

**RESOLUTION NO. 24-R-14**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING ENTERING INTO A POLE ATTACHMENT LICENSE AGREEMENT WITH GUADALUPE VALLEY ELECTRIC COOPERATIVE, INC. (GVEC).**

**WHEREAS**, the City of Schertz entered into a Joint Use Pole Agreement with Guadalupe Valley Electrical Cooperative, Inc. (GVEC) in 2002; and

**WHEREAS**, the City of Schertz has overhead utilities located on 89 GVEC poles as authorized under this agreement; and

**WHEREAS**, GVEC informed the City that they were providing notice to terminate the current agreement and providing an updated Pole Attachment License Agreement; and

**WHEREAS**, in order to ensure essential services, provide for a safe community and high quality of life, it is necessary for the City to continue to be able to locate overhead lines on GVEC Poles.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:**

Section 1. The City Council hereby authorizes entering into a Pole Attachment Licenses Agreement with GVEC as per the Attached Exhibit "A".

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this \_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF SCHERTZ, TEXAS

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Ralph Gutierrez, Mayor

ATTEST:

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Sheila Edmondson, City Secretary

Exhibit "A"

GVEC Pole Attachment License Agreement

# LICENSE AGREEMENT

This **LICENSE AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (“Effective Date”) by and between Guadalupe Valley Electric Cooperative, Inc., a rural electric cooperative (“Licensor”), and \_\_\_\_\_ (“Licensee”). Licensor and Licensee may be referred to hereafter individually as a “Party” and collectively as the “Parties.” The attached Terms and Conditions and all associated Exhibits are incorporated herein and made a part hereof by this reference.

**Notices.** The addresses and electronic mail addresses of the Parties to which any notice, request, consent, demand, designation, approval or statement required to be made to either Party by the other are as follows:

(a) **Licensor:**

GVEC-Joint Use  
6400 IH 10 West  
Seguin, Texas 78155  
email: jointuse@gvec.org

(b) **Licensee:**

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**Term of Agreement.** The term of this Agreement is from the Effective Date until \_\_\_\_\_ (if not lawfully terminated sooner), and thereafter from year to year, unless terminated by either Party by giving notice of its intention to terminate at least six months prior to the end of any period.

**Applicable Law.** This Agreement is deemed executed in the State of Texas and shall be construed under the laws of the State of Texas, without regard to its conflict of laws principles. Any legal action regarding enforcement of this Agreement shall be commenced and heard in state court in Gonzales County, Texas (“Court”), and the Parties consent and submit to the jurisdiction and venue of the Court.

**Responsible Person.** The addresses and electronic mail addresses of the Parties who are familiar with the terms of this Agreement and who may be contacted by the other Party to address contract compliance issues are as follows:

(a) **Licensor:**

GVEC Joint Use  
6400 IH 10 West  
Seguin, Texas 78155  
email: [jointuse@gvec.org](mailto:jointuse@gvec.org)

(b) **Licensee:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Licensee shall update the address and electronic mail address of its responsible person as that person changes.

**Fees**

Pole Attachment Rental Fee. \$17.87 per Attached Pole per year.

Amount of the Security Instrument. See Section 7.5

Unauthorized Attachment Fee. Two times the current Pole Attachment Rental Fee for every year the Unauthorized Attachment exists (or if the attachment date cannot be established then five years), plus \$100.

Safety Violation Fee. \$200

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**IN WITNESS WHEREOF**, the Parties, each in consideration of the mutual covenants contained herein, and for other good and valuable consideration, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date first above-written; *provided, however*, that this Agreement shall not become effective as to either Party until executed by both Parties.

**LICENSOR**

**LICENSEE**

By: \_\_\_\_\_  
(Signature)  
Title: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)  
Title: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

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# TERMS AND CONDITIONS

## 1. DEFINITIONS

The following definitions shall apply to this Agreement. Capitalized terms not defined herein shall have the meaning otherwise set forth in the Agreement.

1.1. Application. The Pole Attachment Application Form attached hereto at Exhibit 1.1 that must be completed by Licensee and approved by Licensor in writing before Licensee may attach to or make use of any of Licensor's Poles under this Agreement.

1.2. Application Processing Fee. The fee that Licensee must pay to reimburse Licensor for the administrative Costs incurred by Licensor in processing Licensee's Application.

