No. 19-70339

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMERICAN PUBLIC POWER ASSOCIATION

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

On Petitions for Review of an Order of
the Federal Communications Commission

BRIEF OF *AMICI CURIAE* IOWA ASSOCIATION OF MUNICIPAL UTILITIES, MINNESOTA MUNICIPAL UTILITIES ASSOCIATION, MISSOURI ASSOCIATION OF MUNICIPAL UTILITIES, AND ARKANSAS MUNICIPAL POWER ASSOCIATION IN SUPPORT OF PETITIONER AMERICAN PUBLIC POWER ASSOCIATION

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CORPORATE DISCLOSURE STATEMENT PURSUANT TO FRAP 26.1

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae*, the Iowa Association of Municipal Utilities, Minnesota Municipal Utilities Association, Missouri Association of Municipal Utilities and Arkansas Municipal Power Association, state that they are not subsidiaries of any other corporation and no publicly held corporation owns 10 percent or more of any *amici curiae* organization's stock.

Dated: June 17, 2019

/s/ Terry M. Jarrett
Terry M. Jarrett

STATEMENT REGARDING CONSENT TO FILE AND AUTHORSHIP

All parties consent to the filing of this brief.

No counsel for a party authored this brief in whole or in part, and no counsel for a party, nor any person other than the *amici curiae*, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E). Undersigned counsel further discloses that he and his law firm previously served as party counsel for the City of North Little Rock, Arkansas, and the Missouri Association of Municipal Utilities ("MAMU") in this case and that MAMU were previously parties (petitioners) in Case No. 19-70148. North Little Rock and MAMU withdrew their petition for review, and are no longer parties in the case.

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici curiae are state-wide associations representing municipal utilities.

The Iowa Association of Municipal Utilities ("IAMU") represents 754 municipal broadband, electric, gas, and water utilities statewide, and maintains a marketing relationship with a large number of associate member businesses.

The Minnesota Municipal Utilities Association ("MMUA") represents the interests of Minnesota's 100-plus municipal electric and natural gas utilities, and provides a wide variety of services to its members.

The Missouri Association of Municipal Utilities ("MAMU") represents 110 community-owned (municipal), locally-regulated electric, natural gas, water, wastewater, and broadband utilities that work together for the benefit of the customers.

The Arkansas Municipal Power Association ("AMPA") is a group of 14 municipal power companies, each serving their cities and communities to provide the most reliable electricity service at the best possible prices. AMPA's mission is to marshal efforts among its city members to find better and the most reliable way to serve our customers.

This case involves a challenge of the Ruling and Order of the Federal Communications Commission ("FCC") captioned *Accelerating Wireless and Wireline Deployment by Removing Barriers to Infrastructure Investment*,

Declaratory Ruling and Third Report and Order, FCC 18-133 ("Order"). The Order was published in the Federal Register, Vol. 83, p.51867, *et. Seq.*, on October 15, 2018 ("Order). *Amici Curiae* have a strong interest in the disposition of this case because the Order is a blatant effort by the FCC to strengthen the hand of carriers in negotiations with local governments over small wireless deployment, and to limit the ability of local governments to negotiate to protect the public interest around small wireless facilities. The ultimate result of this Order will significantly and negatively impact local governments' ability to protect and serve public property, safety and welfare. *See* Fed. R. App. P. 29(a)(3)(A).

As state associations representing hundreds of municipal utilities in four Midwest States, *Amici Curiae* submits this brief because they are in a unique position to provide information and context on how the Order jeopardizes the ability of municipal utilities to maintain the public interest, safety and welfare in their respective States.

INTRODUCTION AND SUMMARY OF ARGUMENT

From the perspective of the municipal utilities represented by *Amici Curiae*, the FCC's Order has very real effects that could impair their ability to provide safe and reliable electric service to their citizens at an affordable price. Over 100 local governments from 22 states filed comments in opposition to the proposed Order

during the FCC's comment period.[1] From these comments, a few common themes emerged:

- The FCC Order invalidates existing local ordinances, policies and agreements that protect and are acceptable to both local governments and wireless providers;
- The FCC Order undermines the sound discretion of local government officials with a duty to protect public infrastructure and the health, safety and welfare of its residents;
- Capping of fees below actual costs creates a subsidy for private investment, resulting in a transfer of wealth from public to private enterprises;
    - In the case of municipal electric utilities, the wealth transfer is from electric utility ratepayers to private telecommunications companies;
- The FCC Order would unfairly shift the financial burden to cities to justify fees in excess of those identified as presumptively reasonable, even those already established as reasonable through arms-length negotiations;
- The FCC Order imposes unfair and inappropriate timelines on cities to review small cell wireless applications.
- The FCC's definition of "effective prohibition" is overly broad; and

[1] National League of Cities, *Cities Voice Concern Over FCC's Small Cell Ruling,* (Sept. 26, 2018), https://www.nlc.org/article/counties-cities-voice-concern-over-fccs-small-cell-ruling.

- The 60-day shot clock will compromise safety and quality controls.

To summarize, most cities are opposed to any laws or rules that limit local authority to maintain city aesthetics and safety, impose unreasonably short timelines to review and process applications, prevent recovery of reasonable permitting costs, and prohibit fair market rates for the use of city assets.

It is important to note that local governments are strongly committed to the timely and successful deployment of 5G facilities and services throughout the nation. Local governments led and supported public and private partnerships that resulted in the successful introduction and expansion of 4G infrastructure and services.[2] Local governments understand that their citizens want access to reliable, affordable high-speed broadband.

However, local governments also have an important responsibility to protect the health, safety and welfare of their residents. Particularly, municipal utilities are responsible for the safety, security, and reliability of critical electrical infrastructure. These important responsibilities are endangered by the Order.

[2] National League of Cities, *Cities Voice Concern Over FCC's Small Cell Ruling,* (Sept. 26, 2018), https://www.nlc.org/article/counties-cities-voice-concern-over-fccs-small-cell-ruling.

ARGUMENT

I. Federal Law and Public Policy Considerations Strongly Favor Local Control over FCC Intrusion

Federal policy has always been to preserve local control over the regulation of pole attachments. In 1978, Congress passed the Pole Attachment Act, which added section 224 to the Communications Act of 1934, to require the FCC to establish subsidized rates for pole attachments for the then-new cable industry.[3] Under the law, public power utilities and rural electric cooperatives were exempted from this requirement "because the pole attachment rates charged by municipally owned and cooperative utilities [were] already subject to a decision-making process based upon constituent needs and interests."[4] This exemption continued through multiple telecommunications reform efforts, including enactment of the Telecommunications Act of 1996, because Congress maintained that the existing process is appropriate and adequate. Attachment rates for public power utilities are usually determined at the local level and if a utility is seeking excessive pole-attachment rates, the affected attacher has the remedy of challenging the rate at the

[3] 47 U.S.C. § 224.

[4] American Public Power Association, *Preserving the Municipal Exemption from Federal Pole Attachment Regulations,* (January 2019), https://www.publicpower.org/policy/preserving-municipal-exemption-federal-pole-attachment-regulations.

local level.[5] The municipal exemption contained in section 224 of the Communications Act remains in effect today.

From a public policy perspective as well as for practical considerations, it is much preferable for local governments to determine the acceptable parameters for allowing small wireless facilities to be attached to infrastructure owned by their taxpayers. Each city has its own unique issues and concerns that cannot be shoe-horned into a one-size-fits-all Federal mandate.

Many cities have design districts or historic districts, where streets are lined with decorative poles or traffic lights that exhibit specific designs. Typically, these areas may be tourist areas and a major source of income for the city. Local governments may need to require wireless providers to follow custom design guidelines or concealment methods to preserve and protect the aesthetic look and feel of the area.

For utility pole attachments, it is critically important that local governments have the authority to regulate small wireless facility installations so that they do not interfere with the operation of the utility pole or its primary uses. Utility poles are a part of the electric distribution system, which contain energized wires that are very dangerous to anyone who gets into the electric space. Local governments must retain the ability to protect these structures and their primary uses by

[5] *Id.*

establishing limits on the space available for collocation, how large the new equipment can be, what types of structural analyses wireless providers need to complete before installing new equipment on the poles, who is going to install the small wireless facilities on the poles, and guidelines for when and how utility poles need to be replaced for safety concerns. A city must have the ability to protect the long-term durability and safety of those important city-owned assets and prioritize their primary purpose of providing utility services to residents.

Local governments are more experienced than the federal government in determining the fair market value of leasing their facilities for use by wireless providers. They are also more aware of how much time and effort needs to be expended to adequately review and consider applications from wireless providers to ensure that city assets are protected. For example, 40% of MMUA member municipal utilities have fewer than 1,000 customers, and the same can be said for the other *Amici* parties. Those small municipal utilities simply do not have the resources to review and process a large influx of small cell applications in the time allotted by the FCC Order. Thus, picking an arbitrary deadline for considering complicated data and information does not promote a safe and reliable deployment of 5G technology —in fact, it inhibits such deployment.

It is important here to note the difference between "governmental vs. proprietary" functions of local governments for two reasons. First, in many

jurisdictions, the law considers the operations of municipal utilities to be a proprietary function for a local government. For this reason, the state laws in Iowa, Minnesota and Missouri dealing with small cell wireless attachments all exempt municipal utilities. The wireless providers in those states did not object to those exemptions because they realize that cities run their utilities like a private business, not like a governmental entity, and always intended to negotiate with municipal utilities separately from city governments. Second, even in states like Arkansas that do not recognize the legal distinction between governmental and proprietary actions, cities still operate their utilities like private businesses, which require different negotiations than cities with no utilities, mainly because of safety issues dealing with electric wires on utility poles. Given these high stakes, it is absolutely essential for municipal utilities to be involved in the development of ordinances, policies and agreements on pole attachments with wireless providers.

Courts have previously recognized this regulatory versus proprietary distinction – e.g., issuing permits for the use of the public right of ways – as opposed to when they are acting in a proprietary capacity, such as when they lease or rent utility facilities or property.[6] Further, the FCC itself recognizes this

[6] *Qwest Corp. v. City of Portland*, 385 F.3d 1236, 1240 (9th Cir. 2004) (recognizing that Section 253(a) preempts only "regulatory schemes"); *Sprint Spectrum v. Mills*, 283 F.3d 404, 421 (2d Cir. 2002) (finding that Section 332(c)(7) "does not preempt nonregulatory decisions of a local governmental entity or instrumentality acting in its proprietary capacity").

distinction as evidenced by one of its prior decisions in 2014, when it stated that neither §253 or §332 apply to the "non-regulatory decisions of a state or locality acting in its proprietary capacity."[7]

Cities already know that the best policy for promoting 5G deployment is to allow local governments to set their own reasonable rules, processes and standards for doing so. Sadly, the FCC did not consider local government perspectives when crafting its Order. Cities, and particularly utilities, were sorely underrepresented in the rulemaking process. Blair Levin, a non-resident senior fellow at the Brookings Institution, exposed the FCC's bias against local authority:

> A major tactic in the FCC's effort to regulate cities is through its Broadband Deployment Advisory Committee (BDAC) process. The stated goals of the BDAC are to accelerate and broaden deployment of next-generation broadband networks and reduce the digital divide. I think all would agree those are worthy goals. However, even if motivated by the right reasons, the BDAC suffers from significant failures of design and execution.
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> ***
>
> Unfortunately, the FCC overwhelmingly filled the BDAC with industry representatives.
>
> Three-quarters of the BDAC membership works for telecommunications companies, trade organizations that represent these companies, or think tanks that have consistently opposed regulation of private telecommunications providers. Only 10 percent of the original members were from city or state governments, and there were neither academics nor

[7] *In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facility Siting Policies,* WT Docket No. 13-238, Report and Order, 29 FCC Rcd. 12865 (2014), at ¶239.

> think tank persons whose views would be considered neutral or pro-municipal rights.
>
> It wasn't just cities that were underrepresented. Electric utilities, for example, own 65 to 70 percent of the utility poles in this country, a critical asset in deploying any next-generation broadband network and particularly critical to deploying the micro-cell radios on which 5G wireless networks will depend. Yet those utilities only had two seats on the BDAC.
>
> Further, instead of treating cities as the legitimate representatives of the constituencies that elected them, FCC officials argued that local representatives may not know what is best for their local constituents. Responding to the complaint that the BDAC was composed almost entirely of industry representatives, a key FCC official admitted that the FCC didn't really care about what cities thought, saying, "we didn't want to choose someone from, say, a municipality that needs a blueprint, because they're not going to be the ones to help design that blueprint." An FCC commissioner justified preemption of cities on the grounds that cities were trying to "impose their will" on carriers. This is more than a bit odd considering unelected bureaucrats at a federal agency preempting elected local officials is the textbook definition of imposing one's will."[8]

II. Local Governments are Not Materially Impeding 5G Deployment

As support for its Order, and mainly relying on anecdotes from the small cell wireless industry, the FCC determined that many state and local jurisdictions are materially impeding 5G deployment, justifying Federal preemption of state and local laws.[9] While the FCC's invocation of "effective prohibition" to justify its

[8] Blair Levin, *The FCC and Cities: The Good, The Bad, and The Ugly*, (June 15, 2018, https://www.brookings.edu/research/the-fcc-and-cities-the-good-the-bad-and-the-ugly/.

[9] FCC Order at ¶ 25, 26.

Order is legally questionable,[10] *Amici Curiae* submits this brief to provide real world examples showing the fallacy of the FCC's determination. In *Amici Curiae's* experiences in Iowa, Minnesota, Missouri, and Arkansas, local governments, municipal utilities, and wireless providers are working together in a constructive and mutually beneficial manner to develop ordinances, policies, and agreements.

One of the reasons that this type of collaboration is possible is because of a level playing field in negotiating reasonable small cell deployment policies and agreements. The express ability of parties to freely negotiate and honor the terms of arms-length agreements is fundamental to a fair legal system providing a predictable, efficient, and mature marketplace. This collaborative process is a balance of maximizing mutual interests toward a shared goal—accelerating 5G deployment.

The FCC Order destroys this delicate balance.

[10] *Sprint Telephony PCS, L.P. v. County of San Diego*, 543 F.3d 571, 579 (9th Cir. 2008) ("a plaintiff must establish either an outright prohibition or an effective prohibition on the provision of telecommunications services; a plaintiff's showing that a locality could *potentially* prohibit the provision of telecommunications services is insufficient.").

III. The FCC Order Will Significantly and Negatively Impact Local Governments' Ability to Protect and Serve Public Property, Safety and Welfare.

One of the major problems with the FCC Order is that it will invalidate state laws, city ordinances, and agreements that were intended to advance small wireless deployment in a safe and reasonable manner while also protecting critical municipal utility infrastructure. These state laws, city ordinances, and agreements were designed to preserve a municipal utility's ability to protect public property, and the safety and welfare of its citizens.

1. Iowa

On May 9, 2017, Iowa Governor Terry Branstad signed into law a measure to streamline and standardize rules that will accelerate the deployment of small cell technology, after it passed the Senate 50-0 and the House 93-0.

The law, which took effect July 1, 2017, makes deployments in the right-of-way considered as a permitted use, as well as establishing an application process, reasonable fees, and a shot clock for the approvals. Municipalities in Iowa were collaborative in writing the bill, which improved the final version.[11]

[11] J. Sharpe Smith, *Iowa Joins 7 States Passing Small Cell Bills,* AGL Media Group (May 15, 2017), https://www.aglmediagroup.com/iowa-passes-small-cell-legislation/.

The law is entitled the "Iowa Cell Siting Act."[12] It applies to a state, county, or city governing body, board, agency, office, or commission authorized by law to make legislative, quasi-judicial, or administrative decisions relative to an application, defined as "authority" under the Act.[13]

Importantly for Iowa municipal utilities, the Act provides: "Notwithstanding any provision to the contrary, an authority shall not mandate, require, or regulate the installation, location, or use of transmission equipment on a utility pole."[14] The FCC Order voids this vital protection intended to preserve the ability of municipal utilities to protect their critical utility infrastructure and preserves their ability to provide safe and reliable electric service.

IAMU has endorsed an "Iowa Model Wireless Technology Siting Ordinance"[15] for its member municipal utilities to use in crafting their own ordinances. Several provisions of this model ordinance are voided by the FCC Order. For example, under the application fee provisions,[16] the model ordinance allows fees of up to $3,000 in some instances, much higher than $500 limit the FCC Order allows. In addition, the model ordinance provides that if the city and

[12] Iowa Code, §§ 8C.1 to 8C.9.
[13] Iowa Code, § 8C.2(3).
[14] Iowa Code, § 8C.7.
[15] This Iowa model ordinance has long and simplified versions. Both are attached to the Appendix (pages A1-A15).
[16] Iowa Model Ordinance (Long Form), section III. (3); Iowa Model Ordinance (Simplified Form), section III. (4).

the wireless provider cannot agree on a fair market value for the annual lease of city property, an appraisal process will be used, which conflicts with the FCC's limit of $270 for an annual right-of-way access fee per small cell.

