

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON APPROVING A SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS AND POLE ATTACHMENT LICENSE AGREEMENT BETWEEN FRONTIER SOUTHWEST, INC. AND THE CITY OF DENTON, AND DIRECTING THE CITY MANAGER AND THE CITY'S ATTORNEYS TO EFFECTUATE AS NECESSARY AND APPROPRIATE THE TERMS OF A SETTLEMENT AGREEMENT AND RELEASE TO EFFECTUATE THIS APPROVAL; PROVIDING FOR THE EXPENDITURE OF FUNDS; AND DECLARING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Council hereby approves the proposed settlement agreement between Frontier Southwest, Inc. and the City of Denton, under terms set forth in the attached Settlement Agreement and Release of Claims attached hereto as Exhibit A and incorporated herein.

SECTION 2. The City Manager and the City's Attorneys are hereby authorized to act on the City's behalf in approving and executing any and all documents necessary or appropriate to effectuate the terms of the settlement, and to take other actions necessary to finalize the settlement.

SECTION 3. The City Manager and the City's Attorneys are hereby authorized to act on the City's behalf in approving and executing any and all documents necessary or appropriate to effectuate the terms of the Pole Attachment License Agreement, and to take other actions necessary or permitted by the Pole Attachment License Agreement, attached hereto as Exhibit B and incorporated herein.

SECTION 4. City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the Pole Attachment License Agreement, if any.

SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2025.

GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn

EXHIBIT “A”

Settlement Agreement and Release

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (this “Settlement Agreement”), dated as of June 27, 2025, is made and entered into by and among (i) the City of Denton, a Texas home-rule municipal corporation (the “City”) and (ii) Frontier Southwest Inc. and its affiliates (“Frontier,” together with the City, each a “Party” and, collectively, the “Parties”).

RECITALS

WHEREAS, on July 25, 1967, the City and General Telephone Company of the Southwest (“Verizon,” n/k/a Frontier Southwest Inc.) entered into that certain Joint-Use Contract (the “1967 Agreement”), which provided for the Parties’ joint use of certain utility poles owned by the City (the “Poles”) with respect to certain telecommunications equipment and network nodes (the “Attachments”); and

WHEREAS, in 2016, Frontier acquired Verizon (the “Verizon Transaction”) and assumed Verizon’s obligations to the City in connection with the Attachments and the 1967 Agreement; and

WHEREAS, from time to time, Frontier, or its predecessors installed telephone and/or telecommunication cables on the Poles, obligating Frontier, or its predecessors, to pay the City certain pole attachment fees under the terms of the 1967 Agreement (the “Pole Attachment Fees”); and

WHEREAS, the City asserts that, at the time of the Verizon Transaction, \$977,446.19 of Pole Attachment Fees were unpaid, as documented by those certain invoices issued to Verizon under account number 9000901 (the “Unpaid Verizon Invoices”), and that Frontier is liable to the City for the Unpaid Verizon Invoices; and

WHEREAS, the City asserts that, following the Verizon Transaction, the City issued certain additional invoices to Frontier under account number 9100152 in the amount of \$472,049.57 for Pole Attachment Fees covering the period up through December 11, 2024, which invoices remain unpaid (the “Unpaid Frontier Invoices,” and together with the Unpaid Verizon Invoices, the “Unpaid Invoices”)¹; and

WHEREAS, on April 14, 2020 (the “Petition Date”), Frontier Communications Corporation and its debtor subsidiaries (collectively, the “Debtors” or the “Reorganized Debtors,” as appropriate) filed petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), commencing the cases styled *In re Frontier Communications Corporation, et al.*, Case No. 20-22476 (the “Chapter 11 Cases”); and

WHEREAS, on or about June 12, 2020, the City filed proofs of claim numbered 1479 and 1500 (the “Proofs of Claim”), asserting general unsecured claims against the Debtors in the

¹ The Unpaid Invoices are summarized on Schedule I attached hereto.

amounts of \$977,445.95 and \$368,055.93, respectively, in connection with certain of the Unpaid Invoices; and

WHEREAS, on August 21, 2020, the Debtors filed their *Fifth Amended Plan of Reorganization of Frontier Communications Corporation and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 984] (as amended and supplemented, the “Plan”),² under which the City’s claims asserted in the Proofs of Claim were classified as Class 11 Claims and provided that Holders of Class 11 Claims would: (i) be paid in full, in cash, if their claim is Allowed; (ii) receive reinstatement of their claim; or (iii) receive other treatment that leaves the claim unimpaired; and

WHEREAS, on August 27, 2020, the Bankruptcy Court entered its *Findings of Fact, Conclusions of Law, and Order Confirming the Fifth Amended Joint Plan of Reorganization of Frontier Communications Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1005] (the “Confirmation Order”) confirming the Plan, and the Effective Date of such Plan occurred on April 30, 2021 [Docket No. 1793]; and

WHEREAS, the Reorganized Debtors did not object to the Proofs of Claims under the terms of the Confirmation Order or the Plan; and

WHEREAS, the City asserts that, as of the date hereof, Frontier is indebted to the City in the aggregate amount of \$1,449,495.76 in connection with the Unpaid Invoices (the “Unpaid Invoice Claim”) and Frontier disputes the amount of the Unpaid Invoice Claim; and

WHEREAS, the City terminated the 1967 Agreement effective June 2004, but the 1967 Agreement provides at Article XIX that “notwithstanding such termination, this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination”; and

WHEREAS, notwithstanding the termination of the 1967 Agreement, the Parties have continued to use the Poles and Attachments in the ordinary course of business subject to the terms of those certain yearly invoices issued by the City to Frontier;

WHEREAS, as of the date hereof, the Parties maintain an ongoing business relationship in connection with the Attachments and Frontier’s use of the Poles and seek to resolve the Unpaid Invoice Claim and enter into a new license agreement; and

WHEREAS, as of the date hereof, the City and Frontier have negotiated a new pole attachment license agreement, the form of which is attached hereto as **Attachment 1**, which supersedes the 1967 Agreement in its entirety (the “New License Agreement”) setting forth the terms and rates to be charged to Frontier for use of the Poles; and

WHEREAS, after an exchange of information and arm’s-length negotiations among the Parties, the Parties have determined that it is in their respective best interests to avoid the cost, expense, and uncertainty of protracted litigation and have determined it to be in the Parties’ best

² Unless otherwise indicated, capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

interest to resolve such disputes related to the Unpaid Invoice Claim among them on the terms set forth herein.

NOW THEREFORE, the Parties, intending to be legally bound and for good and valuable consideration, the receipt of which is hereby acknowledged, agree as follows:

- 1. Recitals.** The Recitals to this Settlement Agreement are incorporated into and made a substantive part hereof.
- 2. Consideration.** In consideration of this Settlement Agreement and the releases set forth herein, within thirty (30) days after all Parties have executed this Settlement Agreement and the New License Agreement, Frontier shall pay to the City the amount of \$931,459.74 (the “Settlement Payment”) pursuant to terms of payment to be provided by the City.
- 3. Effective Date.** This effective date of this Settlement Agreement shall be on the date on which (i) each of the Parties has executed the Settlement Agreement and the New License Agreement and (ii) the City has received the Settlement Payment (the “Effective Date”). The City’s receipt of the Settlement Payment and the Parties’ execution of the New License Agreement are conditions precedent to the effectiveness of this Settlement Agreement.
- 4. Representations and Warranties.**
 - a. The City represents and warrants that it has the authority and has secured the government or other organizational approvals necessary to enter into and be bound by this Settlement Agreement, and to represent that the terms of this Settlement Agreement do not conflict with any other agreements. The individuals signing on behalf of the City are each over the age of 21 and are in all respects competent to enter into and be bound by this Settlement Agreement, and to represent that the terms of this Settlement Agreement do not conflict with any other agreements.
 - b. Frontier represents and warrants that it has the authority and has secured the corporate or other organizational approvals necessary to enter into and be bound by this Settlement Agreement, and to represent that the terms of this Settlement Agreement do not conflict with any other agreements. The individual signing on behalf of Frontier is over the age of 21 and is in all respects competent to enter into and be bound by this Settlement Agreement, and to represent that the terms of this Settlement Agreement do not conflict with any other agreements.
 - c. Each Party represents to the other that this Settlement Agreement constitutes the legal, valid and binding obligation of each Party and is enforceable in accordance with its terms.
 - d. Each Party represents to the other that, except as otherwise set forth herein, no order, consent, approval or authorization of, or registration, declaration or filing with, any government or regulatory authority or any other person or entity (other than any of the foregoing which have been obtained and, at the date in question, are then in effect) is required under existing laws or any other agreement as a condition to the execution, delivery or performance of any Party under the terms of this Settlement Agreement.

- e. Each Party represents to the other that each Party is a sophisticated entity or person and has made, independently and without reliance on any other Party, its own analysis of the transactions required of it under this Settlement Agreement. In entering into and executing this Settlement Agreement, no Party is relying in any respect on any statement or representation made by any other Party, and no promise or representation of any kind has been made to such Party separate and apart from what is expressly contained in this Settlement Agreement. Each Party has received all documents and information it has deemed necessary for such purpose, and it shall continue to make its own decisions with respect to the transactions required of it under this Settlement Agreement, without reliance on any other Party.
 - f. Each Party represents to the other that, before entering into and executing this Settlement Agreement, each Party has been fully informed of the terms, contents, conditions and effects set forth herein, and each Party has had a full and complete opportunity to discuss this Settlement Agreement with its attorney or attorneys.
 - g. Each Party represents to the other that the execution, delivery, and performance of this Settlement Agreement does not violate any provision of law, rule or regulation applicable to it or any of its affiliates or its certificate of incorporation, bylaws or other organizational documents or those of any of its affiliates.
- 5. Cooperation; Reasonable Efforts.** The Parties shall cooperate fully and execute all supplementary documents and take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement, including but not limited to the New License Agreement. The Parties shall make every reasonable effort to comply with the terms and deadlines set forth in this Settlement Agreement.
- 6. Mutual Release of Claims.** Upon the Effective Date, the Parties and their affiliated companies, debtors or reorganized debtors, as applicable, and each and all of their respective past, present and future agents, heirs, executors, administrators, conservators, predecessors, successors, assigns, representatives, officers, members, shareholders, directors, professionals and affiliates (all such releasing persons and entities, collectively, the “Releasing Parties”), does or do hereby fully, unconditionally and irrevocably release, relieve, waive, relinquish, remise, acquit and forever discharge each other and each other’s respective past, present and future agents, heirs, executors, administrators, conservators, predecessors, successors, assigns, representatives, officers, members, shareholders, directors, and professionals (all such released persons and entities collectively, the “Released Parties”) from, against, and in respect of any and all past, present and future claims, cross-claims, counterclaims, third-party claims, demands, liabilities, obligations, debts, liens, damages, losses, costs, expenses, controversies, actions, rights, suits, assessments, penalties, charges, indemnities, guaranties, promises, commitments, or causes of action of whatsoever nature, whether based in contract, tort, statutory law, or otherwise, whether in law or equity, whether direct or indirect, known or unknown, asserted or unasserted, foreseen or unforeseen, fixed or contingent, that any Releasing Party, individually or collectively, may have or may have against any Released Party, individually or collectively, since the beginning of time through and including the Effective Date, based

on or arising out of or related to the Pole Attachment Fees, Unpaid Invoices, and the 1967 Agreement (such release, the “Mutual Release”). For the avoidance of doubt, the Mutual Release provided in this Section 6 shall extend only to the Released Parties and only with respect to the Unpaid Invoices, the Pole Attachment Fees, and the 1967 Agreement, and the Mutual Release shall not relieve any Party of its ongoing obligations, if any, under any other agreement, including without limitation, the New License Agreement. All rights are reserved with respect to persons or entities who are not Released Parties as defined herein. The Releasing Parties covenant not to sue the Released Parties for any matter released herein; *provided*, however, that nothing contained in this Release constitutes, or is deemed to constitute, a release, discharge, or impairment of the Parties’ respective rights to enforce this Settlement Agreement, all of which are expressly reserved.

7. **No Indemnity.** The Parties expressly acknowledge that the City’s authority to indemnify and hold harmless any third party is governed by Article XI, Section 7 of the Texas Constitution. Nothing in this Settlement Agreement requires indemnification by the City and any argument that any provision of this Settlement Agreement requires indemnification by the City is invalid *ab initio*. Nothing in this Settlement Agreement requires that the City incur debt, assess or collect funds, or create a sinking fund.
8. **New License Agreement.** Frontier and the City shall endeavor to promptly enter into the New License Agreement in connection with this Settlement Agreement; *provided* that such New License Agreement shall be based upon a per-pole rate approved by the City Council of Denton, Texas, and in compliance with Chapter 284 of the Texas Local Government Code and applicable federal regulations.
9. **Miscellaneous.**
 - a. **Entire Agreement.** No promise, inducement, commitment, or other agreement not expressly set forth herein has been made with respect to this Settlement Agreement or the subject matter hereof. This Settlement Agreement contains the entire agreement by and among the Parties with respect to all matters related hereto. All prior agreements and understandings, oral agreements, and writings regarding the matters set forth herein (if any) are expressly superseded hereby and are of no further force or effect.
 - b. **Amendments.** This Settlement Agreement may not be altered, amended, or modified in any respect except by a writing duly executed by all of the Parties.
 - c. **Binding Effect; Third Parties.** This Settlement Agreement shall be binding on and inure to the benefit of each Party and its successors. There is no third-party beneficiary of this Settlement Agreement.
 - d. **No Admission of Wrongdoing.** In entering into this Settlement Agreement, no Party is admitting any fault or liability of any kind whatsoever to each other or to any third party, all of which are expressly denied. Nothing in this Settlement Agreement is or shall be construed to be an admission of liability or wrongdoing by any Party.

- e. **Defense.** Subject to the occurrence of the Effective Date pursuant to Section 3 hereof, this Settlement Agreement may be pleaded as a full and complete defense in any subsequent action or other proceeding concerning any and all of the claims, counterclaims, causes of action, assertions, issues, defenses, or other matters released and discharged by this Settlement Agreement, except for claims arising directly from this Settlement Agreement.
- f. **Venue and Jurisdiction.** The Bankruptcy Court shall retain jurisdiction and venue over the subject matter of this Settlement Agreement and the Parties for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the Parties to apply to the Bankruptcy Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.
- g. **Applicable Law.** This Settlement Agreement shall be governed, interpreted, construed, and enforced in accordance with the laws of the state of Texas.
- h. **Assignability.** Neither Party may assign this Settlement Agreement without the prior written consent of each Party.
- i. **Counterparts.** This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Signature pages emailed in a portable document format (.PDF) shall be acceptable and deemed binding on all Parties hereto as if they were originals.

[Remainder intentionally left blank; signature pages follow.]

IN WITNESS HEREOF, the undersigned have executed, or caused their duly authorized officers to execute, as applicable, this Agreement on the day and year first above written.

AGREED TO BY:

THE CITY OF DENTON, a Texas
Home-Rule Municipal Corporation

THIS AGREEMENT HAS BEEN BOTH
REVIEWED AND APPROVED AS TO ALL
TERMS

Sara Hensley, City Manager

Antonio Puente, General Manager
Denton Municipal Electric

Date Signed: _____

ATTEST:

Lauren Thoden, City Secretary

APPROVED AS TO LEGAL FORM:

Mack Reinwand, City Attorney

AGREED TO BY:

FRONTIER SOUTHWEST INC.,

On behalf of itself and its affiliates

By: 

Name: Kevin Saville

Title: Senior Vice President, General Counsel

Schedule I: Unpaid Invoices

Account No.	Customer Name	Invoice Date	Invoice No.	Amount	Description
9100152	Frontier	4/18/2023	92707	\$513.81	2022 Pole Attachments
9100152	Frontier	4/12/2023	92647	\$89,994.60	2022 Pole Attachments
9100152	Frontier	3/31/2022	88880	\$86,039.82	2021 Pole Attachments
9100152	Frontier	3/30/2022	88876	\$57,683.27	2020 Pole Attachments - 04/14/2020 to 12/31/2020
9100152	Frontier	3/30/2022	88875	\$22,984.90	2020 Pole Attachments - Up to 04/14/2020
9100152	Frontier	12/6/2019	81613	\$80,668.17	2019 Pole Attachments
9100152	Frontier	12/11/2018	78179	\$81,088.56	2018 Pole Attachments
9100152	Frontier	1/18/2018	75235	\$81,041.85	2017 Pole Attachments
9100152	Frontier	12/27/2016	71753	\$125,257.35	2016 Pole Attachments
9000901	Verizon	12/22/2016	71755	\$0.00	
9000901	Verizon	12/1/2015	67521	\$115,672.95	2015 Pole Attachments
9000901	Verizon	12/12/2014	63309	\$123,814.80	2014 Pole Attachments
9000901	Verizon	1/22/2014	59650	\$122,421.15	2013 Pole Attachments
9000901	Verizon	12/26/2012	72342	(\$33,850.56)	CREDIT - PAYMENT
9000901	Verizon	12/14/2012	55146	\$121,809.90	2011 Pole Attachments
9000901	Verizon	12/30/2011	51599	\$120,171.75	2010 Pole Attachments
9000901	Verizon	12/28/2010	61185	(\$314,459.20)	CREDIT - PAYMENT
9000901	Verizon	11/9/2010	49473	\$652,472.70	2009 Pole Attachments
9000901	Verizon	1/19/2005	27951	\$69,392.70	2004 Pole Attachments
Subtotal				\$1,602,718.52	

May 2025 Reconciliation

9100152-02	Frontier	5/2/2025	n/a	(\$307,628.48)	Supersedes the invoice dated December 23, 2024 for \$307,628.48
9100152-02	Frontier	5/2/2025	n/a	\$154,405.72	
Reconciled Subtotal (the Unpaid Invoice Claim)				\$1,449,495.76	
60% of outstanding invoices (excludes May 2025 Reconciliation)				\$777,054.02	
May 2025 Reconciled Invoice (covers invoices through 12/11/24)				\$154,405.72	
Total				\$ 931,459.74	

EXHIBIT “B”

Pole Attachment License Agreement

NOTICE

This Agreement does not authorize Licensee to install or maintain wireless communications devices on City of Denton poles or other infrastructure, electric or otherwise. Should Licensee desire to install wireless communications devices on City of Denton poles or other infrastructure, electric or otherwise, Licensee must enter into a separate agreement.

POLE ATTACHMENT LICENSE AGREEMENT BETWEEN THE CITY OF DENTON AND LICENSEE

This License Agreement is between the **City of Denton** ("CITY"), a Texas home-rule municipal corporation, and **Frontier Southwest Inc.** and its affiliates under common control ("Licensee") (collectively referred to as the "Parties").

WHEREAS, CITY, operates or controls certain utility poles in the public rights of way managed and controlled by CITY throughout Denton; and

WHEREAS, Licensee desires to provide voice, video, internet, or data transmission and other lawful communications services within CITY's service area; and

WHEREAS, to provide voice, video, internet, or data transmission and other lawful communications services, Licensee seeks to place and maintain cables, equipment, facilities, within CITY's service area and desires to place such cables, equipment, and facilities on various Poles and easements owned by CITY; and

WHEREAS, CITY is willing to grant Licensee a revocable, non-exclusive license to use certain Poles on the strict terms and conditions set forth in this Agreement and subject to the CITY Code of Ordinances, Electrical Code, and Distribution Construction Standards, as they may be amended from time to time.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, CITY and Licensee do hereby mutually covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND CONSTRUCTION

1.1 Definitions: For purposes of this Agreement, capitalized terms are defined as follows:

A. CITY Distribution Construction Standards means those engineering and construction standards, specifications, and designs maintained and referenced internally by CITY, and complied with in all material respects by CITY, for its own Pole distribution construction and engineering efforts.

B. Annual Usage Charge means the recurring charge that Licensee is to pay CITY annually under this Agreement for attachment to CITY's Poles. The Annual Usage Charge is in

addition to any Costs and Filing Fees Licensee may incur during a Contract Year, and shall be determined by CITY as of December 1 of each Contract Year, other than the first Contract Year. The Annual Usage Charge for any Contract Year shall be the number of Attachments shown on CITY's records to exist as of December 1 of the preceding Contract Year multiplied by the Usage Rate for the new Contract Year for each attachment of equipment. Unless applicable state or federal law is amended to allow a charge for over-lashed Cable, the Annual Usage Charge shall not apply to over-lashed Cable over-lashed with any of Licensee's Attachments for which a Usage Rate is chargeable. Unless otherwise expressly provided in this Agreement, Annual Usage Charges are not refundable.

C. Attachment Application means the CITY prescribed application sheet, together with all required prints, maps, proposed routes, project descriptions, studies, and proposed schedules that Licensee must submit, in full, to CITY in order to request, have reviewed, perform required and then be granted an Attachment License for a particular Pole or group of Poles. For the avoidance of doubt, any Licensee Attachment that was affixed to any CITY Pole prior to the Effective Date will not require a new Attachment Application to remain on such Pole.

D. Attachment means (other than for Annual Usage Charge Purposes):

1. each Cable owned, controlled, or used by Licensee, together with its associated messenger strand, guy wires, span guys, anchors, and other appurtenant and incidental facilities, affixed to a Pole regardless of the means by which affixed (a Cable lashed to another Cable and each Cable lashed to a common messenger is a separate Attachment);
2. each amplifier, repeater, controller, box, cabinet, appliance, device, or piece of equipment owned, controlled, or used by Licensee and affixed to a Pole, regardless of the means by which it is affixed;
3. each amplifier, repeater, controller, box, cabinet, appliance, device, or piece of equipment owned, controlled, or used by Licensee that is resting on the ground but is connected to a Pole, Attachment, or CITY line by a conductor;
4. a new or existing service wire drop that is (i) located in the same one foot of space assigned to the Licensee's Cable Attachment, and (ii) is attached to the same Pole as an existing Attachment of Licensee shall NOT constitute an additional Attachment.
5. risers installed by the Licensee for the purpose of transitioning overhead Cable to underground Cable or vice versa; or risers installed by the Licensee for the purpose of extending service to a customer shall be considered an additional attachment(s) with each individual riser charged at the Riser Rate as defined in the PAF Schedule of the CITY's then current Rate Ordinance
6. Licensee installed conduits, which differ from the conduits mentioned in risers above (5) shall be considered multiple attachments with the value based on the linear footage of the Conduit along the vertical length of the Pole that the conduit is installed.

7. Any other devices installed by the Licensee that may be approved by DME for installation on the Pole will be considered a large unit attachment subject to the miscellaneous charge rate tariff in the PAF Schedule.

E. **Attachment License** means the revocable (solely pursuant to the terms and condition hereof and applicable law), non-exclusive right of Licensee to make an Attachment to a Pole under this Agreement, pursuant to CITY's approval of an Attachment Application and subject to (1) any modifications, conditions, and specifications imposed by CITY pursuant to this Agreement or applicable law when approving the Attachment Application and (2) all Design Documents issued by CITY with respect to the Attachment and Pole in question. An Attachment License authorizes Attachments solely for lawful communications purposes, as described in this Agreement. The use of any Attachment for any purpose other than providing lawful communications as described in this Agreement is prohibited and shall constitute a breach of this Agreement.

F. **Boxing** means the use of a cross arm or through bolt to facilitate a Pole attachment on the opposite side of the Pole from any existing attachment and the installation of Cable or facilities on both sides of the same Pole at approximately the same height. Licensee is prohibited from Boxing on CITY Poles.

G. **Cable** means a conductor, wire, or fiber or a bound or sheathed assembly of conductors, wires, or fibers used as a wire communications or transmission medium (a bare messenger is also a Cable).

H. **Communications Space** means the area on any given Pole, below and sufficiently remote from the Supply Space as required by Electrical Code, within which Attachments and Pole Contacts may lie. The term Communications Space has the equivalent meaning as that used in the Electrical Code. The top surface of the Communications Space must remain at least 40 inches from the lowest surface of the Supply Space and from any other electrical lines, conductors, or equipment, or below the Supply Space at a distance as defined by the National Electric Safety Code for a specified condition. The bottom surface of the Communications Space must maintain a clearance in accordance with National Electrical Safety Code standards. Any make ready that may be required to meet these standards shall be paid for by the Licensee.