1.3. Attached Pole. A Pole owned or maintained by Licensor that contains at least one attachment by an entity other than Licensor.

1.4. Attachment. Each affixation of Licensee's cables (including for example and without limitation coaxial cables, copper cables, and fiber cables), lines, strands, wires and/or associated apparatus, appurtenances and equipment, to Licensor's Poles.

1.5. Authorization. Licensor's grant of authority to Licensee to affix Attachments to Licensor's Poles in accordance with the terms of this Agreement.

1.6. Business Day. All days except Saturday, Sunday and officially recognized Federal legal holidays.

1.7. Control. With respect to any entity, the possession, directly or indirectly, of: (a) 50% or more of its ownership interests; or (b) the power to direct or cause the direction of management and policy, whether through the ownership of voting securities, partnership interests, by contract or otherwise.

1.8. Cost. A Party's "Cost" may include the costs of materials, labor, engineering, supervision and allocated overhead but without markup for profit or margin, which costs shall be determined using the regular and customary methods of such Party and shall be consistent with generally accepted accounting principles. Such costs may include, by way of example and without limitation: (a) external contractor or subcontractor labor costs and professional fees; (b) other costs and out-of-pocket expenses charged on a pass-through basis (e.g., equipment, materials, supplies or contract services); and (c) internal labor and material costs.

1.9. Default. When either Party: (i) fails to perform any of its covenants or obligations set forth in this Agreement, (ii) makes any representation or warranty in this Agreement that is untrue or incorrect, (iii) files a bankruptcy petition in any bankruptcy court proceeding, or (iv) admits in writing its inability to pay its debts when due or its intention not to comply with any requirement of this Agreement.

1.10. Imposition Cost. All Costs, including but not limited to the Cost of materials and equipment, fully loaded direct and indirect labor, engineering, supervision and overhead, associated with performance by Licensor or its contractors and subcontractors of certain tasks as specified in this Agreement, plus an additional 25%.

1.11. Licensee's Service Area. The area in which Licensee does or plans to provide its Services, as shown on Exhibit 1.11 attached hereto.

1.12. Licensor Practices. Licensor's rules and practices for Attachments as set forth in Exhibit 1.12 attached hereto.

1.13. Make Ready Costs. All Costs necessary for Licensor to prepare its Poles for Licensee's Attachments, including the Costs of materials, labor, engineering, supervision, overhead, and a share of Tree Trimming Costs (as calculated in Section 6.5). Engineering includes, without limitation, design, proper conductor spacing and bonding, calculations to determine proper ground clearances and pole down guy and anchor strength requirements for horizontal and transverse loading, and compliance with all applicable requirements in Section 4.4 hereto. Also included among "Make Ready Costs" are the Costs of installing or changing out primary poles, secondary poles and Service Poles, including the Cost of installation and/or removal of guys, anchors, stub poles, materials and equipment, temporary construction and all other construction in accordance with the technical requirements and specifications of Section 4.4.

1.14. Make Ready Estimate. The estimate prepared by Licensor for all Make Ready Work that may be required by Licensor to accommodate Licensor's Poles for attachment by Licensee, in the form set forth in Exhibit 1.1.

1.15. Make Ready Work. All work required by Licensor to ensure Licensor's Poles have adequate space and strength to accommodate Licensee's proposed Attachment.

1.16. Overlashing. The practice whereby a service provider physically ties or otherwise attaches new wiring to wiring that already has been affixed to a Pole.

1.17. Pole. A wood, concrete, fiberglass or metal pole which is owned by Licensor bearing electric distribution lines.

1.18. Pole Attachment Rental Fee. The annual amount per Pole that Licensee must pay to Licensor pursuant to this Agreement in order to affix each Attachment to Licensor's Poles.

1.19. Required Authorizations. All legally required authorizations that Licensee must obtain from federal, state, county or municipal authorities, public or private landowners, or other third parties, to erect, operate and maintain its Attachments, and to provide the Services, including all required franchises, consents, easements, and certificates of convenience and necessity.

1.20. Security Instrument. A performance bond or its equivalent (*e.g.*, irrevocable letter of credit) to be used by Licensee to guarantee Licensee's payment in full of all amounts which may be payable to Licensor under this Agreement.