Finally, the model ordinance contains a similar provision in state law that the city does not mandate, require, or regulate the installation, location, or use of transmission equipment on a utility pole.[17] The FCC Order would invalidate this important protection for municipal utility infrastructure.

Even before the FCC's Order, Iowa's state and local governments were proactive in establishing fair and equitable requirements and procedures for the deployment of small cell wireless technology that made sense for them. And, Iowa's municipal utilities have been active in working with their city administrations and wireless providers in developing local policies and agreements for small wireless deployment that protect critical utility infrastructure. Heavy-handed federal interference is neither necessary nor helpful.

2. Minnesota

In May 2017, an omnibus jobs and economic growth appropriations bill in the Minnesota legislature, SF 1456, contained a wireless facility deployment provision and was signed into law by Governor Mark Dayton. As a result, section 267.163 of the Minnesota state statutes governing telecommunications was

[17] Iowa Model Ordinance (Long and Simplified Forms), section VII.

amended to include wireless service providers deploying 5G small cell networks under its telecommunications laws. It authorizes deployments of small cell wireless facilities in the public right-of-way, as well as establishing an application process, fees and a shot clock for the approvals.[18]

While the law applies to local governments in general, it does not apply to a wireless support structure owned, operated, maintained, or served by a municipal electric utility.[19] The FCC Order imperils this important protection for Minnesota municipal utilities.

The FCC order would also imperil city ordinances that protect municipal utility infrastructure. One example is the MMUA member City of Winthrop, MN.

On March 4, 2019, The Winthrop City Council adopted Ordinance No. 2019-129, adding chapter 306 to the City Code "relating to right-of-way permits and administration."[20] Chapter 306 imposes reasonable regulations on the placement and maintenance of facilities and equipment currently within its rights-of-way, utility easements and any other locations or to be placed therein at some future time.[21] It is intended to complement the regulatory roles of state and federal agencies.

[18] MINN. STAT. ANN § 267.163 Subd. 3 (2018).
[19] MINN. STAT. ANN § 267.163 Subd. 3.c(d) (2018).
[20] Winthrop, Minnesota City Code § 306 (2019).
[21] *Id.*

In conjunction with this new chapter in the City Code, and importantly for its municipal utility, the Winthrop City Council, adopted an official policy, the "Small Wireless Facility Design Guidelines," to provide the aesthetic requirements and other reasonable safety specifications and conditions that small wireless facilities and wireless support structures installed within the public ROW must meet prior to and following installation.[22] "The objective of these Guidelines is to strike a balance between preserving and protecting the character of the City through careful design, siting, and camouflaging techniques to blend these facilities into their surrounding environment and provide other reasonable conditions upon such placement and use of the ROW, while enhancing the ability of small wireless facilities carriers to deploy small wireless facilities and wireless support structures in the City effectively and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability."[23]

Winthrop's policy has one significant feature—small wireless facilities must be attached to new or existing wireless support structures, which do not include utility poles. This feature is voided by the FCC's order.

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[22] *City of Winthrop Small Wireless Facility Guidelines*, City Policy (Feb. 4, 2019), https://www.winthropminnesota.com/city/download/city_policies/2019-01-Small-cell-wireless-aesthetic-standards.pdf.

[23] *Id.* at section I.

The City of Brainerd, Minnesota, is another excellent example of how the FCC Order would void city policy. Brainerd, a MMUA member, has adopted an ordinance addressing wireless and other communications facilities, which include various reasonable requirements and standards.[24] It has determined that for safety purposes, it would not allow small cell facilities on its utility poles; however, it will provide new, separate poles for small cell attachments. This Brainerd policy is now voided by the FCC Order, as are previously-negotiated agreements already negotiated with wireless providers such as Verizon. A copy of one of Brainerd's agreements with a wireless provider (Verizon) is provided in the Appendix[25] to this brief.

As these examples show, Minnesota cities with municipal utilities are actively working to implement reasonable small cell deployment policies that protect utility infrastructure. They are not impeding the deployment of small cell technology in the state of Minnesota.

[24] Brainerd, Minnesota City Zoning Ordinance, §§ 515-35-1 to 515-35-8.
[25] MN06 Brainerd SC Master Lease Agreement and MN06 Brainerd HS SCI Supplement (Appendix pages A16-A32).

3. Missouri

In HB 1991 (sections 67.5110 to 67.5121, RSMo.) (the "Uniform Small Wireless Facility Deployment Act" or the "Act"), the Missouri General Assembly adopted a uniform statewide framework for the deployment of Small Wireless Facilities and utility poles in the State. In August 2018, Governor Mike Parson signed the bill into law.[26] The Act authorizes deployments of small cell wireless facilities in the public right-of-way, and the authority can only require reasonable limitations. Important features of the law include fee caps and a shot clock for processing applications.

Similar to the Iowa and Minnesota laws, Missouri's Act includes municipalities, but exempts municipal electric utilities. However, several Missouri cities with municipal electric utilities have passed ordinances establishing fair and reasonable rules and procedures for small cell siting that are consistent with applicable state and federal laws. One example is MAMU member the City of Columbia, Missouri.

Effective February 18, 2019, the City Council of Columbia passed Ordinance No. 23793, adopting a comprehensive ordinance relating to the

[26] Kendra Chamberlain, *5G Small Cell Deployment: Every Current State Law,* Broadband Now (Dec. 3, 2018), https://broadbandnow.com/report/5g-small-cell-deployment-state-laws/.

"Construction and Deployment of Small Wireless Facilities."[27] The new Article XI in the city code includes provisions on general standards, permitting process, application fees, colocation rate, time limits for processing applications, and aesthetics standards. Section 24-202 provides: "A small wireless facility must comply with reasonable, objective, and cost-effective concealment or safety requirements determined by the city as well as city aesthetic standards, including using equipment as close in color to the pole as possible." (emphasis added).

Section 24-204 contains essential standards and requirements intended to protect not only the municipal utility infrastructure, but also the health, safety and welfare of the public. For its municipal utility, subsection (k) includes the following provision:

> Although municipal electric utility distribution poles or facilities are expressly excluded from RSMo. §§ 67.5110—67.5121, the city shall reserve the right and authority to contract for attachment to city-owned electric utility distribution poles and facilities.

This key provision gives the municipal utility the flexibility it needs to ensure the safety and reliability of its utility infrastructure. Sadly, the FCC's Order invalidates this feature of the ordinance.

Even before the ordinance was adopted, Columbia negotiated and signed agreements with wireless providers ExteNet Systems, Inc. and MO Network

[27] Columbia, Missouri City Code, Chapter 24, Art. XI., §§ 24-200 to 24-212 (2019).

Utility Transport, LLC.[28] Both agreements allow attachments to utility poles, while providing protections for utility infrastructure. The terms and conditions of these agreements are essentially the same, and both have features that are voided under the FCC Order. For example, section 4.1.1 of both agreements provide that the annual pole attachment fee is $540.00 annually per City pole, for the first five (5) year term, and the annual rent shall increase by 20% for each renewal term, which is more than allowed under by the FCC. The FCC Order would eliminate this mutually negotiated fee. Many of the safety and design requirements contained in the agreements may also run afoul of the FCC's Order (what the FCC would call "effectively prohibiting" deployment of 5G).

Importantly, Columbia solicited feedback from wireless providers when developing their ordinances and policies on small cell deployment. Its city utility was very involved in this collaborative process to ensure the safety and protection of critical electrical infrastructure. This shows that municipal utility cities in Missouri have already effectively collaborated with wireless providers to deploy

[28] Copies of the agreements are included in the Appendix (pages A33-A98).

5G technology in their jurisdictions, and those efforts are now impeded by the FCC Order.[29]

4. Arkansas

Unlike Iowa, Minnesota, and Missouri, the Arkansas legislature did not adopt statewide small wireless facility legislation before the FCC Order was issued. In April of 2019, the Arkansas General Assembly adopted a uniform statewide framework for the deployment of small wireless facilities and poles through Act 999, codified at A.C.A. §§ 23-17-501--517 (the "Small Wireless Facility Deployment Act" or "SWiFDA"). SWiFDA authorizes deployments of small wireless facilities in the public right-of-way as a matter of right, subject to specific limitations.

Unlike similar laws in Iowa, Minnesota and Missouri, SWiFDA does not exclude municipal electric utilities. At the time SWiFDA was adopted, the FCC Order had already established a legal framework that included municipal electric utilities, rendering any exclusion meaningless. SWiFDA also mirrors the FCC Order in other ways. It includes rate and fee caps that coincide with the safe

[29] Additional MAMU members that have adopted city ordinances addressing small cell wireless include the City of Independence, Missouri (Bill No. 17-127, Ordinance No. 18830 (2017)) and the City of Rolla, Missouri (Rolla, Missouri City Code, §§ 42-396 to 42-406 (2019)). MAMU members City of Kirkwood and City Utilities of Springfield also have the practice of setting separate poles for small wireless facilities, which is now voided by the FCC Order.

harbor limits of the FCC Order, limits on the discretion of local governments to deny permits, and a shot clock for processing applications.

The FCC Order not only shaped SWiFDA, it undermined previously adopted ordinances of Arkansas cities that were intended to advance small wireless deployment. For example, the cities of North Little Rock and Conway jointly developed ordinances in consultation with telecommunication providers allowing the installation of small wireless facilities on municipal utility poles. North Little Rock's version, Ordinance No. 9031[30], was adopted on July 23, 2018 and Conway's version, Ordinance O-18-80,[31] was adopted on August 14, 2018. Sections 1.3 and 1.35 of these ordinances restrict permits to licensed telecommunication providers, or entities acting on behalf of licensed telecommunication providers. Section 3.31 of the ordinances restrict the number of applications that may be simultaneously submitted to twenty-five (25). Also, Appendix A to the ordinances imposes application fees higher than safe harbor limits found in the FCC Order (annual attachment fees are lower). The FCC Order invalidates all of these protections.

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[30] North Little Rock, Arkansas City Ordinance No. 9031 (July 23, 2018), https://cityclerk.nlr.ar.gov/AppXtender/datasources/EMC2/applications/12/document/18804?lqid=-2&lqrid=%7Bb920f723-6f5b-47ba-a9fa-bce7364ed240%7D&lqaid=12&qrid=%7Bb920f723-6f5b-47ba-a9fa-bce7364ed240%7D&qridx=0.

[31] Conway, Arkansas City Ordinance No. O-18-80 (August 14, 2018), https://media.conwayarkansas.gov/conwayarkansas-media/archive/ordinances/2018/O-18-80.pdf.

Similarly, on September 26, 2018, the City of Bentonville adopted an Ordinance authorizing the placement of small wireless facilities on new poles in the public right-of-way. [32] Under section 7(g)(2) of the Ordinance, Bentonville prohibited attachments to city-owned poles; however, this protection is also invalidated by the FCC.

At the time the ordinance was adopted, one wireless communications provider had 15 sites in Bentonville that it was considering.[33]

CONCLUSION

Federal law, as well as state laws and city ordinances in Iowa, Minnesota, Missouri and Arkansas, preserve local control over the regulation of pole attachments for a very good reason—protection of critical utility infrastructure, and protection of the public from injury and even death.

If the examples detailed in this brief show anything, it is cities that own and operate municipal utilities in Iowa, Minnesota, Missouri and Arkansas are actively working with wireless providers and are not effectively prohibiting the deployment of the 5G wireless network. This collaboration is bearing fruit—cities and

[32] Bentonville, Arkansas City Ordinance, Standards for Small Cell Wireless Facility Placement in Public Right-of-Way, https://www.bentonvillear.com/DocumentCenter/View/2994/Bentonville-Small-Cell---Merged-Original-DRAFT-9-26-18_clean-copy?bidId=.

[33] Melissa Gute, *Bentonville Oks 11-Page Policy on Wireless Push,* Arkansas Democrat Gazette (October 14, 2018), https://www.arkansasonline.com/news/2018/oct/14/bentonville-oks-11-page-policy-on-wirel/.

municipal utilities continue to adopt reasonable ordinances and policies with feedback and negotiation from wireless providers. Many of these efforts will be stymied by the FCC's Order.

Furthermore, public policy clearly favors local control over the deployment of 5G in cities. Given these factors, and the serious legal infirmities described by APPA and intervenors in their briefs, this Court should vacate the Order and restore the level playing field for municipal utilities.

Respectfully submitted,

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[ ] complies with the word limit of Cir. R. 32-1.

[ ] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

[X] is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

[ ] is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

[ ] complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:
[ ] it is a joint brief submitted by separately represented parties;
[ ] a party or parties are filing a single brief in response to multiple briefs; or
[ ] a party or parties are filing a single brief in response to a longer joint brief.

[ ] complies with the length limit designated by court order dated _____.

[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature */s/ Terry M. Jarrett* **Date** June 17, 2019
*(use "*s/[typed name]*" to sign electronically-filed documents)*

CERTIFICATE OF SERVICE

I certify that on June 17, 2019, I electronically filed the foregoing in the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. I further certify that all parties are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

Date: June 17, 2019

/s/ Terry M. Jarrett

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As Amici Curiae

No. 19-70339

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMERICAN PUBLIC POWER ASSOCIATION

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

On Petitions for Review of an Order of
the Federal Communications Commission

APPENDIX TO BRIEF OF *AMICI CURIAE* IOWA ASSOCIATION OF MUNICIPAL UTILITIES, MINNESOTA MUNICIPAL UTILITIES ASSOCIATION, MISSOURI ASSOCIATION OF MUNICIPAL UTILITIES, AND ARKANSAS MUNICIPAL POWER ASSOCIATION IN SUPPORT OF PETITIONER AMERICAN PUBLIC POWER ASSOCIATION

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APPENDIX INDEX

IOWA MODEL WIRELESS TECHNOLOGY SITING ORDINANCE

I. PURPOSE

This Chapter implements Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), as interpreted by the Federal Communications Commission's ("FCC" or "Commission") Acceleration of Broadband Deployment Report & Order and Iowa Code Chapter 8C.

II. DEFINITIONS

For the purposes of this Chapter, the terms used have the following meanings:

1) *Applicant.* Any person engaged in the business of providing wireless telecommunications services or the wireless telecommunications infrastructure required for wireless telecommunications services and who submits an Application.

2) *Application.* A request submitted by an Applicant to the [Jurisdiction] for the following:

   a) an Eligible Facilities Request,

   b) to construct a new Tower,

   c) for the initial placement of Transmission Equipment on a Wireless Support Structure,

   d) for the modification of an existing Tower or existing Base Station that constitutes a Substantial Change to an existing Tower or existing Base Station, or

   e) any other request to construct or place Transmission Equipment that does not meet the definition of an Eligible Facilities Request.

3) *Base Station.* A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a Tower as defined herein or any equipment associated with a Tower. Base Station includes, without limitation:

   a) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

   b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

   c) Any structure other than a Tower that, at the time the relevant Application is filed with [jurisdiction] under this section, supports or houses equipment described in paragraphs (3)(a)-(3)(b) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

   The term does not include any structure that, at the time the relevant Application is filed with [jurisdiction] under this section, does not support or house equipment described in (3)(a)-(3)(b) of this section.

4) *Collocation.* The mounting or installation of Transmission Equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

5) *Electric utility.* Any owner or operator of electric transmission or distribution facilities subject to the regulation and enforcement activities of the Iowa utilities board relating to safety standards.

6) *Eligible Facilities Request.* Any request for modification of an existing Tower or Base Station that does not substantially change the physical dimensions of such Tower or Base Station, involving:

   a) Collocation of new Transmission Equipment;

   b) Removal of Transmission Equipment; or

   c) Replacement of Transmission Equipment.

7) *Eligible Support Structure.* Any Tower or Base Station as defined in this section, provided that it is existing at the time the relevant Application is filed with [jurisdiction] under this section.

8) *Wireless Support Structure.* A structure that exists at the time an Application is submitted and is capable of supporting the attachment or installation of Transmission Equipment in compliance with applicable codes, including but not limited to water towers, buildings, and other structures, whether within or outside the public right-of-way. "Wireless Support Structure" does not include a Tower or existing Base Station.

9) *Existing.* A constructed Tower or Base Station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a Tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this section.

10) *Initial Placement or Installation.* The first time Transmission Equipment is placed or installed on a Wireless Support Structure.

11) *Site.* For Towers not in the public right-of-way, the current boundaries of the leased or owned property surrounding the Tower and any access or utility easements currently related to the site, and, for other Eligible Support Structures other than towers, that area in proximity to the structure and to other Transmission Equipment already deployed on the ground.

12) *Substantial Change.* A modification substantially changes the physical dimensions of an Eligible Support Structure if it meets any of the following criteria:

   a) For Towers other than Towers in the public rights-of-way, it increases the height of the Tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other Eligible Support Structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

   b) For Towers other than Towers in the public rights-of-way, it involves adding an appurtenance to the body of the Tower that would protrude from the edge of the Tower more than twenty feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater;

for other Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

c) For any Eligible Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for Towers in the public rights-of-way and Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

d) It entails any excavation or deployment outside the current Site;

e) It would defeat the concealment elements of the Eligible Support Structure; or

f) It does not comply with conditions associated with the siting approval of the construction or modification of the Eligible Support Structure or Base Station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs (13)(a)-(13)(f) of this section.

g) Height shall be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops. Otherwise, height shall be measured from the dimensions of the Tower or Base Station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act, Pub. L. No. 112-96, Tit. VI.

