BILL NO. 2023-15 RESOLUTION NO. 2023-15

A RESOLUTION AUTHORIZING THE MAYOR OR CITY ADMINISTRATOR TO EXECUTE A POLE ATTACHMENT AGREEMENT BETWEEN THE CITY OF WEST PLAINS, MISSOURI, AND BRIGHTSPEED OF MISSOURI, LLC.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of West Plains, Missouri as follows:

Section 1. That the Mayor or City Administrator is hereby authorized to execute on behalf of the City of West Plains a pole attachment agreement, with the agreement to be in substantially the same form as attached to this resolution.

Section 2. This resolution shall be in full force and effect from and after the date of its passage and approval.

Passed by the City Council and signed by the Mayor this 17th day of July, 2023.

_____
Michael Topliff, Mayor

Attest:

_____
Allison Skinner, City Clerk

POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment License Agreement (the "Agreement") dated _____, 2023 ("Effective Date") is made by and between the City of West Plains, Missouri, 1910 Holiday Lane, West Plains, Missouri 65775 ("City"), a municipal corporation duly created, organized, and existing under and by virtue of the laws of the State of Missouri, and Brightspeed of Missouri, LLC, a Missouri limited liability company, ("Licensee"). City and Licensee are referred to herein individually as "Party" and collectively as "Parties."

Recitals

A. City is a municipal corporation performing the essential public service of distributing electric power; and

B. City is responsible for safeguarding the integrity of its electric system, obtaining fair compensation for the use of its infrastructure through collection of fees and other charges, ensuring compliance with all applicable federal, state, and local laws, rules and regulations, ordinances, standards and policies, and permitting fair and reasonable access to available capacity on City's infrastructure; and

C. Licensee proposes to install and maintain Licensee's Attachments, Facilities, and associated equipment, on City's Poles to provide Services; and

D. City is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee's Attachments on City's Poles, provided that City may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient capacity or for reasons relating to safety, reliability, generally applicable engineering purposes, and/or any other Applicable Standard; and

E. The Parties intend that this Agreement shall replace and supersede all previous pole attachment and/or infrastructure use agreements between the Parties upon the Effective Date of this Agreement;

Therefore, in consideration of the mutual covenants, terms and conditions set out below the Parties agree as follows:

Article 1. Definitions

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

1.1 **Affiliate:** when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.

1.2 **Applicable Standards:** means all applicable engineering and safety standards governing the installation, maintenance, and operation of Facilities and the performance of all work in or around

electric City Facilities and includes the most current versions of National Electric Safety Code ("NESC"), the National Electrical Code ("NEC"), and the regulations of the Occupational Safety and Health Administration ("OSHA"), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of City or other federal, state, or local authority with jurisdiction over City Facilities.

1.3 **Attaching Entity:** means any public or private entity, including Licensee, that, pursuant to a license agreement with City, places an Attachment on City's Poles.

1.4 **Attachment(s):** means Licensee's Facilities that are placed directly on City's Poles, are Overlashed onto an existing Attachment, but does not include either a Riser or a Service Drop attached to a single Pole where Licensee has an existing Attachment on such Pole.

1.5 **Capacity:** means the ability of a Pole or Conduit System segment to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.

1.6 **City Facilities:** means all personal property and real property owned or controlled by City, including Poles, Conduit System, and related Facilities.

1.7 **Climbing Space:** means that portion of a Pole's surface and surrounding space that is free from encumbrances to enable City employees and contractors to safely climb, access, and work on City Facilities and equipment.

1.8 **Correct:** means to perform work to bring an Attachment into compliance with Applicable Standards.

1.9 **Emergency:** means a situation exists which, in the reasonable discretion of Licensee or City, if not remedied immediately, poses an imminent threat to public health, life, or safety, damage to property, or a service outage.

1.10 **Equipment Attachment:** means each power supply, amplifier, pedestal, appliance or other single device or piece of equipment but excluding wireless attachments affixed to any City Pole or City Facilities.

1.11 **Facilities:** means wireline infrastructure used to deliver broadband, internet, and communication Services, including but not limited to, fiber optic, copper, and/or coaxial cables, all associated equipment, utilized to provide broadband, internet and communications Services, but excluding wireless attachments affixed to or contained in any unit of City's infrastructure.

1.12 **Licensee:** means Brightspeed of Missouri, LLC, and its authorized successors and assignees.

1.13 **Make-Ready or Make-Ready Work:** means all work that City reasonably determines to be required to accommodate Licensee's Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement and/or transfer of City Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), Pole replacement and construction, but does not include Licensee's routine maintenance.

1.14 **Occupancy:** means the use or reservation of space for Attachments on a City Pole or portion of City's Conduit System.

1.15 **Overlash:** means to place an additional wire or cable Communications Facility onto an existing attached Communications Facility.

1.16 **Pedestals/Vaults/Enclosures:** means above- or below-ground housings that are not attached to City Poles but are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices, and/or to provide a Service connection point.

1.17 **Permit:** means written or electronic authorization by City for Licensee to make or maintain Attachments to specific City Poles pursuant to the requirements of this Agreement. Licensee's Attachments made prior to the Effective Date and authorized by City ("Existing Attachments") shall be deemed Permitted Attachments hereunder.

1.18 **Pole:** means a pole owned or controlled by City that is used for the distribution of electricity and/or Services and is capable of supporting Attachments for Facilities.

1.19 **Pole Loading Study/Analysis:** means the engineering analysis of the existing and proposed loads on a Pole. The study shall be done using the following Pole loading programs, O-Calc or PLS Pole using liner analysis Grade C Construction and current City Pole Attachment Standards in Appendix C.

1.20 **Post-Construction Inspection:** means the inspection by City or Licensee or some combination of both to verify that the Attachments have been made in accordance with Applicable Standards and the Permit.

1.21 **Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or City to determine the Make-Ready Work necessary to accommodate Licensee's Attachment(s) on a Pole. Such work includes, but is not limited to, field inspection and administrative processing.

1.22 **Reserved Capacity:** means capacity or space on a Pole that City has identified and reserved for its own future City requirements at the time of the Permit grant.

1.23 **Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect wires and cables.

1.24 **Service(s):** means the transmission or receipt of voice, video, data, broadband internet, or other forms of digital or analog signals over Facilities.

1.25 **Tag:** means to place distinct markers on wires and cables, coded by color or other means specified by City and/or applicable federal, state or local regulations, that will readily identify the type of Attachment (*e.g.,* cable TV, telephone, high-speed broadband data, public safety) and its owner.

1.26 **Unauthorized Attachment:** means any Attachment placed on City's Pole(s) without such authorization as is required by this Agreement, provided the Licensee's previously authorized

Attachments made pursuant to a prior agreement between the Parties shall not be considered Unauthorized Attachments.

Article 2. Scope of Agreement

2.1 **Grant of License.** Subject to the provisions of this Agreement, City grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Attachments to City's Poles.

2.2 Unless otherwise agreed this Agreement does not authorize the use of City transmission structures (other than those with distribution underbuilds).

2.3 **No Wireless Attachments**. This Agreement does not contemplate or authorize the attachment of wireless attachments to City's Poles, and such use will only be allowed pursuant to a separately negotiated wireless pole attachment agreement or rider hereto.

2.4 **Parties Bound by Agreement.** Licensee and City agree to be bound by all provisions of this Agreement.

2.5 **Permit Issuance Conditions.** City will issue one or more Permit(s) to Licensee only when City determines, in its sole judgment, exercised reasonably, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.

2.6 **Reserved Capacity.** Access to space on City Poles will be made available to Licensee with the understanding that certain Poles may be subject to Reserve Capacity for future service use. At the time of Permit issuance, City shall notify Licensee if capacity on particular Poles is being reserved for reasonable, foreseeable future use. For Attachments made with notice of such a Reservation of Capacity, on giving Licensee at least sixty (60) calendar days prior notice, City may reclaim such Reserved Capacity at any time following the installation of Licensee's Attachment if required for City's future services. If reclaimed for City's use, City may at such time also install associated Facilities, including, but not limited to, the attachment of electrical, communications, and broadband lines. City shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity for City services, so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Section 4.9. Licensee shall not be required to bear any of the costs of rearranging or replacing its Attachment(s), if such rearrangement or replacement is required as a result of an additional Attachment or the modification of an existing Attachment sought by any other entity.

2.7 **No Interest in Property.** No use, however lengthy, of any City Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of

City's rights to City Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a Licensee only.

2.8 **Licensee's Right to Attach.** Nothing in this Agreement, other than a Permit issued pursuant to Article 6, shall be construed as granting Licensee any right to Attach Licensee's Facilities to any specific Pole.

2.9 **City's Rights over Poles.** The Parties agree that this Agreement does not in any way limit City's right to locate, operate, maintain, or remove its Poles in the manner that will best enable it to fulfill its service requirements or to comply with any federal, state, or local legal requirement.

2.10 **Expansion of Capacity.** City will take reasonable steps to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require City to install, retain, extend, or maintain any Pole for use when such Pole is not needed for City's own service requirements.

2.11 **Other Agreements.** Except as expressly provided in this Agreement, nothing in this Agreement shall limit, restrict, or prohibit City from fulfilling any agreement or arrangement regarding its Poles into which City has previously entered, or may enter in the future, with others not party to this Agreement.

2.12 **Permitted Uses.** This Agreement is limited to the uses specifically stated in this Agreement and no other use shall be allowed without City's express written consent to such use. Nothing in this Agreement shall be construed to require City to allow Licensee to use City's Poles after the termination of this Agreement.

2.13 **Overlashing.** The following provisions apply to Overlashing:

2.13.1 Licensee shall provide no less than sixty (60) days prior notice for each Overlash it intends to install. Absent such prior notice, Overlashing constitutes an Unauthorized Attachment under Article 21.

2.13.2 Authorized Overlashing to accommodate Attachments of Licensee or its Affiliate(s) shall not increase the Annual Attachment Fee paid by Licensee pursuant to Appendix A, Item 1. Licensee or Licensee's Affiliate shall, however, be responsible for all Make-Ready Work and other charges associated with the Overlashing. Licensee shall not have to pay a separate Annual Attachment Fee for such Overlashed Attachment.

2.13.3 At Licensee's request, City may allow Overlashing to accommodate Facilities of a third party, not affiliated with Licensee. In such circumstances, the third party must enter into a License Agreement with City, obtain Permit(s), and pay a separate Attachment Fee (Appendix A, Item 1) as well as the costs of all necessary Make-Ready Work required to accommodate the Overlashing. City shall not grant such Permit(s) to third parties allowing Overlashing of Licensee's Facilities without Licensee's consent. Authorized Overlashing shall not increase the fees and charges paid by Licensee pursuant to Appendix A, Item 1.

Nothing in this Agreement shall prevent Licensee from seeking a contribution from an Overlashing third party to defray fees and charges paid by Licensee.

2.13.4 Make-Ready Work procedures set forth in Article 7 shall apply, as necessary, to all Overlashing.

2.13.5 Licensee's Overlashing will be limited to fiber and coaxial cables, installed consistent with Applicable Standards, subject to any notice regarding Reserve Capacity pursuant to Section 2.6, and only on a permanent basis. Any Overlashing inconsistent with these requirements will constitute an Unauthorized Attachment under Article 21.

2.14 **Enclosures.** Licensee shall not place Pedestals, Vaults, and/or other Enclosures on or within four (4) feet of any Pole or other City Facilities without City's prior written permission. If permission is granted, all such installations shall be per the Applicable Standards. Such permission shall not be unreasonably withheld. Further, Licensee agrees to move any such above-ground enclosures in order to provide sufficient space for City to set a replacement Pole.

Article 3. Fees and Charges

3.1 **Payment of Fees and Charges.** Licensee shall pay to City the fees and charges specified in Appendix A and shall comply with the terms and conditions specified in this Agreement.

3.2 **Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from City pursuant to this Agreement within thirty (30) calendar days of receipt of invoice.

3.3 **Application Fee**. Licensee shall be charged a non-refundable Application Fee for each Pole for which it seeks to make an Attachment. City reserves the right to adjust the Application Fee from time to time to cover actual and documented costs incurred in processing Applications. Failure to include Application Fees will cause the Application(s) to be deemed incomplete, and City will not process such Application(s) until the Application Fees are paid. City will make timely and reasonable efforts to contact Licensee should its Application Fee not be received.

3.4 **Pole Attachment Fee**. Licensee shall be charged an Annual Pole Attachment fee ("Pole Fee"), per year, as set out in Appendix A.

3.5 **Billing of Attachment Fee.** City shall invoice Licensee for the per-Pole Attachment Fee annually. City will submit to Licensee an invoice for the annual rental period not later than January 31 of each year except the initial year when the invoice will be submitted within 15 days after this Agreement is signed by all Parties. The initial annual rental period shall commence upon the Effective Date of this Agreement and conclude on December 31 of that year, and each subsequent annual rental period shall commence on the following January 1 and conclude on December 31 of the subsequent year. The invoice shall set forth the total number of City's Poles on which Licensee was issued Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits.

3.5.1 Contesting Fee. Licensee shall have forty-five (45) days from receipt of invoice to contest the number of Attachments. Failure to contest or otherwise dispute the invoice within forty-five (45) days of receipt shall be deemed to be acceptance by the Licensee. In the event Licensee does contest within forty-five (45) days either the number of Attachments or the Attachment Fee, Licensee shall pay an amount equivalent to the previous year's billing within the initial forty-five (45) days. Upon resolution of the disagreement regarding the then-current year's bill, either Licensee shall pay the difference if the agreed amount is greater than Licensee's initial payment, or City shall refund the difference to Licensee if the agreed amount is less than Licensee's initial payment.

3.6 Refunds. No fees and charges specified in Appendix A shall be refunded on account of any surrender of a Permit granted under this Agreement.

3.7 Late Charge. If City does not receive payment for any fee or other amount owed within thirty (30) calendar days after it becomes due, Licensee shall pay interest to City at the rate of one and one-half percent (1.5%) per month, or the maximum interest allowed by law, whichever is greater, on the amount due. In addition to assessing interest on any unpaid fees or charges, if any fees or charges remain unpaid for a period exceeding ninety (90) days City may, at its option, discontinue the processing of applications for new Attachments until such fees or charges are paid.

3.8 Charges and Expenses. Licensee shall reimburse City and any other Attaching Entity for those actual and documented costs for facilitating Licensee's Attachments or for which Licensee is otherwise responsible under this Agreement.

3.8.1 Such costs and reimbursements shall include, but not necessarily be limited to, all costs associated with de-energizing City's Facilities, all design, engineering, administration, supervision, payments, labor, overhead, materials, equipment and applicable transportation used for work on, or in relation to Licensee's Attachments as set out in this Agreement or as requested by Licensee in writing.

3.9 Advance Payment. City in its sole discretion will determine the extent to which Licensee will be required to pay in advance estimated costs, including, but not limited to, administrative, construction, inspections, and Make-Ready Work costs, in connection with the initial installation or rearrangement of Licensee's Attachments pursuant to the procedures set forth in Articles 6 and 7 below.

3.10 True-Up. Whenever City, in its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of the activity exceeds the advance payment of estimated expenses, Licensee agrees to pay City for the difference in cost, provided that City documents such costs with sufficient detail to enable Licensee to verify the charges. To the extent that City's actual cost of the activity is less than the estimated cost, City shall refund to Licensee the difference in cost.

3.11 Determination of Charges. Wherever this Agreement requires Licensee to pay for work done or contracted by City, the charge for such work shall include all reasonable material, labor,

engineering, administrative, and applicable overhead costs. City shall bill its services based upon actual costs, and such costs will be determined in accordance with City's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed, and costs of materials used. Labor costs shall be the greater of the fully loaded costs of municipal labor or the current "union scale" for comparable work in the region. Consistent with Article 19, if Licensee was required to perform work and fails to perform such work within the specified timeframe, and City performs such work, City may charge Licensee an additional twenty-five percent (25%) of its actual and documented costs for completing such work.

3.12 **Work Performed by City.** Wherever this Agreement requires City to perform any work, City, at its sole discretion, may utilize its employees or contractors, or any combination of the two, to perform such work.

3.13 **Charges for Incomplete Work**. In the event that an Application is submitted by Licensee and then steps are taken by City to carry out the review of the Application by performing necessary engineering and administrative work and the Application is subsequently canceled, Licensee shall reimburse City for all of the actual and documented costs incurred by City through the date of cancellation, including engineering, clerical and administrative and Make-Ready construction costs.

Article 4. Specifications

4.1 **Installation** When a Permit is issued pursuant to this Agreement, Licensee's Facilities shall be installed and maintained in accordance with the requirements and specifications of City and must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Facilities.

4.2 **Maintenance of Facilities**. Licensee shall, at its own expense, make and maintain its Attachment(s) in safe condition and good repair, in accordance with all Applicable Standards. Notwithstanding anything in this Agreement to the contrary, Licensee shall not be required to update or upgrade its Attachments if they met Applicable Standards at the time they were made, unless such updates or upgrades are required by any revised Applicable Standards.

4.3 **Communications**. Licensee shall utilize the emails and addresses for emergency and legal notifications, or other similar notification system(s) identified and utilized by City to facilitate required notices, including, but not limited to, any need to rearrange or transfer Licensee's Attachments. Such notices include, but are not limited to Pole Attachment transfers, rearrangements, Pole Attachment abandonment and removal, as well as the extent to which such use will satisfy the notification requirements of this Agreement and provide notice thereof to Licensee. Licensee and City agree to perform their respective tasks in a commercially reasonable and timely manner, and in accordance with the timeframes specified in this Agreement.

4.4 **Tagging.** Licensee shall Tag all its Facilities with Name, Address and Phone number, and/or applicable federal, state, and local regulations upon installation of such Facilities. All Attached Poles must be tagged with stamped noncorrosive metal material with five-digit number, or greater, to be used for Pole Attachment inventory. Within one year of the execution of this Agreement, Licensee shall also tag any untagged Facilities that were on City Poles on the Effective Date of this Agreement. Failure to provide proper tagging will be considered a violation of the Applicable Standards.

4.5 **Interference.** Licensee shall not allow its Facilities to impair the ability of City or any third party to use City's Poles, nor shall Licensee allow its Facilities to interfere with the operation of any City Facilities or third-party Facilities.

4.6 **Protective Equipment.** Licensee and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and Facilities. Licensee shall, at its own expense, install protective devices designed to handle the electric voltage and current carried by City's Facilities in the event of a contact with such Facilities. City shall not be liable for any actual or consequential damages to Licensee's Facilities, Licensee's customers' Facilities, or to any of Licensee's employees, contractors, customers, or other persons resulting from the lack of protective equipment.

4.7 **Violation of Specifications.** If Licensee's Attachments, or any part of them, are installed, used, or maintained in violation of this Agreement, and Licensee has not Corrected the violation(s) within thirty (30) days from receipt of written notice of the violation(s) from City, the provisions of Article 19 shall apply. When City believes, however, that such violation(s) pose an imminent threat to the safety of any person, interfere with the performance of City's service obligations, or present an imminent threat to the physical integrity of City Poles or Facilities, City may, but shall not be required to, perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable afterward, City will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and documented costs incurred by City in taking action pursuant to this Section 4.7. Licensee shall indemnify City for any such work.

4.8 **Restoration of City Service.** City's service restoration requirements shall take precedence over any and all work operations of Licensee on City's Poles or within City's Conduit System.

4.9 **Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days of the effective date of such right and any extension to such Permit(s), City may, but shall have no obligation to, use the space scheduled for Licensee's Attachment(s) for its own needs or make the space available to other Attaching Entities. In such instances, City shall endeavor to make other space available to Licensee, upon written application under Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions. If City uses the space for its own needs or makes it available to other parties, then from the date that City or a third party begins to use such space, Licensee may obtain a refund on the

portion of any Attachment Fees that it has paid in advance for that space. For purposes of this paragraph, Licensee's access rights shall not be deemed effective until any necessary Make-Ready Work has been performed.

4.10 **Removal of Nonfunctional Attachments.** At its sole expense, Licensee shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for Service ("Nonfunctional Attachment") as provided in this Paragraph 4.10. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an Unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written notice from City that removal is necessary to accommodate City's or another Attaching Entity's use of the affected Pole(s) in which case Licensee shall remove the Nonfunctional Attachment within sixty (60) days of receiving the notice. Licensee shall give City notice as soon as practicable of any Nonfunctional Attachments along with the date the Nonfunctional Attachment was removed.

Article 5. Private and Regulatory Compliance

5.1 **Necessary Authorizations.** Before Licensee occupies any of City's Poles, Licensee shall obtain from the appropriate public or private authority, or from any property owner or other appropriate person, any required authorization to construct, operate, or maintain its Facilities on public or private property. City retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations under this Article 5 include, but are not limited to, its obligation to obtain and pay for all necessary approvals to occupy public/private rights-of-way and easements and all necessary licenses and authorizations to provide the Services that it provides over its Facilities. Licensee shall defend, indemnify, and reimburse City for all losses, costs, and expenses, including reasonable attorney's fees, that City may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to Attach Licensee's Facilities on City's Poles and/or to provide particular Services.

5.2 **Lawful Purpose and Use.** Licensee's Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state, and local laws.

5.3 **Forfeiture of City's Rights.** No Permit granted under this Agreement shall extend, or be deemed to extend, to any of City's Poles, to the extent that Licensee's Attachment would result in a forfeiture of City's rights. Any Permit that would result in forfeiture of City's rights shall be deemed invalid as of the date that City granted it. Further, if any of Licensee's existing Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Facilities upon receipt of written notice from City. If Licensee does not remove its Facilities in question within thirty (30) days of receiving written notice from City, City may, at its option, perform such removal at Licensee's expense. Notwithstanding the forgoing, Licensee shall have the right to contest any such forfeiture before any of its rights are terminated,

provided that Licensee shall indemnify City for liability, costs, and expenses, including reasonable attorney's fees, that may accrue during Licensee's challenge.

5.4 **Effect of Consent to Construction/Maintenance.** Consent by City to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization, or acknowledgment that Licensee has obtained all required Authorizations with respect to such Attachment.

Article 6. Permit Application and Notification Procedures

6.1 **Permit or Notification Required.** Before making any Attachments (excluding Service Drops and Riser Attachments where there is an existing licensed Pole Attachment) to any Poles, Licensee shall submit an Application and receive a Permit therefor, with respect to each Pole. Overlashed Facilities installations require Notification in advance of installation. See Appendix B Pole Attachment Application and Overlash Notification form.

6.2 **Overlashing.** All Overlashing is subject to the following notification process.

6.2.1 Licensee shall provide Notification of Overlashing at least thirty (30) days prior to installation. The required notification shall be made using the Attachment Permit and Overlash Notification Form included in Appendix B as attached hereto, and shall include: (1) a description of the area where the installation will be done including route maps and Pole locations; (2) a description of the installation; (3) a representation that the installation will not require any space other than the space previously designated for Licensee's Facilities; (4) an authorized representative's certification that the installation will not impair the structural integrity of the Pole(s) involved or violate Applicable Standards; and (5) not cause any other Attachments to the Poles to be adversely affected by such installation or fall out of compliance with the above-referenced requirements.

6.2.2 It is Licensee's responsibility to verify in advance that the Pole and strand to which it proposes to install will meet all Applicable Standards including NESC Pole loading and Clearance. Licensee shall be responsible for the costs of all Make-Ready necessary to accommodate the Overlash.

6.2.3 Licensee shall be deemed authorized to proceed with the proposed Overlash installation thirty (30) days after it has submitted its complete written Notification.

6.2.4 In addition to notification prior to installation, Licensee shall further notify City within thirty (30) days of the completed installation and provide written verification that it meets all Applicable Standards.

6.2.5 Any Overlash Attachment that City discovers in which the City was not provided prior written Notification thereof will be considered an Unauthorized Attachment subject to provisions of Article 21.

6.3 **Service Drop.** Licensee may Attach a Service Drop, without Application, from one Pole with an existing authorized Attachment to connect directly to Licensee's customer's building, premise, or location, and Attached to no more than one additional Pole where the additional Pole does not support voltage greater than 600V.

6.3.1 It is Licensee's responsibility to verify that the Pole on which it proposes to make a Service Drop meets all Applicable Standards before Attaching the Service Drop. If existing standards issues are identified, it is the responsibility of the Licensee to notify City of the issue. Licensee shall not be allowed to Attach the Service Drop until the Applicable Standards issue is resolved.

6.3.2 If it is determined by City that Licensee has Attached a Service Drop on a Pole with a pre-existing violation of Applicable Standards, Licensee shall be required to bring the Service Drop into compliance with Applicable Standards to the extent that it is Licensee's existing Attachment that is non-compliant. Subject to the provisions of Article 19, City will provide written notice to Licensee and Licensee will have thirty (30) days from receipt of such notice to Correct the existing standards issue, otherwise the provisions of Article19 shall apply. If the Attachment that is non-compliant belongs to another Attaching Entity, then Licensee shall coordinate with City and the other Attaching Entity concerning any necessary rearrangement of Licensee's Service Drop in conjunction with the Correction of the non-compliant Attachment.

6.3.3 Licensee shall notify City of a Service Drop within thirty (30) days of installation. Any Service Drop that City discovers more than thirty (30) days after installation will be considered an Unauthorized Attachment subject to the provisions of Article 21.

6.4 **Pre-Existing Attachments.** Unless updates or upgrades are required by Applicable Standards, or unless City notifies Licensee to the contrary, Licensee shall not be required to obtain Permits for Attachment(s) existing as of the Effective Date of this Agreement. Such grandfathered Attachments shall, however, be subject to the Attachment Fees specified in Appendix A, and such Attachments shall be subject to the Applicable Standards in accordance with Section 1.2. Licensee shall provide City a list of all such pre-existing Attachments within six (6) months of the Effective Date of this Agreement.

6.5 **Permit Certification.** Unless otherwise waived in writing by City, as part of the Permit application process and at Licensee's sole expense, a qualified and experienced professional engineer, or an employee or contractor of Licensee who has been approved by City in writing, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection, and certify that Licensee's Facilities can be and were installed on the identified Poles in compliance with the Applicable Standards and in accordance with the Permit. The professional engineer's, or Licensee's approved employee or contractor, qualifications must include experience performing such work, or substantially similar work, in the electrical space on electric transmission or distribution systems. The City may require the Licensee's professional engineer or approved employee or contractor, to

conduct a post-construction inspection that the City will verify by means that it deems to be reasonable.

6.6 **Submission and Review of Permit Application.** Licensee shall submit a properly executed Pole Attachment Permit Application, which shall at City's option, include a Pre-Construction Survey and detailed plans for the proposed Attachments, including a description of any necessary Make-Ready Work to accommodate the Attachments, certified by a licensed professional engineer or experienced employee as described in Section 6.5 above and a Pole Loading Study unless waived by City. Licensee shall use the City's Pole Attachment Permit Application form, which form has been provided to Licensee. See Appendix B. City may amend the Pole Attachment Permit Application form from time to time, provided that any such changes are not inconsistent with the terms of this Agreement and are applied to all Attaching Entities on a non-discriminatory basis. City's acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed, under normal circumstances, the Permit Application process shall be as follows:

6.6.1 **Application With Pre-Construction Survey**. If Licensee's Application includes a Pre-Construction Survey and detailed plans for the proposed Attachments, including a description of any necessary Make-Ready to accommodate the Attachments, certified by a licensed professional engineer or experienced employee approved by City as described in Section 6.5 above and a Pole Loading Study unless waived by City, City shall review and respond to such properly executed and complete Permit Application for routine installations as promptly as is reasonable, with a goal of providing a response during normal circumstances within thirty (30) days of receipt. City may utilize contractors to perform such an analysis, the costs of which shall be borne by Licensee.

6.6.1.1 For Permit Applications seeking Attachments to 50 or more Poles, the City may require additional time to review

6.6.1.2 City's response will either: (i) grant permission to undertake such Make-Ready as described in Licensee's Application and Pre-Construction survey; (ii) grant permission to undertake such Make-Ready as City reasonably determines is required; or (iii) provide a written explanation as to why the Application is being denied, in whole or in part, for reasons of safety, reliability or insufficient capacity that cannot be resolved consistent with Applicable Standards, including City and County zoning and construction ordinances.

6.6.2 **Application Without Pre-Construction Survey.** If Licensee's Application does not include a Pre-Construction Survey (including a description of necessary Make-Ready), City or its contractor shall review the Application and perform a Pre-Construction Survey, and, if the Attachment can be accommodated consistent with Applicable Standards, prepare a description of any necessary Make-Ready to accommodate the proposed Pole Attachment. Under normal circumstances, City will respond to such properly executed and complete Permit Application for routine installations as promptly as is reasonable, with a goal of providing a response within sixty (60) days of receipt, unless the Parties mutually agree to a longer period of time. City may utilize contractors to perform such analysis, the actual and documented costs of which shall be borne by Licensee.

6.6.2.1 For Permit Applications seeking Attachments to 50 or more Poles, the City may require additional time to review.

6.6.2.2 City's response will either: (i) provide a description of Make-Ready identified by City and a cost estimate for that Make-Ready; or (ii) provide a written explanation as to why the Application is being denied, in whole or in part, for reasons of safety, reliability or insufficient capacity that cannot be resolved consistent with Applicable Standards, including City and County zoning and construction ordinances.

6.6.3 **Response to Estimate**. Upon receipt of City's response, Licensee shall have fourteen (14) days to approve the estimate of any proposed Make-Ready Work and provide payment in accordance with this Agreement and the specifications of the estimate.

6.7 **Permit as Authorization to Attach.** Upon completion and inspection of any necessary Make-Ready Work and receipt of payment for such work, City will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s).

6.8 **Notification to City.** Within thirty (30) days of completing the installation of an Attachment (including Overlash, Riser Attachments, and/or Service Drops) Licensee shall provide written notice to City.

Article 7. Make-Ready Work/Installation

7.1 **Estimate for Make-Ready Work.** If City determines that it can accommodate Licensee's request for Attachment(s), it will, upon request, advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment.

7.2 **Who May Perform Make-Ready**. Make-Ready Work in the electric supply space may be performed only by City and/or a qualified contractor, at City's sole discretion, authorized by City to perform such work. Under normal circumstances, City will perform all Make-Ready at Licensee's cost, or at City's sole discretion allow Licensee to complete Make-Ready Work through the use of qualified contractors authorized by City.

7.3 **Time Frame for Completion of Make-Ready**. If City is performing Make-Ready Work it will use good faith efforts to complete routine Make-Ready Work within ninety (90) days of receipt of Licensee's approval of the Make-Ready estimate (and advance payment if required). If there are extenuating circumstances that make the necessary Make-Ready more complicated or time-consuming, including, but not limited to, the Application requesting Attachment to more than fifty (50) Poles, or seasonal weather conditions, City shall identify those factors in the Make-Ready description and cost estimate and the Parties shall agree upon a reasonable timeframe for completion. If City does not complete agreed upon Make-Ready Work within ninety (90) days, or the agreed-upon timeframe, it will allow Licensee to use a City approved qualified contractor to complete such Make-Ready Work and refund any amounts paid by Licensee to City for performing such Make-Ready Work that is not completed.

7.3.1 The above notwithstanding, if City has substantially completed the Make-Ready the Parties will reasonably determine whether it makes more sense from an operational efficiency perspective to have City complete the work rather than have Licensee's authorized qualified contractors do the work.

7.4 **Scheduling of Make-Ready Work**. In performing all Make-Ready Work to accommodate Licensee's Attachments, City will endeavor to include such work in its normal work schedule. If Operator requests, and City agrees, to perform Make-Ready Work on a priority basis or outside of City's normal work hours, Licensee will pay any resulting increased actual and documented costs. Nothing in this Agreement shall be construed to require City to perform Licensee's work before other scheduled work or City service restoration.

7.5 **Payment for Make-Ready Work**. Upon completion of the Make-Ready Work performed by City, City shall invoice Licensee for City's actual and documented cost of such Make-Ready Work. The costs of the work shall be itemized in accordance with Section 3.8, and if City receives advance payment, the costs shall be trued up in accordance with Section 3.10. Licensee shall be responsible for entering into an agreement with existing other Attaching Entities to reimburse them for any costs that they incur in rearranging or transferring their Facilities to accommodate Licensee's Attachments.

7.6 **Notification of Make Ready Work.** Before starting Make-Ready Work, City shall notify all existing Attaching Entities of the date and location of the scheduled work and notify them of the need to rearrange and/or transfer their Facilities at Licensee's cost within the specified time period. To the extent that City has the legal authority, and at City's sole discretion, it may, but shall not be required to, rearrange and/or transfer existing Facilities of such other Attaching Entities that have not been moved in a timely manner. Licensee shall pay for any such rearrangement or transfer.

7.6.1 In instances where Licensee is performing Make-Ready, where an existing Attaching Entity has not relocated or otherwise undertaken work required to complete Make-Ready (such as repairing existing Attachments not in compliance with Applicable Standards) within thirty (30) days of notice by City or Licensee to such other Attaching Entity, Licensee is authorized, to the extent that City has such authority, and the legal ability to delegate such authority, to relocate or repair the other Attaching Entity's Attachments on behalf of City. Licensee shall pay the costs to relocate the other Attaching Entity's Attachments as part of Licensee's Make Ready.

7.7 Licensee's Installation/Removal/Maintenance Work.

7.7.1 All of Licensee's installation, removal, and maintenance work, by either Licensee's employees or authorized contractors, shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of City's Poles or other Facilities or other Attaching Entity's Facilities or equipment. All such work is subject to the insurance requirements of Article 25.

7.7.2 All of Licensee's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all applicable regulations specified in Section 4.1. Licensee shall assure that any person installing, maintaining, or removing its Facilities is fully qualified and familiar with all Applicable Standards, the provisions of Article 24, and the Minimum Design Specifications contained in Appendix C.

Article 8. Post Installation Inspections.

8.1 Within thirty (30) days of written notice to City that the Licensee has completed installation of an Attachment (including Overlash, Riser Attachments, and/or Service Drops), City or its contractors may perform a post-installation inspection for each Attachment made to City's Poles. If such post-installation inspections are performed, Licensee shall pay the actual and documented costs for the post-installation inspection.

8.2 If City elects to not perform any post-installation inspection, such non-inspection shall not be grounds for any liability being imposed on City or a waiver of any liability of Licensee.

8.3 If the post-installation inspection reveals that Licensee's Facilities have been installed in violation of Applicable Standards or the approved design described in the Application, City will notify Licensee in writing and Licensee shall have thirty (30) days from the date of receipt of such notice to Correct such violation(s), or such other period as the Parties may agree upon in writing, unless such violation creates an Emergency in which case Licensee shall make all reasonable efforts to Correct such violation immediately. City may perform subsequent post-installation inspections within thirty (30) days of receiving notice that the Correction has been made as necessary to ensure Licensee's Attachments have been brought into compliance.

8.4 If Licensee's Attachments remain out of compliance with Applicable Standards or approved design after any subsequent inspection, consistent with Article 19 City will provide notice of the continuing violation and Licensee will have thirty (30) days from receipt of such notice to Correct the violation, otherwise the provisions of Article 19 shall apply.

Article 9. Intentionally Left Blank.