1.21. Service Drop. A communications wire extending from Licensee's main line distribution cable, or from a tap or splitter at the termination of Licensee's main line distribution network, which is used to provide service to a single customer, building or location. The term "Service Drop" does not include any messenger cable or strand that supports a coaxial, copper or fiber cable or wire.

1.22. Service Pole. An ancillary pole necessary to extend service from a mainline distribution Pole to an individual customer(s).

1.23. Services. Cable television, telecommunications, Internet, data transmission or other similar services or combination of services provided by Licensee, plus any other service that Licensee is authorized, franchised, or licensed to provide.

1.24. Term. The period during which this Agreement remains in effect.

1.25. Tree Trimming. Any clearing or reclearing of existing rights-of-way or easements and any tree or brush trimming necessary for the establishment and maintenance of Attachments, as determined by Licensor in its sole judgment.

1.26. Unauthorized Attachment. Any affixation of any Licensee facility of any nature to any property of Licensor, including Poles, that has not been authorized by Licensor as required by this Agreement. Unauthorized Attachments may include facilities affixed to Licensor's property prior to the Effective Date of this Agreement.

1.27. Unauthorized Attachment Fee. The fee to be paid by Licensee for each Unauthorized Attachment.

## **2. PURPOSE**

The purpose of this Agreement is to allow Licensee to install and maintain Attachments on Licensor's electric distribution and fiber Poles in Licensee's Service Area for the limited purpose of providing Licensee's Services.

This Agreement does not authorize Licensee to install any facilities on transmission poles or towers, including transmission poles or towers with distribution underbuild.

This Agreement does not authorize Licensee to install any wireless antennas or associated apparatus on Licensor's Poles or on Attachments affixed to Licensor's Poles. A separate agreement is required for such installations.

The Authorization granted to Licensee hereunder with respect to any Pole shall be non-exclusive in that Licensor reserves the right to use any and all such Poles for any lawful purpose of business or to grant any other person or entity the right to use any or all Poles for any lawful purpose.

## **3. LICENSOR OBLIGATIONS**

3.1. Quiet Enjoyment. Subject to the terms and conditions of this Agreement, and throughout the Term of this Agreement, Licensor shall not intentionally disturb Licensee's authorized Attachments, except as such disturbance may be necessary in an emergency or natural disaster situation, provided that Licensee is performing in accordance with all terms and conditions of this Agreement.

3.2. Access to Poles; Easements. Each Party shall be responsible for obtaining its own rights-of-way and easements. LICENSOR DOES NOT REPRESENT OR WARRANT THAT ANY OF ITS RIGHTS-OF-WAY OR EASEMENTS ENTITLE LICENSEE TO ACCESS THE PROPERTY UNDERLYING LICENSOR'S POLES. Licensor shall not be liable should Licensee at any time be prevented from placing or maintaining its Attachments on Licensor's Poles because Licensee failed to obtain appropriate rights-of-way or easements. Licensor may require Licensee to demonstrate that it has secured its own rights-of-way or easements prior to authorizing any Attachments. If such a requirement is imposed, the time for Licensor to respond to Licensee's Application shall be tolled pending Licensee's response. Consistent with the terms and conditions of this Agreement, Licensor shall permit Licensee access to Licensor's Poles and related overhead and other easements. Further, Licensee's use of the overhead or other easements is contingent on, and may be prevented or otherwise constrained by, the extent to which such use is permissible under applicable contracts and instruments between Licensor and other entities, and under federal, state and local laws and regulations. THIS AGREEMENT APPLIES ONLY TO DISTRIBUTION POLES AND DOES NOT PERMIT ACCESS OR AFFIXING OF ATTACHMENTS TO TRANSMISSION POLES, TRANSMISSION TOWERS, OR OTHER PROPERTY OF LICENSOR, REGARDLESS OF WHETHER THEY BEAR ELECTRIC DISTRIBUTION LINES.

3.3. Maintenance of Attached Poles. At its own expense, Licensor shall maintain the Attached Poles, and replace, reinforce or repair such poles as Licensor becomes aware that they are defective, in Licensor's sole judgment.

