

**LICENSING AGREEMENT
FOR
COMMUNICATIONS ATTACHMENTS TO UTILITY FACILITIES**

This Licensing Agreement (“Agreement”) is made by and between the City of Georgetown, a home-rule municipal corporation of the State of Texas (“Utility”) and _____
_____ (hereinafter called “Licensee”) on _____ (the “Effective Date”).

RECITALS

- A. Licensee proposes to install, operate and maintain Communications Facilities and associated equipment on City’s Poles.
- B. City is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee’s Attachments on City’s Poles, subject in all instances to considerations of City’s service requirements, the City of Georgetown’s right-of-way management ordinance, and the primary purpose of the poles, and subject to the provisions of this Agreement.
- C. City may deny issuance of a Permit, on a nondiscriminatory basis, where there is insufficient Capacity for reasons of safety, reliability and generally applicable engineering purposes including the Applicable Standards; or to ensure the health safety and welfare of the public.

In consideration of the mutual covenants, and the terms and the conditions contained in this Agreement, and the rights and obligations created under this Agreement, the parties agree as follows:

I. DEFINITIONS

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within a specific Article or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- A. Applicable Standards: means all applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around electric City Facilities and includes the most current versions of the National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), the Texas Health and Safety Code, Chapter 752, the rules and regulations of the Occupational Safety and Health Act (“OSHA”) and any lawful rules, requirements or orders now in effect. Applicable Standards may also include updated or revised laws, rules, and regulations hereafter issued by City or other authority having jurisdiction.

- B. Application: means the packet of information submitted by Licensee for authorization to place Attachments on Poles under the provisions of this Agreement.
- C. Assigned Space: means space on City's Poles that can be used, as defined by the Applicable Standards, for the attachment or placement of wires, cables and associated equipment for the provision of Communications Service or electric service. The neutral zone or safety space is not considered Assigned Space.
- D. Attaching Entity: means any public or private entity that attaches to City's Poles to provide Communications Service pursuant to a license agreement with City.
- E. Attachment(s): means Licensee's Communications Facilities that are placed on City's Poles or Overlashed onto an existing Attachment.
- F. Cable Service: means the provision of one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service by a cable system.
- G. Capacity: means the ability of a Pole to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.
- H. City Facilities: means all personal property and real property owned or controlled by City, including Poles.
- I. City Network Hardware: means City equipment used in the wireless transmission of data to networks that are necessary for the connectivity, communication, operations, and management of City-owned and operated critical infrastructure.
- J. Climbing Space: means that portion of a Pole's surface and surrounding space that is free from encumbrances to enable City employees and contractors to safely climb, access and work on City Facilities and equipment.
- K. Common Space: means space on City's Poles that is not used for the placement of wires or cables but which jointly benefits all users of the Poles by supporting the underlying structure. Common Space shall include that portion of the Pole beneath ground level up to the lowest place on the Pole at which a telecommunications circuit may be attached.
- L. Communications Facilities: means Attachments, including associated network equipment, cables, wire or cable facilities, including but not limited to fiber optic, optical fiber amplifier, Micro Network Nodes, copper and/or coaxial cables or wires, utilized to provide Communications Service. Unless otherwise specified, Communications Facilities does not include wireless network equipment including but not limited to wireless antennas, receivers, radios, amplifiers, repeaters, receivers or transceivers.
- M. Communications Service: means the provision of Telecommunications Service, Cable Service or other lawful communications services over wire or cable facilities utilizing Attachments to City's Poles.

- N. Days: means calendar days unless otherwise specified.
- O. Joint User: means any entity which owns poles that are jointly used by City and to which City has extended, or in the future may extend, privileges to jointly use City's Poles.
- P. Licensee: means Millennium Telcom, LLC d/b/a OneSource Communications and its authorized successors and assigns.
- Q. Licensee's Affiliate: means an entity that owns or controls Licensee, an entity that is owned by or controlled by Licensee, or an entity that is under common ownership or control with Licensee.
- R. Make-Ready Work: means all work City determines is required to accommodate the Licensee's Communications Facilities and/or to comply with all Applicable Standards. Make-Ready Work includes, but is not limited to, rearrangement, relocation and/or transfer of existing Attachments, inspections, engineering work, permitting work, tree trimming, Pole strengthening, Pole replacement and construction, and Pole removal and disposal, all in accordance with City's current construction and engineering standards.
- S. Micro Network Node: means a network node (as defined in Tex. Local Gov't Code § 284.002(12)) that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has exterior antenna, if any, not longer than 11 inches.
- T. Occupancy: means the use or specific reservation of Assigned Space for Attachments on the same City Pole.
- U. Other Licensee: means a Joint User or any entity, other than the Licensee, to which City has extended, or in the future extends, a license to attach Communications Facilities to City Poles.
- V. Overlash: means to place an additional wire or cable Communications Facility onto an existing Attachment owned by the Licensee.
- W. Pedestals: means above ground housings, usually constructed of metal, which are used to enclose a cable splice and/or provide a service wire connection point.
- X. Permit: means City's written authorization for Licensee to make or to maintain Attachments to specific City Poles pursuant to the requirements of this Agreement.
- Y. Pole: means a pole owned or controlled by City that is capable of supporting Attachments for Communications Services.
- Z. Pre-Permit Survey: means all work or operations required by Applicable Standards or the City to determine the Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole. Such work includes, but is not limited to, field inspection, loading calculations and administrative processing. The Pre-Permit Survey shall be coordinated with City and include Licensee's professional engineer.

- AA. Post-Construction Inspection: means the inspection required by City to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Permit.
- BB. Public Right-of-Way: means, for purposes of this Agreement only, the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or City easement in which the City has an interest. The term does not include: (1) a private easement; or (2) the airwaves above a right-of-way with regard to wireless communications.
- . Reserved Space: means designated space on a Pole that the City has reserved, pursuant to the City's development plan, that reasonably and specifically projects a need for that space for the provision of core electric service, including moving the neutral as part of converting phases, space for the future attachment of internal communications lines owned by the City, or installation of transformer(s).
- . Riser: means metallic or plastic encasement materials placed vertically on the Pole to guide and protect communications wires and cables.
- EE. Service Drop: means the last span that is installed to provide service to an individual customer(s).
- FF. Tag: means to place distinct markers on wires and cables, coded by color or other means specified by City that will readily identify the type of Attachment and its owner.
- GG. Telecommunications Service: means the offering of telecommunications for a fee, directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

II. SCOPE OF AGREEMENT

- A. Subject to the terms of this Agreement, City hereby grants Licensee a revocable, non-assignable, and nonexclusive license authorizing Licensee to install and maintain Attachments to City's Poles.
- B. Licensee and City agree to be bound by all provisions of this Agreement and the Permit(s) issued pursuant to this Agreement.
- C. City is under no obligation to modify or replace a Pole to accommodate Licensee's request for Attachment. City will issue a Permit(s) to Licensee only when City reasonably determines, in its sole judgment, that (i) City has sufficient Capacity to accommodate a requested Attachment, (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.
- D. Access to Assigned Space on City Poles will be made available to Licensee pursuant to this Agreement. No access shall be permitted by City to Reserved Space. The Attachments

previously made by Licensee before the Effective Date of this Agreement shall be deemed authorized and have been made in “Assigned Space” as defined herein.

- E. No use, however lengthy, of any of City’s Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of the City Facilities. After issuance of any Permit, Licensee shall be and remain a mere licensee. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of City’s rights to the City Facilities.
- F. Nothing in this Agreement shall be construed as granting Licensee any right to attach Licensee’s Communications Facilities to any specific Pole or to compel City to grant Licensee the right to attach to any specific Pole. City specifically reserves the right to deny access to Poles on which City Network Hardware is attached to the extent allowed by law.
- G. This Agreement does not in any way limit City’s right to locate, operate, maintain or remove its Poles in the manner that will best enable City to fulfill its service requirements or the City’s rights to protect health, safety, and welfare.
- H. Licensee is obligated to obtain all necessary certification, permitting, and franchising from federal, state and local authorities prior to making any Attachments, including any necessary additional easements, right of way permits or other legal rights to utilize private property.
- I. Nothing in this Agreement shall be construed to require City to install, retain, extend or maintain any Pole for use by the Licensee when such Pole is not needed for City’s own service requirements.
- J. Nothing in this Agreement shall limit, restrict, or prohibit City from fulfilling any agreement or arrangement regarding Poles into which City has previously entered, or may enter in the future, with Joint Users and Other Licensees not parties to this Agreement, including, but not limited to, agreements or arrangements for the removal of lines or relocating overhead facilities to underground.
- K. This Agreement is limited to the uses specifically authorized in this Agreement and any other use shall be considered a material breach of this Agreement. Nothing in this Agreement shall be construed to require City to allow Licensee to use City’s Facilities or Poles after the termination of this Agreement
- L. This Agreement shall only apply to Poles associated with the distribution of electric power and not to any City Facilities associated with the generation or transmission of electric power.

