

**WIRELESS POLE ATTACHMENT  
LICENSE AGREEMENT  
BETWEEN  
AEP TEXAS  
AND  
COUNTY OF HIDALGO**

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# WIRELESS POLE ATTACHMENT LICENSE AGREEMENT

This Agreement is entered into as of August 11, 2020 between **AEP TEXAS**, a Texas corporation (herein called "Owner"), and the **COUNTY OF HIDALGO**, a municipality, having its principal office in Edinburg, Texas, (herein called "Licensee"),

## **Background Information**

- A. Licensee is demanding access to Owner's poles pursuant to 47 U.S.C. §224 or any applicable federal and state laws and regulations, for the purpose of attaching certain wireless communications attachments and to install future attachments (hereinafter referred to as "Attachments") on Owner's distribution poles in accordance with the terms and conditions of this Agreement and for the purpose of Licensee engaging in wireless communication services within Owner's service territory.
- B. Owner is willing to comply with the mandatory access request of Licensee and permit Licensee on a non-exclusive basis to continue placing and maintaining the Attachments on said poles pursuant to the terms and conditions of this Agreement and any applicable federal and state laws and regulations.

## **Statement of Agreement**

The parties acknowledge the accuracy of the above background information and in consideration of the promises and mutual covenants set forth herein agree as follows:

### 1. Scope of License

Owner shall grant to Licensee a revocable, non-exclusive and limited license to make attachments to Owner's distribution poles in accordance with the terms of this Agreement. Subject to the requirements of applicable law and upon compliance with the permitting requirements hereunder, Licensee shall only use the Attachment ("Attachment") as defined in detail on Exhibit A hereof, at the power levels and frequencies approved by Owner, for its Represented Use as defined in Section 15 of this Agreement. Nothing in this Agreement shall be construed as a grant by Owner of an exclusive license, right or privilege to Licensee, nor as a limitation, restriction, or prohibition upon Owner's right to grant interests to third parties to the poles licensed hereunder.

All poles covered by this Agreement remain the property of Owner regardless of any payment by Licensee toward their cost. No use, however extended, of Owner's poles or payment of any fee or charge required hereunder shall create or vest in Licensee any claim of title, interest or ownership in such poles. Nothing in this Agreement shall be construed to compel Owner to construct, reconstruct, retain, extend, repair, place, replace or maintain any poles which, in Owner's sole discretion, is not needed for its own purposes. Owner and its successors and assigns shall have the right to operate, relocate and maintain its poles and attendant facilities in such a manner as will best enable it, in its sole discretion, to fulfill its service requirements.

### 2. Permitting

## A. General Requirements

- i) Licensee shall submit a pole attachment construction proposal in a format acceptable to Owner (a "Proposal") prior to installing or modifying any Attachment (as defined in detail on Exhibit A) on any pole of Owner. However, Licensee shall not be required to submit a Proposal for any maintenance and/or repair of its existing facilities and Attachment so long as Licensee's maintenance and/or repair work does not change the location of Licensee's Attachment on Owner's pole or materially increase the weight, capacity, and/or tension of Licensee's Attachment on Owner's pole. The Proposal shall contain the pole number, if available and the number of poles to be attached, the position on the pole, and any other information Owner requests in order to determine Attachment compatibility with existing attachments located on the proposed pole and the impact such Attachment will have on the pole's loading, clearances, safety and reliability concerns.
- ii) Owner shall invoice Licensee for the total cost of a project or transaction, including all applicable materials, labor and overheads, and all actual or imputed time spent supervising any contractors employed for such project, with book value credit for any material actually salvaged by Owner ("Total Cost"), for all expenses Owner incurs that are associated with the preparation or review of any Engineering Reviews (as defined in Subsection B.i below) or Make Ready Estimates (as defined in subsection D.ii below). Licensee shall pay Owner in advance for any make ready work Owner elects to undertake. Any of the deadlines set forth within this Section 2 may be extended at Owner's option in cases where extensions in time for review and make ready are permitted pursuant to applicable state or federal law and regulations.
- iii) The billing for any make ready work undertaken by Owner shall be based upon the Make Ready Estimate, but Owner may issue supplemental invoices if the actual costs of such make ready work exceeds the Make Ready Estimate. Licensee may also request within sixty (60) days of the completion of any make ready work an accounting of the actual expenses incurred for such make ready work. If such actual expenses exceed the Make Ready Estimate, then Owner shall issue a supplemental invoice for such deficit and Licensee shall pay such supplemental invoice within forty-five (45) days of receipt. If such accounting indicates that the actual expense was less than the Make Ready Estimate, then Owner shall reimburse Licensee the excess within forty-five (45) days of such determination.
- iv) If a material change in the Make Ready Estimate occurs, Owner will use reasonable efforts to notify Licensee of such change; provided, however, that Owner's failure to do so will not relieve Licensee of its obligation to pay the Total Cost of all Make Ready work as required under this Section.

## B. Review of Proposals

- i) Upon receipt of a complete Proposal, Owner shall have the option to review each pole Licensee seeks to occupy to determine whether such pole can accommodate the proposed Attachment ("Engineering Review") and to then notify Licensee whether such Attachment can commence without modifications or rearrangement of the pole or whether certain actions must be undertaken prior to Licensee's

construction of the proposed Attachment. Owner shall provide Licensee Notice within fifteen (15) days after submission of a Proposal if it believes the Proposal is incomplete or if Owner elects to forgo conducting the Engineering Review.

- ii) If Owner elects to forego conducting the Engineering Review or has not completed it within forty-five (45) days of Owner's receipt of the Proposal, then Licensee shall submit such Proposal to a contractor which Owner has approved to conduct Engineering Reviews and make ready work (an "Approved Contractor"). Licensee shall notify Owner if an Approved Contractor has been utilized for such Engineering Review within fifteen (15) days of submission to such approved contractor.
- iii) Owner, or the Approved Contractor, shall then conduct such Engineering Review in accordance with all applicable design standards set forth within regulations or codes promulgated by any federal, state, local or other governmental authority having jurisdiction, the National Electrical Safety Code (NESC), and Owner's design standards (the "Standards"). Where one standard is more restrictive than the other standard, the most restrictive standard shall be applied. When an Approved Contractor is utilized, the Approved Contractor shall then submit such Engineering Review to Owner for further action and review.

