

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS ADOPTING AND APPROVING A UNIFORM POLE ATTACHMENT LICENSE AGREEMENT FOR ALL POLE ATTACHMENT FEES AND CHARGES AND ALL CONDUIT FEES AND CHARGES INVOLVING POLES AND CONDUITS OWNED BY THE CITY OF DENTON, TEXAS; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENTS; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, over thirteen years has passed since the City Council last approved a Uniform Pole Attachment License Agreement; and

WHEREAS, both competition, technology and the regulatory environment have changed and impacted the market, and there is now intense competition for the limited amount of utility poles and in utility underground conduit; over time, this pole space has become a valuable commodity; and

WHEREAS, the Federal Communications Commission (“FCC”) has established guidelines on both the criteria and fees that may be applied by the owner of poles for the use of such space, and has developed rules that interpret these guidelines; and

WHEREAS, §54.204(c) of the Texas Public Utility Regulatory Act (“PURA”) provides that a municipal utility in Texas may not charge a pole attachment rate or underground conduit rate that exceeds the fee the utility would be allowed to charge if the utility’s rates were regulated under federal law and the rules of the FCC; and

WHEREAS, the City has revised its Uniform Pole Attachment Agreement (“Agreement”) to comply with changed wireline technology and the new regulatory environment; and

WHEREAS, the Agreement provides a uniform agreement applicable to all entities attaching to the City’s poles utilizing wireline technology and to users of the City’s communications facilities; at a uniform rate of compensation to be paid to the City; in the form of a license; adopting reasonable and uniform technical standards for such use, clearly permitting the City to remove such facilities, at the licensee’s expense, if the licensee does not do so after notice; and

WHEREAS, the City Council understands that the Agreement shall replace the existing uniform pole attachment agreement. NOW THEREFORE

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. That the City Council hereby approves and adopts the attached “Pole Attachment License Agreement” as the uniform agreement governing all wireline-based pole attachments and wireline-based use of conduit applicable to all City-owned pole attachments and conduits, from and after the effective date of this Ordinance.

SECTION 2. The City Manager is hereby authorized to execute and deliver on behalf of the City, a "Pole Attachment License Agreement" between the City of Denton, Texas and any and all persons or entities desiring to attach wireline-based facilities to the City's poles or conduits, which Agreement is attached hereto as Exhibit "A" and incorporated herewith by reference.

SECTION 3. That the expenditure of funds as provided in the attached Pole Attachment License Agreement(s) is hereby authorized.

SECTION 4. That this ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2016.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

By:  _____

EXHIBIT "A"

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 _____, a [*INSERT TYPE OF COMPANY AND STATE OF ENTITY'S SITUS*], e.g., "*a Delaware corporation*") ("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 of Denton's 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.

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.
- 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.

E. Attachment License means the revocable (solely pursuant to the terms and conditions 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 Application and subject to (1) any modifications, conditions, and specifications imposed by CITY pursuant to this Agreement or applicable law when approving the 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 material 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 upon 60-days' notice to Licensee; 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 issued by CITY to Licensee 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 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 Application. The Filing Fee is solely to compensate CITY for reviewing and processing an 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 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.

Y. 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, or dusk to dawn light poles; (2) poles or towers supporting transmission lines carrying a nominal voltage greater than 35kV, unless such poles are also used to support transmission lines carrying a nominal voltage of not more than 35kV; (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.

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 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 material 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.
- H.** Rental and license rates for CMRS and related services and equipment shall be set by separately negotiated license agreements with CITY.

2.2 **Term** The initial term of this Agreement is _____ years, beginning on the Effective Date and renewing thereafter for _____ successive _____ terms, subject to the material 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 _____ days before the end of the then-current term. If Licensee is in material default during the course of the then-current term and Licensee has not cured the default, this Agreement shall not renew. If Licensee has materially 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 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 Rate is calculated in accordance with applicable law. The Maximum Lawful 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. 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 material 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 Application must be submitted in the then approved CITY format. The 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 Application, or it may request additional information to support the Application, in which event the requested information shall be promptly furnished. In the event that CITY denies an Application, it shall provide written notice of its reason for denial to Licensee within 10 business days of the date the Application was submitted.