I. **Conduit** means a structure owned by CITY containing one or more Ducts, usually placed in the ground, in which Cables or wires may be installed. CITY-owned electrical Conduit is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

J. **Conduit System** means any combination of Ducts, Conduits, Manholes, and Handholes joined to form an integrated whole. As used in this Agreement, the term refers to Conduit Systems owned or controlled by CITY. CITY-owned electrical Conduit System is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

K. **Contract Year** means any calendar year during which this Agreement is in effect, beginning January 1 and ending December 31, except that the first Contract Year shall run from

the Effective Date until December 31 of that year and the final Contract Year shall run from January 1 of that year until the date of termination.

L. Contractor includes subcontractors.

M. Cost means the total cost reasonably incurred by CITY for any particular task under this Agreement, and includes without limitation reasonable labor, material, equipment usage, outside Contractor and vendor charges, reasonable overhead, and reasonable general and administrative expenses. Costs may be incurred for, without limitation, engineering and engineering review, Make-Ready construction, inspections and oversight, auditing, public relations and intervention, and other services. Certain Cost rates are specified in Exhibit A to this Agreement, which CITY may change no more than once per year; provided, however, that any such change to such Cost rates shall be based on CITY's reasonable cost of labor, materials, and equipment usage. Subject to the foregoing, Costs shall be determined by CITY in its reasonable judgment and reasonable discretion, and shall be paid by Licensee in accordance with either of the following, at CITY's sole option:

1. Any advance estimate provided by CITY, in which event CITY shall have the right to refuse to incur the Costs until the estimate is paid; and/or
2. Any final invoice submitted by CITY. In the event an advance estimate was paid by Licensee for Costs, the final invoice will reflect such payment.

N. Design Documents means all specifications, drawings, schematics, blueprints, engineering documents, and written requirements for materials, equipment, design, construction, and workmanship with respect to Make-Ready and installation work on a particular Attachment or Pole or group of Attachments or Poles. Any and all design documents must be sealed by a licensed professional engineer.

O. Duct means a single enclosed tube, pipe, or channel for enclosing and carrying Cables, wires, and other facilities owned by CITY. As used in this Agreement, the term Duct includes Inner-Ducts created by subdividing a Duct into smaller channels. CITY-owned electrical and/or electric communication Duct is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

P. Effective Date means the date CITY signs this Agreement as shown on the signature page of this Agreement.

Q. Electrical Code means the National Electrical Safety Code (NESC), the National Electrical Code (NEC), and Chapter 752 of the Texas Health and Safety Code.

R. Filing Fee means the initial, non-refundable fee charged to Licensee for filing an Attachment Application for an Attachment License. Filing Fees are set by the CITY and shall not exceed the actual and reasonable Cost to CITY of reviewing and processing an Attachment Application. The Filing Fee is solely to compensate CITY for reviewing and processing an Attachment Application and does not include or offset Costs or Annual Usage Charges.

S. Handholes means an enclosure, usually below ground level, used for the purpose of installing, operating, and maintaining Attachments in a Conduit. A Handhole is too small to permit personnel to physically enter. CITY-owned electrical Handholes are expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

T. Infrastructure Usage Regulations means the Denton City Code of Ordinances and any other CITY ordinance that may be enacted to govern electric utility infrastructure usage or rental.

U. Inner-Duct means a pathway created by subdividing a Duct into smaller channels. CITY-owned electrical and/or electric utility communication Inner-Duct is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

V. Make-Ready means all work required to accommodate Licensee's Attachments on a Pole with respect to CITY and Third Party User needs and in compliance with Electrical Code, CITY Distribution Construction Standards, generally accepted engineering and construction practices, and applicable laws.

W. Manhole (also called "Pullbox" or "Vault") an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron or concrete Manhole cover, which personnel may enter and use for the purpose of installing, operating, and maintaining Attachments in a Conduit. CITY-owned electrical Manholes are expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

X. Maximum Lawful Usage Rate means the maximum amount that CITY may lawfully charge for an Attachment under applicable state and federal law, rules and regulations in effect from time to time. If, for any Contract Year, applicable state or federal law does not limit the amount CITY may charge Licensee for a particular Attachment or service under this Agreement, the Maximum Lawful Usage Rate for the Attachment or service shall be the amount that CITY determines, in its sole judgment and discretion, to constitute a reasonable and non-discriminatory annual Usage Rate.

V. Pole means any electric distribution pole owned by CITY that supports electric lines having a nominal voltage of not more than 35kV; provided, however, that any electric distribution pole having a nominal voltage of more than 35kV will also be a "Pole" if the pole is also used for distribution of power from a local substation to customers. Unless otherwise agreed by CITY with respect to a particular pole, the term Pole does not include (1) street lighting, traffic signal, AMI extender bridge, or dusk to dawn light poles; (2) metal or wood poles or towers supporting transmission lines carrying a nominal voltage greater than 35kV, unless such wood poles are also used to support distribution lines carrying a nominal voltage of not more than 35kV and where predesigned to accept telecommunication installations; (3) any structure or facility within a substation; (4) conduits (except as otherwise provided in Article 11); or (5) any structure not used for electric power distribution.

Z. Pole Contact means the point or contiguous area on a Pole at which one or more of Licensee's Attachments makes physical contact with a Pole regardless of the duration for which the Pole Contact existed.

AA. Service Drop means a Cable used to connect directly to a customer's location from one

Pole and attached to no more than one additional Pole where the additional Pole does not support voltage greater than six hundred volts (600V) or a Cable used to connect a customer's location through the use of multiple licensed Poles where Service Drop Make-Ready has been performed.

BB. Supply Space means the area on any given Pole, above the Communications Space, that is reserved for the placement of electric supply lines, electrical equipment, and other CITY facilities. The term Supply Space has the equivalent meaning as that used in the Electrical Code. Licensee may not place any Attachments or Pole Contacts in the Supply Space.

CC. Third Party User means any third party that has, or may be granted, an attachment license or other right to attach with respect to a Pole. Third-parties that are allowed by Licensee to overlash third-party conductors onto existing Licensee Attachment(s) shall also execute a Pole Attachment License Agreement with the CITY, regardless of the duration for which the Attachment or Pole Contact existed. At least thirty (30) days before third-party overlash operations, Licensee shall provide advanced written notice to CITY that identifies the proposed third-party overlash entity and all proposed third-party overlash locations.

DD. Unauthorized Attachment means an Attachment or any other affixing or placing of Licensee's facilities onto CITY property for which Licensee does not have a valid Attachment License.

EE. Usage Rate means, for each given Contract Year, the amount Licensee must pay CITY for each Attachment. Usage Rates are specified in Exhibit A to this Agreement and which CITY may change no more than once per year.

1.2 **Syntax** Except as otherwise expressly provided herein, all nouns, pronouns and variations thereof shall be deemed to refer to the singular and plural.

1.3 **Amendments** Any reference to a law, code, or document shall mean such law, code, or document as it may be amended from time to time.

1.4 **Third Party User Agreements** CITY has in the past entered into other Pole usage agreements with Third Party Users. In construing this Agreement, no variations between this Agreement and other agreements with Third Party Users shall have any evidentiary value or be construed against CITY. It is the Parties intent that this provision is not meant to unlawfully discriminate against Licensee in favor of other licensees.

1.5 **No Construction against CITY** The rule of construction that ambiguities in a contract are to be construed against the drafting party shall not apply to this Agreement.

1.6 **Headings** The descriptive headings in this Agreement are only for the convenience of the parties and shall not be deemed to affect the meaning or construction of any provision.

ARTICLE 2 SCOPE AND TERM OF AGREEMENT

2.1 **General Purpose** In accordance with the provisions of this Agreement, CITY may issue

Attachment Licenses to Licensee on the terms and conditions set forth herein. Before Licensee makes any Attachment to or begins any work on a Pole, excluding Service Drops, it shall file an Attachment Application and await CITY's issuance of an Attachment License and Design Documents with respect to that particular Attachment or Pole, as set forth in Article 4. Nothing in this Agreement shall be construed to obligate CITY to grant an Attachment License with respect to any particular Pole where Licensee has failed to fulfill the requirements herein for the grant of such Attachment License.

- A.** The use of any Attachment for any purpose other than providing lawful communications as described in this Agreement is prohibited and shall constitute a breach of this Agreement.
- B.** Licensee is prohibited from Boxing on CITY Poles.
- C.** CITY-owned electrical Conduit is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.
- D.** CITY-owned electrical Duct is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.
- E.** CITY-owned electrical Handholes are expressly reserved for utility reliability and expansion purposes and are not available for use by Licensee.
- F.** City-owned electrical Inner-Duct is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.
- G.** CITY-owned electrical Manholes are expressly reserved for utility reliability and expansion purposes and are not available for use by Licensee.

2.2 Term The initial term of this Agreement is ten (10) years, beginning on the Effective Date and renewing thereafter for two successive ten-year terms, subject to the default provisions, or unless terminated by either Party. At the end of each then-current term, Licensee shall, if it intends to terminate, give CITY written notice of its request to terminate 180 days before the end of the then-current term. If Licensee is in default during the course of the then-current term and Licensee has not cured the default, this Agreement shall not renew. If Licensee has defaulted and not cured such default, renewal will be granted in CITY's reasonable discretion. If renewal is denied, CITY will give written notice of the reasons for denial within thirty (30) days of making that determination and this Agreement will expire at the end of the then-current term.

2.3 Existing Facilities Only Except as otherwise set forth in paragraph 6.4, (i) CITY is under no obligation to add, build, keep, maintain, or replace Poles or any other facilities for the use or convenience of Licensee; and (ii) the maintenance, replacement, removal, relocation, or addition of CITY Poles and facilities shall remain within the sole province and discretion of CITY. Notwithstanding the foregoing, any actions of the CITY under this Agreement shall be taken on a nondiscriminatory basis.

2.4 Poles Only This Agreement is limited to and only addresses Attachments to CITY Poles. This Agreement does not authorize Licensee to install or maintain Attachments on other CITY property and facilities, including without limitation Conduits, buildings, and towers.

2.5 City Rights-of-Ways Except for the placement of Attachments or other facilities covered by this Agreement on CITY Poles and notwithstanding that a Pole to which Licensee may attach its facilities is in the CITY's public streets or rights-of-way, nothing in this Agreement shall be construed to grant, nor does this Agreement grant, Licensee any right or authorization to use or occupy the public streets or rights-of-way of the CITY or any other public property.

2.6 Access to Rights of Ways limited Except to access the CITY's rights of ways as an incident of attaching facilities to CITY'S Poles under this Agreement, Licensee and CITY expressly agree that the authority to attach to CITY Poles does not grant Licensee authority to use or occupy CITY's public streets or rights-of-way.

2.7 Separate Agreement and Franchise Needed for Access to Rights of Ways Licensee expressly agrees that should it intend to use the CITY'S rights of ways, Licensee shall enter into a separate franchise agreement for such privileges.

2.8 Private Easements Licensee understands that some Poles are located on dedicated easements over private property that, by their terms, restrict the use of the easement to CITY for the sole purpose of electric distribution or transmission. Nothing in this Agreement and no action by CITY shall be construed to offer, grant or approve any right or license to use such easement or to affix an Attachment to a Pole within such easement without the consent of the owner of the property to which the easement is appurtenant, unless otherwise allowed by law. CITY has no obligation to expand or obtain rights in such easement on Licensee's behalf. It is the sole obligation of Licensee to obtain the necessary consent or additional easement rights, if any, at Licensee's own expense.

2.9 Eminent Domain CITY is under no obligation to exercise any power of eminent domain on Licensee's behalf.

2.10 No Property Rights In Poles All Poles shall remain the property of CITY and no payment made by Licensee shall create or vest in Licensee any ownership right, title, or interest in any Pole, but Licensee's interest shall remain a bare license. The existence of such a license shall not in any way alter or affect CITY's right to use, change, reclaim, operate, maintain, or remove its Poles, subject to the terms and conditions hereof. Nothing in this Agreement shall prohibit Licensee from repairing, operating, or maintaining a Pole at Licensee's sole cost and expense if: (i) CITY expressly abandons the Pole or constructively abandons the Pole by electing not to repair, operate, or maintain the Pole to such an extent that a reasonable person would conclude that CITY has abandoned the Pole; and (ii) Licensee is permitted to do so under the City Code, the terms of Licensee's franchise, if applicable, and any applicable easements; provided, however, that CITY may remove an abandoned Pole if such removal manifestly serves the public interest. If CITY's use of its Poles materially and adversely affects Licensee's use and operation of an Attachment, Licensee may, by written notice to CITY, remove its Attachments from any adversely affected Pole. Such termination shall be implemented by written notice to the CITY.

2.11 License Not Exclusive Licensee acknowledges that CITY has entered into other agreements concerning the use of Poles by third parties, including Licensee's competitors and may in the future enter into similar agreements. Nothing in this Agreement shall be construed to limit or in any way affect CITY's right or ability to enter into or honor other agreements, or to grant any rights, licenses, or access concerning any Pole, irrespective of the character or degree of economic competition or loss caused to Licensee, so long as CITY's actions are not unreasonably discriminatory.

2.12 CITY Priority The primary purpose of a Pole is electric distribution and public health and safety, and CITY reserves to itself first priority in the use of a Pole. In the event of any conflict between the use of a Pole by CITY and Licensee, the use of a Pole for the distribution of electric power to CITY customers shall prevail and have priority over Licensee's use of the Pole. CITY retains and shall have exclusive use of the Supply Space. All of Licensee's Aerial Attachments shall remain within the Communications Space.

2.13 Discretion of CITY Final CITY reserves the right to deny any Attachment Application pursuant to the terms and conditions of this Agreement, reserve any Pole to its own use pursuant to a *bona fide* development plan, or modify any Pole for legal, safety, mechanical, structural, engineering, environmental, reliability, or service reasons. Determination of these issues shall at all times remain within the reasonable discretion of CITY, subject in all respects to the terms and conditions of this Agreement. Licensee will not be required to pay for any modifications to any Pole or its Attachments in order to accommodate a Third Party User.

2.14 No Cost or Expense to CITY The engineering, construction, installation, use, operation, and maintenance of Licensee's Attachments shall be at Licensee's sole expense. Unless otherwise expressly provided of this Agreement, nothing in this Agreement shall be construed to require CITY to expend any funds or to incur or bear any cost or expense.

ARTICLE 3 USAGE RATES AND CHARGES

3.1 Payment Due upon License Approval CITY's approval of an Attachment License shall be conditioned on Licensee's payment of the then current Usage Rate for each approved Attachment, prorated to reflect the number of months remaining in the Contract Year with any partial month being considered to be a full month. Licensee's payment is due within 45 days from the date of CITY'S approval of an Attachment License.

3.2 Calculation of Usage Rates For each Contract Year, the Usage Rate shall not exceed the Maximum Lawful Usage Rate. Before each new Contract Year, CITY will notify Licensee in writing of the Maximum Lawful Usage Rate for such Contract Year at least 60 days in advance of any invoice. The CITY shall provide its Maximum Lawful Usage Rate calculations and relevant support data so Licensee may verify that the such Usage Rate is calculated in accordance with applicable law. The Maximum Lawful Usage Rate may take into account changes in applicable laws that are to go into effect during the upcoming Contract Year.

3.3 Dispute of Maximum Lawful Usage Rate If Licensee disagrees in good faith with CITY's determination of the Maximum Lawful Usage Rate, Licensee may protest the CITY'S Usage Rate in writing within 30 days of receipt of the notice of the then proposed Usage Rate. The protest shall include copies of all records and other documentation that support Licensee's position. Failure to timely protest CITY's proposed Usage Rate shall constitute agreement to and acceptance of CITY's determination and a waiver of Licensee's rights to dispute CITY'S Usage Rate, unless such rate is unlawful pursuant to applicable law. If Licensee timely protests a proposed Usage Rate, the parties shall endeavor in good faith to negotiate a resolution of the dispute. If the parties are unable to resolve the dispute within 60 days from the date of Licensee's protest, then either party may seek relief from the Public Utility

Commission of Texas ("PUCT") pursuant to section 54.204 of the Texas Utilities Code, any successor regulation, or any other law that confers jurisdiction on the PUCT. The PUCT shall be the sole and exclusive forum for resolution of a dispute regarding CITY'S Usage Rate, unless the PUCT lacks jurisdiction, in which event the dispute resolution provisions set forth in paragraph 18.7 shall control. If the dispute is not resolved by the time the Annual Usage Charge invoice is issued, Licensee shall nonetheless pay the invoice based upon the disputed Usage Rate. Payment by Licensee of the invoice shall not prejudice Licensee's ability to continue to contest the Usage Rate, and CITY agrees not to interpose any claim, defense, or counterclaim that Licensee has waived its right to contest the Usage Rate by paying the disputed invoice. Failure to pay the disputed Usage Rate shall constitute a breach of this Agreement.

3.4 Subsequent Annual Usage Charges In each January of each Contract Year and continuing thereafter until the expiration or termination of this Agreement, CITY will invoice for, and Licensee shall pay, within 45 days after receipt of invoice, the Annual Usage Charge for the new Contract Year. All overdue balances shall accrue interest at the rate of 1% per month from the due date until paid, or the maximum rate allowed by law, whichever is less.

3.5 Invoice Disputes If Licensee believes in good faith that an Attachment count contained in an Annual Usage Charge invoice is incorrect, it shall nonetheless pay the invoice under protest. To protest an invoice, Licensee must give CITY written notice of the nature of its protest no later than the due date for payment of the invoice together with copies of records and other documentation supporting its position. The parties shall promptly meet to resolve the discrepancies in their records to determine the correct Attachment count. If the parties are unable to resolve a discrepancy as to the correct count, the parties may, upon mutual agreement, jointly conduct a physical inventory of geographical grids or other mutually agreeable census to determine the correct count. The Cost to conduct such inventory or census shall be equally divided between the parties.

3.6 Adjustments If upon resolution of a dispute between the parties under paragraph 3.2 or paragraph 3.4, a refund is due to Licensee, CITY shall refund the amount of the overcharge together with interest at the rate specified in paragraph 18.5 from the date of CITY's receipt of the protested Annual Usage Charge payment. If Licensee owes additional money, a corrected invoice shall be issued by CITY for the additional Annual Usage Charge due, plus accrued interest at the rate specified in paragraph 18.5 from the due date of the original invoice.

3.7 No Allowances Unless otherwise expressly stated in this Agreement, there shall be no offsets against any sums due under this Agreement, or any other allowances, for system improvement, materials or labor supplied, upgrading, life extension, or other direct or incidental benefits conferred by Licensee upon CITY or its Poles, system, or facilities. All such improvements and benefits belong solely to CITY, and the fact that such improvements or benefits may accrue shall in no way alter or affect Licensee's obligations under this Agreement.

ARTICLE 4 ATTACHMENT LICENSES

4.1 Attachment License Required Licensee shall have an Attachment License with CITY before performing any new Attachment work on a Pole or making any Contact with, or Attachment to, a Pole or

other facility on CITY property or easement. Maintenance of existing equipment shall be allowed, including transfers for new Poles and for Make-Ready work of other licensees, if Licensee has a current Attachment License that covers the existing Attachments and equipment. Licensee must have an Attachment License for each Pole or group of Poles to which Licensee's Attachments are to be affixed, identifying each separate Attachment to the Pole(s) by type. An Attachment License is not needed to perform visual inspections necessary for preparing an Attachment Application.

4.2 Overlapping Licensee must obtain a separate and additional Attachment License for any Attachment it seeks to overlap to an existing Licensee or Third Party User Attachment or Pole Contact. Licensee may not allow another party to overlap to Licensee's facilities without such party first having an agreement with and attachment license from CITY. Poles are the sole property of CITY, and Licensee shall not charge or accept any financial consideration for allowing a third party to overlap to an Attachment or Pole Contact without CITY's written consent.

4.3 Application Process The Attachment Application must be submitted in the then approved CITY format. The Attachment Application form, and all required supporting documentation and other procedures, are within the reasonable discretion of CITY and may change from time to time upon prior written notice (provided such changes are not inconsistent with the terms and conditions of this Agreement and applied in a nondiscriminatory manner). CITY may reject entirely an incomplete Attachment Application, or it may request additional information to support the Attachment Application, in which event the requested information shall be promptly furnished. In the event that CITY denies an Attachment Application, it shall provide written notice of its reason for denial to Licensee within 30 business days of the date the Attachment Application was submitted.

4.4 Approval

A. CITY retains sole and complete discretion to deny or modify any Attachment Application in order to be able to preserve the safety, reliability, integrity, and effectiveness of the electric distribution system that constitutes the core of its business and its governmental mandate. CITY will approve, modify, or deny an Attachment Application within 15 business days of submission. Licensee may request CITY to reconsider a denial or modification of an Attachment Application. CITY may approve an Attachment Application as submitted, approve it on a modified or conditional basis, or may deny the Attachment Application in accordance with the policies adopted by CITY. An Attachment Application may be denied solely for the reason set forth. The CITY's City Manager, or designee, may deny an application if:

1. the applicant fails to submit a complete Attachment Application;
2. the applicant fails to supplement its Attachment Application with additional information or otherwise cooperate with the utility as requested in the evaluation of the Attachment Application;
3. the applicant fails to pay the applicable Filing Fee;
4. the proposed attachments are of excessive size or weight or would otherwise subject utility infrastructure to unacceptable levels of additional stress;

5. approval would jeopardize the reliability or integrity of the electric system or of individual units of utility infrastructure;
6. approval would present a safety hazard to a City employee or the public;
7. approval would impair the City's ability to operate or maintain utility infrastructure; or
8. approval would require an unacceptable change, upgrade, or addition to utility infrastructure.

B. In the event that CITY intends to deny an Attachment Application based on sub-paragraph numbers 1 - 8 set forth in Paragraph 4.5.A. above, or for any other reason for which denial is permitted by law, and the Pole may be modified or replaced to resolve that issue, CITY shall approve the Attachment Application provided that:

1. the Licensee agrees to pay CITY's Costs to so modify or replace the Pole; and
2. the Attachment Application is otherwise acceptable and grantable pursuant to the terms and conditions of this Agreement and applicable law. Provided, however, that nothing in this sentence abridges or modifies the requirements set forth in paragraph 6.4.

4.5 Order of Approval Attachment Applications concerning a particular Pole will be considered and acted upon by CITY in the order in which they are filed. For purposes of evaluating an Attachment Application with respect to Pole capacity and existing Third Party User Attachments, CITY will consider not only all existing attachments but also all valid Attachment Licenses and reserved CITY space.

4.6 Engineering Licensee shall submit documentation of its field evaluation that has been sealed by a professional engineer licensed by the State of Texas. CITY shall accept and rely on such documentation, but shall reserve the right to perform, or have a firm retained by CITY perform, its own engineering and field evaluation including pole loading analysis. All Costs for such engineering and field evaluation shall be paid by Licensee. With respect to a particular Pole, CITY's engineering shall take into account and allow space for all Attachment Licenses, which are valid for that Pole. In granting an Attachment License, CITY shall issue to Licensee the related Design Documents that were paid for by the Licensee.

4.7 Attachment License Expiration All Attachment Licenses and Design Documents and any rights conferred thereunder shall expire on the later of (i) 120 days after issuance (or such longer period as the parties may agree to in writing) or (ii) 60 days after completion of all Make-Ready work, unless all Make-Ready and installation work has occurred in accordance with the Design Documents before the end of such period. If an Attachment License for a Pole expires, Licensee shall re-apply, *de nova*, for an Attachment License and must receive such License from the CITY before Licensee can begin working on or making an Attachment to that Pole.

ARTICLE 5 GENERAL REQUIREMENTS

5.1 Work Site Safety In performing any work on or near Poles supporting energized electric lines,

Licensee, and its Contractors, agents and employees shall comply with Chapter 752 of the Texas Health and Safety Code and all federal, state and local laws, rules and regulations governing work in proximity to energized electric lines, including without limitation, those promulgated by the Occupational Safety and Health Administration. LICENSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, EMPLOYEES, VOLUNTEERS, AGENTS, CONTRACTORS, AND SUBCONTRACTORS FROM AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, SUITS AND JUDGMENTS ARISING FROM OR CONCERNING A BREACH BY LICENSEE OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

5.2 Electrical Code Licensee, and its Contractors, agents and employees, and all work, Contacts, and Attachments on a Pole shall at all times comply with the then current Electrical Code, as applicable.

5.3 Design Documents All installation and other work performed by Licensee on a Pole or Attachment shall at all times comply with the Design Documents and CITY Distribution Construction Standards and CITY requirements subsequent to Make-Ready inspections.