III. FEES AND CHARGES

- A. Licensee shall pay City the fees and charges specified in Appendix A, as applicable. City may reasonably change the fees and charges set forth in Appendix A annually, provided charges do not conflict with statutory obligations regarding such charges, in which case the

charges shall be pursuant to the applicable statute. The Annual City Pole Attachment Fee per pole shall not exceed the maximum amount the City may lawfully charge under applicable state and federal law, rules and regulations in effect from time to time. City shall provide Licensee with at least ninety (90) days prior written notice of a change of fees and charges-

- B. Overlashes are considered a separate Attachment but are not subject to Annual City Pole Attachment fee set forth in Appendix A-
- C. By executing this Agreement, Licensee acknowledges that the amount of actual damages incurred by City for Licensee's Unauthorized Attachment and/or Failure to Transfer/Rearrange/Relocation/Remove Communications Facilities will be difficult or impossible to ascertain, and that the amount of the fees specified on Appendix A is a reasonable approximation of actual damages intended to compensate City for such damages. The assessment of fees for Licensee's Unauthorized Attachment or Failure to Transfer/Remove Communications Facilities is intended to be separate and apart from City's right to enforce the provisions of any LOC or Bond required under this Agreement and is intended to be in addition to any other rights or remedies City may have at law or in equity.
- D. Irrespective of the date on which an Attachment is actually made, all applicable fees and charges shall be calculated and payable for the entire year in which a Permit for such Attachment is issued under this Agreement. Once paid, the fees and charges are not refundable.
- E. City shall invoice Licensee for the City Pole Attachment Fee annually. City will submit an invoice to Licensee for the annual rental period by September 1 of each year. The initial annual rental period shall commence on the Effective Date of this Agreement and end on September 30. Each subsequent annual rental period shall commence on the following October 1 and conclude on September 30 of the subsequent year. The invoice shall include the total number of City's Poles on which Licensee was issued and/or holds a Permit for Attachment during such annual rental period, including any previously authorized Attachments.
- F. Licensee shall pay invoices no later than forty-five (45) days after Licensee's receipt of an invoice. Payments received by City later than said forty-five (45) day period shall be charged interest in accordance with Chapter 2251, Texas Government Code. If Licensee shall in good faith dispute any portion of an invoice, then Licensee shall provide City written notice of the dispute within forty-five (45) days after Licensee's receipt of the invoice. Payment disputes shall be resolved in compliance with the provisions of Chapter 2251, Texas Government Code.
- G. Licensee shall submit an annual inventory to City listing the number of Poles to which Licensee has Attachments and the locations of all Attachments ("Attachment Inventory"). City provides the essential fields to be provided in the annual inventories in Appendix C. The initial Attachment Inventory shall be prepared by Licensee and reviewed jointly with City to establish Licensee's baseline Pole Attachment count. An

Attachment Inventory shall be effective from October 1 of each year and shall be submitted by Licensee to City no later than August 1 of each year. City reserves the right to compare the information contained on the Attachment Inventory to any actual field inspection or survey conducted mutually. Licensee shall be charged the Unauthorized Attachment Fee specified in Appendix A for Attachments that are not properly identified in the Attachment Inventory. In the event that Licensee fails to submit an Attachment Inventory, Licensee shall pay City, in addition to the Annual Pole Attachment Fee, all actual costs associated with City's performance of an Attachment Inventory of Licensee's Attachments. All forms of inventory shall be referenced in Appendix C.

- H. When this Agreement requires Licensee to pay for work done or contracted by City, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overheads. City shall bill its services based upon set fees determined in accordance with City's cost accounting systems used for recording capital and expense activities.
- I. City requires Licensee to pay any and all estimated costs, expenses, fees, and charges in advance. If actual costs exceed estimated costs by 100% or more, City will invoice Licensee for the overage, and Licensee shall pay such additional invoiced amount within forty-five (45) days, as provided herein.
- J. Licensee shall provide a letter of credit ("LOC") or surety bond ("Bond") to City. The issuing financial institution or surety, and the LOC or Bond form, shall be approved by City. The LOC or Bond shall be in the greater amount of (1) \$25,000, or (2) one year's estimated total Annual Pole Attachment Fees and Permit Fees. Licensee shall submit the LOC or Bond with the executed Agreement. The LOC or Bond must guarantee Licensee's performance of all obligations under this Agreement and Licensee's payment of all sums that may become due to City under this Agreement by reason of the construction, operation and maintenance or removal of Licensee's Communications Facilities on City's Poles. The LOC or Bond must be renewed and submitted annually to City on or before thirty (30) days before each anniversary date of this Agreement, and the term of each renewal of the LOC or Bond must be for a period of one (1) year. Licensee agrees to maintain the LOC or Bond in full force and effect during the entire term of this Agreement and until City is fully reimbursed for all costs and expenses due under this Agreement. No more than once annually, City may require a change in the amount of the LOC or Bond upon thirty (30) days written notice to Licensee, and Licensee agrees to provide a LOC or Bond in such new amount within thirty (30) days after receiving notice. The amount of the LOC or Bond does not operate as a limitation upon obligations or liability of the Licensee under this Agreement.
- K. Nonpayment of any undisputed amount due under this Agreement shall constitute a material default of this Agreement.

IV. SPECIFICATIONS

- A. When a Permit is issued pursuant to this Agreement, Licensee's Communications Facilities shall be installed and maintained in accordance with the City's requirements and specifications, including any installation and maintenance requirements of the Applicable

Standards. All of Licensee's Communications Facilities must comply with all Applicable Standards. Licensee shall be responsible for any tree trimming and other vegetation management necessary in the communications space/grade for the safe and reliable installation, use, and maintenance of its Attachments, subject to and in conformance with the Applicable Standards. Licensee shall not be responsible for clearing vegetation around poles and above the communications space/grade. Except as set forth in Section IX.A of this Agreement, the City shall in no way be responsible for such activities, the costs thereof, or any fees, fines, or penalties assessed by any governmental entity due to Licensee's failure to comply with the Applicable Standards.

- B. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in compliance with all Applicable Standards. Notwithstanding the foregoing, Licensee shall not be required to incur any cost or expense attributable to the correction of a violation of the Applicable Standards by any other party, including City. Non-compliant Attachments and their remediation are addressed in Section XII.D.
- C. After the Effective Date of this Agreement, Licensee shall Tag all of its Communications Facilities in accordance with the City's requirements and specifications and/or applicable federal, state and local regulations upon installation. Licensee shall Tag the pre-existing Attachments installed prior to the Effective Date of this Agreement after the Effective Date of this Agreement. Failure to Tag will be considered a violation of the Applicable Standards. Licensee shall Tag prior authorized Attachments and shall immediately replace any Tags that are missing, improper or incorrect, at any time such Attachments are encountered. City is not liable for any injuries or damages caused by or in connection with missing Tags or otherwise improperly labeled Poles.
- D. Licensee's Communications Facilities shall not interfere with the use of City's Poles by City or with the authorized use of such Poles by any Joint User or Other Licensee who have placed their attachments in accordance with City's requirements and Applicable Standards. Licensee's Communications Facilities shall not interfere with the operation of any City Facilities.

V. PRIVATE AND REGULATORY COMPLIANCE

- A. Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Communications Facilities on public and/or private property before it occupies any portion of City's Poles. City retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations under this Article include, but are not limited to, the obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all associated costs.
- B. LICENSEE SHALL DEFEND, INDEMNIFY AND REIMBURSE CITY FOR ALL LOSS AND EXPENSE, INCLUDING ATTORNEYS' FEES, THAT CITY MAY INCUR AS A RESULT OF CLAIMS BY GOVERNMENTAL BODIES, OWNERS OF PRIVATE

PROPERTY, OR OTHER PERSONS, THAT LICENSEE DOES NOT HAVE SUFFICIENT RIGHTS OR AUTHORITY TO ATTACH LICENSEE'S COMMUNICATIONS FACILITIES ON CITY'S POLES. CITY SHALL GIVE LICENSEE PROMPT WRITTEN NOTICE OF THE MAKING OF ANY SUCH CLAIM, AND/OR THE COMMENCEMENT OF ANY LITIGATION OR OTHER PROCEEDING INCLUDING SUCH CLAIM.

- C. No Permit granted under this Agreement shall extend to any Pole on which the attachment of Licensee's Communications Facilities would result in a forfeiture of City's rights. Any Permit which covers Attachments that would result in forfeiture of City's rights is invalid. If any of Licensee's Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Communications Facilities upon receipt of written notice from the City. City will perform such removal at Licensee's expense after the expiration of sixty (60) days from Licensee's receipt of the written notice. Notwithstanding the foregoing, in the event Licensee is challenging the removal of its facilities and has received a court order that allows Licensee to remain on the Poles during such challenge, Licensee shall defend, indemnify and reimburse City for all loss and expense, including attorney's fees, that City may incur as a result of Licensee remaining on the poles during such challenge.
- D. Consent by City to Licensee's construction or maintenance of any Attachments shall not be deemed consent, authorization or acknowledgment that Licensee has the necessary authority to construct or maintain any such Attachments.