13) *Transmission Equipment.* Equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

14) *Tower.* Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated Site.

15) *Utility pole.* A structure owned or operated by a public utility, municipality, or Electric Utility that is designed specifically for and used to carry lines, cable, or wires for telephone, cable television, or electricity, or to provide lighting.

16) *FCC.* Federal Communications Commission of the United States

III. APPLICATION REVIEW FOR ALL APPLICATIONS

1) *Application.* Applicant shall complete an Application form and indicate whether their Application and intended use is for:
   a) An Eligible Facilities Request, construction of a new Tower,

   b) For the initial placement of Transmission Equipment on a Wireless Support Structure,

c) For the modification of an existing Tower or existing Base Station that constitutes a Substantial Change to an existing Tower or existing Base Station, or

d) Any other request to construct or place Transmission Equipment that does not meet the definition of an Eligible Facilities Request.

2) *Zoning and Land Use.* The [Jurisdiction] exercises zoning, land use, planning, and permitting authority within the [jurisdiction]'s territorial boundaries and within the two-mile limit of the territorial boundaries with regard to the siting of Transmission Equipment, subject to the provisions of Iowa Code Chapter 8C and federal law.

3) *Application Fee.* The Application fee including all [insert jurisdiction] and third party fees for review or technical consultation shall be reasonably related to actual and direct administrative costs according to Iowa law and are as follows;

a) $X for Eligible Facilities Request (No more than $500)

b) $X for New Tower (No more than $3,000)

c) $X for Initial Placement or Installation of Transmission on a Wireless Support Structure (No more than ($3,000)

d) $X for Modification of an Existing Tower that Constitutes a Substantial Modification (No more than $3,000)

e) $X for Any other Application to construct or place Transmission Equipment (No more than $3,000)

4) *Duration of Approval.* The duration of the approval shall not be limited, except that construction of the approved structure or facilities shall be commenced within two years of final approval, including the disposition of any appeals, and diligently pursued to completion.

5) *Limitation of Information.* The information requested for an Application shall not include information about, or evaluate an Applicant's business decisions with respect to, the Applicant's designed service, customer demand for service, or quality of the Applicant's service to or from a particular area or Site;

6) *Limitation of Review for Other Potential Locations or Collocation.* The [Jurisdiction's] review will not:

a) Include evaluating the availability of other potential locations for the placement or construction of a Tower or Transmission Equipment or

b) Require Applicants to establish other options for Collocation instead of the construction of a new Tower or modification of an existing Tower or existing Base Station that constitutes a Substantial Change to an existing Tower or existing Base Station.

7) *Transmission Equipment and Technology.* Application review shall not dictate the type of Transmission Equipment or technology to be used by the Applicant or discriminate between different types of infrastructure or technology.

8) *Radio Frequency and Environmental Impacts.* [Jurisdiction] shall not:

   a) Deny an Application, in whole or in part, based on perceived or alleged environmental effects of radio frequency emissions, as provided in 47 U.S.C. §332(c)(7)(B)(iv); or

   b) Establish or enforce regulations or procedures for radio frequency signal strength or the adequacy of service quality.

   c) Impose environmental testing, sampling or monitoring requirements or other compliance measures for radio frequency emissions from Transmission Equipment that are categorically excluded under FCC rules for radio frequency emissions pursuant to 47.C.F.R. §1.1307(b)(1).

9) *Removal.* The [jurisdiction] shall not require the removal of existing Towers, Base Stations, or Transmission Equipment, wherever located, as a condition to approval of an Application.

10) *Emergency Power Systems.* The [jurisdiction] shall not prohibit the placement of emergency power systems that comply with Federal and State environmental requirements.

11) *Zoning for Airports and Airspace.* The [jurisdiction] can administer and enforce airport zoning pursuant to the provisions of chapter 329 for the protection of navigable airspace.

12) *Surety Requirements.* The [jurisdiction] shall not impose surety requirements, including bonds, escrow, deposits, letters of credit, or any other type of financial surety, to ensure that abandoned or unused Towers or Transmission Equipment can be removed.

13) *Tower Space.* The [jurisdiction] shall not condition the approval of an Application on the Applicant's agreement to

   a) Provide space on or near the Tower, Base Station, or Wireless Support Structure for the [jurisdiction] or local governmental or nongovernmental services at less than the market rate for such space, or
   b) Provide other services via the structure or facilities at less than the market rate for such services.

14) *Historic Properties and Districts.* The [jurisdiction] may administer and enforcement zoning regulations to approve or deny applications for proposed alterations to exterior features of designated local historic landmarks. Applicants shall also comply with federal and state historic property laws.

15) *Discrimination.* The [jurisdiction] shall not discriminate on the basis of the ownership, including ownership by the [jurisdiction], of any property, structure, or Tower when promulgating rules or procedures for siting wireless facilities or for evaluating Applications.

16) *Open Records.* All records, documents, and electronic data in the possession or custody of [insert jurisdiction] personnel are subject to and disclosure of such records shall be consistent with Iowa Code Chapter 22.

17) *Remedies.* Applicants and [jurisdiction] may bring claims related to this ordinance to any court of competent jurisdiction.

IV. APPLICATION REVIEW FOR APPLICATIONS IDENTIFIED AS ELIGIBLE FACILITIES REQUESTS

1) *Application for Eligible Facilities Requests.* For those Applications identified by Applicant and determined by the [jurisdiction] to be an Eligible Facilities Request, the Application shall be limited to the information necessary for [jurisdiction] to consider whether an Application is an Eligible Facilities Request. The Application may not require the Applicant to demonstrate a need or business case for the proposed modification.

2) *Type of Review.* Upon receipt of an Application for an Eligible Facilities Request pursuant to this Chapter, [identify appropriate department– e.g., Public Works, Planning] shall review such Application to determine whether the Application so qualifies.

3) *Timeframe for Review*. Within 60 days of the date on which an Applicant submits an Application seeking approval under this Chapter, [jurisdiction] shall approve the Application unless it determines that the Application is not covered by this Chapter.

4) *Tolling of the Timeframe for Review.* The 60-day review period begins to run when the Application is filed, and may be tolled only by mutual agreement by [jurisdiction] and the Applicant, or in cases where [jurisdiction's reviewing body] determines that the Application is incomplete. The timeframe for review is not tolled by a moratorium on the review of Applications.

   a) To toll the timeframe for incompleteness, [jurisdiction] must provide written notice to the Applicant within 30 days of receipt of the Application, specifically delineating all missing documents or information required in the Application.

   b) The timeframe for review begins running again when the Applicant makes a supplemental submission in response to [jurisdiction's] notice of incompleteness.

   c) Following a supplemental submission, [jurisdiction] will notify the Applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (4) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

5) *Interaction with Section 332(c)(7) of the Uunited States Federal Code.* If [jurisdiction] determines that the Applicant's request is not an Eligible Facilities Request, [jurisdiction] shall notify Applicant in writing and include the type of Application [jurisdiction] is applicable and the basis of its determination. The timeframes under Sections V and VI will begin to run from the issuance of [jurisdiction's] decision that the Application is not an Eligible Facilities Request. To the extent such information is necessary, [jurisdiction] may request additional information from the Applicant to evaluate the Application under Sections V and VI, pursuant to the limitations applicable to said Sections.

6) *Failure to Act.* In the event [jurisdiction] fails to approve or deny a request seeking approval under this Chapter within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the Applicant notifies the applicable reviewing [insert jurisdiction] in writing after the review period has expired (accounting for any tolling) that the Application has been deemed granted.

V. APPLICATION REVIEW FOR APPLICATIONS IDENTIFIED FOR NEW TOWER CONSTRUCTION

1) *Application.* For those Applications identified by Applicant and determined by the [jurisdiction] to construct a new Tower, the Applicant shall submit the necessary copies and attachments of the Application to the [insert appropriate jurisdiction department or official] and comply with applicable local ordinances concerning land use and the appropriate permitting processes.

2) *Additional Information for Residential Districts.* [Jurisdiction] may request propagation maps solely for the purpose of identifying the location of the coverage or capacity gap or need for Applications for new Towers in an area zoned residential.

3) *Explanation for Proposed Location.* Notwithstanding paragraph III(5) of this ordinance, [Jurisdiction] may require an Applicant to provide an explanation regarding the reason for choosing the proposed location for construction of a new Tower and the reason the Applicant did not choose Collocation. The explanation shall include a sworn statement from an individual who has responsibility over placement of the Tower attesting that Collocation within the area determined by the Applicant to meet the Applicant's radio frequency engineering requirements for the placement of a site would not result in the same mobile service functionality, coverage, and capacity, is technically infeasible, or is economically burdensome to the Applicant.

4) *Review Process.* Applications meeting the following criteria shall be allowed by right and approved by [insert appropriate department]:

   a) Insert criteria here – districts, heights, setbacks, etc.

   b) Continue with criteria here – districts, heights, setbacks, etc.

   All other Applications shall require a Conditional Use Permit. See section [insert reference to CUP section of jurisdiction zoning ordinance].

5) *Timeframe for Review.* Within 150 days of the date on which an Applicant submits an Application seeking approval to construct a new Tower, [jurisdiction] shall approve or deny the Application unless, another date is specified in a written agreement between the [jurisdiction] and the Applicant.

6) *Tolling of the Timeframe for Review.* The 150-day review period begins to run when the Application is filed, and may be tolled only by mutual agreement by [jurisdiction] and the Applicant, or in cases where [jurisdiction's reviewing body] determines that the Application is incomplete. The [jurisdiction's reviewing body] shall review the Application for conformity with applicable local zoning regulations, building permit requirements, and consistency with this chapter. The timeframe for review is not tolled by a moratorium on the review of Applications.

   a) To toll the timeframe for incompleteness, [jurisdiction] must provide written notice to the Applicant within 30 days of receipt of the Application, specifically delineating all missing documents or information required in the Application and the [insert jurisdiction]'s timeframe to review is tolled beginning the date the notice is sent.

   b) The [jurisdiction]'s timeframe of 150 days for review begins running again when the Applicant makes a supplemental submission in response to [jurisdiction's] notice of incompleteness.

c) The [jurisdiction]'s 150-day timeframe for review does not toll if the [jurisdiction] requests information regarding any of the considerations the [jurisdiction] may not consider as described in section 8C.3.

d) Following a supplemental submission, [jurisdiction] will notify the Applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (4) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

e) The [jurisdiction] shall make its final decision to approve or disapprove the Application in writing within the timeframe.

7) *Failure to Act.* In the event [jurisdiction] fails to approve or deny a request seeking approval under this Section VI within the timeframe for review (accounting for any tolling), the request shall be deemed granted.

V. APPLICATION REVIEW FOR APPLICATIONS IDENTIFIED FOR THE INITIAL PLACEMENT OR INSTALLATION OF TRANSMISSION EQUIPMENT ON WIRELESS SUPPORT STRUCTURES, MODIFICATION OF AN EXISTING TOWER OR EXISTING BASE STATION THAT CONSTITUTES A SUBSTANTIAL CHANGE, OR OTHER REQUESTS FOR CONSTRUCTION OR PLACEMENT OF TRANSMISSION EQUIPMENT THAT DO NOT CONSTITUTE ELIGIBLE FACILITIES REQUESTS

1) *Application.* For those Applications identified by Applicant and determined by the [jurisdiction] to be for the Initial Placement or Installation of Transmission Equipment on Wireless Support Structures, modification of an existing Tower or existing Base Station that constitutes a Substantial Change, or other requests for construction or placement of Transmission Equipment that do not constitute Eligible Facilities Requests an Eligible Facilities Request, the Applicant shall submit the necessary copies and attachments of the Application to the [insert appropriate jurisdiction department or official] and comply with applicable local ordinances concerning land use or regulations concerning land use and zoning and the appropriate local permitting processes.

2) *Review Process.* Applications meeting the following criteria shall be allowed by right and approved by [insert appropriate department]:

a) Insert criteria here – structure type (i.e. building, water tank), districts, heights, setbacks, etc.

b) Continue with criteria here – structure type (i.e. building, water tank) districts, heights, setbacks, etc.

c)

All other Applications shall require a Conditional Use Permit. See section [insert reference to CUP section of jurisdiction zoning ordinance].

3) *Timeframe for Review.* Within 90 days of the date on which an Applicant submits an Application seeking approval to construct a new Tower, [jurisdiction] shall approve or deny the Application unless, another date is specified in a written agreement between the [jurisdiction] and the Applicant.

The [jurisdiction's reviewing body] shall review the Application for conformity with applicable local zoning regulations, building permit requirements, and consistency with Iowa Code Chapter 8C.

4) *Tolling of the Timeframe for Review.* The 90-day review period begins to run when the Application is filed, and may be tolled only by mutual agreement by [jurisdiction] and the Applicant, or in cases where [jurisdiction's reviewing body] determines that the Application is incomplete. The [jurisdiction's reviewing body] shall review the Application for conformity with applicable local zoning regulations, building permit requirements, and consistency with this chapter. The timeframe for review is not tolled by a moratorium on the review of Applications.

   a) To toll the timeframe for incompleteness, [jurisdiction] must provide written notice to the Applicant within 30 days of receipt of the Application, specifically delineating all missing documents or information required in the Application and the [jurisdiction]'s timeframe to review is tolled beginning the date the notice is sent.

   b) The [jurisdiction]'s timeframe of 90 days for review begins running again when the Applicant makes a supplemental submission in response to [jurisdiction's] notice of incompleteness.

   c) The [jurisdiction]'s 90-day timeframe for review does not toll if the [jurisdiction] requests information regarding any of the considerations the [jurisdiction] may not consider as described in section 8C.3.

   d) Following a supplemental submission, [jurisdiction] will notify the Applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (4) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

   e) The [jurisdiction] shall make its final decision to approve or disapprove the Application in writing within the timeframe.

5) *Failure to Act.* In the event [jurisdiction] fails to approve or deny a request seeking approval under this Section within the timeframe for review (accounting for any tolling), the request shall be deemed granted.

VI. PROPRIETARY LEASING OF [JURISDICTION] OWNED OR CONTROLLED PROPERTY

1) *Leasing of [Jurisdiction] Owned or Controlled Property:* [Jurisdiction] reserves all rights to leasing of [jurisdiction] owned or controlled property but shall offer the market rate value for use of the property.

2) *Lease Term.* Leases shall be for no less than twenty years, but all or a portion of the property may be subject to release for public purposes after fifteen years.

3) *Appraisal Process for Market Value Determination.* If the [jurisdiction] and Applicant cannot agree on the market rate for a lease on real property or structures owned by the [jurisdiction], the [jurisdiction] shall follow the process in Iowa Code 8C.6.

VII. Utility Poles

Notwithstanding any provision to the contrary, [jurisdiction] shall not mandate, require, or regulate the installation, location, or use of Transmission Equipment on a Utility Pole.

IOWA MODEL WIRELESS TECHNOLOGY SITING ORDINANCE

I. PURPOSE

This Chapter implements Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), as interpreted by the United States Federal Communications Commission's ("FCC" or "Commission") Acceleration of Broadband Deployment Report & Order and Iowa Code Chapter 8C.

II. DEFINITIONS

1) For the purposes of this Chapter, the terms used have the meanings in the Iowa Cell Siting Act in Iowa Code 8C.2.

2) *Collocation* means the mounting or installation of transmission equipment on a support structure.

III. APPLICATION REVIEW FOR ALL APPLICATIONS

3) *Application.* Applicant shall complete an Application form and indicate whether their Application and intended use is for:
   a) Construction of a new Tower,
   b) Any other request to construct or place Transmission Equipment that is a substantial change according to Iowa Code 8C.2(11),
   c) Or any other request to construct or place Transmission Equipment that is not a substantial change according to Iowa Code 8C.2(11).

4) *Application Fee.* The Application fee including all [insert jurisdiction] and third party fees for review or technical consultation shall be reasonably related to actual and direct administrative costs according to Iowa law and are as follows;
   a) $X for a New Tower
   b) $X for a request to construct or place Transmission Equipment that is a substantial change according to Iowa Code 8C.2(11)
   c) $X for a request to construct or place Transmission Equipment that is not a substantial change according to Iowa Code 8C.2(11)

5) *Duration of Approval.* The duration of the approval shall not be limited, except that construction of the approved structure or facilities shall be commenced within two years of final approval, including the disposition of any appeals, and diligently pursued to completion.

6) *Uniform Rules and Limitations.* [Jurisdiction] laws are consitent with Iowa Code Chapter 8C.3.

7) *Remedies.* Applicants and [jurisdiction] may bring claims related to this ordinance to any court of competent jurisdiction.