5.4 Service Interruptions Licensee shall not cause any interruption of CITY or Third Party User services without first obtaining CITY's express written consent as provided by Article 6. If it is necessary for CITY to de-energize any equipment or lines for Licensee's benefit, Licensee shall (a) reimburse CITY in full for all Costs in doing so, and (b) coordinate any customer or system outages with the CITY. In the event Licensee damages any of CITY's equipment or lines or causes any service interruption, Licensee, at its sole expense, shall immediately do all things reasonable to avoid injury and further damage, direct and incidental, resulting therefrom and shall notify CITY immediately. Licensee shall be liable for all Costs resulting from such damage and any necessary repairs.

5.5 CITY Oversight CITY shall have the right to conduct on-site field oversight and inspections of Licensee's Attachments, work, and operations on CITY'S Poles. CITY may conduct pre-construction surveys, and post-construction inspections at Licensee's expense and shall provide Licensee with the results. CITY shall at all times have unrestricted access to Poles and to all field work sites of Licensee and Licensee's Contractors. Both CITY and CITY's representative at any Pole site shall have complete and final authority to order the immediate suspension of Licensee's construction or installation activities if CITY or CITY's representative, in its sole discretion and judgment, deems such action necessary for reasons of safety, engineering, electrical service reliability, or failure to obtain proper licenses and permits. If an immediate suspension order is issued, the CITY or CITY's representative shall have the right to inspect any and all facilities installed up to that point on Licensee's Attachment submittal, at Licensee's expense. In the event of an oral suspension order, CITY shall send written notice to Licensee within three (3) days after such suspension, identifying the bases for suspension. Such suspension shall be in effect until such time as the Licensee cures, at Licensee's sole Cost, the alleged bases for suspension. In no event shall CITY be responsible for any damages, losses, or costs incurred by Licensee as a result of such work stoppage. Licensee's failure to obey a suspension order issued in accordance with this Agreement shall constitute a breach of this Agreement.

5.6 Laws To the extent that the Code of the City of Denton lawfully requires Licensee to possess a valid franchise or construction permit before engaging in a particular act, Licensee must comply with such requirement before beginning installing Attachments. Nothing in this Agreement shall be construed as waiving other CITY requirements or permitting the construction of facilities other than Attachments.

Attachments must conform to local, state, or federal law. Licensee's use of any Pole and Licensee's Attachments shall at all times conform to the requirements of the CITY's Code of Ordinances, infrastructure usage regulations, and the published policies promulgated by the CITY pursuant thereto.

5.7 Other Permits Licensee shall apply for and obtain all licenses, permits or other authorizations required to provide its service or to use, operate or maintain its Attachments. If Licensee is denied any required license, permit or authorization, Licensee may, upon written notice to CITY, terminate any Attachment License granted hereunder that was predicated upon the grant of such license, permit or authorization.

5.8 Taxes and Liens Licensee shall pay all taxes and assessments lawfully levied on Licensee's Attachments and any tax, assessments, fee, or charge levied on Poles solely because of their use by Licensee. In no event shall Licensee permit any lien to be filed or to exist upon any Poles or CITY property as a result of any claim against Licensee. Licensee shall promptly pay upon receipt of written notice from CITY all such liens together with all fees and costs necessary to discharge same, or shall bond around such liens in the manner provided by law.

5.9 Electrical Code Conflicts In the event of a difference, conflict, or discrepancy between or among the requirements or practices of any Electrical Code or safety regulations, laws, or industry standards the following rules shall apply: (A) if one specification or practice is more stringent than the other, the more stringent shall apply; (B) if one is not more stringent than the other, the NESC shall govern to the extent permitted by law; (C) if the first two rules are insufficient to resolve the conflict in a clear and unambiguous manner, CITY shall determine which standard shall apply, giving highest priority to safety considerations.

5.10 Design Document Conflicts In the event of a difference, conflict, or discrepancy between or among the requirements or practices of the Design Documents and CITY Distribution Construction Standard, the Design Documents shall govern. In the event Licensee believes a Design Document or CITY Distribution Construction Standard is inconsistent with Electrical Code or applicable law, Licensee shall refer the matter to CITY for determination.

ARTICLE 6 MAKE-READY

6.1 Performance and Cost of Make-Ready Work All Make-Ready Work shall be performed by the CITY and/or a contractor authorized by CITY to perform such work. All Make-Ready Costs shall be borne solely by Licensee, including without limitation, costs of planning, engineering, construction, and pole replacement or modifications, except as set forth in paragraphs 6.3, 6.4, and 6.5. CITY will advise Licensee of estimated Make-Ready Costs. Make-Ready Work will not commence until Licensee has paid estimated Make-Ready Costs.

6.2 Payment of Make-Ready Work Upon completion of Make-Ready Work, CITY shall invoice Licensee for CITY's actual cost of such Make-Ready Work. After completion of the Make-Ready Work the actual Make-Ready Cost will be trued up against the estimated Make-Ready Costs payment.

6.3 Third Party Facilities Make-Ready Costs that are to be paid by Licensee include all costs and expenses to relocate or alter the attachments or facilities of any pre-existing Third Party User as may be necessary to accommodate Licensee's Attachment. CITY shall provide at least 30 days' written notice to each Third Party User that needs to relocate or alter its facilities to accommodate Licensee and attempt

to make all other necessary arrangements directly with the affected Third Party Users. CITY agrees to make best efforts to cause a Third Party User to relocate such Third Party User's facilities, including declaring such Third Party User's facilities to be unauthorized, in accordance with the terms of CITY's pole attachment agreement with such Third Party User, if the Third Party User fails to relocate its facilities within the time periods specified in the pole attachment agreement between CITY and such Third Party User.

6.4 Non-Conforming Attachments Notwithstanding paragraphs 6.1 or 6.2, Licensee shall not be liable for any cost or expense to modify, replace, relocate, or alter any attachments of CITY or a Third Party User that do not comply with the Electrical Code or applicable law. Licensee shall notify CITY if Licensee determines that any Third Party User attachments are out of compliance with the Electrical Code or applicable law, and CITY shall use its best efforts to cause any Third Party User to bring existing attachments into compliance within 30 days of such notice. If after 30 days the owner of the out-of-compliance attachment has not completed its work and brought its attachment in to compliance with the Electrical Code and applicable law, CITY shall declare such Third Party User's facilities to be unauthorized, and CITY or Licensee may relocate or alter the Third Party User's attachment at the Third Party User's expense. CITY shall use its best efforts to cause the Third Party User to pay Licensee its costs and expenses for bringing such Third Party User's attachment in compliance with the Electrical Code and applicable law.

6.5 Pole Replacement and Maintenance CITY shall change, modify, or replace any Pole, at Licensee's request, unless such change, modification, or replacement will jeopardize the safety or reliability of CITY's electrical service. Except as otherwise provided in this paragraph, Pole replacement Costs shall be borne by Licensee if Pole replacement is requested by Licensee or if, because of insufficient capacity, approval of Licensee's Attachment Application first causes the need for the Pole replacement. CITY agrees that if a Pole is broken or rotten, standard Pole replacement costs shall be borne by CITY, except for additional Pole height above the height of the existing Pole; or Pole strength required to accommodate Licensee's new attachments. If the non-compliance with the Electrical Code or applicable law or the broken Pole is the result of Licensee's actions or the actions of Licensee's subcontractors, the Licensee shall be liable for the expense.

6.6 Pole Inspections Notwithstanding anything set forth in paragraph 6.4 and 6.5 with respect to Licensee's responsibility to pay CITY's costs of changing, modifying, or replacing any Pole, CITY shall continue its existing Pole maintenance and inspection program.

ARTICLE 7

INSTALLATION AND MAINTENANCE OF ATTACHMENTS

7.1 Installation Upon (A) completion of Make-Ready work, and (B) CITY's receipt of full payment of all sums owing to CITY, if any, for engineering, Make-Ready, and other Costs in connection with the applicable Pole, Licensee may affix its Attachments to the Pole as set forth in the Attachment License and Design Documents.

7.2 Communication Space Except as otherwise provided herein, all Attachments and Contacts on a Pole must remain in the Communications Space. Licensee operations in the Supply Space or in the space separating the Communication and Supply Spaces are prohibited. The Communications Space includes the space reserved for each attachment on a given Pole. Each attachment or space reserved in the Communications Space shall have a maximum size of twelve (12) inches. Each thru-bolt type

Attachment where the Pole is drilled and bolted to support Cable and messenger or band used to support Cable or messenger shall maintain a minimum of 12" vertical separation from adjacent bolts or bands.

7.3 Maintenance Licensee shall, at its sole expense, make and maintain its Attachments in a safe condition and in good repair including maintain tree trimming and clearances, and in such a manner as to not interfere with or interrupt CITY's lines, facilities, and services or with Third Party User attachments, facilities, and services.

7.4 No Damage Licensee shall not cause damage to CITY or Third Party User facilities or operations. If Licensee, its Contractors, agents, employees, or Attachments cause damage to CITY or Third Party User facilities or operations, Licensee assumes all responsibility for, and shall, as determined by CITY, either repair or promptly reimburse CITY or the Third Party User for all direct loss and expense caused by such damage. Licensee shall immediately inform CITY and all damaged Third Party Users of any damage to their facilities.

7.5 Sag and Mid-Span Clearances Licensee shall leave proper sag in its lines and Cables and shall observe the established sag of power line conductors and other Cables so that during the life of the Attachment minimum clearances are (A) achieved at Poles located on both sides of the span and (B) maintained throughout the span. A minimum clearance between surfaces must be maintained between Licensee's and others' Cables at mid-span and between Licensee's and others' Attachments and Pole Contacts on the Poles. Licensee will correct any clearance violations caused by its facilities or Attachments. In no event will Licensee be responsible for clearance violations caused by any other party, including CITY. Licensee will be responsible to resolve or remedy any incident where their Attachments fail to comply with Electrical Code safety clearance standards.

7.6 Climbing Space An unobstructed climbing space must be maintained at all times on the face of all Poles as required by Electrical Code, as well as adequate ground access to Poles. All Attachments must be placed as to allow and maintain a clear and proper climbing space. Licensee shall place its Attachments on the same side of the Pole as the majority of existing Attachments, if any. Licensee is prohibited from Boxing on CITY poles. Notwithstanding the foregoing, in no event will Licensee be responsible for climbing space violations caused by any other party, including CITY.

7.7 Tagging Each Attachment shall be identified at all times by an identifying marker at each Pole approved by CITY that, at minimum, (A) is permanent in duration and not degradable by rain or sunlight (B) has coloring and numbering or lettering unique to Licensee, and (C) is capable of being read unaided from the ground by a person with normal vision.

7.8 Tree Trimming Licensee shall be responsible for all tree trimming necessary for the safe and reliable installation, use, and maintenance of its Attachments, and to avoid stress on Poles caused by contact between tree limbs and Licensee's Attachments. All tree trimming shall be performed in accordance with the-then current CITY tree-trimming policies (to the extent not inconsistent with the terms and conditions of this Agreement), including without limitation those relating to owner notification and consent. The Licensee shall immediately resolve any citizen complaint of tree-trimming related to the Licensee's Attachments to the satisfaction of the CITY.

7.9 Anchors and Guying Licensee shall provide all anchors and guying necessary to accommodate the additional stress and load placed upon a Pole by its Attachments. Anchors, guys, and guy guards shall be in place and in effect prior to the installation of Attachments, Cables, or any other facilities on a

Pole. Licensee shall not attach to any CITY anchors or guying. Anchors shall not be placed outside of the easement in which a Pole stands.

ARTICLE 8

MODIFICATION OF ATTACHMENTS

8.1 No Unauthorized Modifications Except for routine modifications as provided in Section 8.2, Licensee shall not change the type, nature, or location of any Attachment or alter its use of a Pole without prior written CITY consent. Any such unauthorized modifications shall be deemed an Unauthorized Attachment and the remedial provisions in Article 10 (Unauthorized Attachments) shall apply.

8.2 Routine Modifications Licensee does not need CITY consent for (A) changes incident to routine maintenance and repair; (B) installations of Service Drops; (C) removal of Licensee's Attachments; or (D) upgrades of existing equipment that do not materially alter Pole loading or Pole space utilization.

8.3 CITY Mandated Modifications Within 30 calendar days of written request by CITY or within such other mutually agreed upon timeframe, Licensee shall move or rearrange its Attachments in order to maximize the usable available Pole space and/or to accommodate CITY facilities. Licensee shall do so at its sole cost and risk, except that Licensee shall not be responsible for any costs or expenses incurred to relocate or alter its Attachments to accommodate the Make-Ready work of other Third Party Users. If Licensee fails or refuses to comply with the directions of CITY to change, alter, improve, move, remove or rearrange any of its Attachments in accordance with this Agreement, CITY may then opt to change, alter, improve, move, remove or rearrange such Attachments without incurring any liability, except as provided in Article 16, to Licensee and at Licensee's sole cost and risk, or CITY may proceed under Article 13 of this Agreement and will provide an invoice to the costs to Licensee.

8.4 Emergencies In case of an Emergency, including electrical service restorations, CITY may move, rearrange or transfer Licensee's Attachments, without notice and without liability to Licensee or to any other person, except as provided in Article 16. Licensee shall be responsible for all Costs and shall reimburse CITY for the costs CITY incurs relating to such work within forty-five (45) calendar days of the date CITY sends Licensee an invoice for such work. An "Emergency" is a condition that: (i) poses an immediate threat to the safety of utility workers or the public; (ii) materially and adversely interferes with the performance of CITY or another Third Party User's service obligations; or (iii) poses an immediate threat to the integrity of CITY or another Third Party User's Poles or equipment. As soon as practical thereafter, CITY shall notify Licensee of such events and actions.

8.5 Destroyed Poles If any Pole on which Licensee has an Attachment is substantially destroyed or damaged by fire, storm, accident, or otherwise, CITY shall be under no obligation to rebuild or replace such Pole, but may elect to terminate Licensee's Attachment License for such Pole without any liability to Licensee. CITY shall notify Licensee in writing of a termination under this paragraph, and Licensee shall be entitled to a pro-rata refund of any prepaid but unearned Annual Usage Charge attributable to the Attachments on such damaged or destroyed Pole. Nothing herein shall prohibit Licensee from repairing or replacing such damaged or destroyed Poles at Licensee's sole cost and expense if: (A) CITY elects not to repair or replace same, and (B) Licensee is permitted to do so under the City Code, the terms of Licensee's franchise, if applicable, and any applicable easements.

8.6 Pole Transfers

A. Licensee and CITY expressly agree that for the orderly management of public rights-of-way and aesthetic considerations, double or multiple Poles shall be prohibited if a new Pole contains sufficient carrying capacity to support existing Pole attachments. If CITY replaces an existing Pole supporting an Attachment with a new Pole, CITY will provide at least 30 days' advance written notice via email as well as the NJUNS system to Licensee that Licensee must transfer its Attachment to the new Pole except for emergencies. If mutually agreed upon and if reasonably feasible and safe to do so, CITY will transfer the Attachment to the replacement Pole when CITY transfers its own lines and facilities. Licensee may also notify the CITY in writing within 15 days of the notice that it does not desire to occupy the new Pole. Failure of Licensee to timely respond to CITY's notice shall be deemed an election to occupy the new Pole. If Licensee opts not to occupy the new Pole, Licensee shall remove its facilities from CITY'S Pole within 30 days from the date the replacement Pole is installed and ready for use and Licensee's Attachment License to the replaced Pole shall terminate as of the date of replacement and as liquidated damages to CITY for Licensee's failure to remove Licensee's attachments from the replacement Pole the Usage Rates for such Pole shall be two times (2x) the Annual Usage Fee, starting 30 days after the date of replacement. Should the existing Pole upon which Licensee's facilities remain attached become damaged or rotten, the City shall not be responsible for its replacement and the Licensee will need to make other arrangements for their facilities. Licensee shall not be entitled to a refund of any Annual Usage Charge as a result. For each Attachment transferred by CITY, Licensee shall pay a transfer Fee as set forth in Exhibit A, unless the transfer is the result of a Third Party User attachment request, in which case the Third Party User will pay for Licensee's transfer.

B. All Poles, including any new Poles that may be required, shall be installed in the same line of existing Poles unless it is infeasible to do so either safely, technically, or legally.

8.7 Relocation Upon at least 60 days advance written notice, Licensee agrees that it will bear all actual and reasonable Costs associated with the relocation or re-routing of its Attachments in the event CITY facilities are removed from a Pole. In such event, CITY shall be under no obligation to maintain any Poles that no longer support CITY lines and may remove Licensee's Attachments when removing the abandoned Pole at Licensee's sole Cost and risk if Licensee fails to relocate its facilities in a timely manner. City is not responsible for any negotiations for reimbursement for developer related relocations.

8.8 Underground Conversion Upon written notice, Licensee agrees that it will bear all Costs associated with the relocation or re-routing of its Attachments in the event CITY facilities are removed from a Pole and re-routed through underground Conduits. In such event, CITY shall be under no obligation to maintain any Poles that no longer support CITY supply lines and may remove Licensee's Attachments when removing the abandoned Pole at Licensee's sole Cost and risk. CITY will afford Licensee the opportunity to relocate underground, at Licensee's expense, where reasonably practicable.

ARTICLE 9

INVENTORY, INSPECTIONS, ANNUAL REPORTING, RIGHT TO AUDIT

9.1 Right to Inspect CITY may inspect Licensee's work and Attachments at any time. CITY may conduct these inspections for any purpose relating to this Agreement, including without limitation: (A)

determining compliance with the Design Documents or other design and installation requirements; or (B) determining compliance with Electrical Code. The making of an inspection by CITY shall not operate in any way to relieve Licensee or Licensee's insurers of any responsibility, duty, obligation, or liability under this Agreement or otherwise, nor does CITY's ability to make inspections relieve Licensee from its obligations to exercise due care in the operation and inspection of its Attachments. Further, by conducting any inspection CITY is not responsible for the design, installation, or maintenance of Licensee's facilities or for any damages in anyway related to Licensee's Attachments to CITY'S Pole.

9.2 Compliance In the event any inspection of an existing Attachment reveals that corrections or other actions are required of Licensee under this Agreement, including without limitation those required for reasons of safety or structural integrity, Licensee shall make such corrections or take the requested actions within 30 days after the date CITY sends Licensee a written notice informing Licensee of the corrections to be made. If such corrections cannot be made within 30 days, the parties will agree on a mutually acceptable timeframe. CITY may also perform such work without notice, at Licensee's sole Cost and risk, except as provided in Article 16, if CITY determines in its reasonable judgment and discretion that an Emergency does not permit full advance notice to Licensee. If Licensee fails or refuses to comply with the directions of CITY, the Attachment License(s) for the Attachments in question shall be terminated. In no event will Licensee be responsible for corrections of violations caused by another party, including CITY. CITY may opt to change, alter, improve, move, remove or rearrange such Attachments without incurring any liability to Licensee, except as provided in Article 16, and at Licensee's sole Cost and risk, or proceed under Article 13 of this Agreement.

9.3 System-wide Inventory Not more than once every 3 years, nor less often than once every 10 years, CITY may, but is under no obligation to, conduct a system-wide inventory of all Licensee Attachments and Third-Party User attachments on its Poles, for which Licensee shall bear its proportionate share of Costs with all other Licensee's and Third Party Users. CITY will notify Licensee at least 90 days in advance of the times and places of such inventory, and Licensee may have representatives accompany CITY on the inventory. CITY may use the results of the inventory for purposes of calculating the Annual Usage Charge, but may also rely upon geographical grids or other mutually agreeable census to determine the correct count.

9.4 Annual Reporting Requirements Licensee shall report the following to CITY no later than October 31 of each year:

A. List of Installations The Licensee shall provide a list of specific Poles (by CITY Pole number, if available) on which the Licensee has installed, during the relevant reporting period, Attachments and Service Drops, or any other facility.

B. List of Non-Functional Attachment The Licensee shall provide a list of all Attachments or other installations that have either become non-functional, surrendered, or for which the Licensee is no longer paying under the Annual Usage Charge during the relevant reporting period. The report shall identify the specific Pole (by CITY Pole number, if available) on which the nonfunctional Attachment or installation is located and provide a description of the nonfunctional equipment.

C. Removed Equipment The Licensee shall provide a list of any equipment removed (and

not replaced by substantially similar equipment) from specific Poles (by CITY Pole number, if available) during the relevant reporting period. The report shall identify the Pole from which the equipment was removed, a description of the removed equipment, and indicate the approximate date of removal.

D. Contact Personnel The Licensee shall provide accurate and current contact information. Contact information shall include: (1) emails for field construction, engineering, and city relationship personnel, as well as an email and contact for a vice president level executive, and (2) a phone line that can be contacted by CITY at all times. Should contact information change Licensee shall provide updated information to the CITY within five (5) business days.

E. Failure to Report Failure of a Licensee to provide CITY the required annual information within forty-five (45) calendar days following issuance of written notice by CITY shall result in CITY suspending all work on the Licensee's Applications which may be in process or may be submitted after the suspension date. Within three (3) business days of CITY receiving the required annual information, CITY shall resume processing the Licensee's Attachment Applications in the order that they were initially received by CITY.

9.5 Right to Audit The Licensee grants the CITY, or its designees, the right to audit, examine or inspect, at the CITY's election, all of the Licensee's records relating to number and types of Licensee's Attachments during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a CITY designee, which may include its internal auditors or an outside representative engaged by the CITY. The Licensee agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the Agreement, then, such retention period shall extend until final resolution of the dispute. "Licensee's Records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of Licensee records include but are not limited to billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, policies, procedures, and any and all other agreements, sources of information and matters that may in the CITY's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by the Agreement. The CITY agrees that it will exercise the right to audit, examine or inspect only during regular business hours. The Licensee agrees to allow the CITY's designee access to all of the Licensee's Records, Licensee's facilities, and current or former employees of Licensee, deemed necessary by CITY or its designee(s), to perform such audit, inspection or examination. Licensee also agrees to provide adequate and appropriate work space necessary to CITY or its designees to conduct such audits, inspections or examinations. Licensee must include this audit clause in any subcontractor, supplier or vendor contract.

ARTICLE 10 UNAUTHORIZED ATTACHMENTS

10.1 Unauthorized Attachments Licensee shall not place any Attachments on a Pole or other CITY infrastructure except as authorized by an Attachment License. If one or more Unauthorized Attachments are discovered, Licensee shall comply with this Article 10 or, if Licensee fails to comply, CITY may, but shall not be required to, remove the Unauthorized Attachment without incurring any liability to Licensee

and at Licensee's sole Cost, as described in this paragraph 10.1. With respect to any Unauthorized Attachment, CITY may opt to:

A. Require that Licensee remove such Unauthorized Attachment upon written notice or, if Licensee fails to do so as described in part B of this paragraph 10.1, remove such Attachment at Licensee's sole Cost and risk; or

B. Require that Licensee pay all costs to correct any Code or other violation, all inspection and engineering costs to field-check necessary Poles, Unauthorized Attachment Fees, with interest, for each unauthorized Attachment (as shown in Exhibit A Pole Attachment Charges), and submit an Attachment Application for each such Unauthorized Attachment, together with the then-current Filing Fee and Annual Usage Charge for the current year. If such penalty fees, Attachment Application, and charges are not received by CITY within 30 days of notice of the Unauthorized Attachment, or such reasonable time under the circumstances, CITY may then opt to remove Licensee's Unauthorized Attachments pursuant to Part A. of paragraph 10.1. CITY reserves the right to immediately remove any Unauthorized Attachments that, in the CITY'S sole opinion, pose an imminent danger to electrical utility operations or the public.

10.2 Remedies Cumulative The remedies afforded CITY under this Article 10 are in addition to any civil or criminal penalties provided by City Ordinance, as amended.

10.3 Ratification Must Be in Writing No act or failure to act by CITY with respect to an Unauthorized Attachment or any other unauthorized use of CITY Poles or property shall be considered to be a ratification, licensing, or permitting of the unauthorized use, irrespective of any otherwise applicable doctrine of waiver or laches.

10.4 Excessive Unauthorized Attachments Following the first audit after the Effective Date, if CITY determines that Licensee has made more than 30 Unauthorized Attachments cumulatively during any Contract Year, Licensee shall be considered to be in breach of this Agreement and CITY retains the right to terminate this Agreement and require removal of Licensee's Attachments in accordance with Article 13 of this Agreement. Licensee herein reserves the right to challenge any such termination and maintain its Attachments until such challenge is exhausted.