#### 4. LICENSEE OBLIGATIONS

4.1. Use of Attachments. Licensee shall use the Attachments solely to provide the Services.

4.2. Licensee Service Area. Licensee shall identify the Licensee Service Area using Exhibit 1.11.

4.3. Compliance with Applicable Rules. Licensee shall comply with all federal, state, and local rules, regulations and ordinances and all technical rules and specifications applicable to Licensee's affixation of Attachments to Licensor's Poles as authorized herein.

4.4. Technical Requirements and Specifications.

(a) At its own expense, Licensee shall erect, install, and maintain its Attachments in safe condition and good repair in accordance with all applicable technical requirements and specifications, including, but not limited to:

- (i) requirements and specifications of the National Electrical Safety Code ("NESC"), the National Electrical Code ("NEC"), the Occupational Safety and Health Act ("OSHA") and Rural Utilities Service ("RUS"), and to the extent such requirements or specifications may conflict, then the most stringent of the NESC, NEC, OSHA or RUS requirements and specifications;
- (ii) any amendments or revisions of, or successor(s) to, the requirements and specifications of the NESC, NEC, OSHA, and RUS;
- (iii) the Licensor Practices set forth in Exhibit 1.12; and
- (iv) any current or future rules or orders of any federal, state or local authority having jurisdiction.

- (b) Licensee shall bring into conformity as soon as practical following notice by Licensor, any existing Attachments of Licensee that do not conform to the technical requirements and specifications listed in this section. Such Licensee correction shall occur no later than thirty (30) days of notification of such nonconformance, unless in Licensor's sole judgment safety considerations require Licensee to take corrective action within a shorter period. In the event that Licensee fails to comply with this requirement, Licensor in its sole discretion may elect to bring such Attachments into compliance and Licensee shall reimburse Licensor for all Imposition Costs related thereto. Licensor shall not be liable for any loss or damage to Licensee's facilities which may result, and Licensee shall be responsible for any additional damages resulting from its failure to act in a timely manner in accordance with these requirements. Failure by Licensor to inspect Licensee's conformance to the technical requirements and specifications listed in this section or to take action on its own to bring such Attachments into compliance shall not cause Licensor to be liable for any loss or injury resulting from such failure of conformance and shall not relieve Licensee of its obligations of indemnification hereunder.
- (c) The Licensor Practices may be amended from time to time by Licensor as necessary in its sole discretion to promote the safe and efficient operation of its electric distribution system, including the Poles, without resort to the provisions of Section 20 (Modifications), and Licensee agrees to be bound by any such amendment. In the event that Licensor amends the Licensor Practices set forth in Exhibit 1.12, Licensee shall make all required modifications within thirty (30) days after receipt of notice thereof from Licensor.

4.5. Assumption of Risk. Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, agents, contractors or subcontractors, or that are in the vicinity of where Licensee's employees, agents, contractors or subcontractors may be working. Licensee assumes all risks related to the construction, operation and maintenance of its Attachments, except as to those that may be caused by the gross negligence or willful misconduct of Licensor.

4.6. Safety Precautions. Licensee shall take all steps necessary to protect persons and property against injury or damage that may result from the presence, installation, use, maintenance or operation of Licensee's Attachments. Should any such injury or damage occur despite such steps, Licensee shall promptly notify Licensor within 24 hours of such injury or damage. At Licensor's option, Licensee shall promptly (within 15 days or within 30 days of invoice, as appropriate) either (i) repair such damage, or (ii) compensate Licensor for the Cost of repairing any such damage, and shall indemnify Licensor as provided in Section 14.1.

4.7. Interference Precautions. Licensee will operate its Attachments in a manner that will not cause or create interference: (i) with Licensor's existing or proposed communications or electric distribution or transmission operations; (ii) with the equipment of attaching entities whose facilities were attached to the Pole prior to Licensee's authorized use of the Pole ("pre-existing attachers"); or (iii) between the equipment of Licensor or any pre-existing attacher. Licensee shall cooperate in any investigation into, and the resolution of, any such interference. Licensor in its discretion may cause an independent third-party interference analysis to be conducted and require the entity found to be interfering improperly to correct the interference or to cease all operations. Licensee shall cooperate with, and comply with the determination and recommendations of, such third-party analysis. If Licensee is found to be interfering with Licensor or a pre-existing attacher, Licensee will pay the reasonable Costs associated with the analysis. If Licensor or the third party analysis determines that Licensee's equipment and/or operations are interfering with Licensor's equipment and/or operations, or the equipment and/or

operations of a pre-existing attacher, then Licensee will use best efforts to immediately correct the interference even if Licensee is operating in full compliance with applicable Federal, State or local regulations. If Licensee fails to correct such interference within fifteen (15) days after receipt of notice from Licensor, Licensor may terminate the Authorization for the Poles in question on fifteen (15) days additional notice and Licensee will promptly remove its Attachments from the Poles.