IV. APPLICATION REVIEW FOR APPLICATIONS IDENTIFIED FOR NEW TOWER CONSTRUCTION

1) *Application.* For those Applications identified by Applicant and determined by the [jurisdiction] to construct a new Tower, the Applicant shall submit the necessary copies and attachments of the Application to the [insert appropriate jurisdiction department or official] and comply with applicable local ordinances concerning land use and the appropriate permitting processes.

2) *Review Process.* Applications meeting the following criteria shall be allowed by right and approved by [insert appropriate department]:

   a) Residential: Except for parcels zoned single family residential any application that is for a new tower less than 80 feet.

   b) Commercial: Any application that is for a new tower less than 150 feet.

   c) Industrial: Any application that is for a new tower less than 200 feet.

   d) Agricultural: Any application that is for a new tower less than 200 feet.

   All other Applications shall require a Conditional Use Permit. See section [insert reference to CUP section of jurisdiction zoning ordinance].

3) *Timeframe for Review.* Within 30 days of the date on which an Applicant submits an Application seeking approval to construct a new Tower, [jurisdiction] shall approve or deny the Application unless, another date is specified in a written agreement between the [jurisdiction] and the Applicant.

4) *Tolling of the Timeframe for Review.* The 30-day review period begins to run when the Application is filed, and may be tolled only by mutual agreement by [jurisdiction] and the Applicant, or in cases where [jurisdiction's reviewing body] determines that the Application is incomplete. The [jurisdiction's reviewing body] shall review the Application for conformity with applicable local zoning regulations, building permit requirements, and consistency with this chapter. The timeframe for review is not tolled by a moratorium on the review of Applications.

   a) To toll the timeframe for incompleteness, [jurisdiction] must provide written notice to the Applicant within 30 days of receipt of the Application, specifically delineating all missing documents or information required in the Application and the [insert jurisdiction]'s timeframe to review is tolled beginning the date the notice is sent.

   b) The [jurisdiction]'s timeframe of 30 days for review begins running again when the Applicant makes a supplemental submission in response to [jurisdiction's] notice of incompleteness.

   c) The [jurisdiction]'s 30-day timeframe for review does not toll if the [jurisdiction] requests information regarding any of the considerations the [jurisdiction] may not consider as described in section 8C.3.

   d) Following a supplemental submission, [jurisdiction] will notify the Applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (4) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

   e) The [jurisdiction] shall make its final decision to approve or disapprove the Application in writing within the timeframe.

5) *Failure to Act.* In the event [jurisdiction] fails to approve or deny a request seeking approval under this Section VI within the timeframe for review (accounting for any tolling), the request shall be deemed granted.

V. APPLICATION REVIEW FOR APPLICATIONS TO CONSTRUCT OR PLACE TRANSMISSION EQUIPMENT THAT IS A SUBSTANTIAL CHANGE ACCORDING TO IOWA CODE 8C.2(11)

1) *Application for Eligible Facilities Requests.* For those Applications identified by Applicant and determined by the [jurisdiction] to be an Eligible Facilities Request, the Application shall be limited to the information necessary for [jurisdiction] to consider whether an Application is an Eligible Facilities Request. The Application may not require the Applicant to demonstrate a need or business case for the proposed modification.

2) *Type of Review.* Upon receipt of an Application for an Eligible Facilities Request pursuant to this Chapter, [identify appropriate department– e.g., Public Works, Planning] shall review such Application to determine whether the Application so qualifies.

3) *Timeframe for Review.* Within 60 days of the date on which an Applicant submits an Application seeking approval under this Chapter, [jurisdiction] shall approve the Application unless it determines that the Application is not covered by this Chapter.

4) *Tolling of the Timeframe for Review.* The 60-day review period begins to run when the Application is filed, and may be tolled only by mutual agreement by [jurisdiction] and the Applicant, or in cases where [jurisdiction's reviewing body] determines that the Application is incomplete. The timeframe for review is not tolled by a moratorium on the review of Applications.

   a) To toll the timeframe for incompleteness, [jurisdiction] must provide written notice to the Applicant within 30 days of receipt of the Application, specifically delineating all missing documents or information required in the Application.

   b) The timeframe for review begins running again when the Applicant makes a supplemental submission in response to [jurisdiction's] notice of incompleteness.

   c) Following a supplemental submission, [jurisdiction] will notify the Applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (4) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

5) *Interaction with Section 332(c)(7) of the Uunited States Federal Code.* If [jurisdiction] determines that the Applicant's request is not an Eligible Facilities Request, [jurisdiction] shall notify Applicant in writing and include the type of Application [jurisdiction] is applicable and the basis of its determination. The timeframes under Sections V and VI will begin to run from the issuance of [jurisdiction's] decision that the Application is not an Eligible Facilities Request. To the extent such information is necessary, [jurisdiction] may request additional information from the Applicant to evaluate the Application under Sections V and VI, pursuant to the limitations applicable to said Sections.

6) *Failure to Act.* In the event [jurisdiction] fails to approve or deny a request seeking approval under this Chapter within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the Applicant notifies the applicable reviewing [insert jurisdiction] in writing after the review period has expired (accounting for any tolling) that the Application has been deemed granted.

_VI._ APPLICATION REVIEW FOR APPLICATIONS TO CONSTRUCT OR PLACE TRANSMISSION EQUIPMENT THAT IS NOT A SUBSTANTIAL CHANGE ACCORDING TO IOWA CODE 8C.2(11)

1) *Application.* For those Applications identified by Applicant and determined by the [jurisdiction] to be for the construction or placement of transmission equipment that is not a substantial change according to Iowa Code 8C.2(11), the Applicant shall submit the necessary copies and attachments of the Application to the [insert appropriate jurisdiction department or official] and comply with applicable local ordinances concerning land use or regulations concerning land use and zoning and the appropriate local permitting processes.

2) *Review Process.* Applications not determined to be for a new tower or not a substantial change shall be allowed by right and approved by [insert appropriate department]:

   a) Insert criteria here – structure type (i.e. building, water tank), districts, heights, setbacks, etc.

   b) Continue with criteria here – structure type (i.e. building, water tank) districts, heights, setbacks, etc.

3) *Timeframe for Review*. Within 30 days of the date on which an Applicant submits an Application seeking approval to construct a new Tower, [jurisdiction] shall approve or deny the Application unless, another date is specified in a written agreement between the [jurisdiction] and the Applicant. The [jurisdiction's reviewing body] shall review the Application for conformity with applicable local zoning regulations, building permit requirements, and consistency with Iowa Code Chapter 8C.

4) *Tolling of the Timeframe for Review*. The 30-day review period begins to run when the Application is filed, and may be tolled only by mutual agreement by [jurisdiction] and the Applicant, or in cases where [jurisdiction's reviewing body] determines that the Application is incomplete. The [jurisdiction's reviewing body] shall review the Application for conformity with applicable local zoning regulations, building permit requirements, and consistency with this chapter. The timeframe for review is not tolled by a moratorium on the review of Applications.

   a) To toll the timeframe for incompleteness, [jurisdiction] must provide written notice to the Applicant within 30 days of receipt of the Application, specifically delineating all missing documents or information required in the Application and the [jurisdiction]'s timeframe to review is tolled beginning the date the notice is sent.

   b) The [jurisdiction]'s timeframe of 90 days for review begins running again when the Applicant makes a supplemental submission in response to [jurisdiction's] notice of incompleteness.

   c) The [jurisdiction]'s 90-day timeframe for review does not toll if the [jurisdiction] requests information regarding any of the considerations the [jurisdiction] may not consider as described in section 8C.3.

d) Following a supplemental submission, [jurisdiction] will notify the Applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (4) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

e) The [jurisdiction] shall make its final decision to approve or disapprove the Application in writing within the timeframe.

5) *Failure to Act.* In the event [jurisdiction] fails to approve or deny a request seeking approval under this Section within the timeframe for review (accounting for any tolling), the request shall be deemed granted.

VI. PROPRIETARY LEASING OF [JURISDICTION] OWNED OR CONTROLLED PROPERTY

1) *Leasing of [Jurisdiction] Owned or Controlled Property:* [Jurisdiction] reserves all rights to leasing of [jurisdiction] owned or controlled property but shall offer the market rate value for use of the property.

2) *Lease Term.* Leases shall be for no less than twenty years, but all or a portion of the property may be subject to release for public purposes after fifteen years.

VII. Utility Poles

Notwithstanding any provision to the contrary, [jurisdiction] shall not mandate, require, or regulate the installation, location, or use of Transmission Equipment on a Utility Pole.

MASTER LEASE AGREEMENT

This Master Lease Agreement (the "**Agreement**") made this 15th day of December, 2016 between Water & Light Department d/b/a Brainerd Public Utilities with its principal offices located at 8027 Highland Scenic Road, PO Box 373, Brainerd, MN 56401, hereinafter designated **LESSOR** and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, with its principal offices located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated **LESSEE**. LESSOR and LESSEE are at times collectively referred to hereinafter as the "**Parties**" or individually as the "**Party**."

RECITALS

WHEREAS, LESSOR is the owner of, or holds a leasehold or other possessory interest in, certain properties, utility poles, which are located within the geographic area of a license held by LESSEE to provide wireless services issued by the Federal Communications Commission (the "**FCC License**"); and

WHEREAS, LESSEE desires to install, maintain and operate communications equipment on certain of LESSOR's utility poles and/or facilities; and

WHEREAS, LESSOR and LESSEE desire to enter into this Agreement to define the general terms and conditions which would govern their relationship with respect to particular sites at which LESSOR may wish to permit LESSEE to install, maintain, and operate communications equipment; and

WHEREAS, LESSOR and LESSEE acknowledge that they will determine each particular location or site on which the LESSOR agrees to allow LESSEE to install, maintain, and operate communications equipment; and

WHEREAS, the Parties acknowledge that different related entities may operate or conduct the business of LESSEE in different geographic areas, and LESSEE's affiliated entities may be authorized by LESSEE to act on its behalf under this Agreement as further described herein, as appropriate based upon the entity holding the FCC License in the subject geographic location, in the case of LESSEE.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound hereby, the Parties agree as follows:

1. PREMISES. From time to time, and pursuant to all of the terms and conditions of this Agreement, LESSEE may propose to lease certain space upon certain of LESSOR's utility poles (the "**Poles**") for the installation, operation, and maintenance of communications equipment; together with the non-exclusive right to access over, under and through the Poles to and from the Premises (as hereinafter defined) for the purpose of installation, operation, and maintenance of LESSEE's communications equipment. LESSEE may from time to time propose to modify its equipment in the Premises. LESSEE shall provide the proposed Pole location, leased space, and equipment design or modification, all in compliance with LESSOR'S policies and requirements, for LESSOR'S review and approval. Upon LESSOR'S approval, which must be indicated in writing, the Parties agree to lease the approved leased space pursuant to a Master Lease Agreement Supplement in the form attached as Exhibit A (the "Supplement"). The space approved by and leased by LESSOR to LESSEE on the Poles and as described in each Supplement, is hereinafter collectively referred to as the "**Premises.**" The

Premises may include, without limitation, (a) certain space on the ground, but only if owned by LESSOR, (b) space on the Poles sufficient for the installation, operation, and maintenance of antennas and other equipment (the "**Antenna Space**"), and (c) such additional space necessary for the installation, operation and maintenance of wires, cables, conduits, and pipes (the "**Cabling Space**") running between and among the various portions of the Premises and to all necessary electrical and telephone utility, cable, and fiber sources located within the Poles, all as described in Exhibit A of the Supplement.

2. CONDITION OF POLES. LESSOR shall deliver the Premises to LESSEE for LESSEE's construction of its improvements. The Parties acknowledge and agree that the Poles are provided on an AS IS basis and without warranty or representation relating to their condition, design, warranty, or suitability for specific use. LESSOR will provide access to the Poles to facilitate LESSEE's investigation of the Poles to determine whether or not lead-based paint, asbestos, or other hazardous substances (as that term may be defined under any applicable federal, state or local law) are present on the Premises.

3. TERM/LESSOR TERMINATION RIGHT. This Agreement shall be for a term of ten (10) years commencing upon the execution hereof by both Parties (the "Term"). Each Supplement shall be effective and shall commence as of the date of execution by both Parties (the "Commencement Date") and the initial term of each Supplement shall be for five (5) years. Upon the expiration of the initial term of a Supplement, the Supplement shall automatically be extended for one additional five-year term unless LESSEE terminates it at the end of the initial term by giving LESSOR written notice of the intent to terminate at least three (3) months prior to the end of the initial term, provided that no Supplement shall exceed the Term of this Agreement. LESSOR may terminate a Supplement for a public purpose, after discussion at a Commission meeting and with six (6) months' notice to LESSEE.

4. RENTAL. The LESSEE shall pay rent for each Supplement based on an initial amount of Nine Hundred and 00/100 Dollars ($900.00) per year for each Supplement (the "Master Annual Rental"). The Master Annual Rental shall be automatically adjusted each year on January 1 by one and one-half percent (1.5%). The adjusted annual rental for each Supplement shall be based on the then effective Master Annual Rental and shall be set forth in the Supplement and shall be paid in advance annually on the Commencement Date and on each anniversary of the Commencement Date, in advance, to the payee designated by LESSOR in the Supplement. The annual rental for each Supplement shall be increased by one and one-half percent (1.5%) each year on the anniversary of the Commencement Date of the Supplement. LESSOR and LESSEE acknowledge and agree that the first billing under Section 6 and the first rental payment for each Supplement may not actually be provided until ninety (90) days after the Commencement Date. As additional consideration, LESSEE further agrees to pay LESSOR a one-time, lump sum payment in the sum of Four Thousand and No/100 Dollars ($4,000.00) as additional rent for the first Supplement executed by the Parties, which shall be due and payable within ninety (90) days of the full execution of the first Supplement and which shall be non-refundable. This additional rent payment obligation for the first Supplement shall be set forth only in the first Supplement. The Parties understand and agree that this additional rent for the first Supplement is being paid for the purpose of reimbursing LESSOR for its attorney costs. In the event that LESSEE requires poles or equipment that are different from LESSOR's standard facilities, LESSEE shall be responsible for the actual costs of procuring or replacing such poles or equipment. The actual costs of procuring or replacing such poles or equipment for the initial installation shall be set for in the Supplement and shall be paid within ninety (90) days of the full execution of the Supplement. In the event of replacing such poles or equipment after the initial installation, LESSOR shall send a separate invoice to LESSEE, and shall be paid within ninety (90) days of receipt of the invoice.

5. DOCUMENTATION. The Parties shall mutually cooperate to provide documentation reasonably required to perform under the terms of the Agreement, including confirmation of LESSOR's title or legal interest in the Poles, supporting documentation for a Supplement, Internal Revenue Service Form W-9, or equivalent, applicable state or local withholding forms, bank routing information for purposes of electronic funds transfer, and other documentation reasonably requested to comply with the requirement of any applicable laws, rules, regulations, ordinances, directives, or covenants now in effect, or which may hereafter come into effect.

6. ELECTRICAL. LESSOR shall extend power to the Premises at LESSEE'S expense. LESSOR shall, during the term, provide electrical service within the Premises. LESSEE shall pay LESSOR for the power and energy supplied to LESSEE and LESSEE'S equipment. LESSOR retains the discretion to change the rates for the sale and purchase of electricity over the time provided the rates are consistent with the rates charged to other similar uses in the City of Brainerd. The Parties agree that the sale of power and energy under this Agreement shall be made under the rates then in effect each month. All invoices for power consumption shall be sent by LESSOR to LESSEE at Verizon Wireless, M/S 3846, P.O. Box 2375, Spokane, WA 99210-2375, or at such other address as provided by LESSEE, on a monthly basis (the "Invoice Period"), and shall include the amount of electricity used by LESSEE in the preceding month, and the rate(s) charged. Payment is due within thirty (30) days of the invoice. Payment may be made by electronic funds transfer, as mutually agreed upon by the Parties.

LESSEE must operate its equipment in full compliance with the rules, regulations, and policies adopted by the LESSOR, and conform to the national, state, and local electric and safety codes, and will be responsible for the costs of such conformance. LESSOR may discontinue providing electricity to LESSEE during a system emergency or if required by prudent utility practices or safety concerns. LESSOR shall not discriminate against LESSEE when it discontinues providing electricity or when it resumes providing electricity. In the event that LESSEE's electric service is interrupted due to planned maintenance, Conditioning Work, or Replacement Work by LESSOR, then LESSEE is permitted arrange a temporary power source to keep LESSEE's communications facility operational, subject to LESSOR'S policies and requirements.

7. USE; GOVERNMENTAL APPROVALS. LESSEE shall use the Premises for the purpose of constructing, maintaining, repairing, and operating a communications facility and uses incidental thereto. Subject to the terms of this Agreement and in compliance with LESSOR'S policies and requirements, LESSEE shall have the right, without any increase in rent, to replace, repair, add (without exceeding the Premises) or otherwise modify its equipment, fiber or cable, equipment, antennas and/or conduits or any portion thereof, and the frequencies over which the equipment operates, during the term. It is understood and agreed that LESSEE's ability to use the Premises is contingent upon LESSEE obtaining, in conjunction with the approval of LESSOR in Section 1, all of the certificates, permits, and other approvals (collectively the "**Governmental Approvals**") that may be required by any Federal, State, or Local authorities, as well as a satisfactory Pole structural analysis that will permit LESSEE use of the Premises as set forth above. LESSOR shall not unreasonably object to LESSEE's efforts to obtain the Governmental Approvals.

