired automobiles used by Licensee, its members and invitees, who may congregate on the PSE&G Property, with a combined single limit of One Million (\$1,000,000) Dollars for each occurrence of bodily injury and property damage.

Excess or Umbrella Liability Insurance with a limit of Four Million (\$4,000,000) Dollars for each occurrence and in the aggregate. This limit applies in excess of the Commercial General Liability and Commercial Automobile Liability insurances set forth above, which are scheduled as primary.

(b) The above-mentioned insurance policies shall be primary to any other insurance or self-insurance maintained by the Licensor; contain the standard cross-liability provisions, where applicable; and provide for a waiver of all rights of subrogation against the Licensor and its insurers.

(c) The above-mentioned insurance policies shall name the Licensor and its successors and assigns as additional insureds.

(d) The above-mentioned policies shall be provided by insurance companies acceptable to Licensor and having ratings of at least "A-/VII" in the latest Best's Key Rating Insurance Guide.

(e) Prior to the commencement of this Agreement, Licensee shall deliver to Licensor evidence of the required insurance coverage in the form of Certificates of Insurance acceptable to Licensor.

(f) The insurance requirements set forth above are to protect the Licensor from claims by third parties, including any employees, members or invitees of Licensee. Said insurance, however, is in no manner to relieve or release Licensee, its members and invitees from, or limit their liability as to any and all obligations assumed under this Agreement.

5. Licensee acknowledges that the PSE&G Property has existing active **high voltage transmission towers**. Licensor use of the PSE&G Property and its facilities shall take precedence and have priority over Licensee's use of the PSE&G Property. If for any reason, Licensor's facilities are negatively affected by the parking of vehicles, Licensor shall notify Licensee of the issue and provide Licensee ten (10) days to remediate said issue. After ten (10) days, Licensor shall have the right to terminate this Agreement immediately and Licensee shall reimburse Licensor any and all costs associated with remediation of the issue.

6. If any parking by Licensee on the PSE&G Property increases the real estate taxes otherwise payable by Licensor, Licensee agrees to pay, upon demand, in addition to the annual charge or compensation herein reserved, such additional taxes.

7. Licensee shall not assign or transfer this Agreement to anyone without the written consent of Licensor, such consent to be given at Licensor's sole discretion, which shall not be unreasonably withheld.

8. Licensee shall not store any hazardous or toxic wastes or substances or any materials of a dangerous or flammable nature, including but not limited to petroleum or petroleum products in any form upon, in or under the PSE&G Property, with the exception of gas or diesel fuel stored in the fuel tanks of any vehicles parked on the PSE&G property.

9. Licensee expressly understands and agrees that any review of Licensee's plans or specifications, comments thereon, or monitoring of Licensee's work shall not constitute or be construed as an approval of such plans or representation or warranty on the part of Licensor as to the adequacy or propriety of such plans or specifications or the methods of work, nor shall Licensor be deemed to have assumed any liability to Licensee or to any third party by reason of such review or monitoring or by virtue of the presence of representatives of Licensor on the PSE&G Property.

10. Licensor assumes no responsibility or liability in connection with any law, ordinance, rule or regulation of any public or governmental body that may limit, affect, regulate or prohibit the use of that area of the PSE&G Property for the purposes aforesaid. Licensor makes no representations or warranties concerning the condition of the PSE&G Property. Licensor shall have no responsibility or liability for any claims, injuries or delays that may arise from any chemical or environmental hazards at or near the PSE&G Property.

11. If any damage to any facility of Licensor results from or in any way arises out of Licensee's work, activities, entry or subsequent use, it shall be repaired promptly by Licensor at the sole cost and expense of Licensee.

12. If Licensee shall fail to keep and perform any of the covenants by it to be kept and performed, then and in any such event this Agreement shall immediately cease and terminate.

13. This Agreement and any subsequent agreement shall be construed in accordance with the laws of the State of New Jersey, and any disputes arising in connection with this Agreement shall be submitted to a court of competent jurisdiction within the State of New Jersey. This Agreement shall not be recorded.

**IN WITNESS WHEREOF**, Licenser has caused this Agreement to be signed by its proper officer or agent thereunto duly authorized and Licensee has signed the same as of the day and year first aforesaid.