VI. PERMITS AND MAKE-READY WORK

- A. In order for Permits to be issued authorizing Attachments, the following events must occur:
 - 1. Licensee must sign and deliver to City this Licensing Agreement for Communications Attachments to City Facilities.
 - 2. Licensee must submit an Application for specific Poles on which Licensee requests authority to place new Attachments.
 - i. The Application must be accompanied by: (a) a completed Pre-Permit Survey, also referred to as a Pole Loading Analysis, as set forth in Appendix B; and (b) an Application Fee in the amount set forth on Appendix A. The Pole Loading Analysis will be used by City to determine if any Make-Ready Work will be required prior to the installation of the Attachment.
 - ii. If the Licensee wants the City to perform the Pole Loading Analysis, as described in Appendix B, the Licensee will submit an additional fee for that task with its application for a permit in the amount shown on Appendix A. If the Licensee provides a Pole Loading Analysis with its application for a permit, Licensee will pay the Pole Loading Analysis review fee as shown on Appendix A.

3. If the Pole Loading Analysis/Pre-Permit Survey indicates that Make-Ready Work will be required prior to installation of the Attachment, then upon receipt from Licensee of the Make-Ready Work Engineering Fee as set forth on Appendix A, City will undertake the Make-Ready Work Engineering to develop the engineering design and construction cost estimate for construction of the Make-Ready Work.
 4. If the Pole Loading Analysis/Pre-Permit Survey indicates that no Make-Ready Work is required prior to installation of an Attachment, City will so notify Licensee, and will issue the Permit for the requested Attachment.
 5. Upon completion of the Make-Ready Work Engineering, City will provide Licensee with the engineer's design and construction cost estimate for undertaking the Make-Ready Work ("Make-Ready Work Estimate").
 6. Upon payment by Licensee of the Make-Ready Work Estimate, City will undertake such Make-Ready Work. The ordering of the construction materials is undertaken only after the Make-Ready Estimate is paid in full.
 7. Upon completion of the Make-Ready Work, City will issue the Permit to Licensee.
 8. Licensee shall obtain all necessary certification, permitting, and franchising from federal, state, and local authorities prior to making any Attachments, including any necessary additional easements, right-of-way permits, or other legal rights to utilize private property.
 9. Licensee shall notify City of completion of Attachment installation Licensee will submit a Post-Construction Inspection Fee, as provided on Appendix A.
- B. Licensee shall not install any Attachments, including Overlashing, on any Pole, or materially modify the Communications Facilities on any Pole, without first applying for and obtaining a Permit as provided herein and as set forth in Appendix B. Authorized Attachments installed prior to the Effective Date of this Agreement shall be grandfathered with respect to Permitting but shall be subject to payment of the Annual City Pole Attachment Fee. Pre-existing Attachments shall be included and identified in Licensee's Attachment Inventory.
- C. The Pole Loading Analysis shall be conducted by a qualified and experienced professional engineer in accordance with City's requirements and Applicable Standards. The professional engineer's qualifications must include experience performing work on communications attachments to electric City poles.
- D. As part of the Permit Application Process, and at Licensee's sole expense, Licensee must submit detailed plans for each Attachment. City's acceptance of the submitted design documents does not relieve Licensee and its engineer of full responsibility and liability for any errors and/or omissions in the engineering analysis.

- E. As soon as practicable, but no later than thirty (30) days after the receipt by City of a complete Permit Application, including the completed Pole Loading Analysis/Pre-Permit Survey, City will complete its review of the Permit Application and make a preliminary determination to grant or deny Licensee's Permit Application subject to completion of any necessary Make-Ready Work. If City performs the Pre-Permit Survey, it shall complete its review no later than forty-five (45) days following receipt of all required information.
- F. City will provide Licensee the Make-Ready Work Estimate within forty-five (45) days after receipt of the Make-Ready Work Engineering Fee from Licensee. Make-Ready Work Estimates will include costs related to the modification or replacement of the Pole and for the costs associated with the transfer or rearrangement of any other Attaching Entity's facilities. Licensee shall be responsible for reaching an agreement with each other Attaching Entity concerning the allocation of costs for the relocation or rearrangement of the existing Attachments. City shall not be obligated in any way to enforce or administer Licensee's agreements with other Attaching Entities regarding responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's facilities but is entitled to look solely to Licensee for payment of such all costs hereunder. Each Attaching Entity shall cooperate with Licensee in determining the cost, and process, of rearrangement, relocation and/or removal of their respective facilities.
- G. If Make-Ready Work is done to accommodate Licensee's Communications Facilities, the work will commence after Licensee has accepted the proposed Make-Ready Work and paid the Make-Ready Work Estimate. In the event Licensee requests that the Make-Ready Work be performed on a priority basis or outside of City's normal work hours, and City agrees to accommodate the request, Licensee agrees to pay any resulting increased costs. Under no circumstances shall City be required to perform Make-Ready Work or other work for Licensee before other scheduled City work or City service restoration.
- H. Within three (3) business days after completion of the Make-Ready Work, City will issue the Permit which shall serve as authorization for Licensee to make the Attachment(s).
- I. Licensee shall provide written notice to City when the Attachments authorized by the Permit are complete and Licensee will remit payment to City for City's Post-Construction Inspection in the amount set forth in Appendix A. If such inspection identifies any deficiencies with Applicable Standards, City will notify Licensee of same. The provisions of Section XII.D shall apply to the correction of the deficiencies.
- J. Licensee shall make the Attachments authorized by the Permit within ninety (90) days from the issuance of a Permit. If Licensee does not make the Attachments within the ninety (90) days, and there is no evidence of ongoing construction to make the Attachments, City reserves the right to cancel the Permit upon thirty (30) days written notice to Licensee.
- K. If Licensee intends to Overlash an existing Licensee Attachment between existing Poles, Licensee shall before such installation commence the permitting process established in Section VI. A. Any installation, including Overlapping without prior written notice to City or contrary to City's determination as provided herein shall be deemed an Unauthorized Attachment under the provisions of this Agreement.

VII. TERMINATION OF PERMITS

- A. Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Communications Facilities on public or private property at the location of the particular Pole covered by the Permit. Licensee shall, at its sole expense, remove the Communications Facilities, including all Overlashing, from the affected Pole(s) within sixty (60) days of notice by the City. If Licensee fails to remove the Communications Facilities from the affected Pole(s) within sixty (60) days after the City issued notice, City shall have the right to remove the Communications Facilities at Licensee's expense. Communications Facilities that Licensee does not remove within sixty (60) days shall constitute an unauthorized Attachment subject to the Unauthorized Attachment Fee included in Appendix A and the process defined in Appendix D.
- B. Any Permit issued pursuant to this Agreement shall automatically terminate for an Attachment that becomes nonfunctional and no longer fit for service ("Nonfunctional Attachment"). Licensee shall, at its sole expense, remove any Nonfunctional Attachment, or part of a Nonfunctional Attachment, within sixty (60) days of the Attachment becoming nonfunctional upon notice of the City. If Licensee fails to remove a Nonfunctional Attachment within sixty (60) days after City notice, City shall have the right to remove the Nonfunctional Attachment at Licensee's expense. A Nonfunctional Attachment that Licensee fails to remove as required shall be subject to a Failure to Remove Facilities Fee included in Appendix A. Licensee shall provide City notice of Nonfunctional Attachments in the Attachment Inventory.
- C. Licensee may at any time surrender any Permit for Attachment of Communications Facilities to City's Poles. Licensee shall, at its sole expense, remove the Communications Facilities from the affected Pole(s) within sixty (60) days of Licensee's notice of surrender of a Permit. If Licensee fails to remove the Communications Facilities from the affected Pole(s) within sixty (60) days of notice, City shall have the right to remove the Communications Facilities at Licensee's expense. Communications Facilities that Licensee does not remove within sixty (60) days shall constitute an unauthorized Attachment subject to the Unauthorized Attachment Fee included in Appendix A.

VIII. RELOCATION OF COMMUNICATIONS FACILITIES

- A. If City determines that a relocation of Licensee's Communications Facilities is necessary, Licensee shall complete the relocation within sixty (60) days after receiving written notice from City, provided City or another Attaching Entity has not prevented Licensee from completing such work. Licensee is also responsible for relocation of Facilities that are Overlashed onto Licensee's Attachments. Licensee shall notify City in writing within ten (10) days after the transfer of Licensee's Communications Facilities has been completed.
- B. If Licensee fails to relocate Licensee's Communications Facilities within sixty (60) days after receiving written notice from City, City shall have the right to relocate, or to have Licensee's Communications Facilities relocated, at Licensee's expense. In addition, Licensee shall be subject to the Failure to Transfer Facilities Fee included in Appendix A.

- C. In the event that a Failure to Transfer fee is issued after the sixty (60) day period of transferal notice expires, the Licensee will have thirty (30) days to relocate the Facility and becomes subject to the Failure to Transfer fee specified in Appendix A. If the facility is not relocated in the (30) thirty-day time frame, the Attachment becomes an Unauthorized Attachment and will be subject to the Unauthorized Attachment Fee specified in Appendix A. Subsequently, the City may, at its discretion, relocate the Facilities at the Licensee's expense.
- D. City shall not be responsible or liable for damage to Licensee's Communications Facilities except to the extent provided in this Agreement.