C. Attachments Where No Make Ready Work is Necessary

- i) If the Engineering Review indicates that the proposed Attachment can be accommodated on the pole without any rearrangement of existing attachments or replacement of the pole and Owner concurs with the conclusions of the Engineering Review, then within fourteen (14) days after completing or receiving the Engineering Review, Owner shall provide Notice to Licensee that Licensee may proceed with construction ("Notice to Proceed") which Notice shall constitute Owner's written approval of the Attachment(s). Licensee may then proceed with the attachment of its facilities and shall give Notice to Owner of its completion of such attachment within thirty (30) days of completing the work. If Owner has not received Notice of such completion of the work within ninety (90) days of the Notice to Proceed, then Owner shall have the option, in its sole discretion, to cancel the Proposal.
- ii) If Owner does not cancel the Proposal, and does not receive Notice whether Licensee has constructed its proposed Attachments within ninety (90) days after Licensee's receipt of the Notice to Proceed, Owner may assume that such Attachment(s) have been constructed and the obligation for Licensee to pay Annual Attachment Fees (as defined in below for such proposed Attachment(s)) shall commence as of the date of the Notice to Proceed.

D. Attachments Where Make Ready Work is Required

- i) If the Engineering Review indicates that rearrangements of existing facilities in the communications space of the pole (forty inches below Owner's lowest electric equipment and above applicable ground clearance requirements (the "Communications Space")) will be required to accommodate Licensee's proposed Attachment, then Owner may elect to provide Licensee a written cost estimate of making the pole ready (the "Make Ready Estimate") for attachment. If Owner fails

to provide such Make Ready Estimate within fourteen (14) days after Owner's receipt of the completed Engineering Review, then Licensee shall engage an Approved Contractor to determine the Make Ready Estimate and provide to Owner for approval and upon Owner's approval of the Make Ready Estimate, Owner shall issue a Notice to Proceed with the Make Ready Estimate to Licensee.

- ii) If the Engineering Review indicates that rearrangements of Owner's electric facilities will be required to accommodate Licensee's proposed Attachment, then Owner shall prepare a Make Ready Estimate within fourteen (14) days of the completed Engineering Review setting forth the Total Cost, for the rearrangement of Owner's facilities, and confirm that the relevant Attachments will be authorized hereunder upon payment of the make ready estimate and the completion of the make ready work.
- iii) Within fourteen (14) days of Licensee's receipt of Owner's Make Ready Estimate, Licensee shall provide Notice to Owner of whether Licensee is electing to have such make ready work undertaken at Licensee's expense ("Election to Proceed with Make Ready"). If Licensee fails to respond within such fourteen (14) days with payment, then Owner may withdraw the Make Ready Estimate and Licensee must resubmit the Proposal.
- iv) Upon receipt of payment for the full amount of the Make Ready Estimate, Owner shall complete such make ready work within the time requirements set forth in applicable state or federal law. If Owner elects not to proceed with rearrangements or fails to complete rearrangements of facilities within the Communications Space within such state or federal required timelines, then Licensee may proceed with any legal remedies available to Licensee to rearrange third party communications facilities within the Communications Space. Licensee shall not make any attachments to poles identified as requiring make ready work until all such make ready work has been completed. If Owner does not complete rearrangement of facilities within the Communications Space within applicable state or federal required timelines and Licensee assumes control of make ready work pursuant to applicable state or federal law, Licensee shall provide Owner Notice of completion of the make ready work and attachment of Licensee Attachments within thirty (30) days after the attachment of Licensee's Attachments.
- v) If Owner has not received notice of such completion of the work within ninety (90) days of the issuance of the Notice to Proceed, then Owner shall have the option, in its sole discretion, to cancel the Proposal. If Owner does not cancel the Proposal and does not receive notice whether Licensee has constructed its proposed Attachments, Owner may assume that such Attachments have been constructed and the obligation for Licensee to pay Annual Attachment Fees for such proposed Attachments shall commence as of the date of the Notice to Proceed.

E. Attachments in the Power Space and Make Ready Work for Electric Facilities

- i) Except as specifically required by applicable state or federal law, and unless Owner otherwise elects (in its sole discretion) to permit Approved Contractors to rearrange Owner's electric facilities, Owner or its contractors shall perform all rearrangements of Owner's electric facilities. If the Make Ready Estimate indicates that pole replacement will be necessary to accommodate Licensee's Proposed

Attachment, then Owner shall determine (in its sole discretion) whether to proceed with such pole replacement, and unless the parties otherwise agree, Licensee shall pay the Total Cost of such poles replacement prior to Owner undertaking such work.

- ii) Unless Owner otherwise elects (in its sole discretion), Owner shall perform all work above the Communications Space (the "Power Space"), including installation or reconfiguration of the Attachment and any rearrangement of the pole within the Power Space. Owner shall prepare a Make Ready Estimate of the Total Cost Owner expects to incur to install the Attachment and undertake any rearrangement of the pole within the Power Space.
- iii) Included within such Make Ready Estimate shall be a notice by Owner whether Owner will be undertaking the work or whether Licensee must engage an Approved Contractor. If Licensee fails to respond within such fourteen (14) days, then Owner may cancel the Proposal, and Licensee shall be required to submit a new Proposal. If the Make Ready Estimate indicates that pole replacement will be necessary in order to accommodate the proposed Attachment, then Owner shall determine (in its sole discretion) whether to proceed with such pole replacement, and Licensee shall pay the Total Cost of such pole replacement prior to Owner or the Approved Contractor undertaking such work. Licensee shall be responsible for retaining the services of the Approved Contractor.
- iv) Any work performed by an Approved Contractor within the Power Space shall be undertaken in compliance with all Owners' access and tag out rules. Licensee shall give notice to Owner of its completion of such attachment within thirty (30) days of the Approved Contractor completing the work. If Owner has not received notice of such completion of the work within sixty (60) days of the Notice to Proceed, then Owner shall have the option, in its sole discretion, to cancel the Proposal. If Owner does not cancel the Proposal and does not receive notice whether Licensee has constructed its proposed Attachment, then Owner may assume that the Attachment has been constructed and the obligation for Licensee to pay Annual Attachment Fees (as defined below) for the Attachment shall commence as of the date of the Notice to Proceed.