**LICENSOR:**

**PUBLIC SERVICE ELECTRIC  
AND GAS COMPANY**

By: PSEG Services Corporation, its Agent

(Seal)

ATTEST:

By:

\_\_\_\_\_  
Roger J. Trudeau  
Manager-Corporate Real Estate Transactions

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LICENSEE:**

**BOROUGH OF NORTH CALDWELL**

(Seal)

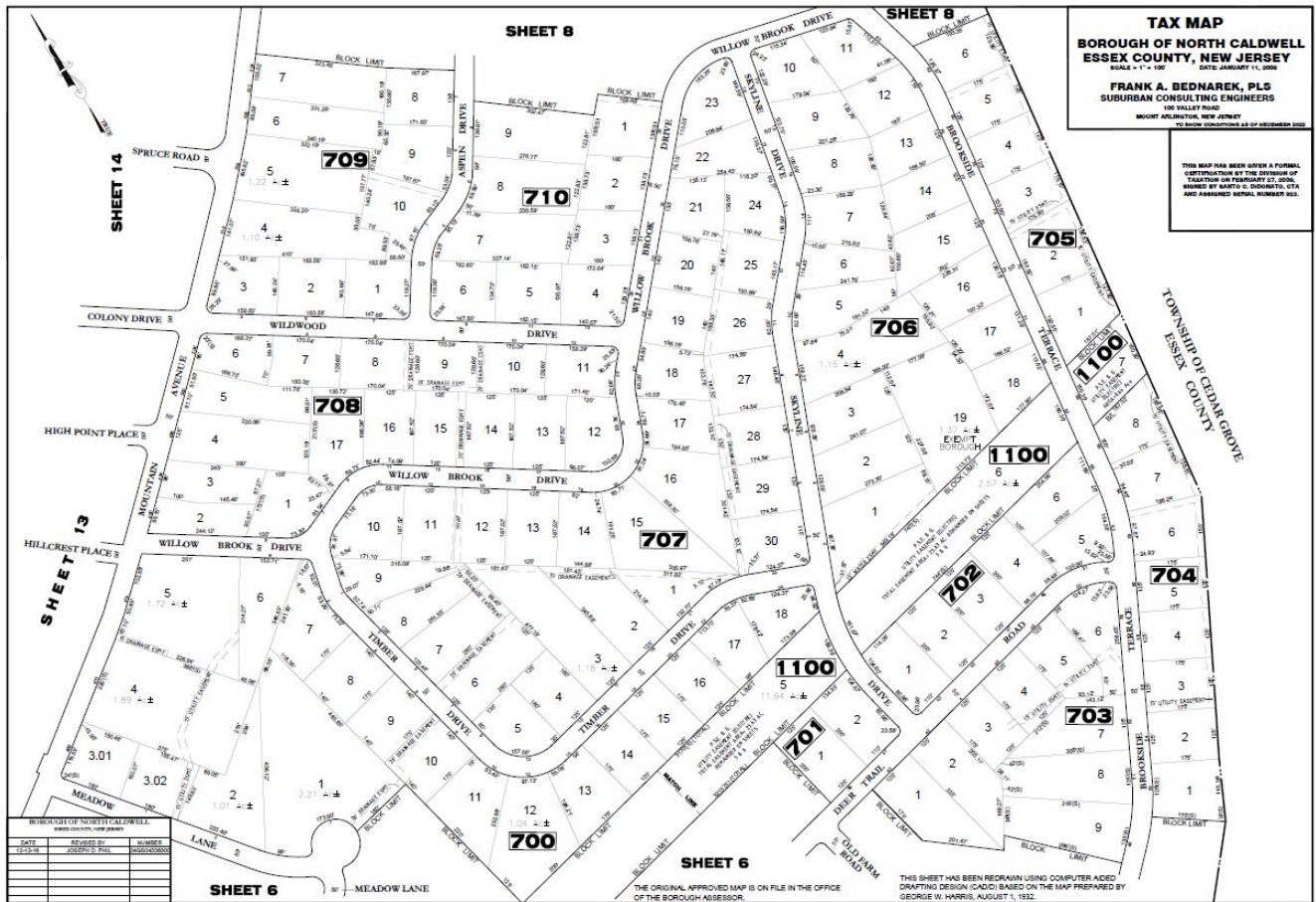
ATTEST:

By:

\_\_\_\_\_  
Joshua Raymond  
Mayor of North Caldwell

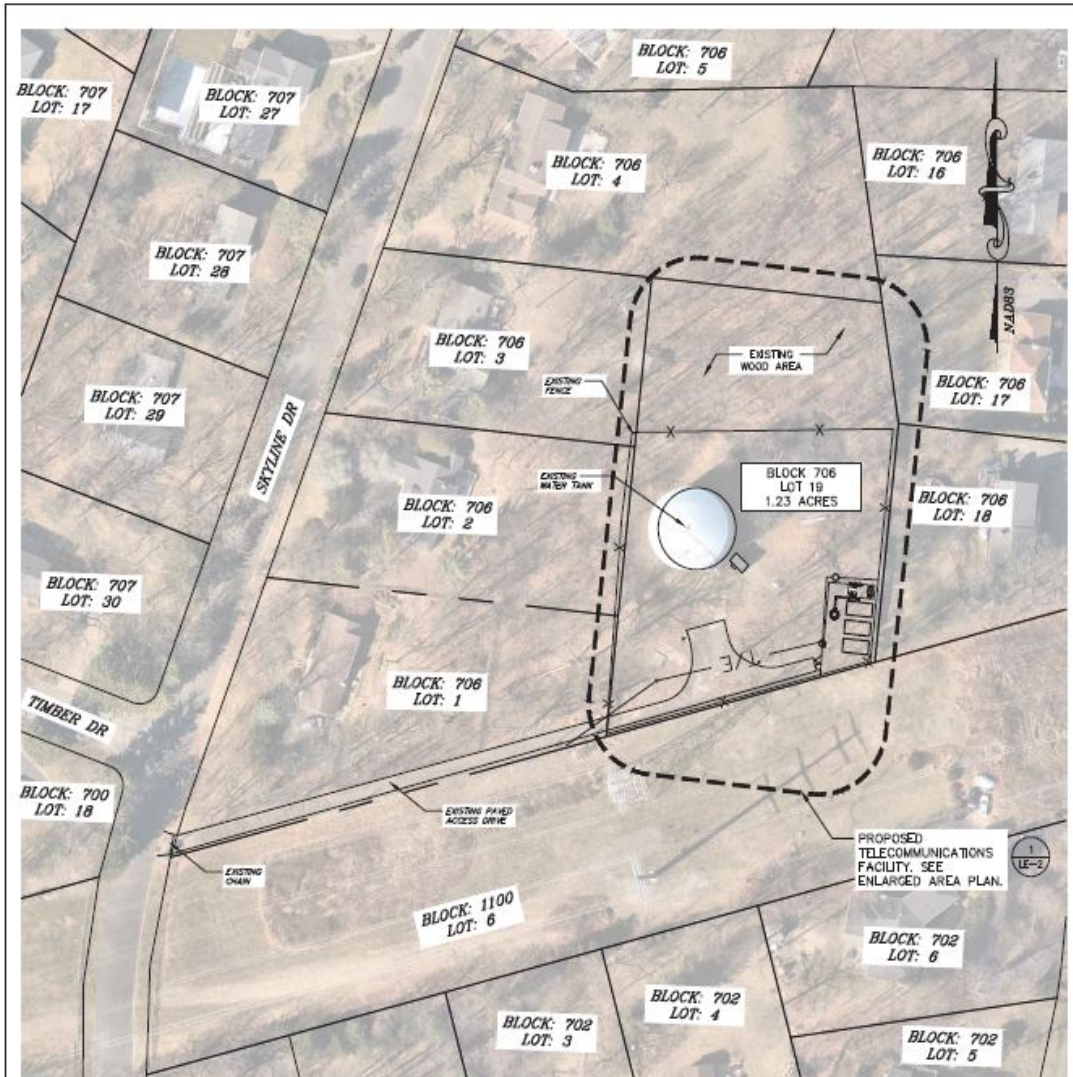
\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# EXHIBIT A






## EXHIBIT B



### NOTES:

1. THIS DRAWING IS BASED ON DISCUSSIONS WHICH TOOK PLACE IN THE FIELD AND ON LIMITED FIELD MEASUREMENTS. THIS PLAN DOES NOT REPRESENT AN ACTUAL FIELD SURVEY.
2. THIS DRAWING IS CONCEPTUAL AND HAS BEEN PREPARED ONLY TO PROMOTE DISCUSSIONS BETWEEN THE LESSOR AND THE LESSEE.
3. DO NOT SCALE THIS DRAWING.

1  
LE-1 SITE MAP  
SCALE: N.T.S.

 <p>FORGE &amp; PARTNERS ARCHITECTS</p> <p>New Jersey • New York • Pennsylvania • Georgia</p>	<p>PROJECT NO. 2442.298</p> <p>DRAWN BY C.J.R.</p> <p>APPROVED/CHECKED BY J.R.C.</p> <p>TURNKEY: TK DESIGN</p>	<p><b>T-MOBILE</b> <b>NORTHEAST LLC</b> a Delaware Limited Liability Company</p> <p>4 SKYLINE WAY, PARSIPPANY, NJ 07054</p> <p><small>THIS DOCUMENT IS THE PROPERTY AND COPYRIGHTED WORK OF T-MOBILE NORTHEAST, LLC. ANY REPLICATION OR USE WITHOUT WRITTEN PERMISSION IS STRICTLY PROHIBITED.</small></p>	<p>DRAWING TITLE: <b>LEASE EXHIBIT SITE MAP</b></p> <p>PROJECT: NJ08985A</p> <p>ADDRESS: 2 SKYLINE DR CALDWELL, NJ 07006</p>	<p>1 07/03/23</p> <p>0 05/16/23</p> <p>REVISION# DATE#</p>	
				<p>SITE ID# <b>NJ08985A</b></p>	
				<p>DRAWING NO. <b>LE-1</b></p>	
				<p>REV# <b>1</b></p>	