IX. FACILITIES MODIFICATIONS AND/OR REPLACEMENTS

- A. The costs for any rearrangement, relocation, transfer and removal of Licensee's Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location) shall be allocated to City, Licensee or other Attaching Entity on the following basis:
 - 1. If City intends to modify or replace a Pole solely for City's own requirements, including repair or replacement of damaged Poles, City shall be responsible for the costs related to the modification or replacement of the Pole. Licensee, however, shall be responsible for all costs associated with the rearrangement or transfer of Licensee's Communications Facilities. City shall provide Licensee with sixty (60) days written notice prior to making the proposed modification or alteration in order to provide Licensee a reasonable opportunity to modify or add to its Communications Facilities. This notice requirement shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Communications Facilities after such notice, with City's written permission, the Licensee shall bear the total incremental costs incurred by City, as reasonably determined by City, in making the space on the Poles accessible to Licensee.
 - 2. If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment requested by an Attaching Entity other than City or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring Licensee's Communications Facilities. Licensee shall cooperate with the Attaching Entity to determine the costs of rearranging or transferring Licensee's Communications Facilities.
 - 3. If the modification of Attachments or replacement of a Pole is necessary for reasons unrelated to the use of the Pole by Attaching Entities (such as storm, accident, deterioration) each Attaching Entity shall pay the associated costs and expenses of rearranging or transferring its own Attachments and Communications Facilities.
- B. If City receives Permit Applications for the same Pole from two or more prospective licensees within (60) days of one another, and accommodating their respective requests

would require replacement or modification of the Pole or rearrangements of existing Attachments, City will allocate the applicable costs associated with such modification or replacement among the prospective licensees.

- C. Any strengthening, reinforcing or stabilizing of Poles, including the use of guying, to accommodate Licensee's Attachments shall be provided by and at the expense of Licensee and to the satisfaction of the City.
- D. No provision of this Agreement shall be construed to require City to relocate its Attachments or modify/replace its Poles for the benefit of Licensee, provided that any denial by City for modification of the Pole is based on nondiscriminatory standards of general applicability.

X. ABANDONMENT OR REMOVAL OF CITY FACILITIES

- A. If City desires at any time to abandon or remove any City Facilities to which Licensee's Communications Facilities are attached, City shall give Licensee notice in writing at least sixty (60) days prior to the date on which City intends to abandon or remove such City Facilities. The notice shall indicate if City is offering Licensee an option to purchase any of the City Facilities and the price for which the City Facilities are offered for sale. If, following the expiration of the sixty (60) day period, Licensee has not removed and/or transferred all of Licensee's Communications Facilities, and has not entered into an agreement to purchase the City Facilities pursuant to Paragraph B, City shall have the right to remove and/or transfer Licensee's Communications Facilities at Licensee's expense.
- B. Should City desire to abandon any City Facilities, City, in its sole discretion, may grant Licensee the option of purchasing City Facilities. Licensee must notify City in writing within thirty (30) days of the date of receipt of City's notice of abandonment that Licensee desires to purchase the abandoned City Facilities. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access such City Facilities. Should Licensee fail to secure the necessary governmental approvals, or should City and Licensee fail to enter into an agreement for Licensee to purchase the City Facilities prior to the end of the sixty (60) day notice of abandonment period, Licensee must remove its Attachments within ninety (90) days of City's notice of abandonment. If, following the expiration of the ninety (90) day period, Licensee has not removed and/or transferred all of Licensee's Communications Facilities, City shall have the right to remove and/or transfer Licensee's Communications Facilities at Licensee's expense. City is under no obligation to sell Poles or City Facilities that City intends to remove or abandon.
- C. If any City Facilities must be removed by reason of any federal, state, county, municipal or other governmental requirement, including, but not limited, to underground conversion, or the requirement of a property owner, Licensee shall remove its Communications Facilities from the affected City Facilities, at Licensee's expense, within sixty (60) days of receipt of notice from City. If Licensee does not remove its Communications Facilities

within the sixty (60) day period, City shall have the right to remove and/or transfer Licensee's Communications Facilities at Licensee's expense and is subject to the Unauthorized Attachment Fee.

XI. REMOVAL OF LICENSEE COMMUNICATIONS FACILITIES

- A. If City determines that removal of Licensee's Communications Facilities from City's Poles is necessary in accordance with the terms of this Agreement, Licensee shall remove the Communications Facilities at its own expense within sixty (60) days of receipt of written notice. Licensee shall notify City in writing within ten (10) days after the removal of Licensee's Communications Facilities has been completed. No Permit is required for removal, but Licensee shall notify and coordinate removal activity with City, and Licensee shall obtain all necessary permitting from federal, state, and local authorities prior to removing any Attachments, including any necessary additional easements, right-of-way permits, or other legal rights to City private property. It is Licensee's obligation to adjust the Pole Attachment count for removed Attachments. No refund of any fees or charges will be made upon removal.
- B. If Licensee fails to remove its Communications Facilities within sixty (60) days as required in the applicable section of this Agreement, City shall have the right to remove, or have Licensee's Communications Facilities shall be subject to process specified in Section VIII.C and in Appendix D and ultimately removed, at Licensee's expense. In addition, Licensee shall be subject to the Failure to Remove Facilities Fee included in Appendix A.
- C. City shall not be responsible or liable for damage to Licensee's Communications Facilities except to the extent provided in this Agreement.

XII. INSPECTION OF LICENSEE'S FACILITIES

- A. City reserves the right to inspect Licensee's Communications Facilities at any time. Licensee shall reimburse City for the actual cost of an inspection of each individual pole after construction, otherwise known as a Post-Construction Inspection Fee, as specified in Appendix A. Licensee shall also reimburse the City for the actual cost of inspection for each instance of inspection in which the Licensee's Attachment is found in violation of Applicable Standards.
- B. City shall give Licensee at least ninety (90) days advance written notice of any system wide inspection as set forth in Appendix C, except in those instances where safety considerations justify the need for inspection without delay. Licensee shall have the right to be present at and observe any such inspections, at Licensee's sole expense.
- C. City's inspections, or the failure to do so, shall not operate to impose upon City any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability for Licensee's Communications Facilities, whether assumed under this Agreement or otherwise existing.
- D. City shall provide written notice to Licensee if an inspection reveals that all, or any part, of Licensee's Communications Facilities are installed, used or maintained in violation of

this Agreement. Licensee agrees to either provide an explanation refuting responsibility for or bring its Communications Facilities into full compliance with the Applicable Standards and this Agreement within fifteen (15) days of receipt of written notice from City, or within such other period of time that may be mutually agreed, unless it is not possible to correct such conditions within thirty (30) days, in which case, Licensee and City shall mutually agree upon a longer time period. If Licensee does not refute responsibility for or correct the violation(s) within thirty (30) days (or other mutually agreed period of time) as required, City may correct the conditions at Licensee's expense and is subject to an Unauthorized Attachment Fee. When City reasonably believes that the violation(s) poses an immediate threat to the safety of any person, interferes with the performance of City's service obligations, or poses an immediate threat to the physical integrity of City's Facilities, City may perform work and/or take action as reasonably necessary to eliminate such immediate threat without first giving written notice to Licensee. City will advise Licensee in writing of the work performed or the action taken, including photographic evidence substantiating the violation and its cause. Licensee shall pay City for all costs City incurs in performing the work or taking the action, if (i) Licensee does not refute responsibility for or correct the violation(s) within fifteen (15) days (or otherwise mutually agreed period of time) as required; or (ii) if the evidence provided proves conclusively that Licensee's Communication Facilities or workmanship caused the violation; or if (iii) it is finally determined that Licensee's Communication Facilities or workmanship caused the violation.

XIII. UNAUTHORIZED OCCUPANCY OR ACCESS

- A. After the Effective Date of this Agreement and the completion of the Initial Attachment Inventory, if any of Licensee's Communications Facilities, including Overlashing, are found occupying any portion of any of City's Poles for which no Permit has been issued and is in effect, City, without prejudice to its other rights or remedies may assess an Unauthorized Attachment Fee, as specified in Appendix A, from the date of notice to Licensee until a complete Permit application and all required fees, as per Appendix A, have been submitted for the verified unauthorized attachments or until the verified Unauthorized Attachment is removed in the event the Permit is not granted. At City's discretion, City may require the immediate removal of the verified unauthorized attachment, in which event Unauthorized Attachment Fees will continue to accrue and be payable by Licensee until the verified unauthorized attachment is removed. If Licensee persists in not removing the verified Unauthorized Attachment for a period of thirty (30) days after notification by City, or after denial of the Permit application, whichever is appropriate, then City may remove the verified Unauthorized Attachment, without liability to Licensee for any damage caused to such verified Unauthorized Attachment during the removal. If the Licensee wishes to dispute the claims of an Unauthorized Attachment, they may conduct the actions specified in Appendix D.
- B. If Licensee attaches Communications Facilities after submittal of a Permit application but prior to City's final determination on the Permit, such premature attachment shall be deemed to be unauthorized, and the Unauthorized Attachment Fee shall apply from the date of notice by City to Licensee until the Permit is issued by City. If the City determines

to deny the Permit application for such premature attachment, the Unauthorized Attachment Fee shall apply until the attachment is removed.

- C. No act or failure to act by City with regard to unauthorized occupancy or access shall be deemed as ratification of the unauthorized occupancy or access. If any Permit should be subsequently issued, said Permit shall not operate retroactively or constitute a waiver by City of any of its rights or remedies. Licensee shall be subject to all liabilities, obligations and responsibilities for the unauthorized occupancy or access from inception.