LESSEE shall have the right to withdraw its request for LESSOR approval of a proposed Premises under Section 1 and, subject to Section 13, terminate a Supplement if: (i) any of the applications for Governmental Approvals is finally rejected; (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) LESSEE

determines that the Governmental Approvals may not be obtained in a timely manner; (iv) LESSEE determines that the Premises is no longer technically compatible for its use; or (v) LESSEE, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary. Notice of LESSEE's exercise of its right to terminate shall be given to LESSOR in accordance with the notice provisions set forth in Section 17 and shall be effective upon the mailing of that notice by LESSEE, or upon such later date as designated by LESSEE. All rentals paid through the termination date shall be retained by LESSOR. Upon such termination, the applicable Premises shall be of no further force or effect and neither Party shall have any further obligations, including payment of rent, for the terminated Premises.

8. LIABILITY. Each Party shall be responsible for its own acts or omissions relating to this Agreement. Nothing in this Agreement waives the rights or limits provided to the LESSOR in Minnesota Statutes, Chapter 466, and it is intended in this Agreement that the LESSOR shall retain the maximum benefits and rights accorded a "municipality" as that term is defined in Chapter 466.

9. INSURANCE.

a. LESSOR is self-insured pursuant to Minnesota law.

b. LESSEE shall procure and maintain, at its cost and expense, sufficient insurance to cover any losses or damages it may incur with respect to the matters covered by this Agreement. At the effective date of this Agreement, LESSEE shall provide evidence of commercial general liability insurance with limits not less than $2,000,000.00 per occurrence for bodily injury (including death) and for damage or destruction to property. LESSEE will include the LESSOR as an additional insured as its interest may appear under this Agreement.

10. LIMITATION OF CERTAIN DAMAGES. To the fullest extent permitted by law, neither Party shall be liable to the other Party for claims, suits, actions, or causes of action for punitive or consequential damages arising from the performance or non-performance of this Agreement.

11. INTENTIONALLY OMITTED.

12. INTERFERENCE. LESSEE agrees to install and maintain equipment of the type and frequency that will not cause interference with any equipment or operations of (a) LESSOR, or (b) other tenants of the Poles that existed on the Poles prior to the date the of approval of LESSOR under Section 1. In the event that LESSEE's equipment causes such interference, and after LESSOR has notified LESSEE of such interference by a call to LESSEE's Network Operations Center [at (800) 224-6620], LESSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LESSEE's option, powering down such interfering equipment and later powering up such interfering equipment for intermittent testing. If the interference continues for a period in excess of 48 hours following such notification, LESSOR shall have the right to require LESSEE to reduce power, and/or cease operations until such time LESSEE can effect repairs to the interfering equipment. In no event will LESSOR be entitled relocate the equipment as long as LESSEE is making a good faith effort to remedy the interference issue. LESSOR agrees that any other users of the Poles who currently have or in the future take possession of the Poles will be permitted to install only such equipment that is of the type and frequency which will not cause interference with the then existing equipment of LESSEE.

13. REMOVAL AT END OF TERM. LESSEE shall, within ninety (90) days after expiration of the term of a Supplement, or any earlier termination, remove its equipment, conduits, fixtures and all

personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LESSEE shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the term, whether or not said items are considered fixtures and attachments to real property under applicable laws. If the time for removal causes LESSEE to remain on the Premises after termination of the Supplement, LESSEE shall pay rent at the then-existing monthly rate, or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the antenna structure, fixtures and all personal property are completed. If LESSEE filed a memorandum or document with the appropriate recording officer under Section 18, LESSEE shall arrange, at its expense, notification of the expiration or termination of the Supplement.

14. RIGHTS UPON SALE. If, at any time during the term, LESSOR decides: (i) to sell or transfer all or any part of the Poles or the Premises thereon to a purchaser other than LESSEE, or (ii) to grant to a third party by easement or other legal instrument an interest in the Premises, for the purpose of operating and maintaining communications facilities or the management thereof, that sale or grant of an easement or interest therein shall be subject to the Agreement, then LESSOR agrees that any such purchaser or transferee must recognize LESSEE's rights hereunder. This Section shall not apply to LESSOR replacement or removal of Poles or moving facilities underground, in the course of utility operations.

15. QUIET ENJOYMENT AND REPRESENTATIONS. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises. LESSOR represents and warrants to LESSEE as of the execution date, and covenants during the term, that LESSOR is seized of good and sufficient title and interest to the Poles, and has full authority to enter into and execute the Agreement. LESSEE covenants that during the term of this Agreement it shall not damage the Poles or the Premises or the equipment or facilities of LESSOR or others that may exist on the Poles. LESSOR further covenants that there are no liens or judgments against on the Poles, or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions that prevent or adversely affect the use or occupancy of the Premises by LESSEE as provided in this Agreement. Each Party covenants that during the term, it shall not create or allow to be created any lien or encumbrance, including, without limitation, tax liens, mechanics liens, or other liens or encumbrances with respect to work performed or equipment furnished, in connection with the installation, repair, maintenance, or operation of a Party's facilities related to the Premises.

16. ASSIGNMENT. This Agreement may be sold, assigned or transferred by the LESSEE without any approval or consent of the LESSOR, to the LESSEE's principal, affiliates, subsidiaries of its principal, or to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the FCC in which the Poles is located by reason of a merger, acquisition or other business reorganization ("**LESSEE Affiliate**"). As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LESSOR, which consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder.

17. NOTICES. All notices hereunder must be in writing and are validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the

next business day following the courier's receipt from the sender, addressed as follows (or to any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: Brainerd Public Utilities
Attention: General Manager
8027 Highland Scenic Road
Brainerd, MN 56401

LESSEE: Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless
Attention: Network Real Estate
180 Washington Valley Road
Bedminster, New Jersey 07921

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

18. RECORDING. Upon reasonable request of LESSEE, LESSOR agrees to execute a document or memorandum describing each Premises, in a form substantially similar to that provided in Exhibit B, for LESSEE to record with the appropriate recording officer.

19. DEFAULT. If there is a breach by a Party with respect to any of the provisions of this Agreement or Supplement, the non-breaching Party shall give the breaching Party written notice of that breach. After receipt of the written notice, the breaching Party shall have thirty (30) days in which to cure the breach, provided the breaching Party shall have such extended period as may be required beyond the thirty (30) days if the breaching Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion, but in no event more than ninety (90) calendar days after receipt of written notice. The non-breaching Party may not maintain any action or effect any remedies for default against the breaching Party unless and until the breaching Party has failed to cure the breach within the time periods provided in this Section.

20. REMEDIES. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of that default, the non-defaulting Party may terminate the applicable Premises or the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located. Further, upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor.

21. ENVIRONMENTAL.

a. LESSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any

time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Poles, unless such conditions or concerns are caused by the specific activities of LESSEE in the Premises.

b. LESSOR shall hold LESSEE harmless and indemnify LESSEE from and assume all duties, responsibility and liability at LESSOR's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such non-compliance results from conditions caused by LESSEE; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Poles or activities conducted thereon, unless such environmental conditions are caused by LESSEE.

c. LESSEE shall hold LESSOR harmless and indemnify LESSOR from and assume all duties, responsibility and liability at LESSEE's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, to the extent that such non-compliance results from conditions caused by LESSEE; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Poles or activities conducted thereon, to the extent that such environmental conditions are caused by LESSEE.

22. CASUALTY. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Pole is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, then LESSEE may, at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Premises, terminate the Supplement as to the affected Premises upon fifteen (15) days prior written notice to LESSOR. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LESSEE's use of the Premises is impaired.

23. APPLICABLE LAWS. During the term, LESSOR shall maintain the Poles in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, laws regulating hazardous substances) (collectively "**Laws**"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with: (a) all Laws relating to LESSEE's use of the Premises; and (b) all Laws requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises.

24. AUTHORIZED ENTITIES. This Agreement is entered into by the Parties each on its own behalf and for the benefit of: (i) any entity in which the Party directly or indirectly holds an equity or similar interest; (ii) any entity which directly or indirectly holds an equity or similar interest in the Party; or (iii) any entity directly or indirectly under common control with the Party. Each Party and each of the entities described above are referred to herein as an "**Authorized Entity**". No obligation is incurred or liability accepted by any Authorized Entity until that Authorized Entity enters into a Supplement. Only the Party and the Authorized Entity executing a Supplement is responsible for the obligations and liabilities related thereto. All communications and invoices must be directed to the Authorized Entity executing the Supplement.

25. MISCELLANEOUS. This Agreement contains all agreements, promises, and understandings between the LESSOR and the LESSEE regarding LESSEE'S use of the Premises, and no oral agreement, promises, or understandings shall be binding upon either the LESSOR or the LESSEE in any dispute, controversy, or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors, and assigns hereto. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such Party shall have the right to enforce such rights at any time. The performance of this Agreement shall be governed interpreted, construed and regulated by the laws of the state in which the Premises is located without reference to its choice of law rules. The Parties agree that they participated equally in, and are jointly responsible for, the drafting of this Agreement. In the event of any dispute, any ambiguity in this Agreement shall not be construed against either Party. If any provision in this Agreement is determined by any court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired. Headings are provided for convenience and are not a part of this Agreement. This Agreement may be executed in counterpart copies by the Parties and each counterpart, when taken together with the other, shall be deemed one and the same executed Agreement.

26. DATA PRACTICES. The Parties acknowledge that LESSOR is a government entity that is subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (the Act). The Act presumes that data that a government entity creates, collects, receives, stores, uses, maintains, or disseminates is public, unless specifically characterized otherwise by law. If and to the extent that the LESSEE creates, collects, receives, stores, uses, maintains or disseminates government data (as defined under the Act) because it performs government functions under this Agreement, then LESSEE must comply with the applicable requirements of the Act as if it were a government entity, and may be held liable under the Act for noncompliance. LESSEE agrees to promptly notify LESSOR if it becomes aware of any data requests or potential claims under the Act.

27. STRUCTURE RECONDITIONING, REPAIR, REPLACEMENT.

a. From time to time, LESSOR may plan to paint, recondition, or otherwise improve or repair one or more of the Poles in a substantial way ("**Reconditioning Work**"). LESSOR shall reasonably cooperate with LESSEE to carry out Reconditioning Work activities in a manner that minimizes interference with LESSEE's approved use of the Premises.

b. Prior to commencing Reconditioning Work, LESSOR shall provide LESSEE with not less than one hundred twenty (120) days prior written notice. Upon receiving that notice, it shall be LESSEE's

sole responsibility to provide adequate measures to cover or otherwise protect LESSEE's equipment from the consequences of the Reconditioning Work, including but not limited to paint and debris fallout. LESSOR reserves the right to require LESSEE to remove all of LESSEE's equipment from the Poles and Premises during Reconditioning Work, provided the requirement to remove LESSEE's equipment is contained in the written notice required by this Section.

c. During LESSOR's Reconditioning Work, LESSEE may maintain a temporary communications facility on the Poles, or after approval by LESSOR, on any land owned or controlled by LESSOR in the vicinity of the Poles, upon mutual agreement of the Parties and compliance with LESSOR policies and requirements.

d. LESSEE may request a modification of LESSOR's procedures for carrying out Reconditioning Work in order to reduce the interference with LESSEE's use of the Premises. If LESSOR agrees to the modification, LESSEE shall be responsible for all reasonable incremental cost related to the modification.

e. If the Poles need to be replaced in the ordinary course of business operations ("**Replacement Work**"), LESSOR shall provide LESSEE with at least thirty (30) days' written notice to remove its equipment. LESSOR shall also promptly notify LESSEE when the Poles have been replaced and LESSEE may re-install its equipment. In the event of Replacement Work, the Parties will confer in good faith as to schedule, work plan, temporary arrangements, and related matters. During LESSOR's Replacement Work, LESSEE may maintain a temporary communications facility on the Poles, subject to compliance with LESSOR'S policies and requirements, or after approval by LESSOR, on any land owned or controlled by LESSOR in the vicinity of the Poles. If the Poles will not accommodate LESSEE's temporary communications facility or if the Parties cannot agree on a temporary location, LESSEE may provide notice of termination as to the affected Premises.

f. If the Poles need to be repaired due to storm or other damage on an immediate basis ("**Repair Work**"), LESSOR shall notify LESSEE to remove its equipment as soon as possible. In the event of an emergency, LESSOR shall contact LESSEE by telephone at LESSEE's Network Operations Center [at (800) 224-6620] prior to removing LESSEE's equipment from the Premises. Once the Poles have been replaced or repaired, LESSOR will promptly notify LESSEE it can reinstall its equipment. LESSOR in its sole discretion, consistent with prudent utility practices, shall determine how and when to address Repair Work of Poles, in consideration of customer and facilities needs throughout its system. During LESSOR's Repair Work, LESSEE may maintain a temporary communications facility on the Poles, subject to compliance with LESSOR'S policies and requirements, or after approval by LESSOR, on any land owned or controlled by LESSOR in the vicinity of the Poles. If the Poles will not accommodate LESSEE's temporary communications facility, if the Parties cannot agree on a temporary location, or if the Pole(s) cannot be repaired or replaced within thirty (30) days, LESSEE may provide notice of termination as to the affected Premises.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective the day and year first above written.

LESSOR:

Water & Light Department d/b/a Brainerd Public Utilities

By: _____

Name: SCOTT MAGNUSON

Its: SUPERINTENDENT

Date: 9-21-2016

LESSEE:

Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

By: _____

Name: James R. Martin

Its: Director - Network Field Engineering

Date: 12/13/16

EXHIBIT A
Master Lease Agreement Supplement Form

Consistent with the Master Lease Agreement dated ____, , Brainerd Public Utilities with its principal offices located at 8027 Highland Scenic Road, PO Box 373, Brainerd, MN 56401, hereinafter designated **LESSOR** and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, with its principal offices located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated **LESSEE**, Lessor leases to Lessee certain spaces on and within Lessor's Pole at the location listed below (the "Premises") pursuant to this Master Lease Agreement Supplement (the "Supplement"):

1. **Premises.** Space on Lessor's pole located at <INSERT SITE ADDRESS> reasonably required for the installation, operation, and maintenance of antennas and other equipment (the "**Antenna Space**") and such additional space necessary for the installation, operation and maintenance of wires, cables, conduits, and pipes running between and among the various portions of the equipment and to all necessary electrical and telephone utility, cable, and fiber sources, all as described in Exhibit 1, which is attached hereto and made a part hereof.

2. **Term**. The Commencement Date and the term of this Supplement shall be as set forth in the Master Lease Agreement.

3. **Consideration.** Rent under this Supplement shall be <ANNUAL RENT> per year, payable to Lessor at <REMITTANCE ADDRESS>. The annual rent shall escalate as set forth in the Master Lease Agreement.

The Parties acknowledge and agree that this Supplement may be amended from time to time, in accordance with the Master Lease Agreement, upon LESSEE'S request and LESSOR'S approval, all as reflected in writing.

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Supplement.

LESSOR:

Brainerd Public Utilities

By: _____

Name: Scott MAGNUSON

Its: SUPERINTENDENT

Date: 9-21-2016

LESSEE:

Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless

By:_____

Its:

Date: _____

EXHIBIT 1 of Supplement

Site Plan of Premises, Equipment Design, Antenna Space

EXHIBIT B

FORM MEMORANDUM OF SUPPLEMENT FOR RECORDING

DRAFTED BY
AND RETURN TO:
Moss & Barnett (AAD)
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
(Site Name: _____)
(Prepared by)
Parcel Id. No.
Legal Description on Page

(Space above this line for Recorder's use.)

MEMORANDUM OF MASTER LEASE AGREEMENT SUPPLEMENT

THIS MEMORANDUM OF MASTER LEASE AGREEMENT SUPPLEMENT ("Memorandum") is made this _____ day of _____, 20__, between Brainerd Public Utilities with its notice office located at 8027 Highland Scenic Road, PO Box 373, Brainerd, MN 56401, hereinafter referred to as ("LESSOR"), and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, with its address for notice located at 180 Washington Valley Road, Bedminster, New Jersey 07921, hereinafter referred to as ("LESSEE"). LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

1. LESSOR and LESSEE entered into a Master Lease Agreement Supplement (the "Supplement") on _____, 20____, for an initial term of five (5) years, effective as of the date of execution by both Parties (the "Commencement Date"). Upon the expiration of the initial term, the Supplement shall automatically be extended for an additional five-year term, unless LESSEE provides notice under the Master Lease Agreement of termination, provided that no Supplement shall exceed the Term of the Master Lease Agreement.