4.8. Qualifications of Employees, Agents and Contractors. Licensee shall ensure that all employees, agents and contractors of Licensee used to install or maintain the Attachments either (i) have been certified or trained by an entity acceptable to Licensor to work in the vicinity of electric distribution poles or (ii) have received training with respect to work on electric distribution poles that is in Licensor's sole judgment at least as extensive as the training received by Licensor's employees performing similar work. Licensee shall produce proof of such certification or training upon Licensor's request.

4.9. Identification Markers.

- (a) Licensee shall place and maintain permanent identification markers at every fourth Pole on each of its Attachments to such Poles prior to affixing it to Licensor's Poles. All identification markers must be located at or near the point where such Attachments are affixed to each Pole, and must:
  - (i) be non-metallic;
  - (ii) be of a distinctive and uniform design;
  - (iii) include an alphanumeric code as specified by Licensor;
  - (iv) be legible, clearly visible and recognizable from the ground by a person having normal vision; and
  - (v) not show Licensee's name or insignia, unless prior consent of Licensor is obtained and it is made clear that Licensee is not the owner of the pole.
- (b) Licensee shall be responsible for periodically inspecting its Attachments to ensure they have permanent identification markers. Should Licensor encounter any of Licensee's Attachments without permanent identification markers, Licensor may notify Licensee provided that Licensor can identify the Attachments as belonging to Licensee. Licensee shall have thirty (30) days from the date of notice to place such permanent identification markers on those Attachments. If the markers are not placed within thirty (30) days, then Licensor may remove such Attachments without incurring any liability to Licensee, and Licensee shall reimburse Licensor for the Imposition Cost of such removal.

4.10. Notification of Attachments. Licensee shall notify Licensor upon Licensor's request of the precise location and total number of Licensee's Attachments.

4.11. Accommodation of New Attachments. Licensee must rearrange or transfer its Attachments to accommodate new attachers in a manner consistent with the technical requirements and specifications of Section 4.4.

## 5. MUTUAL OBLIGATIONS

5.1. Protection of Facilities. Each Party shall take all precautions as are reasonably necessary to avoid damaging the facilities of the other.

5.2. Responsible Persons. Each Party shall identify one or more persons who shall be responsible for receiving notices and other correspondence from the other Party, and who shall be familiar with the terms of this Agreement and may be contacted by the other Party to address contract compliance issues. Each Party shall notify the other within seven (7) days if the person(s) responsible for receiving notices or addressing contract compliance issues has changed, and identify within that period the name of the new contact person(s).

5.3. Instruction of Employees and Contractors. Licensee shall provide instruction to ensure that every employee, contractor, subcontractor and agent who may perform work for Licensee under this Agreement is familiar with all relevant terms and conditions of the Agreement, including the Technical Requirements and Specifications identified in Section 4.4(a) and the Licensor Practices identified in Exhibit 1.12.

## 6. ESTABLISHING ATTACHMENT TO POLES

6.1. Pole Attachment Application. Before Licensee may affix any attachments to or make use of any of Licensor's Poles under this Agreement, Licensee shall (a) submit to Licensor an Application requesting Licensor's permission to attach to or make use of each such pole, including all of the information required to be part of the Application; (b) receive written approval from Licensor authorizing the attachment to or use of each such pole; and (c) comply with all procedures set forth in this section. Licensee's failure to request and receive Licensor's permission as described herein will subject each Unauthorized Attachment to an Unauthorized Attachment Fee.