XIV. LIABILITY AND INDEMNIFICATION

- A. City reserves the right to maintain and operate its Poles in such manner as will best enable City to fulfill its own service requirements. Licensee agrees to use City's Poles at Licensee's sole risk. City shall exercise reasonable care to avoid damaging Licensee's Communications Facilities and City shall report to Licensee of the occurrence of any such damage caused by City's employees, agents or contractors. Subject to Paragraph C of this Section, City agrees to reimburse Licensee for reasonable costs incurred by the Licensee for the physical repair of Licensee's Communications Facilities damaged by City's gross negligence or willful misconduct.
- B. Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless City and all associated, affiliated, allied and subsidiary entities of City, whether existing now or in the future, and their respective officials, officers, departments, agencies, board members, council members, commissioners, representatives, employees, agents, contractors and attorneys against any and all liability, claims, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by City under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), costs and expenses (including reasonable attorney fees of counsel selected by City and all other costs and expenses of litigation) ("Covered Claims") arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents or contractors, of Licensee's Communications Facilities, except to the extent of City's negligence or willful misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:
 - 1. intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;
 - 2. cost of work performed by City that was necessitated by Licensee's failure to install, maintain, use, transfer or remove Licensee's Communications Facilities as required by this Agreement or from any work this Agreement authorizes City to perform on Licensee's behalf;

3. damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee pursuant to this Agreement; and/or
 4. liabilities incurred as a result of Licensee's violation of any law, rule, or regulation of the United States, State of Texas or any other governmental entity or administrative agency.
- C. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by City of governmental immunity or other provisions of Texas law limiting municipal liability. No indemnification provision contained in this Agreement under which Licensee indemnifies City shall be construed in any way to limit any other indemnification provision contained in this Agreement or Texas law.
- D. City shall give Licensee prompt written notice of the making of any claim or the commencement of any litigation or other proceeding covered by this Article. City's failure to give notice will not relieve Licensee from its obligation to indemnify City unless Licensee is materially prejudiced by the failure of notice.
- E. If City is the prevailing party in a legal action to enforce this Agreement, Licensee shall pay City's reasonable attorney fees, reasonable expert and consultant fees, and all other associated costs and expenses.
- F. UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THE OTHER PARTY OR BY ANY SUBSCRIBER, CUSTOMER OR PURCHASER OF THE OTHER PARTY FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY PROVISION OF INDEMNITY, OR OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY UPON WHICH ANY SUCH CLAIM MAY BE BASED.

XV. DUTIES, RESPONSIBILITIES AND EXCULPATION

- A. Licensee acknowledges and agrees that City does not warrant the condition or safety of City's Facilities, or the premises surrounding the Facilities. Licensee further acknowledges and agrees that it has an obligation to inspect City's Poles and/or premises surrounding the Poles, prior to commencing any work on City's Poles or entering the premises surrounding such Poles. **LICENSEE HEREBY ACKNOWLEDGES THE RISK OF WORKING NEAR OR AROUND ENERGIZED CITY FACILITIES ASSUMES ALL RISKS OF ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF THE POLES AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN, OR SURROUNDING THE POLES.**

- B. By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.
- C. **CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO CITY'S FACILITIES OR POLES, ALL OF WHICH WARRANTIES ARE HEREBY DISCLAIMED. CITY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- D. The Parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, employees, contractors and subcontractors will work near electrically energized lines, transformers, or other City Facilities, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except in an emergency endangering life, grave personal injury, or property. Licensee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of City, and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors and subcontractors with competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner, and shall require its contractors and other agents to comply with all applicable federal, state and local laws, rules and regulations. Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of City's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.
- E. In the event City de-energizes any equipment or line at Licensee's request and for Licensee's benefit and convenience in performing a particular segment of any work, Licensee shall reimburse City in full for all costs and expenses incurred to comply with Licensee's request for de-energization of any equipment or line.
- F. In the event that Licensee shall cause an interruption of service by damaging or interfering with any equipment of City, Licensee at its expense shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting from the interruption and shall notify City immediately. To the extent permitted by Texas law, Licensee shall be liable for all direct costs resulting from such damage and any necessary repairs.
- G. Licensee further warrants that it is apprised of, conscious of, and understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on City's Poles by Licensee's employees, agents, contractors or subcontractors, and accepts it as its duty

and sole responsibility to notify and inform Licensee's employees, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

XVI. INSURANCE

- A. At all times during the term of this Agreement, Licensee shall keep in force and effect the following described insurance coverage:
1. Worker's Compensation and Employers' Liability Insurance. Statutory worker's compensation benefits and employers' liability insurance with a limit of liability no less than that required by Texas law for each accident at the time of the application of this provision. This policy shall include a waiver of subrogation in favor of City. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
 2. Commercial General Liability Insurance. Provide coverage for, but not limited to: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities (commonly known as XCU coverage). Limits of liability of \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence.
 3. Automobile Liability Insurance. Business automobile coverage for all owned, hired and non-owned private passenger autos and commercial vehicles. Limits of liability of \$1,000,000 each accident.
 4. Umbrella Excess Liability Insurance. Additional coverage in excess of other required insurance. Limits of liability of \$4,000,000 each occurrence, \$4,000,000 aggregate. Licensee may use any combination of primary and excess to meet required total limits.
 5. Property Insurance. Each party will be responsible for maintaining its own facilities, buildings and other improvements, including all equipment, fixtures, and City structures, fencing or support systems that may be placed on, within or around City Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.
- B. Each insurer must be authorized to do business under the laws of the State of Texas and have an "A" or better rating in Best's Guide. Licensee's required insurance will be primary. Licensee may self-insure the obligations contained herein.
- C. Prior to the execution of this Agreement and upon renewal of each insurance policy during the term of this Agreement, Licensee will furnish City with a Certificate of Insurance evidencing the insurance coverage required by this Agreement. The Certificate of

Insurance shall reference this Agreement and workers' compensation and property insurance waivers of subrogation required by this Agreement. City, its council members, board members, commissioners, agencies, officers, employees and representatives (collectively, "Additional Insureds") shall be included as Additional Insureds as respects this Agreement under each required insurance policy, except worker's compensation, which shall be so stated on the Certificate of Insurance. Each policy, other than worker's compensation, shall be written on an occurrence and not on a claims-made basis. Licensee shall defend, indemnify and hold harmless City and Additional Insureds from and against payment of any deductible and payment of any premium on any insurance policy required by this Agreement. City shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of any required insurance that is not replaced during the term of this Agreement.

- D. The limits of liability may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences which could materially increase or decrease City's or Licensee's exposure to risk.
- E. No insurance coverage required to be obtained and maintained by Licensee or its contractors or subcontractors shall contain provisions: (1) that exclude coverage of liability arising from excavating, collapse, or underground work, (2) that exclude coverage for injuries to City's employees or agents, and (3) that exclude coverage of liability for injuries or damages caused by Licensee's contractors or contractor's employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.
- F. Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program and for any deficiencies in the amounts of insurance maintained.
- G. Licensee shall require reasonable and sufficient insurance coverage and limits from any of its contractors and subcontractors while performing work hereunder.

XVII. AUTHORIZATION NOT EXCLUSIVE

City shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement, by contract or otherwise, to use City Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

XVIII. NON-ASSIGNMENTS OF RIGHTS

- A. This License Agreement and associated Permits may not be assigned, transferred, sold, or disposed of by Licensee without the prior written consent of City expressed by action of the City Council of the City of Georgetown, which will not be unreasonably withheld.

- B. No assignment or transfer shall be allowed unless and until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement, and such written assumption is provided to City. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants or conditions of this Agreement without the written consent to the release of Licensee by City.
- C. Licensee shall not sub-license or lease its rights under this Agreement to an unaffiliated third party, including but not limited to allowing third parties to place Attachments on City's Poles, directly or through Overlapping, or by placing Attachments on City's Poles for the benefit of such third parties, without City's prior written consent. Any such action shall constitute a material breach of this Agreement.

XIX. FAILURE TO ENFORCE

Failure of City or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement, or to give notice, or to declare this Agreement or any authorization granted under this Agreement terminated, shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

XX. TERMINATION OF AGREEMENT AND/OR PERMITS

- A. Licensee shall be in default:
 - 1. When Licensee fails to comply with any term or condition of this Agreement, including but not limited to the following circumstances:
 - a. Construction, operation or maintenance of Licensee's Communications Facilities in violation of law or in aid of any unlawful act or undertaking; or
 - b. Construction, operation or maintenance of Licensee's Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority; or
 - c. Construction, operation or maintenance of Licensee's Communications Facilities without the required insurance coverage; or
 - d. Licensee's Communications Facilities are found occupying any portion of any of City's Poles for which no required Permit has been issued and is in effect; or
 - e. Failure of the Licensee to timely cure a violation of any Applicable Standard or provision of this Agreement; or
 - f. Nonpayment of any undisputed amount due under this Agreement.