Article 10. Rearrangements and Transfers

10.1 Required Transfers of Licensee's Facilities. If City reasonably determines that a rearrangement or transfer of Licensee's Attachments is necessary, including as part of Make-Ready to accommodate another Attaching Entity's Attachment, City will require Licensee to perform such rearrangement or transfer within thirty (30) days after receiving written notice from City via the agreed upon notification system (to include electronic mail). If Licensee fails to rearrange or transfer

its Attachment within thirty (30) days after receiving such notice from City, the provisions of Article 19 shall apply, including City's right to rearrange or transfer Licensee's Attachments thirty (30) days after Licensee's receipt of original notification of the need to rearrange or transfer its Attachments. The actual and documented costs of such rearrangements or transfers shall be apportioned as specified under Section 10.2. City shall not be liable for damage to Licensee's Facilities except to the extent provided in Article 23.1. In Emergency situations, City may rearrange or transfer Licensee's Attachments as it determines to be necessary in its reasonable judgment. In Emergency Situations City will provide such advance notice as is practical, given the urgency of the particular situation. City shall then provide written notice of any such actions taken within ten (10) days following the occurrence.

10.1.1 If Licensee fails to rearrange and/or transfer its Attachments within the prescribed time period, City may delegate its authority to rearrange and/or transfer Licensee's Attachments to an authorized Attaching Entity or its authorized contractors. In such case another Attaching Entity may rearrange or transfer Licensee's Attachments thirty (30) days after Licensee's receipt of original notification of the need to rearrange or transfer its Attachments.

10.1.2 Irrespective of who owns Facilities that are Overlashed on to Licensee's Attachments, Licensee is responsible for the transfer of such Overlashed Facilities and the costs of doing so.

10.2 **Allocation of Costs.** The costs for any rearrangement or transfer of Licensee's Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of City's cables or wires) shall be allocated on the following basis:

10.2.1 If City intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Each Attaching Entity, including Licensee, shall be responsible for transferring or rearranging their respective Attachments/Facilities and each Attaching Entity, including Licensee, shall be responsible for their respective costs associated with the rearrangement or transfer of Licensee's Facilities. Prior to making any such modification or replacement, City shall provide Licensee written notification of its intent in order to provide Licensee a reasonable opportunity to modify or add to its existing Attachment. Should Licensee decide to do so, it must seek City's written permission in accordance with this Agreement. If Licensee elects to add to or modify its Facilities, Licensee shall pay its proportional share of the costs incurred by City in making the space on the Poles accessible to Licensee.

10.2.2 If the modification or replacement of a Pole is necessitated by the requirements of Licensee, excluding modification or replacement due to routine maintenance, Licensee shall be responsible for all costs caused by the modification or replacement of the Pole as well as the costs associated with the transfer or rearrangement of any other Attaching Entity's Facilities. At the time Licensee submits a Permit Application to City, Licensee shall submit evidence in writing that it has made arrangements to reimburse all affected Attaching Entities for their costs caused by such transfers or rearrangements of their Facilities. City

shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Facilities pursuant to this Section.

10.2.3 If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than City or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or replacement, as well as the costs for rearranging or transferring Licensee's Facilities. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's Facilities and Licensee may require advance payment of its estimated costs prior to rearranging or transferring its Facilities.

10.2.4 If the Pole must be modified or replaced for reasons unrelated to the use of the Pole by Attaching Entities (*e.g.*, storm, accident, deterioration), City shall pay the costs of such modification or replacement and Licensee shall pay the costs of rearranging or transferring its Facilities.

10.3 **City Not Required to Replace.** Nothing in this Agreement shall be construed to require City to replace its Poles for the benefit of Licensee.

Article 11. Pole Modifications or Replacements of Defective or Overloaded Poles.

11.1 Where Licensee is unable to place a Permitted Attachment on a Pole because such Pole is a Defective Pole or Overloaded Pole, provided that the communications space on such Pole could otherwise have been arranged with sufficient spacing to accommodate the Licensee's proposed Attachment(s), City will replace, at City's sole cost, such Defective Pole or Overloaded Pole. A "Defective Pole" means a Pole that is no longer serviceable due to decay, damage, or deterioration. An "Overloaded Pole" is a Pole that (without consideration of Licensee's proposed Attachment) exceeds the applicable loading requirements set forth in the Applicable Standards.

11.2 In the event that an existing Pole is a Defective Pole or Overloaded Pole but does not pose an imminent threat or danger to safety or the safe functioning or operation of existing Attachments or Facilities, City shall replace said Pole at its sole cost consistent with its routine maintenance schedule.

11.3 If Licensee seeks to expedite the replacement of a Defective Pole or Overloaded Pole, City will provide Licensee with the materials and Licensee will pay the labor cost of using approved contractors to replace the Pole.

11.4 In all instances the replaced Pole will remain the property of City.

Article 12. Treatment of Multiple Requests for Same Pole.

If City receives Permit applications for the same Pole from two (2) or more prospective Attaching Entities within one hundred twenty (120) calendar days of the initial request, and has not yet completed the Permitting of the initial applicant, and accommodating their respective requests would require modification

of the Pole or replacement of the Pole, City will make reasonable and good faith efforts to allocate among such Attaching Entities the applicable costs associated with such modification or replacement.

Article 13. Equipment Attachments.

Equipment Attachments are not allowed on the Poles and are not part of this Agreement.

Article 14. Authorized Contractors.

Licensee shall only use authorized, qualified contractors approved by City to conduct Make-Ready Work (or any other work) in or around the electric supply space on a Pole. City shall not unreasonably withhold, delay, or condition its approval of any contractor proposed by Licensee to be authorized by City to perform Make-Ready in the electric supply space on City's Poles, provided such contractors meet City's qualified contractor specifications pursuant to Section 6.5 of this Agreement.

Article 15. Guys and Anchor Attachments.

Licensee shall at its own cost in accordance with construction standards of City place guys and anchors to sustain any unbalanced loads caused by Licensee's Attachments. When, in unusual circumstances, Licensee determines that it is necessary or desirable for Licensee to Attach its guys to anchors owned by City, it may make application to do so in a manner similar to that outlined in Article 6 above for application to make Pole Attachments. In such circumstances, all the provisions of this Agreement that are applicable to Poles shall also be separately applicable to anchors. Licensee will be subject to a one-time Anchor Fee as set out in Exhibit A but shall not be subject to an annual Attachment Fee for Licensee's use of anchors owned by City. In the event that any anchor or guy to which Licensee desires to make Attachments is inadequate to support the additional Facilities in accordance with the aforesaid specifications, City will notify Licensee of the changes necessary to provide an adequate anchor or guy, together with the estimated cost thereof to Licensee. Licensee will compensate City for the actual and documented cost including engineering and administrative cost for changing the guy and anchor, if such change is performed by City.

Article 16. Installation of Grounds.

When City is requested by Licensee to install grounds or make connections to City's system neutral, Licensee shall within thirty (30) days of demand reimburse City for the total actual and documented costs including engineering, clerical and administrative cost thereby incurred on initial installation only. All grounds installed by Licensee shall be in accordance with City's standard grounding practices.

Article 17. Abandonment of Poles and/or Facilities.

17.1 Notice of Abandonment or Removal of City Facilities. If City desires at any time to abandon, remove, or underground any City Facilities to which Licensee's Facilities are Attached, it shall give Licensee notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such City's Facilities. Notice may be limited to thirty (30) calendar days, if City is required to remove or abandon its City Facilities as the result of the action of a third party and the lengthier notice period is not practical. Such notice shall indicate whether City is offering Licensee an option to purchase the Pole(s). If, following the expiration of the 30-

day period, Licensee has not yet removed and/or transferred all of its Facilities and has not entered into an agreement to purchase City's Facilities pursuant to Section 17.2, City shall have the right, but not the obligation, to remove or transfer Licensee's Facilities at Licensee's expense and Licensee shall be subject to the provisions of Article 19. City shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities.

17.2 **Option to Purchase Abandoned Poles.** Should City desire to abandon any Pole, City may, in its sole discretion, grant Licensee the option of purchasing such Pole at a price to be negotiated with City. Licensee must notify City in writing within thirty (30) calendar days of the date of City's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should City and Licensee fail to enter into an agreement for Licensee to purchase the Pole within forty-five (45) calendar days, Licensee must remove its Attachments as required under Section 17.1. Nothing in this Agreement shall be construed as requiring City to sell Licensee Poles that City intends to remove or abandon.

17.3 **Underground Relocation.** If City moves any portion of its aerial system underground, Licensee shall remove its Facilities from any affected Poles within sixty (60) calendar days of receipt of notice from City and must either relocate its affected Facilities underground with City or find other means to accommodate its Facilities. If Licensee does not remove its Attachments within sixty (60) days, City shall have the right to remove or transfer Licensee's Facilities at Licensee's expense. Licensee's failure to remove its Facilities as required under this Section 17.3 shall subject Licensee to the provisions of Article 19, provided that City or another Attaching Entity through action or inaction has not delayed Licensee's ability to complete such work.

Article 18. Inspection.

18.1 **General Inspections.** City reserves the right to make periodic inspections, as conditions may warrant, of the entire system of Licensee. Such inspections, or the failure to make such inspections, shall not operate to relieve Licensee of any responsibility or obligation or liability assumed under this Agreement.

18.2 **Periodic Safety Inspections**. Upon twelve (12) months' advance written notice from City, and not more frequently than every five (5) years, City may at its option jointly perform a safety inspection in all or in part of the territory covered by this Agreement with all Attaching Entities to identify any safety violations of all Attachments and Facilities on City Poles or Facilities ("Safety Inspection"). Such notice shall describe the scope of the inspection and provide Licensee and all Attaching Entities an opportunity to participate. Licensee, City and other Attaching Entities shall share proportionately in the actual and documented Safety Inspection costs (based on the proportion of Attachments of City and each other Attaching Entity) irrespective of whether City elects to perform the Safety Inspection itself or have it performed by a contractor.

18.3 **Corrections**. In the event any of Licensee's Facilities are found to be in violation of the Applicable Standards and such violation poses a potential Emergency situation, Licensee shall use all reasonable efforts to Correct such violation immediately. Should Licensee fail or be unable to Correct such Emergency situation immediately, City may Correct the Emergency and bill Licensee for one hundred twenty-five percent (125%) of the actual and documented costs incurred. If any of Licensee's Facilities are found to be in violation of the Applicable Standards and such violations do not pose potential Emergency conditions, City shall, consistent with Article 19, give Licensee notice, whereupon Licensee shall have thirty (30) days from receipt of notice to Correct any such violation, or within a longer, mutually agreed-to time frame if Correction of the violation is not possible within thirty (30) days, such extended time to be not more than an additional sixty (60) days. Notwithstanding the foregoing grace periods, in the event City or another Attaching Entity prevents Licensee from Correcting a Non-Emergency violation, the timeframe for Correcting such violation shall be extended to account for the time during which Licensee was unable to Correct the violation due to action (or failure to act) by City or other Attaching Entity. Licensee will not be responsible for the costs associated with violations caused by others that are not affiliated or acting under the direction of Licensee. In all circumstances, all of the Attaching Entities on the Pole and City will work together to maximize safety while minimizing the cost of Correcting any such deficiencies, but the Licensee shall be responsible for the actual and documented cost of any necessary or appropriate Corrective measures associated with violations caused by Licensee, including removal and replacement of the Pole and all transfers or other work incident thereto. If Licensee fails to Correct a non-Emergency violation within the specified timely period, including any agreed upon extensions, the provisions of Article 19 shall apply.

18.3.1 If any Facilities of City are found to be in violation of the Applicable Standards and specifications and City has caused the violation, then the Parties will work together to minimize the cost of Correcting any such deficiencies, but City shall be responsible for the full cost of any necessary or appropriate Corrective measures, including removal and replacement of the Pole, provided, however, that City shall not be responsible for Licensee's own costs.

18.3.2 If one or more other Attaching Entity's Attachment caused the violation, then such Attaching Entities shall pay the Corrective costs incurred by all who have Attachments on the Pole, including the Licensee.

18.3.3 If there exists a violation of Applicable Standards and it cannot be determined which Attaching Entity on the Pole caused such violation or there is a mixture of the Attaching Entities causing the violation, then the Parties will work together to minimize the cost of Correcting any such deficiencies, and all Attaching Entities who may have caused such violation will share equally in such costs, provided that Licensee shall not be required to pay more than its proportionate share of such costs.

Article 19. **Failure to Rearrange, Transfer or Correct.**

19.1 Unless otherwise agreed, as part of City's written notice of a need for Licensee to rearrange, transfer, remove or Correct violations, City will indicate whether or not City is willing to perform the required work.

19.2 If City indicates in the notice that it is willing to perform the work, Licensee shall have fifteen (15) days to notify City in writing of its election to either have City perform the work or that the Licensee will perform the work itself.

19.2.1 If Licensee requests that City perform the work, Licensee shall reimburse City for the actual and documented cost of such work. If Licensee requests City to perform the work and City does not complete the work within the prescribed timeframe, Licensee may then perform the work itself. However, Licensee shall reimburse City for the actual and documented costs for the portion of work City did.

19.2.2 If Licensee either fails to respond or indicates that it will perform the work itself, then until such work is complete and City receives written notice of the completion of such work, Licensee shall be subject to an additional daily fee as specified in Exhibit A, per Attachment, per day commencing on the day after expiration of the time period for completion of the work specified in the Agreement and original notification that Licensee needs to rearrange, transfer, remove or Correct violations. Beginning with the ninetieth (90^{th}) calendar day after expiration of the time period for completion of the work specified in the Agreement and original notification, the daily fee shall escalate as specified in Exhibit A.

19.2.3 Notwithstanding Licensee's election under Article 19.2.2 to perform the required work itself, commencing on the thirtieth (30^{th}) day after expiration of the time period for completion of the work specified in the Agreement and original notification, City may perform the required work at Licensee's expense, or may delegate such authority to another Attaching Entity utilizing a qualified contractor, provided that City or another Attaching Entity through action or inaction has not delayed Licensee's ability to complete such work.

19.2.4 If Licensee was required to perform work under this Article 19 and fails to perform such work within the specified timeframe, and City performs such work, City may charge Licensee an additional twenty-five percent (25%) of its actual and documented costs for completing such work, provided that City or another Attaching Entity through action or inaction has not delayed Licensee's ability to complete such work.

19.3 If City indicates in the notice that it is unwilling or unable to perform the work, then until such work is completed and City receives written notice of the completion of such work, Licensee shall be subject to an additional daily fee as specified in Exhibit A, per Attachment, per day commencing on the day after expiration of the time period for completion of the work specified in the Agreement and original notification that Licensee needs to rearrange, transfer, remove or Correct violations. Beginning with the ninetieth (90^{th}) calendar day after expiration of the time period for completion of the work specified in the Agreement and original notification, the daily fee shall escalate as specified in Exhibit A.

19.4 Licensee shall provide written notification to City upon completion of any of the required work, daily fees will continue to accrue until City's receipt of such notice of completion. Notice of completion shall be given by the same means as it was received from City.

Article 20. Actual Inventory.

20.1 City will at intervals of not more than once every five (5) years perform an actual inventory of the Attachments to Poles in all or in part of the territory covered by this Agreement, for the purpose of checking and verifying the number of Poles on which Licensee and other Attaching Entities have Attachments. Such field checks shall be made collectively by City and all Attaching Entities, and the costs to be actual and documented shall be shared proportionately among all such Attaching Entities based upon the number of Attachments**.** City shall provide at least thirty (30) days advance written notice regarding the inventory and provide Licensee a reasonable opportunity to participate. Should a third-party contractor be selected to perform the inventory, the Parties will mutually agree on the contractor selected and scope of work. However, if the Parties are unable to agree within thirty (30) days, City shall select the outside contractor to conduct the inventory, as well as the scope of work.

20.2 **Attachment Records.** Notwithstanding the above inventory provisions, Licensee shall furnish to City annually an up-to-date electronic map depicting the locations of its Attachments, in a format specified by City.

Article 21. Unauthorized Attachments.

If during the term of this Agreement, City discovers Unauthorized Attachments (including Overlashing, Riser Attachments or Service Drops for which timely notification was not provided) placed on its Poles, the following fees may be assessed, and procedures will be followed:

21.1 City shall provide specific written notice of each violation within thirty (30) days of discovering such violation and Licensee shall be given thirty (30) days from receipt of notice to contest an allegation that an Attachment is unauthorized (or that Licensee failed to timely provide notice). The notice shall identify the precise location and a description of the Unauthorized Attachment.

21.2 Licensee shall pay back rent for all Unauthorized Attachments (except Overlash Attachments and/or Riser Attachments where an existing licensed Pole Attachment exists) for a period of five (5) years, or since the date of the last inventory of Licensee's Attachments (whichever period is shortest), at the rental rates in effect during such periods.

21.3 In addition to the back rent, Licensee shall be subject to the Unauthorized Attachment Fee as specified in Exhibit A for each Unauthorized Attachment, including Service Drops, Riser Attachments where an existing licensed Pole Attachment exists and Overlash Attachments, where prior notification was not provided.

21.4 Licensee shall submit a Permit Application in accordance with Article 6 of this Agreement within thirty (30) days of receipt of notice from City of any Unauthorized Attachment, or such longer time as mutually agreed to by the Parties after an inventory.

21.4.1 No additional notification is required for Service Drops or Riser Attachments where an existing licensed Pole Attachment exists.

21.4.2 In the case of Overlash requiring prior notice of installation to City pursuant to Article 6, Licensee shall be required to submit the notification and information pursuant to Appendix B within thirty (30) days of receipt of notice of Unauthorized Attachment.

21.5 In the event Licensee fails to submit the requisite notice information pursuant to Article 6 within thirty (30) days, or such longer time as mutually agreed to by the Parties after an inventory, the provisions of Article 19 shall apply.

21.6 **No Ratification of Unauthorized Use**. No act or failure to act by City with regard to any Unauthorized Attachments shall be deemed as ratification of the unauthorized use. Unless the Parties agree otherwise, a Permit for a previously Unauthorized Attachment shall not operate retroactively or constitute a waiver by City of any of its rights or privileges under this Agreement or otherwise, and Licensee shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

Article 22. Reporting Requirements

At the time that Licensee pays its annual Attachment Fee, Licensee shall also provide the following information to City, using the reporting form contained in Appendix D:

22.1 The Poles on which Licensee has installed, during the relevant reporting period, Risers and Service drops, for which no Permit was required.

22.2 All Attachments that have become Nonfunctional during the relevant reporting period. The report shall identify the Pole on which the Nonfunctional Attachment is located, describe the Nonfunctional equipment, and indicate the approximate date the Attachment became Nonfunctional.

22.3 Any equipment Licensee has removed from Poles during the relevant reporting period. The report shall identify the Pole from which the equipment was removed, describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Licensee is surrendering a Permit.

Article 23. Liability and Indemnification

23.1 **Liability.** City reserves to itself the right to maintain and operate its Poles in the manner that will best enable it to fulfill its service requirements. Licensee agrees that its use of City's Poles is at Licensee's sole risk. Notwithstanding the foregoing, City shall exercise reasonable precaution to avoid damaging Licensee's Facilities and shall report to Licensee the occurrence of any such

damage caused by its employees, agents, or contractors. Subject to Section 23.5, City agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of Facilities damaged by the gross negligence or willful misconduct of City; provided, however, that the aggregate liability of City to Licensee, in any fiscal year, for such claims of physical damage to Licensee's Facilities directly caused by City's gross negligence or willful misconduct and directly relating to the physical damage to Licensee's Facilities shall not exceed the amount of the total Annual Attachment Fees paid by Licensee to City for that year, as calculated based on the number of Attachments under Permit at the time of the occurrence, as set forth in Appendix A, Item 1.

23.2 **Indemnification.** Licensee, and any agent, contractor, or subcontractor of Licensee, shall defend, indemnify, and hold harmless City and its officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by City under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of City and all other costs and expenses of litigation) ("Covered Claims") arising in any way, including any act, omission, failure, negligence, or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents, or contractors, of Licensee's Facilities, except to the extent of City's gross negligence or willful misconduct solely giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

23.2.1 Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;

23.2.2 Cost of work performed by City that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents or contractors, to install, maintain, use, transfer, or remove Licensee's Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes City to perform on Licensee's behalf;

23.2.3 Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents, or contractors, pursuant to this Agreement;

23.2.4 Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents, or contractors, of any law, rule, or regulation of the United States, any state, or any other governmental entity or administrative agency.

23.3 **Fines and/or Penalties**

23.3.1 Any fines, penalties or other costs incurred by either Party for non-compliance by such Party with the requirements of any law(s), or regulation(s) shall be the sole responsibility of such non-complying Party.

23.3.2 If a Party is assessed such fines, penalties or other costs due to the non-compliance of the other Party, the non-complying Party shall indemnify and hold harmless the other Party against any and all losses, liabilities, damages and claims suffered or incurred because of the non-complying Party's non-compliance. The non-complying Party shall also reimburse the other Party for any and all legal or other expenses (including reasonable attorneys' fees) reasonably incurred by the other Party in connection with such losses, liabilities, damages and claims resulting from the non-complying Party's non-compliance.

23.4 Procedure for Claims.

23.4.1 City and Licensee shall give prompt written notice to the other Party of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit, or proceeding filed by a third party against City or Licensee, the Parties shall give the notice to the other Party no later than fifteen (15) calendar days after either Party receives written notice of the action, suit, or proceeding.

23.4.2 Either Party's failure to give the required notice will not relieve the responsible Party from its obligations hereunder unless, and only to the extent, that the other Party is materially prejudiced by such failure.

23.4.3. Either Party will have the right at any time, by notice to the other Party, to participate in or assume control of, the defense of a claim with counsel of its choice, which counsel must be reasonably acceptable to the other Party. The Parties agree to cooperate fully with each other. If either Party assumes control of the defense of any third-party claim, the other Party shall have the right to participate in the defense at its own expense. If the other Party does not assume control or otherwise participate in the defense of any third-party claim, the other Party shall be bound by the results obtained by the controlling Party with respect to the claim.

23.4.4 In no event will either Party admit any liability with respect to, or settle, compromise or discharge, any third-party claim without the other Party's prior written consent.

23.5 Environmental Hazards. Licensee represents and warrants that its use of City's Poles will not generate any Hazardous Substances, that it will not store or dispose on or about City's Poles or transport to City's Poles any hazardous substances and that Licensee's Facilities will not constitute or contain and will not generate any Hazardous Substance in violation of federal, state, or local law now or hereafter in effect, including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations, or rules

now or hereafter in effect, including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration, or other disaster, its Facilities would not release any Hazardous Substances. Licensee and its agents, contractors, and subcontractors shall defend, indemnify, and hold harmless City and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, or expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage, or discovery of any Hazardous Substances on, under, or adjacent to City's Poles/Conduit System attributable to Licensee's use of City's Poles.

23.6 **No Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, PUNITIVE, INCIDENTAL, INDIRECT, LIQUIDATED, OR SPECIAL DAMAGES OR LOST REVENUE OR LOST PROFITS TO ANY PERSON ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF ANY PROVISION OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

23.7 **Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by City of any applicable state limits on municipal liability or governmental immunity. No indemnification or claims provision contained in this Agreement under which Licensee indemnifies City shall be construed in any way to limit any other indemnification or claims provision contained in this Agreement.

Article 24. Duties, Responsibilities, and Exculpation

24.1 **Duty to Inspect.** Licensee acknowledges and agrees that City does not warrant the condition or safety of City's Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect City's Poles or premises surrounding the Poles, prior to commencing any work on City's Poles or entering the premises surrounding such Poles.

24.2 **Knowledge of Work Conditions.** By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the Facilities, difficulties, and restrictions attending the execution of such work.

24.3 **DISCLAIMER.** CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO CITY'S POLES OR CONDUIT SYSTEM, ALL OF WHICH ARE HEREBY DISCLAIMED, AND CITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. CITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

24.4 **Duty of Competent Supervision and Performance.** The Parties further understand and agree that, in the performance of work under this Agreement, Licensee and its agents, employees, contractors, and subcontractors will work near electrically energized lines, transformers, or other City Facilities. The Parties understand and intend that energy generated, stored, or transported by City Facilities will not be interrupted during the continuance of this Agreement, except in Emergencies endangering life or threatening grave personal injury or property. Licensee shall ensure that its employees, agents, contractors, and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, agents, contractors, and subcontractors; employees, agents, contractors, and subcontractors of City, and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors, and subcontractors' competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of City's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

24.5 **Requests to De-energize.** If City de-energizes any equipment or line at Licensee's request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse City in accordance with Sections 3.8 and 3.8.1, for all costs and expenses that City incurs in complying with Licensee's request. Before City de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Licensee's request.

24.6 **Interruption of Service.** If Licensee causes an interruption of service by damaging or interfering with any equipment of City, Licensee shall, at its own expense, immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify City immediately.

24.7 **Duty to Inform.** Licensee further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on City's Poles by Licensee's employees, agents, contractors, or subcontractors, and Licensee accepts the duty and sole responsibility to notify and inform Licensee's employees, agents, contractors, or subcontractors of such dangers, and to keep them informed regarding same.

Article 25. Insurance

25.1 **Policies Required.** At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:

25.1.1 **Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Missouri law at the time of the application of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation in favor of City.

Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

25.1.2 **Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than $2,000,000 general aggregate, $2,000,000 products/completed operations aggregate, $2,000,000 personal injury, $2,000,000 each occurrence.

25.1.3 **Automobile Liability Insurance.** Business automobile policy covering all owned, hired, and non-owned private passenger autos and commercial vehicles. Limits of liability not less than $1,000,000 each occurrence, $1,000,000 aggregate.

25.1.4 **Umbrella Liability Insurance.** Coverage is to be in excess of the sum employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than $4,000,000 each occurrence, $4,000,000 aggregate.

25.1.5 **Property Insurance.** Each Party will be responsible for maintaining property insurance on its own Facilities, buildings, and other improvements, including all equipment, fixtures, and City structures, fencing, or support systems that may be placed on, within, or around City Facilities to protect fully against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.

25.2 **Qualification; Priority; Contractors' Coverage.** The insurer must be authorized to do business under the laws of the State of Missouri and have an "A" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability, and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article 25 with the same limits.

25.3 **Certificate of Insurance; Other Requirements.** Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish City with a certificate of insurance ("Certificate") and, upon request, certified copies of the required insurance policies. The Certificate shall reference this Agreement and workers' compensation and property insurance waivers of subrogation required by this Agreement. City shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. City, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except workers' compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. All policies will be written with deductibles, not to exceed $100,000, or such greater amount as expressly

allowed in writing by City. Licensee shall defend, indemnify and hold harmless City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors, and their subcontractors and provide a copy of such Certificates to City upon request. Nothing contained in the policies shall be construed to broaden the liability of the City of West Plains, Missouri beyond any applicable Missouri statutes, nor to abolish or waive any defense at law which might otherwise be available to the City or its officers and employees. The insurance required from Licensee will be primary to any insurance of the City.

25.4 **Limits.** The limits of liability set out in this Article 25 may be increased or decreased by mutual consent of the Parties, which consent will not be unreasonably withheld by either Party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal, or other governmental compensation plans, or laws that would materially increase or decrease either Party's exposure to risk.

25.5 **Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this Agreement with City except as to infringement of patents or copyrights or for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage for injuries to City's employees or agents, or (4) exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

25.6 **Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

Article 26. Assignment

26.1 **Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed.

26.2 **Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 26 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish City with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, or conditions of this Agreement without the express written consent to the release of Licensee by City.

26.3 **Sub-licensing.** Without City's prior written consent, Licensee shall not sub-license or lease to any third party, including but not limited to, allowing third parties to place Attachments on City's Facilities, including Overlashing, or to place Attachments for the benefit of such third parties on City's Poles. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlashing is not subject to this Section 26.3.

Article 27. Failure to Enforce

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

Article 28. Issue Resolution Process

28.1 **Dispute Resolution**. Except for an action seeking a temporary restraining order or an injunction or to compel compliance with this dispute resolution procedure, the Parties can invoke the dispute resolution procedures in this Article at any time to resolve a controversy, claim, or breach arising under this Agreement. Each Party will bear its own costs for dispute resolution activity.

28.2 **Initial Meeting**. At either Party's written request, each Party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The Parties will conduct any meeting in-person or via conference call, as reasonably appropriate.

28.3 **Executive Meeting**. If ninety (90) days after the first in-person meeting of the senior representatives, the Parties have not resolved the dispute to their mutual satisfaction, each Party will designate executive representatives at the director level or above to meet and negotiate in good faith to resolve the dispute. To facilitate the negotiations, the Parties may agree in writing to use mediation or another alternative dispute resolution procedure.

28.4 **Unresolved Dispute.** If after sixty (60) days from the first executive-level, in-person meeting, the Parties have not resolved the dispute to their mutual satisfaction, either Party may invoke any legal means available to resolve the dispute, including enforcement of the default and termination procedures set out in Article 29.

28.5 **Confidential Settlement**. Unless the Parties otherwise agree in writing, communication between the Parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery and inadmissible in litigation.

28.6 **Business as Usual**. During any dispute resolution procedure or lawsuit, the Parties will continue providing services to each other and performing their obligations under this Agreement.

28.7 **Additional Daily Fees.** Additional Daily Fees will continue to accrue pending dispute resolution procedures unless the dispute specifically involves a dispute over the application of the fee.

Article 29. Default.

29.1 An Event of Default (each of the following being an "Event of Default") shall be deemed to have occurred hereunder by Licensee if:

29.1.1 Licensee breaches any material term or condition of this Agreement or Permit granted hereunder; or

29.1.2 Licensee evades or attempts to evade any material provision of this Agreement or Permit granted hereunder; or

29.1.3 Licensee makes a material misrepresentation of fact in this Agreement or Permit granted hereunder; or

29.1.4 Licensee fails to complete work by the date and in accordance with the terms specified in this Agreement or Permit granted hereunder, unless an extension is obtained or unless the failure to complete the work is beyond the Licensee's control or the result of a *Force Majeure Event*; or

29.1.5 Licensee fails to timely Correct violations of Applicable Standards.

29.2 Upon the occurrence of any one or more of the Events of Default set forth in Section 29.1 hereof, City, at its option, in addition to and not in lieu of any other remedies provided for herein, shall be entitled to proceed to exercise any and all actions it may have in law or at equity, including drawing down upon the bond for any fees, costs, or expenses that Licensee has not paid, and, in addition, at its option, may terminate this Agreement upon providing notice to Licensee, provided, however, City may take such action or actions only after first giving Licensee written notice of the Event of Default and a reasonable time in which Licensee may cure or commence diligent efforts to cure such Event of Default, which period of time shall be not less than thirty (30) calendar days, except that the period of time shall not be less than ten (10) calendar days for monies past due and owing by Licensee to City; for failure to maintain adequate insurance, as provided for herein; and for failure to maintain any bonds required pursuant to this Agreement.

29.3 Without limiting the rights granted to City pursuant to the foregoing Section 29.2, the Parties hereto agree to conduct themselves reasonably and in good faith and to use a good faith effort to meet and to resolve outstanding issues, including but not limited to the Dispute Resolution Process of Article 28.

29.4 In the event that City fails to perform, observe or meet any material covenant or condition made in this Agreement or shall breach any material term of condition of this Agreement, or at any time any representation, warranty or statement made by City shall be incorrect or misleading in any material respect, then City shall be in default of this Agreement. Upon being provided notice from Licensee of said default, City shall have thirty (30) days to cure same and if such default is not cured, then Licensee shall have any and all remedies at law or in equity available to it, including termination of this Agreement without any liability therefor.

29.4.1 The above notwithstanding, Licensee's sole remedy if City is unable to perform a survey or complete Make-Ready Work within the prescribed timeframes under Articles 6 and 7 is the authority to perform such survey or Make-Ready itself at Licensee's expense.

29.4.2 Under no circumstances will a failure of City to meet the survey or Make-Ready time periods set out in Articles 6 and 7 subject City to damages.

29.5 Upon Termination of the Agreement for Default as provided for in Section 29.2 herein, and after exhaustion of dispute resolution efforts, Licensee shall remove its Attachments from all City Poles within six (6) months of receiving notice, or at a rate of two thousand (2,000) Attachments per month, whichever period results in the greatest length of time for completing removal. If not so removed within that time period, City shall have the right to remove Licensee's Attachments, and Licensee agrees to pay the actual and documented cost thereof within forty-five (45) days after it has received an invoice from City.

Article 30. Receivership, Foreclosure or Act of Bankruptcy.

30.1 The Pole use granted hereunder to Licensee shall, at the option of City, cease and terminate one hundred twenty (120) days after the filing of bankruptcy or 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 such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied 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 this Agreement.

30.2 In the case of foreclosure or other judicial sale of Licensee's Facilities, 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 this Agreement herein granted and all rights and privileges of this Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

30.2.1 City shall have approved the transfer of this Agreement to the successful bidder, as and in the manner in this Agreement provided; and

30.2.2 Such successful bidder shall have covenanted and agreed with City to assume and be bound by all the terms and conditions to this Agreement.

Article 31. Removal of Attachments.

Licensee may at any time remove its Attachments from any Facility of City but shall promptly give City written notice of such removals. No refund of any rental fee will be due on account of such removal.

Article 32. Performance Bond.

Licensee shall furnish a performance bond executed by a surety company reasonably acceptable to City which is duly authorized to do business in the State of Missouri in the amount of fifty thousand dollars ($50,000.00) for the duration of this Agreement as security for the faithful performance of this Agreement and for the payment of all persons performing labor and furnishing materials in connection with this Agreement.

Article 33. Term of Agreement

33.1 This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years and, unless terminated by either Party, shall automatically be renewed for two additional five (5) year terms. Either Party may terminate this Agreement at the end of the initial term or a successor term by giving written notice of intent to terminate the Agreement at the end of the then-current term. Such a notice must be given at least ninety (90) calendar days prior to the end of the then-current term.

33.2 Even after the termination of this Agreement, Licensee's indemnity obligations shall continue with respect to any claims or demands related to Licensee's Facilities, as provided for in Article 23.

Article 34. Amending Agreement

This Agreement shall not be amended, changed, or altered except in writing and with approval by authorized representatives of both Parties.

Article 35. Notices

35.1 Wherever in this Agreement notice is required to be given by either Party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail with return receipt requested, with postage prepaid, and except where specifically provided for elsewhere, properly addressed as follows:

If to City, at:
City of West Plains
Attn. City Clerk
1910 Holiday Lane
West Plains, MO 65775

If to Licensee, at:
Brightspeed of Missouri, LLC
Attn: Legal
1120 South Tryon Street, 7th Floor
Charlotte, NC 28202

or to such other address as either Party, from time to time, may give the other Party in writing.

35.2 The above notwithstanding the Parties may agree to utilize electronic communications, including email, for notifications related to the Permits application and approval process and necessary transfer or Pole modifications.

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

Article 36. Entire Agreement

This Agreement and its appendices constitute the entire Agreement between the Parties concerning Attachments of Licensee's Facilities on City's Poles within the geographical service area covered by this Agreement. Unless otherwise expressly stated in this Agreement, all previous agreements, whether written or oral, between City and Licensee are superseded and of no further effect.

Article 37. Severability

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either Party, such provision shall not render unenforceable this entire Agreement. Rather, the Parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision.

Article 38. Governing Law

All matters relating to this Agreement shall be governed by the laws (without reference to choice of law) of the State of Missouri.