ARTICLE 11

ACCESS TO CONDUIT AND DUCTS

11. 1 Scope Nothing in this Agreement require, or shall be construed as to require CITY to provide Licensee with access to CITY's electrical Ducts and Conduits.

ARTICLE 12

CUSTOMER INTERACTION

12.1 Purpose Licensee acknowledges that the scope of its proposed project and Attachment installation it intends to undertake under this Agreement will require Licensee to make extensive and repeated intrusions onto the private property of CITY customers in order to access Poles. The purpose of this Article is to establish minimum standards of conduct with respect to property owners and CITY customers.

12.2 Licensee Conduct Before engaging in electrical installation work on the property of a CITY customer (except for connections or disconnections of customer's service or doing maintenance on existing Licensee facilities), Licensee shall, at minimum:

- A.** Provide CITY's Electric Utility Dispatch Center, (940) 349-7644, or such other department or division and number as CITY from time to time may designate, with notice of the times, locations, and nature of the work to be performed;
- B.** Require all field crews, and those of its Contractors, to carry and distribute upon request information packets explaining in detail the nature, extent, and purpose of the work being done and listing the telephone number and web site where additional information can be found;
- C.** Establish and maintain a call-center telephone number during all hours during which field work is being done that is staffed by knowledgeable personnel who can answer and resolve customer questions and complaints in a timely manner concerning the work being done on their premises;
- D.** Require all field crews to wear I.D. badges that identify themselves as employees or Contractors of Licensee;
- E.** Have all vehicles used in field work bear the logo(s) of Licensee's Contractors or Licensee; and
- F.** Have readily available, during all hours in which field work is being done, one or more knowledgeable personnel who can communicate with and assist the City Manager's Office and City Council members regarding property owner complaints, and also have available qualified personnel to conduct on-site resolution of property owner complaints.

12.3 No CITY Affiliation Licensee, and its employees, Contractors, and agents shall not at any time represent themselves to the public, any CITY customer, or any resident as being associated with, having the permission of, or having been requested by the City of Denton to be on private property. Licensee shall inform any such persons that it is allowed to work on CITY Poles by virtue of state and federal law, not by voluntary association with the City of Denton.

12.4 Service Interruptions If applicable, Licensee shall provide written notice to affected CITY customers of any planned electrical service interruptions by Licensee's contractors that will affect them not less than 48 hours in advance of such interruption. Such notice shall contain the specific dates and times for such interruptions and the reasons therefor.

ARTICLE 13

TERMINATION

13.1 Termination of Attachment Licenses Attachment Licenses for specific Attachments shall terminate upon any of the following events or conditions:

- A.** Licensee has not completed the Attachment installation within the later of (i) 120 days from issuance of the Attachment License (or such longer period as the parties may agree in writing); or (ii) 60 days after completion of all electrical Make-Ready work, unless Licensee and CITY agree in writing for a longer period;
- B.** Licensee removes the Attachment other than in the course of routine maintenance or replacement;
- C.** Licensee ceases to offer services, or provides services unlawfully, through the Attachment;
- D.** Licensee fails to comply with paragraphs 8.3, 8.7 or 9.2 of this Agreement, except as otherwise provided by those paragraphs.

13.2 Right of Suspension Except in the case of a good faith dispute between the Parties, if Licensee fails either to make any payment required under this Agreement, or to perform timely any obligation under this Agreement, and such default continues for 30 days after the date the payment or performance is due if such cure can reasonably be completed within thirty (30) days, and if not, such cure has commenced and is being diligently and consistently pursued then, in addition to any other available right or remedy, CITY may, upon written notice to Licensee, immediately suspend all Attachment Licenses of Licensee hereunder until such time as the default is cured. The payment under protest of a disputed amount in order to avoid, or lift, suspension of Attachment Licenses shall not prejudice the rights of Licensee to continue the payment dispute. A suspension of Attachment Licenses under this paragraph shall not prevent Licensee from operating, maintaining, repairing or removing its existing Attachments, but Licensee shall not install any new or additional Attachments or make any changes to existing Attachments (except for removal or routine repair or maintenance necessary to continue to provide services to then-existing Licensee customers) during the period of suspension.

13.3 Termination of Agreement by CITY If Licensee fails either to pay any undisputed payment required under this Agreement, or timely perform any obligation under this Agreement, and if such default has not been cured within three months of Licensee's receipt of written notice of default, or if such cure cannot reasonably be completed in three months, cure has commenced and has been continuously and diligently pursued, CITY may terminate this Agreement and all Attachment Licenses upon written notice to Licensee. Upon receipt of a notice of termination, Licensee shall promptly begin the process of removing all Attachments from specified Poles. All such Attachments shall be removed within 90 days after the date of the notice of termination, or within such time as CITY may agree. Until all of Licensee's Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Such payment by Licensee or acceptance by CITY of Annual Usage Charges shall not act to cure the default that triggered the termination nor shall it reinstate this

Agreement or Licensee's Attachment Licenses hereunder.

13.4 Failure to Remove Attachments If Licensee has not removed all its Attachments within the period of time specified in the preceding paragraph, or such additional period of time granted by CITY in writing, then CITY may remove Licensee's Attachments at Licensee's sole Cost and risk. CITY will invoice Licensee for such Cost. Additionally, CITY may, in its reasonable discretion and upon written notice to Licensee, deem the Attachments to have been abandoned and assume ownership thereof.

13.5 Termination of Agreement by Licensee Licensee may terminate this Agreement upon 60 days written notice to CITY, in which event all Attachments shall be removed within 120 days after the date of the notice of termination or within such other time as CITY agrees. Until all of Licensee's Pole Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Termination by Licensee during a Contract Year shall not relieve Licensee from payment for the full Annual Usage Charge for that Contract Year or any other sums that it owes CITY.

13.6 Survival Licensee's obligations under this Article 13 shall survive termination of this Agreement.

ARTICLE 14 ASSIGNMENTS

14.1 Written Consent Required The rights granted by this License Agreement inure to the benefit of Licensee and shall not be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise by force or involuntary sale, without the express prior written consent of the CITY, which consent shall not be unreasonable withheld, delayed or conditioned.

14.2 Transfer of License Agreement Notwithstanding the provisions of Section 14.1, a transfer of this License Agreement may occur without CITY approval in the following circumstance: (i) an assignment or transfer to entities that control, are controlled by, or are under common control with Licensee, or (ii) the acquisition of all or substantially all of Licensee's assets in the Denton, Texas market by reason of a merger, acquisition or other business reorganization. In order to effect an assignment of this License Agreement as listed in (i) and (ii) above without CITY approval, the Licensee must provide the CITY a Notice of Assumption at least thirty (30) days prior to the assignment which contractually binds the purchasing or acquiring party to meet all the obligations of this License Agreement.

14.3 Institutional Mortgagee or Lenders Licensee may also assign this License Agreement, without CITY's consent and without prior notice to CITY, to an institutional mortgagee or lender providing financing to Licensee with respect to Licensee's Attachments in the event such institutional mortgagee or lender exercises its foreclosure right against Licensee and operates the Attachments; provided such institutional mortgagee or lender is capable of assuming all of the obligations of the Licensee under this License Agreement and further provided that any assignment will not be effective against CITY unless and until written notice of such assignment and exercise of rights is provided to CITY.

14.4 Assignment by CITY CITY may assign this Agreement in whole or in part without the consent of Licensee. CITY shall give Licensee written notice of the transaction within ten days after closing.

ARTICLE 15
SURETY

15.1 Payment Bond Within 30 days of the Effective Date of this Agreement, Licensee shall provide a payment bond in the amount of \$500,000. The payment bond will serve as security for the faithful payment of all of Licensee's obligations for contracts, subcontracts, work, labor, equipment, supplies, and materials performed under this Agreement. The payment bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law.

15.2 Performance Bond Within 30 days of the Effective Date of this Agreement, Licensee shall provide a Performance Bond in the amount of \$500,000 to guarantee the performance of Licensee's obligations under this Agreement, including, but not limited to, the removal of Licensee's Attachments upon termination of this Agreement. Licensee agrees to maintain the performance bond in full force and effect during the entire term of this Agreement and until CITY is reimbursed for all Costs incurred as a result of removing Licensee's Attachments upon termination of this Agreement. The performance bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The amount of the bond or financial security does not operate as a limitation upon obligations of the Licensee under this Agreement.

ARTICLE 16
LIABILITY AND INDEMNITY

16.1 CITY Liability CITY reserves to itself the right to maintain and operate its Poles in such manner as will best enable it to fulfill its own service requirements. CITY shall not be liable for any damages incurred by Licensee for damage or interruption to its Attachments except for actual repair costs caused by the gross negligence or intentional misconduct of CITY; provided, however, that CITY shall not be liable to Licensee for material or financial loss resulting from any interruption of Licensee's service or for interference with the operation of Licensee's Attachments. **NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY, ANY THIRD PARTY, OR ANY CUSTOMER OF THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THE USE OF OR DAMAGE TO, LICENSEE'S FACILITIES, OR THIS AGREEMENT.**

16.2 No Warranties by CITY Licensee is expected to inspect the Poles on which its Attachments will be placed and shall rely solely on such inspection to determine the suitability of the Poles for its purposes. **CITY DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTIES CONCERNING ANY POLE, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACCEPTS THE USE OF ALL POLES AS IS-WHERE IS, AND WITH ALL FAULTS, EXCEPT AS OTHERWISE PROVIDED HEREIN.**

16.3 Unsafe Poles Licensee acknowledges and agrees CITY does not warrant the condition or safety of CITY's Poles, or the premises surrounding the Poles, and LICENSEE HEREBY ASSUMES ALL RISKS OF , AND INDEMNIFIES CITY FROM, ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY LICENSEE'S, OR LICENSEE'S CONTRACTORS' OR SUBCONTRACTORS' USE OF THE POLES AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN, OR SURROUNDING THE POLES. Licensee expressly agrees it will undertake responsibility for inspecting and evaluating the condition of any Pole before allowing any employees, whether those of Licensee or Licensee's Contractors or Subcontractors, to climb or otherwise work on such Pole. If Licensee discovers any Poles that are rotten or otherwise unsafe for climbing or for Attachment installation, Licensee shall report any unsafe condition to CITY within one (1) day. Licensee further acknowledges CITY does not warrant all Poles are properly labeled, and agrees CITY is not liable for any injuries or damages caused by or in connection with missing labels or otherwise improperly labeled Poles. Licensee further agrees to notify CITY immediately if labels or tags are missing or otherwise improper.

16.4 Dangerous Nature of the Work Licensee acknowledges in performing the work contemplated by this Agreement, Licensee and its agents, servants, employees, Contractors and Subcontractors will work near electrically energized lines, transformers, and other electrical equipment, and it is the intention the power flowing through such facilities will not be interrupted except by CITY. Licensee shall ensure its employees, servants, 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 by this Agreement. In addition, Licensee shall furnish its employees, and shall require its agents, Contractors and Subcontractors to furnish their employees, with competent supervision and sufficient and adequate personal protective equipment, tools and other equipment for their work to be performed in a safe

manner. Licensee further warrants it is apprised of, conscious of, and understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION OR FALLS) inherent in the work necessary to make installations on CITY's Poles by Licensee's employees, servants, agents, Contractors and Subcontractors, and accepts as its duty and sole responsibility to notify and inform Licensee's employees, and to require its agents, Contractors and Subcontractors to inform their employees of such dangers and to keep them informed regarding same.

16.5 Disclaimer of Liability CITY shall not at any time be required to pay from its own funds for injury or damage occurring to any person or property from any cause whatsoever arising out of Licensee's construction, reconstruction, maintenance, repair, use, operation, condition or dismantling of Licensee's system or Licensee's provision of service.

16.6 Indemnification SUBJECT ONLY TO PARAGRAPH 16.9, LICENSEE SHALL, AT ITS SOLE COST AND EXPENSE, FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND ALL ASSOCIATED, AFFILIATED, ALLIED AND SUBSIDIARY ENTITIES OF CITY, WHETHER EXISTING NOW OR IN THE FUTURE, AND EACH OF THEIR RESPECTIVE OFFICIALS, OFFICERS, DEPARTMENTS, AGENCIES, COUNTIES, BOARDS, REPRESENTATIVES, EMPLOYEES, AGENTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS AND ATTORNEYS (CITY AND SUCH OTHER PERSONS AND ENTITIES BEING COLLECTIVELY REFERRED TO HEREIN AS "INDEMNITEES"), FROM AND AGAINST:

A. ANY AND ALL LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS) , WHICH MAY BE IMPOSED UPON, INCURRED BY OR BE ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY ACT OR OMISSION OF LICENSEE, ITS PERSONNEL, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS OR AFFILIATES, RESULTING IN ECONOMIC HARM, PERSONAL INJURY, BODILY INJURY, SICKNESS, DISEASE OR DEATH TO ANY PERSON OR DAMAGE TO, LOSS OF OR DESTRUCTION OF TANGIBLE OR INTANGIBLE PROPERTY, LIBEL, SLANDER, INVASION OF PRIVACY AND UNAUTHORIZED USE OF ANY TRADEMARK, TRADE NAME, COPYRIGHT, PATENT, SERVICE MARK OR ANY OTHER RIGHT OF ANY PERSON, FIRM OR CORPORATION, WHICH MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THE CONSTRUCTION, RECONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE OR CONDITION OF LICENSEE'S ATTACHMENTS OR OTHER PROPERTY OF LICENSEE OR ITS AFFILIATES AND ANY OTHER FACILITIES AUTHORIZED BY OR PERMITTED UNDER THIS AGREEMENT; THE RELEASE OF HAZARDOUS SUBSTANCES, OR; THE FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, LAW, CODE, ORDINANCE OR REGULATION.

B. ANY AND ALL LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS), WHICH ARE IMPOSED UPON, INCURRED BY OR ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY CLAIM OR LIEN ARISING OUT OF WORK, LABOR, MATERIALS OR SUPPLIES PROVIDED OR SUPPLIED TO LICENSEE, ITS CONTRACTORS OR SUBCONTRACTORS, FOR THE INSTALLATION, CONSTRUCTION, RECONSTRUCTION, OPERATION OR MAINTENANCE OF LICENSEE'S FACILITIES (AND ANY OTHER FACILITIES AUTHORIZED BY OR PERMITTED UNDER THIS AGREEMENT OR PROVISION OF COMMUNICATIONS SERVICES OR OTHER SERVICES AUTHORIZED BY OR PERMITTED UNDER THIS AGREEMENT), AND, UPON THE WRITTEN REQUEST OF CITY, LICENSEE SHALL CAUSE SUCH CLAIM OR LIEN COVERING CITY'S PROPERTY TO BE DISCHARGED OR BONDED WITHIN THIRTY (30) DAYS FOLLOWING SUCH REQUEST.

C. ANY AND ALL LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS), WHICH MAY BE IMPOSED UPON, INCURRED BY OR BE ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY FINANCING OR SECURITIES OFFERING BY LICENSEE OR ITS AFFILIATES FOR VIOLATIONS OF THE COMMON LAW OR ANY LAWS, STATUTES, OR REGULATIONS OF THE STATE OF TEXAS OR THE UNITED STATES, INCLUDING THOSE OF THE FEDERAL SECURITIES AND EXCHANGE COMMISSION, WHETHER BY LICENSEE OR OTHERWISE.

D. ALL ACTS OR OMISSIONS BY LICENSEE OR ITS CONTRACTORS DONE IN THE COURSE OF INSTALLATION CONSTRUCTION OR IN THE MAINTENANCE, USE, OR OPERATION OF LICENSEE'S ATTACHMENTS.

E. ANY WORK PERFORMED BY CITY THAT WAS NECESSITATED BY THE INSTALLATION, MAINTENANCE, PRESENCE, USE OR REMOVAL OF LICENSEE'S ATTACHMENTS OR FROM ANY WORK THIS AGREEMENT AUTHORIZES CITY TO PERFORM ON LICENSEE'S BEHALF.

F. ALL CLAIMS OR CAUSES OF ACTION FOR DAMAGE TO PROPERTY OR INJURY TO OR DEATH OF ANY PERSONS, INCLUDING PAYMENTS MADE BY CITY UNDER ANY WORKER'S COMPENSATION LAWS OR UNDER ANY PLAN FOR EMPLOYEES' DISABILITY AND DEATH BENEFITS, ARISING OUT OF THE ERECTION, MAINTENANCE, REPAIR, PRESENCE, USE, RELOCATION, TRANSFER OR REMOVAL OF LICENSEE'S ATTACHMENTS OR THE PROXIMITY OF LICENSEE'S ATTACHMENTS TO CITY'S FACILITIES OR THE PROPERTY OF ANY OTHER THIRD PARTY USER, OR BY ANY ACT OR OMISSION OF LICENSEE ON OR IN THE VICINITY OF CITY'S POLES.

G. ALL CLAIMS OR CAUSES OF ACTION FOR PROPERTY DAMAGE, BODILY INJURY OR DEATH ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE OF ANY WORK OR OBLIGATION UNDERTAKEN BY LICENSEE PURSUANT TO THIS AGREEMENT.

H. ANY OCCURRENCE RELATED TO LICENSEE'S ERECTION, MAINTENANCE, REPAIR, PRESENCE, USE, RELOCATION, TRANSFER OR REMOVAL OF LICENSEE'S ATTACHMENTS, INCLUDING LIABILITIES INCURRED AS A RESULT OF VIOLATION OF ANY LAW, RULE, OR REGULATION OF THE UNITED STATES, STATE OF TEXAS OR ANY OTHER GOVERNMENTAL ENTITY OR ADMINISTRATIVE AGENCY.

I. A VIOLATION OF ANY STATE OR FEDERAL LAW ARISING OUT OF LICENSEE'S ERECTION, MAINTENANCE, REPAIR, PRESENCE OR USE, RELOCATION, TRANSFER OR REMOVAL OF LICENSEE'S ATTACHMENTS OR THE PROXIMITY OF LICENSEE'S ATTACHMENTS TO CITY'S FACILITIES OR THE PROPERTY OF ANY ATTACHING ENTITY, OR BY ANY ACT OR OMISSION OF LICENSEE ON OR IN THE VICINITY OF CITY'S POLES, WHETHER SUCH VIOLATION IS THE RESULT OF A VIOLATION OF A STATUTE BY CITY OR THE LICENSEE SOLELY OR ANY JOINT VIOLATION THEREOF.

J. CLAIMS OF GOVERNMENTAL BODIES, PROPERTY OWNERS OR OTHERS ALLEGING THAT LICENSEE DOES NOT HAVE A SUFFICIENT RIGHT OR AUTHORITY FOR PLACING AND MAINTAINING LICENSEE'S FACILITIES AT THE LOCATIONS OF POLES OWNED BY CITY OR JOINT USERS.

K. CLAIMS FOR TAXES OR SPECIAL CHARGES BY OTHERS THAT ARISE DIRECTLY OR INDIRECTLY FROM THE CONSTRUCTION, MAINTENANCE OR OPERATION OF LICENSEE'S FACILITIES.

L. CLAIMS OR CAUSES OF ACTION CAUSED BY OR RELATING IN ANY MANNER TO A BREACH OF THIS AGREEMENT OR A FAILURE TO FOLLOW THE TERMS OF THIS AGREEMENT BY LICENSEE OR ITS AGENTS AND EMPLOYEES OR BY LICENSEE'S CONTRACTORS OR THEIR AGENTS AND EMPLOYEES.

M. ALL CLAIMS OR CAUSES OF ACTION OF THIRD PARTY USERS ALLEGING INTERFERENCE FROM LICENSEE'S ATTACHMENTS OR DAMAGE TO THIRD PARTY USER ATTACHMENTS OR FACILITIES.

N. ALL CLAIMS OR CAUSES OF ACTION RELATING TO LICENSEE'S USE OF ITS ATTACHMENTS, INCLUDING WITHOUT LIMITATION CLAIMS OF LIBEL AND SLANDER AND CLAIMS BASED UPON INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

O. LICENSEE'S OBLIGATIONS TO INDEMNIFY INDEMNITEES UNDER THIS AGREEMENT SHALL NOT EXTEND TO CLAIMS, LOSSES, AND OTHER MATTERS COVERED HEREUNDER THAT ARE CAUSED OR CONTRIBUTED TO BY THE NEGLIGENCE OF ONE OR MORE INDEMNITEES. IN SUCH CASE THE OBLIGATION TO INDEMNIFY SHALL BE REDUCED IN PROPORTION TO THE NEGLIGENCE OF THE INDEMNITEES. BY ENTERING INTO THIS AGREEMENT, CITY DOES NOT CONSENT TO SUIT, WAIVE ITS GOVERNMENTAL IMMUNITY OR THE LIMITATIONS AS TO DAMAGES CONTAINED IN THE TEXAS TORT CLAIMS ACT.

P. THIS SECTION 16.6 SURVIVES THE TERMINATION OF THIS LICENSE AGREEMENT.

16.7 Assumption of Risk Licensee undertakes and assumes for its officers, agents, Contractors and subcontractors and employees (collectively "Licensee" for the purpose of this Section), all risk of dangerous conditions, if any, on or about any CITY-owned or controlled property, the streets and public ways, and Licensee hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any person (other than from Indemnitees' gross negligence) arising out of Licensee's installation, operation, maintenance or condition of the Communication Facilities or other facilities or Licensee's failure to comply with any Federal, State or local statute, law, code, ordinance or regulation.

16.8 Defense of Indemnitees In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Licensee shall, upon notice from any of the Indemnitees, at Licensee's sole cost and expense, resist and defend the same with legal counsel selected by Licensee and consented to by CITY, such consent not to be unreasonably withheld; provided, however, that Licensee shall not admit liability in any such matter on behalf of the Indemnitees without their written consent and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Licensee.

16.9 Joint Liability The indemnity obligations set forth in paragraphs 16.5 and 16.6 shall apply to fully protect and indemnify CITY from all such claimed damages regardless of whether CITY is a joint tortfeasor unless (1) the indemnified liability was the result of intentional or reckless misconduct on the part of CITY, or their agents, servants, employees, or contractors, or (2) by virtue of a final judgment, a finder of fact determines CITY'S percentage of responsibility for the indemnified liability to be 60% or greater, in which case each party shall then be liable for its found percentage of damages in accordance with Texas law.

16.10 Governmental Immunity No provision of this Agreement is intended, or shall be construed, to

be a waiver for any purpose by CITY of the provisions of the Texas Tort Claims Act or any other law limiting municipal liability.

16.11 City Fault. SUBJECT ONLY TO PARAGRAPH 16.6, IT IS THE EXPRESS INTENT OF THE PARTIES THAT THE FOREGOING INDEMNITY IS TO PROTECT AND INDEMNIFY CITY AGAINST THE CONSEQUENCES OF ITS OWN FAULT WHERE THE CITY'S FAULT IS A CONCURRENT CAUSE OF THE INDEMNIFIED CLAIM.

16.12 Notice, Cooperation and Expenses The Indemnitees shall give Licensee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Article 16. Nothing herein shall be deemed to prevent the Indemnitees at their own expense from cooperating with Licensee and participating in the defense of any litigation by their own counsel.

16.13 Other Indemnification Provisions No indemnification provision contained in this Article shall be construed in any way to limit any other indemnification provision contained in this Agreement.

16.14 Survival This Article 16 shall survive the termination of this License Agreement.

ARTICLE 17 INSURANCE

17.1 Licensee shall purchase and maintain in force and effect, at its own expense, the following minimum insurance coverages and limits:

17.2 Statutory Worker's Compensation and Employer's Liability Insurance with minimum limits of not less than indicated below. The policy must be in the name of the Licensee.

Required Limits – Statutory limits, with Employer's Liability Coverage as follows:

Bodily Injury by Accident	\$1,000,000.00
Bodily Injury by Disease Each Employee	\$1,000,000.00
Bodily Injury by Disease Policy Limit	\$1,000,000.00

17.3 Commercial General Liability Insurance, including the coverages identified below, with minimum limits indicated below.

Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00

The Commercial General Liability Policy will include the following coverage's where applicable:

1. Bodily injury & Property damage on an "Occurrence" basis
2. Premises & Operations
3. Products/Completed Operations
4. Personal & Advertising Injury Liability
5. Contractual Liability
6. Explosion, Collapse, and Underground (XCU)

17.4 Commercial Automobile Insurance for all owned, non-owned, and hired vehicles.

Combined Single Limit BI & PD \$500,000.00

17.5 Umbrella/Excess Liability Coverage over Employers' Liability, Commercial General Liability, and Commercial Automobile Liability Policies, with the limits shown below.