- B. City will notify Licensee in writing of any default condition(s) pursuant to Section 20(A) above. Licensee shall take immediate corrective action to eliminate any such condition(s) within thirty (30) days of receipt of written notice and shall confirm in writing to City that the noticed condition(s) has ceased or been corrected. If Licensee fails to discontinue or correct such condition(s) and/or fails to give the required confirmation within thirty (30) days as required, City may take any remedy available under this Agreement, including immediately terminating this Agreement or any Permit issued pursuant to this Agreement if such default pertains to all or substantially all of Licensee's Attachments or the Permit related to such default. However, no default will be deemed to exist if Licensee has commenced to cure the alleged default condition(s) within such thirty (30) day period, and thereafter such efforts are prosecuted to completion within reasonable diligence. Delay in curing an alleged default condition(s) will be excused if due to causes beyond the reasonable control of Licensee.
- C. Either party may terminate this Agreement by giving to the other party at least six (6) months written notice of intention to terminate the Agreement provided, however, that Licensee is current in all payments required hereunder. Termination by Licensee does not extinguish its continuing obligations to remove its Attachments as outlined in Section XX.D of this Agreement. Licensee shall continue to be obligated to pay rental fees to City for each Attachment until removed.
- D. Upon termination of this Agreement Licensee shall remove its Communications Facilities within sixty (60) days after termination, at Licensee's sole expense. If Licensee fails to remove the Communications Facilities within sixty (60) days of termination, City shall have the right to remove the Communications Facilities at Licensee's expense.
- E. Licensee shall be liable for and pay all fees and charges pursuant to terms of this Agreement to City until Licensee's Communications Facilities are actually removed.
- F. After the termination of this Agreement, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's Communications Facilities as provided for in this Agreement or applicable law.

XXI. TERM OF AGREEMENT

This Agreement shall have an Initial Term of five (5) years from and after the Effective Date hereof. Unless written notice is given by either party hereto to the other, not less than one year prior to the expiration of the Initial Term, that the notifying party chooses to not renew the Agreement beyond the Initial Term, the Agreement shall automatically renew for an additional period of five (5) years from such expiration date. Thereafter the Agreement shall automatically renew for successive five-year periods unless either party gives written notice of termination not less than one (1) year before the expiration of any renewal period.

XXII. AMENDING AGREEMENT

The terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of City and Licensee.

XXIII. NOTICE

- A. When notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when mailed by certified mail, return receipt requested, with postage prepaid and properly addressed as follows:

If to Utility, at:

City Manager
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627

If to Licensee, at:

With a Copy to:

or to such other address as either party may give the other party in writing.

- B. Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where Utility can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to Utility's concerns and requests. Failure to maintain an emergency contact as required shall subject Licensee to a penalty of \$100 per incident, and shall eliminate Utility's liability to Licensee for any actions that Utility deems reasonably necessary given the specific circumstances

XXIV. ENTIRE AGREEMENT

This Agreement supersedes all previous agreements, whether written or oral, between Utility and Licensee for placement and maintenance of Licensee's Communications Facilities on Utility's Poles within the geographical operating area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed in this Agreement.

XXV. SEVERABILITY

If any provision or portion of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of the Agreement to either party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the parties that the Agreement be administered as if not containing the invalid provision.

XXVI. GOVERNING LAW

The validity, performance and all matters relating to the effect of this Agreement and any amendment of this Agreement shall be governed by the laws (without reference to choice of law) of the State of Texas.

XXVII. INCORPORATION OF RECITALS AND APPENDICES

The Recitals stated above and Appendix A to this Agreement are incorporated into and constitute part of this Agreement.

XXVIII. FORCE MAJEURE

In the event that either Utility or Licensee is prevented or delayed from complying with this Agreement by reason of acts of nature (i.e. fire, flood, earthquake), wars, civil commotion, acts of terrorism or vandalism, embargo, acts of the government in its sovereign capacity, material changes of law or regulations, unavailability of equipment or material, or any other such cause not attributable to the negligence or fault of the party delayed or prevented in performing as required by this Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the party shall remove or overcome such inability as soon as reasonably possible under the circumstances. Utility shall not impose any charges on Licensee stemming solely from Licensee's inability to perform required acts during a period of unavoidable delay provided that Licensee presents Utility with written notice of the *force majeure* within a reasonable time after occurrence of the event or cause relied on. This provision shall not operate to excuse Licensee from the timely payment of any fees or charges due Utility under this Agreement.

XXIX. CHANGE OF LAW

The terms, conditions, and rates of this Agreement were composed in order to effectuate the legal requirements and/or parameters in effect at the time the Agreement was produced. In the event that any of the terms, conditions, and/or rates herein, or any of the laws or regulations that were the basis or rationale for such terms, conditions, and/or rates in this Agreement are invalidated, modified, or stayed by any state or federal regulatory or legislative bodies or courts of competent jurisdiction, the parties shall meet in good faith to jointly determine whether this Agreement should be modified. All terms in the existing Agreement shall remain in effect while the parties meet in good faith to jointly determine whether the Agreement should be modified and during any such modification process.

XXX. DISPUTE RESOLUTION PROCESS

The parties agree prior to commencing any action at law or in equity, to first make good faith efforts to meet and confer to attempt to settle any dispute arising out of or relating to this Agreement through upper management escalation. Either party may seek to have the dispute escalated to upper management of each party upon notice initiated by either party and thereafter, the upper management shall each exchange relevant information in good faith and attempt to resolve the dispute for a period not to exceed forty-five (45) days from the date that either party first initiated the upper management escalation process. After the expiration of the forty-five (45) day escalation period, any remaining dispute shall be resolved in a mediation process at a mutually agreeable location in the venue where Licensee's Attachments are located. In the event that such dispute is not resolved within ninety (90) calendar days following the first day of mediation or such later date as mutually agreed to, either party may initiate litigation. The foregoing obligations to escalate to upper management and mediate are an essential and material part of this Agreement and ones that are legally binding upon them; in case of a failure of either party to follow the

foregoing dispute resolution process, the other may seek specific enforcement of such obligation in any courts having jurisdiction of this Agreement. Each party waives its right to a trial by jury on disputes arising from this Agreement.

[signatures on the following page]

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate.

ATTEST:

CITY OF GEORGETOWN

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

ATTEST:

LICENSEE

BY: _____

BY: _____

NAME: _____

NAME:

TITLE:

STATE OF TEXAS

§
§
§

ACKNOWLEDGMENT

COUNTY OF WILLIAMSON

This instrument was acknowledged before me on this the ____ day of _____, ____ by _____, a person known to me in his capacity as _____ of the City of Georgetown, on behalf of the City of Georgetown.

Notary Public – State of Texas

STATE OF TEXAS

§
§
§

ACKNOWLEDGMENT

COUNTY OF _____

This instrument was acknowledged before me on this the ____ day of _____, ____ by _____, a person known to me in his capacity as _____ of _____, on behalf of _____.

Notary Public – State of Texas

APPENDIX A

ATTACHMENT FEES AND CHARGES

All listed fees subject to annual adjustment

Effective Date: December 2021

One-time Permit Fee	\$25.00/Attachment
Pre-Permit Survey Fees	
Pole Loading Analysis (PLA) review fee <i>(Performed by Licensee; Includes application review, route analysis survey and GIS coordination)</i>	\$25/Attachment; \$250 Minimum
Additional Pole Loading Analysis (PLA) Review Fee <i>(after the initial review, if necessary)</i>	\$15/ Attachment
Pole Loading Analysis <i>(Performed by City)</i>	\$120/Attachment; Minimum \$1,200
Make-Ready Engineering Fee for Utility Poles <i>(non-refundable; includes attachment engineering and design for make-ready)</i>	\$350/Pole; Minimum \$1,200
Make-Ready Construction Costs	As per Make-Ready Estimate
Post Construction Inspection Fee	\$20/Attachment
Annual Utility Pole Attachment Fee <i>(multiplied per Attachment per Utility Pole; Does not include overlashed attachments)</i>	\$16.50
Unauthorized Attachment Fee <i>(multiplied per day, per Attachment, until complete Permit application is submitted for Attachment)</i>	\$45.00
Failure to Transfer/Remove Facilities Fee <i>(multiplied per day, per pole, after notice period expires)</i>	\$15.00

APPENDIX B

CITY OF GEORGETOWN POLE ATTACHMENT PRE-PERMIT SURVEY REQUIREMENTS AND PROCESS

A. OVERVIEW OF PERMITTING PROCESS

The following is a summary of the process for obtaining a Pole Attachment Permit:

Step 1: Applicant must have a Licensing Agreement in place with City of Georgetown.

Step 2: Applicant submits a permit application along with the required fee and a Pre-Permit Survey application form.

Step 3: Completion of Pole Loading Analysis (PLA) and payment of required fee.

Step 4: Review of PLA by Utility; identification of any Make-Ready Work.

Step 5: If no Make-Ready Work is required, Permit is approved. If Utility Make-Ready Work is required, Licensee requests Utility to proceed with non-refundable Make-Ready engineering and pays the required fee.

Step 6: Upon receipt of Make-Ready Engineering fee from Licensee, Utility provides estimate of Make-Ready Construction Costs, which include labor, material for installing, retiring, disposal, and any permitting costs.

Step 7: When Make-Ready Construction Cost estimate is paid in full by Licensee, Utility procures required materials and schedule the construction activities.