2. Pursuant to the Supplement, LESSOR leased to LESSEE certain space described in the Supplement upon LESSOR's pole on the real property legally described on Exhibit "1".

3. The terms, covenants and provisions of the Supplement, the terms of which are hereby incorporated by reference into this Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of LESSOR and LESSEE.

Signature and Notary Blocks to be added

Exhibit 1 to be added.

Master Lease Agreement Supplement

Consistent with the Master Lease Agreement dated December 13, 2016, *Water & Light Department d/b/a *Brainerd Public Utilities with its principal offices located at 8027 Highland Scenic Road, PO Box 373, Brainerd, MN 56401, hereinafter designated **LESSOR** and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, with its principal offices located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated **LESSEE**, Lessor leases to Lessee certain spaces on and within Lessor's Pole at the location listed below (the "Premises") pursuant to this Master Lease Agreement Supplement (the "Supplement"):

1. **Premises.** Space on Lessor's pole located near the intersection of South 5th Street and Oak Street, in Brainerd, Minnesota, reasonably required for the installation, operation, and maintenance of antennas and other equipment (the "**Antenna Space**") and such additional space necessary for the installation, operation and maintenance of wires, cables, conduits, and pipes running between and among the various portions of the equipment and to all necessary electrical and telephone utility, cable, and fiber sources, all as described in Exhibit 1, which is attached hereto and made a part hereof.

2. **Term**. The Commencement Date and the term of this Supplement shall be as set forth in the Master Lease Agreement.

3. **Consideration.** Rent under this Supplement shall be Nine Hundred and 00/100 Dollars ($900.00) per year, payable to Lessor at 8027 Highland Scenic Road, Brainerd, MN 56401. The annual rent shall escalate as set forth in the Master Lease Agreement.

4. **Lessor's Pole**. The actual costs of procuring and replacing LESSOR's pole for the initial installation is Twelve Thousand Nine Hundred Twenty-one and 33/100 Dollars ($12,921.33) and shall be paid by LESSEE within ninety (90) days of the full execution of this Supplement.

The Parties acknowledge and agree that this Supplement may be amended from time to time, in accordance with the Master Lease Agreement, upon LESSEE'S request and LESSOR'S approval, all as reflected in writing.

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Supplement.

LESSOR:
Water & Light Department d/b/a
Brainerd Public Utilities

By: _____
Name: Scott MacNuson
Its: Superintendent
Date: 9-21-2016

LESSEE:

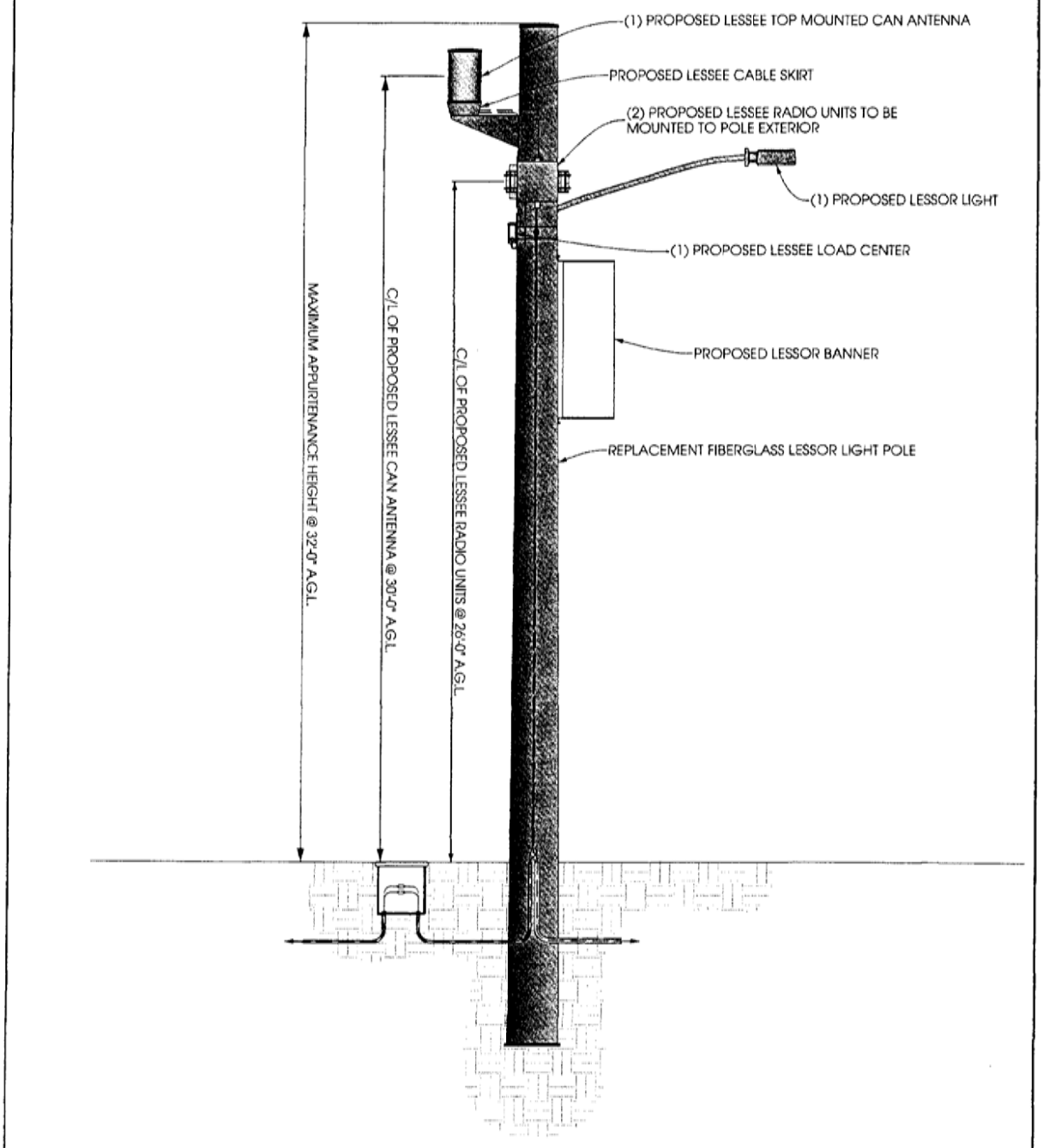
Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless

By: _____
Name: James R. Martin
Its: Director - Network Field Engineering
Date: 12/20/16

EXHIBIT 1 of Supplement

Site Plan of Premises, Equipment Design, Antenna Space

See Attached Drawings



A LIGHT POLE ELEVATION
SCALE: NTS

Edge
Consulting Engineers, Inc.

PROJECT NO: 20130091083
EDGE PROJECT NO: 13752
DRAWN BY: RKB
CHECKED BY: OGD

REV	DATE	DESCRIPTION	INI.
A	05/07/2019	LEASE EXHIBIT	TKB
B	06/13/2019	LEASE EXHIBIT	TKB

MINOR BRAINERD HS SC 1
BRAINERD, MINNESOTA
REPLACEMENT POLE
LEASE EXHIBIT

SHEET TITLE
NODE 1
LIGHT POLE
ELEVATION

SHEET NUMBER
EXHIBIT A.2

Pole Attachment License Agreement

This Pole Attachment License Agreement (the "Agreement") dated_____, 2018 is made by and between City of Columbia, Missouri ("City"), a municipal corporation, and ExteNet Systems, Inc. ("Licensee"), a Delaware corporation.

Recitals

City is a municipal utility performing the essential public service of distributing electric power; and

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 and standards and policies, and permitting fair and reasonable access to available capacity on City's infrastructure; and

Licensee proposes to install and maintain its Communications Facilities distributed antenna systems and associated wireless equipment, Licensee's Attachments, on City's Poles to provide Communications Services; and

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

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 Pole(s).

1.4 **Attachment(s):** means Licensee's Communications 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 **Communications Facilities:** means distributed antenna systems, wireless attachments, and all associated equipment or Attachments, utilized to provide Communications Service.

1.9 **Communications Service:** means the transmission or receipt of voice, video, data, broadband Internet, or other forms of digital or analog signals over Communications Facilities.

1.10 **Conduit System:** means City owned system of conduit, innerduct, manholes and hand holes.

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

1.12 **Emergency:** means a situation exists which, in the reasonable discretion of Licensee

or City, if not remedied immediately, poses an imminent threat to public to public health, life, or safety, damage to property or a service outage.

1.13 **Licensee:** means ExteNet Systems, Inc., its authorized successors and assignees.

1.14 **Make-Ready or Make-Ready Work:** means all work that City reasonably determines to be required to accommodate Licensee's Communications 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.

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

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

1.17 **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.

1.18 **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.

1.19 **Pole:** means a pole owned or controlled by City that is used for the distribution of electricity, lighting and/or Communications Service and is capable of supporting Attachments for Communications Facilities.

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 Communications Facilities 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 utility requirements at the time of the Permit grant, including the installation of communications circuits for operation of City's electric system or lighting system.

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

1.24 **Service Drop:** means the collection of overhead electrical wire(s) running from a Pole to the point of connection at a premises on other building.

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 as designated by City.

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

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

2.4 **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.

2.5 **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 City use. At the time of Permit issuance, City shall notify Licensee if capacity on particular poles is being reserved for reasonably foreseeable future electric use or any other required City 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 utility service. If reclaimed for City's use, City may at such time also install associated facilities, including the attachment of communications lines for internal City operational or governmental communications requirements. 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 core utility service requirements, 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 Article 8. Licensee shall not be required to bear any of the costs or 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.

2.6 **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 Communications 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.

2.7 **Licensee's Right to Attach .** Nothing in this Agreement, other than a Permit issued pursuant to Article 7, shall be construed as granting Licensee any right to attach Licensee's Communications Facilities to any specific Pole.

2.8 **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.

2.9 **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.

2.10 **Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals set forth above 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.

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

2.11.1 Licensee shall obtain a Permit for each Overlashing, in accordance with the requirements of Article 7. Absent such authorization, Overlashing constitutes an Unauthorized Attachment under Article 18.

2.11.2 Authorized Overlashing to accommodate Attachments of Licensee or its Affiliate(s) shall not increase the Annual Attachment Fee paid by Licensee. 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.

2.11.3 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 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 Communications Facilities without Licensee's consent. Authorized Overlashing shall not increase the fees and charges paid by Licensee. Nothing in this Agreement shall prevent Licensee from seeking a contribution from an Overlashing third party to defray fees and charges paid by Licensee.

2.11.4 Make-Ready Work procedures set forth in Article 8 shall apply, as necessary, to all Overlashing.

2.12 **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. Term

The term of this Agreement shall remain in effect for a term of five (5) years from the date of execution by the City and Licensee unless terminated by other terms of this Agreement. Thereafter, the Agreement shall automatically renew for two (2) additional five (5) year terms (the "Renewal Terms") unless the Agreement is allowed to end by one party giving the other written notice of its intent to end the Agreement at least six (6) months prior to the expiration of the current five (5) year Renewal Term.

Article 4. Fees and Charges

4.1 Payment of Fees and Charges. Licensee shall pay to City the fees and charges specified below and shall comply with the terms and conditions specified below:

4.1.1 Street pole annual attachment fee five hundred forty dollars ($540.00) annually per City pole, for the first five (5) year term. The annual rent shall increase by twenty percent (20%) upon the commencement of each Renewal Term.

4.1.2 Permit application fee for attachment permit to reimburse City for costs incurred for project management services review of permit application site description approval and pole evaluation in an amount of one hundred dollars ($100.00) per pole.

4.1.3 Unauthorized Attachment Penalty Fee: Three times the annual attachment fee per occurrence for attachments made without prior City approval. Payment of this fee does no guarantee the attachment may remain on the particular pole.

4.1.4 Failure to Timely Remove or Transfer. Abandon or non-removal holdover fee of one hundred dollars ($100.00) per day per pole attachment shall be assessed.

4.1.5 In addition to the fees set forth above, Licensee shall pay City for all electric power necessary to operate its equipment. City and Licensee agree that metering service to each and every Attachment is both uneconomical and impractical and parties agree the rate charged shall be based on the metering of one pole of each type of Attachment arrangement pursuant to Permits issued by City, and multiplied by the number of Poles with a similar Attachment arrangement. This rate amount shall be divided by the number of other entities or users utilizing

electric power and each Pole that Licensee has placed Attachments on. Electric use shall be paid on a monthly basis

4.2 **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.

4.3 **Billing of Attachment Fee.** Licensee shall pay the per-pole Attachment Fee annually, not later than January 30 of each 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.

4.4 **Refunds.** No fees and charges shall be refunded on account of any surrender of a Permit granted under this Agreement.

4.5 **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 two percent (2%) 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.

4.6 **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 s responsible under this Agreement.

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

4.7 **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.

4.8 **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 and provides such documentation upon Licensee's request. 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.

4.9 **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.

4.10 **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.

4.11 **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 5. Specifications

5.1 **Installation.** When a Permit is issued pursuant to this Agreement, Licensee's Communications 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 Communications Facilities.

5.2 **Maintenance of Licensee's Communication 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.

5.3 **Tagging.** Licensee shall Tag all of its Communications Facilities as specified in applicable federal, state, and local regulations upon installation of such Facilities. Failure to provide proper tagging will be considered a violation of the Applicable Standards.

5.4 **Interference.** Licensee shall not allow its Communications Facilities to impair the ability of City or any third party to use City's Poles, nor shall Licensee allow its Communications Facilities to interfere with the operation of any City Facilities or third-party facilities. City currently has existing banner agreements that may require the entire pole.

5.5 **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 Communications Facilities, Licensee's customers' facilities, or to any of Licensee's employees, contractors, customers, or other persons.

5.6 **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 26 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 City Facilities, City may 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 Article 5.6. Licensee shall indemnify City for any such work.

5.7 **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.

5.8 **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 7, 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.

5.9 **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 5.9.

Article 6. Private and Regulatory Compliance

6.1 **Necessary Authorizations.** To the extent that City cannot provide the necessary authorizations, before Licensee occupies any of City's Poles or City Facilities, 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 Communications 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 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 Communications Facilities.

6.2 **Lawful Purpose and Use.** Licensee's Communications Facilities and the use of such Facilities must comply with all applicable federal, state and local laws.

Article 7. Permit Application Procedures

7.1 **Permit Required.** Before making any Attachments to any Poles, Licensee shall submit an Application and receive a Permit therefor, with respect to each Pole.

7.1.1 Overlashing is subject to a streamlined Permit process. As part of an Application of Overlashing Licensee shall conduct a loading analysis. City shall review the Application and identify any necessary make-ready to accommodate the Overlashing. City shall review Applications for routine Overlashing installations as promptly as is reasonable. Licensee shall not install any new Overlash until it receives a Permit. Licensee shall be responsible for the costs of all make-ready necessary to accommodate the Overlash.

7.1.2 It is Licensee's responsibility to verify that the Pole and strand to which it proposes to Overlash meets all Applicable Standards before Overlashing.

7.1.3 Licensee shall notify City of an Overlash within thirty (30) days of completion.

7.1.4 Any Overlash attachment that City discovers more than thirty (30) days after installation will be considered an Unauthorized Attachment subject to provisions of Article 18.

7.2 **Professional 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, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection, and certify that Licensee's Communications 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 qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems. The City may require the Licensee's professional engineer to conduct a post-construction inspection that the City will verify by means that it deems to be reasonable.

7.3 **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. Licensee shall use the City's Pole Attachment Permit Application form, which form has been provided to Licensee. 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:

7.3.1 **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, City shall review and respond to such properly executed and complete Permit Application for routine installations as promptly as is reasonable. City may utilize contractors to perform such analysis, the costs of which shall be borne by Licensee.

7.3.2 **Application With 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. City may utilize contractors to perform such analysis, the costs of which shall be borne by Licensee.

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

7.3.2.2 City's response will either: (i) provide a description of Make-Ready identified by City and a cost estimate for the City's portion of 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.

7.3.3 **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.

7.4 **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) within thirty (30) days following Licensee's submission of such Application if one (1) pole is noted on the Application. Sixty (60) days following Licensee's submission of the Application if two (2) to nine (9) pole requests are

included on the Application and within one hundred twenty (120) days following Licensees' submission of such Application if ten (10) or more poles are noted on the Application.

7.5 **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 8. Make-Ready Work/Installation

8.1 **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.

8.2 **Who May Perform Make-Ready.** Make-Ready Work in the electric supply space may be performed only by City and/or a qualified contractor authorized by City to perform such work. Estimated costs of the make ready work shall be paid in advance by Licensee.

8.3 **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 and if City received advance payment, the costs shall be advised and credited accordingly. 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.

8.3.1 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.

8.4 **Operator 's Installation/Removal/Maintenance Work.**

8.4.1 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 22.

8.4.2 All of Licensee's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all applicable regulations specified. Licensee shall assure that any person installing, maintaining, or removing its Communications Facilities is fully qualified and familiar with all Applicable Standards and the Minimum Design Specifications.

Article 9. Post Installation Inspections.

9.1 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.