### 3. Installation Standards

- A. All Attachments permitted by Owner shall be installed in a manner which does not interfere with the present or any future use which Owner may desire to make of its poles. Owner shall determine, in its sole discretion, whether the Attachment interferes with Owner's present or future pole use plans. All Attachments made hereunder shall be installed and maintained by Licensee in compliance with the Standards. Licensee shall identify the Attachment at each pole location using a tagging system approved by Owner.
- B. Licensee acknowledges that the poles licensed hereunder have energized facilities installed upon them and that working in the vicinity of energized facilities poses potential dangers. At all times during the term of this Agreement, and particularly during the time of any construction, repair, or maintenance of Attachments covered by this Agreement, Licensee shall consider the electric wires of Owner to be energized. Licensee shall warn all of its employees, agents, contractors and subcontractors, or

any other parties who may be working on behalf of the undersigned, of the potential dangers. Licensee shall take any necessary precautions by the installation of protective equipment, or other means, to protect all persons and property of all kinds against injury or damage occurring by reason of Licensee's Attachments on Owner's Poles.

#### 4. Poles Installations

##### A. Poles Installed In New Locations:

- i. Where Owner desires to install a new pole in a location where facilities have not been previously placed, and Licensee desires to attach to such pole, Owner and Licensee shall follow the procedures set forth in Section 2. Owner shall make a determination of the size and height of the pole necessary to accommodate its facilities alone and shall calculate the Total Cost necessary to procure and install such pole. Owner shall then make a determination of the size and height of the pole necessary to accommodate both Owner's facilities and Licensee's Attachments. Licensee shall pay Owner the difference between the Total Cost of installing a pole to accommodate both Owner and Licensee(s) on a new pole (either as new construction or replacement of an existing pole at Owner's initiation) and the Total Cost of installing a pole that meets Owner's needs ("Incremental Cost"), if such applies. If other parties desire to attach to the same pole, then Licensee shall only be responsible for the Incremental Cost of the pole necessary to accommodate all parties, divided by the total number of attaching parties (exclusive of Owner).
- ii. Owner may set aside space on poles for future development needs consistent with applicable law and a *bona fide* development plan that reasonably and specifically projects and identifies a need for that space in the provision of its core utility service. Until such time as Owner has an actual need for such reserved space, Owner shall permit Licensee to use it for attachment of Licensee's Attachments, subject to Section 2 hereof. In the event Owner desires to reclaim such loaned space, Owner shall provide Notice to Licensee of the space reclamation. Upon such Notice, Licensee shall either remove its facilities from the loaned space within sixty (60) days of Owner's Notice, or pay the Total Cost of either (i) modifying the poles, if possible, to expand capacity necessary to continue the maintenance of Licensee's Attachments; or, if such expansion is not possible, (ii) replacing the pole with a pole which will accommodate all of the existing and planned attachments on the pole, including the cost of removing the old pole, and transferring the facilities of Owner and any other attaching party to the new pole. If Licensee is sharing such reclaimed loaned space with another attaching party, then Licensee and the other attaching party shall share the Total Cost of the project.

##### B. Pole Installed as Replacements:

- i. Where Owner must replace or relocate a pole and such replacement or relocation is not caused by the addition of new Licensee Attachment, Owner shall provide Licensee reasonable advance Notice before undertaking such replacement or relocation. Licensee shall transfer its Attachment within ten

(10) days of receiving Notice that the new pole is in place. If Licensee does not transfer its Attachment within such ten (10) days, then Owner may transfer the Attachment at Licensee's expense.

- ii. If Owner or another party is required to make a return trip to remove a pole as a result of Licensee failing to transfer its Attachment within the time set forth herein, then Licensee shall reimburse Owner or such third party for the Total Cost incurred by such return trip. The foregoing notwithstanding, however, if Licensee is delayed in transferring its Attachments due to the act or failure to act of any other entity with Attachments on Owner's poles, or for other reasons that are not the fault of Licensee or are beyond Licensee's reasonable control, then Licensee's obligation to transfer its Attachments will be excused for the period of the delay.

- C. General Issues: Licensee shall remain responsible for the Total Cost of all projects initiated by Owner as the result of a Licensee Proposal, regardless of whether Licensee elects to install the Attachment. Licensee shall be responsible for all engineering, inspection, and construction work undertaken by Owner on Owner's poles and on all third party owned poles where such work is initiated as a result of the proposed attachment of Licensee's facilities. Notwithstanding any requirement set forth in this Agreement, Owner may decline to expand the capacity of any of its poles facilities.

## 5. Rearrangement of Attachment

Licensee shall rearrange any of its Attachment installed hereunder in order to accommodate additional Owner or third party attachments. Such rearrangement shall be completed within sixty (60) days of receiving Notice to rearrange. If Licensee does not rearrange its Attachments within such sixty (60) days, then Licensee shall be deemed to have granted consent to Owner or the party seeking such rearrangement to rearrange Licensee's Attachment. The foregoing notwithstanding, where Owner seeks rearrangement of only Licensee's Attachments solely to accommodate Owner's facilities, Owner may request such relocation on an expedited basis by Notice to Licensee, and if Licensee does not rearrange its Attachments within thirty (30) days of receiving such Notice, it shall be deemed to have granted its consent for Owner to rearrange Licensee's relevant Attachments. If Licensee is delayed in rearranging its Attachments due to the act or failure to act of any other entity with Attachments on Owner's poles, or for other reasons that are beyond Licensee's reasonable control, then Licensee's obligation to rearrange its Attachments will be excused for the period of the delay.