Excess Liability Coverage \$8,000,000.00 per occurrence/claim

17.6 Each of Licensee's liability insurance policies where the CITY is included as an additional insured shall be primary to and non-contributing with, any other insurance carried by, or for the benefit of the CITY. Insurance may be provided under a single limit policy, or two or more policies with combined limits for the required amount of coverage.

17.7 Licensee's workers' compensation, employers' liability, commercial automobile liability, commercial general liability, and umbrella/excess liability insurance policies shall, through policy language or endorsement, waive all rights of subrogation in favor of CITY and its affiliates, and their shareholders, directors, officers, members, employees and agents.

17.8 CITY and its employees, officers, directors, shareholders, members, and agents shall be included as additional insureds on all policies (except workers' compensation and employer's liability). Commercial general liability policy shall include ISO endorsement forms "CG 20 10" and "CG 20 37," or their equivalent. Further:

(a) In the event of cancellation of the required policies, Licensee or its insurer(s) shall provide thirty (30) days' prior written notice of cancellation to CITY.

(b) Upon request by CITY, Licensee shall provide copies of policy endorsements as required in this Section 17 from issuing insurance company(s).

17.9 All Licensee's insurance shall be issued by insurance carriers authorized or licensed to do business in Texas at the time the policy is issued and rated by A.M. Best Company as A-VII or better, confirmed by one or more insurance certificates listing CITY's name and address as a Certificate Holder, and list the name of Project as described in this Agreement and the name and phone number of the broker who prepared the certificate. Certificates of insurance shall be prepared on an Acord form 25.

17.10 With respect to any coverage maintained on a "claims-made" policy form, Licensee shall maintain such coverage, either through policy renewals or the purchase of an extended discovery period (if such extended coverage is available), for two (2) years following termination of this Agreement; provided that, if a "claims-made" policy is maintained, the retroactive date must precede the effective date of this Agreement.

17.11 Licensee shall not commence the installation of Attachments under this Agreement until Licensee has obtained all required insurance and until such insurance certificates and endorsements/policy language have been received and approved by CITY. CITY's approval of Licensee's insurance shall not relieve or decrease the liability of Licensee hereunder.

17.12 If Licensee fails to obtain or renew the above required insurance and furnish to the CITY acceptable evidence thereof, CITY shall have the right, but not the obligation, to: (1) procure such insurance and reduce the Agreement amount by the cost thereof; or (2) deem as material breach of this Agreement the Licensee's failure to do so.

17.13 Nothing herein shall reduce or alter any obligation Licensee has to indemnify, defend or hold harmless the Indemnified Parties identified in the Agreement.

17.14 In the event Licensee enters into a subcontract with an independent contractor, the Licensee will require the independent contractor to procure insurance that is appropriate for the type and level of services being provided.

17.15 Licensee shall bear all risks and be responsible for any uninsured loss due to policy deductibles, self-insured retentions, exclusions, limitation inadequacy and/or absence of coverage, whether such policies are purchased by Licensee and/or CITY.

ARTICLE 18

MISCELLANEOUS PROVISIONS

18.1 Integration This Agreement constitutes the entire understanding of the parties relating to the use of CITY'S Poles hereunder; and there shall be no modification or waiver hereof except by writing, signed by the parties. There are no oral representations or agreements between the parties. All previous agreements, correspondence, statements, and negotiations are superseded by this Agreement.

18.2 No Waiver The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in duly force and effect.

18.3 Applicable Law The parties hereto agree and intend that all disputes that may arise from, out of, under or respecting the terms and conditions of this Agreement, or concerning the rights or obligations of the parties hereunder, or respecting any performance or failure of performance by either party hereunder, shall be governed by the laws of the State of Texas, without application of its Conflict of Laws provisions. Except as provided in Article 3, Paragraph 3.2 of this Agreement, the parties further agree and intend that venue shall be proper and shall lie exclusively in state or federal court with jurisdiction in Denton County, Texas, except where otherwise provided herein and except where the Texas Public Utility Commission lawfully has jurisdiction.

18.4 Severability If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants and provisions of this Agreement shall remain in full force and effect.

18.5 Payments & Interest All monetary payments under this Agreement shall be due and payable within 45 days after receipt of invoice. All overdue balances shall accrue interest at the rate of 1% per month from the due date until paid, or the maximum rate allowed by law, whichever is less.

18.6 Amending Agreement Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed, or altered except in writing signed by authorized representatives of both Parties.

18.7 Dispute Resolution This procedure shall govern any dispute resolution process between CITY and Licensee arising from or related to the subject matter of this Agreement that is not resolved by agreement between their respective personnel responsible for day-to-day administration and performance of this Agreement. Upon mutual agreement of the Parties, prior to the filing of any suit with respect to such a dispute, other than a suit seeking injunctive relief with respect to intellectual property rights, the Party believing itself aggrieved ("the Invoking Party") will call for progressive management involvement in the dispute negotiation by giving written notice to the other Party. Such a notice will be without prejudice to the Invoking Party's right to any other remedy permitted by this Agreement. CITY and Licensee will use their best efforts to arrange personal meetings and telephone conferences as needed, at mutually convenient times and places, between their negotiators. If a resolution is not

achieved by negotiators at the final management level within allotted reasonable amount of time, then either Party may within ten (10) business days thereafter request non-binding mediation to resolve the dispute. The mediation shall take place in Denton County or in a location mutually agreed to by the Parties. The allotted period for completion of the mediation shall be thirty (30) calendar days. Notwithstanding the foregoing, either Party may file an action in a court of competent jurisdiction within the State of Texas to resolve the dispute at any time unless otherwise agreed.

18.8 Receivership, Foreclosure, or Bankruptcy Licensee shall notify CITY not later than thirty (30) days of the filing of a receivership, reorganization, bankruptcy or other such action or proceeding by or against Licensee. The rights granted to Licensee hereunder, at the option of CITY shall cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Licensee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

- A.** to the extent permitted by law, within one hundred twenty (120) days after their election or appointment, such receivers or trustees shall have complied fully with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the Agreement, if any; and
- B.** to the extent permitted by law, within said one hundred twenty (120) days, such receivers or trustees shall execute an agreement duly approved by CITY having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.
- C.** In the case of foreclosure or other judicial sale of the plant, property and equipment of Licensee, or any part thereof, including or excluding this Agreement, CITY may serve notice of termination upon Licensee and the successful bidder at such sale, in which event the Agreement herein granted and all rights and privileges of the Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:
- D.** CITY shall have approved the transfer of this Agreement, as and in the manner in this Agreement provided; and
- E.** Unless such successful bidder shall have agreed with CITY to assume and be bound by all the terms and conditions to this Agreement.

18.9 Incorporation of Recitals and Appendices The Recitals stated above and all appendices, attachments, and exhibits to this Agreement are incorporated into and constitute part of this Agreement.

18.10 Contractors and Agents Bound Licensee shall be fully liable for any Contractor or subcontractor retained by Licensee to perform work or services for Licensee under this Agreement, as a condition of being granted access to Poles and City property.

18.11 No Third Party Beneficiaries The terms and provisions of this Agreement are intended to be for the benefit of CITY and Licensee except as otherwise provided in this Agreement, and nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than the parties to this Agreement, any benefits, rights or remedies under or by reason of this Agreement.

18.12 Emergency Contact Each Party shall maintain a staffed 24-hour emergency telephone number where a Party can contact the other Party to report damage to the other Party's Facilities or other situations requiring immediate communications between the Parties. Failure to maintain an emergency contact shall subject the Licensee to a charge equal to the actual costs incurred by CITY per incident and shall eliminate CITY's liability to Licensee for any actions that CITY deems reasonably necessary given the specific circumstances. The CITY's Electric Utility Dispatch Center emergency phone number is (940) 349-7644.

18.13 Notices When notice is required to be given under this Agreement by either party, it shall be in writing mailed or delivered to the other party at the following address or to such other address as either party may from time to time designate in writing for that purpose. All notices shall be effective upon receipt.

City:

Office of the City Attorney
City of Denton
215 E. McKinney St.
Denton, Texas
76201

Licensee:

Lisa Newsome

JU Sr. Specialist, Joint Use
lisa.k.newsome@ftr.com
260-461-3520

Kevin Saville

General Counsel
Ks9458@ftr.com
612-839-0909

IN WITNESS WHEREOF, the undersigned have executed this Agreement at Denton, Denton County, Texas through their duly authorized representatives.

AGREED:

CITY OF DENTON

City Manager

Signed on the _____ day of _____, 20__

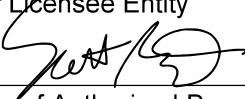
Approved as to legal form

City Attorney

LICENSEE

Scott Mispagel

Name of Licensee Entity



Signature of Authorized Person for Licensee Entity

Printed Name of Authorized Person

Signed on the 20th day of June, 2025

· THIS AGREEMENT HAS BEEN BOTH
REVIEWED AND APPROVED AS TO
ALL TERMS

Antonio Puente, General Manager
Denton Municipal Electric

Date Signed: _____

Attachment 1
New License Agreement

NOTICE

This Agreement does not authorize Licensee to install or maintain wireless communications devices on City of Denton poles or other infrastructure, electric or otherwise. Should Licensee desire to install wireless communications devices on City of Denton poles or other infrastructure, electric or otherwise, Licensee must enter into a separate agreement.

POLE ATTACHMENT LICENSE AGREEMENT BETWEEN THE CITY OF DENTON AND LICENSEE

This License Agreement is between the **City of Denton** ("CITY"), a Texas home-rule municipal corporation, and **Frontier Southwest Inc.** and its affiliates under common control ("Licensee") (collectively referred to as the "Parties").

WHEREAS, CITY, operates or controls certain utility poles in the public rights of way managed and controlled by CITY throughout Denton; and

WHEREAS, Licensee desires to provide voice, video, internet, or data transmission and other lawful communications services within CITY's service area; and

WHEREAS, to provide voice, video, internet, or data transmission and other lawful communications services, Licensee seeks to place and maintain cables, equipment, facilities, within CITY's service area and desires to place such cables, equipment, and facilities on various Poles and easements owned by CITY; and

WHEREAS, CITY is willing to grant Licensee a revocable, non-exclusive license to use certain Poles on the strict terms and conditions set forth in this Agreement and subject to the CITY Code of Ordinances, Electrical Code, and Distribution Construction Standards, as they may be amended from time to time.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, CITY and Licensee do hereby mutually covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND CONSTRUCTION

1.1 Definitions: For purposes of this Agreement, capitalized terms are defined as follows:

A. CITY Distribution Construction Standards means those engineering and construction standards, specifications, and designs maintained and referenced internally by CITY, and complied with in all material respects by CITY, for its own Pole distribution construction and engineering efforts.

B. Annual Usage Charge means the recurring charge that Licensee is to pay CITY annually under this Agreement for attachment to CITY's Poles. The Annual Usage Charge is in

addition to any Costs and Filing Fees Licensee may incur during a Contract Year, and shall be determined by CITY as of December 1 of each Contract Year, other than the first Contract Year. The Annual Usage Charge for any Contract Year shall be the number of Attachments shown on CITY's records to exist as of December 1 of the preceding Contract Year multiplied by the Usage Rate for the new Contract Year for each attachment of equipment. Unless applicable state or federal law is amended to allow a charge for over-lashed Cable, the Annual Usage Charge shall not apply to over-lashed Cable over-lashed with any of Licensee's Attachments for which a Usage Rate is chargeable. Unless otherwise expressly provided in this Agreement, Annual Usage Charges are not refundable.

C. Attachment Application means the CITY prescribed application sheet, together with all required prints, maps, proposed routes, project descriptions, studies, and proposed schedules that Licensee must submit, in full, to CITY in order to request, have reviewed, perform required and then be granted an Attachment License for a particular Pole or group of Poles. For the avoidance of doubt, any Licensee Attachment that was affixed to any CITY Pole prior to the Effective Date will not require a new Attachment Application to remain on such Pole.

D. Attachment means (other than for Annual Usage Charge Purposes):

1. each Cable owned, controlled, or used by Licensee, together with its associated messenger strand, guy wires, span guys, anchors, and other appurtenant and incidental facilities, affixed to a Pole regardless of the means by which affixed (a Cable lashed to another Cable and each Cable lashed to a common messenger is a separate Attachment);
2. each amplifier, repeater, controller, box, cabinet, appliance, device, or piece of equipment owned, controlled, or used by Licensee and affixed to a Pole, regardless of the means by which it is affixed;
3. each amplifier, repeater, controller, box, cabinet, appliance, device, or piece of equipment owned, controlled, or used by Licensee that is resting on the ground but is connected to a Pole, Attachment, or CITY line by a conductor;
4. a new or existing service wire drop that is (i) located in the same one foot of space assigned to the Licensee's Cable Attachment, and (ii) is attached to the same Pole as an existing Attachment of Licensee shall NOT constitute an additional Attachment.
5. risers installed by the Licensee for the purpose of transitioning overhead Cable to underground Cable or vice versa; or risers installed by the Licensee for the purpose of extending service to a customer shall be considered an additional attachment(s) with each individual riser charged at the Riser Rate as defined in the PAF Schedule of the CITY's then current Rate Ordinance
6. Licensee installed conduits, which differ from the conduits mentioned in risers above (5) shall be considered multiple attachments with the value based on the linear footage of the Conduit along the vertical length of the Pole that the conduit is installed.

7. Any other devices installed by the Licensee that may be approved by DME for installation on the Pole will be considered a large unit attachment subject to the miscellaneous charge rate tariff in the PAF Schedule.

E. **Attachment License** means the revocable (solely pursuant to the terms and condition hereof and applicable law), non-exclusive right of Licensee to make an Attachment to a Pole under this Agreement, pursuant to CITY's approval of an Attachment Application and subject to (1) any modifications, conditions, and specifications imposed by CITY pursuant to this Agreement or applicable law when approving the Attachment Application and (2) all Design Documents issued by CITY with respect to the Attachment and Pole in question. An Attachment License authorizes Attachments solely for lawful communications purposes, as described in this Agreement. The use of any Attachment for any purpose other than providing lawful communications as described in this Agreement is prohibited and shall constitute a breach of this Agreement.

F. **Boxing** means the use of a cross arm or through bolt to facilitate a Pole attachment on the opposite side of the Pole from any existing attachment and the installation of Cable or facilities on both sides of the same Pole at approximately the same height. Licensee is prohibited from Boxing on CITY Poles.

G. **Cable** means a conductor, wire, or fiber or a bound or sheathed assembly of conductors, wires, or fibers used as a wire communications or transmission medium (a bare messenger is also a Cable).

H. **Communications Space** means the area on any given Pole, below and sufficiently remote from the Supply Space as required by Electrical Code, within which Attachments and Pole Contacts may lie. The term Communications Space has the equivalent meaning as that used in the Electrical Code. The top surface of the Communications Space must remain at least 40 inches from the lowest surface of the Supply Space and from any other electrical lines, conductors, or equipment, or below the Supply Space at a distance as defined by the National Electric Safety Code for a specified condition. The bottom surface of the Communications Space must maintain a clearance in accordance with National Electrical Safety Code standards. Any make ready that may be required to meet these standards shall be paid for by the Licensee.

I. **Conduit** means a structure owned by CITY containing one or more Ducts, usually placed in the ground, in which Cables or wires may be installed. CITY-owned electrical Conduit is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

J. **Conduit System** means any combination of Ducts, Conduits, Manholes, and Handholes joined to form an integrated whole. As used in this Agreement, the term refers to Conduit Systems owned or controlled by CITY. CITY-owned electrical Conduit System is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

K. **Contract Year** means any calendar year during which this Agreement is in effect, beginning January 1 and ending December 31, except that the first Contract Year shall run from

the Effective Date until December 31 of that year and the final Contract Year shall run from January 1 of that year until the date of termination.

L. Contractor includes subcontractors.

M. Cost means the total cost reasonably incurred by CITY for any particular task under this Agreement, and includes without limitation reasonable labor, material, equipment usage, outside Contractor and vendor charges, reasonable overhead, and reasonable general and administrative expenses. Costs may be incurred for, without limitation, engineering and engineering review, Make-Ready construction, inspections and oversight, auditing, public relations and intervention, and other services. Certain Cost rates are specified in Exhibit A to this Agreement, which CITY may change no more than once per year; provided, however, that any such change to such Cost rates shall be based on CITY's reasonable cost of labor, materials, and equipment usage. Subject to the foregoing, Costs shall be determined by CITY in its reasonable judgment and reasonable discretion, and shall be paid by Licensee in accordance with either of the following, at CITY's sole option:

1. Any advance estimate provided by CITY, in which event CITY shall have the right to refuse to incur the Costs until the estimate is paid; and/or
2. Any final invoice submitted by CITY. In the event an advance estimate was paid by Licensee for Costs, the final invoice will reflect such payment.

N. Design Documents means all specifications, drawings, schematics, blueprints, engineering documents, and written requirements for materials, equipment, design, construction, and workmanship with respect to Make-Ready and installation work on a particular Attachment or Pole or group of Attachments or Poles. Any and all design documents must be sealed by a licensed professional engineer.

O. Duct means a single enclosed tube, pipe, or channel for enclosing and carrying Cables, wires, and other facilities owned by CITY. As used in this Agreement, the term Duct includes Inner-Ducts created by subdividing a Duct into smaller channels. CITY-owned electrical and/or electric communication Duct is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

P. Effective Date means the date CITY signs this Agreement as shown on the signature page of this Agreement.

Q. Electrical Code means the National Electrical Safety Code (NESC), the National Electrical Code (NEC), and Chapter 752 of the Texas Health and Safety Code.

R. Filing Fee means the initial, non-refundable fee charged to Licensee for filing an Attachment Application for an Attachment License. Filing Fees are set by the CITY and shall not exceed the actual and reasonable Cost to CITY of reviewing and processing an Attachment Application. The Filing Fee is solely to compensate CITY for reviewing and processing an Attachment Application and does not include or offset Costs or Annual Usage Charges.

S. Handholes means an enclosure, usually below ground level, used for the purpose of installing, operating, and maintaining Attachments in a Conduit. A Handhole is too small to permit personnel to physically enter. CITY-owned electrical Handholes are expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

T. Infrastructure Usage Regulations means the Denton City Code of Ordinances and any other CITY ordinance that may be enacted to govern electric utility infrastructure usage or rental.

U. Inner-Duct means a pathway created by subdividing a Duct into smaller channels. CITY-owned electrical and/or electric utility communication Inner-Duct is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

V. Make-Ready means all work required to accommodate Licensee's Attachments on a Pole with respect to CITY and Third Party User needs and in compliance with Electrical Code, CITY Distribution Construction Standards, generally accepted engineering and construction practices, and applicable laws.

W. Manhole (also called "Pullbox" or "Vault") an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron or concrete Manhole cover, which personnel may enter and use for the purpose of installing, operating, and maintaining Attachments in a Conduit. CITY-owned electrical Manholes are expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

X. Maximum Lawful Usage Rate means the maximum amount that CITY may lawfully charge for an Attachment under applicable state and federal law, rules and regulations in effect from time to time. If, for any Contract Year, applicable state or federal law does not limit the amount CITY may charge Licensee for a particular Attachment or service under this Agreement, the Maximum Lawful Usage Rate for the Attachment or service shall be the amount that CITY determines, in its sole judgment and discretion, to constitute a reasonable and non-discriminatory annual Usage Rate.

V. Pole means any electric distribution pole owned by CITY that supports electric lines having a nominal voltage of not more than 35kV; provided, however, that any electric distribution pole having a nominal voltage of more than 35kV will also be a "Pole" if the pole is also used for distribution of power from a local substation to customers. Unless otherwise agreed by CITY with respect to a particular pole, the term Pole does not include (1) street lighting, traffic signal, AMI extender bridge, or dusk to dawn light poles; (2) metal or wood poles or towers supporting transmission lines carrying a nominal voltage greater than 35kV, unless such wood poles are also used to support distribution lines carrying a nominal voltage of not more than 35kV and where predesigned to accept telecommunication installations; (3) any structure or facility within a substation; (4) conduits (except as otherwise provided in Article 11); or (5) any structure not used for electric power distribution.

Z. Pole Contact means the point or contiguous area on a Pole at which one or more of Licensee's Attachments makes physical contact with a Pole regardless of the duration for which the Pole Contact existed.

AA. Service Drop means a Cable used to connect directly to a customer's location from one

Pole and attached to no more than one additional Pole where the additional Pole does not support voltage greater than six hundred volts (600V) or a Cable used to connect a customer's location through the use of multiple licensed Poles where Service Drop Make-Ready has been performed.

BB. Supply Space means the area on any given Pole, above the Communications Space, that is reserved for the placement of electric supply lines, electrical equipment, and other CITY facilities. The term Supply Space has the equivalent meaning as that used in the Electrical Code. Licensee may not place any Attachments or Pole Contacts in the Supply Space.

CC. Third Party User means any third party that has, or may be granted, an attachment license or other right to attach with respect to a Pole. Third-parties that are allowed by Licensee to overlash third-party conductors onto existing Licensee Attachment(s) shall also execute a Pole Attachment License Agreement with the CITY, regardless of the duration for which the Attachment or Pole Contact existed. At least thirty (30) days before third-party overlash operations, Licensee shall provide advanced written notice to CITY that identifies the proposed third-party overlash entity and all proposed third-party overlash locations.

DD. Unauthorized Attachment means an Attachment or any other affixing or placing of Licensee's facilities onto CITY property for which Licensee does not have a valid Attachment License.

EE. Usage Rate means, for each given Contract Year, the amount Licensee must pay CITY for each Attachment. Usage Rates are specified in Exhibit A to this Agreement and which CITY may change no more than once per year.

1.2 **Syntax** Except as otherwise expressly provided herein, all nouns, pronouns and variations thereof shall be deemed to refer to the singular and plural.

1.3 **Amendments** Any reference to a law, code, or document shall mean such law, code, or document as it may be amended from time to time.

1.4 **Third Party User Agreements** CITY has in the past entered into other Pole usage agreements with Third Party Users. In construing this Agreement, no variations between this Agreement and other agreements with Third Party Users shall have any evidentiary value or be construed against CITY. It is the Parties intent that this provision is not meant to unlawfully discriminate against Licensee in favor of other licensees.

1.5 **No Construction against CITY** The rule of construction that ambiguities in a contract are to be construed against the drafting party shall not apply to this Agreement.

1.6 **Headings** The descriptive headings in this Agreement are only for the convenience of the parties and shall not be deemed to affect the meaning or construction of any provision.

ARTICLE 2 SCOPE AND TERM OF AGREEMENT

2.1 **General Purpose** In accordance with the provisions of this Agreement, CITY may issue

Attachment Licenses to Licensee on the terms and conditions set forth herein. Before Licensee makes any Attachment to or begins any work on a Pole, excluding Service Drops, it shall file an Attachment Application and await CITY's issuance of an Attachment License and Design Documents with respect to that particular Attachment or Pole, as set forth in Article 4. Nothing in this Agreement shall be construed to obligate CITY to grant an Attachment License with respect to any particular Pole where Licensee has failed to fulfill the requirements herein for the grant of such Attachment License.

- A.** The use of any Attachment for any purpose other than providing lawful communications as described in this Agreement is prohibited and shall constitute a breach of this Agreement.
- B.** Licensee is prohibited from Boxing on CITY Poles.
- C.** CITY-owned electrical Conduit is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.
- D.** CITY-owned electrical Duct is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.
- E.** CITY-owned electrical Handholes are expressly reserved for utility reliability and expansion purposes and are not available for use by Licensee.
- F.** City-owned electrical Inner-Duct is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.
- G.** CITY-owned electrical Manholes are expressly reserved for utility reliability and expansion purposes and are not available for use by Licensee.

2.2 Term The initial term of this Agreement is ten (10) years, beginning on the Effective Date and renewing thereafter for two successive ten-year terms, subject to the default provisions, or unless terminated by either Party. At the end of each then-current term, Licensee shall, if it intends to terminate, give CITY written notice of its request to terminate 180 days before the end of the then-current term. If Licensee is in default during the course of the then-current term and Licensee has not cured the default, this Agreement shall not renew. If Licensee has defaulted and not cured such default, renewal will be granted in CITY's reasonable discretion. If renewal is denied, CITY will give written notice of the reasons for denial within thirty (30) days of making that determination and this Agreement will expire at the end of the then-current term.