9.2 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.

9.3 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.

9.4 If Licensee's Attachments remain out of compliance with Applicable Standards or approved design after any subsequent inspection, 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 Licensee will be in default of this Agreement and City may take appropriate steps to remedy such default..

Article 10. Effect of Failure to Exercise Access Rights.

If Licensee does not exercise any access right granted pursuant an applicable Permit(s) within one hundred twenty (120) calendar days of the effective date of such right (unless such time period is extended), 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. Licensee's access rights shall not be deemed effective until any necessary Make-Ready Work has been performed and a Permit has been issued.

Article 11. Rearrangements and Transfers

11.1 **Required Transfers of Licensee's Communications Facilities.** City shall only require relocation or removal of Licensee's attachments in instances required for public safety/welfare or as a result of a City project developed to the benefit of the public. Prior to relocation, the parties will identify a mutually agreeable, alternative location that technologically and functionally meets Licensee's Attachment needs. If Licensee fails to rearrange or transfer its Attachment within thirty (30) days after the parties identify a mutually agreeable, alternative location(s) for the Attachment(s), City has the right to rearrange or transfer Licensee's Attachments to such location(s). The actual and documented costs of such rearrangements or transfers shall be apportioned accordingly by and between the City and Licensee. City shall not be liable for damage to Licensee's Communication Facilities unless such damage was due to City or its contractor's negligence misconduct. 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 shall 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.

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

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.

13.1 Licensee shall compensate City for the actual and documented cost, including engineering and administrative cost, for rearranging, transferring, and/or relocating City's Poles to accommodate Licensee's Equipment Attachments.

13.2 Licensee shall reimburse the owner or owners of other facilities attached to City Poles for any actual and documented cost incurred by them for rearranging or transferring such facilities to accommodate Licensee's Equipment Attachments.

Article 14. Guys and Anchor Attachments and Grounds. 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 and install all necessary grounds.

Article 15. Abandonment of Poles.

15.1 **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 Communications 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. If, following the expiration of the notice period, Licensee has not yet removed and/or transferred all of its Communications Facilities, City shall have the right, but not the obligation, to remove or transfer Licensee's Communications Facilities at Licensee's expense. City shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities.

15.2 **Underground Relocation.** If City moves any portion of its pole system underground, Licensee shall remove its Communications Facilities from any affected Poles within sixty (60) calendar days of receipt of notice from City or such extended period of time which the parties mutually agree. The City agrees to provide to Licensee as much advance written notice of any requirement for Licensee to remove its Communications Facilities from the City's Poles. If Licensee does not remove its Attachments within the time period specified in the City's written notice, City shall have the right to remove or transfer Licensee's Communications Facilities at Licensee's expense. Regardless of such removal or transfer by the City, Licensee's Attachments shall remain the property of Licensee.

Article 16. Inspection.

16.1 **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.

16.2 **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 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, 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, unless otherwise agreed. 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 User. 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.

16.2.1 If any City Facilities 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.

16.2.2 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, and City will make reasonable effort to cause the Attaching Entity to make such payment.

16.2.3 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 17. Failure to Rearrange, Transfer or Correct.

17.1 Until such work is complete and City receives written notice of the completion of such work, Licensee shall be subject to a daily penalty as specified 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.

17.2 Licensee shall provide written notification to City upon completion of any of the required work.

Article 18. 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:

18.1 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).

18.2 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 one (1) year, 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.

18.3 In addition to the back rent, Licensee shall be subject to the Unauthorized Attachment Penalty as specified for each Unauthorized Attachment, including Service Drops, Riser Attachments where an existing licensed Pole Attachment exists and Overlash Attachments, where no Permit was obtained and/or required post-installation notification was not provided. Licensee shall submit a Permit Application in accordance with 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.

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

18.3.2 In the case of Overlash requiring a separate Permit application Licensee shall be required to submit an application within thirty (30) days of receipt of notice of Unauthorized Attachment.

Article 19 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 provide by the City:

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

19.2 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.

19.3 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 20. Liability and Indemnification.

20.1 **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 Communications Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. City agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of Licensee's Communication 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 any fines, penalties, claims, damages, or costs, arising out of or relating in any way to Licensee's service or interference with the operation of Licensee's Communications 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.

20.2 **Indemnification.** Licensee, and any agent, contractor, or subcontractor of Licensee, shall to the full extent permitted by law 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 Communications 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:

20.2.1 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 Communications 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;

20.2.2 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;

20.2.3 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.

20.3 **Procedure for Indemnification.**

20.3.1 City shall give prompt written notice to Licensee 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, City shall give the notice to Licensee no later than fifteen (15) calendar days after City receives written notice of the action, suit, or proceeding.

20.3.2 City's failure to give the required notice will not relieve Licensee from its obligation to indemnify City unless, and only to the extent, that Licensee is materially prejudiced by such failure.

20.3.3 Even after the termination of this Agreement, Licensee's indemnity obligations shall continue with respect to any claims or demand related to Licensee's Communications Facilities.

20.4 **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 Communications 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 Communications 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.

20.5 **No Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, 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.

20.6 **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 or federal limits on municipal liability or official governmental immunity. No indemnification provision contained in this Agreement under which Licensee indemnifies City shall be construed in any way to limit any other indemnification provision contained in this Agreement.

Article 21. Duties, Responsibilities, and Exculpation

21.1 **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.

21.2 **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.

21.3 **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.

21.4 **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 subcontractor's 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.

21.5 **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, 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.

21.6 **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.

21.7 **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 22. Insurance

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

22.1.1 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 contractors and others not protected under its insurance to obtain and maintain such insurance.

22.1.2 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.

22.1.3 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.

22.1.4 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.

22.2 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 who perform work on behalf of Licensee shall carry, in full force and effect, worker's compensation and employers' liability, comprehensive general liability, and automobile liability insurance coverages of the type that Licensee is required to obtain under this Agreement. Licensee shall ensure that each of its contractors and/or subcontractors adhere to the same insurance requirements set forth in this Section 22.2 (the "Insurance Requirements"); provided, however, this provision may be satisfied by contractors'

insurance policies which meet the Insurance Requirements and insure the activities of their subcontractors in lieu of separate subcontractor insurance policies.

22.3 **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. 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.

22.4 **Limits.** The limits of liability set out in this Agreement 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 Licensee's exposure to risk.

22.5 **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.

22.6 **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 23. Assignment

23.1 **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. Notwithstanding anything contained in this section, this Agreement and each Permit under it may be sold or assigned by Licensee without any approval or consent of the City to Licensee's affiliates or to any entity which acquires all or substantially all of licensee's assets that are the subject of this Agreement by reason of a merger, acquisition or other business reorganization provided that such acquiring entity is bound by all of the terms and conditions of this Agreement.

23.2 **Sub-licensing.** City and Licensee agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Communication Facilities deployed by Licensee pursuant to this Agreement may be owned and/or operated by Licensee's third-party wireless carrier customers ("Carriers") and installed and maintained by Licensee pursuant to license agreements between Licensee and such Carriers. Such Communication Facilities shall be treated as Licensee's Communication Facilities for all purposes under this Agreement provided that (i) License remains responsible and liable for all performance obligations under the Agreement with respect to such Communication Facilities; (ii) City's sole point of contact regarding such Communication Facilities shall be Licensee; and (iii) Licensee shall have the right to remove and relocate the Communication Facilities.

Article 24. 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 25. Jurisdiction and Venue

The jurisdiction and venue for any litigation arising out of this Agreement shall be in Boone County Circuit Court, Missouri or the United States Western District Court of Missouri.

25.1 **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 herein.

25.2 **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.

Article 26. Default

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

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

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

26.1.3 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

26.1.4 Licensee fails to timely correct violations of Applicable Standards.

26.2 Upon the occurrence of any one or more of the Events of Default, 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 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. If the nature of the breach reasonably required more than thirty (30) days to cure, Licensee will not be in default hereunder if it promptly commences such cure and is diligently pursuing the same.

26.3 Without limiting the rights granted to City, 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.

26.4 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, 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. Licensee may terminate specific Permits at any time and remove the attachments subject to such Permits. Following the effective date of the termination of a Permit and removal of the Attachments subject to such Permits, Licensee shall not be

subject to any additional annual Attachment Fees or other fees related to the terminated Permit and Attachment.

26.5

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

26.5.2 Under no circumstances will a failure of City to meet the survey or Make-Ready time periods subject City to damages.

26.6 Upon Termination for Default, Licensee shall remove its Attachments from all City Poles within six (6) months of receiving notice. 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 27. Receivership, Foreclosure or Act of Bankruptcy

27.1 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.

27.2 In the case of foreclosure or other judicial sale of the plant, property and equipment of Licensee, or any part thereof, including or excluding this Agreement, City may serve notice of termination upon Licensee and the successful bidder at such sale, in which event 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:

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

27.2.2 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 28. 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 29. Amending Agreement

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

Article 30. Notices

30.1 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:

Director of Water and Light
701 E. Broadway
Columbia, Missouri 65201

and

Law Dept.
701 E. Broadway
Columbia, Missouri 65201

If to Licensee, at:

ExteNet Systems, Inc.
3030 Warrenville Rd., Suite 340
Lisle, Illinois 60532
Attn: Executive V-P and CFO

With a copy sent to the same address, Attn: Legal

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

30.2 Licensee shall maintain a staffed 24-hour emergency telephone number, and provide same to City, where City can contact Licensee to report damage to Licensee's Communication 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.

Article 31. Entire Agreement

This Agreement constitutes the entire agreement between the parties concerning attachments of Licensee's Communications 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 32. 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 33. Governing Law

All matters relating to this Agreement shall be governed by the laws of the state of Missouri, and venue shall be in the Circuit Court of Boone County, Missouri or the Western District of Missouri Federal Court.

Article 34. Incorporation of Recitals

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

Article 35. *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, 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.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have been duly authorized to execute this contract as of the day and year first above written.

CITY:

CITY OF COLUMBIA, MISSOURI BY:

_____
Mike Matthes, City Manager

ATTEST:

_____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

_____
Nancy Thompson, City Counselor

STATE OF MISSOURI)
) ss
COUNTY OF BOONE)

On this_____day of_____, 2018, before me appeared Mike Matthes, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and the City Manager acknowledged this instrument to be the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal, at my office in Columbia, Boone County, Missouri, the day and year first above written.

_____
Notary Public

My commission expires:_____.

LICENSEE:

EXTENET SYSTEMS, INC., A DELAWARE CORPORATION

By: _____

Name: Oliver Valente

Title: EVP-COO

ATTEST:

By: _____

Name: ADELA REYNOSO

Title: LEGAL COORINATOR

STATE OF Illinois)
) ss
COUNTY OF ~~Cook~~ DuPage)

On this 22nd day of January, 2018, before me, a Notary Public in and for said state, personally appeared, Oliver Valente, to me personally known, who being by me duly sworn did say that he/she is EVP-COO of ExteNet Systems, Inc, a Delaware corporation, and that this instrument was signed on behalf of said limited liability corporation and further acknowledged that he/she executed the same as his/her free act and deed for the purpose therein stated and has been duly granted the authority by said limited liability corporation to execute the same.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal the day and year first above written.

_____
Notary Public

My commission expires: 9/27/20.

OFFICIAL SEAL
MARY C ARENA
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/27/20

Pole Attachment License Agreement

This Pole Attachment License Agreement (the "Agreement") dated_____, 2017 ("Effective Date") is made by and between City of Columbia, Missouri ("City"), a municipal corporation, and MO Network Utility Transport, LLC ("Licensee").

Recitals

City is a municipal utility performing the essential public service of distributing electric power; and

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 and standards and policies, and permitting fair and reasonable access to available capacity on City's infrastructure; and

Licensee proposes to install and maintain Communications Facilities, distributed antenna systems and associated wireless equipment, Licensee's Attachments, on City's Poles to provide Communications Services; and

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

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 Pole(s).

1.4 **Attachment(s):** means MO Network Utility Transport, LLC's Communications 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 MO Network Utility Transport, LLC 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 **Communications Facilities:** means distributed antenna systems, wireless attachments, and all associated equipment, utilized to provide Communications Service.

1.9 **Communications Service:** means the transmission or receipt of voice, video, data, broadband Internet, or other forms of digital or analog signals over Communications Facilities.

1.10 **Conduit System:** means City owned system of conduit, innerduct, manholes and hand holes.

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

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

1.13 **Equipment Attachment:** means each power supply, amplifier, pedestal, appliance, antenna, or other single device or piece of equipment affixed to any City Pole or City Facilities.

1.14 **Licensee:** means Missouri Network Utility Transport, LLC, its authorized successors and assignees.

1.15 **Make-Ready or Make-Ready Work:** means all work that City reasonably determines to be required to accommodate Licensee's Communications 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.

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

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

1.18 **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.

1.19 **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.

1.20 **Pole:** means a pole owned or controlled by City that is used for the distribution of electricity, lighting and/or Communications Service and is capable of supporting Attachments for Communications Facilities.

1.21 **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.

1.22 **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 Communications Facilities on a Pole. Such work includes, but is not limited to, field inspection and administrative processing.

1.23 **Reserved Capacity:** means capacity or space on a Pole that City has identified and reserved for its own future utility requirements at the time of the Permit grant, including the installation of communications circuits for operation of City's electric system or lighting system.

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

1.25 **Service Drop:** means the collection of overhead electrical wire(s) running from a Pole to the point of connection at a premises or other building.

1.26 **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.

1.27 **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 as designated by City.

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

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

2.4 **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.

2.5 **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 City use. Prior to Permit issuance, City shall notify Licensee if capacity on particular Poles is being reserved for reasonably foreseeable future electric use or any other required City 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 utility service. If reclaimed for City's use, City may at such time also install associated facilities, including the attachment of communications lines for internal City operational or governmental communications requirements. 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 core utility service requirements, 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 Article 8. Licensee shall not be required to bear any of the costs or rearranging or replacing its Attachment(s) as a result of City reclaiming Reserved Capacity, 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.

2.6 **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.

2.7 **Licensee's Right to Attach .** Nothing in this Agreement, other than a Permit issued pursuant to Article 7, shall be construed as granting Licensee any right to attach Licensee's Communications Facilities to any specific Pole.

2.8 **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.

2.9 **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.

2.10 **Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals set forth above 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.

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

2.11.1 Licensee shall obtain a Permit for each Overlashing, in accordance with the requirements of Article 6. Absent such authorization, Overlashing constitutes an Unauthorized Attachment under Article 20.

2.11.2 Authorized Overlashing to accommodate Attachments of Licensee or its Affiliate(s) shall not increase the annual Attachment Fee set forth in Section 4.1.1 ("Attachment Fee") . 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.

2.11.3 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 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 Communications Facilities without Licensee's consent. Authorized Overlashing shall not increase the fees and charges paid by Licensee. Nothing in this Agreement shall prevent Licensee from seeking a contribution from an Overlashing third party to defray fees and charges paid by Licensee.

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

2.12 **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, conditioned, or delayed. 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. Term

The term of this Agreement shall remain in effect for a term of five (5) years from the date of execution by the City unless terminated by other terms of this Agreement. Thereafter, the Agreement shall automatically renew for two (2) additional five (5) year terms unless the Agreement is allowed to end by one party giving the other written notice of its intent to end the Agreement at least six (6) months prior to the expiration of the current five (5) year term.

Article 4. Fees and Charges

4.1 **Payment of Fees and Charges**. Licensee shall pay to City the fees and charges specified below and shall comply with the terms and conditions specified below:

4.1.1 Street pole annual Attachment Fee of five hundred and forty dollars ($540.00) annually per City Pole, for the first five (5) year term. The annual rent shall increase by twenty percent (20%) upon the commencement of each five (5) year renewal term.

4.1.2 Permit application fee for attachment permit to reimburse City for costs incurred for project management services review of a Pole Attachment Permit Application ("Application"), site description approval and Pole evaluation in an amount of one hundred dollars ($100.00).

4.1.3 Unauthorized Attachment Penalty Fee: Three times the annual Attachment Fee per occurrence for Attachments made without prior City approval. Payment of this fee does no guarantee the Attachment may remain on the particular Pole.

4.1.4 Failure to Timely Remove or Transfer. Abandon or non-removal holdover fee of one hundred dollars ($100.00) per day per Pole Attachment shall be assessed.

4.1.5 In addition to the fees set forth above, Licensee shall pay City for all electric power necessary to operate its Communication Facilities. City and Licensee agree that metering service to each and every Attachment is both uneconomical and impractical and parties agree the rate charged shall be based on the metering of each type of Attachment arrangement pursuant to Permits issued by City, and

multiplied by the number of Poles with a similar Attachment arrangement. This rate amount shall be divided by the number of other entities or users utilizing electric power on each Pole that Licensee has placed Attachments on. Electric use shall be paid on a monthly basis.

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

4.3 **Billing of Attachment Fee.** Licensee shall pay the per-pole Attachment Fee annually, not later than January 30 of each 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.

4.4 **Refunds.** No fees and charges shall be refunded on account of any surrender of a Permit granted under this Agreement.