## 6. Guying

Any guying required pursuant to the Standards shall be installed by and at the expense of Licensee. Licensee shall not use any of Owner's guys or anchors. Licensee shall install its guys and anchors prior to stringing any lines or messengers.

## 7. Frequency Operation

- A. Approved Frequencies. Licensee shall operate the Attachment at the frequencies and power levels set forth on Exhibit A hereof (the "Approved Frequencies"). Licensee may only change the Approved Frequencies pursuant to Owner's written consent, which consent shall not be unreasonably withheld. Any proposed change in frequency

or power that materially increases rf emission exposure levels may be denied by Owner in its sole discretion. Licensee shall pay Owner upon invoicing the Total Cost incurred by Owner in reviewing any requested Approved Frequency changes.

- B. Interference. In the event that Owner installs any improvement upon a pole which materially interferes with the transmission or reception of Licensee's Attachment, then Licensee's sole remedy shall be to either remove the Attachment affected or terminate this Agreement effective as of the date of such interference.
- C. FCC Licensing. Licensee shall be responsible for obtaining and maintaining appropriate Federal Communications Commission ("FCC") authorization for the operation of the Attachment. Licensee shall provide Owner a copy of all such licensing and/or authorization prior to operating the Attachment, and shall provide Owner with copies of any modifications to or terminations of such licensing and/or authorization within five (5) days of receipt by Licensee.
- D. Interruption of Communication Attachment Use. Licensee shall install a mechanism upon the Attachment to permit Owner or any other party maintaining attachments on the same pole to interrupt use of the Attachment when Owner or a third party is accessing the pole. Owner or such third parties shall be permitted to terminate operation of any Attachment upon a reasonable determination by Owner or such third party that interruption is necessary in order to service the pole or attachments upon such pole. Owner shall further be permitted to rearrange or remove the Attachment during emergencies provided such removal or rearrangement is reasonably necessary to restore electric service in the area.

8. Post Construction Inspection

- A. Owner may conduct at Licensee's expense a post-construction inspection within one year of all new Attachment installations or modifications of existing Attachment. In addition, Owner may make additional inspections of the Attachment at Licensee's expense, if Owner has reasonable cause to believe that Licensee is not maintaining its Attachment in accordance with the Standards and the terms of this Agreement. Owner agrees to provide Licensee reasonable Notice of such post-construction inspection that allows Licensee a reasonable opportunity to participate in the inspection.
- B. Owner's right to make any inspections and any inspection made pursuant to such right shall not relieve Licensee of any responsibility, obligation or liability assumed under this Agreement to maintain its Attachment in accordance with the Standards and other prudent practices. If Owner finds that Licensee has not maintained any of its Attachments in accordance with the Standards and the terms of this Agreement, Owner shall provide Notice to Licensee, which notice shall include reasonable information concerning the claimed deficiencies found with respect to Licensee's Attachments, including pole number and location ("Notice of Violation").
- C. Within sixty (60) days after Licensee's receipt of any Notice of Violation, Licensee shall either submit a plan of correction or shall dispute the findings of such Notice of Violation with regard to some or all poles identified in the Notice of Violation by providing Notice and supporting documentation to the Owner. If Licensee submits a

plan of correction to Owner, Licensee shall provide notice of the correction to Owner within one hundred-eighty (180) days after Licensee's receipt of the Notice of Violation.

9. Inventory

- A. Owner may conduct at reasonable intervals yet not more often than once every three (3) years, complete field inventories of its poles for the purpose of verifying the number and location of all Attachments of Licensee in the area covered by this Agreement. Owner shall give to Licensee at least sixty (60) days prior Notice of such inventory and Licensee shall advise Owner if Licensee desires to participate (ride-along) in the inventory with Owner not less than fifteen (15) days prior to the scheduled date of such inventory. Licensee shall reimburse Owner for Owner's expenses incurred in making such inventory, whether or not Licensee participates provided, however, if such inventory also includes a review of attachments of other attaching parties (including Owner if applicable), the expenses of such inventory shall be reasonably allocated to all such attaching entities.
- B. Owner shall provide to Licensee reasonable information concerning the identification of Licensee's unauthorized Attachments, including pole number and location ("Inventory Report"). Within sixty (60) days after Licensee's receipt of such Inventory Report, Licensee may dispute its findings with regard to some or all poles identified in the Inventory Report by providing Notice and supporting documentation to the Owner on a pole by pole basis, including any pole numbers and locations Licensee disputes. If no Notice or supporting documentation is provided within the required timeframe, the inventory results shall be deemed conclusive. If Owner agrees that some or all of the unauthorized Attachments identified in the Inventory Report were in fact authorized Attachments, Owner shall notify Licensee in writing of its determination and shall revise the Inventory Report with regard to those Attachments. If, after reviewing Licensee's supporting documentation, Owner reasonably determines that some or all of the unauthorized Attachments identified in the Inventory Report are in fact unauthorized, Owner may order Licensee to permit such unauthorized Attachments pursuant to Section 2 above. Licensee shall at all times make and keep in full and complete form plats, maps and records showing the exact location of all Licensee's Attachments on Owner's Poles.

10. Unauthorized Attachments

- A. Except as otherwise specifically provided in this Agreement, any Attachment made by Licensee without the written approval of Owner pursuant to the terms of this Agreement, or any prior agreement governing such facilities, shall be considered an unauthorized attachment. Upon discovery of an unauthorized Attachment other than in an Attachment Inventory conducted pursuant to Section 9 above, Owner shall provide Notice to Licensee, which shall include the pole number and location. Within twenty (20) business days after Licensee's receipt of such Notice, Licensee may dispute the Notice with regard to some or all poles identified in it by providing a written response and supporting documentation to the Owner.
- B. If Owner agrees that some or all of the unauthorized Attachments identified in the Notice were in fact authorized Attachments, Owner shall notify Licensee in writing of

its determination and shall revise the Notice with regard to those Attachments. If, after reviewing Licensee's supporting documentation, Owner reasonably determines that some or all of the unauthorized Attachments identified in the Notice are in fact unauthorized, Owner may order Licensee to permit such unauthorized attachments pursuant to Section 2 above. For each unauthorized Attachment discovered during an inventory or pursuant to Section A above, Licensee shall also pay Owner upon invoice an Unauthorized Attachment Fee (the "Unauthorized Attachment Fee") equal to six (6) times the Annual Attachment Fee applicable for the Contract Year during which the discovery of the unauthorized Attachment occurred.