Article 39. Incorporation of Recitals and Appendices

The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.

Article 40. *Force Majeure*

If either City or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, pandemic, epidemic, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the Party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected Party shall endeavor to remove or overcome such inability as soon as reasonably possible.

Article 41. *Nondiscriminatory Treatment*

In accordance RSMo § 67.5104.2, City shall be nondiscriminatory between all Pole Attachers, and will not act more favorably or less favorably between such Attachers in the assessment of fees, rates, terms or conditions of this Agreement.

Article 42. *Mutual Reservation of Rights*

Nothing in this Agreement shall be deemed a waiver by City or Licensee of the rights of each such party under applicable law, rules and regulations, including without limitation the right to seek judicial or administrative review of the provisions of this Agreement. City reserves and in no way waives any right

to enforce the requirements in this Agreement during the term of this Agreement and Licensee agrees to such reservation and non-waiver by City. Licensee reserves and in no way waives any right to challenge the enforcement of the fees, terms and conditions in this Agreement, including without limitation under the provisions of RSMo § 67.5104, and City agrees to such reservation and non-waiver by Licensee.

[*Signatures on following page.*]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate on the day and year first written above.

(CITY)	(LICENSEE)
City of West Plains, Missouri	Brightspeed of Missouri, LLC
BY:_____	BY:_____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Attest: _____	

STATE OF MISSOURI)
) ss
COUNTY OF HOWELL)

I, the undersigned, a Notary Public in and for the State of Missouri, hereby certify that on the _____ day of _____ 2023 personally appeared before me _____, the Manager of Brightspeed, a Missouri limited liability company, to me known to be the individual and who executed the foregoing Agreement and acknowledged that he is duly authorized by the Managers and Members of the Company to sign this Agreement, and that he signed and sealed the same as his free and voluntary act and deed and the free act and deed of the Company, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

_____

Print Name: _____

Notary Public in and for the State of Missouri

STATE OF MISSOURI)
) ss
COUNTY OF HOWELL)

I, the undersigned, a Notary Public in and for the State of Missouri, hereby certify that on the _____ day of _____ 2023, personally appeared before me a notary public, personally appeared Jarrad Carr, personally known to me to be the Mayor of the City of West Plains, Missouri, who, being by me duly sworn did say that he is the Mayor of the City of West Plains, Missouri, and that the seal affixed to foregoing Agreement is the corporate seal of said City, and that said Agreement was signed and sealed in behalf of said City of West Plains, Missouri, by authority of its City Council, and said Jarrad Carr acknowledged said Agreement to be the free act and deed of said City of West Plains, Missouri.

_____

Print Name: _____
Notary Public in and for the State of Missouri

APPENDIX A—FEES and CHARGES

The Annual Pole Attachment Fee shall be set out below for the fifteen (15) years (three (3) five (5) year terms) contemplated by the Agreement, starting January 1st, 2023 and ending on December 31st, 2038, unless the Agreement is terminated pursuant to the terms of the Agreement prior to December 31st, 2038. After the first year, either Party may require a meeting to recalculate the Annual Pole Attachment Fee. Regardless of whether the Annual Pole Attachment Fee has been recalculated previously, the Parties will meet before July 31st, 2038, and re-calculate the Annual Pole Attachment Fee. Any new Attachment Fee shall be effective January 1st of the following year.

Fourteen ($14.00) per Pole per year adjusted annually.

15 Year Rate Schedule

Year	Price	% Increase
2023	$14.00	
2024	$14.28	2%
2025	$14.57	2%
2026	$14.86	2%
2027	$15.16	2%
2028	$15.46	2%
2029	$15.77	2%
2030	$16.09	2%
2031	$16.41	2%
2032	$16.74	2%
2033	$17.07	2%
2034	$17,41	2%
2035	$17.76	2%
2036	$18.12	2%
2037	$18.48	2%
2038	$18.85	2%

Each Attachment shall only occupy twelve (12) inches of vertical space on a Pole, as measured either above or below (but not both) the point of attachment, and any Attachment outside of the twelve inches shall be deemed to constitute an Unauthorized Attachment.

Non-Recurring Fees[1]

1. License Application Fee: One Hundred dollars ($100.00) per Application (limit 50 Attachments per Application).
2. Make Ready Work and Other Charges: See Article 3 and 7 of Agreement.

[1] City reserves the right to adjust non-recurring fees from time to time to cover actual costs, provided any such adjustment is applied on a nondiscriminatory basis to all Attaching Entities.

3. Work performed by City where Licensee failed to perform in a timely manner may be subject to a twenty-five percent (25%) additional charge pursuant to Article 19 of Agreement.
4. Anchor Use Fee: Two Hundred dollars ($200) per City Anchor. See Article 15 of Agreement.
5. Grounding Connection Fee: When City installs grounds or makes connections to City's system neutral, Licensee shall reimburse City for the total actual and documented costs. See Article 16 of Agreement.

Other Non-Recurring Fees

1. Standard Unauthorized Attachment Fee:

One hundred dollars ($100) per Attachment (including Service Drops, and Riser Attachments that were not reported, excluding Service Drops and Riser Attachments where an existing Permitted Pole Attachment exists)), plus the Annual Pole Attachment Fee back to the date of the last audit or the Effective Date of this Agreement, whichever results in the least amount.

2. Non-Transfer/Removal Fee:

If, consistent with Article 19 of the Agreement, Licensee fails to rearrange, transfer, remove or Correct violations in a timely manner, Licensee shall be subject to ~~a daily fee of five dollars ($5) per Attachment, per day beginning on the day after expiration of the original time period for completion of the work specified in the Agreement and the original notification that Operator needs to~~ rearrange, transfer, remove or Correct violations. Beginning with the ninetieth (90^{th}) calendar day after expiration of the time period for completion of the work specified in the Agreement and original notification the ~~daily penalty shall escalate to ten dollars ($10) per Attachment per day.~~

APPENDIX B

APPLICATION FOR POLE ATTACHMENT PERMIT
AND OVERLASH FACILITIES NOTIFICATION

City of West Plains
1910 Holiday Lane,
West Plains, Mo 65775

Date:

Permit #:

West Plains, MO 65775

Attention: Engineering Manager [or other title of person]

In accordance with the terms and conditions of the Agreement between us, dated _____, 20___, (i) an Application is hereby made for a Permit to make Attachments or (ii) a Notification is made regarding Overlash installations on the following Pole(s):

Pole No.	**Location**	**Attachment/Overlash**

Application
By:_____

_____
_____
(Address)

Printed Name:

Title:

Permission
Granted by:_____

_____
_____
City of West Plains

Printed Name:

Cost:

Cost Accepted: _____

1. Application shall be submitted [electronically or in person]
2. A complete description of all Facilities shall be given, including: Quantities, sizes and types of all cables and equipment. See Section 6.6 of Agreement.
3. Licensee will notify all other Attaching entities of the need to transfer and/or rearrange Attachments.
4. Licensee confirms that each Overlash Facilities meet all Standards, will not overload the Pole(s) attaching to, and that the Pole(s) Attaching to are not defective.

APPENDIX C
POLE ATTACHMENT STANDARDS AND DRAWINGS

GENERAL POLE ATTACHMENT STANDARDS INDEX

GENERAL POLE ATTACHMENT STANDARDS

A proposed tenant requesting to attach to COL owned poles or overlash existing facilities owned by the proposed tenant or another tenant on COL poles must first have an existing Pole Attachment Agreement or Joint Use Agreement in place with COL. Every proposed attachment or overlash must first be approved by COL. An application for approval shall be submitted to-COL that follows the requirements of the corresponding Agreement with the requesting tenant.

The requesting tenant must submit along with each application the required information listed in the section below. All planning costs associated with the request will be the responsibility of the tenant requesting the pole attachment or overlash.

Any existing attachment or overlash without an approved attachment or overlash request shall be considered an unauthorized attachment and subject to a penalty as determined by the related attachment agreement.

POLE ATTACHMENT AND OVERLASH APPLICATION PROCEDURES

A pole attachment and/or overlash application shall include the following:

1. The attachment application required by the corresponding Pole Attachment or Joint Use Agreement.
2. The number of poles per request will be limited to the number indicated in the corresponding attachment agreement.
3. One set of marked up maps showing the streets, addresses and pole locations of designated poles with COL pole numbers.
4. A pole loading analysis of each pole in the application using a finite element analysis program such as PLS-Pole, (Power Line Systems Inc.) or a COL approved equivalent program to calculate pole loading as required by the related Agreement. The analysis shall be done using NESC Grade C construction requirements and with .5-inch ice and 4lb./ft ^{2} wind loading. The analysis shall be approved by COL Electric Department.
5. Identify any overloaded poles and any "make ready work" necessary to meet these attachment standards and correct any existing violations.
6. Detailed drawings of the proposed attachments indicating size, weight and location of attachment.
7. COL will determine if there will be any cost related to the attachment request. Any related costs will be paid in advance before work will begin.

GENERAL REQUIREMENTS

Use of equipment brackets, standoffs, crossarms, extension arms and davit arms are not allowed. Poles shall not be boxed in. Communication cable shall not be installed on opposite sides of a pole.

Tenants are responsible for their own down guys and anchors designed to meet the NESC requirements. Attachment to-COL anchors require a submitted request and prior approval.

Proof of required easements shall be provided upon request.

All vertical runs installed by Licensee shall be placed in conduit and attached to pole using a minimum of 6" standoff brackets. U-guard and other protective covering are prohibited. Location of tenant risers shall be in accordance with COL standards.

DATE: 02/01/17 REVISED:	**GENERAL POLE ATTACHMENT STANDARDS INDEX**	**STANDARD NUMBER** **GPAS**

WIRELESS ATTACHMENT DEVICES

Only one wireless device (receiver, transmitter or combination unit) less than 6xl2x4 inches will be allowed per pole. Only one wireless provider will be permitted on a single pole.

When wireless equipment is installed above the communication space, it must be installed by COL, or a -COL approved contractor that is qualified to work in the supply space.

COL may deny any attachment request or allow with the exception to reserve pole space for any planned future-COL installation.

SUPPLY AND COMMUNICATIONS

Amplifiers and equipment other than wireless devices will not be allowed on COL poles. All communication devices requiring power shall have a disconnect switch, located on a separate meter stand. This will enable COL to disconnect power to the antennae and the battery backup, to avoid RF exposure to its employees while working around the devices. See attached standards.

A COL new service application shall be required to provide equipment power. Installation shall follow current COL Service Standards.

POLE TOP ANTENNA

1. The design and mounting requirements of all antennas must be approved by COL Electric Department prior to installation.
2. Only one antenna shall be installed per pole.
3. The antenna must be installed by COL, or a COL approved contractor that is qualified to work in the Supply Space.
4. No work shall be completed in the Supply Space without approval of the COL Electric Department.
5. All poles must be bucket truck accessible.
6. Pole Top Antenna will only be allowed on Distribution Poles.
7. Antenna shall only be allowed on tangent poles.
8. Antenna shall not be installed on equipment poles or in the Primary Zone on a pole.
9. The height of all distribution poles used to mount pole top antennas shall be increased by 5 feet above existing pole height.
10. The use of pole top extensions is prohibited.
11. Antenna coax cable shall be installed in maximum size 2-inch diameter Sch. 40 PVC conduit. Conduit supports should be installed every 5 feet. Conduit less than 1 inch may be attached to the pole with ground wire molding staples.
12. When required, two RF warning signs must be installed. One sign shall be installed near the pole top at the level where the safe approach level ends and for FCC General Population/un-controlled power levels. The second sign shall be installed near the base of the pole. These signs shall say "Warning - antenna safe approach distance is [xx] feet" and the antenna owners name and phone number. When COL work is required within the antenna approach distance,

workers will disconnect the RF power source.

13. The antenna power source shall have a lockable disconnect installed to allow the antenna and battery backup to be de-energized when required for safety.

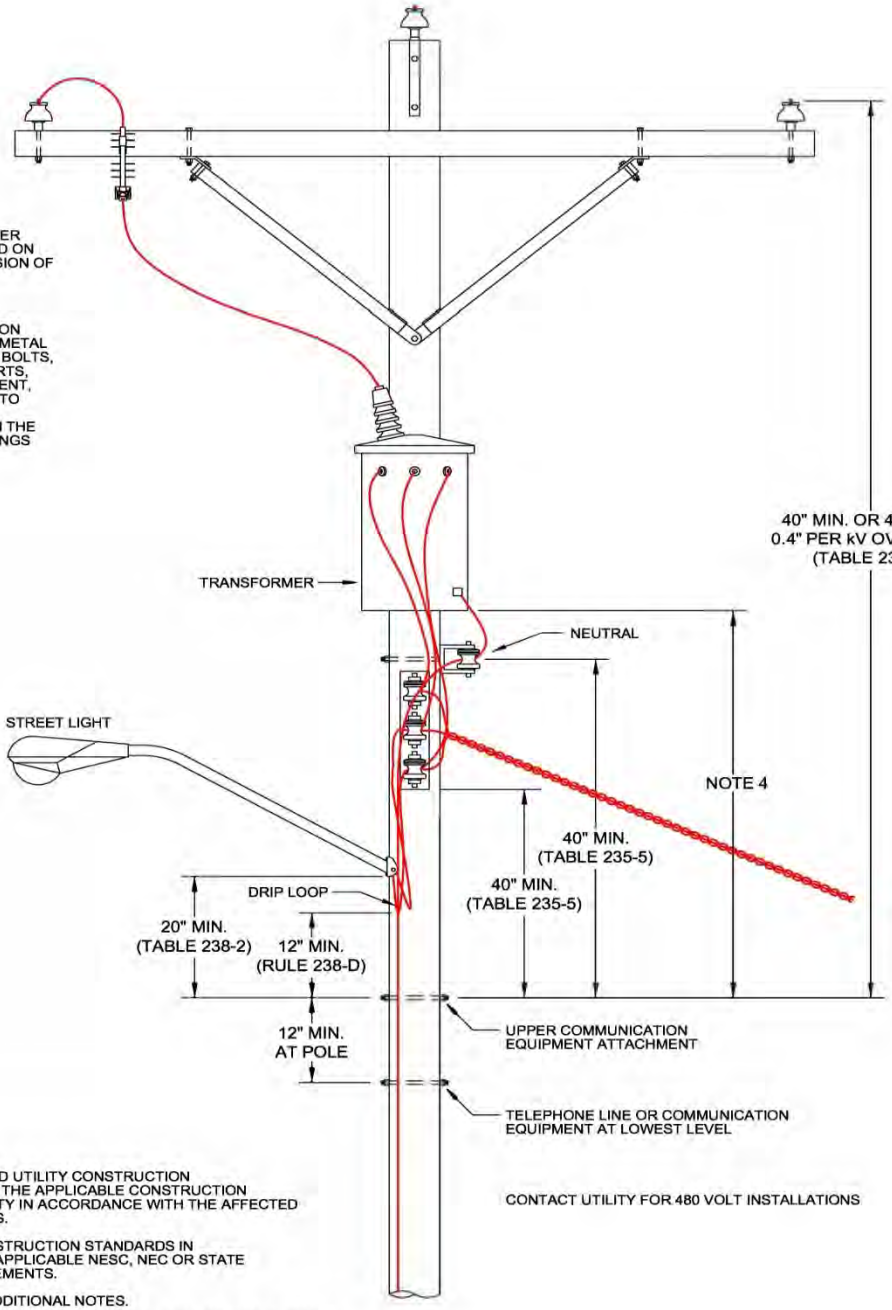
14. Disconnect, meter and antenna equipment must be installed in accordance with the current COL Construction Standards.
15. A driven pole ground is required for each antenna installation. It shall be installed to meet COL Construction Standards.
16. If a pole with communications equipment installed needs to be replaced, NJUNS will be used to notify the attaching companies to relocate their equipment.

DATE: **02/01/17** REVISED:	**GENERAL POLE ATTACHMENT STANDARDS INDEX** continued	**STANDARD NUMBER** **GPAS**

NOTES to Drawings that follow:

Standard Number A-13
Under the notes portion item C. PVC 80 and changed to Type 40 PVC conduit.

Standard Number A-17
Remove this Drawing.



NOTES:

1. REFER TO THE ATTACHED UTILITY CONSTRUCTION STANDARDS, OR OBTAIN THE APPLICABLE CONSTRUCTION STANDARDS FROM UTILITY IN ACCORDANCE WITH THE AFFECTED UTILITY's REQUIREMENTS.
2. APPLY THE UTILITY CONSTRUCTION STANDARDS IN COORDINATION OF THE APPLICABLE NESC, NEC OR STATE STATUTE CODE REQUIREMENTS.
3. SEE DRAWING 02 FOR ADDITIONAL NOTES.
4. UTILITY CONSTRUCTION STANDARD DOES NOT ALLOW TRANSFORMER TANK TO BE LOWER THAN SYSTEM NEUTRAL OR SECONDARY.

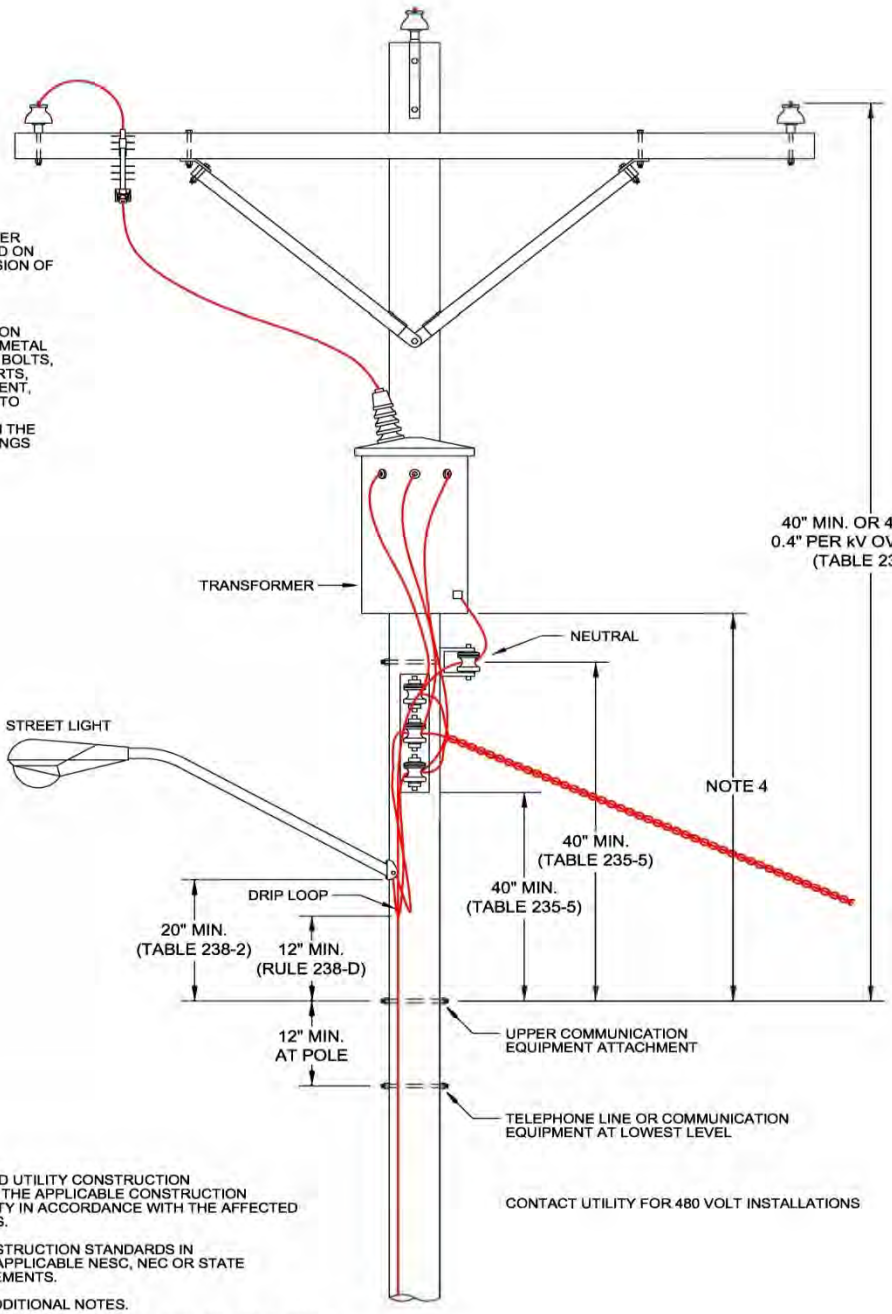
OVERHEAD MINIMUM CLEARANCES

DATE: 06/07/16

REVISED:

1

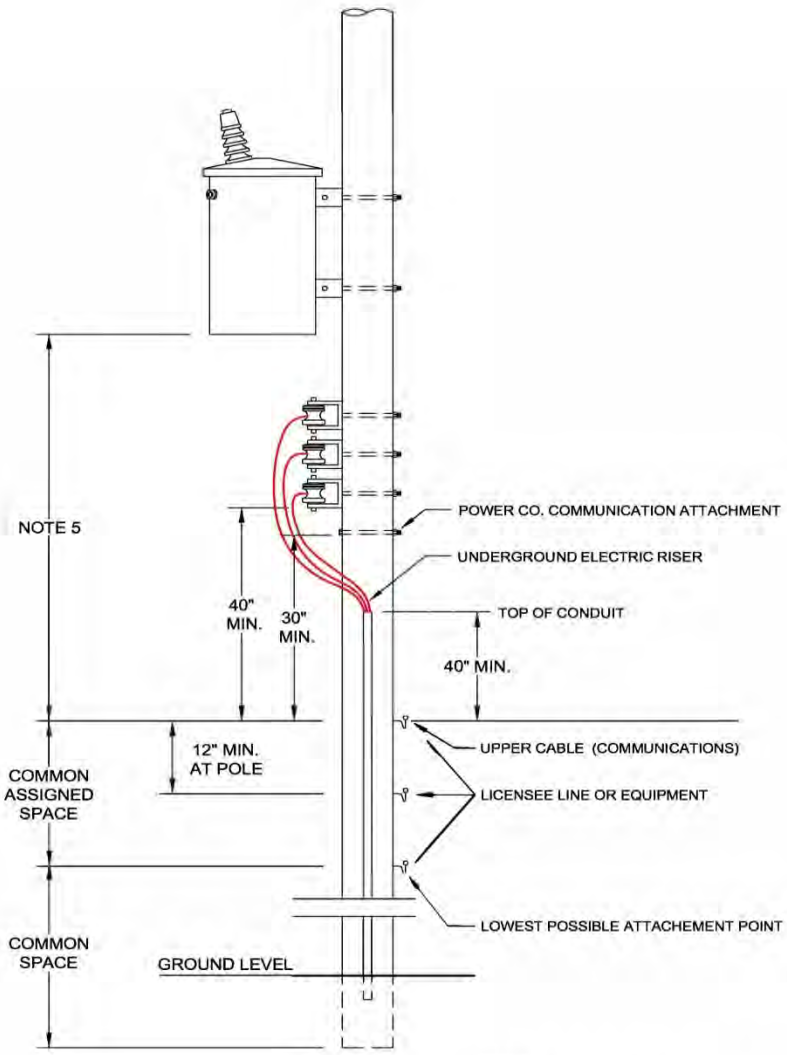
STANDARD NUMBER
A-01



NOTES:

1. REFER TO THE ATTACHED UTILITY CONSTRUCTION STANDARDS, OR OBTAIN THE APPLICABLE CONSTRUCTION STANDARDS FROM UTILITY IN ACCORDANCE WITH THE AFFECTED UTILITY's REQUIREMENTS.
2. APPLY THE UTILITY CONSTRUCTION STANDARDS IN COORDINATION OF THE APPLICABLE NESC, NEC OR STATE STATUTE CODE REQUIREMENTS.
3. SEE DRAWING 02 FOR ADDITIONAL NOTES.
4. UTILITY CONSTRUCTION STANDARD DOES NOT ALLOW TRANSFORMER TANK TO BE LOWER THAN SYSTEM NEUTRAL OR SECONDARY.

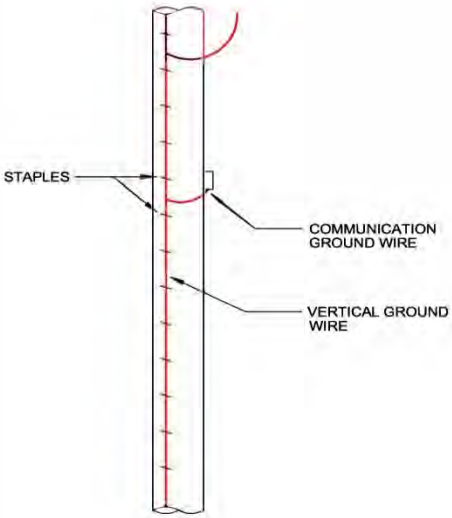
DATE: 06/07/16 REVISED: 10/17/16	OVERHEAD MINIMUM CLEARANCES	1 STANDARD NUMBER A-01

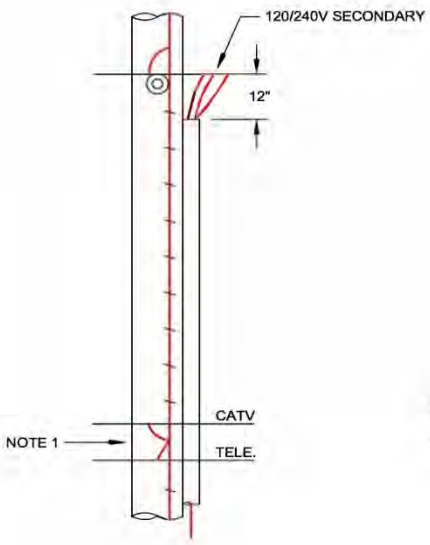


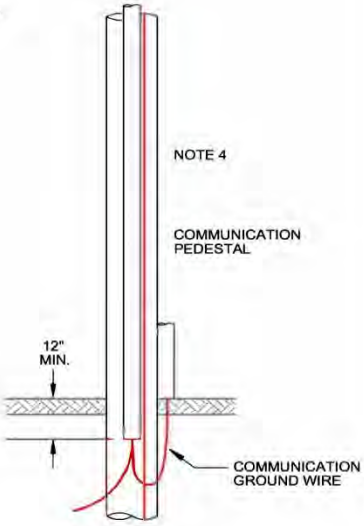
NOTES:

1. SEPARATION BETWEEN VERTICAL RUNS AND ANY METAL PARTS OR THROUGH BOLTS OF POWER OR COMMUNICATION EQUIPMENT SHALL BE AT LEAST 2" IN ANY DIRECTION. BOLTS SHALL HAVE LESS THAN 2" EXPOSED THREAD.
2. NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF THE UTILITY.
3. THE ABOVE CLEARANCES MAY HAVE TO BE INCREASED TO ALLOW FOR CODE CLEARANCE REQUIREMENT IN MID SPAN.
4. LICENSEE's ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.
5. UTILITY CONSTRUCTION STANDARD DOES NOT ALLOW TRANSFORMER TANK TO BE LOWER THAN SYSTEM NEUTRAL OR SECONDARY.

DATE: 06/07/16 REVISED: 10/17/16	OVERHEAD MINIMUM CLEARANCES	2 STANDARD NUMBER A-02







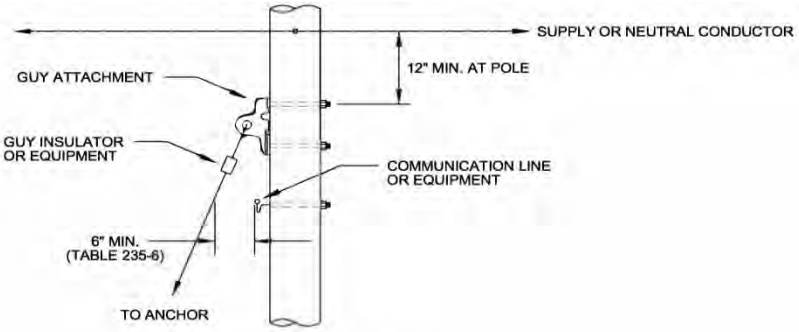
NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.

LICENSEE's ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

NOTES:

1. LICENSEE SHALL BOND TO UTILITY POLE GROUND WHEREVER UTILITY HAS A DOWN GROUND ON THE POLE. IF THE GROUND IS UNDER THE METAL U-GUARD, CONTACT UTILITY TO MAKE THE GROUND CONNECTION.
2. IF NO POLE GROUND EXISTS CONTACT UTILITY TO HAVE POLE GROUND INSTALLED.
3. BOND WIRE SHALL BE #6 BARE COPPER OR LARGER. IF BOND WIRE IS UNSUPPORTED FOR MORE THAN 12" LONG, STAPLE TO POLE.
4. WHEN COMMUNICATION's ARE UNDERGROUND, THE POWER IS OVERHEAD AND IT IS REQUIRED THAT THE COMMUNICATIONS GROUND BE INTERCONNECTED TO THE POWER SUPPLY GROUND, THE CONNECTION SHALL BE MADE BELOW GRADE.
5. IN NO CASE SHALL LICENSEE GROUND BE CONNECTED TO GUYS/ANCHORS.
6. IF A NEUTRAL ISOLATION DEVICE IS INSTALLED ON THIS POLE THE ATTACHER MUST CONTACT UTILITY FOR SPECIAL GROUNDING INSTRUCTIONS.
7. LICENSEE's MESSENGER CABLE SHALL BE BONDED TO UTILITY's POLE GROUND WIRE AT EACH POLE THAT HAS A GROUND WIRE.

DATE: 08/20/12 REVISED: 10/17/16	GROUNDING CONNECTIONS	3 STANDARD NUMBER A-03



INSULATED GUY OPTION

CONTACT UTILITY TO DETERMINE IF GUYS ARE TO BE INSULATED OR GROUNDED.

NOTES:

1. LICENSEE SHALL BE RESPONSIBLE FOR PROCURING AND INSTALLING ALL ANCHORS AND GUY WIRES TO SUPPORT THE ADDITIONAL STRESS PLACED ON THE UTILITY's POLES BY LICENSEE's ATTACHMENTS.
2. ANCHORS AND GUY WIRES MUST BE SET ON EACH UTILITY POLE WHERE THERE IS A TURN OR ANGLE AND ON ALL DEAD-END UTILITY POLES.
3. LICENSEE MAY NOT PLACE GUY WIRES ON THE ANCHORS OF UTILITY OR THIRD PARTY USER WITHOUT PRIOR WRITTEN CONSENT OF ALL ATTACHING ENTITIES AND ANCHOR OWNERS.
4. NO ATTACHMENT MAY BE INSTALLED ON A UTILITY POLE UNTIL ALL REQUIRED GUYS AND ANCHORS ARE INSTALLED, NOR MAY ANY ATTACHMENT BE MODIFIED OR RELOCATED IN SUCH A WAY AS WILL MATERIALLY INCREASE THE STRESS OR LOADING ON UTILITY POLES UNTIL ALL REQUIRED GUYS AND ANCHORS ARE INSTALLED.
5. LICENSEE's DOWN GUYS SHALL NOT BE BONDED TO GROUND OR NEUTRAL WIRE OF UTILITY's POLE AND SHALL NOT PROVIDE A CURRENT PATH TO GROUND FROM THE POLE GROUND OR POWER SYSTEM NEUTRAL.
6. ON JOINTLY USED STRUCTURES, GUYS THAT PASS WITHIN 12" OF SUPPLY CONDUCTORS AND ALSO PASS WITHIN 12" OF COMMUNICATION CABLES, SHALL BE PROTECTED WITH A SINGLE INSULATED COVERING WHERE THE GUY PASSES THE SUPPLY CONDUCTORS, UNLESS THE GUY IS EFFECTIVELY GROUNDED OR INSULATED WITH A STRAIN INSULATOR AT A POINT BELOW THE LOWEST SUPPLY CONDUCTOR AND ABOVE THE HIGHEST COMMUNICATION CABLE.

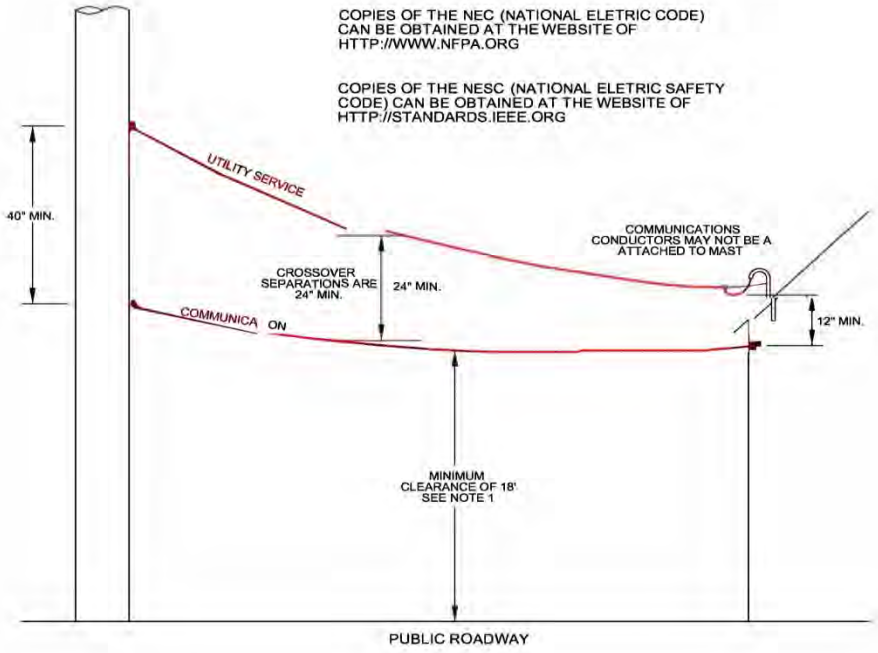
NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.

LICENSEE's ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

DATE: 08/20/12 REVISED: 10/17/16	GUY WIRE REQUIREMENTS	4 STANDARD NUMBER A-04

COPIES OF THE NEC (NATIONAL ELETRIC CODE) CAN BE OBTAINED AT THE WEBSITE OF HTTP://WWW.NFPA.ORG

COPIES OF THE NESC (NATIONAL ELETRIC SAFETY CODE) CAN BE OBTAINED AT THE WEBSITE OF HTTP://STANDARDS.IEEE.ORG



NOTES: (THE NESC CHANGES EVERY THREE YEARS. THE CLEARANCES NOTED BELOW HAVE LIMITING CONDITIONS AND MAY CHANGE. REFER TO SECTION 232 OF THE NESC FOR LATEST REQUIREMENTS.)