6.2. Application Processing and Fees. To cover the administrative Costs incurred by Licensor in processing Licensee's Application, Licensee shall pay to Licensor the Application Processing Fee. Licensee must in addition pay the Cost of performing all survey, engineering and design work necessary to prepare the Make Ready Estimate, which Licensor may charge for in advance or after the work is completed. Licensee shall pay Licensor's Cost to double check information submitted as part of the application, including the pole loading analysis. If Licensee's pole loading analysis is insufficient, Licensee shall resubmit another pole loading analysis or may hire Licensor's contractor to perform such analysis. Licensee shall pay for Licensor to perform post-construction inspection(s) to verify Licensee's Attachments were installed properly and for Licensor to catalog such new Attachments. A more detailed list of such Application processing tasks to be conducted by Licensor is attached hereto at Exhibit 6.2.

6.3. Decision Regarding Application. If in the sole judgment of Licensor attachment to Licensor's Poles as proposed in the Application is undesirable or impracticable based on the technical requirements and specifications of Section 4.4, or because of other capacity, safety, reliability or engineering concerns, including Licensor's current or future need for such space, Licensor may reject all or part of the Application or limit the number and character of Attachments on any Pole. Licensor shall notify Licensee in writing whether the Application is approved, approved with modifications, or rejected.

### 6.4. Make Ready Estimate.

- (a) Licensor shall, on the basis of the Application and associated construction plans and drawings, submit to Licensee a Make Ready Estimate (based on Licensor's method of computing Costs, which shall follow generally accepted accounting principles) for all Make Ready Work which may be required for each Pole, including an estimated completion date for such Make Ready Work.

- (b) Following notice pursuant to Exhibit 1.1 attached hereto that the Make Ready Estimate has been accepted by Licensee, and upon payment of the Make Ready Estimate, Licensor shall proceed with the Make Ready Work covered by the Make Ready Estimate. Nothing shall preclude the Parties from making other mutually agreeable arrangements for contracting for or otherwise accomplishing the necessary Make Ready Work. Upon completion of all Make Ready Work, Licensor shall notify Licensee that the Make Ready Work has been completed.
- (c) Upon completion of the Make Ready Work, Licensee shall obtain Authorization to use the Poles and to make Attachments in accordance with the terms of this Agreement.

6.5. Tree Trimming. Tree Trimming shall be performed by Licensor in its sole judgment. Licensee shall pay for a proportional share of the Cost, including associated administrative Costs, of any such Tree Trimming.

6.6. Overlashing.

- (a) Any proposed Overlashing by Licensee shall constitute a separate Attachment subject to the Application process and all other provisions of this Agreement.
- (b) Licensee shall not allow third party Overlashing without Licensor's prior approval.

6.7. Service Drops.

- (a) A Service Drop may use an existing approved Attachment to a mainline distribution Pole, and may use new Attachment(s) to one or more Service Pole(s), or both, but cannot extend along or attach to more than one (1) Licensor mainline distribution Pole.
- (b) Licensee need not apply for and obtain Authorization in advance for installing (i) an Attachment to a Service Pole, or (ii) a Service Drop from an existing Attachment, or from the cables, strands, wires and associated apparatus of an existing Attachment. However, Licensee shall apply for Authorization to attach to Service Poles and to install Service Drops within 30 days following the last calendar day of the month such Attachment or Service Drop is made. Such Applications shall follow the attachment application process specified in this Section 6. To the extent Licensee fails to apply for such Authorization, such Attachments and Service Drops shall be deemed Unauthorized Attachments.

## 7. PAYMENT PROVISIONS

7.1. Pole Attachment Rental Fee. The annual rental period covered by this Agreement shall be the calendar year period beginning on January 1 of each year that this Agreement is in effect. Licensor shall invoice Licensee for the Pole Attachment Rental Fee after the end of the annual rental period. The Pole Attachment Rental Fee for each period shall be based on the number of Attachments on Licensor's Poles as of the day preceding the annual rental period. For Attachments that are authorized during any part of the annual rental period, the Pole Attachment Rental Fee will be assessed for the entire annual rental period. Licensor may invoice Licensee for Attachments authorized during the annual rental period at any time after the Application for such Attachments is approved.

7.2. Payment Period. All amounts payable under this Agreement shall be due within thirty (30) days of the date of invoice. Interest shall be charged at the rate of 1.5% or the maximum amount allowed by law on the unpaid balance of delinquent bills for each month or part thereof that any bill remains unpaid.