2.3 Existing Facilities Only Except as otherwise set forth in paragraph 6.4, (i) CITY is under no obligation to add, build, keep, maintain, or replace Poles or any other facilities for the use or convenience of Licensee; and (ii) the maintenance, replacement, removal, relocation, or addition of CITY Poles and facilities shall remain within the sole province and discretion of CITY. Notwithstanding the foregoing, any actions of the CITY under this Agreement shall be taken on a nondiscriminatory basis.

2.4 Poles Only This Agreement is limited to and only addresses Attachments to CITY Poles. This Agreement does not authorize Licensee to install or maintain Attachments on other CITY property and facilities, including without limitation Conduits, buildings, and towers.

2.5 City Rights-of-Ways Except for the placement of Attachments or other facilities covered by this Agreement on CITY Poles and notwithstanding that a Pole to which Licensee may attach its facilities is in the CITY's public streets or rights-of-way, nothing in this Agreement shall be construed to grant, nor does this Agreement grant, Licensee any right or authorization to use or occupy the public streets or rights-of-way of the CITY or any other public property.

2.6 Access to Rights of Ways limited Except to access the CITY's rights of ways as an incident of attaching facilities to CITY'S Poles under this Agreement, Licensee and CITY expressly agree that the authority to attach to CITY Poles does not grant Licensee authority to use or occupy CITY's public streets or rights-of-way.

2.7 Separate Agreement and Franchise Needed for Access to Rights of Ways Licensee expressly agrees that should it intend to use the CITY'S rights of ways, Licensee shall enter into a separate franchise agreement for such privileges.

2.8 Private Easements Licensee understands that some Poles are located on dedicated easements over private property that, by their terms, restrict the use of the easement to CITY for the sole purpose of electric distribution or transmission. Nothing in this Agreement and no action by CITY shall be construed to offer, grant or approve any right or license to use such easement or to affix an Attachment to a Pole within such easement without the consent of the owner of the property to which the easement is appurtenant, unless otherwise allowed by law. CITY has no obligation to expand or obtain rights in such easement on Licensee's behalf. It is the sole obligation of Licensee to obtain the necessary consent or additional easement rights, if any, at Licensee's own expense.

2.9 Eminent Domain CITY is under no obligation to exercise any power of eminent domain on Licensee's behalf.

2.10 No Property Rights In Poles All Poles shall remain the property of CITY and no payment made by Licensee shall create or vest in Licensee any ownership right, title, or interest in any Pole, but Licensee's interest shall remain a bare license. The existence of such a license shall not in any way alter or affect CITY's right to use, change, reclaim, operate, maintain, or remove its Poles, subject to the terms and conditions hereof. Nothing in this Agreement shall prohibit Licensee from repairing, operating, or maintaining a Pole at Licensee's sole cost and expense if: (i) CITY expressly abandons the Pole or constructively abandons the Pole by electing not to repair, operate, or maintain the Pole to such an extent that a reasonable person would conclude that CITY has abandoned the Pole; and (ii) Licensee is permitted to do so under the City Code, the terms of Licensee's franchise, if applicable, and any applicable easements; provided, however, that CITY may remove an abandoned Pole if such removal manifestly serves the public interest. If CITY's use of its Poles materially and adversely affects Licensee's use and operation of an Attachment, Licensee may, by written notice to CITY, remove its Attachments from any adversely affected Pole. Such termination shall be implemented by written notice to the CITY.

2.11 License Not Exclusive Licensee acknowledges that CITY has entered into other agreements concerning the use of Poles by third parties, including Licensee's competitors and may in the future enter into similar agreements. Nothing in this Agreement shall be construed to limit or in any way affect CITY's right or ability to enter into or honor other agreements, or to grant any rights, licenses, or access concerning any Pole, irrespective of the character or degree of economic competition or loss caused to Licensee, so long as CITY's actions are not unreasonably discriminatory.

2.12 CITY Priority The primary purpose of a Pole is electric distribution and public health and safety, and CITY reserves to itself first priority in the use of a Pole. In the event of any conflict between the use of a Pole by CITY and Licensee, the use of a Pole for the distribution of electric power to CITY customers shall prevail and have priority over Licensee's use of the Pole. CITY retains and shall have exclusive use of the Supply Space. All of Licensee's Aerial Attachments shall remain within the Communications Space.

2.13 Discretion of CITY Final CITY reserves the right to deny any Attachment Application pursuant to the terms and conditions of this Agreement, reserve any Pole to its own use pursuant to a *bona fide* development plan, or modify any Pole for legal, safety, mechanical, structural, engineering, environmental, reliability, or service reasons. Determination of these issues shall at all times remain within the reasonable discretion of CITY, subject in all respects to the terms and conditions of this Agreement. Licensee will not be required to pay for any modifications to any Pole or its Attachments in order to accommodate a Third Party User.

2.14 No Cost or Expense to CITY The engineering, construction, installation, use, operation, and maintenance of Licensee's Attachments shall be at Licensee's sole expense. Unless otherwise expressly provided of this Agreement, nothing in this Agreement shall be construed to require CITY to expend any funds or to incur or bear any cost or expense.

ARTICLE 3 USAGE RATES AND CHARGES

3.1 Payment Due upon License Approval CITY's approval of an Attachment License shall be conditioned on Licensee's payment of the then current Usage Rate for each approved Attachment, prorated to reflect the number of months remaining in the Contract Year with any partial month being considered to be a full month. Licensee's payment is due within 45 days from the date of CITY'S approval of an Attachment License.

3.2 Calculation of Usage Rates For each Contract Year, the Usage Rate shall not exceed the Maximum Lawful Usage Rate. Before each new Contract Year, CITY will notify Licensee in writing of the Maximum Lawful Usage Rate for such Contract Year at least 60 days in advance of any invoice. The CITY shall provide its Maximum Lawful Usage Rate calculations and relevant support data so Licensee may verify that the such Usage Rate is calculated in accordance with applicable law. The Maximum Lawful Usage Rate may take into account changes in applicable laws that are to go into effect during the upcoming Contract Year.

3.3 Dispute of Maximum Lawful Usage Rate If Licensee disagrees in good faith with CITY's determination of the Maximum Lawful Usage Rate, Licensee may protest the CITY'S Usage Rate in writing within 30 days of receipt of the notice of the then proposed Usage Rate. The protest shall include copies of all records and other documentation that support Licensee's position. Failure to timely protest CITY's proposed Usage Rate shall constitute agreement to and acceptance of CITY's determination and a waiver of Licensee's rights to dispute CITY'S Usage Rate, unless such rate is unlawful pursuant to applicable law. If Licensee timely protests a proposed Usage Rate, the parties shall endeavor in good faith to negotiate a resolution of the dispute. If the parties are unable to resolve the dispute within 60 days from the date of Licensee's protest, then either party may seek relief from the Public Utility

Commission of Texas ("PUCT") pursuant to section 54.204 of the Texas Utilities Code, any successor regulation, or any other law that confers jurisdiction on the PUCT. The PUCT shall be the sole and exclusive forum for resolution of a dispute regarding CITY'S Usage Rate, unless the PUCT lacks jurisdiction, in which event the dispute resolution provisions set forth in paragraph 18.7 shall control. If the dispute is not resolved by the time the Annual Usage Charge invoice is issued, Licensee shall nonetheless pay the invoice based upon the disputed Usage Rate. Payment by Licensee of the invoice shall not prejudice Licensee's ability to continue to contest the Usage Rate, and CITY agrees not to interpose any claim, defense, or counterclaim that Licensee has waived its right to contest the Usage Rate by paying the disputed invoice. Failure to pay the disputed Usage Rate shall constitute a breach of this Agreement.

3.4 Subsequent Annual Usage Charges In each January of each Contract Year and continuing thereafter until the expiration or termination of this Agreement, CITY will invoice for, and Licensee shall pay, within 45 days after receipt of invoice, the Annual Usage Charge for the new Contract Year. All overdue balances shall accrue interest at the rate of 1% per month from the due date until paid, or the maximum rate allowed by law, whichever is less.

3.5 Invoice Disputes If Licensee believes in good faith that an Attachment count contained in an Annual Usage Charge invoice is incorrect, it shall nonetheless pay the invoice under protest. To protest an invoice, Licensee must give CITY written notice of the nature of its protest no later than the due date for payment of the invoice together with copies of records and other documentation supporting its position. The parties shall promptly meet to resolve the discrepancies in their records to determine the correct Attachment count. If the parties are unable to resolve a discrepancy as to the correct count, the parties may, upon mutual agreement, jointly conduct a physical inventory of geographical grids or other mutually agreeable census to determine the correct count. The Cost to conduct such inventory or census shall be equally divided between the parties.

3.6 Adjustments If upon resolution of a dispute between the parties under paragraph 3.2 or paragraph 3.4, a refund is due to Licensee, CITY shall refund the amount of the overcharge together with interest at the rate specified in paragraph 18.5 from the date of CITY's receipt of the protested Annual Usage Charge payment. If Licensee owes additional money, a corrected invoice shall be issued by CITY for the additional Annual Usage Charge due, plus accrued interest at the rate specified in paragraph 18.5 from the due date of the original invoice.

3.7 No Allowances Unless otherwise expressly stated in this Agreement, there shall be no offsets against any sums due under this Agreement, or any other allowances, for system improvement, materials or labor supplied, upgrading, life extension, or other direct or incidental benefits conferred by Licensee upon CITY or its Poles, system, or facilities. All such improvements and benefits belong solely to CITY, and the fact that such improvements or benefits may accrue shall in no way alter or affect Licensee's obligations under this Agreement.

ARTICLE 4 ATTACHMENT LICENSES

4.1 Attachment License Required Licensee shall have an Attachment License with CITY before performing any new Attachment work on a Pole or making any Contact with, or Attachment to, a Pole or

other facility on CITY property or easement. Maintenance of existing equipment shall be allowed, including transfers for new Poles and for Make-Ready work of other licensees, if Licensee has a current Attachment License that covers the existing Attachments and equipment. Licensee must have an Attachment License for each Pole or group of Poles to which Licensee's Attachments are to be affixed, identifying each separate Attachment to the Pole(s) by type. An Attachment License is not needed to perform visual inspections necessary for preparing an Attachment Application.

4.2 Overlapping Licensee must obtain a separate and additional Attachment License for any Attachment it seeks to overlap to an existing Licensee or Third Party User Attachment or Pole Contact. Licensee may not allow another party to overlap to Licensee's facilities without such party first having an agreement with and attachment license from CITY. Poles are the sole property of CITY, and Licensee shall not charge or accept any financial consideration for allowing a third party to overlap to an Attachment or Pole Contact without CITY's written consent.

4.3 Application Process The Attachment Application must be submitted in the then approved CITY format. The Attachment Application form, and all required supporting documentation and other procedures, are within the reasonable discretion of CITY and may change from time to time upon prior written notice (provided such changes are not inconsistent with the terms and conditions of this Agreement and applied in a nondiscriminatory manner). CITY may reject entirely an incomplete Attachment Application, or it may request additional information to support the Attachment Application, in which event the requested information shall be promptly furnished. In the event that CITY denies an Attachment Application, it shall provide written notice of its reason for denial to Licensee within 30 business days of the date the Attachment Application was submitted.

4.4 Approval

A. CITY retains sole and complete discretion to deny or modify any Attachment Application in order to be able to preserve the safety, reliability, integrity, and effectiveness of the electric distribution system that constitutes the core of its business and its governmental mandate. CITY will approve, modify, or deny an Attachment Application within 15 business days of submission. Licensee may request CITY to reconsider a denial or modification of an Attachment Application. CITY may approve an Attachment Application as submitted, approve it on a modified or conditional basis, or may deny the Attachment Application in accordance with the policies adopted by CITY. An Attachment Application may be denied solely for the reason set forth. The CITY's City Manager, or designee, may deny an application if:

1. the applicant fails to submit a complete Attachment Application;
2. the applicant fails to supplement its Attachment Application with additional information or otherwise cooperate with the utility as requested in the evaluation of the Attachment Application;
3. the applicant fails to pay the applicable Filing Fee;
4. the proposed attachments are of excessive size or weight or would otherwise subject utility infrastructure to unacceptable levels of additional stress;

5. approval would jeopardize the reliability or integrity of the electric system or of individual units of utility infrastructure;
6. approval would present a safety hazard to a City employee or the public;
7. approval would impair the City's ability to operate or maintain utility infrastructure; or
8. approval would require an unacceptable change, upgrade, or addition to utility infrastructure.

B. In the event that CITY intends to deny an Attachment Application based on sub-paragraph numbers 1 - 8 set forth in Paragraph 4.5.A. above, or for any other reason for which denial is permitted by law, and the Pole may be modified or replaced to resolve that issue, CITY shall approve the Attachment Application provided that:

1. the Licensee agrees to pay CITY's Costs to so modify or replace the Pole; and
2. the Attachment Application is otherwise acceptable and grantable pursuant to the terms and conditions of this Agreement and applicable law. Provided, however, that nothing in this sentence abridges or modifies the requirements set forth in paragraph 6.4.

4.5 Order of Approval Attachment Applications concerning a particular Pole will be considered and acted upon by CITY in the order in which they are filed. For purposes of evaluating an Attachment Application with respect to Pole capacity and existing Third Party User Attachments, CITY will consider not only all existing attachments but also all valid Attachment Licenses and reserved CITY space.

4.6 Engineering Licensee shall submit documentation of its field evaluation that has been sealed by a professional engineer licensed by the State of Texas. CITY shall accept and rely on such documentation, but shall reserve the right to perform, or have a firm retained by CITY perform, its own engineering and field evaluation including pole loading analysis. All Costs for such engineering and field evaluation shall be paid by Licensee. With respect to a particular Pole, CITY's engineering shall take into account and allow space for all Attachment Licenses, which are valid for that Pole. In granting an Attachment License, CITY shall issue to Licensee the related Design Documents that were paid for by the Licensee.

4.7 Attachment License Expiration All Attachment Licenses and Design Documents and any rights conferred thereunder shall expire on the later of (i) 120 days after issuance (or such longer period as the parties may agree to in writing) or (ii) 60 days after completion of all Make-Ready work, unless all Make-Ready and installation work has occurred in accordance with the Design Documents before the end of such period. If an Attachment License for a Pole expires, Licensee shall re-apply, *de nova*, for an Attachment License and must receive such License from the CITY before Licensee can begin working on or making an Attachment to that Pole.

ARTICLE 5 GENERAL REQUIREMENTS

5.1 Work Site Safety In performing any work on or near Poles supporting energized electric lines,

Licensee, and its Contractors, agents and employees shall comply with Chapter 752 of the Texas Health and Safety Code and all federal, state and local laws, rules and regulations governing work in proximity to energized electric lines, including without limitation, those promulgated by the Occupational Safety and Health Administration. LICENSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, EMPLOYEES, VOLUNTEERS, AGENTS, CONTRACTORS, AND SUBCONTRACTORS FROM AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, SUITS AND JUDGMENTS ARISING FROM OR CONCERNING A BREACH BY LICENSEE OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

5.2 Electrical Code Licensee, and its Contractors, agents and employees, and all work, Contacts, and Attachments on a Pole shall at all times comply with the then current Electrical Code, as applicable.

5.3 Design Documents All installation and other work performed by Licensee on a Pole or Attachment shall at all times comply with the Design Documents and CITY Distribution Construction Standards and CITY requirements subsequent to Make-Ready inspections.

5.4 Service Interruptions Licensee shall not cause any interruption of CITY or Third Party User services without first obtaining CITY's express written consent as provided by Article 6. If it is necessary for CITY to de-energize any equipment or lines for Licensee's benefit, Licensee shall (a) reimburse CITY in full for all Costs in doing so, and (b) coordinate any customer or system outages with the CITY. In the event Licensee damages any of CITY's equipment or lines or causes any service interruption, Licensee, at its sole expense, shall immediately do all things reasonable to avoid injury and further damage, direct and incidental, resulting therefrom and shall notify CITY immediately. Licensee shall be liable for all Costs resulting from such damage and any necessary repairs.

5.5 CITY Oversight CITY shall have the right to conduct on-site field oversight and inspections of Licensee's Attachments, work, and operations on CITY'S Poles. CITY may conduct pre-construction surveys, and post-construction inspections at Licensee's expense and shall provide Licensee with the results. CITY shall at all times have unrestricted access to Poles and to all field work sites of Licensee and Licensee's Contractors. Both CITY and CITY's representative at any Pole site shall have complete and final authority to order the immediate suspension of Licensee's construction or installation activities if CITY or CITY's representative, in its sole discretion and judgment, deems such action necessary for reasons of safety, engineering, electrical service reliability, or failure to obtain proper licenses and permits. If an immediate suspension order is issued, the CITY or CITY's representative shall have the right to inspect any and all facilities installed up to that point on Licensee's Attachment submittal, at Licensee's expense. In the event of an oral suspension order, CITY shall send written notice to Licensee within three (3) days after such suspension, identifying the bases for suspension. Such suspension shall be in effect until such time as the Licensee cures, at Licensee's sole Cost, the alleged bases for suspension. In no event shall CITY be responsible for any damages, losses, or costs incurred by Licensee as a result of such work stoppage. Licensee's failure to obey a suspension order issued in accordance with this Agreement shall constitute a breach of this Agreement.

5.6 Laws To the extent that the Code of the City of Denton lawfully requires Licensee to possess a valid franchise or construction permit before engaging in a particular act, Licensee must comply with such requirement before beginning installing Attachments. Nothing in this Agreement shall be construed as waiving other CITY requirements or permitting the construction of facilities other than Attachments.

Attachments must conform to local, state, or federal law. Licensee's use of any Pole and Licensee's Attachments shall at all times conform to the requirements of the CITY's Code of Ordinances, infrastructure usage regulations, and the published policies promulgated by the CITY pursuant thereto.

5.7 Other Permits Licensee shall apply for and obtain all licenses, permits or other authorizations required to provide its service or to use, operate or maintain its Attachments. If Licensee is denied any required license, permit or authorization, Licensee may, upon written notice to CITY, terminate any Attachment License granted hereunder that was predicated upon the grant of such license, permit or authorization.

5.8 Taxes and Liens Licensee shall pay all taxes and assessments lawfully levied on Licensee's Attachments and any tax, assessments, fee, or charge levied on Poles solely because of their use by Licensee. In no event shall Licensee permit any lien to be filed or to exist upon any Poles or CITY property as a result of any claim against Licensee. Licensee shall promptly pay upon receipt of written notice from CITY all such liens together with all fees and costs necessary to discharge same, or shall bond around such liens in the manner provided by law.

5.9 Electrical Code Conflicts In the event of a difference, conflict, or discrepancy between or among the requirements or practices of any Electrical Code or safety regulations, laws, or industry standards the following rules shall apply: (A) if one specification or practice is more stringent than the other, the more stringent shall apply; (B) if one is not more stringent than the other, the NESC shall govern to the extent permitted by law; (C) if the first two rules are insufficient to resolve the conflict in a clear and unambiguous manner, CITY shall determine which standard shall apply, giving highest priority to safety considerations.

5.10 Design Document Conflicts In the event of a difference, conflict, or discrepancy between or among the requirements or practices of the Design Documents and CITY Distribution Construction Standard, the Design Documents shall govern. In the event Licensee believes a Design Document or CITY Distribution Construction Standard is inconsistent with Electrical Code or applicable law, Licensee shall refer the matter to CITY for determination.

ARTICLE 6 MAKE-READY

6.1 Performance and Cost of Make-Ready Work All Make-Ready Work shall be performed by the CITY and/or a contractor authorized by CITY to perform such work. All Make-Ready Costs shall be borne solely by Licensee, including without limitation, costs of planning, engineering, construction, and pole replacement or modifications, except as set forth in paragraphs 6.3, 6.4, and 6.5. CITY will advise Licensee of estimated Make-Ready Costs. Make-Ready Work will not commence until Licensee has paid estimated Make-Ready Costs.

6.2 Payment of Make-Ready Work Upon completion of Make-Ready Work, CITY shall invoice Licensee for CITY's actual cost of such Make-Ready Work. After completion of the Make-Ready Work the actual Make-Ready Cost will be trued up against the estimated Make-Ready Costs payment.

6.3 Third Party Facilities Make-Ready Costs that are to be paid by Licensee include all costs and expenses to relocate or alter the attachments or facilities of any pre-existing Third Party User as may be necessary to accommodate Licensee's Attachment. CITY shall provide at least 30 days' written notice to each Third Party User that needs to relocate or alter its facilities to accommodate Licensee and attempt

to make all other necessary arrangements directly with the affected Third Party Users. CITY agrees to make best efforts to cause a Third Party User to relocate such Third Party User's facilities, including declaring such Third Party User's facilities to be unauthorized, in accordance with the terms of CITY's pole attachment agreement with such Third Party User, if the Third Party User fails to relocate its facilities within the time periods specified in the pole attachment agreement between CITY and such Third Party User.

6.4 Non-Conforming Attachments Notwithstanding paragraphs 6.1 or 6.2, Licensee shall not be liable for any cost or expense to modify, replace, relocate, or alter any attachments of CITY or a Third Party User that do not comply with the Electrical Code or applicable law. Licensee shall notify CITY if Licensee determines that any Third Party User attachments are out of compliance with the Electrical Code or applicable law, and CITY shall use its best efforts to cause any Third Party User to bring existing attachments into compliance within 30 days of such notice. If after 30 days the owner of the out-of-compliance attachment has not completed its work and brought its attachment in to compliance with the Electrical Code and applicable law, CITY shall declare such Third Party User's facilities to be unauthorized, and CITY or Licensee may relocate or alter the Third Party User's attachment at the Third Party User's expense. CITY shall use its best efforts to cause the Third Party User to pay Licensee its costs and expenses for bringing such Third Party User's attachment in compliance with the Electrical Code and applicable law.

6.5 Pole Replacement and Maintenance CITY shall change, modify, or replace any Pole, at Licensee's request, unless such change, modification, or replacement will jeopardize the safety or reliability of CITY's electrical service. Except as otherwise provided in this paragraph, Pole replacement Costs shall be borne by Licensee if Pole replacement is requested by Licensee or if, because of insufficient capacity, approval of Licensee's Attachment Application first causes the need for the Pole replacement. CITY agrees that if a Pole is broken or rotten, standard Pole replacement costs shall be borne by CITY, except for additional Pole height above the height of the existing Pole; or Pole strength required to accommodate Licensee's new attachments. If the non-compliance with the Electrical Code or applicable law or the broken Pole is the result of Licensee's actions or the actions of Licensee's subcontractors, the Licensee shall be liable for the expense.

6.6 Pole Inspections Notwithstanding anything set forth in paragraph 6.4 and 6.5 with respect to Licensee's responsibility to pay CITY's costs of changing, modifying, or replacing any Pole, CITY shall continue its existing Pole maintenance and inspection program.

ARTICLE 7

INSTALLATION AND MAINTENANCE OF ATTACHMENTS

7.1 Installation Upon (A) completion of Make-Ready work, and (B) CITY's receipt of full payment of all sums owing to CITY, if any, for engineering, Make-Ready, and other Costs in connection with the applicable Pole, Licensee may affix its Attachments to the Pole as set forth in the Attachment License and Design Documents.

7.2 Communication Space Except as otherwise provided herein, all Attachments and Contacts on a Pole must remain in the Communications Space. Licensee operations in the Supply Space or in the space separating the Communication and Supply Spaces are prohibited. The Communications Space includes the space reserved for each attachment on a given Pole. Each attachment or space reserved in the Communications Space shall have a maximum size of twelve (12) inches. Each thru-bolt type

Attachment where the Pole is drilled and bolted to support Cable and messenger or band used to support Cable or messenger shall maintain a minimum of 12" vertical separation from adjacent bolts or bands.

7.3 Maintenance Licensee shall, at its sole expense, make and maintain its Attachments in a safe condition and in good repair including maintain tree trimming and clearances, and in such a manner as to not interfere with or interrupt CITY's lines, facilities, and services or with Third Party User attachments, facilities, and services.

7.4 No Damage Licensee shall not cause damage to CITY or Third Party User facilities or operations. If Licensee, its Contractors, agents, employees, or Attachments cause damage to CITY or Third Party User facilities or operations, Licensee assumes all responsibility for, and shall, as determined by CITY, either repair or promptly reimburse CITY or the Third Party User for all direct loss and expense caused by such damage. Licensee shall immediately inform CITY and all damaged Third Party Users of any damage to their facilities.