1. MAINTAIN MINIMUM CLEARANCE
   A) RAILROADS - 24'
   B) INTERSTATE, MODOT - 18'
   B) DRIVEWAYS - 16'
   B) WALKWAYS - 12'

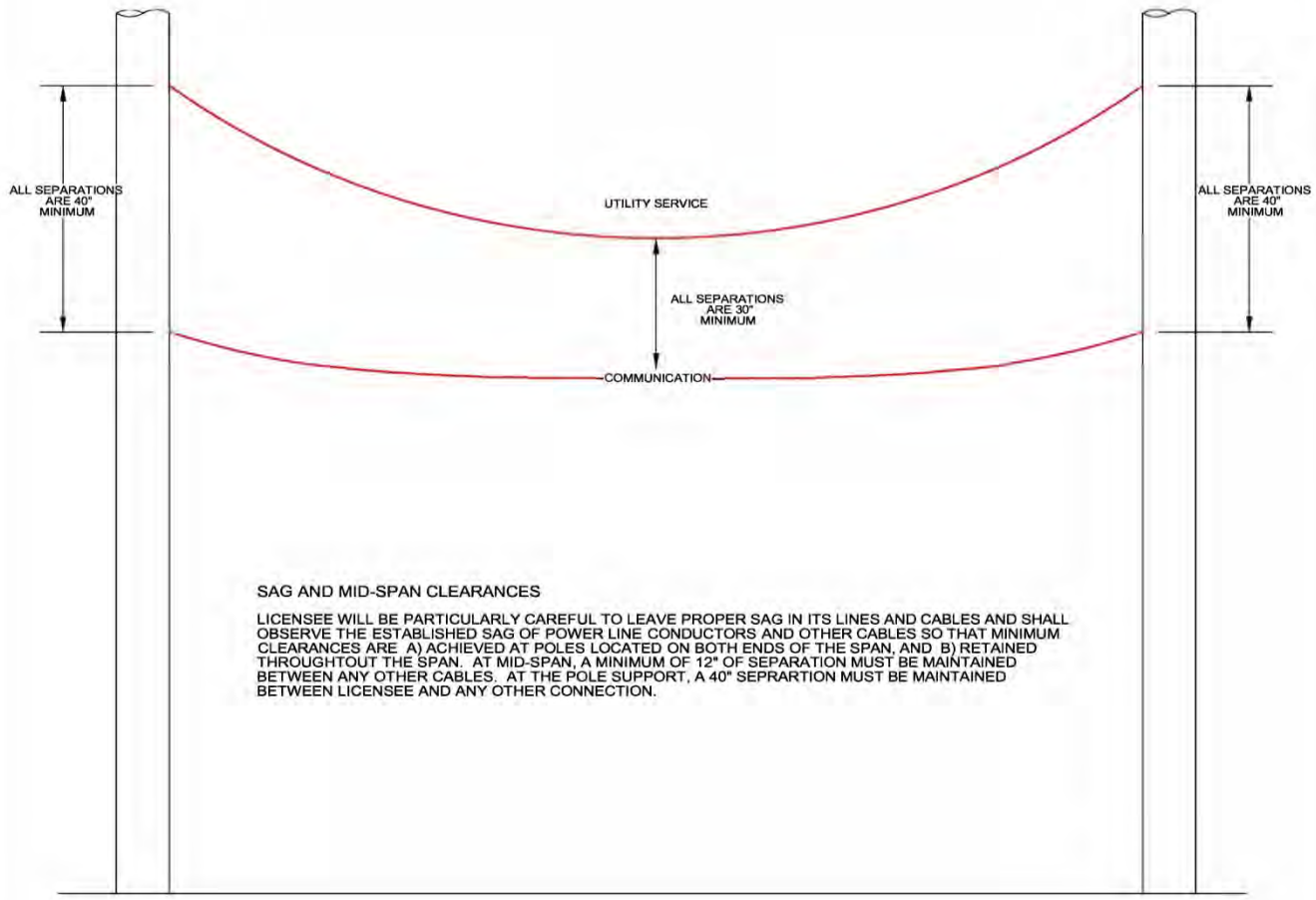
2. REFERENCE NESC CLEARANCES ON SAME SUPPORTING STRUCTURES
   A) SECTION 235
   B) SECTION 238

3. REFERENCE NESC CLEARANCES ON DIFFERENCT SUPPORTING STRUCTURES
   A) SECTION 233

NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF THE UTLITY.

LICENSEE's ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

DATE: 08/20/12 REVISED:	MINIMUM CLEARANCE TO SERVICE AND ROADWAY	6 STANDARD NUMBER A-06



SAG AND MID-SPAN CLEARANCES

LICENSEE WILL BE PARTICULARLY CAREFUL TO LEAVE PROPER SAG IN ITS LINES AND CABLES AND SHALL OBSERVE THE ESTABLISHED SAG OF POWER LINE CONDUCTORS AND OTHER CABLES SO THAT MINIMUM CLEARANCES ARE A) ACHIEVED AT POLES LOCATED ON BOTH ENDS OF THE SPAN, AND B) RETAINED THROUGHTOUT THE SPAN. AT MID-SPAN, A MINIMUM OF 12" OF SEPARATION MUST BE MAINTAINED BETWEEN ANY OTHER CABLES. AT THE POLE SUPPORT, A 40" SEPRARTION MUST BE MAINTAINED BETWEEN LICENSEE AND ANY OTHER CONNECTION.

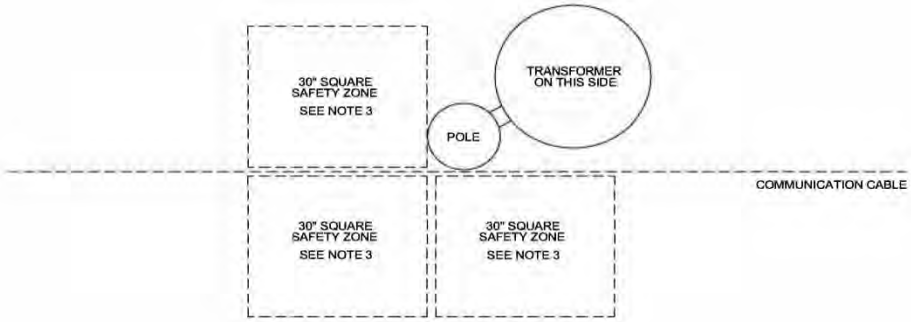
COPIES OF THE NEC (NATIONAL ELETRIC CODE) CAN BE OBTAINED AT THE WEBSITE OF HTTP://WWW.NFPA.ORG

COPIES OF THE NESC (NATIONAL ELETRIC SAFETY CODE) CAN BE OBTAINED AT THE WEBSITE OF HTTP://STANDARDS.IEEE.ORG

NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF THE UTLITY.

LICENSEE's ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

DATE: 08/20/12 REVISED: 10/17/16	MINIMUM CLEARANCE BETWEEN CIRCUITS	7 STANDARD NUMBER A-07



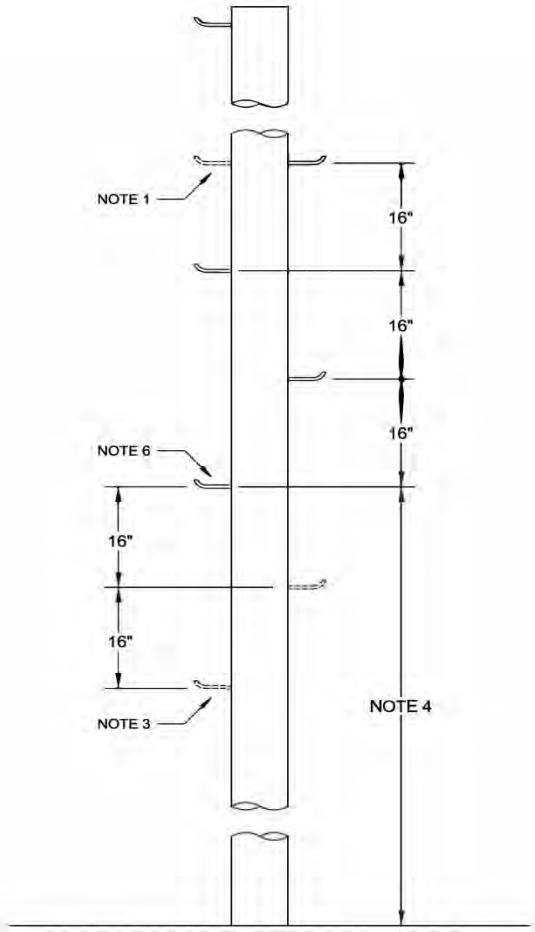
NOTES:

1. FOR NEW CABLE INSTALLATIONS LOCATE CABLE ON THE SAME SIDE OF THE POLE AS UTILITY's LOWEST CONDUCTOR.
2. STANDOFF BRACKETS TO MOUNT CABLE TO POLE ARE NOT ALLOWED WITHOUT APPROVAL OF UTILITY.
3. CLIMBING AND WORKSPACE THROUGH THE COMMUNICATION SPACE SHALL EXTEND FROM 40" BELOW THE LOWEST COMMUNICATION CABLE TO THE TOP OF THE POLE.
4. ON TRANSFORMER POLES THE COMMUNICATION SERVICE DROPS SHALL BE LOCATED SO THAT THEY ORIGINATE FROM THE MESSENGER ON THE SIDE OF THE POLE OPPOSITE THE TRANSFORMER.
5. MINIMUM CLEARANCES FOR CLIMBING AND WORKING SPACE SHALL BE FOLLOWED AS PER NESC SECTION 236.

NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF THE UTLITY.

LICENSEE's ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

DATE: 08/20/12 REVISED:	CLIMBING SPACE REQUIREMENTS	8 STANDARD NUMBER A-08



NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.

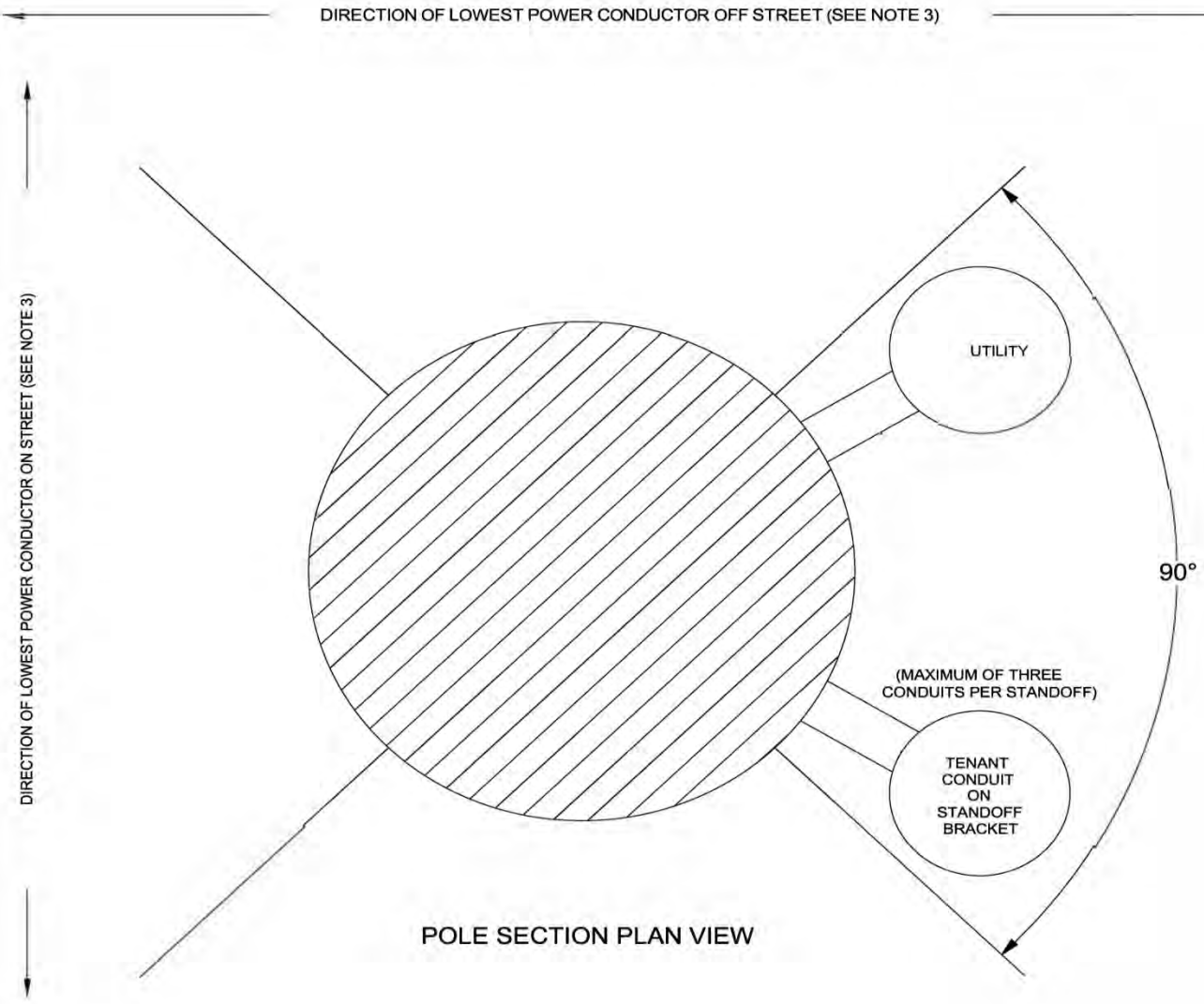
LICENSEE's ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

POLE STEPS MUST BE AUTHORIZED BY THE UTILITY BEFORE INSTALLATION.

NOTES:

1. AN ADDITIONAL STEP SHALL BE PLACED OPPOSITE A STEP LOCATED WHERE WORK IS FREQUENTLY PERFORMED.
2. WHERE POLE IS SET CLOSE TO A BUILDING WITH AN ACCESSIBLE ROOF USE DETACHABLE STEPS FROM THE ROOF LEVEL UP TO A LEVEL 8 FT. ABOVE THE ROOF.
3. USE DETACHABLE POLE STEPS WHERE STEPS ARE REQUIRED BELOW THE 8 FT. LEVEL.
4. LOCATE LOWEST HOOK POLE STEP 8 FT. ABOVE THE GROUND ON DISTRIBUTION POLES AND 8 FT. ABOVE THE GROUND ON JOINT POLES.

DATE: 08/20/12 REVISED:	POLE STEP REQUIREMENTS	9 STANDARD NUMBER A-09

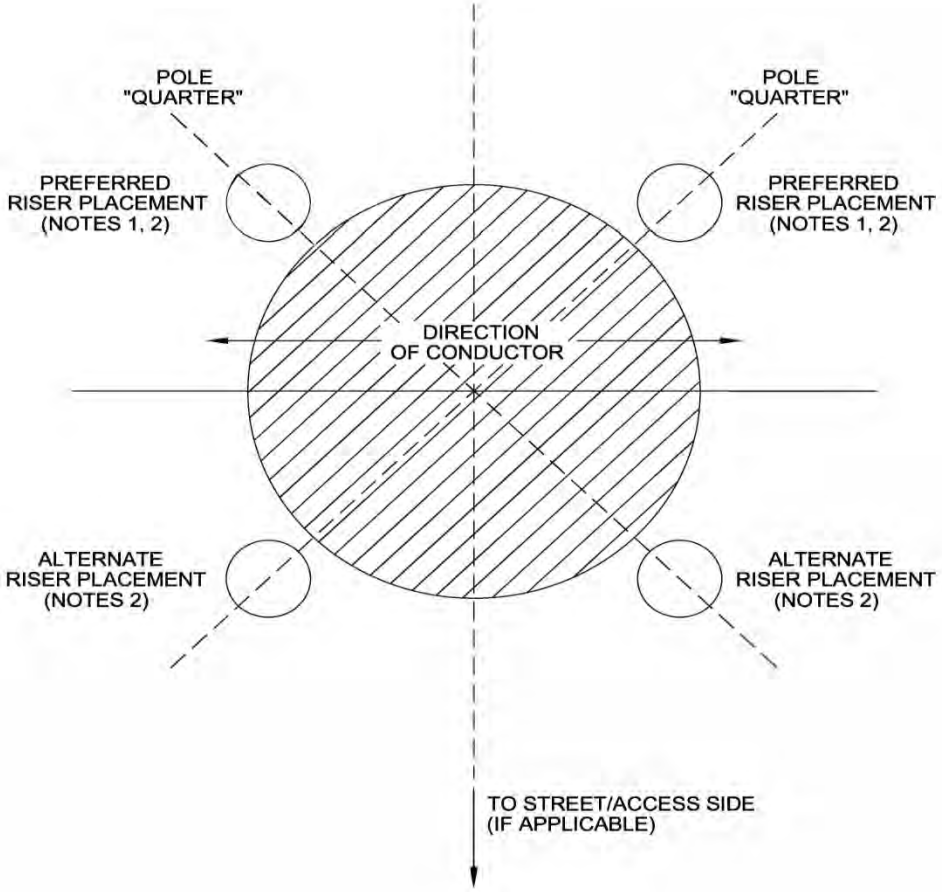


POLE SECTION PLAN VIEW

NOTES:

1. TENANTS CONDUIT ON STANDOFF BRACKETS MUST OCCUPY SAME 90°, OR QUARTER, OF POLE SECTION PERIPHERY AS UTILITY.
2. ILLUSTRATION IS AN EXAMPLE ONLY AND IS NOT INTENDED TO INDICATE A PARTICULAR ORDER OR QUANTITY OF DEVICES OR RISERS ON A POLE.
3. LOWEST POWER CONDUCTOR MAY BE SECONDARY, NEUTRAL OR PRIMARY DEPENDING ON STYLE OF CONSTRUCTION.
4. THERE SHALL BE NO MORE THAN TWO STANDOFF BRACKETS/RISERS PER POLE AS SHOWN ABOVE. ONE STANDOFF BRACKET/RISER LOCATION WILL BE RESERVED FOR FUTURE UTILITY FACILITIES.

DATE: 02/01/17 REVISED:	MAXIMUM POLE RISER OCCUPANCY	10 STANDARD NUMBER A-10



NOTES:

1. IF CONDUCTOR DOES NOT RUN PARALLEL TO STREET/ACCESS, PREFERRED RISER PLACMENT IS ON THE QUARTER OF THE POLE OPPOSITE THE STREET/ACCESS SIDE.
2. IF A RISER POSITION IS BLOCKED BY EXISTING EQUIPMENT AN ALTERNATE RISER LOCATION MUST BE CHOSEN. EXISTING FOREIGN ATTACHMENTS MAY ALSO BLOCK RISER POSITIONS. IN THIS CASE, AN ALTERNATIVE RISER POSITION MUST BE CHOSEN.

DATE: 02/01/17 REVISED:	POLE RISER ORIENTATION AND POSITIONING	11 STANDARD NUMBER A-11

NOTES:

A. STANDARD SOCKET METER INSTALLATION. SOCKET FURNISHED BY UTILITY DEPARTMENT AND INSTALLED BY CUSTOMER.

B. INSULATED BUSHING FURNISHED AND INSTALLED BY CUSTOMER.

C. TYPE 80 PVC CONDUIT AND SLIP-FITTER FURNISHED AND INSTALLED CUSTOMER.
* OCCASSIONALLY THE CUSTOMER'S METER SOCKET IS LOCATED AT A LOWER ELEVATION THAN THE UTILITIES TRANSFOMER, PEDESTAL OR SECONDARY CONNECTION. OTHER MEASURES TO PROHIBIT WATER RETENTION MAY BE RECOMMENDED BY THE CUSTOMER OR CUSTOMER'S AGENT FOR APPROVAL BY THE UTILITY.

D. DO NOT USE CENTER KNOCKOUT FOR INCOMING CONDUIT.

E. ONLY CONTINUOUS NON-METALLIC PVC TYPE DB SCHEDULE 40 CONDUIT, FURNISHED AND INSTALLED, WITHOUT SHARP BENDS OR INDENTATIONS, BY CUSTOMER SHALL BE USED FOR SERVICE. UTILITY TO INSPECT BEFORE BACKFILLING.

F. CUSTOMERS MUST PROVIDE AND INSTALL CONDUIT AND CABLE. EXCESS CABLE SHALL BE LEFT HANGING FROM WEATHERHEAD AT TOP OF RISER FOR UTILITY TO CONNECT TO SECONDARY.

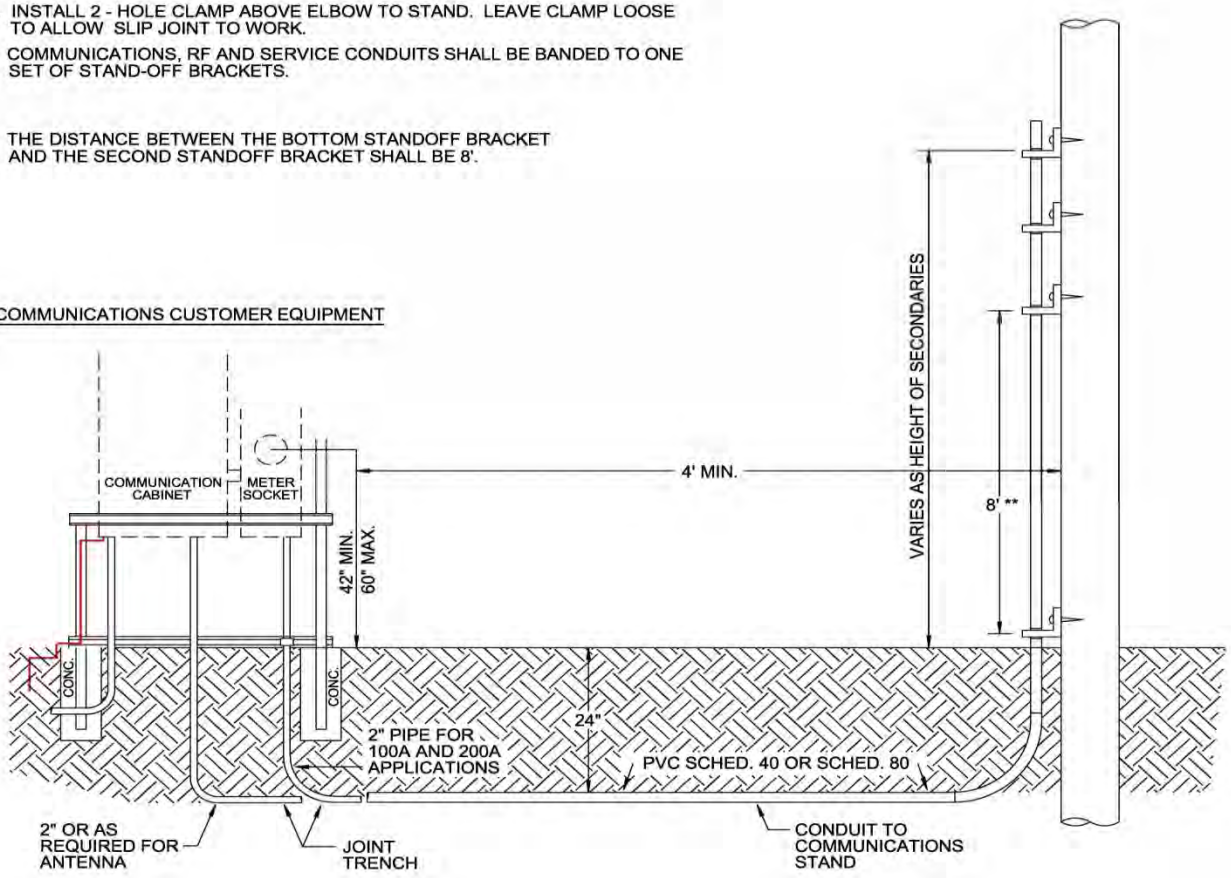
G. CONDUITS MAY BE INSTALLED IN JOINT TRENCH.

H. INSTALL 2 - HOLE CLAMP ABOVE ELBOW TO STAND. LEAVE CLAMP LOOSE TO ALLOW SLIP JOINT TO WORK.

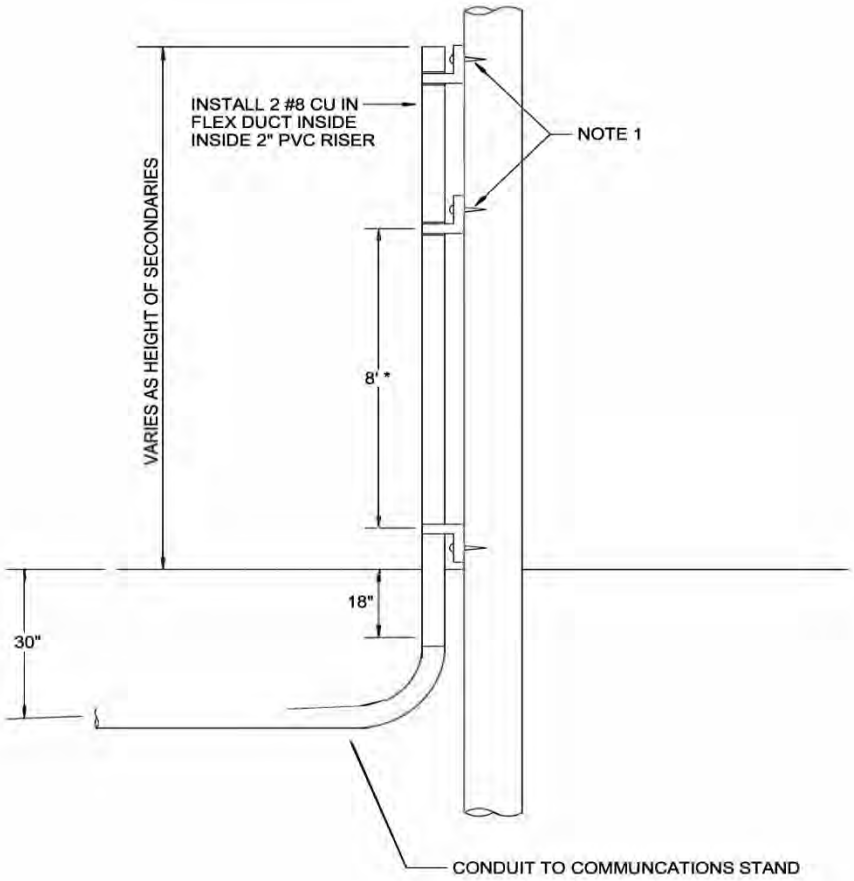
J. COMMUNICATIONS, RF AND SERVICE CONDUITS SHALL BE BANDED TO ONE SET OF STAND-OFF BRACKETS.

** THE DISTANCE BETWEEN THE BOTTOM STANDOFF BRACKET AND THE SECOND STANDOFF BRACKET SHALL BE 8'.

COMMUNICATIONS CUSTOMER EQUIPMENT



DATE: 02/01/17 REVISED:	CABLE RISER FOR COMMUNICATION TERMINAL POLES	13 STANDARD NUMBER A-13

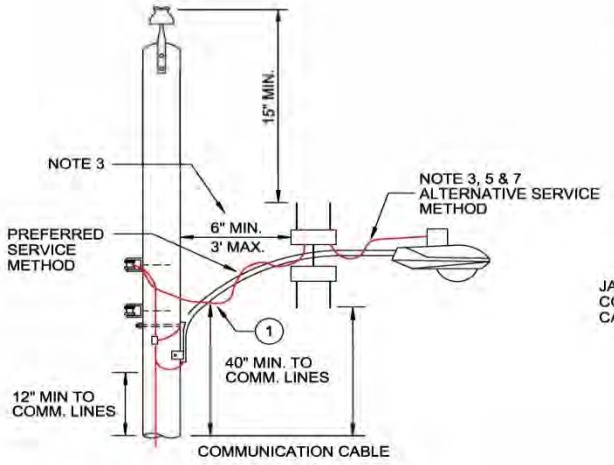


NOTES:

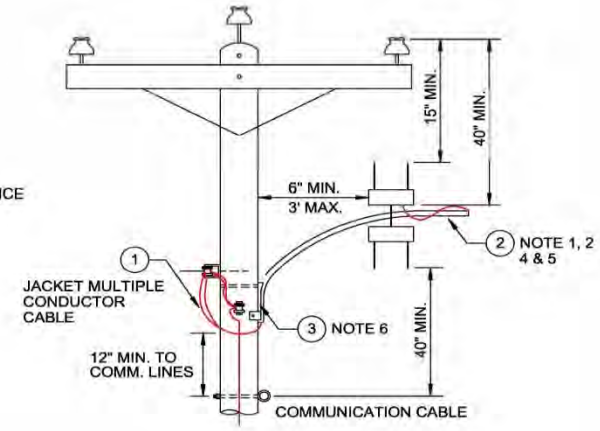
1. INSTALL PIPE AS HIGH AS CONNECTIONS WILL ALLOW. INSTALL TWO STANDOFF BRACKETS PER 10' SECTION OF PIPE ABOVE BOTTOM SECTION.

* THE DISTANCE BETWEEN THE BOTTOM STANDOFF BRACKET AND THE SECOND STANDOFF BRACKET SHALL BE 8'.

DATE: 02/01/17 REVISED:	CABLE RISER FOR COMMUNICATION TERMINAL POLES	14 STANDARD NUMBER A-14



EXISTING OPEN WIRE SECONDARY
AND STREET LIGHT

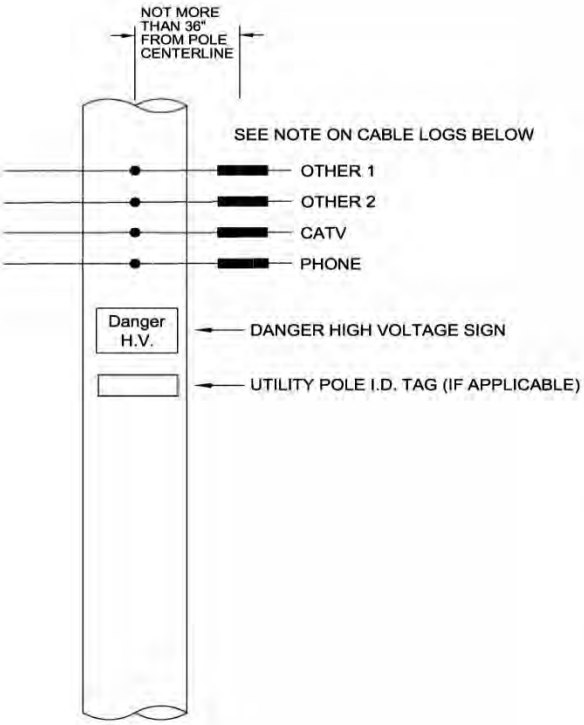


CABLE SECONDARY - NO STREET LIGHT

NOTES:

1. SUPPLY CABLE FOR PACKET ANTENNA & COMMUNICATION EQUIPMENT TO BE JACKETED MULTIPLE CONDUCTOR CABLE.
2. IF THERE IS NO EXISTING STREET LIGHT BRACKET ARM USE BRACKET ARM APPROVED BY UTILITY ENGINEERING. WHEN A BRACKET ARM IS INSTALLED SOLELY TO MOUNT COMMUNICATION EQUIPMENT THE JACKETED MULTIPLE CONDUCTOR CABLE SHOULD BE INSTALLED INSIDE THE BRACKET ARM.
3. MAXIMUM WEIGHT OF COMMUNICATION EQUIPMENT NOT TO EXCEED 15 LBS. WHEN INSTALLED ON EXISTING STREET LIGHT BRACKET ARM. COMMUNICATION EQUIPMENT TO BE INSTALLED A MAXIMUM 3' FROM POLE ON EXISTING BRACKET ARM.
4. CUSTOMER TO PROVIDE AND INSTALL BRACKET ARM, CONNECTORS AND JACKETED MULTIPLE CONDUCTOR CABLE AS REQUIRED.
5. TO INSTALL AND MAINTAIN EQUIPMENT WORKERS MUST BE QUALIFIED TO WORK IN SUPPLY SPACE AND USE SUPPLY WORK RULES AND METHODS.
6. BRACKET ARM SHALL BE BONDED TO POLE GROUND WITH #6 S.D. BARE COPPER CONDUCTOR.
7. ALTERNATE SERVICE METHOD FROM EXISTING STREET LIGHT MUST BE APPROVED BY UTILITY ENGINEERING PRIOR TO INSTALLATION.

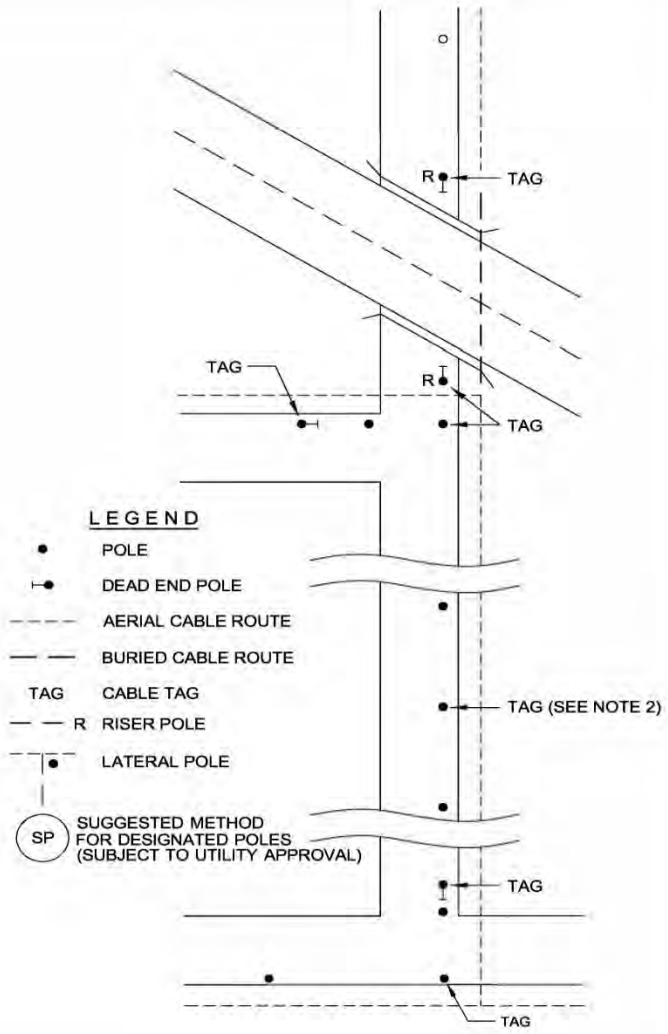
DATE: 02/01/17 REVISED:	ANTENNA MOUNTED IN SUPPLY SPACE WIRELESS ATTACHMENT DEVICE	17 STANDARD NUMBER A-17



SUGGESTED METHOD FOR DESIGNATED POLES
(SUBJECT TO UTILITY APPROVAL)

CABLE OWNER
PHONE NUMBER
REPEAT SO INFORMATION IS VISIBLE
FROM ALL SIDES ON THE WRAPPED TAG

ROLLED CABLE TAG WIDTH TO BE 5 INCHES OR GREATER. TAG DIAMETER SIZED TO FIT CABLE. ALL TO BE UV RESISTANT MATERIAL AND PRINTING.



NOTES:

1. TAGS SHOULD BE INSTALLED ON LATERAL AND DEAD END POLES AND AT THE TERMINATION POINT OF UNDERGROUND CABLE RUNS.
2. TAGS SHOULD BE INSTALLED AT LEAST EVERY 3RD POLE.
3. BURIED CABLE SIGNS SHOULD BE INSTALLED EVERY 1,000 FEET BETWEEN RISER POLES AS WELL AS ON BOTH RISER POLES.
4. TAG LOCATIONS SHOWN ABOVE ARE MINIMUM LOCATIONS. TAGS MAY BE INSTALLED AT ADDITIONAL LOCATIONS AS DEEMED NECESSARY FOR ADEQUATE IDENTIFICATION.