Step 8: Upon completion of Make-Ready Work, Licensee may install the Attachments and pay required inspection fee.

Step 9: When installation of the Attachments is complete, Utility performs a Post Construction Inspection before the final approval of Licensee's Attachments.

B. PRE-PERMIT SURVEY AND APPLICATION

Licensee must execute the Licensing Agreement for Attachment to Utility Facilities before submitting a Pre-Permit Survey Application. The information required on the Pre-Permit Survey Application includes:

1. A comprehensive G.I.S. map of the Licensee's requested route that is easily identified. On the map, the Utility poles on which the Licensee requests authority to place an Attachment shall be clearly marked with each Utility pole number noted.
2. The following data for each Pole proposed for Attachments:
 - a. Utility Pole ID number;
 - b. A digital photo of each Pole;

- c. Pole brand information (height, class, year);
 - d. Span lengths on either side of the Pole and the Pole's line angle;
 - e. A height measurement at the Pole relative to the grade of existing foreign attachments, the existing Utility neutral, the existing Utility equipment, and the existing Pole top;
 - f. A height measurement of existing wires mid-span relative to existing grade; and
 - g. Proposed attachment heights relative to existing grade for the new Licensee communication line on each pole and the resulting mid-span clearances for the new Licensee communication line.
3. Proposed construction standards for all cable to be attached to the Utility's Poles, including wire characteristics and wire tensions.
 4. If applicable, detailed design information for the Network Node and all associated equipment proposed to be installed on, or adjacent to, the Pole, including dimensions and weight.
 5. A Radio Frequency Safety Compliance Certification report, or similar, for each proposed Network Node installation, that also identifies operating frequencies.

C. POLE LOADING ANALYSIS AND ASSESSMENT

1. Utility requires a Pole Loading Analysis (PLA) on all Utility Poles proposed for attachment. The PLA shall be performed by a professional engineer engaged by Licensee or the Utility.
2. The PLA design criteria includes the following:
 - a. Utility's construction standards require that the Licensee use the following Loading District and Construction Grades to obtain PLA engineering results:
 - i. NESC Grade C construction with medium wind and ice loading requirements;
 - ii. Poles that cross over controlled access highways or railroads shall use NESC Grade B construction with medium wind and ice loading requirements.
 - b. Utility's construction standards require that the electrical wire tensions will be set per NESC Section 261.H1.b at 35% of the rated breaking strength of the conductor (Maximum Design Tension), unless otherwise required for reduced tension spans.
 - c. Utility's construction standards require that the total usage of the Pole based on the available ground line moment capacity of the Pole shall not be greater than 90% after all loadings have been applied to the existing or new Utility Pole. Any Pole exceeding 90% capacity shall be replaced with a Pole that will pass the 90% usage capacity requirement.
3. The PLA data required for each Pole attached to by the Licensee shall include an engineering analysis and report concerning the NESC strength and clearances of each Pole (PLA report). Each PLA report shall have a statement signed off by a Professional Engineer licensed in the State of Texas verifying the adequacy with the new foreign attachment.
4. Utility will review the PLA submitted by the Licensee and return any questions or comments that Utility may have concerning the PLA, or will give its approval with no

comments. The Licensee shall adequately answer all questions and concerns Utility has prior to Utility giving final approval. Should Utility not approve of the responses by the Licensee, additional reviews shall be required.

5. Once the PLA is performed, Utility shall provide the Licensee with a complete project listing of Poles (by pole number) that require Make-Ready Work. Make-Ready Work identified by Utility may include work to be completed by the Licensee.

D. DEFINITION OF UTILITY AND LICENSEE MAKE-READY

1. Utility Make-Ready Work is any work required on the Utility facilities or on the Pole, including but not limited to changing a Pole to a taller Pole, changing an existing Pole to a stronger Pole, or adding a new Pole mid-span. Utility Make-Ready Work is required if the PLA analysis and report discover any NESC violations when the Licensee attaches to the Utility Pole. Utility Make-Ready Work shall be based on the Utility's current construction and engineering standards. For example, a wooden Pole may not be replaced by another wooden Pole if the Utility does not currently use wooden Poles.
2. Licensee Make-Ready Work is any work required on the existing foreign attachments on the Pole in order for the Licensee to attach to the Utility Pole. This work includes, but is not limited to, moving the existing foreign attachments up or down on the Pole. Licensee Make-Ready Work is required if the PLA analysis and report discover an NESC clearance violation either existing or as a result of the new Licensee contact.
3. Both Utility Make-Ready Work and Licensee Make-Ready Work are discussed further in the remaining process steps.

E. UTILITY ELECTRIC SYSTEM MAKE-READY DESIGN AND CONSTRUCTION

Once the Pre-Permit Survey Application and PLA have been completed and approved and all appropriate fees have been paid, Utility will undertake the Make-Ready Engineering task. Make-Ready Engineering is only required if the PLA so indicates. The following steps are required of the Licensee and Utility in order to undertake the Make-Ready Engineering task:

1. Based on the PLA report, the Utility will develop a Pole-by-Pole spreadsheet indicating the recommended make-ready actions required by Utility at each Pole. Licensee pays non-refundable Make-Ready Engineering Fee. Once the fees are paid, the Utility will provide a cost estimate of the Utility Make-Ready Work.
2. Based on the Make-Ready Engineering analysis, the Utility shall determine the Utility Make-Ready Construction Cost estimate for labor and material costs, including the cost of ultimate removal and disposal of the old Poles and any permitting costs (such as TxDOT and Railroad Commission permits), as required, and provide this information to the Licensee.
4. Upon approval by the Licensee, and payment of Make-Ready Construction Costs identified in the cost estimate, Utility shall begin ordering materials and schedule construction for the Utility Make-Ready Work.
5. Utility will inform the Licensee once the construction is complete.

6. If actual Make-Ready Construction Costs exceed the estimate by 100% or more, Utility will invoice the Licensee for such additional costs incurred by Utility.

F. LICENSEE MAKE-READY

Once the Utility has notified the Licensee that the PLA has been approved and has completed any required Utility Make-Ready Work, the Licensee can begin its Make-Ready Work as required. The Licensee is responsible for supplying the make-ready engineering, materials, and labor in order to relocate existing attachments (other than Utility electric) on the existing Poles or place them on the new Poles based on the PLA report.

The following steps are required of the Licensee and Utility in order to perform the Licensee make-ready design:

1. The Licensee shall prepare a pole-by-pole spreadsheet indicating actions required by each existing foreign utility (telephone, CATV, and other incumbent attachments) at each Pole, as required for the Licensee Make-Ready based on the PLA report.
2. The Licensee shall relocate or reattach the existing contacts (other than Utility electric) by using its own contractor. If the Licensee does not have an agreement with the foreign utility attached to the existing pole, the Licensee shall coordinate with the foreign utility in order to move their contacts on the existing pole or reattach their contacts to a new pole(s).
3. The Licensee will oversee the construction of its contractor.
4. The Licensee shall prepare and submit any required TxDOT and Railroad Commission permits. The Licensee shall be responsible for the actual cost of the fees required by TxDOT or the Railroad Commission.
5. Utility will inspect all work performed on Utility Poles.

G. POST MAKE-READY AND LICENSEE CONSTRUCTION

Once Utility has inspected and approved all make-ready construction, Utility will issue the attachment permit to the Licensee to begin its work as approved by Utility.

H. POST CONSTRUCTION INSPECTION AND CLOSE-OUT

The following steps are required of the Licensee and Utility once the Licensee notifies Utility that the Attachment work has been completed:

1. Utility will perform a Post-Construction Inspection on all Poles within 10 days using the design specifications provided by the Licensee.
2. Utility will provide the punch list to the Licensee. The Licensee will have 30 days to make any necessary corrections to the items listed on the punch list. Any work performed by the Licensee or its contractor that deviates from the construction specifications shall be corrected by the Licensee at the Licensee's expense.
3. Once the Licensee states the punch list has been completed, a final inspection will be performed by Utility. If all items on the punch list have been corrected, Utility will sign off on the completed project.

4. If the punch list is not completed within 30 days, Utility will make the corrections listed on the punch list and invoice the Licensee for all of the labor, materials, and administrative tasks used for this work.
5. Utility will maintain a master file on all applications that includes make-ready spreadsheets, inspection reports, and field data per company by application.
6. Utility will document an inspection of the Licensee's work, which will capture all of the pole contacts. Utility will maintain a master data set and provide documentation to the Utility's Electric Engineering Department for annual invoice processing for Attachments.