7.5 Sag and Mid-Span Clearances Licensee shall leave proper sag in its lines and Cables and shall observe the established sag of power line conductors and other Cables so that during the life of the Attachment minimum clearances are (A) achieved at Poles located on both sides of the span and (B) maintained throughout the span. A minimum clearance between surfaces must be maintained between Licensee's and others' Cables at mid-span and between Licensee's and others' Attachments and Pole Contacts on the Poles. Licensee will correct any clearance violations caused by its facilities or Attachments. In no event will Licensee be responsible for clearance violations caused by any other party, including CITY. Licensee will be responsible to resolve or remedy any incident where their Attachments fail to comply with Electrical Code safety clearance standards.

7.6 Climbing Space An unobstructed climbing space must be maintained at all times on the face of all Poles as required by Electrical Code, as well as adequate ground access to Poles. All Attachments must be placed as to allow and maintain a clear and proper climbing space. Licensee shall place its Attachments on the same side of the Pole as the majority of existing Attachments, if any. Licensee is prohibited from Boxing on CITY poles. Notwithstanding the foregoing, in no event will Licensee be responsible for climbing space violations caused by any other party, including CITY.

7.7 Tagging Each Attachment shall be identified at all times by an identifying marker at each Pole approved by CITY that, at minimum, (A) is permanent in duration and not degradable by rain or sunlight (B) has coloring and numbering or lettering unique to Licensee, and (C) is capable of being read unaided from the ground by a person with normal vision.

7.8 Tree Trimming Licensee shall be responsible for all tree trimming necessary for the safe and reliable installation, use, and maintenance of its Attachments, and to avoid stress on Poles caused by contact between tree limbs and Licensee's Attachments. All tree trimming shall be performed in accordance with the-then current CITY tree-trimming policies (to the extent not inconsistent with the terms and conditions of this Agreement), including without limitation those relating to owner notification and consent. The Licensee shall immediately resolve any citizen complaint of tree-trimming related to the Licensee's Attachments to the satisfaction of the CITY.

7.9 Anchors and Guying Licensee shall provide all anchors and guying necessary to accommodate the additional stress and load placed upon a Pole by its Attachments. Anchors, guys, and guy guards shall be in place and in effect prior to the installation of Attachments, Cables, or any other facilities on a

Pole. Licensee shall not attach to any CITY anchors or guying. Anchors shall not be placed outside of the easement in which a Pole stands.

ARTICLE 8

MODIFICATION OF ATTACHMENTS

8.1 No Unauthorized Modifications Except for routine modifications as provided in Section 8.2, Licensee shall not change the type, nature, or location of any Attachment or alter its use of a Pole without prior written CITY consent. Any such unauthorized modifications shall be deemed an Unauthorized Attachment and the remedial provisions in Article 10 (Unauthorized Attachments) shall apply.

8.2 Routine Modifications Licensee does not need CITY consent for (A) changes incident to routine maintenance and repair; (B) installations of Service Drops; (C) removal of Licensee's Attachments; or (D) upgrades of existing equipment that do not materially alter Pole loading or Pole space utilization.

8.3 CITY Mandated Modifications Within 30 calendar days of written request by CITY or within such other mutually agreed upon timeframe, Licensee shall move or rearrange its Attachments in order to maximize the usable available Pole space and/or to accommodate CITY facilities. Licensee shall do so at its sole cost and risk, except that Licensee shall not be responsible for any costs or expenses incurred to relocate or alter its Attachments to accommodate the Make-Ready work of other Third Party Users. If Licensee fails or refuses to comply with the directions of CITY to change, alter, improve, move, remove or rearrange any of its Attachments in accordance with this Agreement, CITY may then opt to change, alter, improve, move, remove or rearrange such Attachments without incurring any liability, except as provided in Article 16, to Licensee and at Licensee's sole cost and risk, or CITY may proceed under Article 13 of this Agreement and will provide an invoice to the costs to Licensee.

8.4 Emergencies In case of an Emergency, including electrical service restorations, CITY may move, rearrange or transfer Licensee's Attachments, without notice and without liability to Licensee or to any other person, except as provided in Article 16. Licensee shall be responsible for all Costs and shall reimburse CITY for the costs CITY incurs relating to such work within forty-five (45) calendar days of the date CITY sends Licensee an invoice for such work. An "Emergency" is a condition that: (i) poses an immediate threat to the safety of utility workers or the public; (ii) materially and adversely interferes with the performance of CITY or another Third Party User's service obligations; or (iii) poses an immediate threat to the integrity of CITY or another Third Party User's Poles or equipment. As soon as practical thereafter, CITY shall notify Licensee of such events and actions.

8.5 Destroyed Poles If any Pole on which Licensee has an Attachment is substantially destroyed or damaged by fire, storm, accident, or otherwise, CITY shall be under no obligation to rebuild or replace such Pole, but may elect to terminate Licensee's Attachment License for such Pole without any liability to Licensee. CITY shall notify Licensee in writing of a termination under this paragraph, and Licensee shall be entitled to a pro-rata refund of any prepaid but unearned Annual Usage Charge attributable to the Attachments on such damaged or destroyed Pole. Nothing herein shall prohibit Licensee from repairing or replacing such damaged or destroyed Poles at Licensee's sole cost and expense if: (A) CITY elects not to repair or replace same, and (B) Licensee is permitted to do so under the City Code, the terms of Licensee's franchise, if applicable, and any applicable easements.

8.6 Pole Transfers

A. Licensee and CITY expressly agree that for the orderly management of public rights-of-way and aesthetic considerations, double or multiple Poles shall be prohibited if a new Pole contains sufficient carrying capacity to support existing Pole attachments. If CITY replaces an existing Pole supporting an Attachment with a new Pole, CITY will provide at least 30 days' advance written notice via email as well as the NJUNS system to Licensee that Licensee must transfer its Attachment to the new Pole except for emergencies. If mutually agreed upon and if reasonably feasible and safe to do so, CITY will transfer the Attachment to the replacement Pole when CITY transfers its own lines and facilities. Licensee may also notify the CITY in writing within 15 days of the notice that it does not desire to occupy the new Pole. Failure of Licensee to timely respond to CITY's notice shall be deemed an election to occupy the new Pole. If Licensee opts not to occupy the new Pole, Licensee shall remove its facilities from CITY'S Pole within 30 days from the date the replacement Pole is installed and ready for use and Licensee's Attachment License to the replaced Pole shall terminate as of the date of replacement and as liquidated damages to CITY for Licensee's failure to remove Licensee's attachments from the replacement Pole the Usage Rates for such Pole shall be two times (2x) the Annual Usage Fee, starting 30 days after the date of replacement. Should the existing Pole upon which Licensee's facilities remain attached become damaged or rotten, the City shall not be responsible for its replacement and the Licensee will need to make other arrangements for their facilities. Licensee shall not be entitled to a refund of any Annual Usage Charge as a result. For each Attachment transferred by CITY, Licensee shall pay a transfer Fee as set forth in Exhibit A, unless the transfer is the result of a Third Party User attachment request, in which case the Third Party User will pay for Licensee's transfer.

B. All Poles, including any new Poles that may be required, shall be installed in the same line of existing Poles unless it is infeasible to do so either safely, technically, or legally.

8.7 Relocation Upon at least 60 days advance written notice, Licensee agrees that it will bear all actual and reasonable Costs associated with the relocation or re-routing of its Attachments in the event CITY facilities are removed from a Pole. In such event, CITY shall be under no obligation to maintain any Poles that no longer support CITY lines and may remove Licensee's Attachments when removing the abandoned Pole at Licensee's sole Cost and risk if Licensee fails to relocate its facilities in a timely manner. City is not responsible for any negotiations for reimbursement for developer related relocations.

8.8 Underground Conversion Upon written notice, Licensee agrees that it will bear all Costs associated with the relocation or re-routing of its Attachments in the event CITY facilities are removed from a Pole and re-routed through underground Conduits. In such event, CITY shall be under no obligation to maintain any Poles that no longer support CITY supply lines and may remove Licensee's Attachments when removing the abandoned Pole at Licensee's sole Cost and risk. CITY will afford Licensee the opportunity to relocate underground, at Licensee's expense, where reasonably practicable.

ARTICLE 9

INVENTORY, INSPECTIONS, ANNUAL REPORTING, RIGHT TO AUDIT

9.1 Right to Inspect CITY may inspect Licensee's work and Attachments at any time. CITY may conduct these inspections for any purpose relating to this Agreement, including without limitation: (A)

determining compliance with the Design Documents or other design and installation requirements; or (B) determining compliance with Electrical Code. The making of an inspection by CITY shall not operate in any way to relieve Licensee or Licensee's insurers of any responsibility, duty, obligation, or liability under this Agreement or otherwise, nor does CITY's ability to make inspections relieve Licensee from its obligations to exercise due care in the operation and inspection of its Attachments. Further, by conducting any inspection CITY is not responsible for the design, installation, or maintenance of Licensee's facilities or for any damages in anyway related to Licensee's Attachments to CITY'S Pole.

9.2 Compliance In the event any inspection of an existing Attachment reveals that corrections or other actions are required of Licensee under this Agreement, including without limitation those required for reasons of safety or structural integrity, Licensee shall make such corrections or take the requested actions within 30 days after the date CITY sends Licensee a written notice informing Licensee of the corrections to be made. If such corrections cannot be made within 30 days, the parties will agree on a mutually acceptable timeframe. CITY may also perform such work without notice, at Licensee's sole Cost and risk, except as provided in Article 16, if CITY determines in its reasonable judgment and discretion that an Emergency does not permit full advance notice to Licensee. If Licensee fails or refuses to comply with the directions of CITY, the Attachment License(s) for the Attachments in question shall be terminated. In no event will Licensee be responsible for corrections of violations caused by another party, including CITY. CITY may opt to change, alter, improve, move, remove or rearrange such Attachments without incurring any liability to Licensee, except as provided in Article 16, and at Licensee's sole Cost and risk, or proceed under Article 13 of this Agreement.

9.3 System-wide Inventory Not more than once every 3 years, nor less often than once every 10 years, CITY may, but is under no obligation to, conduct a system-wide inventory of all Licensee Attachments and Third-Party User attachments on its Poles, for which Licensee shall bear its proportionate share of Costs with all other Licensee's and Third Party Users. CITY will notify Licensee at least 90 days in advance of the times and places of such inventory, and Licensee may have representatives accompany CITY on the inventory. CITY may use the results of the inventory for purposes of calculating the Annual Usage Charge, but may also rely upon geographical grids or other mutually agreeable census to determine the correct count.

9.4 Annual Reporting Requirements Licensee shall report the following to CITY no later than October 31 of each year:

A. List of Installations The Licensee shall provide a list of specific Poles (by CITY Pole number, if available) on which the Licensee has installed, during the relevant reporting period, Attachments and Service Drops, or any other facility.

B. List of Non-Functional Attachment The Licensee shall provide a list of all Attachments or other installations that have either become non-functional, surrendered, or for which the Licensee is no longer paying under the Annual Usage Charge during the relevant reporting period. The report shall identify the specific Pole (by CITY Pole number, if available) on which the nonfunctional Attachment or installation is located and provide a description of the nonfunctional equipment.

C. Removed Equipment The Licensee shall provide a list of any equipment removed (and

not replaced by substantially similar equipment) from specific Poles (by CITY Pole number, if available) during the relevant reporting period. The report shall identify the Pole from which the equipment was removed, a description of the removed equipment, and indicate the approximate date of removal.

D. Contact Personnel The Licensee shall provide accurate and current contact information. Contact information shall include: (1) emails for field construction, engineering, and city relationship personnel, as well as an email and contact for a vice president level executive, and (2) a phone line that can be contacted by CITY at all times. Should contact information change Licensee shall provide updated information to the CITY within five (5) business days.

E. Failure to Report Failure of a Licensee to provide CITY the required annual information within forty-five (45) calendar days following issuance of written notice by CITY shall result in CITY suspending all work on the Licensee's Applications which may be in process or may be submitted after the suspension date. Within three (3) business days of CITY receiving the required annual information, CITY shall resume processing the Licensee's Attachment Applications in the order that they were initially received by CITY.

9.5 Right to Audit The Licensee grants the CITY, or its designees, the right to audit, examine or inspect, at the CITY's election, all of the Licensee's records relating to number and types of Licensee's Attachments during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a CITY designee, which may include its internal auditors or an outside representative engaged by the CITY. The Licensee agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the Agreement, then, such retention period shall extend until final resolution of the dispute. "Licensee's Records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of Licensee records include but are not limited to billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, policies, procedures, and any and all other agreements, sources of information and matters that may in the CITY's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by the Agreement. The CITY agrees that it will exercise the right to audit, examine or inspect only during regular business hours. The Licensee agrees to allow the CITY's designee access to all of the Licensee's Records, Licensee's facilities, and current or former employees of Licensee, deemed necessary by CITY or its designee(s), to perform such audit, inspection or examination. Licensee also agrees to provide adequate and appropriate work space necessary to CITY or its designees to conduct such audits, inspections or examinations. Licensee must include this audit clause in any subcontractor, supplier or vendor contract.

ARTICLE 10 UNAUTHORIZED ATTACHMENTS

10.1 Unauthorized Attachments Licensee shall not place any Attachments on a Pole or other CITY infrastructure except as authorized by an Attachment License. If one or more Unauthorized Attachments are discovered, Licensee shall comply with this Article 10 or, if Licensee fails to comply, CITY may, but shall not be required to, remove the Unauthorized Attachment without incurring any liability to Licensee

and at Licensee's sole Cost, as described in this paragraph 10.1. With respect to any Unauthorized Attachment, CITY may opt to:

A. Require that Licensee remove such Unauthorized Attachment upon written notice or, if Licensee fails to do so as described in part B of this paragraph 10.1, remove such Attachment at Licensee's sole Cost and risk; or

B. Require that Licensee pay all costs to correct any Code or other violation, all inspection and engineering costs to field-check necessary Poles, Unauthorized Attachment Fees, with interest, for each unauthorized Attachment (as shown in Exhibit A Pole Attachment Charges), and submit an Attachment Application for each such Unauthorized Attachment, together with the then-current Filing Fee and Annual Usage Charge for the current year. If such penalty fees, Attachment Application, and charges are not received by CITY within 30 days of notice of the Unauthorized Attachment, or such reasonable time under the circumstances, CITY may then opt to remove Licensee's Unauthorized Attachments pursuant to Part A. of paragraph 10.1. CITY reserves the right to immediately remove any Unauthorized Attachments that, in the CITY'S sole opinion, pose an imminent danger to electrical utility operations or the public.

10.2 Remedies Cumulative The remedies afforded CITY under this Article 10 are in addition to any civil or criminal penalties provided by City Ordinance, as amended.

10.3 Ratification Must Be in Writing No act or failure to act by CITY with respect to an Unauthorized Attachment or any other unauthorized use of CITY Poles or property shall be considered to be a ratification, licensing, or permitting of the unauthorized use, irrespective of any otherwise applicable doctrine of waiver or laches.

10.4 Excessive Unauthorized Attachments Following the first audit after the Effective Date, if CITY determines that Licensee has made more than 30 Unauthorized Attachments cumulatively during any Contract Year, Licensee shall be considered to be in breach of this Agreement and CITY retains the right to terminate this Agreement and require removal of Licensee's Attachments in accordance with Article 13 of this Agreement. Licensee herein reserves the right to challenge any such termination and maintain its Attachments until such challenge is exhausted.

ARTICLE 11

ACCESS TO CONDUIT AND DUCTS

11. 1 Scope Nothing in this Agreement require, or shall be construed as to require CITY to provide Licensee with access to CITY's electrical Ducts and Conduits.

ARTICLE 12

CUSTOMER INTERACTION

12.1 Purpose Licensee acknowledges that the scope of its proposed project and Attachment installation it intends to undertake under this Agreement will require Licensee to make extensive and repeated intrusions onto the private property of CITY customers in order to access Poles. The purpose of this Article is to establish minimum standards of conduct with respect to property owners and CITY customers.

12.2 Licensee Conduct Before engaging in electrical installation work on the property of a CITY customer (except for connections or disconnections of customer's service or doing maintenance on existing Licensee facilities), Licensee shall, at minimum:

- A.** Provide CITY's Electric Utility Dispatch Center, (940) 349-7644, or such other department or division and number as CITY from time to time may designate, with notice of the times, locations, and nature of the work to be performed;
- B.** Require all field crews, and those of its Contractors, to carry and distribute upon request information packets explaining in detail the nature, extent, and purpose of the work being done and listing the telephone number and web site where additional information can be found;
- C.** Establish and maintain a call-center telephone number during all hours during which field work is being done that is staffed by knowledgeable personnel who can answer and resolve customer questions and complaints in a timely manner concerning the work being done on their premises;
- D.** Require all field crews to wear I.D. badges that identify themselves as employees or Contractors of Licensee;
- E.** Have all vehicles used in field work bear the logo(s) of Licensee's Contractors or Licensee; and
- F.** Have readily available, during all hours in which field work is being done, one or more knowledgeable personnel who can communicate with and assist the City Manager's Office and City Council members regarding property owner complaints, and also have available qualified personnel to conduct on-site resolution of property owner complaints.

12.3 No CITY Affiliation Licensee, and its employees, Contractors, and agents shall not at any time represent themselves to the public, any CITY customer, or any resident as being associated with, having the permission of, or having been requested by the City of Denton to be on private property. Licensee shall inform any such persons that it is allowed to work on CITY Poles by virtue of state and federal law, not by voluntary association with the City of Denton.

12.4 Service Interruptions If applicable, Licensee shall provide written notice to affected CITY customers of any planned electrical service interruptions by Licensee's contractors that will affect them not less than 48 hours in advance of such interruption. Such notice shall contain the specific dates and times for such interruptions and the reasons therefor.

ARTICLE 13

TERMINATION

13.1 Termination of Attachment Licenses Attachment Licenses for specific Attachments shall terminate upon any of the following events or conditions:

- A.** Licensee has not completed the Attachment installation within the later of (i) 120 days from issuance of the Attachment License (or such longer period as the parties may agree in writing); or (ii) 60 days after completion of all electrical Make-Ready work, unless Licensee and CITY agree in writing for a longer period;
- B.** Licensee removes the Attachment other than in the course of routine maintenance or replacement;
- C.** Licensee ceases to offer services, or provides services unlawfully, through the Attachment;
- D.** Licensee fails to comply with paragraphs 8.3, 8.7 or 9.2 of this Agreement, except as otherwise provided by those paragraphs.

13.2 Right of Suspension Except in the case of a good faith dispute between the Parties, if Licensee fails either to make any payment required under this Agreement, or to perform timely any obligation under this Agreement, and such default continues for 30 days after the date the payment or performance is due if such cure can reasonably be completed within thirty (30) days, and if not, such cure has commenced and is being diligently and consistently pursued then, in addition to any other available right or remedy, CITY may, upon written notice to Licensee, immediately suspend all Attachment Licenses of Licensee hereunder until such time as the default is cured. The payment under protest of a disputed amount in order to avoid, or lift, suspension of Attachment Licenses shall not prejudice the rights of Licensee to continue the payment dispute. A suspension of Attachment Licenses under this paragraph shall not prevent Licensee from operating, maintaining, repairing or removing its existing Attachments, but Licensee shall not install any new or additional Attachments or make any changes to existing Attachments (except for removal or routine repair or maintenance necessary to continue to provide services to then-existing Licensee customers) during the period of suspension.

13.3 Termination of Agreement by CITY If Licensee fails either to pay any undisputed payment required under this Agreement, or timely perform any obligation under this Agreement, and if such default has not been cured within three months of Licensee's receipt of written notice of default, or if such cure cannot reasonably be completed in three months, cure has commenced and has been continuously and diligently pursued, CITY may terminate this Agreement and all Attachment Licenses upon written notice to Licensee. Upon receipt of a notice of termination, Licensee shall promptly begin the process of removing all Attachments from specified Poles. All such Attachments shall be removed within 90 days after the date of the notice of termination, or within such time as CITY may agree. Until all of Licensee's Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Such payment by Licensee or acceptance by CITY of Annual Usage Charges shall not act to cure the default that triggered the termination nor shall it reinstate this

Agreement or Licensee's Attachment Licenses hereunder.

13.4 Failure to Remove Attachments If Licensee has not removed all its Attachments within the period of time specified in the preceding paragraph, or such additional period of time granted by CITY in writing, then CITY may remove Licensee's Attachments at Licensee's sole Cost and risk. CITY will invoice Licensee for such Cost. Additionally, CITY may, in its reasonable discretion and upon written notice to Licensee, deem the Attachments to have been abandoned and assume ownership thereof.

13.5 Termination of Agreement by Licensee Licensee may terminate this Agreement upon 60 days written notice to CITY, in which event all Attachments shall be removed within 120 days after the date of the notice of termination or within such other time as CITY agrees. Until all of Licensee's Pole Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Termination by Licensee during a Contract Year shall not relieve Licensee from payment for the full Annual Usage Charge for that Contract Year or any other sums that it owes CITY.

13.6 Survival Licensee's obligations under this Article 13 shall survive termination of this Agreement.

ARTICLE 14 ASSIGNMENTS

14.1 Written Consent Required The rights granted by this License Agreement inure to the benefit of Licensee and shall not be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise by force or involuntary sale, without the express prior written consent of the CITY, which consent shall not be unreasonable withheld, delayed or conditioned.

14.2 Transfer of License Agreement Notwithstanding the provisions of Section 14.1, a transfer of this License Agreement may occur without CITY approval in the following circumstance: (i) an assignment or transfer to entities that control, are controlled by, or are under common control with Licensee, or (ii) the acquisition of all or substantially all of Licensee's assets in the Denton, Texas market by reason of a merger, acquisition or other business reorganization. In order to effect an assignment of this License Agreement as listed in (i) and (ii) above without CITY approval, the Licensee must provide the CITY a Notice of Assumption at least thirty (30) days prior to the assignment which contractually binds the purchasing or acquiring party to meet all the obligations of this License Agreement.

14.3 Institutional Mortgagee or Lenders Licensee may also assign this License Agreement, without CITY's consent and without prior notice to CITY, to an institutional mortgagee or lender providing financing to Licensee with respect to Licensee's Attachments in the event such institutional mortgagee or lender exercises its foreclosure right against Licensee and operates the Attachments; provided such institutional mortgagee or lender is capable of assuming all of the obligations of the Licensee under this License Agreement and further provided that any assignment will not be effective against CITY unless and until written notice of such assignment and exercise of rights is provided to CITY.

14.4 Assignment by CITY CITY may assign this Agreement in whole or in part without the consent of Licensee. CITY shall give Licensee written notice of the transaction within ten days after closing.

ARTICLE 15
SURETY

15.1 Payment Bond Within 30 days of the Effective Date of this Agreement, Licensee shall provide a payment bond in the amount of \$500,000. The payment bond will serve as security for the faithful payment of all of Licensee's obligations for contracts, subcontracts, work, labor, equipment, supplies, and materials performed under this Agreement. The payment bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law.

15.2 Performance Bond Within 30 days of the Effective Date of this Agreement, Licensee shall provide a Performance Bond in the amount of \$500,000 to guarantee the performance of Licensee's obligations under this Agreement, including, but not limited to, the removal of Licensee's Attachments upon termination of this Agreement. Licensee agrees to maintain the performance bond in full force and effect during the entire term of this Agreement and until CITY is reimbursed for all Costs incurred as a result of removing Licensee's Attachments upon termination of this Agreement. The performance bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The amount of the bond or financial security does not operate as a limitation upon obligations of the Licensee under this Agreement.