DATE: 01/31/17 REVISED: 06/16/17	POLE TAG REQUIREMENTS	99 STANDARD NUMBER A-99

APPENDIX D
ANNUAL ADDITIONAL ATTACHMENT REPORT

Consistent with Article of the Agreement, the Annual Pole Attachment Report shall include the following:

The number of Poles on which Licensee has installed Risers and Service Drops for which no Permit was required: _____.

The number of Attachments that have become Nonfunctional during the relevant reporting period: _____.

Provide Pole List with the following:

Pole Number Description of Nonfunctional Attachment and Date it was Nonfunctional

The list of Attachments that has been removed from Poles during the relevant reporting period:

Provide Pole List with the following:

Pole Number Description of Equipment Removed Date of Removal

POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment License Agreement (the "Agreement") dated _____, 2023 ("Effective Date") is made by and between the City of West Plains, Missouri, 1910 Holiday Lane, West Plains, Missouri 65775 ("City"), a municipal corporation duly created, organized, and existing under and by virtue of the laws of the State of Missouri, and Brightspeed, a Missouri limited liability company, 2703 Clark Lane, Columbia MO 65202 ("Licensee"). City and Licensee are referred to herein individually as "Party" and collectively as "Parties."

Recitals

A. City is a municipal corporation performing the essential public service of distributing electric power; and

B. City is responsible for safeguarding the integrity of its electric system, obtaining fair compensation for the use of its infrastructure through collection of fees and other charges, ensuring compliance with all applicable federal, state, and local laws, rules and regulations, ordinances, standards and policies, and permitting fair and reasonable access to available capacity on City's infrastructure; and

C. Licensee proposes to install and maintain Licensee's Attachments, Facilities, and associated equipment, on City's Poles to provide Services; and

D. City is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee's Attachments on City's Poles, provided that City may refuse, on a

nondiscriminatory basis, to issue a Permit where there is insufficient capacity or for reasons relating to safety, reliability, generally applicable engineering purposes, and/or any other Applicable Standard; and

E. The Parties intend that this Agreement shall replace and supersede all previous pole attachment and/or infrastructure use agreements between the Parties upon the Effective Date of this Agreement;

Therefore, in consideration of the mutual covenants, terms and conditions set out below the Parties agree as follows:

Article 1. Definitions

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

1.27 **Affiliate:** when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.

1.28 **Applicable Standards:** means all applicable engineering and safety standards governing the installation, maintenance, and operation of Facilities and the performance of all work in or around electric City Facilities and includes the most current versions of National Electric Safety Code ("NESC"), the National Electrical Code ("NEC"), and the regulations of the Occupational Safety and Health Administration ("OSHA"), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of City or other federal, state, or local authority with jurisdiction over City Facilities.

1.29 **Attaching Entity:** means any public or private entity, including Licensee, that, pursuant to a license agreement with City, places an Attachment on City's Poles.

1.30 **Attachment(s):** means Licensee's Facilities that are placed directly on City's Poles, are Overlashed onto an existing Attachment, but does not include either a Riser or a Service Drop attached to a single Pole where Licensee has an existing Attachment on such Pole.

1.31 **Capacity:** means the ability of a Pole or Conduit System segment to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.

1.32 **City Facilities:** means all personal property and real property owned or controlled by City, including Poles, Conduit System, and related Facilities.

1.33 **Climbing Space:** means that portion of a Pole's surface and surrounding space that is free from encumbrances to enable City employees and contractors to safely climb, access, and work on City Facilities and equipment.

1.34 **Correct:** means to perform work to bring an Attachment into compliance with Applicable Standards.

1.35 **Emergency:** means a situation exists which, in the reasonable discretion of Licensee or City, if not remedied immediately, poses an imminent threat to public health, life, or safety, damage to property, or a service outage.

1.36 **Equipment Attachment:** means each power supply, amplifier, pedestal, appliance or other single device or piece of equipment but excluding wireless attachments affixed to any City Pole or City Facilities.

1.37 **Facilities:** means wireline infrastructure used to deliver broadband, internet, and communication Services, including but not limited to, fiber optic, copper, and/or coaxial cables, all associated equipment, utilized to provide broadband, internet and communications Services, but excluding wireless attachments affixed to or contained in any unit of City's infrastructure.

1.38 **Licensee:** means Brightspeed, and its authorized successors and assignees.

1.39 **Make-Ready or Make-Ready Work:** means all work that City reasonably determines to be required to accommodate Licensee's Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement and/or transfer of City Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), Pole replacement and construction, but does not include Licensee's routine maintenance.

1.40 **Occupancy:** means the use or reservation of space for Attachments on a City Pole or portion of City's Conduit System.

1.41 **Overlash:** means to place an additional wire or cable Communications Facility onto an existing attached Communications Facility.

1.42 **Pedestals/Vaults/Enclosures:** means above- or below-ground housings that are not attached to City Poles but are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices, and/or to provide a Service connection point.

1.43 **Permit:** means written or electronic authorization by City for Licensee to make or maintain Attachments to specific City Poles pursuant to the requirements of this Agreement. Licensee's Attachments made prior to the Effective Date and authorized by City ("Existing Attachments") shall be deemed Permitted Attachments hereunder.

1.44 **Pole:** means a pole owned or controlled by City that is used for the distribution of electricity and/or Services and is capable of supporting Attachments for Facilities.

1.45 **Pole Loading Study/Analysis:** means the engineering analysis of the existing and proposed loads on a Pole. The study shall be done using the following Pole loading programs, O-Calc or PLS Pole using liner analysis Grade C Construction and current City Pole Attachment Standards in Appendix C.

1.46 **Post-Construction Inspection:** means the inspection by City or Licensee or some combination of both to verify that the Attachments have been made in accordance with Applicable Standards and the Permit.

1.47 **Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or City to determine the Make-Ready Work necessary to accommodate Licensee's Attachment(s) on a Pole. Such work includes, but is not limited to, field inspection and administrative processing.

1.48 **Reserved Capacity:** means capacity or space on a Pole that City has identified and reserved for its own future City requirements at the time of the Permit grant.

1.49 **Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect wires and cables.

1.50 **Service(s):** means the transmission or receipt of voice, video, data, broadband internet, or other forms of digital or analog signals over Facilities.

1.51 **Tag:** means to place distinct markers on wires and cables, coded by color or other means specified by City and/or applicable federal, state or local regulations, that will readily identify the type of Attachment (*e.g.,* cable TV, telephone, high-speed broadband data, public safety) and its owner.

1.52 **Unauthorized Attachment:** means any Attachment placed on City's Pole(s) without such authorization as is required by this Agreement, provided the Licensee's previously authorized Attachments made pursuant to a prior agreement between the Parties shall not be considered Unauthorized Attachments.

Article 2. Scope of Agreement

2.15 **Grant of License.** Subject to the provisions of this Agreement, City grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Attachments to City's Poles.

2.16 Unless otherwise agreed this Agreement does not authorize the use of City transmission structures (other than those with distribution underbuilds).

2.17 **No Wireless Attachments**. This Agreement does not contemplate or authorize the attachment of wireless attachments to City's Poles, and such use will only be allowed pursuant to a separately negotiated wireless pole attachment agreement or rider hereto.

2.18 **Parties Bound by Agreement.** Licensee and City agree to be bound by all provisions of this Agreement.

2.19 **Permit Issuance Conditions.** City will issue one or more Permit(s) to Licensee only when City determines, in its sole judgment, exercised reasonably, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.

2.20 **Reserved Capacity.** Access to space on City Poles will be made available to Licensee with the understanding that certain Poles may be subject to Reserve Capacity for future service use. At the time of Permit issuance, City shall notify Licensee if capacity on particular Poles is being reserved for reasonable, foreseeable future use. For Attachments made with notice of such a Reservation of Capacity, on giving Licensee at least sixty (60) calendar days prior notice, City may reclaim such Reserved Capacity at any time following the installation of Licensee's Attachment if required for City's future services. If reclaimed for City's use, City may at such time also install associated Facilities, including, but not limited to, the attachment of electrical, communications, and broadband lines. City shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity for City services, so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Section 4.9. Licensee shall not be required to bear any of the costs of rearranging or replacing its Attachment(s), if such rearrangement or replacement is required as a result of an additional Attachment or the modification of an existing Attachment sought by any other entity.

2.21 **No Interest in Property.** No use, however lengthy, of any City Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of City's rights to City Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a Licensee only.

2.22 **Licensee's Right to Attach.** Nothing in this Agreement, other than a Permit issued pursuant to Article 6, shall be construed as granting Licensee any right to Attach Licensee's Facilities to any specific Pole.

2.23 **City's Rights over Poles.** The Parties agree that this Agreement does not in any way limit City's right to locate, operate, maintain, or remove its Poles in the manner that will best enable it to fulfill its service requirements or to comply with any federal, state, or local legal requirement.

2.24 **Expansion of Capacity.** City will take reasonable steps to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require City to install, retain, extend, or maintain any Pole for use when such Pole is not needed for City's own service requirements.

2.25 **Other Agreements.** Except as expressly provided in this Agreement, nothing in this Agreement shall limit, restrict, or prohibit City from fulfilling any agreement or arrangement regarding its Poles into which City has previously entered, or may enter in the future, with others not party to this Agreement.

2.26 **Permitted Uses.** This Agreement is limited to the uses specifically stated in this Agreement and no other use shall be allowed without City's express written consent to such use. Nothing in this Agreement shall be construed to require City to allow Licensee to use City's Poles after the termination of this Agreement.

2.27 **Overlashing.** The following provisions apply to Overlashing:

2.27.1 Licensee shall provide no less than sixty (60) days prior notice for each Overlash it intends to install. Absent such prior notice, Overlashing constitutes an Unauthorized Attachment under Article 21.

2.27.2 Authorized Overlashing to accommodate Attachments of Licensee or its Affiliate(s) shall not increase the Annual Attachment Fee paid by Licensee pursuant to Appendix A, Item 1. Licensee or Licensee's Affiliate shall, however, be responsible for all Make-Ready Work and other charges associated with the Overlashing. Licensee shall not have to pay a separate Annual Attachment Fee for such Overlashed Attachment.

2.27.3 At Licensee's request, City may allow Overlashing to accommodate Facilities of a third party, not affiliated with Licensee. In such circumstances, the third party must enter into a License Agreement with City, obtain Permit(s), and pay a separate Attachment Fee (Appendix A, Item 1) as well as the costs of all necessary Make-Ready Work required to accommodate the Overlashing. City shall not grant such Permit(s) to third parties allowing Overlashing of Licensee's Facilities without Licensee's consent. Authorized Overlashing shall not increase the fees and charges paid by Licensee pursuant to Appendix A, Item 1. Nothing in this Agreement shall prevent Licensee from seeking a contribution from an Overlashing third party to defray fees and charges paid by Licensee.

2.27.4 Make-Ready Work procedures set forth in Article 7 shall apply, as necessary, to all Overlashing.

2.27.5 Licensee's Overlashing will be limited to fiber and coaxial cables, installed consistent with Applicable Standards, subject to any notice regarding Reserve Capacity pursuant to Section 2.6, and only on a permanent basis. Any Overlashing inconsistent with these requirements will constitute an Unauthorized Attachment under Article 21.

2.28 **Enclosures.** Licensee shall not place Pedestals, Vaults, and/or other Enclosures on or within four (4) feet of any Pole or other City Facilities without City's prior written permission. If permission is granted, all such installations shall be per the Applicable Standards. Such permission shall not be unreasonably withheld. Further, Licensee agrees to move any such above-ground enclosures in order to provide sufficient space for City to set a replacement Pole.

Article 3. Fees and Charges

3.14 **Payment of Fees and Charges.** Licensee shall pay to City the fees and charges specified in Appendix A and shall comply with the terms and conditions specified in this Agreement.

3.15 **Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from City pursuant to this Agreement within thirty (30) calendar days of receipt of invoice.

3.16 **Application Fee**. Licensee shall be charged a non-refundable Application Fee for each Pole for which it seeks to make an Attachment. City reserves the right to adjust the Application Fee from time to time to cover actual and documented costs incurred in processing Applications. Failure to include Application Fees will cause the Application(s) to be deemed incomplete, and City will not process such Application(s) until the Application Fees are paid. City will make timely and reasonable efforts to contact Licensee should its Application Fee not be received.

3.17 **Pole Attachment Fee**. Licensee shall be charged an Annual Pole Attachment fee ("Pole Fee"), per year, as set out in Appendix A.

3.18 **Billing of Attachment Fee.** City shall invoice Licensee for the per-Pole Attachment Fee annually. City will submit to Licensee an invoice for the annual rental period not later than January 31 of each year except the initial year when the invoice will be submitted within 15 days after this Agreement is signed by all Parties. The initial annual rental period shall commence upon the Effective Date of this Agreement and conclude on December 31 of that year, and each subsequent annual rental period shall commence on the following January 1 and conclude on December 31 of the subsequent year. The invoice shall set forth the total number of City's Poles on which Licensee was issued Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits.

3.5.1 **Contesting Fee.** Licensee shall have forty-five (45) days from receipt of invoice to contest the number of Attachments. Failure to contest or otherwise dispute the invoice within forty-five (45) days of receipt shall be deemed to be acceptance by the Licensee. In the event Licensee does contest within forty-five (45) days either the number of Attachments or the Attachment Fee, Licensee shall pay an amount equivalent to the previous year's billing within the initial forty-five (45) days. Upon resolution of the disagreement regarding the then-current year's bill, either Licensee shall pay the difference if the agreed amount is greater than Licensee's initial payment, or City shall refund the difference to Licensee if the agreed amount is less than Licensee's initial payment.

3.19 **Refunds.** No fees and charges specified in Appendix A shall be refunded on account of any surrender of a Permit granted under this Agreement.

3.20 **Late Charge.** If City does not receive payment for any fee or other amount owed within thirty (30) calendar days after it becomes due, Licensee shall pay interest to City at the rate of one and one-half percent (1.5%) per month, or the maximum interest allowed by law, whichever is greater, on the amount due. In addition to assessing interest on any unpaid fees or charges, if any fees or charges remain unpaid for a period exceeding ninety (90) days City may, at its option, discontinue the processing of applications for new Attachments until such fees or charges are paid.

3.21 **Charges and Expenses.** Licensee shall reimburse City and any other Attaching Entity for those actual and documented costs for facilitating Licensee's Attachments or for which Licensee is otherwise responsible under this Agreement.

3.21.1 Such costs and reimbursements shall include, but not necessarily be limited to, all costs associated with de-energizing City's Facilities, all design, engineering, administration, supervision, payments, labor, overhead, materials, equipment and applicable transportation used for work on, or in relation to Licensee's Attachments as set out in this Agreement or as requested by Licensee in writing.

3.22 **Advance Payment.** City in its sole discretion will determine the extent to which Licensee will be required to pay in advance estimated costs, including, but not limited to, administrative, construction, inspections, and Make-Ready Work costs, in connection with the initial installation or rearrangement of Licensee's Attachments pursuant to the procedures set forth in Articles 6 and 7 below.

3.23 **True-Up.** Whenever City, in its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of the activity exceeds the advance payment of estimated expenses, Licensee agrees to pay City for the difference in cost, provided that City documents such costs with sufficient detail to enable Licensee to verify the charges. To the extent that City's actual cost of the activity is less than the estimated cost, City shall refund to Licensee the difference in cost.

3.24 **Determination of Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by City, the charge for such work shall include all reasonable material, labor, engineering, administrative, and applicable overhead costs. City shall bill its services based upon actual costs, and such costs will be determined in accordance with City's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed, and costs of materials used. Labor costs shall be the greater of the fully loaded costs of municipal labor or the current "union scale" for comparable work in the region. Consistent with Article 19, if Licensee was required to perform work and fails to perform such work within the specified timeframe, and City performs such work, City may charge Licensee an additional twenty-five percent (25%) of its actual and documented costs for completing such work.

3.25 **Work Performed by City.** Wherever this Agreement requires City to perform any work, City, at its sole discretion, may utilize its employees or contractors, or any combination of the two, to perform such work.

3.26 **Charges for Incomplete Work**. In the event that an Application is submitted by Licensee and then steps are taken by City to carry out the review of the Application by performing necessary engineering and administrative work and the Application is subsequently canceled, Licensee shall reimburse City for all of the actual and documented costs incurred by City through the date of cancellation, including engineering, clerical and administrative and Make-Ready construction costs.

Article 4. Specifications

4.11 **Installation** When a Permit is issued pursuant to this Agreement, Licensee's Facilities shall be installed and maintained in accordance with the requirements and specifications of City and must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Facilities.

4.12 **Maintenance of Facilities**. Licensee shall, at its own expense, make and maintain its Attachment(s) in safe condition and good repair, in accordance with all Applicable Standards. Notwithstanding anything in this Agreement to the contrary, Licensee shall not be required to update or upgrade its Attachments if they met Applicable Standards at the time they were made, unless such updates or upgrades are required by any revised Applicable Standards.

4.13 **Communications**. Licensee shall utilize the emails and addresses for emergency and legal notifications., or other similar notification system(s) identified and utilized by City to facilitate required notices, including, but not limited to, any need to rearrange or transfer Licensee's Attachments. Such notices include, but are not limited to Pole Attachment transfers, rearrangements, Pole Attachment abandonment and removal, as well as the extent to which such use will satisfy the notification requirements of this Agreement and provide notice thereof to Licensee. Licensee and City agree to perform their respective tasks in a commercially reasonable and timely manner, and in accordance with the timeframes specified in this Agreement.

4.14 **Tagging.** Licensee shall Tag all its Facilities with Name, Address and Phone number, and/or applicable federal, state, and local regulations upon installation of such Facilities. All Attached Poles must be tagged with stamped noncorrosive metal material with five-digit number, or greater, to be used for Pole Attachment inventory. Within one year of the execution of this Agreement, Licensee shall also tag any untagged Facilities that were on City Poles on the Effective Date of this Agreement. Failure to provide proper tagging will be considered a violation of the Applicable Standards.

4.15 **Interference.** Licensee shall not allow its Facilities to impair the ability of City or any third party to use City's Poles, nor shall Licensee allow its Facilities to interfere with the operation of any City Facilities or third-party Facilities.

4.16 **Protective Equipment.** Licensee and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and Facilities. Licensee shall, at its own expense, install protective devices designed to handle the electric voltage and current carried by City's Facilities in the event of a contact with such Facilities. City shall not be liable for any actual or consequential damages to Licensee's Facilities, Licensee's customers' Facilities, or to any of Licensee's employees, contractors, customers, or other persons resulting from the lack of protective equipment.

4.17 **Violation of Specifications.** If Licensee's Attachments, or any part of them, are installed, used, or maintained in violation of this Agreement, and Licensee has not Corrected the violation(s) within

thirty (30) days from receipt of written notice of the violation(s) from City, the provisions of Article 19 shall apply. When City believes, however, that such violation(s) pose an imminent threat to the safety of any person, interfere with the performance of City's service obligations, or present an imminent threat to the physical integrity of City Poles or Facilities, City may, but shall not be required to, perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable afterward, City will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and documented costs incurred by City in taking action pursuant to this Section 4.7. Licensee shall indemnify City for any such work.

4.18 **Restoration of City Service.** City's service restoration requirements shall take precedence over any and all work operations of Licensee on City's Poles or within City's Conduit System.

4.19 **Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days of the effective date of such right and any extension to such Permit(s), City may, but shall have no obligation to, use the space scheduled for Licensee's Attachment(s) for its own needs or make the space available to other Attaching Entities. In such instances, City shall endeavor to make other space available to Licensee, upon written application under Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions. If City uses the space for its own needs or makes it available to other parties, then from the date that City or a third party begins to use such space, Licensee may obtain a refund on the portion of any Attachment Fees that it has paid in advance for that space. For purposes of this paragraph, Licensee's access rights shall not be deemed effective until any necessary Make-Ready Work has been performed.

4.20 **Removal of Nonfunctional Attachments.** At its sole expense, Licensee shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for Service ("Nonfunctional Attachment") as provided in this Paragraph 4.10. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an Unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written notice from City that removal is necessary to accommodate City's or another Attaching Entity's use of the affected Pole(s) in which case Licensee shall remove the Nonfunctional Attachment within sixty (60) days of receiving the notice. Licensee shall give City notice as soon as practicable of any Nonfunctional Attachments along with the date the Nonfunctional Attachment was removed.

Article 5. Private and Regulatory Compliance

5.5 **Necessary Authorizations.** Before Licensee occupies any of City's Poles, Licensee shall obtain from the appropriate public or private authority, or from any property owner or other appropriate person, any required authorization to construct, operate, or maintain its Facilities on public or private property. City retains the right to require evidence that appropriate authorization has been

obtained before any Permit is issued to Licensee. Licensee's obligations under this Article 5 include, but are not limited to, its obligation to obtain and pay for all necessary approvals to occupy public/private rights-of-way and easements and all necessary licenses and authorizations to provide the Services that it provides over its Facilities. Licensee shall defend, indemnify, and reimburse City for all losses, costs, and expenses, including reasonable attorney's fees, that City may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to Attach Licensee's Facilities on City's Poles and/or to provide particular Services.

5.6 **Lawful Purpose and Use.** Licensee's Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state, and local laws.

5.7 **Forfeiture of City's Rights.** No Permit granted under this Agreement shall extend, or be deemed to extend, to any of City's Poles, to the extent that Licensee's Attachment would result in a forfeiture of City's rights. Any Permit that would result in forfeiture of City's rights shall be deemed invalid as of the date that City granted it. Further, if any of Licensee's existing Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Facilities upon receipt of written notice from City. If Licensee does not remove its Facilities in question within thirty (30) days of receiving written notice from City, City may, at its option, perform such removal at Licensee's expense. Notwithstanding the forgoing, Licensee shall have the right to contest any such forfeiture before any of its rights are terminated, provided that Licensee shall indemnify City for liability, costs, and expenses, including reasonable attorney's fees, that may accrue during Licensee's challenge.

5.8 **Effect of Consent to Construction/Maintenance.** Consent by City to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization, or acknowledgment that Licensee has obtained all required Authorizations with respect to such Attachment.

Article 6. Permit Application and Notification Procedures

6.9 **Permit or Notification Required.** Before making any Attachments (excluding Service Drops and Riser Attachments where there is an existing licensed Pole Attachment) to any Poles, Licensee shall submit an Application and receive a Permit therefor, with respect to each Pole. Overlashed Facilities installations require Notification in advance of installation. See Appendix B Pole Attachment Application and Overlash Notification form.

6.10 **Overlashing.** All Overlashing is subject to the following notification process.

6.10.1 Licensee shall provide Notification of Overlashing at least thirty (30) days prior to installation. The required notification shall be made using the Attachment Permit and Overlash Notification Form included in Appendix B as attached hereto, and shall include: (1) a description of the area where the installation will be done including route maps and Pole locations; (2) a description of the installation; (3) a representation that the installation

will not require any space other than the space previously designated for Licensee's Facilities; (4) an authorized representative's certification that the installation will not impair the structural integrity of the Pole(s) involved or violate Applicable Standards; and (5) not cause any other Attachments to the Poles to be adversely affected by such installation or fall out of compliance with the above-referenced requirements.

6.10.2 It is Licensee's responsibility to verify in advance that the Pole and strand to which it proposes to install will meet all Applicable Standards including NESC Pole loading and Clearance. Licensee shall be responsible for the costs of all Make-Ready necessary to accommodate the Overlash.

6.10.3 Licensee shall be deemed authorized to proceed with the proposed Overlash installation thirty (30) days after it has submitted its complete written Notification.

6.10.4 In addition to notification prior to installation, Licensee shall further notify City within thirty (30) days of the completed installation and provide written verification that it meets all Applicable Standards.

6.10.5 Any Overlash Attachment that City discovers in which the City was not provided prior written Notification thereof will be considered an Unauthorized Attachment subject to provisions of Article 21.

6.11 **Service Drop.** Licensee may Attach a Service Drop, without Application, from one Pole with an existing authorized Attachment to connect directly to Licensee's customer's building, premise, or location, and Attached to no more than one additional Pole where the additional Pole does not support voltage greater than 600V.

6.11.1 It is Licensee's responsibility to verify that the Pole on which it proposes to make a Service Drop meets all Applicable Standards before Attaching the Service Drop. If existing standards issues are identified, it is the responsibility of the Licensee to notify City of the issue. Licensee shall not be allowed to Attach the Service Drop until the Applicable Standards issue is resolved.

6.11.2 If it is determined by City that Licensee has Attached a Service Drop on a Pole with a pre-existing violation of Applicable Standards, Licensee shall be required to bring the Service Drop into compliance with Applicable Standards to the extent that it is Licensee's existing Attachment that is non-compliant. Subject to the provisions of Article 19, City will provide written notice to Licensee and Licensee will have thirty (30) days from receipt of such notice to Correct the existing standards issue, otherwise the provisions of Article19 shall apply. If the Attachment that is non-compliant belongs to another Attaching Entity, then Licensee shall coordinate with City and the other Attaching Entity concerning any necessary rearrangement of Licensee's Service Drop in conjunction with the Correction of the non-compliant Attachment.

6.11.3 Licensee shall notify City of a Service Drop within thirty (30) days of installation. Any Service Drop that City discovers more than thirty (30) days after installation will be considered an Unauthorized Attachment subject to the provisions of Article 21.

6.12 **Pre-Existing Attachments.** Unless updates or upgrades are required by Applicable Standards, or unless City notifies Licensee to the contrary, Licensee shall not be required to obtain Permits for Attachment(s) existing as of the Effective Date of this Agreement. Such grandfathered Attachments shall, however, be subject to the Attachment Fees specified in Appendix A, and such Attachments shall be subject to the Applicable Standards in accordance with Section 1.2. Licensee shall provide City a list of all such pre-existing Attachments within six (6) months of the Effective Date of this Agreement.

6.13 **Permit Certification.** Unless otherwise waived in writing by City, as part of the Permit application process and at Licensee's sole expense, a qualified and experienced professional engineer, or an employee or contractor of Licensee who has been approved by City in writing, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection, and certify that Licensee's Facilities can be and were installed on the identified Poles in compliance with the Applicable Standards and in accordance with the Permit. The professional engineer's, or Licensee's approved employee or contractor, qualifications must include experience performing such work, or substantially similar work, in the electrical space on electric transmission or distribution systems. The City may require the Licensee's professional engineer or approved employee or contractor, to conduct a post-construction inspection that the City will verify by means that it deems to be reasonable.

6.14 **Submission and Review of Permit Application.** Licensee shall submit a properly executed Pole Attachment Permit Application, which shall at City's option, include a Pre-Construction Survey and detailed plans for the proposed Attachments, including a description of any necessary Make-Ready Work to accommodate the Attachments, certified by a licensed professional engineer or experienced employee as described in Section 6.5 above and a Pole Loading Study unless waived by City. Licensee shall use the City's Pole Attachment Permit Application form, which form has been provided to Licensee. See Appendix B. City may amend the Pole Attachment Permit Application form from time to time, provided that any such changes are not inconsistent with the terms of this Agreement and are applied to all Attaching Entities on a non-discriminatory basis. City's acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed, under normal circumstances, the Permit Application process shall be as follows:

6.14.1 **Application With Pre-Construction Survey**. If Licensee's Application includes a Pre-Construction Survey and detailed plans for the proposed Attachments, including a description of any necessary Make-Ready to accommodate the Attachments, certified by a licensed professional engineer or experienced employee approved by City as described in Section 6.5 above and a Pole Loading Study unless waived by City, City shall review and respond to such properly executed and complete Permit Application for routine installations as promptly as is reasonable, with a goal of providing a response during normal circumstances within thirty (30) days of receipt. City may utilize contractors to perform such an analysis, the costs of which shall be borne by Licensee.

6.6.1.1 For Permit Applications seeking Attachments to 50 or more Poles, the City may require additional time to review.

6.6.1.2 City's response will either: (i) grant permission to undertake such Make-Ready as described in Licensee's Application and Pre-Construction survey; (ii) grant permission to undertake such Make-Ready as City reasonably determines is required; or (iii) provide a written explanation as to why the Application is being denied, in whole or in part, for reasons of safety, reliability or insufficient capacity that cannot be resolved consistent with Applicable Standards, including City and County zoning and construction ordinances.

6.14.2 **Application Without Pre-Construction Survey.** If Licensee's Application does not include a Pre-Construction Survey (including a description of necessary Make-Ready), City or its contractor shall review the Application and perform a Pre-Construction Survey, and, if the Attachment can be accommodated consistent with Applicable Standards, prepare a description of any necessary Make-Ready to accommodate the proposed Pole Attachment. Under normal circumstances, City will respond to such properly executed and complete Permit Application for routine installations as promptly as is reasonable, with a goal of providing a response within sixty (60) days of receipt, unless the Parties mutually agree to a longer period of time. City may utilize contractors to perform such analysis, the actual and documented costs of which shall be borne by Licensee.

6.6.2.1 For Permit Applications seeking Attachments to 50 or more Poles, the City may require additional time to review.

6.6.2.2 City's response will either: (i) provide a description of Make-Ready identified by City and a cost estimate for that Make-Ready; or (ii) provide a written explanation as to why the Application is being denied, in whole or in part, for reasons of safety, reliability or insufficient capacity that cannot be resolved consistent with Applicable Standards, including City and County zoning and construction ordinances.

6.14.3 **Response to Estimate**. Upon receipt of City's response, Licensee shall have fourteen (14) days to approve the estimate of any proposed Make-Ready Work and provide payment in accordance with this Agreement and the specifications of the estimate.

6.15 **Permit as Authorization to Attach.** Upon completion and inspection of any necessary Make-Ready Work and receipt of payment for such work, City will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s).

6.16 **Notification to City.** Within thirty (30) days of completing the installation of an Attachment (including Overlash, Riser Attachments, and/or Service Drops) Licensee shall provide written notice to City.

Article 7. Make-Ready Work/Installation

7.1 **Estimate for Make-Ready Work.** If City determines that it can accommodate Licensee's request for Attachment(s), it will, upon request, advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment.

7.2 **Who May Perform Make-Ready**. Make-Ready Work in the electric supply space may be performed only by City and/or a qualified contractor, at City's sole discretion, authorized by City to perform such work. Under normal circumstances, City will perform all Make-Ready at Licensee's cost, or at City's sole discretion allow Licensee to complete Make-Ready Work through the use of qualified contractors authorized by City.

7.3 **Time Frame for Completion of Make-Ready**. If City is performing Make-Ready Work it will use good faith efforts to complete routine Make-Ready Work within ninety (90) days of receipt of Licensee's approval of the Make-Ready estimate (and advance payment if required). If there are extenuating circumstances that make the necessary Make-Ready more complicated or time-consuming, including, but not limited to, the Application requesting Attachment to more than fifty (50) Poles, or seasonal weather conditions, City shall identify those factors in the Make-Ready description and cost estimate and the Parties shall agree upon a reasonable timeframe for completion. If City does not complete agreed upon Make-Ready Work within ninety (90) days, or the agreed-upon timeframe, it will allow Licensee to use a City approved qualified contractor to complete such Make-Ready Work and refund any amounts paid by Licensee to City for performing such Make-Ready Work that is not completed.

7.3.1 The above notwithstanding, if City has substantially completed the Make-Ready the Parties will reasonably determine whether it makes more sense from an operational efficiency perspective to have City complete the work rather than have Licensee's authorized qualified contractors do the work.

7.4 **Scheduling of Make-Ready Work**. In performing all Make-Ready Work to accommodate Licensee's Attachments, City will endeavor to include such work in its normal work schedule. If Operator requests, and City agrees, to perform Make-Ready Work on a priority basis or outside of City's normal work hours, Licensee will pay any resulting increased actual and documented costs. Nothing in this Agreement shall be construed to require City to perform Licensee's work before other scheduled work or City service restoration.

7.5 **Payment for Make-Ready Work**. Upon completion of the Make-Ready Work performed by City, City shall invoice Licensee for City's actual and documented cost of such Make-Ready Work. The costs of the work shall be itemized in accordance with Section 3.8, and if City receives advance payment, the costs shall be trued up in accordance with Section 3.10. Licensee shall be responsible for entering into an agreement with existing other Attaching Entities to reimburse them for any costs that they incur in rearranging or transferring their Facilities to accommodate Licensee's Attachments.

7.6 **Notification of Make Ready Work.** Before starting Make-Ready Work, City shall notify all existing Attaching Entities of the date and location of the scheduled work and notify them of the need to rearrange and/or transfer their Facilities at Licensee's cost within the specified time period. To the extent that City has the legal authority, and at City's sole discretion, it may, but shall not be required to, rearrange and/or transfer existing Facilities of such other Attaching Entities that have not been moved in a timely manner. Licensee shall pay for any such rearrangement or transfer.

7.6.1 In instances where Licensee is performing Make-Ready, where an existing Attaching Entity has not relocated or otherwise undertaken work required to complete Make-Ready (such as repairing existing Attachments not in compliance with Applicable Standards) within thirty (30) days of notice by City or Licensee to such other Attaching Entity, Licensee is authorized, to the extent that City has such authority, and the legal ability to delegate such authority, to relocate or repair the other Attaching Entity's Attachments on behalf of City. Licensee shall pay the costs to relocate the other Attaching Entity's Attachments as part of Licensee's Make Ready.

7.7 **Licensee's Installation/Removal/Maintenance Work**.

7.7.1 All of Licensee's installation, removal, and maintenance work, by either Licensee's employees or authorized contractors, shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of City's Poles or other Facilities or other Attaching Entity's Facilities or equipment. All such work is subject to the insurance requirements of Article 25.

7.7.2 All of Licensee's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all applicable regulations specified in Section 4.1. Licensee shall assure that any person installing, maintaining, or removing its Facilities is fully qualified and familiar with all Applicable Standards, the provisions of Article 24, and the Minimum Design Specifications contained in Appendix C.

Article 8. Post Installation Inspections.

8.1 Within thirty (30) days of written notice to City that the Licensee has completed installation of an Attachment (including Overlash, Riser Attachments, and/or Service Drops), City or its contractors may perform a post-installation inspection for each Attachment made to City's Poles. If such post-installation inspections are performed, Licensee shall pay the actual and documented costs for the post-installation inspection.

8.2 If City elects to not perform any post-installation inspection, such non-inspection shall not be grounds for any liability being imposed on City or a waiver of any liability of Licensee.

8.3 If the post-installation inspection reveals that Licensee's Facilities have been installed in violation of Applicable Standards or the approved design described in the Application, City will notify Licensee in writing and Licensee shall have thirty (30) days from the date of receipt of such notice to Correct such violation(s), or such other period as the Parties may agree upon in writing, unless such violation creates an Emergency in which case Licensee shall make all reasonable efforts to Correct such violation immediately. City may perform subsequent post-installation inspections within thirty (30) days of receiving notice that the Correction has been made as necessary to ensure Licensee's Attachments have been brought into compliance.

8.4 If Licensee's Attachments remain out of compliance with Applicable Standards or approved design after any subsequent inspection, consistent with Article 19 City will provide notice of the continuing violation and Licensee will have thirty (30) days from receipt of such notice to Correct the violation, otherwise the provisions of Article 19 shall apply.

Article 9. Intentionally Left Blank.