UTILITY/CITY OF GEORGETOWN

LICENSEE

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

APPENDIX C

CITY OF GEORGETOWN POLE ATTACHMENT INVENTORY AND INSPECTION STANDARDS AND PROCEDURES

1. INSPECTIONS

- a. Utility, at its discretion and in addition to any inspections undertaken during Make-Ready Work and Post-Construction Inspections, may engage in two other specific types of inspections or Inventory of Attachments. These include:
 1. routine visual inspections of Attachments, that the Utility may conduct at any time employees may conduct at any time
 2. a formal Inventory that the Utility may conduct no more frequently than once every five (5) years, in which the Utility shall undertake with its own personnel or with outside contractors, subject to a formal competitive bidding basis, the cost of which shall be borne by all Licensees on a pro-rata basis.
- b. Utility expects a Licensee to install, maintain, and inspect its Attachments, including Overlashing, to ensure these facilities are in good order and safe to the general public at all times. If any inspection reveals that any Attaching Entity's Attachments, Overlashings, with the Applicable Engineering Standards in effect at the time the Application was approved, the Utility shall provide written notice and the Attaching Entity shall make any and all corrections to bring the Attachment into compliance with the Applicable Engineering Standards. If the severity of the non-compliance warrants, the Utility will assess, and the Licensee or Attaching Entity will be subject and required to pay an Unauthorized Attachment Fee as described in Appendix A.
- c. If it is found that the Licensee or Attaching Entity has made an Attachment, without a Permit, the Licensee shall pay an Unauthorized Attachment Fee, as specified in Appendix A, in addition to applicable Application Fees, Pre-Permit Survey Fees, and Make-Ready Charges, if any.
- d. Notwithstanding any other provisions contained in these Standards, no revisions to the Applicable Engineering Standards shall be retroactive to existing permitted Attachments, Overlashings, unless required by city, county, state, or federal law.
- e. All Attachments, including Overlashing, must comply with Applicable Engineering Standards in effect at the time of installation or modification of Attachment.

2. ROUTINE VISUAL INSPECTIONS AND INVENTORY

Any qualified Utility employee may conduct a routine inspection and/or inventory of an Attaching Entity's Attachments. In practice, these routine inspections and/or inventory may be undertaken and completed as part of the daily work assignment of a Utility employee. The cost of this work is included in the determination of the Annual Utility Pole Attachment Fee, as described in Appendix A. During a routine visual inspection, Utility employee or

contractor may require a Licensee or its contractors installing an Attachment to supply evidence of a valid Permit or permission from the Utility to access a Utility-owned Pole as applicable. Utility reserves the right to demand the Licensee or its contractor to immediately suspend work on the Attachment should the Licensee or contractor be unable to furnish the valid Permit or other notice of permission for Utility's inspection. If Utility directs the work be suspended, the Licensee or its contractor shall suspend the work in a safe and orderly manner ensuring the suspension of the work will not cause a danger to Utility employees, contractors, or the general public.

3. FORMAL INVENTORY

The Utility may contract with a third-party contractor to conduct a formal Inventory of either all or designated Poles within the Utility service area. The cost of this formal Inventory shall not be included in the calculation of the Annual Utility Pole Attachment Fee. All Licensees shall cooperate and participate in the Inventory. Each Licensee will share the total cost of the Inventory on a pro-rata basis with all other Licensees based on the number of found Attachments, including Overlashing, belonging to each Licensee. For the limited purpose of determining the pro-rata shared costs, the Utility Facilities will count as one (1) Attachment on each Pole. In undertaking this formal Inventory:

- a. Utility shall have sole responsibility for the management, review, and approval of the Inventory of its Poles
- b. Utility shall routinely conduct meetings, communicate in writing, via electronic mail, with all Licensees to discuss the progress and on-going results of the Inventory. Utility will seek to find consensus with the Licensees as to the most effective schedule and methodology of these meetings and communications. Each Licensee shall be expected to cooperate fully with the Utility and/or the third-party contractor conducting the Inventory by assigning a single point of contact to attend project meetings and receive the written communications and to answer any questions either the Utility or the third-party contractor may have concerning the Licensee's Attachments. Licensees shall be given access to the Inventory results and other supporting documentation, including maps, spreadsheets, and other related items.
- c. At the conclusion of the Inventory, the Utility shall provide a written report to each Licensee containing a draft of the final Inventory Attachment count for the Licensee and other documentation necessary to substantiate the third-party contractor's Inventory findings. If the Attaching Entity does not provide a written challenge to the draft Inventory count or results within thirty (30) calendar days of the issuance of the Utility's draft Inventory count, the Inventory count will be deemed correct.
- d. Should a Licensee wish to challenge the results of the draft Inventory report, the Licensee shall, within thirty (30) calendar day of the Utility issuing the draft Inventory report, discussed in the section above, provide the Utility written notice that the Licensee has cause to challenge the results. In this notice, the Licensee shall provide to the Utility all relevant documentation to substantiate its challenge for

review and consideration by the Utility. All costs related to this challenge, including both Utility's and third-party contractor's labor and other expenses required to respond to and resolve the challenge shall be borne by the Licensee challenging the Inventory results. Should multiple Licensees provide notice of their intent to challenge the results, Utility will pro-rate the cost and expenses required to respond to the challenge to the Licensees participating in the challenge. To the extent the Licensee prevails in identifying errors or omissions in the Inventory, the Utility shall be responsible for its own and the third-party contractor costs. The Utility will meet with the Licensee requesting the challenge within ten (10) calendar days of receiving the written notice of challenge to discuss the challenge and attempt to reach agreement and settlement on the Licensee's Attachment count. Utility will issue its final decision in writing as to the resolution of the challenge within fifteen (15) days following this settlement meeting.

- e. Following resolution of all challenges, the Utility shall issue a final Inventory report and shall true-up each Licensee's count to the number of Attachments identified in the final Inventory report including any Unauthorized Attachments. Unauthorized Attachments reported shall incur an Unauthorized Attachment Fee, as provided in Appendix A. Utility shall invoice the applicable Licensee for the Unauthorized Attachments and payment shall be due within forty-five (45) calendar days of Utility's issuance of the invoice. Failure of the Attaching Entity to pay the outstanding invoice timely and in full will result in the suspension of any current pending Applications and the immediate rejection of any future Applications until such payment is received in full.

4. ANNUAL LICENSEE CONDUCTED INVENTORY

Nothing in these Standards prevents a Licensee from performing its own Inventory of its own Attachments which the Utility shall consider in the determination of the Licensee's total annual Attachment count. Before the Utility will consider such inventory, the Licensee shall be required to meet with the Utility and describe the methodology and approach used to conduct the inventory. The cost of such inventory shall be the sole risk and responsibility of the Attaching Entity undertaking the inventory. The Licensee shall provide the Utility with an annual inventory consisting of all Attachments, including Overlapping, by August 1st of every year. The annual inventory is to include, but not limited to, location of attachment, description of attachment, installation date, and associated permit number given by the Utility. The attachment inventory should also note any removed attachments during the year.

APPENDIX D

CITY OF GEORGETOWN STANDARDS AND PROCEDURES FOR UNAUTHORIZED ATTACHEMENTS

A. Inventory-Based Unauthorized Attachment:

If, after the establishment of the Inventory, any Attachments, including Overlashing, belonging to a Licensee that are found to occupy a Pole as applicable, for which the Utility had not previously issued a Permit to the Licensee, or are being utilized to provide services that are not Communications Services; the Utility, without prejudice to its other rights or remedies, will send the Licensee a written Notice of the Unauthorized Attachment. Such notice shall include the specific location of the Pole where the violation is found and the nature of the Unauthorized Attachment. Within thirty (30) calendar days upon receipt of the notice of violation, the Attaching Entity must submit for the Unauthorized Attachment an Application for a Permit, the correct Application Fee if applicable, and the Unauthorized Attachment Fee to the Utility. Should the Licensee fail to comply within the thirty (30) calendar days, the Licensee must remove its Unauthorized Attachment within the subsequent thirty (30) calendar day period. If the Licensee fails to remove the unauthorized facilities, the Utility may remove them without liability and the Licensee shall promptly reimburse the Utility for the expense plus ten percent (10%) of such removal in all cases, no later than forty-five (45) calendar days following the Utility's issuance of invoice.

B. Other Unauthorized Attachments:

Pursuant to Section A above, the Utility, without prejudice to its other rights or remedies, may assess an Unauthorized Attachment Fee, as specified in Appendix A, for each Attachment, including Overlashing, for which either:

1. No Permit has been issued by the Utility, or
2. Where an Attachment received a Permit and it was later found the information provided by the Attaching Entity on the Application was substantially incorrect as specified, as specified in Section XII. D., or
3. Where an Attachment has been significantly modified since the issuance of its initial Permit and such modification has not been approved by the Utility, or
4. An attachment has been recognized by the Utility as a Failure to Remove/Transfer facility for over the thirty (30) day period as specified in Section VIII.C. of the Agreement, or
5. A Permit has been terminated by the Utility Section as specified in Section VII of the Agreement.

The Unauthorized Attachment Fee shall be due and payable irrespective of whether a Permit is subsequently issued to the Attaching Entity for the Unauthorized Attachment.

C. Dispute of Unauthorized Attachments:

In the event that the Licensee deems that the claimed Unauthorized Attachment is not in violation, the Licensee may dispute within fifteen (15) days upon receipt of notice, in which a notice of dispute is provided to the Utility explaining the reason for dispute along with supporting documentation. Within fifteen (15) days upon receipt of dispute, the Utility shall consort with the Licensee, including meeting at the attachment location, if necessary, to determine the status of the attachment. If the attachment is found not in violation, the charged Unauthorized Attachment Fee will be waived. If the attachment is deemed to remain in violation, the Unauthorized Attachment Fee will be charged from when the initial Unauthorized Attachment Notice is sent and subsequently from that moment on until the Attachment is rectified.