- C. If Licensee fails to submit a Proposal under Section 2 above to permit its unauthorized Attachments within sixty (60) days of Owner's order to do so and then complete, in the time-frame set forth in Section 2 above, any required make ready work within the Communications Space that is identified by the Engineering Review, then upon invoice Licensee shall pay an additional Unauthorized Attachment Fee equal to seven (7) times the annual Attachment Fee applicable for the Contract Year which the discovery of the unauthorized Attachment occurred for each unauthorized Attachment that Licensee either failed to submit to Engineering Review or properly remedy. The payment of such additional Unauthorized Attachment Fees shall not relieve Licensee of its obligation to submit a Proposal for its unauthorized Attachments in accordance with Section 2. In no event shall Owner recover more than what is permissible under applicable federal or state law. Licensee shall also pay Owner all reasonable and documented non-recurring administrative expenses Owner incurs as a result of processing and documenting such Unauthorized Attachments.
- D. Anything else in this Agreement notwithstanding, in no event shall any unauthorized Attachment later permitted pursuant to this Section 10 and Section 2 above constitute an event of default or non-compliance under Section 21 of this Agreement.

11. Interference or Hazard

- A. Whenever Owner notifies Licensee in writing or verbally with written confirmation, that any Attachment made hereunder does not comply with the Standards, Licensee shall within sixty (60) days of receiving such Notice, either remove such non-complying attachment, or bring such Attachment within compliance with the Standards. Such Notice to Licensee shall include reasonable information concerning the nature of the violations found and shall include the pole number and location. Within one hundred-eighty (180) days after receiving Owner's Notice, Licensee shall notify Owner in writing that the subject Attachment or Attachments have either been removed or corrected to comply with the Standards. If non-compliance of such Standards is causing a hazard, then Licensee shall undertake the remedial efforts set forth above in this Section within ten (10) days of receiving notice from Owner.
- B. All tree trimming required, on account of Licensee's attachment, shall be done by Licensee at its sole risk and expense and in a manner satisfactory to Owner.
- C. In the case of an emergency, which in Owner's reasonable judgment requires Owner to immediately remove or relocate the Licensee's Attachment, Owner may remove or relocate such Attachment as required, at Licensee's expense, without prior Notice or responsibility for any damage to Licensee caused by such removal or rearrangement; provided, however, that Owner shall endeavor to provide Notice to Licensee regarding

the emergency removal or relocation of Licensee's Attachments, including associated expenses, as soon as practical thereafter

12. Access to Power Space

Licensee shall only access the Power Space pursuant to the terms set forth within this Section 12 and as permitted pursuant to Section 2. Licensee shall provide Owner prior notice of thirty (30) days and follow the tag out and access rules set by Owner. Only Approved Electrical Contractors shall access the Power Space. Owner reserves the right to have Owner crews at the site during such access. Licensee shall reimburse Owner the Total Cost of any such monitoring. Owner's option to monitor Licensee access to the Power Space shall not relieve Licensee of any responsibility, obligation or liability assumed under this Agreement to maintain its Attachment in accordance with the Standards and other prudent practices.

13. Attachment Removal

Licensee may, at any time, abandon the use of a pole hereunder by giving Notice to Owner and removing from the pole all of its Attachments. Annual attachment fees shall continue to accrue until Licensee provides Notice to Owner that Licensee has removed its Attachment and Owner has confirmed.

14. Charges and Fees

- A. Non-Recurring Expenses: Except as otherwise set forth herein and subject to applicable law, Licensee shall reimburse Owner for the Total Cost of all non-recurring expenses incurred by Owner, which are caused by or reasonably attributable to Licensee's Attachment including Owner's review of Attachment specifications, rf conditions and Engineering Review from our Standards, Telecommunications, Engineering and other applicable resources for Licensee's specific Attachment.
- B. Initial Contact Fee: If applicable, Licensee agrees to pay Owner an initial Contact Fee as defined in the appropriate state tariff. No initial contact fee is required if Licensee has, at the effective date of this Agreement, paid an annual charge to Owner with respect to such poles(s), or in cases where poles are replaced .
- C. Annual Attachment Fee: Licensee agrees to pay Owner during the Initial Term an Annual Attachment Fee per Attachment as set forth and described on Exhibit A ("Annual Attachment Fee"), attached hereto and incorporated herein. Upon expiration of the Initial Term (as defined below) Owner may revise the Annual Attachment Fee pursuant to Section 14 below prior to the effective date of such revision or rate adjustment. Billing of annual charges shall be rendered, in advance, annually on or about July 1 of each year.
- D. General. Licensee shall pay the applicable Annual Attachment Fee, in arrears upon the next annual billing, for new Attachments made during the prior "Contract Year" (the preceding period of July 1 – June 30). There shall be no proration of fees hereunder, including adjustments in billing for attachment made or removed during the Contract Year.

- E. Revisions to Annual Attachment Fee: Upon the commencement of each new Contract Year the Annual Attachment Fee shall be increased three percent (3%). Licensee shall provide Notice to Owner, if Licensee believes such Annual Attachment Fee as adjusted herein exceeds the maximum Annual Attachment Fee permitted under state or federal law.

15. Electricity Use

Licensee shall be responsible for obtaining and promptly paying all utility charges for electricity, telephone service or any other utility consumed by Licensee. If Owner provides electricity, Licensee shall promptly pay Owner the applicable tariff rate for such service in addition to any fees described herein.