Article 10. Rearrangements and Transfers

10.3 **Required Transfers of Licensee's Facilities.** If City reasonably determines that a rearrangement or transfer of Licensee's Attachments is necessary, including as part of Make-Ready to accommodate another Attaching Entity's Attachment, City will require Licensee to perform such rearrangement or transfer within thirty (30) days after receiving written notice from City via the agreed upon notification system (to include electronic mail). If Licensee fails to rearrange or transfer its Attachment within thirty (30) days after receiving such notice from City, the provisions of Article 19 shall apply, including City's right to rearrange or transfer Licensee's Attachments thirty (30) days after Licensee's receipt of original notification of the need to rearrange or transfer its Attachments. The actual and documented costs of such rearrangements or transfers shall be apportioned as specified under Section 10.2. City shall not be liable for damage to Licensee's Facilities except to the extent provided in Article 23.1. In Emergency situations, City may rearrange or transfer Licensee's Attachments as it determines to be necessary in its reasonable judgment. In Emergency Situations City will provide such advance notice as is practical, given the urgency of the particular situation. City shall then provide written notice of any such actions taken within ten (10) days following the occurrence.

10.3.1 If Licensee fails to rearrange and/or transfer its Attachments within the prescribed time period, City may delegate its authority to rearrange and/or transfer Licensee's Attachments to an authorized Attaching Entity or its authorized contractors. In such case another Attaching Entity may rearrange or transfer Licensee's Attachments thirty (30) days after Licensee's receipt of original notification of the need to rearrange or transfer its Attachments.

10.3.2 Irrespective of who owns Facilities that are Overlashed on to Licensee's Attachments, Licensee is responsible for the transfer of such Overlashed Facilities and the costs of doing so.

10.4 **Allocation of Costs.** The costs for any rearrangement or transfer of Licensee's Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of City's cables or wires) shall be allocated on the following basis:

10.2.1 If City intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Each Attaching Entity, including Licensee, shall be responsible for transferring or rearranging their respective Attachments/Facilities and each Attaching Entity, including Licensee,

shall be responsible for their respective costs associated with the rearrangement or transfer of Licensee's Facilities. Prior to making any such modification or replacement, City shall provide Licensee written notification of its intent in order to provide Licensee a reasonable opportunity to modify or add to its existing Attachment. Should Licensee decide to do so, it must seek City's written permission in accordance with this Agreement. If Licensee elects to add to or modify its Facilities, Licensee shall pay its proportional share of the costs incurred by City in making the space on the Poles accessible to Licensee.

10.2.2 If the modification or replacement of a Pole is necessitated by the requirements of Licensee, excluding modification or replacement due to routine maintenance, Licensee shall be responsible for all costs caused by the modification or replacement of the Pole as well as the costs associated with the transfer or rearrangement of any other Attaching Entity's Facilities. At the time Licensee submits a Permit Application to City, Licensee shall submit evidence in writing that it has made arrangements to reimburse all affected Attaching Entities for their costs caused by such transfers or rearrangements of their Facilities. City shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Facilities pursuant to this Section.

10.3.3 If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than City or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or replacement, as well as the costs for rearranging or transferring Licensee's Facilities. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's Facilities and Licensee may require advance payment of its estimated costs prior to rearranging or transferring its Facilities.

10.3.4 If the Pole must be modified or replaced for reasons unrelated to the use of the Pole by Attaching Entities (*e.g.*, storm, accident, deterioration), City shall pay the costs of such modification or replacement and Licensee shall pay the costs of rearranging or transferring its Facilities.

10.4 **City Not Required to Replace.** Nothing in this Agreement shall be construed to require City to replace its Poles for the benefit of Licensee.

Article 11. Pole Modifications or Replacements of Defective or Overloaded Poles.

11.1 Where Licensee is unable to place a Permitted Attachment on a Pole because such Pole is a Defective Pole or Overloaded Pole, provided that the communications space on such Pole could otherwise have been arranged with sufficient spacing to accommodate the Licensee's proposed Attachment(s), City will replace, at City's sole cost, such Defective Pole or Overloaded Pole. A "Defective Pole" means a Pole that is no longer serviceable due to decay, damage, or deterioration. An "Overloaded Pole" is a Pole that (without consideration of Licensee's proposed Attachment) exceeds the applicable loading requirements set forth in the Applicable Standards.

11.2 In the event that an existing Pole is a Defective Pole or Overloaded Pole but does not pose an imminent threat or danger to safety or the safe functioning or operation of existing Attachments or Facilities, City shall replace said Pole at its sole cost consistent with its routine maintenance schedule.

11.3 If Licensee seeks to expedite the replacement of a Defective Pole or Overloaded Pole, City will provide Licensee with the materials and Licensee will pay the labor cost of using approved contractors to replace the Pole.

11.4 In all instances the replaced Pole will remain the property of City.

Article 12. Treatment of Multiple Requests for Same Pole.

If City receives Permit applications for the same Pole from two (2) or more prospective Attaching Entities within one hundred twenty (120) calendar days of the initial request, and has not yet completed the Permitting of the initial applicant, and accommodating their respective requests would require modification of the Pole or replacement of the Pole, City will make reasonable and good faith efforts to allocate among such Attaching Entities the applicable costs associated with such modification or replacement.

Article 13. Equipment Attachments.

Equipment Attachments are not allowed on the Poles and are not part of this Agreement.

Article 14. Authorized Contractors.

Licensee shall only use authorized, qualified contractors approved by City to conduct Make-Ready Work (or any other work) in or around the electric supply space on a Pole. City shall not unreasonably withhold, delay, or condition its approval of any contractor proposed by Licensee to be authorized by City to perform Make-Ready in the electric supply space on City's Poles, provided such contractors meet City's qualified contractor specifications pursuant to Section 6.5 of this Agreement.

Article 15. Guys and Anchor Attachments.

Licensee shall at its own cost in accordance with construction standards of City place guys and anchors to sustain any unbalanced loads caused by Licensee's Attachments. When, in unusual circumstances, Licensee determines that it is necessary or desirable for Licensee to Attach its guys to anchors owned by City, it may make application to do so in a manner similar to that outlined in Article 6 above for application to make Pole Attachments. In such circumstances, all the provisions of this Agreement that are applicable to Poles shall also be separately applicable to anchors. Licensee will be subject to a one-time Anchor Fee as set out in Exhibit A but shall not be subject to an annual Attachment Fee for Licensee's use of anchors owned by City. In the event that any anchor or guy to which Licensee desires to make Attachments is inadequate to support the additional Facilities in accordance with the aforesaid specifications, City will notify Licensee of the changes necessary to provide an adequate anchor or guy, together with the estimated cost thereof to Licensee. Licensee will compensate City for the actual and documented cost including engineering and administrative cost for changing the guy and anchor, if such change is performed by City.

Article 16. Installation of Grounds.

When City is requested by Licensee to install grounds or make connections to City's system neutral, Licensee shall within thirty (30) days of demand reimburse City for the total actual and documented costs including engineering, clerical and administrative cost thereby incurred on initial installation only. All grounds installed by Licensee shall be in accordance with City's standard grounding practices.

Article 17. Abandonment of Poles and/or Facilities.

17.2 Notice of Abandonment or Removal of City Facilities. If City desires at any time to abandon, remove, or underground any City Facilities to which Licensee's Facilities are Attached, it shall give Licensee notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such City's Facilities. Notice may be limited to thirty (30) calendar days, if City is required to remove or abandon its City Facilities as the result of the action of a third party and the lengthier notice period is not practical. Such notice shall indicate whether City is offering Licensee an option to purchase the Pole(s). If, following the expiration of the 30-day period, Licensee has not yet removed and/or transferred all of its Facilities and has not entered into an agreement to purchase City's Facilities pursuant to Section 17.2, City shall have the right, but not the obligation, to remove or transfer Licensee's Facilities at Licensee's expense and Licensee shall be subject to the provisions of Article 19. City shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities.

17.2 Option to Purchase Abandoned Poles. Should City desire to abandon any Pole, City may, in its sole discretion, grant Licensee the option of purchasing such Pole at a price to be negotiated with City. Licensee must notify City in writing within thirty (30) calendar days of the date of City's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should City and Licensee fail to enter into an agreement for Licensee to purchase the Pole within forty-five (45) calendar days, Licensee must remove its Attachments as required under Section 17.1. Nothing in this Agreement shall be construed as requiring City to sell Licensee Poles that City intends to remove or abandon.

17.3 Underground Relocation. If City moves any portion of its aerial system underground, Licensee shall remove its Facilities from any affected Poles within sixty (60) calendar days of receipt of notice from City and must either relocate its affected Facilities underground with City or find other means to accommodate its Facilities. If Licensee does not remove its Attachments within sixty (60) days, City shall have the right to remove or transfer Licensee's Facilities at Licensee's expense. Licensee's failure to remove its Facilities as required under this Section 17.3 shall subject Licensee to the provisions of Article 19, provided that City or another Attaching Entity through action or inaction has not delayed Licensee's ability to complete such work.

Article 18. Inspection.

18.1 **General Inspections.** City reserves the right to make periodic inspections, as conditions may warrant, of the entire system of Licensee. Such inspections, or the failure to make such inspections, shall not operate to relieve Licensee of any responsibility or obligation or liability assumed under this Agreement.

18.2 **Periodic Safety Inspections**. Upon twelve (12) months' advance written notice from City, and not more frequently than every five (5) years, City may at its option jointly perform a safety inspection in all or in part of the territory covered by this Agreement with all Attaching Entities to identify any safety violations of all Attachments and Facilities on City Poles or Facilities ("Safety Inspection"). Such notice shall describe the scope of the inspection and provide Licensee and all Attaching Entities an opportunity to participate. Licensee, City and other Attaching Entities shall share proportionately in the actual and documented Safety Inspection costs (based on the proportion of Attachments of City and each other Attaching Entity) irrespective of whether City elects to perform the Safety Inspection itself or have it performed by a contractor.

18.3 **Corrections**. In the event any of Licensee's Facilities are found to be in violation of the Applicable Standards and such violation poses a potential Emergency situation, Licensee shall use all reasonable efforts to Correct such violation immediately. Should Licensee fail or be unable to Correct such Emergency situation immediately, City may Correct the Emergency and bill Licensee for one hundred twenty-five percent (125%) of the actual and documented costs incurred. If any of Licensee's Facilities are found to be in violation of the Applicable Standards and such violations do not pose potential Emergency conditions, City shall, consistent with Article 19, give Licensee notice, whereupon Licensee shall have thirty (30) days from receipt of notice to Correct any such violation, or within a longer, mutually agreed-to time frame if Correction of the violation is not possible within thirty (30) days, such extended time to be not more than an additional sixty (60) days. Notwithstanding the foregoing grace periods, in the event City or another Attaching Entity prevents Licensee from Correcting a Non-Emergency violation, the timeframe for Correcting such violation shall be extended to account for the time during which Licensee was unable to Correct the violation due to action (or failure to act) by City or other Attaching Entity. Licensee will not be responsible for the costs associated with violations caused by others that are not affiliated or acting under the direction of Licensee. In all circumstances, all of the Attaching Entities on the Pole and City will work together to maximize safety while minimizing the cost of Correcting any such deficiencies, but the Licensee shall be responsible for the actual and documented cost of any necessary or appropriate Corrective measures associated with violations caused by Licensee, including removal and replacement of the Pole and all transfers or other work incident thereto. If Licensee fails to Correct a non-Emergency violation within the specified timely period, including any agreed upon extensions, the provisions of Article 19 shall apply.

18.3.1 If any Facilities of City are found to be in violation of the Applicable Standards and specifications and City has caused the violation, then the Parties will work together to minimize the cost of Correcting any such deficiencies, but City shall be responsible for the full cost of any necessary or appropriate Corrective measures, including removal and

replacement of the Pole, provided, however, that City shall not be responsible for Licensee's own costs.

18.3.3 If one or more other Attaching Entity's Attachment caused the violation, then such Attaching Entities shall pay the Corrective costs incurred by all who have Attachments on the Pole, including the Licensee.

18.3.3 If there exists a violation of Applicable Standards and it cannot be determined which Attaching Entity on the Pole caused such violation or there is a mixture of the Attaching Entities causing the violation, then the Parties will work together to minimize the cost of Correcting any such deficiencies, and all Attaching Entities who may have caused such violation will share equally in such costs, provided that Licensee shall not be required to pay more than its proportionate share of such costs.

Article 19. Failure to Rearrange, Transfer or Correct.

19.1 Unless otherwise agreed, as part of City's written notice of a need for Licensee to rearrange, transfer, remove or Correct violations, City will indicate whether or not City is willing to perform the required work.

19.2 If City indicates in the notice that it is willing to perform the work, Licensee shall have fifteen (15) days to notify City in writing of its election to either have City perform the work or that the Licensee will perform the work itself.

19.2.1 If Licensee requests that City perform the work, Licensee shall reimburse City for the actual and documented cost of such work. If Licensee requests City to perform the work and City does not complete the work within the prescribed timeframe, Licensee may then perform the work itself. However, Licensee shall reimburse City for the actual and documented costs for the portion of work City did.

19.2.2 If Licensee either fails to respond or indicates that it will perform the work itself, then until such work is complete and City receives written notice of the completion of such work, Licensee shall be subject to an additional daily fee as specified in Exhibit A, per Attachment, per day commencing on the day after expiration of the time period for completion of the work specified in the Agreement and original notification that Licensee needs to rearrange, transfer, remove or Correct violations. Beginning with the ninetieth (90^{th}) calendar day after expiration of the time period for completion of the work specified in the Agreement and original notification, the daily fee shall escalate as specified in Exhibit A.

19.2.3 Notwithstanding Licensee's election under Article 19.2.2 to perform the required work itself, commencing on the thirtieth (30^{th}) day after expiration of the time period for completion of the work specified in the Agreement and original notification, City may perform the required work at Licensee's expense, or may delegate such authority to another Attaching Entity utilizing a qualified contractor, provided that City or another Attaching Entity through action or inaction has not delayed Licensee's ability to complete such work.

19.2.4 If Licensee was required to perform work under this Article 19 and fails to perform such work within the specified timeframe, and City performs such work, City may charge Licensee an additional twenty-five percent (25%) of its actual and documented costs for completing such work, provided that City or another Attaching Entity through action or inaction has not delayed Licensee's ability to complete such work.

19.3 If City indicates in the notice that it is unwilling or unable to perform the work, then until such work is completed and City receives written notice of the completion of such work, Licensee shall be subject to an additional daily fee as specified in Exhibit A, per Attachment, per day commencing on the day after expiration of the time period for completion of the work specified in the Agreement and original notification that Licensee needs to rearrange, transfer, remove or Correct violations. Beginning with the ninetieth (90^{th}) calendar day after expiration of the time period for completion of the work specified in the Agreement and original notification, the daily fee shall escalate as specified in Exhibit A.

19.4 Licensee shall provide written notification to City upon completion of any of the required work, daily fees will continue to accrue until City's receipt of such notice of completion. Notice of completion shall be given by the same means as it was received from City.

Article 20. Actual Inventory.

20.1 City will at intervals of not more than once every five (5) years perform an actual inventory of the Attachments to Poles in all or in part of the territory covered by this Agreement, for the purpose of checking and verifying the number of Poles on which Licensee and other Attaching Entities have Attachments. Such field checks shall be made collectively by City and all Attaching Entities, and the costs to be actual and documented shall be shared proportionately among all such Attaching Entities based upon the number of Attachments**.** City shall provide at least thirty (30) days advance written notice regarding the inventory and provide Licensee a reasonable opportunity to participate. Should a third-party contractor be selected to perform the inventory, the Parties will mutually agree on the contractor selected and scope of work. However, if the Parties are unable to agree within thirty (30) days, City shall select the outside contractor to conduct the inventory, as well as the scope of work.

20.2 **Attachment Records.** Notwithstanding the above inventory provisions, Licensee shall furnish to City annually an up-to-date electronic map depicting the locations of its Attachments, in a format specified by City.

Article 21. Unauthorized Attachments.

If during the term of this Agreement, City discovers Unauthorized Attachments (including Overlashing, Riser Attachments or Service Drops for which timely notification was not provided) placed on its Poles, the following fees may be assessed, and procedures will be followed:

21.1 City shall provide specific written notice of each violation within thirty (30) days of discovering such violation and Licensee shall be given thirty (30) days from receipt of notice to contest an allegation that an Attachment is unauthorized (or that Licensee failed to timely provide notice). The notice shall identify the precise location and a description of the Unauthorized Attachment.

21.2 Licensee shall pay back rent for all Unauthorized Attachments (except Overlash Attachments and/or Riser Attachments where an existing licensed Pole Attachment exists) for a period of five (5) years, or since the date of the last inventory of Licensee's Attachments (whichever period is shortest), at the rental rates in effect during such periods.

21.3 In addition to the back rent, Licensee shall be subject to the Unauthorized Attachment Fee as specified in Exhibit A for each Unauthorized Attachment, including Service Drops, Riser Attachments where an existing licensed Pole Attachment exists and Overlash Attachments, where prior notification was not provided.

21.4 Licensee shall submit a Permit Application in accordance with Article 6 of this Agreement within thirty (30) days of receipt of notice from City of any Unauthorized Attachment, or such longer time as mutually agreed to by the Parties after an inventory.

21.4.1 No additional notification is required for Service Drops or Riser Attachments where an existing licensed Pole Attachment exists.

21.4.2 In the case of Overlash requiring prior notice of installation to City pursuant to Article 6, Licensee shall be required to submit the notification and information pursuant to Appendix B within thirty (30) days of receipt of notice of Unauthorized Attachment.

21.5 In the event Licensee fails to submit the requisite notice information pursuant to Article 6 within thirty (30) days, or such longer time as mutually agreed to by the Parties after an inventory, the provisions of Article 19 shall apply.

21.6 **No Ratification of Unauthorized Use**. No act or failure to act by City with regard to any Unauthorized Attachments shall be deemed as ratification of the unauthorized use. Unless the Parties agree otherwise, a Permit for a previously Unauthorized Attachment shall not operate retroactively or constitute a waiver by City of any of its rights or privileges under this Agreement or otherwise, and Licensee shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

Article 22. Reporting Requirements

At the time that Licensee pays its annual Attachment Fee, Licensee shall also provide the following information to City, using the reporting form contained in Appendix D:

22.2 The Poles on which Licensee has installed, during the relevant reporting period, Risers and Service drops, for which no Permit was required.

22.2 All Attachments that have become Nonfunctional during the relevant reporting period. The report shall identify the Pole on which the Nonfunctional Attachment is located, describe the Nonfunctional equipment, and indicate the approximate date the Attachment became Nonfunctional.

22.4 Any equipment Licensee has removed from Poles during the relevant reporting period. The report shall identify the Pole from which the equipment was removed, describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Licensee is surrendering a Permit.

Article 23. Liability and Indemnification

23.1 **Liability.** City reserves to itself the right to maintain and operate its Poles in the manner that will best enable it to fulfill its service requirements. Licensee agrees that its use of City's Poles is at Licensee's sole risk. Notwithstanding the foregoing, City shall exercise reasonable precaution to avoid damaging Licensee's Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents, or contractors. Subject to Section 23.5, City agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of Facilities damaged by the gross negligence or willful misconduct of City; provided, however, that the aggregate liability of City to Licensee, in any fiscal year, for such claims of physical damage to Licensee's Facilities directly caused by City's gross negligence or willful misconduct and directly relating to the physical damage to Licensee's Facilities shall not exceed the amount of the total Annual Attachment Fees paid by Licensee to City for that year, as calculated based on the number of Attachments under Permit at the time of the occurrence, as set forth in Appendix A, Item 1.

23.3 **Indemnification.** Licensee, and any agent, contractor, or subcontractor of Licensee, shall defend, indemnify, and hold harmless City and its officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by City under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of City and all other costs and expenses of litigation) ("Covered Claims") arising in any way, including any act, omission, failure, negligence, or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents, or contractors, of Licensee's Facilities, except to the extent

of City's gross negligence or willful misconduct solely giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

23.3.1 Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;

23.3.2 Cost of work performed by City that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents or contractors, to install, maintain, use, transfer, or remove Licensee's Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes City to perform on Licensee's behalf;

23.3.3 Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents, or contractors, pursuant to this Agreement;

23.3.4 Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents, or contractors, of any law, rule, or regulation of the United States, any state, or any other governmental entity or administrative agency.

23.3 Fines and/or Penalties

23.3.1 Any fines, penalties or other costs incurred by either Party for non-compliance by such Party with the requirements of any law(s), or regulation(s) shall be the sole responsibility of such non-complying Party.

23.3.2 If a Party is assessed such fines, penalties or other costs due to the non-compliance of the other Party, the non-complying Party shall indemnify and hold harmless the other Party against any and all losses, liabilities, damages and claims suffered or incurred because of the non-complying Party's non-compliance. The non-complying Party shall also reimburse the other Party for any and all legal or other expenses (including reasonable attorneys' fees) reasonably incurred by the other Party in connection with such losses, liabilities, damages and claims resulting from the non-complying Party's non-compliance.

23.4 Procedure for Claims.

23.4.1 City and Licensee shall give prompt written notice to the other Party of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit, or proceeding filed by a third party against City or Licensee, the Parties shall give the notice to the other Party no later than fifteen (15) calendar days after either Party receives written notice of the action, suit, or proceeding.

23.4.2 Either Party's failure to give the required notice will not relieve the responsible Party from its obligations hereunder unless, and only to the extent, that the other Party is materially prejudiced by such failure.

23.4.3. Either Party will have the right at any time, by notice to the other Party, to participate in or assume control of, the defense of a claim with counsel of its choice, which counsel must be reasonably acceptable to the other Party. The Parties agree to cooperate fully with each other. If either Party assumes control of the defense of any third-party claim, the other Party shall have the right to participate in the defense at its own expense. If the other Party does not assume control or otherwise participate in the defense of any third-party claim, the other Party shall be bound by the results obtained by the controlling Party with respect to the claim.

23.4.4 In no event will either Party admit any liability with respect to, or settle, compromise or discharge, any third-party claim without the other Party's prior written consent.

23.5 **Environmental Hazards.** Licensee represents and warrants that its use of City's Poles will not generate any Hazardous Substances, that it will not store or dispose on or about City's Poles or transport to City's Poles any hazardous substances and that Licensee's Facilities will not constitute or contain and will not generate any Hazardous Substance in violation of federal, state, or local law now or hereafter in effect, including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations, or rules now or hereafter in effect, including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration, or other disaster, its Facilities would not release any Hazardous Substances. Licensee and its agents, contractors, and subcontractors shall defend, indemnify, and hold harmless City and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, or expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage, or discovery of any Hazardous Substances on, under, or adjacent to City's Poles/Conduit System attributable to Licensee's use of City's Poles.

23.6 **No Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, PUNITIVE, INCIDENTAL, INDIRECT, LIQUIDATED, OR SPECIAL DAMAGES OR LOST REVENUE OR LOST PROFITS TO ANY PERSON ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF ANY PROVISION OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

23.7 **Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by City of any applicable state limits on municipal liability or governmental immunity. No indemnification or claims provision contained in this Agreement under which Licensee indemnifies City shall be construed in any way to limit any other indemnification or claims provision contained in this Agreement.

Article 24. Duties, Responsibilities, and Exculpation

24.8 **Duty to Inspect.** Licensee acknowledges and agrees that City does not warrant the condition or safety of City's Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect City's Poles or premises surrounding the Poles, prior to commencing any work on City's Poles or entering the premises surrounding such Poles.

24.9 **Knowledge of Work Conditions.** By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the Facilities, difficulties, and restrictions attending the execution of such work.

24.10 **DISCLAIMER.** CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO CITY'S POLES OR CONDUIT SYSTEM, ALL OF WHICH ARE HEREBY DISCLAIMED, AND CITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. CITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

24.11 **Duty of Competent Supervision and Performance.** The Parties further understand and agree that, in the performance of work under this Agreement, Licensee and its agents, employees, contractors, and subcontractors will work near electrically energized lines, transformers, or other City Facilities. The Parties understand and intend that energy generated, stored, or transported by City Facilities will not be interrupted during the continuance of this Agreement, except in Emergencies endangering life or threatening grave personal injury or property. Licensee shall ensure that its employees, agents, contractors, and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, agents, contractors, and subcontractors; employees, agents, contractors, and subcontractors of City, and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors, and subcontractors' competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of City's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

24.12 **Requests to De-energize.** If City de-energizes any equipment or line at Licensee's request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse City in accordance with Sections 3.8 and 3.8.1, for all costs and expenses that City incurs in complying with Licensee's request. Before City de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Licensee's request.

24.13 **Interruption of Service.** If Licensee causes an interruption of service by damaging or interfering with any equipment of City, Licensee shall, at its own expense, immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify City immediately.

24.14 **Duty to Inform.** Licensee further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on City's Poles by Licensee's employees, agents, contractors, or subcontractors, and Licensee accepts the duty and sole responsibility to notify and inform Licensee's employees, agents, contractors, or subcontractors of such dangers, and to keep them informed regarding same.

Article 25. Insurance

25.1 **Policies Required.** At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:

25.1.1 **Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Missouri law at the time of the application of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation in favor of City. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

25.1.2 **Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than $2,000,000 general aggregate, $2,000,000 products/completed operations aggregate, $2,000,000 personal injury, $2,000,000 each occurrence.

25.1.3 **Automobile Liability Insurance.** Business automobile policy covering all owned, hired, and non-owned private passenger autos and commercial vehicles. Limits of liability not less than $1,000,000 each occurrence, $1,000,000 aggregate.

25.1.4 **Umbrella Liability Insurance.** Coverage is to be in excess of the sum employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than $4,000,000 each occurrence, $4,000,000 aggregate.

25.1.5 **Property Insurance.** Each Party will be responsible for maintaining property insurance on its own Facilities, buildings, and other improvements, including all equipment, fixtures, and City structures, fencing, or support systems that may be placed on, within, or around City Facilities to protect fully against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.

25.2 **Qualification; Priority; Contractors' Coverage.** The insurer must be authorized to do business under the laws of the State of Missouri and have an "A" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability, and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article 25 with the same limits.

25.3 **Certificate of Insurance; Other Requirements.** Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish City with a certificate of insurance ("Certificate") and, upon request, certified copies of the required insurance policies. The Certificate shall reference this Agreement and workers' compensation and property insurance waivers of subrogation required by this Agreement. City shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. City, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except workers' compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. All policies will be written with deductibles, not to exceed $100,000, or such greater amount as expressly allowed in writing by City. Licensee shall defend, indemnify and hold harmless City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors, and their subcontractors and provide a copy of such Certificates to City upon request. Nothing contained in the policies shall be construed to broaden the liability of the City of West Plains, Missouri beyond any applicable Missouri statutes, nor to abolish or waive any defense at law which might otherwise be available to the City or its officers and employees. The insurance required from Licensee will be primary to any insurance of the City.

25.4 **Limits.** The limits of liability set out in this Article 25 may be increased or decreased by mutual consent of the Parties, which consent will not be unreasonably withheld by either Party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal, or other governmental compensation plans, or laws that would materially increase or decrease either Party's exposure to risk.

25.5 **Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this Agreement with City except as to infringement of patents or copyrights or for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage for injuries to City's employees or agents, or (4) exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

25.6 **Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

Article 26. Assignment

26.1 **Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed.

26.2 **Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 26 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish City with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, or conditions of this Agreement without the express written consent to the release of Licensee by City.

26.3 **Sub-licensing.** Without City's prior written consent, Licensee shall not sub-license or lease to any third party, including but not limited to, allowing third parties to place Attachments on City's Facilities, including Overlashing, or to place Attachments for the benefit of such third parties on City's Poles. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlashing is not subject to this Section 26.3.

Article 27. Failure to Enforce

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

Article 28. Issue Resolution Process

28.1 **Dispute Resolution**. Except for an action seeking a temporary restraining order or an injunction or to compel compliance with this dispute resolution procedure, the Parties can invoke the dispute resolution procedures in this Article at any time to resolve a controversy, claim, or breach arising under this Agreement. Each Party will bear its own costs for dispute resolution activity.

28.2 **Initial Meeting**. At either Party's written request, each Party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The Parties will conduct any meeting in-person or via conference call, as reasonably appropriate.

28.3 **Executive Meeting**. If ninety (90) days after the first in-person meeting of the senior representatives, the Parties have not resolved the dispute to their mutual satisfaction, each Party will designate executive representatives at the director level or above to meet and negotiate in good faith to resolve the dispute. To facilitate the negotiations, the Parties may agree in writing to use mediation or another alternative dispute resolution procedure.

28.4 **Unresolved Dispute.** If after sixty (60) days from the first executive-level, in-person meeting, the Parties have not resolved the dispute to their mutual satisfaction, either Party may invoke any legal means available to resolve the dispute, including enforcement of the default and termination procedures set out in Article 29.

28.5 **Confidential Settlement**. Unless the Parties otherwise agree in writing, communication between the Parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery and inadmissible in litigation.

28.6 **Business as Usual**. During any dispute resolution procedure or lawsuit, the Parties will continue providing services to each other and performing their obligations under this Agreement.

28.7 **Additional Daily Fees.** Additional Daily Fees will continue to accrue pending dispute resolution procedures unless the dispute specifically involves a dispute over the application of the fee.

Article 29. Default.

29.2 An Event of Default (each of the following being an "Event of Default") shall be deemed to have occurred hereunder by Licensee if:

29.1.1 Licensee breaches any material term or condition of this Agreement or Permit granted hereunder; or

29.1.2 Licensee evades or attempts to evade any material provision of this Agreement or Permit granted hereunder; or

29.1.3 Licensee makes a material misrepresentation of fact in this Agreement or Permit granted hereunder; or

29.1.4 Licensee fails to complete work by the date and in accordance with the terms specified in this Agreement or Permit granted hereunder, unless an extension is obtained or unless the failure to complete the work is beyond the Licensee's control or the result of a *Force Majeure Event*; or

29.1.5 Licensee fails to timely Correct violations of Applicable Standards.

29.2 Upon the occurrence of any one or more of the Events of Default set forth in Section 29.1 hereof, City, at its option, in addition to and not in lieu of any other remedies provided for herein, shall be entitled to proceed to exercise any and all actions it may have in law or at equity, including drawing down upon the bond for any fees, costs, or expenses that Licensee has not paid, and, in addition, at its option, may terminate this Agreement upon providing notice to Licensee, provided, however, City may take such action or actions only after first giving Licensee written notice of the Event of Default and a reasonable time in which Licensee may cure or commence diligent efforts to cure such Event of Default, which period of time shall be not less than thirty (30) calendar days, except that the period of time shall not be less than ten (10) calendar days for monies past due and owing by Licensee to City; for failure to maintain adequate insurance, as provided for herein; and for failure to maintain any bonds required pursuant to this Agreement.

29.3 Without limiting the rights granted to City pursuant to the foregoing Section 29.2, the Parties hereto agree to conduct themselves reasonably and in good faith and to use a good faith effort to meet and to resolve outstanding issues, including but not limited to the Dispute Resolution Process of Article 28.

29.4 In the event that City fails to perform, observe or meet any material covenant or condition made in this Agreement or shall breach any material term of condition of this Agreement, or at any time any representation, warranty or statement made by City shall be incorrect or misleading in any material respect, then City shall be in default of this Agreement. Upon being provided notice from Licensee of said default, City shall have thirty (30) days to cure same and if such default is not cured, then Licensee shall have any and all remedies at law or in equity available to it, including termination of this Agreement without any liability therefor.

29.4.1 The above notwithstanding, Licensee's sole remedy if City is unable to perform a survey or complete Make-Ready Work within the prescribed timeframes under Articles 6 and 7 is the authority to perform such survey or Make-Ready itself at Licensee's expense.

29.4.2 Under no circumstances will a failure of City to meet the survey or Make-Ready time periods set out in Articles 6 and 7 subject City to damages.

29.5 Upon Termination of the Agreement for Default as provided for in Section 29.2 herein, and after exhaustion of dispute resolution efforts, Licensee shall remove its Attachments from all City Poles within six (6) months of receiving notice, or at a rate of two thousand (2,000) Attachments per month, whichever period results in the greatest length of time for completing removal. If not so removed within that time period, City shall have the right to remove Licensee's Attachments, and Licensee

agrees to pay the actual and documented cost thereof within forty-five (45) days after it has received an invoice from City.

Article 30. Receivership, Foreclosure or Act of Bankruptcy.

30.1 The Pole use granted hereunder to Licensee shall, at the option of City, cease and terminate one hundred twenty (120) days after the filing of bankruptcy or 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 such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied 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 this Agreement.

30.2 In the case of foreclosure or other judicial sale of Licensee's Facilities, 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 this Agreement herein granted and all rights and privileges of this Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

30.2.1 City shall have approved the transfer of this Agreement to the successful bidder, as and in the manner in this Agreement provided; and

30.2.2 Such successful bidder shall have covenanted and agreed with City to assume and be bound by all the terms and conditions to this Agreement.

Article 31. Removal of Attachments.

Licensee may at any time remove its Attachments from any Facility of City but shall promptly give City written notice of such removals. No refund of any rental fee will be due on account of such removal.

Article 32. Performance Bond.

Licensee shall furnish a performance bond executed by a surety company reasonably acceptable to City which is duly authorized to do business in the State of Missouri in the amount of fifty thousand dollars ($50,000.00) for the duration of this Agreement as security for the faithful performance of this Agreement and for the payment of all persons performing labor and furnishing materials in connection with this Agreement.

Article 33. Term of Agreement

33.1 This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years and, unless terminated by either Party, shall automatically be renewed for two additional five (5) year terms. Either Party may terminate this Agreement at the end of the initial term or a successor term by giving written notice of intent to terminate the Agreement at the end of the then-current term. Such a notice must be given at least ninety (90) calendar days prior to the end of the then-current term.

33.2 Even after the termination of this Agreement, Licensee's indemnity obligations shall continue with respect to any claims or demands related to Licensee's Facilities, as provided for in Article 23.

Article 34. Amending Agreement

This Agreement shall not be amended, changed, or altered except in writing and with approval by authorized representatives of both Parties.

Article 35. Notices

35.1 Wherever in this Agreement notice is required to be given by either Party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail with return receipt requested, with postage prepaid, and except where specifically provided for elsewhere, properly addressed as follows:

If to City, at: City of West Plains
Attn. City Clerk
1910 Holiday Lane
West Plains, MO 65775

If to Licensee, at:

or to such other address as either Party, from time to time, may give the other Party in writing.

35.2 The above notwithstanding the Parties may agree to utilize electronic communications, including email, for notifications related to the Permits application and approval process and necessary transfer or Pole modifications.

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

Article 36. Entire Agreement

This Agreement and its appendices constitute the entire Agreement between the Parties concerning Attachments of Licensee's Facilities on City's Poles within the geographical service area covered by this Agreement. Unless otherwise expressly stated in this Agreement, all previous agreements, whether written or oral, between City and Licensee are superseded and of no further effect.

Article 37. Severability

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either Party, such provision shall not render unenforceable this entire Agreement. Rather, the Parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision.

Article 38. Governing Law

All matters relating to this Agreement shall be governed by the laws (without reference to choice of law) of the State of Missouri.

Article 39. Incorporation of Recitals and Appendices

The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.

Article 40. *Force Majeure*

If either City or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, pandemic, epidemic, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the Party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected Party shall endeavor to remove or overcome such inability as soon as reasonably possible.

Article 41. *Nondiscriminatory Treatment*

In accordance RSMo § 67.5104.2, City shall be nondiscriminatory between all Pole Attachers, and will not act more favorably or less favorably between such Attachers in the assessment of fees, rates, terms or conditions of this Agreement.