4.5 **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 two percent (2%) 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.

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

Such costs and reimbursements shall include, but not necessarily be limited to, 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.

4.7 **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.

4.8 **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.

4.9 **Determination of Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by City, City will provide prior written notice of charges for such work, and 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.

4.10 **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.

4.11 **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 by Licensee, 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 5. Specifications

5.1 **Installation.** When a Permit is issued pursuant to this Agreement, Licensee's Communications 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 Communications Facilities. City shall be responsible for the maintenance of its Poles.

5.2 **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.

5.3 **Tagging.** Licensee shall Tag all of its Communications Facilities as specified in applicable federal, state, and local regulations upon installation of such Facilities. Failure to provide proper tagging will be considered a violation of the Applicable Standards.

5.4 **Interference.** Licensee shall not allow its Communications Facilities to impair the ability of City or any third party to use City's Poles, nor shall Licensee allow its Communications Facilities to interfere with the operation of any City Facilities or third-party facilities. City currently has existing banner agreements that may require the entire Pole.

5.5 **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 Communications Facilities, Licensee's customers' facilities, or to any of Licensee's employees, contractors, customers, or other persons.

5.6 **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 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 Article 4.7. Licensee shall indemnify City for any such work.

5.7 **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.

5.8 **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 one hundred twenty (120) 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.

5.9 **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 as reasonably and mutually determined by Licensee and City ("Nonfunctional Attachment") as provided in this Paragraph 5.9.

Article 6. Private and Regulatory Compliance

6.1 **Necessary Authorizations.** To the extent that City cannot provide the 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 Communications 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 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 Communications Facilities.

6.2 **Lawful Purpose and Use.** Licensee's Communications Facilities and the use of such Facilities must comply with all applicable federal, state and local laws.

Article 7. Permit Application Procedures

7.1 **Permit Required.** Before making any Attachments to any Poles, Licensee shall submit an Application and receive a Permit therefor, with respect to each Pole.

7.1.1 Overlashing is subject to a streamlined Permit process. As part of an Application of Overlashing Licensee shall conduct a loading analysis. City shall review the Application and identify any necessary make-ready to accommodate the Overlashing. City shall review Applications for routine Overlashing installations as promptly as is reasonable. Licensee shall not install any new Overlash until it receives a Permit. Licensee shall be responsible for the costs of all make-ready necessary to accommodate the Overlash.

7.1.2 It is Licensee's responsibility to verify that the Pole and strand to which it proposes to Overlash meets all Applicable Standards before Overlashing.

7.1.3 Licensee shall notify City of an Overlash within thirty (30) days of completion.

7.1.4 Any Overlash attachment that City discovers more than thirty (30) days after installation will be considered an Unauthorized Attachment subject to provisions of Article 20.

7.2 **Professional Certification.** Unless otherwise waived in writing by City, as part of the 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, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection, and certify that Licensee's Communications 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 qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems. The City may require the Licensee's professional engineer to conduct a post-construction inspection that the City will verify by means that it deems to be reasonable.

7.3 **Submission and Review of Permit Application.** Licensee shall submit a properly executed 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. Licensee shall use the City's Application form, which form has been provided to Licensee. City may amend the 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 Application process shall be as follows:

7.3.1 **Application With Pre-Construction Survey**. If Licensee's Application includes a Pre- Construction Survey that was required by City 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, City shall review and respond to such properly executed and complete an Application for routine installations as promptly as is reasonable.

7.3.2 **Application Without Pre-Construction Survey.** If Licensee's Application does not include a Pre-Construction Survey because the City did not require such a 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 Application for routine installations as promptly as is reasonable. City may utilize contractors to perform such analysis, the costs of which shall be borne by Licensee.

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

7.3.2.2 City's response will either: (i) provide a description of Make-Ready identified by City and a cost estimate for the City's portion of 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.

7.3.3 **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.

7.4 **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 Application, which shall serve as authorization for Licensee to make its Attachment(s).

7.5 **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 8. Make-Ready Work/Installation

8.1 **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.

8.2 **Who May Perform Make-Ready.** Make-Ready Work in the electric supply space may be performed only by City and/or a qualified contractor authorized by City to perform such work. Estimated costs of the make ready work shall be paid in advance by Licensee.

8.3 **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 and if City received advance payment, the costs shall be advised and credited accordingly. 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.

8.3.1 In instances where Licensee is performing Make-Ready Work, where an existing Attaching Entity has not relocated or otherwise undertaken work required to complete Make-Ready Work (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.

8.4 **Operator's Installation/Removal/Maintenance Work.**

8.4.1 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 18.

8.4.2 All of Licensee's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all applicable regulations specified. Licensee shall assure that any person installing, maintaining, or removing its Communications Facilities is fully qualified and familiar with all Applicable Standards and the Minimum Design Specifications.

Article 9. Post Installation Inspections.

9.1 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.

9.2 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.

9.3 If the post-installation inspection reveals that Licensee's Attachments 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.

9.4 If Licensee's Attachments remain out of compliance with Applicable Standards or approved design after any subsequent inspection, 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 Licensee will be in default of this Agreement and City may take appropriate steps to remedy such default.

Article 10. Effect of Failure to Exercise Access Rights.

If Licensee does not exercise any access right granted pursuant to an applicable Permit(s) within one hundred twenty (120) calendar days of the effective date of such right (unless such time period is extended), 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. City will provide Licensee with sixty (60) days' prior written notice before using or making available to another Attaching Entity the space that was scheduled for Licensee's Attachments pursuant to an applicable Permit(s). Licensee's access rights shall not be deemed effective until any necessary Make-Ready Work has been performed and a Permit has been issued.

Article 11. Rearrangements and Transfers

11.1 **Required Transfers of Licensee's Communications Facilities**. City shall only require relocation or removal of Licensee's attachments in instances required for public safety/welfare or as a result of a City project developed to the benefit of the public. Prior to relocation, the parties will identify a mutually agreeable, alternative location that technologically and functionally meets Licensee's Attachment needs. If Licensee fails to rearrange or transfer its Attachment within thirty (30) days after the parties identify a mutually agreeable, alternative location(s) for the Attachment(s), City has the right to rearrange or transfer Licensee's Attachments to such location(s). The actual and documented costs of such rearrangements or transfers shall be apportioned accordingly by and between the City and Licensee. City shall not be liable for damage to Licensee's facilities unless such damage was due to City or its contractors' gross negligence or gross misconduct. 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 shall 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.

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

Article 12. Treatment of Multiple Requests for Same Pole.

If City receives 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.

13.1 Licensee shall compensate City for the actual and documented cost, including engineering and administrative cost, for rearranging, transferring, and/or relocating City's Poles to accommodate Licensee's Attachments.

13.2 Licensee shall reimburse the owner or owners of other facilities attached to City Poles for any actual and documented cost incurred by them for rearranging or transferring such facilities to accommodate Licensee's Attachments.

Article 14. Guys and Anchor Attachments and Grounds. 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 and install all necessary grounds.

Article 15. Abandonment of Poles.

15.1 **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 Communications 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. If, following the expiration of the notice period, Licensee has not yet removed and/or transferred all of its Communications Facilities, City shall have the right, but not the obligation, to remove or transfer Licensee's Communications Facilities at Licensee's expense. City shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities. Regardless of such removal or transfer by the City, Licensee's Attachments shall remain the property of Licensee.

15.2 **Underground Relocation.** If City moves any portion of its pole system underground, Licensee shall remove its Communications Facilities from any affected Poles within sixty (60) calendar days of receipt of notice from City. If Licensee does not remove its Attachments within sixty (60) days, City shall have the right to remove or transfer Licensee's Communications Facilities at Licensee's expense. Regardless of such removal or transfer by the City, Licensee's Attachments shall remain the property of Licensee.

Article 16. Inspection.

16.1 **General Inspections.** City reserves the right to make periodic inspections, as conditions may warrant, of the Attachment 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.

16.2 **Corrections**. In the event any of Licensee's Attachments 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 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, 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 User. 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.

16.2.1 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.

16.2.2 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, and City will make reasonable effort to cause the Attaching Entity to make such payment.

16.2.3 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 17. Failure to Rearrange, Transfer or Correct.

17.1 Until such work is complete and City receives written notice of the completion of such work, Licensee shall be subject to a daily penalty as specified 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.

17.2 Licensee shall provide written notification to City upon completion of any of the required work.

Article 18. 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:

18.1 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).

18.2 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 one (1) year, 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.

18.3 In addition to the back rent, Licensee shall be subject to the Unauthorized Attachment Penalty as specified for each Unauthorized Attachment, including Service Drops, Riser Attachments where an existing licensed Pole Attachment exists and Overlash Attachments, where no Permit was obtained and/or required post-installation notification was not provided. Licensee shall submit an Application in accordance with 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.

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

18.3.2 In the case of Overlash requiring a separate Application Licensee shall be required to submit an Application within thirty (30) days of receipt of notice of Unauthorized Attachment.

Article 19. 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 provide by the City:

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

19.2 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.

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

Article 20. Liability and Indemnification.

20.1 **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 Communications Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. 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 any fines, penalties, claims, damages, or costs, arising out of or relating in any way to Licensee's service or interference with the operation of Licensee's Communications 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.

20.2 **Indemnification.** Licensee, and any agent, or contractor of Licensee, shall to the full extent permitted by law 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 Communications 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:

20.2.1 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 Communications 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;

20.2.1 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;

20.2.3 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.

20.3 **Procedure for Indemnification.**

20.3.1 City shall give prompt written notice to Licensee 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, City shall give the notice to Licensee no later than fifteen

(15) calendar days after City receives written notice of the action, suit, or proceeding.

20.3.2 City's failure to give the required notice will not relieve Licensee from its obligation to indemnify City unless, and only to the extent, that Licensee is materially prejudiced by such failure.

20.3.3 Even after the termination of this Agreement, Licensee's indemnity obligations shall continue with respect to any claims or demand related to Licensee's Communications Facilities.

20.4 **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 Communications 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 Communications Facilities would not release any Hazardous Substances. Licensee and its agents, or contractors 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.

20.5 **No Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, 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.

20.6 **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 or federal limits on municipal liability or official governmental immunity. No indemnification provision contained in this Agreement under which Licensee indemnifies City shall be construed in any way to limit any other indemnification provision contained in this Agreement.

Article 21. Duties, Responsibilities, and Exculpation

21.1 **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.

21.2 **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.

21.3 **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.**

21.4 **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, and contractors 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, and contractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, agents, and contractors; 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, and contractors' 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.

21.5 **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, 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.

21.6 **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.

21.7 **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, or contractors, and Licensee accepts the duty and sole responsibility to notify and inform Licensee's employees, agents, or contractors of such dangers, and to keep them informed regarding same.

Article 22. Insurance

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

22.1.1 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 contractors and others not protected under its insurance to obtain and maintain such insurance.

22.1.2 **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.

22.1.3 **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.

22.1.4 **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.

22.2 **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 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 Agreement. Licensee shall ensure that each of its contractors and/or subcontractors adhere to the same insurance requirements set forth in this Section 22.2 (the "Insurance Requirements"); provided, however, this provision may be satisfied by contractors' insurance policies which meet the Insurance Requirements and insure the activities of their subcontractors in lieu of separate subcontractor insurance policies.

22.3 **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. 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 provide a copy of such Certificates to City upon request.

22.4 **Limits.** The limits of liability set out in this Agreement 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 Licensee's exposure to risk.

22.5 **Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors 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.

22.6 **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 23. Assignment

23.1 **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. Notwithstanding anything contained in this section, this Agreement and each Permit under it may be sold or assigned by Licensee without any approval or consent of the City to Licensee's Affiliates or to any entity which acquires all or substantially all of Licensee's assets that are the subject of this Agreement by reason of a merger, acquisition or other business reorganization provided that such acquiring entity is bound by all of the terms and conditions of this Agreement.

23.2 **Sub-licensing.** City and Licensee agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Communication Facilities deployed by Licensee pursuant to this Agreement may be owned and/or operated by Licensee's third-party wireless carrier customers ("Carriers") and installed and maintained by Licensee pursuant to license agreements between Licensee and such Carriers. Such Communication Facilities shall be treated as Licensee's Communication Facilities for

all purposes under this Agreement provided that (i) Licensee remains responsible and liable for all performance obligations under the Agreement with respect to such Communication Facilities; (ii) City's sole point of contact regarding such Communication Facilities shall be Licensee; and (iii) Licensee shall have the right to remove and relocate the Communication Facilities.

Article 24. 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 25. Jurisdiction and Venue

The jurisdiction and venue for any litigation arising out of this Agreement shall be in Boone County Circuit Court, Missouri or the United States Western District Court of Missouri.

25.1 **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 herein.

25.2 **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.

Article 26. Default

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

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

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

26.1.3 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

26.1.4 Licensee fails to timely correct violations of Applicable Standards.

26.2 Upon the occurrence of any one or more of the Events of Default, 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 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. If the nature of the breach reasonably required more than thirty (30) days to cure, Licensee will not be in default hereunder if it promptly commences such cure and is diligently pursuing the same.

26.3 Without limiting the rights granted to City, 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.

26.4 In the event that City fails to perform, observe or meet any material covenant or condition made in this Agreement or Permit shall breach any material term of condition of this Agreement or Permit, 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. Licensee may terminate specific Permits at any time and remove the Attachments subject to such Permits. Following the effective date of the termination of a Permit and removal of the Attachments subject to such Permits, Licensee shall not be subject to any additional annual Attachment Fees or other fees related to the terminated Permit and Attachment.

26.5

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

26.5.2 Under no circumstances will a failure of City to meet the survey or Make-Ready time periods subject City to damages.

26.6 Upon termination of the Agreement as a result of an uncured Event of Default, Licensee shall remove its Attachments from all City Poles within six (6) months of receiving notice. 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 27. Receivership, Foreclosure or Act of Bankruptcy

27.1 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.

27.2 In the case of foreclosure or other judicial sale of the plant, property and equipment of Licensee, or any part thereof, including or excluding this Agreement, City may serve notice of termination upon Licensee and the successful bidder at such sale, in which event 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:

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

27.2.2 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 28. 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 29. Amending Agreement

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

Article 30. Notices

30.1 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:
Director of Water and Light
701 E. Broadway
Columbia, Missouri 65201

and

Law Dept.
701 E. Broadway
Columbia, Missouri 65201

If to Licensee, at:
MO Network Utility Transport, LLC
660 Newport Center Dr.
Suite 200
Newport Beach California 92660
Attn: Legal Department

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

30.2 Licensee shall maintain a staffed 24-hour emergency telephone number, and provide same to City, 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.

Article 31. Entire Agreement

This Agreement and its appendices constitute the entire agreement between the parties concerning attachments of Licensee's Communications 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 32. 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 33. Governing Law

All matters relating to this Agreement shall be governed by the laws of the state of Missouri, and venue shall be in the Circuit Court of Boone County, Missouri or the Western District of Missouri Federal Court.

Article 34. 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 35. *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, 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.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have been duly authorized to execute this contract as of the day and year first above written.

CITY:

CITY OF COLUMBIA, MISSOURI BY:

_____
Mike Matthes, City Manager

ATTEST:

_____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

_____
Nancy Thompson, City Counselor

STATE OF MISSOURI)
) ss
COUNTY OF BOONE)

On this_____day of_____, 2017, before me appeared Mike Matthes, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and the City Manager acknowledged this instrument to be the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal, at my office in Columbia, Boone County, Missouri, the day and year first above written.

_____
Notary Public

My commission expires:_____.

LICENSEE:

MO NETWORK UTILITY TRANSPORT, LLC

By: _____

Name: CHRISTOPHER GLASS

Title: SVP, GENERAL COUNSEL

ATTEST:

By: _____

Name: _____

Title: _____

STATE OF Missouri)
) ss
COUNTY OF Boone)

On this_____day of_____, 2017, before me, a Notary Public in and for said state, personally appeared,_____, to me personally known, who being by me duly sworn did say that he/she is_____of Missouri Network Utility Transport, LLC and that this instrument was signed on behalf of said limited liability corporation and further acknowledged that he/she executed the same as his/her free act and deed for the purpose therein stated and has been duly granted the authority by said limited liability corporation to execute the same.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal the day and year first above written.

_____
Notary Public

My commission expires:_____.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange)

On November 21, 2017 before me, Yumi Corvera, Notary Public
(insert name and title of the officer)

personally appeared Christopher Glass,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

YUMI CORVERA
COMM #2110590
Notary Public - California
Orange County
My Comm. Expires May 8, 201

Signature _____ (Seal)

CERTIFICATE OF SERVICE

I certify that on June 17, 2019, I electronically filed the foregoing in the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. I further certify that all parties are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

Date: June 17, 2019

/s/ Terry M. Jarrett
Terry M. Jarrett
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Jefferson City, MO 65101
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Counsel for Iowa Association of Municipal Utilities, Minnesota Municipal Utilities Association, Missouri Association of Municipal Utilities, and Arkansas Municipal Power Association
As Amici Curiae