4.4 Filing Fee The Filing Fee shown in Exhibit A shall be paid at the time the Application is submitted. No Application will be considered before payment of the Filing Fee.

4.5 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 Application as submitted, approve it on a modified or conditional basis, or may deny the Application in accordance with the policies adopted by CITY. An 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 subparagraph 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.

4.6 Order of Approval 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 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.

4.7 Engineering Licensee shall submit documentation of its field evaluation using a CITY-approved Licensee employee. CITY shall not unreasonably withhold, condition, or delay grant of

approval for a CITY-approved Licensee employee. 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.

4.8 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 novo*, 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 Make-Ready, 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.

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 material 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 Make-Ready construction or 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 CONSTRUCTION**

PART A - GENERAL PROVISIONS

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, 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, rotten, or not otherwise in compliance with the Electrical Code or applicable law, 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 Upgrades Notwithstanding anything set forth in paragraph 6.4 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, modernization, and upgrade 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.

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.

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 and guys 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.

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 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 AND INSPECTIONS

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 Licensee(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.

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 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, 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 material 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 the amount of Make-Ready construction 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 Make-Ready or 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 Utility Dispatch Center (NPA) NXX-XXXX, 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 all necessary Make-Ready work and 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 material 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, including timely payments to Contractors for Make-Ready Work, or timely perform any material 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, in which event Licensee shall pay to CITY as liquidated damages, and not as a penalty, for the use and occupancy of CITY Poles a sum equal to five times (5x) the monthly Usage Rate for each Attachment or Pole Contact for each month (or part thereof) until all such Attachments or Pole Contacts have been removed, in addition to the Annual Usage Fee. Alternatively, 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 Leased Network Capacity CITY acknowledges that Licensee's business plan may include leasing the capacity of its Network Facilities to Third Parties, often by long-term conveyances that extend for the entire useful life of the Network Facilities. To the extent such third-party entities hold the requisite franchises, permits, or licenses from City to provide their services within CITY, including the payment of all applicable fees, such long-term leases are agreed to be within the scope of Licensee's intended use and shall not be deemed assignments requiring CITY's consent, provided that Licensee has delegated none of its obligations under this License Agreement to the lessee of the Network Facilities, and CITY may continue to look solely to Licensee for performance hereunder. Further, Licensee shall verify through sworn affidavit from an duly authorized officer or representative of Licensee, that any such third parties' services are limited to the provision of wireline local exchange telephone services or wireline voice services.

14.4 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, DAS Network or Network Facilities in the event such institutional mortgagee or lender exercises its foreclosure right against Licensee and operates the Attachments, DAS Network or Network Facilities; 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.

14.5 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 \$5,000 for the first 100 Poles for which Application has been made. 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. During the course of this Agreement, Licensee shall maintain such

bond in the amount of \$5 for each Pole for which an Attachment Licensee has been granted but for which Make-Ready work has not been complete for more than 90 days.

15.2 Performance Bond Within 30 days of the Effective Date of this Agreement, Licensee shall provide a Performance Bond in the amount of \$50,000 for the first 5,000 Poles for which Application is made, 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 immediately. 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 16.10, 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 Facilities 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 Make-Ready or 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 AE 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 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 LIABILITY.

16.10 Joint Liability The indemnity obligations set forth in paragraphs 15.5 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.

16.11 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.

16.12 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 Insurance Required During the term of this Agreement, and at all times thereafter when Licensee is occupying or using the licensed areas in any way, Licensee shall at all times carry insurance issued by companies duly licensed and authorized to provide insurance in the State of Texas rated at least A VIII under the A. M. Best rating system, and approved by CITY (which approval shall not be unreasonably withheld) to protect Licensee and the CITY from and against any and all claims, demands, actions, judgments, costs, expenses, or liabilities of every kind that may arise, directly or indirectly, from or by reason of losses, injuries, or damages described in this Agreement. The CITY reserves the right to review the insurance requirements and to reasonably adjust insurance and limits when the CITY determines that changes in statutory law, court decisions, or the claims history of the industry or the Licensee require adjustment of the coverage.