7.3. Contractor Invoices. With the exception of Make Ready Work and the Pole Attachment Rental Fee, Licensor may empower its contractor to invoice Licensee directly for certain amounts payable under this Agreement for work that the contractor performs on Licensor's behalf. Licensee shall pay such invoices directly to the contractor in order to satisfy such amount payable. In such event, if the work being performed by the contractor is work that is subject to an Imposition Cost, Licensor may bill separately for the additional 25% Imposition Cost charge.

7.4. CPI Increases. Licensor in its sole discretion may increase all fees that are due and payable under this Agreement effective on each annual anniversary date of the Effective Date to reflect either the increase in the Consumer Price Index for All Urban Consumers that have occurred since the Effective Date, or two percent (2%) per year since the Effective Date, whichever is greater. Licensor shall provide notice to Licensee by November 15<sup>th</sup> for such fee increases which will be effective the following January 1.

7.5. Security. Unless provided by Licensor in writing to the contrary, Licensee shall furnish a bond or satisfactory letter of credit, the terms of which shall be subject to Licensor's approval, in the amount listed below to guarantee the payment of any sums which may become due Licensor under this Agreement (including the removal of Attachments upon the termination of this Agreement or as otherwise specified herein), or for any expense that may be incurred by Licensor because of any default of Licensee. Effective January 1 of any year, Licensor may require Licensee to increase the amount of the bond or letter of credit consistent with the amounts listed below to reflect any increase in the number of Poles to which Licensee is attached. All bonds or letter of credit must specify that Licensor be notified thirty days prior to the expiration or cancellation of the underlying instrument and shall allow for direct payment to Licensor from such bond or letter of credit of any outstanding amounts due by Licensee under this Agreement upon default by Licensee of the terms of this Agreement. Licensee is obligated to maintain the security in the full required amount for the term of the Agreement. The amount of the bond or other financial security shall not operate as a limitation upon the obligations or liability of Licensee.

| Poles       | Security Amount |
|-------------|-----------------|
| 1-50        | \$5,000.00      |
| 51-250      | \$25,000.00     |
| 251-500     | \$50,000.00     |
| 501-2,000   | \$200,000.00    |
| 2,001-3,000 | \$300,000.00    |
| 3,001+      | \$400,000.00    |

## 8. INSPECTIONS

8.1. Right to Conduct. Licensor may conduct inspections of Licensee's Attachments from time to time as necessary in Licensor's sole judgment to determine whether Licensee's Attachments meet the technical requirements and specifications listed in Section 4.4. If practicable, as determined in Licensor's sole judgment, Licensor shall provide three (3) business days notice of such inspections to Licensee, and Licensee shall have the right to be present at and observe any such inspections. Such inspections may be conducted no more frequently than once every year, unless Licensor determines that more frequent inspections are necessary for reasons involving safety of persons

or protection of property. Licensee shall reimburse Licensor for all Costs of conducting inspections to the extent such expenses are attributable to Licensee's Attachments.

8.2. Safety Violations. If during inspection or otherwise Licensor determines that any of Licensee's Attachments do not conform with the technical requirements and specifications listed in Section 4.4, Licensee shall, upon notice by Licensor, pay a Safety Violation Fee for each such violation, and shall correct such nonconformance within thirty (30) days of notification of such nonconformance, unless in Licensor's sole judgment safety considerations require Licensee to take corrective action within a shorter period. Should Licensee fail to take all steps necessary to comply with this requirement, or if safety considerations so require, Licensor may elect to do such work itself, and Licensee shall reimburse Licensor for all Imposition Costs incurred by Licensor. Licensor shall not be liable for any loss or damage to Licensee's facilities which may result, and Licensee shall be responsible for any additional damages resulting from its failure to act in a timely manner in accordance with these requirements.

## 9. AUDITS

9.1. Right to Conduct Audits. Licensor may conduct an audit of Licensee's Attachments to verify the number of Licensee's Attachments. Any such audit may be conducted no more frequently than once every three (3) years, unless Licensor in good faith believes that Licensee's reported number of Attachments is inaccurate, in which case Licensor may audit as frequently as is necessary in its sole discretion. Licensor must provide thirty (30) days notice of any such audit so that Licensee may be present and observe such audit. Licensee shall reimburse Licensor for its proportionate share of all Costs of conducting audits. For example, if Licensor conducts an audit of every Pole Licensor owns, then Licensee shall pay a percentage of those Costs of conducting the full audit based upon a fraction, the numerator of which is the number of Licensee Contacts, and the denominator of which is the sum of all Contacts by all non-Licensor attachers, except that Licensor shall be deemed to have a Contact on any Pole to which Licensor has installed fiber to be used for retail broadband service. The number of "Contacts" is determined by identifying all attachments on all Licensor Poles, except that if an attaching entity has more than one attachment on a single pole, the attaching entity will be deemed to have only a single Contact on that Pole.