ARTICLE 16
LIABILITY AND INDEMNITY

16.1 CITY Liability CITY reserves to itself the right to maintain and operate its Poles in such manner as will best enable it to fulfill its own service requirements. CITY shall not be liable for any damages incurred by Licensee for damage or interruption to its Attachments except for actual repair costs caused by the gross negligence or intentional misconduct of CITY; provided, however, that CITY shall not be liable to Licensee for material or financial loss resulting from any interruption of Licensee's service or for interference with the operation of Licensee's Attachments. **NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY, ANY THIRD PARTY, OR ANY CUSTOMER OF THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THE USE OF OR DAMAGE TO, LICENSEE'S FACILITIES, OR THIS AGREEMENT.**

16.2 No Warranties by CITY Licensee is expected to inspect the Poles on which its Attachments will be placed and shall rely solely on such inspection to determine the suitability of the Poles for its purposes. **CITY DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTIES CONCERNING ANY POLE, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACCEPTS THE USE OF ALL POLES AS IS-WHERE IS, AND WITH ALL FAULTS, EXCEPT AS OTHERWISE PROVIDED HEREIN.**

16.3 Unsafe Poles Licensee acknowledges and agrees CITY does not warrant the condition or safety of CITY's Poles, or the premises surrounding the Poles, and LICENSEE HEREBY ASSUMES ALL RISKS OF , AND INDEMNIFIES CITY FROM, ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY LICENSEE'S, OR LICENSEE'S CONTRACTORS' OR SUBCONTRACTORS' USE OF THE POLES AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN, OR SURROUNDING THE POLES. Licensee expressly agrees it will undertake responsibility for inspecting and evaluating the condition of any Pole before allowing any employees, whether those of Licensee or Licensee's Contractors or Subcontractors, to climb or otherwise work on such Pole. If Licensee discovers any Poles that are rotten or otherwise unsafe for climbing or for Attachment installation, Licensee shall report any unsafe condition to CITY within one (1) day. Licensee further acknowledges CITY does not warrant all Poles are properly labeled, and agrees CITY is not liable for any injuries or damages caused by or in connection with missing labels or otherwise improperly labeled Poles. Licensee further agrees to notify CITY immediately if labels or tags are missing or otherwise improper.

16.4 Dangerous Nature of the Work Licensee acknowledges in performing the work contemplated by this Agreement, Licensee and its agents, servants, employees, Contractors and Subcontractors will work near electrically energized lines, transformers, and other electrical equipment, and it is the intention the power flowing through such facilities will not be interrupted except by CITY. Licensee shall ensure its employees, servants, 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 by this Agreement. In addition, Licensee shall furnish its employees, and shall require its agents, Contractors and Subcontractors to furnish their employees, with competent supervision and sufficient and adequate personal protective equipment, tools and other equipment for their work to be performed in a safe

manner. Licensee further warrants it is apprised of, conscious of, and understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION OR FALLS) inherent in the work necessary to make installations on CITY's Poles by Licensee's employees, servants, agents, Contractors and Subcontractors, and accepts as its duty and sole responsibility to notify and inform Licensee's employees, and to require its agents, Contractors and Subcontractors to inform their employees of such dangers and to keep them informed regarding same.

16.5 Disclaimer of Liability CITY shall not at any time be required to pay from its own funds for injury or damage occurring to any person or property from any cause whatsoever arising out of Licensee's construction, reconstruction, maintenance, repair, use, operation, condition or dismantling of Licensee's system or Licensee's provision of service.

16.6 Indemnification SUBJECT ONLY TO PARAGRAPH 16.9, LICENSEE SHALL, AT ITS SOLE COST AND EXPENSE, FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND ALL ASSOCIATED, AFFILIATED, ALLIED AND SUBSIDIARY ENTITIES OF CITY, WHETHER EXISTING NOW OR IN THE FUTURE, AND EACH OF THEIR RESPECTIVE OFFICIALS, OFFICERS, DEPARTMENTS, AGENCIES, COUNTIES, BOARDS, REPRESENTATIVES, EMPLOYEES, AGENTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS AND ATTORNEYS (CITY AND SUCH OTHER PERSONS AND ENTITIES BEING COLLECTIVELY REFERRED TO HEREIN AS "INDEMNITEES"), FROM AND AGAINST:

A. ANY AND ALL LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS) , WHICH MAY BE IMPOSED UPON, INCURRED BY OR BE ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY ACT OR OMISSION OF LICENSEE, ITS PERSONNEL, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS OR AFFILIATES, RESULTING IN ECONOMIC HARM, PERSONAL INJURY, BODILY INJURY, SICKNESS, DISEASE OR DEATH TO ANY PERSON OR DAMAGE TO, LOSS OF OR DESTRUCTION OF TANGIBLE OR INTANGIBLE PROPERTY, LIBEL, SLANDER, INVASION OF PRIVACY AND UNAUTHORIZED USE OF ANY TRADEMARK, TRADE NAME, COPYRIGHT, PATENT, SERVICE MARK OR ANY OTHER RIGHT OF ANY PERSON, FIRM OR CORPORATION, WHICH MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THE CONSTRUCTION, RECONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE OR CONDITION OF LICENSEE'S ATTACHMENTS OR OTHER PROPERTY OF LICENSEE OR ITS AFFILIATES AND ANY OTHER FACILITIES AUTHORIZED BY OR PERMITTED UNDER THIS AGREEMENT; THE RELEASE OF HAZARDOUS SUBSTANCES, OR; THE FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, LAW, CODE, ORDINANCE OR REGULATION.

B. ANY AND ALL LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS), WHICH ARE IMPOSED UPON, INCURRED BY OR ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY CLAIM OR LIEN ARISING OUT OF WORK, LABOR, MATERIALS OR SUPPLIES PROVIDED OR SUPPLIED TO LICENSEE, ITS CONTRACTORS OR SUBCONTRACTORS, FOR THE INSTALLATION, CONSTRUCTION, RECONSTRUCTION, OPERATION OR MAINTENANCE OF LICENSEE'S FACILITIES (AND ANY OTHER FACILITIES AUTHORIZED BY OR PERMITTED UNDER THIS AGREEMENT OR PROVISION OF COMMUNICATIONS SERVICES OR OTHER SERVICES AUTHORIZED BY OR PERMITTED UNDER THIS AGREEMENT), AND, UPON THE WRITTEN REQUEST OF CITY, LICENSEE SHALL CAUSE SUCH CLAIM OR LIEN COVERING CITY'S PROPERTY TO BE DISCHARGED OR BONDED WITHIN THIRTY (30) DAYS FOLLOWING SUCH REQUEST.

C. ANY AND ALL LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS), WHICH MAY BE IMPOSED UPON, INCURRED BY OR BE ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY FINANCING OR SECURITIES OFFERING BY LICENSEE OR ITS AFFILIATES FOR VIOLATIONS OF THE COMMON LAW OR ANY LAWS, STATUTES, OR REGULATIONS OF THE STATE OF TEXAS OR THE UNITED STATES, INCLUDING THOSE OF THE FEDERAL SECURITIES AND EXCHANGE COMMISSION, WHETHER BY LICENSEE OR OTHERWISE.

D. ALL ACTS OR OMISSIONS BY LICENSEE OR ITS CONTRACTORS DONE IN THE COURSE OF INSTALLATION CONSTRUCTION OR IN THE MAINTENANCE, USE, OR OPERATION OF LICENSEE'S ATTACHMENTS.

E. ANY WORK PERFORMED BY CITY THAT WAS NECESSITATED BY THE INSTALLATION, MAINTENANCE, PRESENCE, USE OR REMOVAL OF LICENSEE'S ATTACHMENTS OR FROM ANY WORK THIS AGREEMENT AUTHORIZES CITY TO PERFORM ON LICENSEE'S BEHALF.

F. ALL CLAIMS OR CAUSES OF ACTION FOR DAMAGE TO PROPERTY OR INJURY TO OR DEATH OF ANY PERSONS, INCLUDING PAYMENTS MADE BY CITY UNDER ANY WORKER'S COMPENSATION LAWS OR UNDER ANY PLAN FOR EMPLOYEES' DISABILITY AND DEATH BENEFITS, ARISING OUT OF THE ERECTION, MAINTENANCE, REPAIR, PRESENCE, USE, RELOCATION, TRANSFER OR REMOVAL OF LICENSEE'S ATTACHMENTS OR THE PROXIMITY OF LICENSEE'S ATTACHMENTS TO CITY'S FACILITIES OR THE PROPERTY OF ANY OTHER THIRD PARTY USER, OR BY ANY ACT OR OMISSION OF LICENSEE ON OR IN THE VICINITY OF CITY'S POLES.

G. ALL CLAIMS OR CAUSES OF ACTION FOR PROPERTY DAMAGE, BODILY INJURY OR DEATH ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE OF ANY WORK OR OBLIGATION UNDERTAKEN BY LICENSEE PURSUANT TO THIS AGREEMENT.

H. ANY OCCURRENCE RELATED TO LICENSEE'S ERECTION, MAINTENANCE, REPAIR, PRESENCE, USE, RELOCATION, TRANSFER OR REMOVAL OF LICENSEE'S ATTACHMENTS, INCLUDING LIABILITIES INCURRED AS A RESULT OF VIOLATION OF ANY LAW, RULE, OR REGULATION OF THE UNITED STATES, STATE OF TEXAS OR ANY OTHER GOVERNMENTAL ENTITY OR ADMINISTRATIVE AGENCY.

I. A VIOLATION OF ANY STATE OR FEDERAL LAW ARISING OUT OF LICENSEE'S ERECTION, MAINTENANCE, REPAIR, PRESENCE OR USE, RELOCATION, TRANSFER OR REMOVAL OF LICENSEE'S ATTACHMENTS OR THE PROXIMITY OF LICENSEE'S ATTACHMENTS TO CITY'S FACILITIES OR THE PROPERTY OF ANY ATTACHING ENTITY, OR BY ANY ACT OR OMISSION OF LICENSEE ON OR IN THE VICINITY OF CITY'S POLES, WHETHER SUCH VIOLATION IS THE RESULT OF A VIOLATION OF A STATUTE BY CITY OR THE LICENSEE SOLELY OR ANY JOINT VIOLATION THEREOF.

J. CLAIMS OF GOVERNMENTAL BODIES, PROPERTY OWNERS OR OTHERS ALLEGING THAT LICENSEE DOES NOT HAVE A SUFFICIENT RIGHT OR AUTHORITY FOR PLACING AND MAINTAINING LICENSEE'S FACILITIES AT THE LOCATIONS OF POLES OWNED BY CITY OR JOINT USERS.

K. CLAIMS FOR TAXES OR SPECIAL CHARGES BY OTHERS THAT ARISE DIRECTLY OR INDIRECTLY FROM THE CONSTRUCTION, MAINTENANCE OR OPERATION OF LICENSEE'S FACILITIES.

L. CLAIMS OR CAUSES OF ACTION CAUSED BY OR RELATING IN ANY MANNER TO A BREACH OF THIS AGREEMENT OR A FAILURE TO FOLLOW THE TERMS OF THIS AGREEMENT BY LICENSEE OR ITS AGENTS AND EMPLOYEES OR BY LICENSEE'S CONTRACTORS OR THEIR AGENTS AND EMPLOYEES.

M. ALL CLAIMS OR CAUSES OF ACTION OF THIRD PARTY USERS ALLEGING INTERFERENCE FROM LICENSEE'S ATTACHMENTS OR DAMAGE TO THIRD PARTY USER ATTACHMENTS OR FACILITIES.

N. ALL CLAIMS OR CAUSES OF ACTION RELATING TO LICENSEE'S USE OF ITS ATTACHMENTS, INCLUDING WITHOUT LIMITATION CLAIMS OF LIBEL AND SLANDER AND CLAIMS BASED UPON INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

O. LICENSEE'S OBLIGATIONS TO INDEMNIFY INDEMNITEES UNDER THIS AGREEMENT SHALL NOT EXTEND TO CLAIMS, LOSSES, AND OTHER MATTERS COVERED HEREUNDER THAT ARE CAUSED OR CONTRIBUTED TO BY THE NEGLIGENCE OF ONE OR MORE INDEMNITEES. IN SUCH CASE THE OBLIGATION TO INDEMNIFY SHALL BE REDUCED IN PROPORTION TO THE NEGLIGENCE OF THE INDEMNITEES. BY ENTERING INTO THIS AGREEMENT, CITY DOES NOT CONSENT TO SUIT, WAIVE ITS GOVERNMENTAL IMMUNITY OR THE LIMITATIONS AS TO DAMAGES CONTAINED IN THE TEXAS TORT CLAIMS ACT.

P. THIS SECTION 16.6 SURVIVES THE TERMINATION OF THIS LICENSE AGREEMENT.

16.7 Assumption of Risk Licensee undertakes and assumes for its officers, agents, Contractors and subcontractors and employees (collectively "Licensee" for the purpose of this Section), all risk of dangerous conditions, if any, on or about any CITY-owned or controlled property, the streets and public ways, and Licensee hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any person (other than from Indemnitees' gross negligence) arising out of Licensee's installation, operation, maintenance or condition of the Communication Facilities or other facilities or Licensee's failure to comply with any Federal, State or local statute, law, code, ordinance or regulation.

16.8 Defense of Indemnitees In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Licensee shall, upon notice from any of the Indemnitees, at Licensee's sole cost and expense, resist and defend the same with legal counsel selected by Licensee and consented to by CITY, such consent not to be unreasonably withheld; provided, however, that Licensee shall not admit liability in any such matter on behalf of the Indemnitees without their written consent and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Licensee.

16.9 Joint Liability The indemnity obligations set forth in paragraphs 16.5 and 16.6 shall apply to fully protect and indemnify CITY from all such claimed damages regardless of whether CITY is a joint tortfeasor unless (1) the indemnified liability was the result of intentional or reckless misconduct on the part of CITY, or their agents, servants, employees, or contractors, or (2) by virtue of a final judgment, a finder of fact determines CITY'S percentage of responsibility for the indemnified liability to be 60% or greater, in which case each party shall then be liable for its found percentage of damages in accordance with Texas law.

16.10 Governmental Immunity No provision of this Agreement is intended, or shall be construed, to

be a waiver for any purpose by CITY of the provisions of the Texas Tort Claims Act or any other law limiting municipal liability.

16.11 City Fault. SUBJECT ONLY TO PARAGRAPH 16.6, IT IS THE EXPRESS INTENT OF THE PARTIES THAT THE FOREGOING INDEMNITY IS TO PROTECT AND INDEMNIFY CITY AGAINST THE CONSEQUENCES OF ITS OWN FAULT WHERE THE CITY'S FAULT IS A CONCURRENT CAUSE OF THE INDEMNIFIED CLAIM.

16.12 Notice, Cooperation and Expenses The Indemnitees shall give Licensee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Article 16. Nothing herein shall be deemed to prevent the Indemnitees at their own expense from cooperating with Licensee and participating in the defense of any litigation by their own counsel.

16.13 Other Indemnification Provisions No indemnification provision contained in this Article shall be construed in any way to limit any other indemnification provision contained in this Agreement.

16.14 Survival This Article 16 shall survive the termination of this License Agreement.

ARTICLE 17 INSURANCE

17.1 Licensee shall purchase and maintain in force and effect, at its own expense, the following minimum insurance coverages and limits:

17.2 Statutory Worker's Compensation and Employer's Liability Insurance with minimum limits of not less than indicated below. The policy must be in the name of the Licensee.

Required Limits – Statutory limits, with Employer's Liability Coverage as follows:

Bodily Injury by Accident	\$1,000,000.00
Bodily Injury by Disease Each Employee	\$1,000,000.00
Bodily Injury by Disease Policy Limit	\$1,000,000.00

17.3 Commercial General Liability Insurance, including the coverages identified below, with minimum limits indicated below.

Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00

The Commercial General Liability Policy will include the following coverage's where applicable:

1. Bodily injury & Property damage on an "Occurrence" basis
2. Premises & Operations
3. Products/Completed Operations
4. Personal & Advertising Injury Liability
5. Contractual Liability
6. Explosion, Collapse, and Underground (XCU)

17.4 Commercial Automobile Insurance for all owned, non-owned, and hired vehicles.

Combined Single Limit BI & PD \$500,000.00

17.5 Umbrella/Excess Liability Coverage over Employers' Liability, Commercial General Liability, and Commercial Automobile Liability Policies, with the limits shown below.

Excess Liability Coverage \$8,000,000.00 per occurrence/claim

17.6 Each of Licensee's liability insurance policies where the CITY is included as an additional insured shall be primary to and non-contributing with, any other insurance carried by, or for the benefit of the CITY. Insurance may be provided under a single limit policy, or two or more policies with combined limits for the required amount of coverage.

17.7 Licensee's workers' compensation, employers' liability, commercial automobile liability, commercial general liability, and umbrella/excess liability insurance policies shall, through policy language or endorsement, waive all rights of subrogation in favor of CITY and its affiliates, and their shareholders, directors, officers, members, employees and agents.

17.8 CITY and its employees, officers, directors, shareholders, members, and agents shall be included as additional insureds on all policies (except workers' compensation and employer's liability). Commercial general liability policy shall include ISO endorsement forms "CG 20 10" and "CG 20 37," or their equivalent. Further:

(a) In the event of cancellation of the required policies, Licensee or its insurer(s) shall provide thirty (30) days' prior written notice of cancellation to CITY.

(b) Upon request by CITY, Licensee shall provide copies of policy endorsements as required in this Section 17 from issuing insurance company(s).

17.9 All Licensee's insurance shall be issued by insurance carriers authorized or licensed to do business in Texas at the time the policy is issued and rated by A.M. Best Company as A-VII or better, confirmed by one or more insurance certificates listing CITY's name and address as a Certificate Holder, and list the name of Project as described in this Agreement and the name and phone number of the broker who prepared the certificate. Certificates of insurance shall be prepared on an Acord form 25.

17.10 With respect to any coverage maintained on a "claims-made" policy form, Licensee shall maintain such coverage, either through policy renewals or the purchase of an extended discovery period (if such extended coverage is available), for two (2) years following termination of this Agreement; provided that, if a "claims-made" policy is maintained, the retroactive date must precede the effective date of this Agreement.

17.11 Licensee shall not commence the installation of Attachments under this Agreement until Licensee has obtained all required insurance and until such insurance certificates and endorsements/policy language have been received and approved by CITY. CITY's approval of Licensee's insurance shall not relieve or decrease the liability of Licensee hereunder.

17.12 If Licensee fails to obtain or renew the above required insurance and furnish to the CITY acceptable evidence thereof, CITY shall have the right, but not the obligation, to: (1) procure such insurance and reduce the Agreement amount by the cost thereof; or (2) deem as material breach of this Agreement the Licensee's failure to do so.

17.13 Nothing herein shall reduce or alter any obligation Licensee has to indemnify, defend or hold harmless the Indemnified Parties identified in the Agreement.

17.14 In the event Licensee enters into a subcontract with an independent contractor, the Licensee will require the independent contractor to procure insurance that is appropriate for the type and level of services being provided.

17.15 Licensee shall bear all risks and be responsible for any uninsured loss due to policy deductibles, self-insured retentions, exclusions, limitation inadequacy and/or absence of coverage, whether such policies are purchased by Licensee and/or CITY.

ARTICLE 18

MISCELLANEOUS PROVISIONS

18.1 Integration This Agreement constitutes the entire understanding of the parties relating to the use of CITY'S Poles hereunder; and there shall be no modification or waiver hereof except by writing, signed by the parties. There are no oral representations or agreements between the parties. All previous agreements, correspondence, statements, and negotiations are superseded by this Agreement.

18.2 No Waiver The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in duly force and effect.

18.3 Applicable Law The parties hereto agree and intend that all disputes that may arise from, out of, under or respecting the terms and conditions of this Agreement, or concerning the rights or obligations of the parties hereunder, or respecting any performance or failure of performance by either party hereunder, shall be governed by the laws of the State of Texas, without application of its Conflict of Laws provisions. Except as provided in Article 3, Paragraph 3.2 of this Agreement, the parties further agree and intend that venue shall be proper and shall lie exclusively in state or federal court with jurisdiction in Denton County, Texas, except where otherwise provided herein and except where the Texas Public Utility Commission lawfully has jurisdiction.

18.4 Severability If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants and provisions of this Agreement shall remain in full force and effect.

18.5 Payments & Interest All monetary payments under this Agreement shall be due and payable within 45 days after receipt of invoice. All overdue balances shall accrue interest at the rate of 1% per month from the due date until paid, or the maximum rate allowed by law, whichever is less.

18.6 Amending Agreement Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed, or altered except in writing signed by authorized representatives of both Parties.

18.7 Dispute Resolution This procedure shall govern any dispute resolution process between CITY and Licensee arising from or related to the subject matter of this Agreement that is not resolved by agreement between their respective personnel responsible for day-to-day administration and performance of this Agreement. Upon mutual agreement of the Parties, prior to the filing of any suit with respect to such a dispute, other than a suit seeking injunctive relief with respect to intellectual property rights, the Party believing itself aggrieved ("the Invoking Party") will call for progressive management involvement in the dispute negotiation by giving written notice to the other Party. Such a notice will be without prejudice to the Invoking Party's right to any other remedy permitted by this Agreement. CITY and Licensee will use their best efforts to arrange personal meetings and telephone conferences as needed, at mutually convenient times and places, between their negotiators. If a resolution is not

achieved by negotiators at the final management level within allotted reasonable amount of time, then either Party may within ten (10) business days thereafter request non-binding mediation to resolve the dispute. The mediation shall take place in Denton County or in a location mutually agreed to by the Parties. The allotted period for completion of the mediation shall be thirty (30) calendar days. Notwithstanding the foregoing, either Party may file an action in a court of competent jurisdiction within the State of Texas to resolve the dispute at any time unless otherwise agreed.

18.8 Receivership, Foreclosure, or Bankruptcy Licensee shall notify CITY not later than thirty (30) days of the filing of a receivership, reorganization, bankruptcy or other such action or proceeding by or against Licensee. The rights granted to Licensee hereunder, at the option of CITY shall cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Licensee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

- A.** to the extent permitted by law, within one hundred twenty (120) days after their election or appointment, such receivers or trustees shall have complied fully with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the Agreement, if any; and
- B.** to the extent permitted by law, within said one hundred twenty (120) days, such receivers or trustees shall execute an agreement duly approved by CITY having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.
- C.** In the case of foreclosure or other judicial sale of the plant, property and equipment of Licensee, or any part thereof, including or excluding this Agreement, CITY may serve notice of termination upon Licensee and the successful bidder at such sale, in which event the Agreement herein granted and all rights and privileges of the Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:
- D.** CITY shall have approved the transfer of this Agreement, as and in the manner in this Agreement provided; and
- E.** Unless such successful bidder shall have agreed with CITY to assume and be bound by all the terms and conditions to this Agreement.

18.9 Incorporation of Recitals and Appendices The Recitals stated above and all appendices, attachments, and exhibits to this Agreement are incorporated into and constitute part of this Agreement.

18.10 Contractors and Agents Bound Licensee shall be fully liable for any Contractor or subcontractor retained by Licensee to perform work or services for Licensee under this Agreement, as a condition of being granted access to Poles and City property.

18.11 No Third Party Beneficiaries The terms and provisions of this Agreement are intended to be for the benefit of CITY and Licensee except as otherwise provided in this Agreement, and nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than the parties to this Agreement, any benefits, rights or remedies under or by reason of this Agreement.

18.12 Emergency Contact Each Party shall maintain a staffed 24-hour emergency telephone number where a Party can contact the other Party to report damage to the other Party's Facilities or other situations requiring immediate communications between the Parties. Failure to maintain an emergency contact shall subject the Licensee to a charge equal to the actual costs incurred by CITY per incident and shall eliminate CITY's liability to Licensee for any actions that CITY deems reasonably necessary given the specific circumstances. The CITY's Electric Utility Dispatch Center emergency phone number is (940) 349-7644.

18.13 Notices When notice is required to be given under this Agreement by either party, it shall be in writing mailed or delivered to the other party at the following address or to such other address as either party may from time to time designate in writing for that purpose. All notices shall be effective upon receipt.

City:

Office of the City Attorney
City of Denton
215 E. McKinney St.
Denton, Texas
76201

Licensee:

Lisa Newsome

JU Sr. Specialist, Joint Use
lisa.k.newsome@ftr.com
260-461-3520

Kevin Saville

General Counsel
Ks9458@ftr.com
612-839-0909

IN WITNESS WHEREOF, the undersigned have executed this Agreement at Denton, Denton County, Texas through their duly authorized representatives.

AGREED:

CITY OF DENTON

City Manager

Signed on the ____ day of _____, 20__

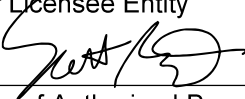
Approved as to legal form

City Attorney

LICENSEE

Scott Mispagel

Name of Licensee Entity



Signature of Authorized Person for Licensee Entity

Printed Name of Authorized Person

Signed on the 20th day of June, 2025

· THIS AGREEMENT HAS BEEN BOTH
REVIEWED AND APPROVED AS TO
ALL TERMS

Antonio Puente, General Manager
Denton Municipal Electric

Date Signed: _____