17.2 Minimum Coverages At a minimum, Licensee shall carry and maintain the following policies and shall furnish the CITY Risk Manager Certificates of Insurance on the most current State of Texas

Department of Insurance-approved certificate form as evidence thereof.

A. Commercial General Liability coverage with minimum limits of liability of \$2,000,000 per occurrence and \$2,000,000 aggregate. The policy shall contain no exclusions without specific reference to same, and shall include coverage for products and completed operations liability; independent contractor's liability; personal & advertising injury liability; and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

B. Workers' Compensation coverage with statutory limits of liability as set forth in the Texas Workers' Compensation Act and Employer's Liability coverage, or its equivalent, of not less than \$1,000,000 per accident, \$1,000,000 per disease and \$1,000,000 per disease per employee;

C. Business Automobile Liability Insurance for any vehicles, owned vehicles, non-owned vehicles, scheduled vehicles and hired vehicles with a minimum combined single limit of liability of \$2,000,000.

D. Pollution liability insurance which provides coverage for sudden and accidental environmental contamination with minimum limits of liability of \$5,000,000.

E. Umbrella or Excess Liability insurance with minimum limits of \$5,000,000 combined single limit per occurrence, and \$5,000,000 aggregate.

17.3 CITY as Additional Insured All policies, except for Workers' Compensation policies, or its equivalent, shall list the CITY and all associated, affiliated, allied and subsidiary entities of CITY, now existing or hereafter created, and their respective officers, employees, volunteers, agents, and contractors, as their respective interests may appear, as Additional Insureds (CITY and such other persons and entities being collectively referred to herein as "Additional Insureds") and shall include cross-liability coverage. Should any of the policies be canceled before the expiration date thereof, written notice shall be given to the City's Risk Manager in accordance with the policy provisions. The "other insurance" clause shall not apply to the CITY; it being the intention of the parties that the above policies covering Licensee and the Additional Insureds shall be considered primary coverage. Each policy shall contain a waiver of all rights of recovery or subrogation against CITY, its officers, agents, employees, volunteers and elected officials.

17.4 Occurrence Basis Policies All insurance policies other than those for Workers' Compensation must be occurrence-based. Claims-made policies will not be accepted.

17.5 Combining Policy Amounts The coverage amounts set forth in this section may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated and the umbrella policy follows the form, or its terms and conditions are at least as broad as those of the primary policies.

17.6 Insurance Primary All policies of the Licensee shall be primary, and any policy of insurance or self-insurance purchased or held by the CITY now or in the future shall be non-contributory. The term "policy of insurance" as applied to the Additional Insureds shall include any self-insurance

program, self-insured retention or deductible, or risk pool program or an indemnification, defense, or similar program purchased or maintained by CITY and Additional Insureds.

17.7 Contractors 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.

17.8 No Right of Recovery Against City This Article creates no right of recovery of an insurer against the CITY. The required insurance policies shall protect the LICENSEE and the CITY. The insurance shall be primary coverage for losses covered by the policies.

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 party asserted to be bound thereby. 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.

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	LICENSEE

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

AGREED:

ABC COMPANY By: _____ (Printed Name) _____ Signature _____ Title Date: _____	CITY OF DENTON By: _____ City Manager _____ Signature Date: _____ APPROVED: _____ City Attorney
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LIST OF EXHIBITS

Exhibit A – Pole Attachment Charges

Exhibit B – Construction Guidelines (Pole Attachment Specifications)

Exhibit C – Licensee’s Certificates of Insurance

EXHIBIT A
POLE ATTACHMENT CHARGES

Licensee will be subject to the rates for billable services as established by the CITY's Rate Ordinance in effect at the time services are billed.

EXHIBIT B

**CONSTRUCTION GUIDELINES
(Pole Attachment Specifications)**

EXHIBIT C

Licensee's Certificates of Insurance