Article 42. *Mutual Reservation of Rights*

Nothing in this Agreement shall be deemed a waiver by City or Licensee of the rights of each such party under applicable law, rules and regulations, including without limitation the right to seek judicial or administrative review of the provisions of this Agreement. City reserves and in no way waives any right to enforce the requirements in this Agreement during the term of this Agreement and Licensee agrees to such reservation and non-waiver by City. Licensee reserves and in no way waives any right to challenge the enforcement of the fees, terms and conditions in this Agreement, including without limitation under the provisions of RSMo § 67.5104, and City agrees to such reservation and non-waiver by Licensee.

[*Signatures on following page.*]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate on the day and year first written above.

(CITY)	(LICENSEE)
City of West Plains, Missouri	Brightspeed
BY:_____	BY:_____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Attest: _____	

STATE OF MISSOURI)
) ss
COUNTY OF HOWELL)

I, the undersigned, a Notary Public in and for the State of Missouri, hereby certify that on the _____ day of _____ 2023 personally appeared before me _____, the Manager of Brightspeed, a Missouri limited liability company, to me known to be the individual and who executed the foregoing Agreement and acknowledged that he is duly authorized by the Managers and Members of the Company to sign this Agreement, and that he signed and sealed the same as his free and voluntary act and deed and the free act and deed of the Company, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

_____

Print Name: _____

Notary Public in and for the State of Missouri

STATE OF MISSOURI)
) ss
COUNTY OF HOWELL)

I, the undersigned, a Notary Public in and for the State of Missouri, hereby certify that on the _____ day of _____ 2023, personally appeared before me a notary public, personally appeared Jarrad Carr, personally known to me to be the Mayor of the City of West Plains, Missouri, who, being by me duly sworn did say that he is the Mayor of the City of West Plains, Missouri, and that the seal affixed to foregoing Agreement is the corporate seal of said City, and that said Agreement was signed and sealed in behalf of said City of West Plains, Missouri, by authority of its City Council, and said Jarrad Carr acknowledged said Agreement to be the free act and deed of said City of West Plains, Missouri.

_____

Print Name: _____
Notary Public in and for the State of Missouri

APPENDIX A—FEES and CHARGES

The Annual Pole Attachment Fee shall be set out below for the fifteen (15) years (three (3) five (5) year terms) contemplated by the Agreement, starting January 1st, 2023 and ending on December 31st, 2038, unless the Agreement is terminated pursuant to the terms of the Agreement prior to December 31st, 2038. After the first year, either Party may require a meeting to recalculate the Annual Pole Attachment Fee. Regardless of whether the Annual Pole Attachment Fee has been recalculated previously, the Parties will meet before July 31st, 2038, and re-calculate the Annual Pole Attachment Fee. Any new Attachment Fee shall be effective January 1st of the following year.

Fourteen ($14.00) per Pole per year adjusted annually.

15 Year Rate Schedule

Year	Price	% Increase
2023	$14.00	
2024	$14.28	2%
2025	$14.57	2%
2026	$14.86	2%
2027	$15.16	2%
2028	$15.46	2%
2029	$15.77	2%
2030	$16.09	2%
2031	$16.41	2%
2032	$16.74	2%
2033	$17.07	2%
2034	$17,41	2%
2035	$17.76	2%
2036	$18.12	2%
2037	$18.48	2%
2038	$18.85	2%

Each Attachment shall only occupy twelve (12) inches of vertical space on a Pole, as measured either above or below (but not both) the point of attachment, and any Attachment outside of the twelve inches shall be deemed to constitute an Unauthorized Attachment.

Non-Recurring Fees[2]

6. License Application Fee: One Hundred dollars ($100.00) per Application (limit 50 Attachments per Application).
7. Make Ready Work and Other Charges: See Article 3 and 7 of Agreement.

[2] City reserves the right to adjust non-recurring fees from time to time to cover actual costs, provided any such adjustment is applied on a nondiscriminatory basis to all Attaching Entities.

8. Work performed by City where Licensee failed to perform in a timely manner may be subject to a twenty-five percent (25%) additional charge pursuant to Article 19 of Agreement.
9. Anchor Use Fee: Two Hundred dollars ($200) per City Anchor. See Article 15 of Agreement.
10. Grounding Connection Fee: When City installs grounds or makes connections to City's system neutral, Licensee shall reimburse City for the total actual and documented costs. See Article 16 of Agreement.

Other Non-Recurring Fees

2. Standard Unauthorized Attachment Fee:

One hundred dollars ($100) per Attachment (including Service Drops, and Riser Attachments that were not reported, excluding Service Drops and Riser Attachments where an existing Permitted Pole Attachment exists)), plus the Annual Pole Attachment Fee back to the date of the last audit or the Effective Date of this Agreement, whichever results in the least amount.

2. Non-Transfer/Removal Fee:

If, consistent with Article 19 of the Agreement, Licensee fails to rearrange, transfer, remove or Correct violations in a timely manner, Licensee shall be subject to ~~a daily fee of five dollars ($5) per Attachment, per day beginning on the day after expiration of the original time period for completion of the work specified in the Agreement and the original notification that Operator needs to~~ rearrange, transfer, remove or Correct violations. Beginning with the ninetieth (90^{th}) calendar day after expiration of the time period for completion of the work specified in the Agreement and original notification the ~~daily penalty shall escalate to ten dollars ($10) per Attachment per day.~~

APPENDIX B

APPLICATION FOR POLE ATTACHMENT PERMIT
AND OVERLASH FACILITIES NOTIFICATION

City of West Plains
[department and address]

Date:
Permit #:

West Plains, MO 65775

Attention: Engineering Manager [or other title of person]

In accordance with the terms and conditions of the Agreement between us, dated _____, 20___, (i) an Application is hereby made for a Permit to make Attachments or (ii) a Notification is made regarding Overlash installations on the following Pole(s):

Pole No.	**Location**	**Attachment/Overlash**

Application
By:_____

_____
_____
(Address)

Printed Name:

Title:

Permission
Granted by:_____

_____
_____
City of West Plains

Printed Name:

Cost:

Cost Accepted: _____

5. Application shall be submitted [electronically or in person]
6. A complete description of all Facilities shall be given, including: Quantities, sizes and types of all cables and equipment. See Section 6.6 of Agreement.
7. Licensee will notify all other Attaching entities of the need to transfer and/or rearrange Attachments.
8. Licensee confirms that each Overlash Facilities meet all Standards, will not overload the Pole(s) attaching to, and that the Pole(s) Attaching to are not defective.

APPENDIX C
POLE ATTACHMENT STANDARDS AND DRAWINGS

GENERAL POLE ATTACHMENT STANDARDS INDEX

GENERAL POLE ATTACHMENT STANDARDS

A proposed tenant requesting to attach to COL owned poles or overlash existing facilities owned by the proposed tenant or another tenant on COL poles must first have an existing Pole Attachment Agreement or Joint Use Agreement in place with COL. Every proposed attachment or overlash must first be approved by COL. An application for approval shall be submitted to-COL that follows the requirements of the corresponding Agreement with the requesting tenant.

The requesting tenant must submit along with each application the required information listed in the section below. All planning costs associated with the request will be the responsibility of the tenant requesting the pole attachment or overlash.

Any existing attachment or overlash without an approved attachment or overlash request shall be considered an unauthorized attachment and subject to a penalty as determined by the related attachment agreement.

POLE ATTACHMENT AND OVERLASH APPLICATION PROCEDURES

A pole attachment and/or overlash application shall include the following:

8. The attachment application required by the corresponding Pole Attachment or Joint Use Agreement.
9. The number of poles per request will be limited to the number indicated in the corresponding attachment agreement.
10. One set of marked up maps showing the streets, addresses and pole locations of designated poles with COL pole numbers.
11. A pole loading analysis of each pole in the application using a finite element analysis program such as PLS-Pole, (Power Line Systems Inc.) or a COL approved equivalent program to calculate pole loading as required by the related Agreement. The analysis shall be done using NESC Grade C construction requirements and with .5-inch ice and 4lb./ft ^{2} wind loading. The analysis shall be approved by COL Electric Department.
12. Identify any overloaded poles and any "make ready work" necessary to meet these attachment standards and correct any existing violations.
13. Detailed drawings of the proposed attachments indicating size, weight and location of attachment.
14. COL will determine if there will be any cost related to the attachment request. Any related costs will be paid in advance before work will begin.

GENERAL REQUIREMENTS

Use of equipment brackets, standoffs, crossarms, extension arms and davit arms are not allowed. Poles shall not be boxed in. Communication cable shall not be installed on opposite sides of a pole.

Tenants are responsible for their own down guys and anchors designed to meet the NESC requirements. Attachment to-COL anchors require a submitted request and prior approval.

Proof of required easements shall be provided upon request.

All vertical runs installed by Licensee shall be placed in conduit and attached to pole using a minimum of 6" standoff brackets. U-guard and other protective covering are prohibited. Location of tenant risers shall be in accordance with COL standards.

DATE: 02/01/17 REVISED:	**GENERAL POLE ATTACHMENT STANDARDS INDEX**	**STANDARD NUMBER** **GPAS**

WIRELESS ATTACHMENT DEVICES

Only one wireless device (receiver, transmitter or combination unit) less than 6xl2x4 inches will be allowed per pole. Only one wireless provider will be permitted on a single pole.

When wireless equipment is installed above the communication space, it must be installed by COL, or a -COL approved contractor that is qualified to work in the supply space.

COL may deny any attachment request or allow with the exception to reserve pole space for any planned future-COL installation.

SUPPLY AND COMMUNICATIONS

Amplifiers and equipment other than wireless devices will not be allowed on COL poles. All communication devices requiring power shall have a disconnect switch, located on a separate meter stand. This will enable COL to disconnect power to the antennae and the battery backup, to avoid RF exposure to its employees while working around the devices. See attached standards.

A COL new service application shall be required to provide equipment power. Installation shall follow current COL Service Standards.

POLE TOP ANTENNA

14. The design and mounting requirements of all antennas must be approved by COL Electric Department prior to installation.
15. Only one antenna shall be installed per pole.
16. The antenna must be installed by COL, or a COL approved contractor that is qualified to work in the Supply Space.
17. No work shall be completed in the Supply Space without approval of the COL Electric Department.
18. All poles must be bucket truck accessible.
19. Pole Top Antenna will only be allowed on Distribution Poles.
20. Antenna shall only be allowed on tangent poles.
21. Antenna shall not be installed on equipment poles or in the Primary Zone on a pole.
22. The height of all distribution poles used to mount pole top antennas shall be increased by 5 feet above existing pole height.
23. The use of pole top extensions is prohibited.
24. Antenna coax cable shall be installed in maximum size 2-inch diameter Sch. 40 PVC conduit. Conduit supports should be installed every 5 feet. Conduit less than 1 inch may be attached to the pole with ground wire molding staples.
25. When required, two RF warning signs must be installed. One sign shall be installed near the pole top at the level where the safe approach level ends and for FCC General Population/un-controlled power levels. The second sign shall be installed near the base of the pole. These signs shall say "Warning - antenna safe approach distance is [xx] feet" and the antenna owners name and phone number. When COL work is required within the antenna approach distance,

workers will disconnect the RF power source.

26. The antenna power source shall have a lockable disconnect installed to allow the antenna and battery backup to be de-energized when required for safety.

14. Disconnect, meter and antenna equipment must be installed in accordance with the current COL Construction Standards.
15. A driven pole ground is required for each antenna installation. It shall be installed to meet COL Construction Standards.
16. If a pole with communications equipment installed needs to be replaced, NJUNS will be used to notify the attaching companies to relocate their equipment.

DATE: **02/01/17** REVISED:	**GENERAL POLE ATTACHMENT STANDARDS INDEX** continued	**STANDARD NUMBER** **GPAS**

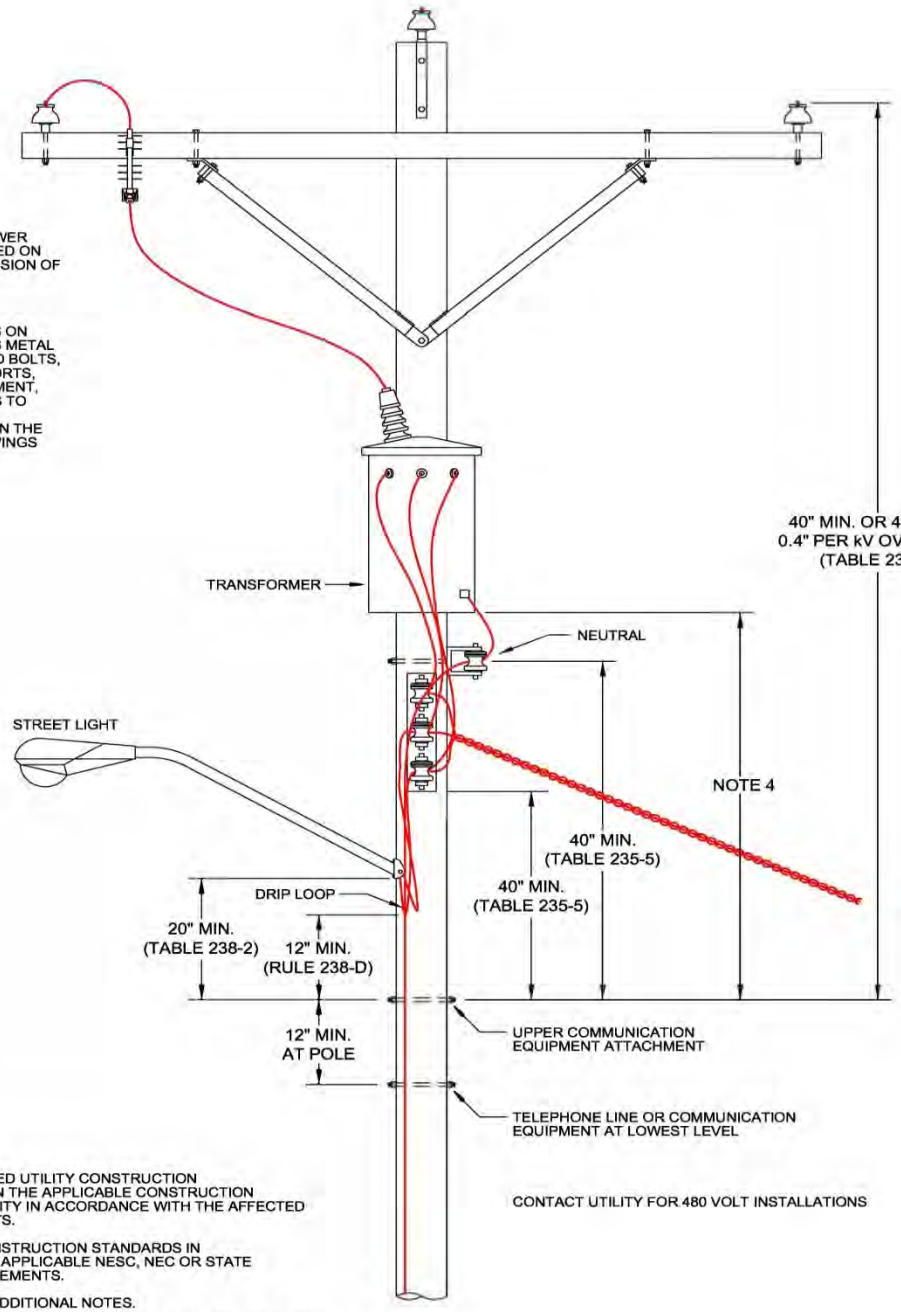
NOTES to Drawings that follow:

Standard Number A-13
Under the notes portion item C. PVC 80 and changed to Type 40 PVC conduit.

Standard Number A-17
Remove this Drawing.

NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.

LICENSEE's ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.



CONTACT UTILITY FOR 480 VOLT INSTALLATIONS

NOTES:

1. REFER TO THE ATTACHED UTILITY CONSTRUCTION STANDARDS, OR OBTAIN THE APPLICABLE CONSTRUCTION STANDARDS FROM UTILITY IN ACCORDANCE WITH THE AFFECTED UTILITY's REQUIREMENTS.
2. APPLY THE UTILITY CONSTRUCTION STANDARDS IN COORDINATION OF THE APPLICABLE NESC, NEC OR STATE STATUTE CODE REQUIREMENTS.
3. SEE DRAWING 02 FOR ADDITIONAL NOTES.
4. UTILITY CONSTRUCTION STANDARD DOES NOT ALLOW TRANSFORMER TANK TO BE LOWER THAN SYSTEM NEUTRAL OR SECONDARY.

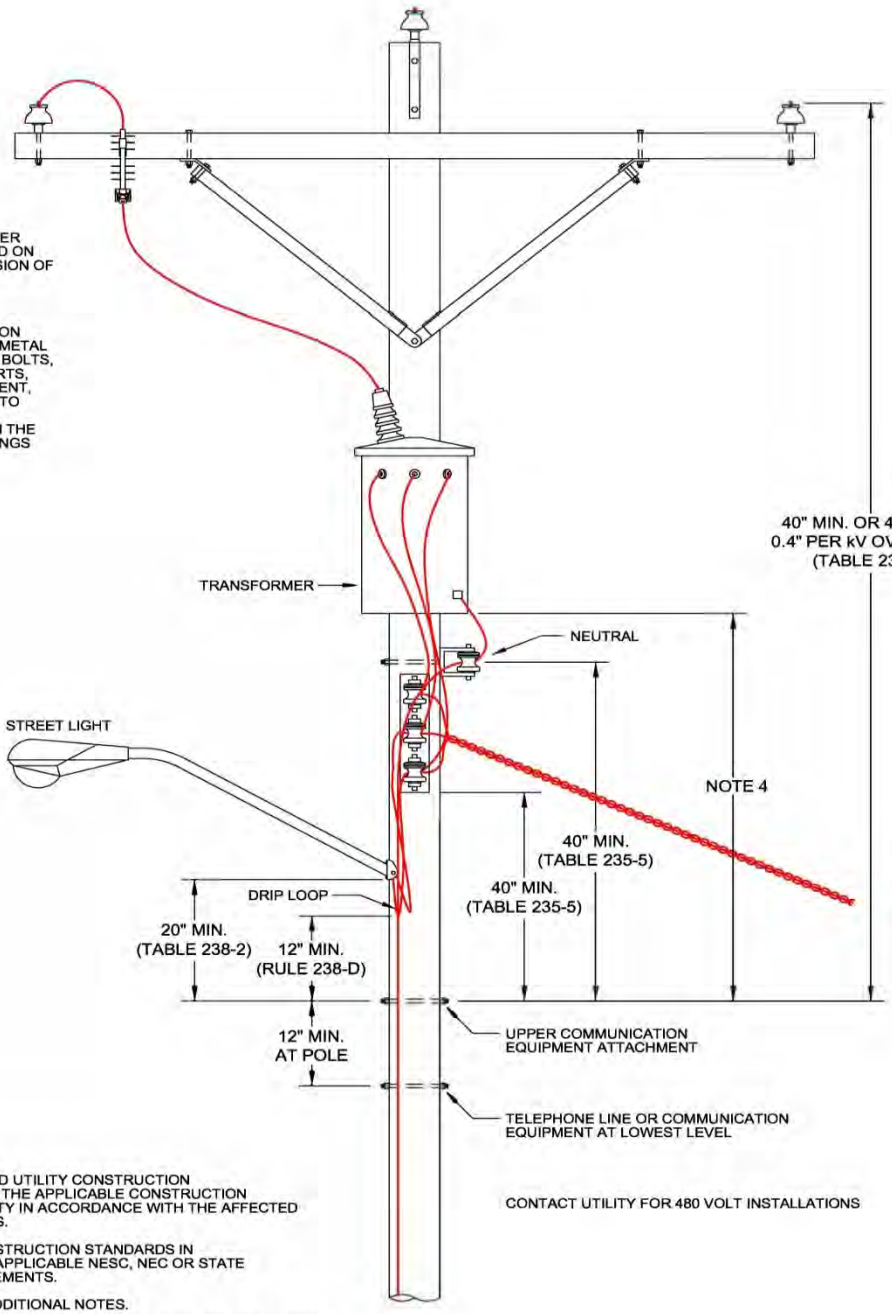
OVERHEAD MINIMUM CLEARANCES

DATE: 06/07/16

REVISED:

1

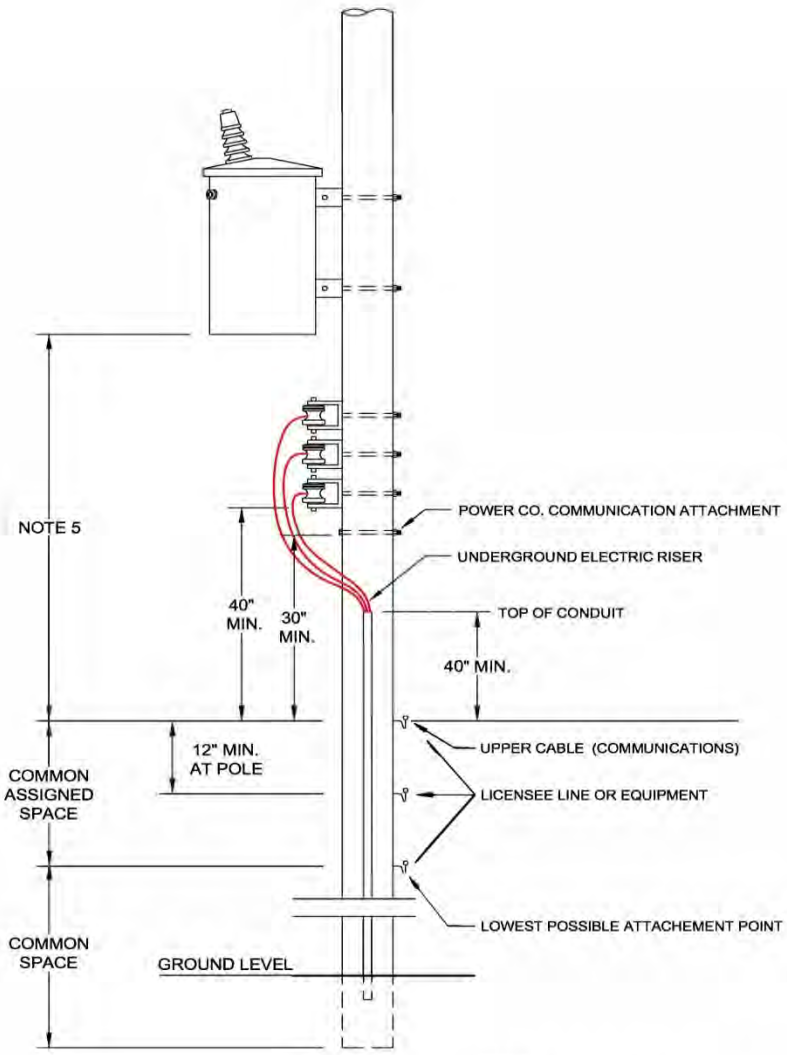
STANDARD NUMBER
A-01



NOTES:

1. REFER TO THE ATTACHED UTILITY CONSTRUCTION STANDARDS, OR OBTAIN THE APPLICABLE CONSTRUCTION STANDARDS FROM UTILITY IN ACCORDANCE WITH THE AFFECTED UTILITY's REQUIREMENTS.
2. APPLY THE UTILITY CONSTRUCTION STANDARDS IN COORDINATION OF THE APPLICABLE NESC, NEC OR STATE STATUTE CODE REQUIREMENTS.
3. SEE DRAWING 02 FOR ADDITIONAL NOTES.
4. UTILITY CONSTRUCTION STANDARD DOES NOT ALLOW TRANSFORMER TANK TO BE LOWER THAN SYSTEM NEUTRAL OR SECONDARY.

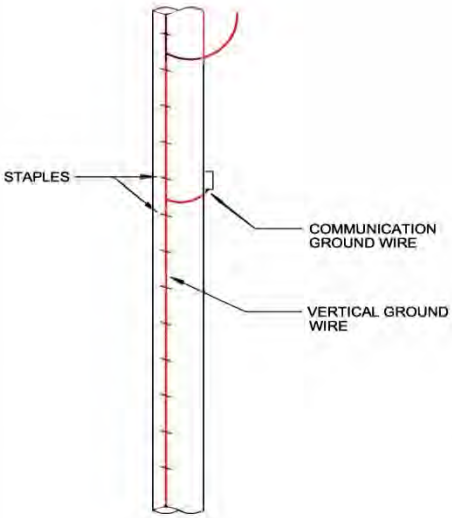
DATE: 06/07/16 REVISED: 10/17/16	OVERHEAD MINIMUM CLEARANCES	1 STANDARD NUMBER A-01

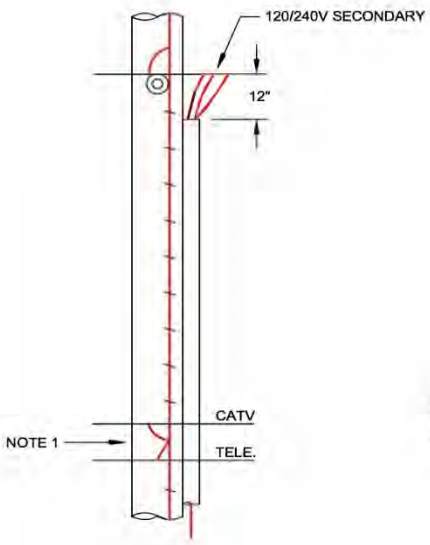


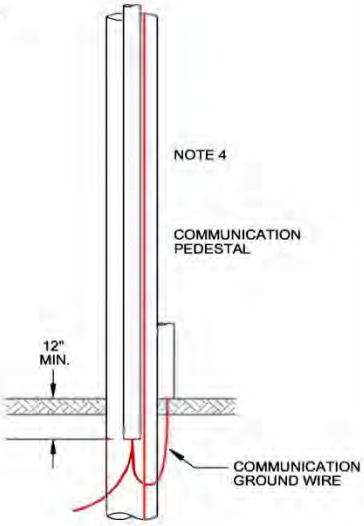
NOTES:

1. SEPARATION BETWEEN VERTICAL RUNS AND ANY METAL PARTS OR THROUGH BOLTS OF POWER OR COMMUNICATION EQUIPMENT SHALL BE AT LEAST 2" IN ANY DIRECTION. BOLTS SHALL HAVE LESS THAN 2" EXPOSED THREAD.
2. NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF THE UTILITY.
3. THE ABOVE CLEARANCES MAY HAVE TO BE INCREASED TO ALLOW FOR CODE CLEARANCE REQUIREMENT IN MID SPAN.
4. LICENSEE's ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.
5. UTILITY CONSTRUCTION STANDARD DOES NOT ALLOW TRANSFORMER TANK TO BE LOWER THAN SYSTEM NEUTRAL OR SECONDARY.

DATE: 06/07/16 REVISED: 10/17/16	OVERHEAD MINIMUM CLEARANCES	2 STANDARD NUMBER A-02







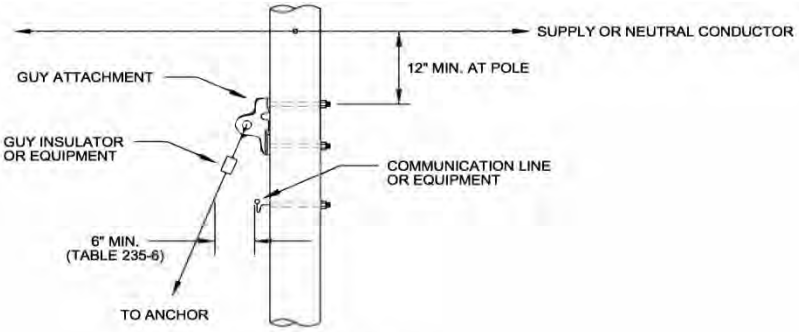
NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.

LICENSEE's ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

NOTES:

1. LICENSEE SHALL BOND TO UTILITY POLE GROUND WHEREVER UTILITY HAS A DOWN GROUND ON THE POLE. IF THE GROUND IS UNDER THE METAL U-GUARD, CONTACT UTILITY TO MAKE THE GROUND CONNECTION.
2. IF NO POLE GROUND EXISTS CONTACT UTILITY TO HAVE POLE GROUND INSTALLED.
3. BOND WIRE SHALL BE #6 BARE COPPER OR LARGER. IF BOND WIRE IS UNSUPPORTED FOR MORE THAN 12" LONG, STAPLE TO POLE.
4. WHEN COMMUNICATION's ARE UNDERGROUND, THE POWER IS OVERHEAD AND IT IS REQUIRED THAT THE COMMUNICATIONS GROUND BE INTERCONNECTED TO THE POWER SUPPLY GROUND, THE CONNECTION SHALL BE MADE BELOW GRADE.
5. IN NO CASE SHALL LICENSEE GROUND BE CONNECTED TO GUYS/ANCHORS.
6. IF A NEUTRAL ISOLATION DEVICE IS INSTALLED ON THIS POLE THE ATTACHER MUST CONTACT UTILITY FOR SPECIAL GROUNDING INSTRUCTIONS.
7. LICENSEE's MESSENGER CABLE SHALL BE BONDED TO UTILITY's POLE GROUND WIRE AT EACH POLE THAT HAS A GROUND WIRE.

DATE: 08/20/12 REVISED: 10/17/16	GROUNDING CONNECTIONS	3 STANDARD NUMBER A-03



INSULATED GUY OPTION

CONTACT UTILITY TO DETERMINE IF GUYS ARE TO BE INSULATED OR GROUNDED.

NOTES:

1. LICENSEE SHALL BE RESPONSIBLE FOR PROCURING AND INSTALLING ALL ANCHORS AND GUY WIRES TO SUPPORT THE ADDITIONAL STRESS PLACED ON THE UTILITY's POLES BY LICENSEE's ATTACHMENTS.
2. ANCHORS AND GUY WIRES MUST BE SET ON EACH UTILITY POLE WHERE THERE IS A TURN OR ANGLE AND ON ALL DEAD-END UTILITY POLES.
3. LICENSEE MAY NOT PLACE GUY WIRES ON THE ANCHORS OF UTILITY OR THIRD PARTY USER WITHOUT PRIOR WRITTEN CONSENT OF ALL ATTACHING ENTITIES AND ANCHOR OWNERS.
4. NO ATTACHMENT MAY BE INSTALLED ON A UTILITY POLE UNTIL ALL REQUIRED GUYS AND ANCHORS ARE INSTALLED, NOR MAY ANY ATTACHMENT BE MODIFIED OR RELOCATED IN SUCH A WAY AS WILL MATERIALLY INCREASE THE STRESS OR LOADING ON UTILITY POLES UNTIL ALL REQUIRED GUYS AND ANCHORS ARE INSTALLED.
5. LICENSEE's DOWN GUYS SHALL NOT BE BONDED TO GROUND OR NEUTRAL WIRE OF UTILITY's POLE AND SHALL NOT PROVIDE A CURRENT PATH TO GROUND FROM THE POLE GROUND OR POWER SYSTEM NEUTRAL.
6. ON JOINTLY USED STRUCTURES, GUYS THAT PASS WITHIN 12" OF SUPPLY CONDUCTORS AND ALSO PASS WITHIN 12" OF COMMUNICATION CABLES, SHALL BE PROTECTED WITH A SINGLE INSULATED COVERING WHERE THE GUY PASSES THE SUPPLY CONDUCTORS, UNLESS THE GUY IS EFFECTIVELY GROUNDED OR INSULATED WITH A STRAIN INSULATOR AT A POINT BELOW THE LOWEST SUPPLY CONDUCTOR AND ABOVE THE HIGHEST COMMUNICATION CABLE.

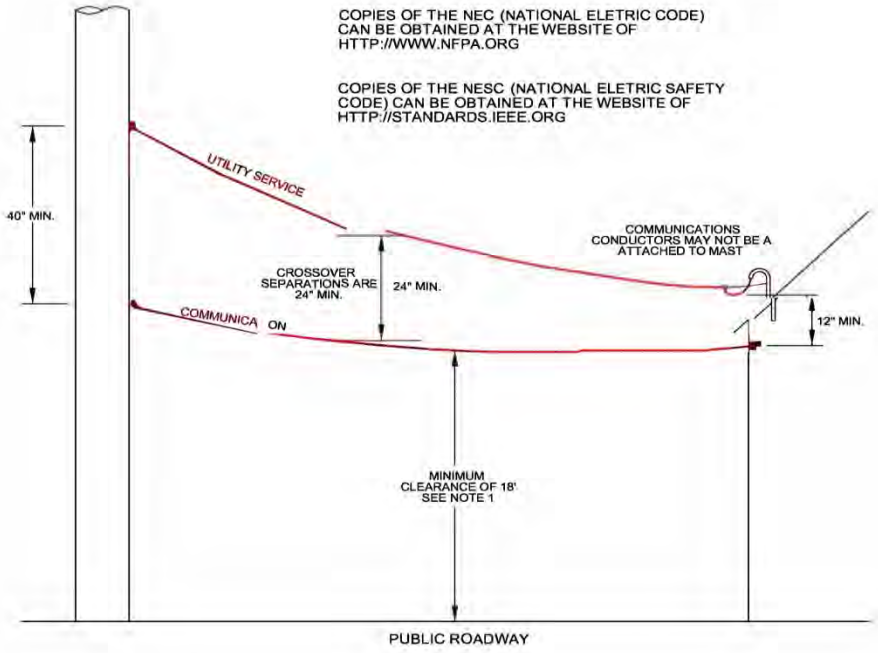
NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.

LICENSEE's ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

DATE: 08/20/12 REVISED: 10/17/16	GUY WIRE REQUIREMENTS	4 STANDARD NUMBER A-04

COPIES OF THE NEC (NATIONAL ELETRIC CODE) CAN BE OBTAINED AT THE WEBSITE OF HTTP://WWW.NFPA.ORG

COPIES OF THE NESC (NATIONAL ELETRIC SAFETY CODE) CAN BE OBTAINED AT THE WEBSITE OF HTTP://STANDARDS.IEEE.ORG



NOTES: (THE NESC CHANGES EVERY THREE YEARS. THE CLEARANCES NOTED BELOW HAVE LIMITING CONDITIONS AND MAY CHANGE. REFER TO SECTION 232 OF THE NESC FOR LATEST REQUIREMENTS.)