16. RF Exposure

It shall be the responsibility of Licensee to ensure that the addition of the Attachment does not cause radio frequency, and is properly tagged to exhibit the exposure levels of all of the current existing equipment located upon the pole and in the surrounding vicinity (including the Attachment, Owner's equipment, and all other transmitting equipment in the vicinity) to exceed those levels permitted by the FCC. Owner shall require other licensees installing equipment after the installation of the Attachment to bear the same responsibility. If it is determined that the radio frequency exposure levels at a pole and surrounding vicinity exceed exposure levels set by the FCC and the Attachment is part of the cause of such exposure issues, then Licensee shall immediately terminate operation of the Attachment and remove the Attachment located at that pole within thirty (30) days of being notified.

17. Time of Payment

Unless otherwise set forth herein, payments due hereunder shall be made within thirty (30) days from the date of the invoice. On all amounts not so paid, an additional charge for interest at the Interest Rate of 12% annually, compounded daily will be assessed. All invoices for make ready construction work shall be paid in advance of the commencement of such work. Licensee may dispute the amount of any bill, but shall not withhold payment of any amount in dispute. In the event a refund of any amount paid by Licensee is determined to be due (or in the event of the discovery of any other billing error) an adjustment to correct the billing error shall be made and applied to the Licensee's following year's Annual Pole Attachment Fee invoice. Non-payment by Licensee of any such amounts due Owner, when due, shall constitute a default under this Agreement and may cause forfeiture of the bond or security required by Section 20, to the extent of the nonpayment. Where the provisions of this Agreement require any payment by Licensee to Owner other than for the Annual Attachment Fee, Owner may, at its option, require that the estimated amount thereof be paid in advance of permission to use any pole or the performance by Owner of any work.

## **18. Indemnity**

To the extent permitted by law, Licensee for itself and its contractors and subcontractors hereby releases Owner, its affiliates, and their respective directors, officers, employees and agents (collectively, "Indemnitees"), from any and all liability for loss of or damage to the

Attachment and for any interruption to, or failure of, the service rendered by Licensee or others in which such Attachment is used. Licensee further hereby agrees to indemnify, hold harmless, and defend Indemnitees from and against any and all losses, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including, without limitation, all judgments rendered against, and all fines and penalties imposed upon Indemnitees, and any reasonable attorneys' fees and any other costs of litigation (hereinafter collectively referred to as "liabilities") arising, directly or indirectly, out of the interruption or loss of Licensee's, its subscribers, affiliates, or sub licensees' services or because of any interference with communication reception of such services, or out of injuries to persons, including disease or death, or damage to property, or in any other way attributable to or arising either directly or indirectly out of, the attachment, installation, operation, presence, use, maintenance, or removal of Licensee's Attachment to Owner's Poles, or by the proximity of Licensee's Attachment to all other parties, including the Owner, occupying space on Owner's poles, except that Licensee's obligation to indemnify Indemnitees shall not apply to any liabilities to the extent arising from Indemnitees' sole negligence or willful misconduct. Indemnitees shall be free to select counsel of their choice for their defense hereunder.

Because Licensee may utilize contractors in the construction of its Attachment, Licensee hereto agrees to require its contractors and subcontractors to provide a release and indemnification of all claims for the benefit of the Indemnitees in the form attached hereto as Exhibit B. If Licensee fails to obtain the appropriate release and indemnification from its contractor/subcontractor, Licensee hereby agrees to provide the same release and indemnification to Indemnitees by Licensee's contractor or subcontractor on their behalf.

It is further agreed between the parties hereto, that to the extent any of the provisions of this Section are determined to be contrary to law or held to be invalid by any court of competent jurisdiction, this Section shall be construed and applied as if such invalid provisions were not contained herein, attempting at all times to conform, to the extent possible, to the intent of the parties as herein stated, and provide the maximum indemnity allowed by law. With respect to claims against one party by the other party's employees, the latter party agrees to expressly waive its immunity, if any, as a complying employer under the workers' compensation law but only to the extent that such immunity would bar or affect recovery under or enforcement of the indemnification obligations set forth in this Section.

The terms of this indemnity and any other indemnities set forth in this Agreement shall survive the termination of this Agreement. In the event that Owner becomes aware of a claim affecting Licensee under the terms of this indemnification clause, Owner shall endeavor to put Licensee on timely notice of such claim.

#### 19. Insurance

Licensee shall obtain and furnish the insurance described below. Licensee shall maintain and cause its subcontractors to maintain this insurance at all times during the performance of this Agreement.

- A. Coverage for the legal liability of Licensee and its subcontractors under the workers' compensation and occupational disease law of the state in which the Attachments are made. In states with a workers' compensation fund, Licensee and its subcontractors shall be contributors to the state workers' compensation fund and shall furnish a certificate to that effect. In states without a workers' compensation fund, Licensee and its subcontractors shall maintain an insurance

policy for workers' compensation from an insurance carrier approved for transacting workers' compensation business in the state in which the Attachments are made. If Licensee or a subcontractor is a legally permitted and qualified workers compensation self-insurer in the state in which Attachments are made, it may furnish proof that it is such a self-insurer in lieu of submitting proof of insurance.

- B. Commercial general liability insurance with limits of not less than \$5,000,000 per occurrence.
- C. Commercial automobile liability insurance with a limit for bodily injury and property damage of not less than \$5,000,000 per occurrence.

The above referenced limit requirements may be met by any combination of umbrella or excess and primary policies so long as the total limit of insurance requirement is met. The limits of insurance indicated are minimum requirements and are in no way intended to limit Licensee liability.