1. MAINTAIN MINIMUM CLEARANCE
   A) RAILROADS - 24'
   B) INTERSTATE, MODOT - 18'
   B) DRIVEWAYS - 16'
   B) WALKWAYS - 12'

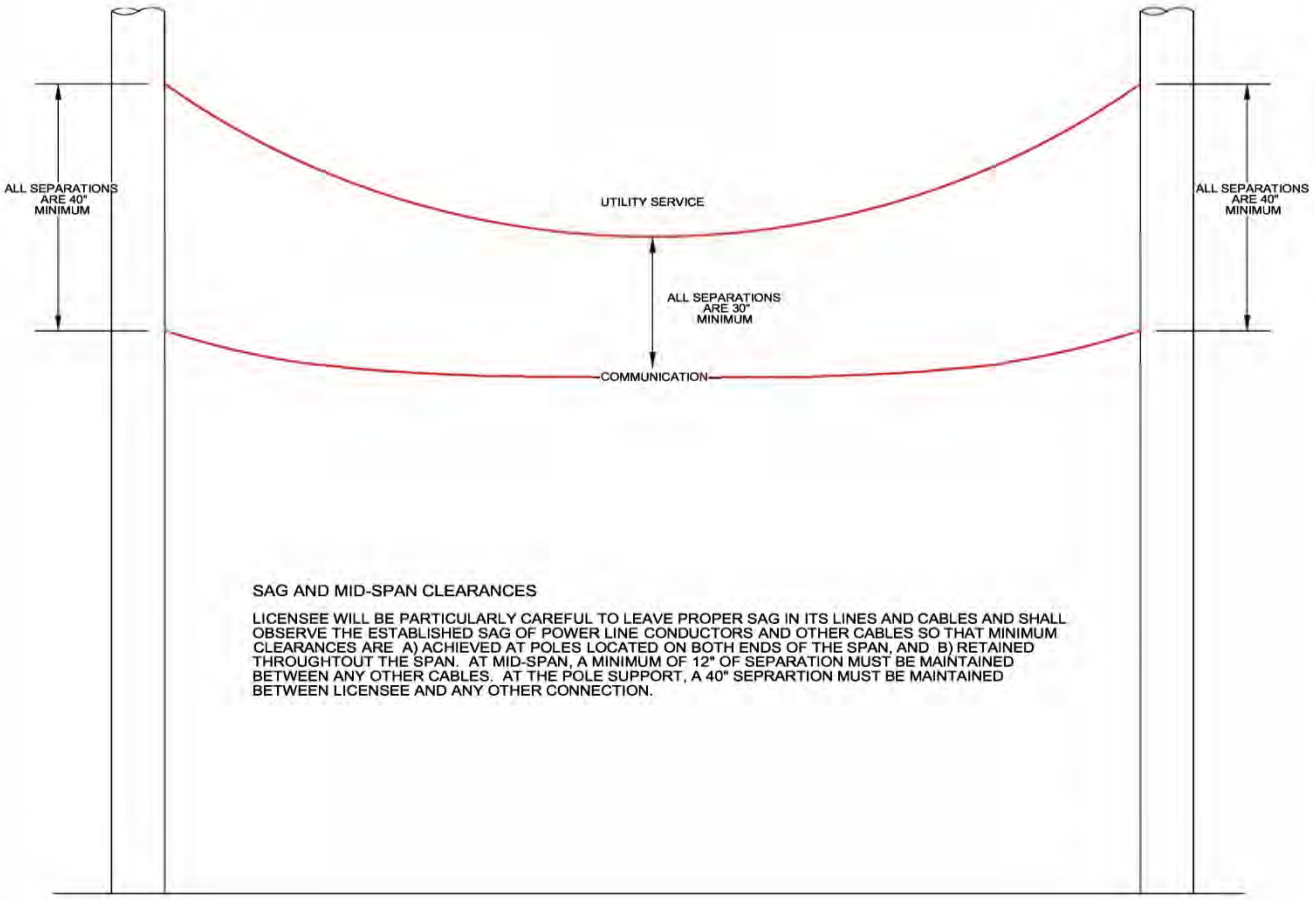
2. REFERENCE NESC CLEARANCES ON SAME SUPPORTING STRUCTURES
   A) SECTION 235
   B) SECTION 238

3. REFERENCE NESC CLEARANCES ON DIFFERENCT SUPPORTING STRUCTURES
   A) SECTION 233

NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF THE UTLITY.

LICENSEE's ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

DATE: 08/20/12 REVISED:	MINIMUM CLEARANCE TO SERVICE AND ROADWAY	6 STANDARD NUMBER A-06



SAG AND MID-SPAN CLEARANCES

LICENSEE WILL BE PARTICULARLY CAREFUL TO LEAVE PROPER SAG IN ITS LINES AND CABLES AND SHALL OBSERVE THE ESTABLISHED SAG OF POWER LINE CONDUCTORS AND OTHER CABLES SO THAT MINIMUM CLEARANCES ARE A) ACHIEVED AT POLES LOCATED ON BOTH ENDS OF THE SPAN, AND B) RETAINED THROUGHTOUT THE SPAN. AT MID-SPAN, A MINIMUM OF 12" OF SEPARATION MUST BE MAINTAINED BETWEEN ANY OTHER CABLES. AT THE POLE SUPPORT, A 40" SEPRARTION MUST BE MAINTAINED BETWEEN LICENSEE AND ANY OTHER CONNECTION.

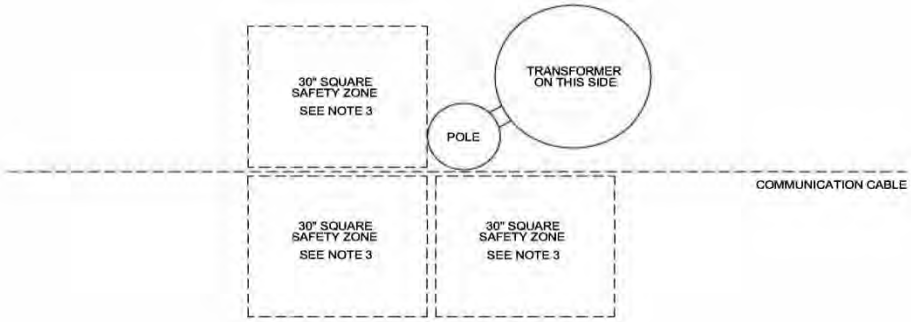
COPIES OF THE NEC (NATIONAL ELETRIC CODE) CAN BE OBTAINED AT THE WEBSITE OF HTTP://WWW.NFPA.ORG

COPIES OF THE NESC (NATIONAL ELETRIC SAFETY CODE) CAN BE OBTAINED AT THE WEBSITE OF HTTP://STANDARDS.IEEE.ORG

NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF THE UTLITY.

LICENSEE's ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

DATE: 08/20/12 REVISED: 10/17/16	MINIMUM CLEARANCE BETWEEN CIRCUITS	7 STANDARD NUMBER A-07



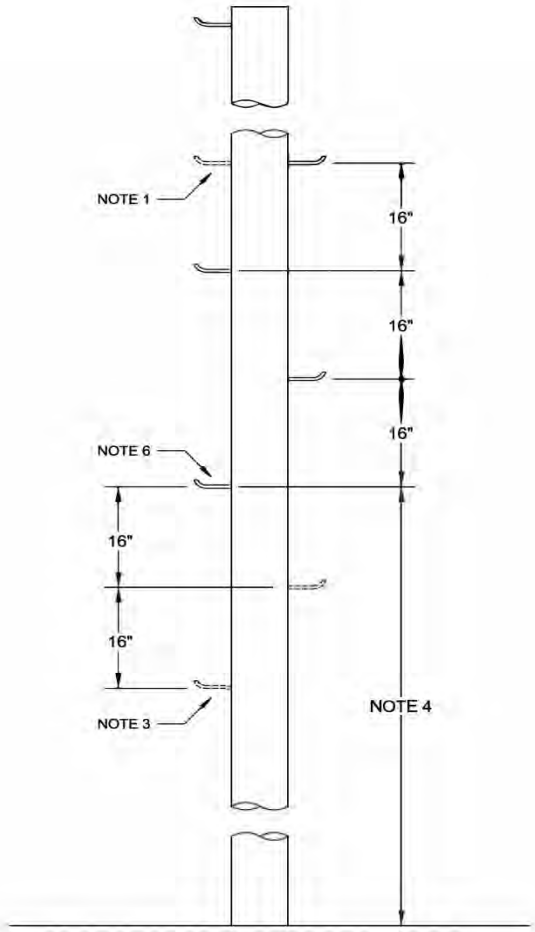
NOTES:

1. FOR NEW CABLE INSTALLATIONS LOCATE CABLE ON THE SAME SIDE OF THE POLE AS UTILITY's LOWEST CONDUCTOR.
2. STANDOFF BRACKETS TO MOUNT CABLE TO POLE ARE NOT ALLOWED WITHOUT APPROVAL OF UTILITY.
3. CLIMBING AND WORKSPACE THROUGH THE COMMUNICATION SPACE SHALL EXTEND FROM 40" BELOW THE LOWEST COMMUNICATION CABLE TO THE TOP OF THE POLE.
4. ON TRANSFORMER POLES THE COMMUNICATION SERVICE DROPS SHALL BE LOCATED SO THAT THEY ORIGINATE FROM THE MESSENGER ON THE SIDE OF THE POLE OPPOSITE THE TRANSFORMER.
5. MINIMUM CLEARANCES FOR CLIMBING AND WORKING SPACE SHALL BE FOLLOWED AS PER NESC SECTION 236.

NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF THE UTLITY.

LICENSEE's ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

DATE: 08/20/12 REVISED:	CLIMBING SPACE REQUIREMENTS	8 STANDARD NUMBER A-08



NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.

LICENSEE's ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

POLE STEPS MUST BE AUTHORIZED BY THE UTILITY BEFORE INSTALLATION.

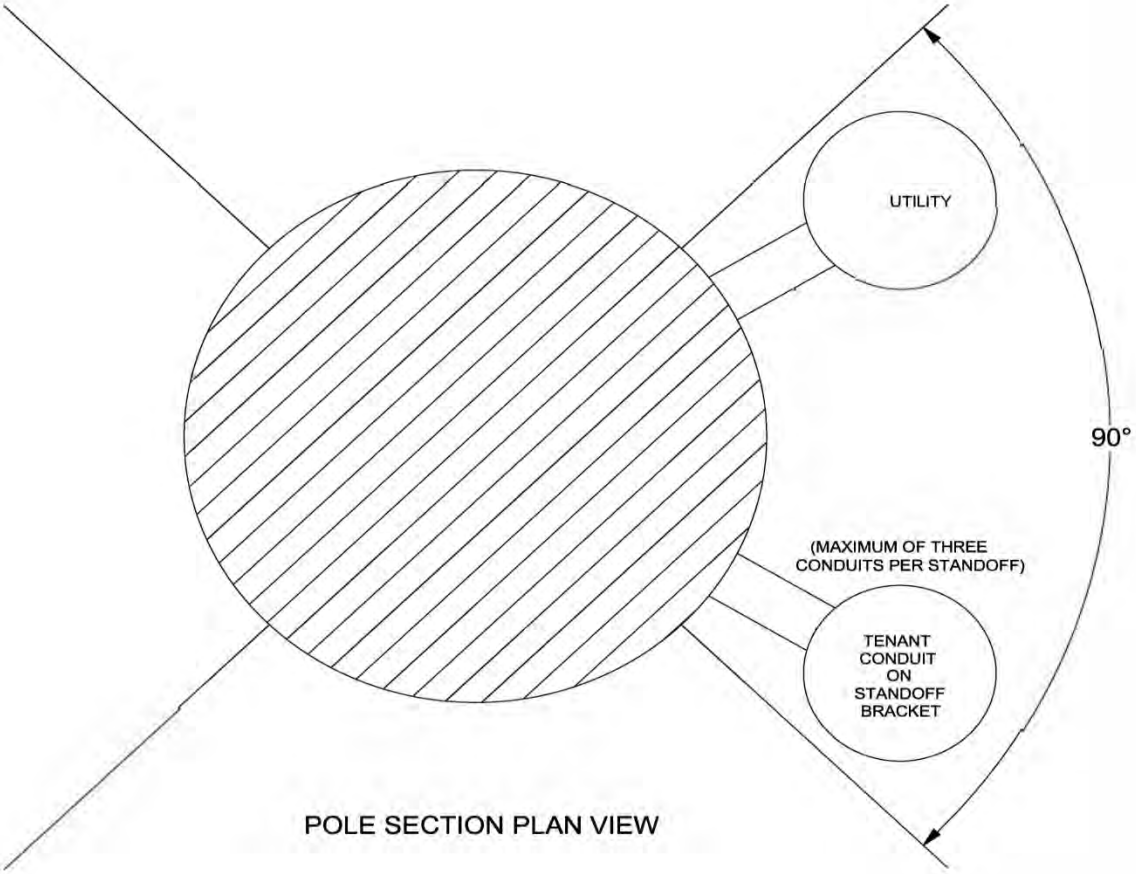
NOTES:

1. AN ADDITIONAL STEP SHALL BE PLACED OPPOSITE A STEP LOCATED WHERE WORK IS FREQUENTLY PERFORMED.
2. WHERE POLE IS SET CLOSE TO A BUILDING WITH AN ACCESSIBLE ROOF USE DETACHABLE STEPS FROM THE ROOF LEVEL UP TO A LEVEL 8 FT. ABOVE THE ROOF.
3. USE DETACHABLE POLE STEPS WHERE STEPS ARE REQUIRED BELOW THE 8 FT. LEVEL.
4. LOCATE LOWEST HOOK POLE STEP 8 FT. ABOVE THE GROUND ON DISTRIBUTION POLES AND 8 FT. ABOVE THE GROUND ON JOINT POLES.

DATE: 08/20/12 REVISED:	POLE STEP REQUIREMENTS	9 STANDARD NUMBER A-09

DIRECTION OF LOWEST POWER CONDUCTOR OFF STREET (SEE NOTE 3)

DIRECTION OF LOWEST POWER CONDUCTOR ON STREET (SEE NOTE 3)

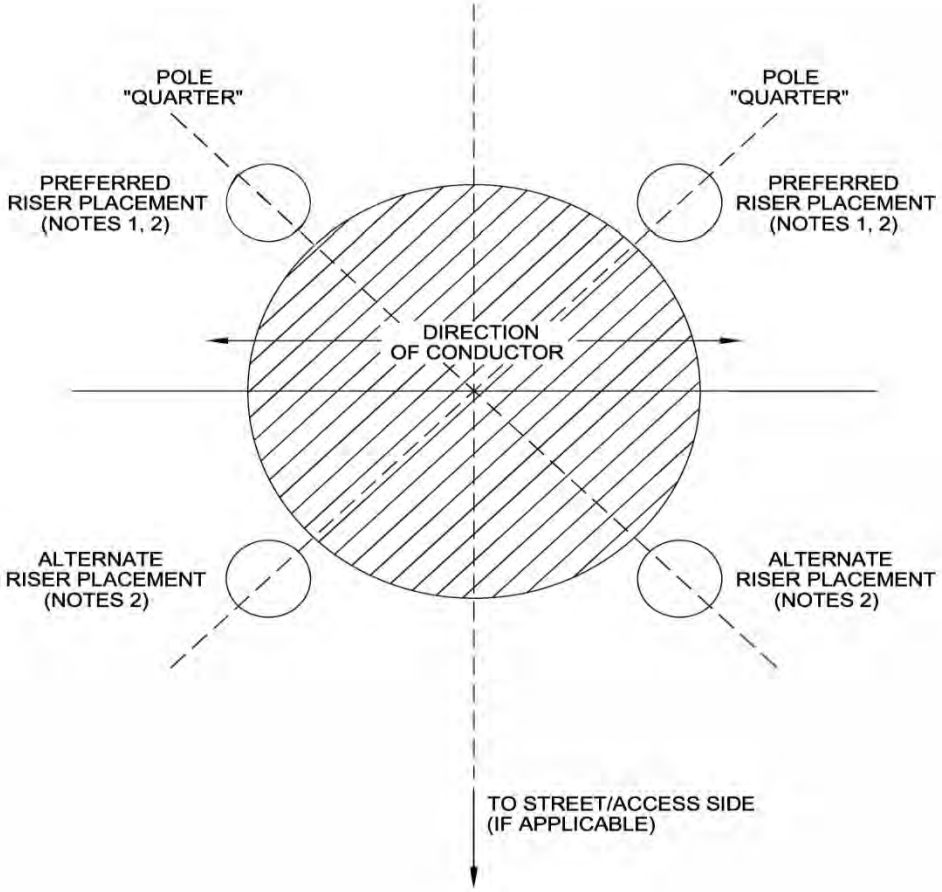


POLE SECTION PLAN VIEW

NOTES:

1. TENANTS CONDUIT ON STANDOFF BRACKETS MUST OCCUPY SAME 90°, OR QUARTER, OF POLE SECTION PERIPHERY AS UTILITY.
2. ILLUSTRATION IS AN EXAMPLE ONLY AND IS NOT INTENDED TO INDICATE A PARTICULAR ORDER OR QUANTITY OF DEVICES OR RISERS ON A POLE.
3. LOWEST POWER CONDUCTOR MAY BE SECONDARY, NEUTRAL OR PRIMARY DEPENDING ON STYLE OF CONSTRUCTION.
4. THERE SHALL BE NO MORE THAN TWO STANDOFF BRACKETS/RISERS PER POLE AS SHOWN ABOVE. ONE STANDOFF BRACKET/RISER LOCATION WILL BE RESERVED FOR FUTURE UTILITY FACILITIES.

DATE: 02/01/17 REVISED:	MAXIMUM POLE RISER OCCUPANCY	10 STANDARD NUMBER A-10



NOTES:

1. IF CONDUCTOR DOES NOT RUN PARALLEL TO STREET/ACCESS, PREFERRED RISER PLACMENT IS ON THE QUARTER OF THE POLE OPPOSITE THE STREET/ACCESS SIDE.
2. IF A RISER POSITION IS BLOCKED BY EXISTING EQUIPMENT AN ALTERNATE RISER LOCATION MUST BE CHOSEN. EXISTING FOREIGN ATTACHMENTS MAY ALSO BLOCK RISER POSITIONS. IN THIS CASE, AN ALTERNATIVE RISER POSITION MUST BE CHOSEN.

DATE: 02/01/17 REVISED:	POLE RISER ORIENTATION AND POSITIONING	11 STANDARD NUMBER A-11

NOTES:

A. STANDARD SOCKET METER INSTALLATION. SOCKET FURNISHED BY UTILITY DEPARTMENT AND INSTALLED BY CUSTOMER.

B. INSULATED BUSHING FURNISHED AND INSTALLED BY CUSTOMER.

C. TYPE 80 PVC CONDUIT AND SLIP-FITTER FURNISHED AND INSTALLED CUSTOMER.
* OCCASSIONALLY THE CUSTOMER'S METER SOCKET IS LOCATED AT A LOWER ELEVATION THAN THE UTILITIES TRANSFOMER, PEDESTAL OR SECONDARY CONNECTION. OTHER MEASURES TO PROHIBIT WATER RETENTION MAY BE RECOMMENDED BY THE CUSTOMER OR CUSTOMER'S AGENT FOR APPROVAL BY THE UTILITY.

D. DO NOT USE CENTER KNOCKOUT FOR INCOMING CONDUIT.

E. ONLY CONTINUOUS NON-METALLIC PVC TYPE DB SCHEDULE 40 CONDUIT, FURNISHED AND INSTALLED, WITHOUT SHARP BENDS OR INDENTATIONS, BY CUSTOMER SHALL BE USED FOR SERVICE. UTILITY TO INSPECT BEFORE BACKFILLING.

F. CUSTOMERS MUST PROVIDE AND INSTALL CONDUIT AND CABLE. EXCESS CABLE SHALL BE LEFT HANGING FROM WEATHERHEAD AT TOP OF RISER FOR UTILITY TO CONNECT TO SECONDARY.

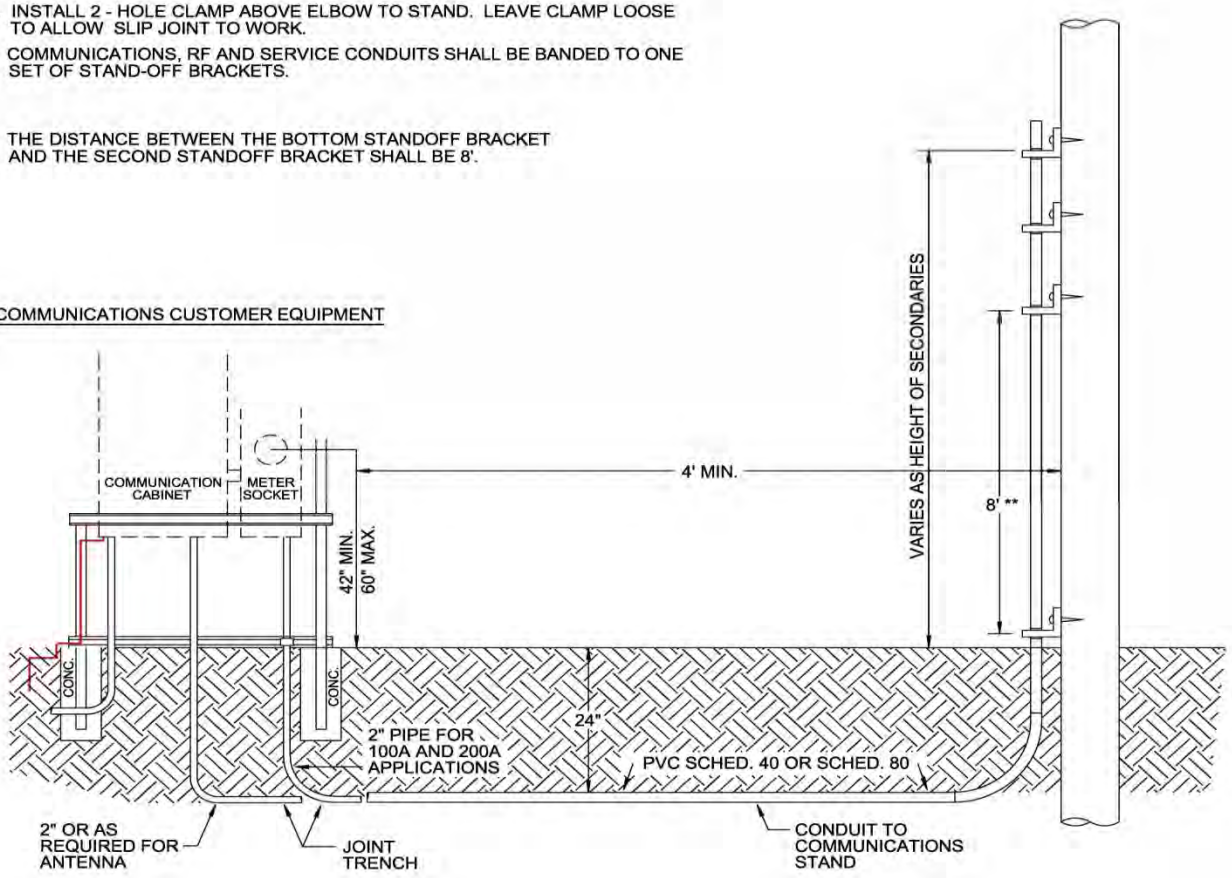
G. CONDUITS MAY BE INSTALLED IN JOINT TRENCH.

H. INSTALL 2 - HOLE CLAMP ABOVE ELBOW TO STAND. LEAVE CLAMP LOOSE TO ALLOW SLIP JOINT TO WORK.

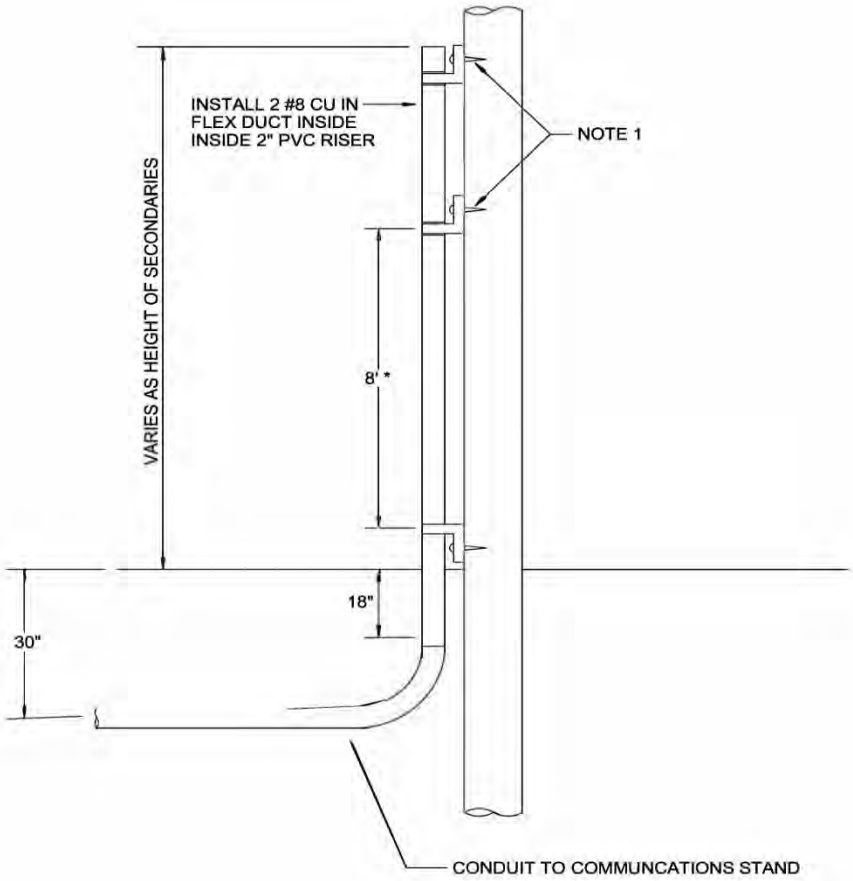
J. COMMUNICATIONS, RF AND SERVICE CONDUITS SHALL BE BANDED TO ONE SET OF STAND-OFF BRACKETS.

** THE DISTANCE BETWEEN THE BOTTOM STANDOFF BRACKET AND THE SECOND STANDOFF BRACKET SHALL BE 8'.

COMMUNICATIONS CUSTOMER EQUIPMENT



DATE: 02/01/17 REVISED:	CABLE RISER FOR COMMUNICATION TERMINAL POLES	13 STANDARD NUMBER A-13

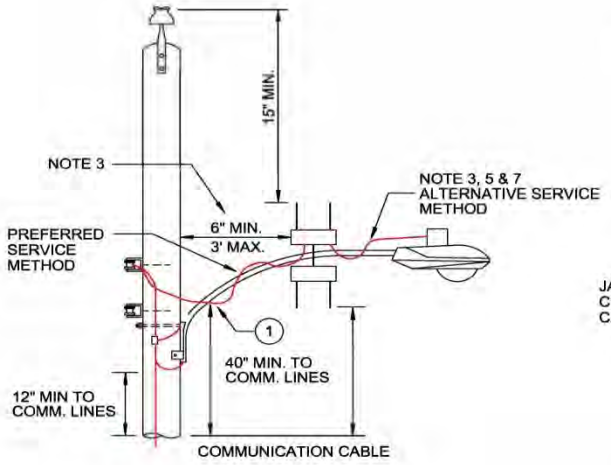


NOTES:

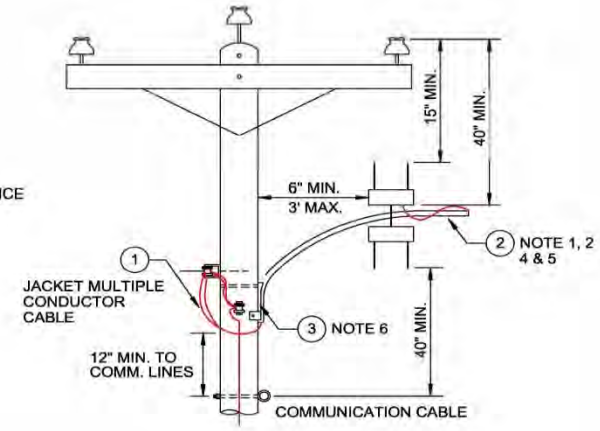
1. INSTALL PIPE AS HIGH AS CONNECTIONS WILL ALLOW. INSTALL TWO STANDOFF BRACKETS PER 10' SECTION OF PIPE ABOVE BOTTOM SECTION.

* THE DISTANCE BETWEEN THE BOTTOM STANDOFF BRACKET AND THE SECOND STANDOFF BRACKET SHALL BE 8'.

DATE: 02/01/17 REVISED:	CABLE RISER FOR COMMUNICATION TERMINAL POLES	14 STANDARD NUMBER A-14



EXISTING OPEN WIRE SECONDARY
AND STREET LIGHT

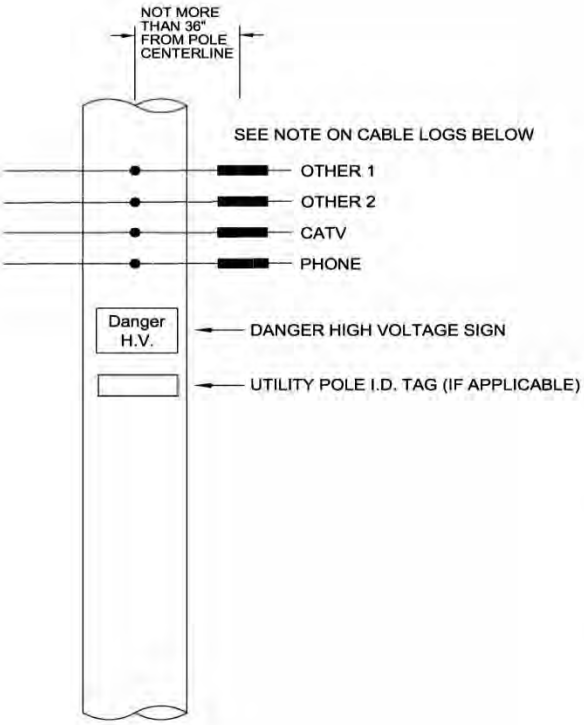


CABLE SECONDARY - NO STREET LIGHT

NOTES:

1. SUPPLY CABLE FOR PACKET ANTENNA & COMMUNICATION EQUIPMENT TO BE JACKETED MULTIPLE CONDUCTOR CABLE.
2. IF THERE IS NO EXISTING STREET LIGHT BRACKET ARM USE BRACKET ARM APPROVED BY UTILITY ENGINEERING. WHEN A BRACKET ARM IS INSTALLED SOLELY TO MOUNT COMMUNICATION EQUIPMENT THE JACKETED MULTIPLE CONDUCTOR CABLE SHOULD BE INSTALLED INSIDE THE BRACKET ARM.
3. MAXIMUM WEIGHT OF COMMUNICATION EQUIPMENT NOT TO EXCEED 15 LBS. WHEN INSTALLED ON EXISTING STREET LIGHT BRACKET ARM. COMMUNICATION EQUIPMENT TO BE INSTALLED A MAXIMUM 3' FROM POLE ON EXISTING BRACKET ARM.
4. CUSTOMER TO PROVIDE AND INSTALL BRACKET ARM, CONNECTORS AND JACKETED MULTIPLE CONDUCTOR CABLE AS REQUIRED.
5. TO INSTALL AND MAINTAIN EQUIPMENT WORKERS MUST BE QUALIFIED TO WORK IN SUPPLY SPACE AND USE SUPPLY WORK RULES AND METHODS.
6. BRACKET ARM SHALL BE BONDED TO POLE GROUND WITH #6 S.D. BARE COPPER CONDUCTOR.
7. ALTERNATE SERVICE METHOD FROM EXISTING STREET LIGHT MUST BE APPROVED BY UTILITY ENGINEERING PRIOR TO INSTALLATION.

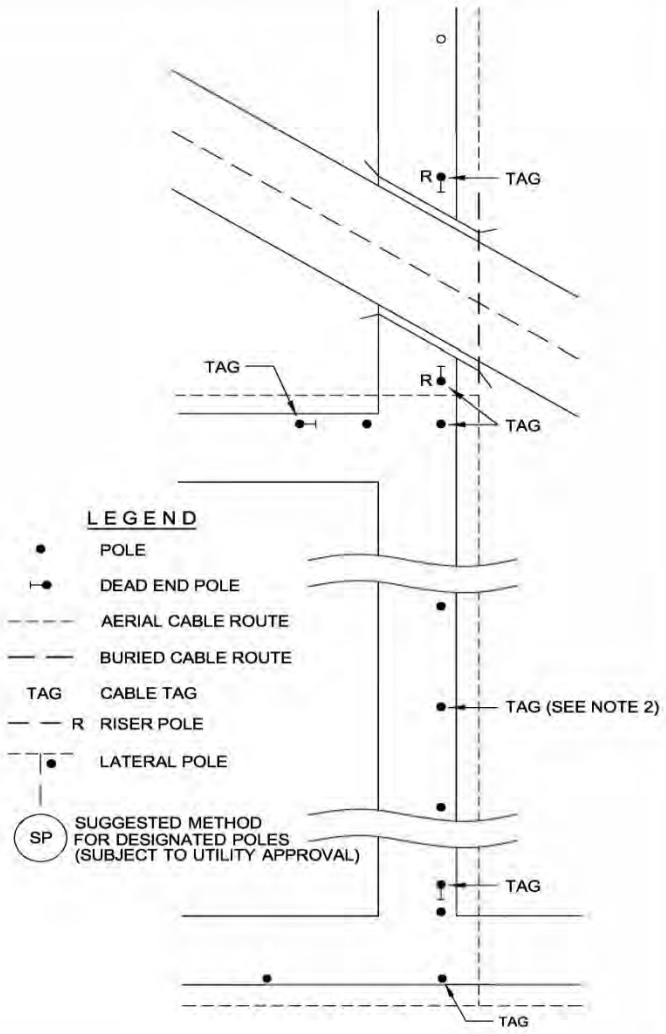
DATE: 02/01/17 REVISED:	ANTENNA MOUNTED IN SUPPLY SPACE WIRELESS ATTACHMENT DEVICE	17 STANDARD NUMBER A-17



SUGGESTED METHOD FOR DESIGNATED POLES
(SUBJECT TO UTILITY APPROVAL)

CABLE OWNER
PHONE NUMBER
REPEAT SO INFORMATION IS VISIBLE
FROM ALL SIDES ON THE WRAPPED TAG

ROLLED CABLE TAG WIDTH TO BE 5 INCHES OR GREATER. TAG DIAMETER SIZED TO FIT CABLE. ALL TO BE UV RESISTANT MATERIAL AND PRINTING.



NOTES:

1. TAGS SHOULD BE INSTALLED ON LATERAL AND DEAD END POLES AND AT THE TERMINATION POINT OF UNDERGROUND CABLE RUNS.
2. TAGS SHOULD BE INSTALLED AT LEAST EVERY 3RD POLE.
3. BURIED CABLE SIGNS SHOULD BE INSTALLED EVERY 1,000 FEET BETWEEN RISER POLES AS WELL AS ON BOTH RISER POLES.
4. TAG LOCATIONS SHOWN ABOVE ARE MINIMUM LOCATIONS. TAGS MAY BE INSTALLED AT ADDITIONAL LOCATIONS AS DEEMED NECESSARY FOR ADEQUATE IDENTIFICATION.

DATE: 01/31/17 REVISED: 06/16/17	POLE TAG REQUIREMENTS	99 STANDARD NUMBER A-99

APPENDIX D
ANNUAL ADDITIONAL ATTACHMENT REPORT

Consistent with Article of the Agreement, the Annual Pole Attachment Report shall include the following:

The number of Poles on which Licensee has installed Risers and Service Drops for which no Permit was required: _____.

The number of Attachments that have become Nonfunctional during the relevant reporting period: _____.

Provide Pole List with the following:

Pole Number	Description of Nonfunctional Attachment and Date it was Nonfunctional

The list of Attachments that has been removed from Poles during the relevant reporting period:

Provide Pole List with the following:

Pole Number	Description of Equipment Removed	Date of Removal