Licensee will not be permitted to access Owner's pole until Owner receives from Licensee one copy of an acceptable certificate of insurance covering the terms of Subsections A-C above. Such certificate shall state that the insurance carrier has issued the policies providing for the insurance specified above, that such policies are in force, and that the insurance carrier will give Owner thirty (30) days prior written notice of any material change in, or cancellation of, such policies. If such insurance policies are subject to any exceptions to the terms specified herein, such exceptions should be explained in full in such certificates. Owner may, at its discretion, require Licensee to obtain insurance policies that are not subject to any exceptions. Licensee and its subcontractors shall obtain waivers of subrogation on all of their insurance. Such waivers shall be for the benefit of Owner and its affiliated companies. Policies written on a "claims-made" basis shall be maintained for a period of five years after completion of the Agreement. Licensee acknowledges that continued maintenance of the insurance requirements under this Agreement is a substantial and important part of this Agreement and that any lapse in insurance coverage shall be corrected so that coverage will be in place during the period required hereunder, with no gaps or lapses in coverage.

The amounts of insurance required under this Agreement shall be increased as Owner may reasonably require from time to time to account for inflation, generally increased insurance settlements, court verdicts or any other business purposes. If Licensee does not timely deliver to Owner a certificate showing all of the required insurance to be in full force and effect as required by this Agreement, Owner may either: (i) declare Licensee to be in substantial default under the terms of this Agreement upon which event this Agreement shall automatically terminate within sixty (60) days without the need for any further notice, or (ii) obtain the insurance to fulfill any and all of the insurance obligations under this Agreement. On Owner's demand, Licensee shall reimburse Owner the full amount of any insurance premiums paid by Owner, a fee of \$250.00 Dollars to cover applicable expenses and overheads incurred by Owner, and interest at the Interest Rate, compounded daily, from the date of Owner's demand, until reimbursement by Licensee.

## 20. Easements

Licensee shall secure any right, license or permit from any governmental body, authority or other person or persons, which may be required for the construction or maintenance of Licensee's

Attachment. Owner does not grant, convey nor guarantee any easements, rights-of-way or franchises for the construction and maintenance of the Attachment. Licensee hereby agrees to indemnify and save Owner harmless (on a pro rata basis with all other users of Owner's pole who failed to secure such right, license, permit or easement, based on their respective proportionate use of space on such pole and to the extent the other users are part of such claim) from any and all claims, including the expenses incurred by Owner to defend itself against such claims, resulting from or arising out of the failure of Licensee to secure such right, license, permit or easement for the construction or maintenance of the Attachment on Owner's pole, the loss of right-of-way or property owner consent, of the costs of relocating any of Owner's pole or other attachments on Owner's pole. In the event that Owner becomes aware of a claim affecting Licensee under the terms of this provision, Owner shall endeavor to put Licensee on timely notice of such claim. However, such notice obligation of Owner does not extend to permits or franchises required by governmental entities. As applicable, all of the terms of the indemnity set forth in this Agreement are incorporated herein and shall apply with equal force to the indemnity set forth in this Section.

21. Letter of Credit, Performance Bond or Deposit

**This section may be waived.**

22. Default or Non-Compliance

If Licensee fails to comply with any of the provisions of this Agreement, or defaults in the performance of any of its obligations under this Agreement, and fails within thirty (30) days, after written notice from Owner to correct such default or noncompliance, Owner may, at its option, take any one or more of the following actions: (i) suspend Licensee's access to climb or work on its Attachment on all of Owner's poles; (ii) terminate the specific proposal or proposals covering the pole to which such default or noncompliance is applicable; (iii) remove, relocate, or rearrange the Attachment to which such default or noncompliance relates, all at Licensee's expense; (iv) decline to permit additional Attachment hereunder until such default is cured; or (v) in the event of any failure to pay any of the charges, fees or amounts provided in this Agreement or any other substantial default, or of repeated defaults, terminate this Agreement. Notwithstanding the foregoing, Licensee shall have up to an additional thirty (30) days to correct such default or noncompliance if Licensee promptly commences its corrective efforts within the thirty day period described above and diligently continues such corrective actions thereafter. No liability shall be incurred by Owner because of any or all such actions. The remedies provided herein are cumulative and in addition to any other remedies available to Owner under this Agreement or otherwise. No such termination, however, shall reduce or eliminate the obligation of the Licensee to make payments of any amounts due to Owner for any services covered, shall not waive charges for any Attachment until said Attachment is removed from the pole to which it is attached and shall not affect Licensee's Indemnification of Owner or the Insurance requirements contained in this Agreement. Owner shall be entitled to recover any and all attorney fees, costs and expenses incurred in successfully pursuing any of the remedies set forth above.

23. Alternative Dispute Resolution

Before seeking any action or complaint with a state or federal agency or court for a default under this Agreement or a claim that the enforcement of this Agreement is not consistent with state or federal law or is not a reasonable term or condition under state or federal law, the aggrieved party shall first give notice to the other party of its intent to file an action. Upon receipt of such notice the parties shall engage in good faith executive level talks whereby each party is represented by an employee or agent that is vested with sufficient authority to make binding decisions. Any

disputes which remain after such executive level discussions shall be resolved by arbitration, to be held in Columbus, Ohio, in accordance with the rules and procedures of the American Arbitration Association. The arbitrator's decision shall be final and legally binding and judgment may be entered thereon.

#### 24. Regulation

Both parties acknowledge that, prior to negotiation of this Agreement, the parties carefully reviewed all relevant provisions of state and federal statutes and regulations relating to the regulation of Owner's pole, and that the negotiations freely conducted herein were undertaken without duress and with full knowledge of any rights either party may have pursuant to such state or federal law. Both parties believe the fees charged herein to be in compliance with any applicable state or federal law. Each and every provision of this Agreement is considered an essential exchange of consideration hereto. Any deviation in the rate charged herein from the calculation of such rate pursuant to any applicable state or federal law imposed formula is a result of other negotiated concessions made herein by the Owner or Licensee. To the extent that either party may challenge any provision of this Agreement as a violation of state or federal law and is successful, then upon the sole option of the party to which such determination adversely affects, this Agreement shall terminate effective as of such determination. Upon such termination both parties shall enter into negotiations for a new agreement in compliance with such determination. It is the intent of both parties that any adjustments made pursuant to any such judicial or regulatory determination allow Owner to recover the maximum amount available in accordance with the applicable regulated rate.

Execution and performance of this Agreement are without prejudice to, and do not constitute a waiver of any positions taken or claims asserted respecting the validity, enforceability or effect of any or all such regulations or orders in any appeal, litigation or administrative proceeding pending at the date hereof or later begun, or any rights arising out of any judgment, opinion or order therein.

#### 25. Term

Except as provided in the Default or Noncompliance Section, this Agreement shall continue for a period of one year from the date hereof, and shall thereafter automatically renew for successive one year periods unless one party gives the other party written notice of termination at least sixty (60) days in advance of the next renewal date. Should Licensee not place the Attachment on Owner's pole in any portion of the area covered by this Agreement within six (6) months of its effective date, Owner may, at its option, terminate this Agreement. Licensee shall completely remove its Attachments from Owner's pole within one hundred twenty (120) days of the termination date, unless an extension of the existing Agreement is negotiated or a new agreement covering such pole has been executed by the parties hereto. If Licensee fails to remove its Attachment, Owner may and is hereby given the clear and incontestable right to remove Licensee's Attachment, at Licensee's expense, from Owner's pole and without any liability to Owner. If 47 U.S.C. §224 is invalidated, repealed, reinterpreted, or amended in a manner that no longer sets a maximum attachment fee, then at either party's option this Agreement may be terminated upon one-hundred eighty (180) days' notice. During such termination notice period both parties shall in good faith negotiate terms and conditions of a new Wireless Pole Attachment License Agreement.

26. Prior Agreements

This Agreement terminates and supersedes any prior agreement, license or joint use affecting Owner's Poles and Licensee's attachments covered hereby as of the date hereof, but such termination shall not reduce or eliminate the obligation of Licensee to make payment of any amounts due to Owner under any prior agreement.

27. Transfers of Ownership

This Agreement shall be binding upon and inure to the benefit of the parties hereto, and Licensee shall not assign, transfer, sublet or sublicense any of the rights hereby granted without the prior written consent of Owner. If Licensee wishes to sell, or otherwise transfer, all or part of its Attachment covered by this Agreement to a third party, said third party shall submit an application to enter into an agreement with Owner for the installation and/or maintenance of the Attachment on Owner's poles, and reimburse Owner for any non-recurring expenses associated with Owner's review of the third party. Any outstanding liabilities of Licensee, including, without limitation, charges for inventories and inspections, charges and penalties for unauthorized attachments, or other outstanding costs or expenses shall be paid to Owner, in full, prior to the transfer of any rights and privileges of the Licensee, either with a new agreement or assignment of the existing agreement (at Owner's option), to said third party. Owner reserves the right, at its option, to consent to the transfer of the existing agreement to a new third party, or to require the execution of a new agreement in lieu of granting its consent to the assignment or transfer of any right, license or privilege under this Agreement.

Notwithstanding the above, Owner shall not unreasonably withhold its consent to Licensee to assign this agreement to an affiliate of Licensee provided such affiliate has, in Owner's sole discretion, the financial means and technical expertise to perform its duties herein, and reimburses Owner for any non-recurring expenses associated with Owner's review of such proposed assignment.

Owner shall be permitted to sell all or part of the poles covered by this Agreement to a third party. Upon such sale, Owner shall determine in its sole discretion whether to assign this Agreement. If Owner elects to assign this Agreement, then such assignee shall become Owner under the terms of this Agreement. If Owner does not elect to assign, then this Agreement shall terminate as of the date of such sale for those poles subject to such sale. Upon such termination, Owner shall be permitted in its sole discretion to conduct an inventory pursuant to Section 9 above and collect any amounts owed for unauthorized Attachments.

28. Governing Law

Except insofar as governed by federal law, this Agreement shall be construed in accordance with, and its performance shall be governed by, applicable laws in effect of the state where the poles are located.

29. State Tariffs

It is the intent of the parties hereto that all terms and conditions of this Agreement and any applicable state tariffs be construed as being consistent where possible; however, in the event of a conflict or inconsistency between their respective terms and conditions, the terms of the applicable state tariff shall control.

30. Third Party

This Agreement shall not create for, nor give to, any third party any claim or right of action against either party to this Agreement that would not arise in the absence of this Agreement.

31. Execution

This Agreement may be executed in two counterparts each of which so executed shall be deemed to be an original.

32. Agreement Modifications

This Agreement and its Exhibits constitute the entire agreement between the parties respecting pole attachments, and shall only be modified in a writing signed by both parties hereto.

33. Preservation of Remedies

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to Owner shall impair or affect Owner's right thereafter to exercise the same.

34. Headings

Headings used in this Agreement are inserted only for the convenience of the parties and shall not affect the interpretation or construction of this Agreement.

35. Survival of Obligations

All payment, performance and indemnity obligations of Licensee under this Agreement shall survive the termination of this Agreement, until said obligations are satisfied.

36. Notices

Any and all notices required or permitted hereunder shall be in writing and mailed postpaid via United States First Class Mail or reliable, receipted overnight courier service, or submitted in an electronic format acceptable to the Owner as follows:

Owner: ((956-903-3166)

AEP TEXAS

Attn: Lee Jones

5700 North Cage Blvd.

Pharr TX 78570

[hljones@aep.com](mailto:hljones@aep.com)

Licensee:

COUNTY OF HIDALGO

Attn: Daniel Salinas

100 E. Cano

Edinburg, TX 78539

[daniel.salinas@co.hidalgo.tx.us](mailto:daniel.salinas@co.hidalgo.tx.us)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

**COUNTY OF HIDALGO**

**AEP TEXAS**

By: \_\_\_\_\_  
Richard F. Cortez

By: \_\_\_\_\_  
Marc A. Feeney

Title: County Judge

Title: Attachment Svcs Contract Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A  
ATTACHMENT FEES SCHEDULE

**Purpose of Attachment:**

**Annual Fee Per Attachment:**

Wireless Communication Equipment

**Approved Equipment:**

**Approved Frequencies:**

2.4 – 2.5 GHz

**Units will only be placed on  
Wooden AEP poles**