9.2. Challenge to Audit. Licensee shall have sixty (60) days within which to dispute the findings of such an audit by providing written notice and supporting documentation to Licensor. If no notice or supporting documentation is provided within that period, the audit results shall be deemed conclusive.

9.3. Licensee Attachment Records. Licensee shall at times create and maintain full and complete form plats, maps and records showing the exact location of all Licensee facilities and equipment attached to Licensor's Poles.

9.4. Licensee Contract Obligations. No audit, or lack thereof, shall relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement.

## 10. UNAUTHORIZED ATTACHMENTS

10.1. Unauthorized Attachment Fee. Licensee shall pay to Licensor an Unauthorized Attachment Fee within thirty (30) days of notification of each Unauthorized Attachment. In its discretion, Licensor may require that such Unauthorized Attachment be removed by Licensee, or Licensor itself may remove the Unauthorized Attachment without liability, at Licensee's Imposition Cost expense. If the Unauthorized Attachment is not so removed, Licensee shall submit an Application for

such Attachment, which shall be processed as if the Attachment were not already affixed to the Pole, and Licensee shall pay for any Make-Ready Work and other charges required to process the Application and accommodate such Attachment. The Unauthorized Attachment Fee shall be in addition to any and all other applicable fees, including without limitation, Pole Attachment Rental Fees due and payable for the current year and all prior years in which the Unauthorized Attachment existed. If it cannot be determined when such Unauthorized Attachment was attached, it shall be presumed to have been attached right after the last audit was conducted or five years, whichever is less. Nothing herein shall act to limit any other remedies, including a remedy for trespass, that may be available to Licensor as a result of any Unauthorized Attachment.

10.2. Licensor Failure to Act. No act or failure to act by Licensor with regard to any Unauthorized Attachment shall be deemed to ratify or license the Unauthorized Attachment. If an Application for such attachment is subsequently approved, such approval shall not operate retroactively to constitute a waiver by Licensor of any of its rights under this Agreement regarding the Unauthorized Attachment, and Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement from its inception with regard to any such Unauthorized Attachment.

## **11. REPLACEMENT AND RELOCATION OF POLES; REARRANGEMENT OF FACILITIES**

11.1. Replacement or Relocation of Poles. Except in an emergency involving safety of persons or protection of property, as determined by Licensor in its sole judgment, Licensor shall provide twenty (20) days notice to Licensee whenever Licensor intends to replace or relocate an Attached Pole, specifying the poles involved and the time of such proposed replacement or relocation. Notwithstanding the foregoing, if a government authority or private landowner requires relocation in less than twenty (20) days, the notice provided by Licensor shall be reduced accordingly. Licensee may, at the time so specified, transfer its Attachments to the new or relocated Attached Pole. Should Licensee fail to transfer its Attachments at the time specified for such transfer, Licensor may elect to transfer Licensee's Attachments, and Licensee shall reimburse Licensor for all Imposition Costs of such transfer, and Licensor shall not be liable for any loss or damage to Licensee's facilities which may result. Licensee shall be responsible for any additional damages resulting from its failure to transfer its Attachments.

11.2. Replacement Costs. If Licensor determines that a Pole needs replacement in order to accommodate Licensee's proposed Attachments and agrees to such expansion of capacity with a taller or stronger pole, then Licensor may do so with Licensee's consent and Licensee will bear the expense of such replacement.

11.3. Vacating Pole Space. In the event it becomes necessary for Licensor, Licensor's subsidiary or affiliate or any other entity in which Licensor holds an interest, or another utility with whom Licensor has a prior agreement for pole attachments, to use the space on a Pole occupied or to be occupied by Licensee's Attachments, Licensee shall, upon receipt of twenty (20) days notice, either (a) vacate the space by removing its Attachments at its own expense, or (b) if Licensor agrees to replace the pole with a larger pole that can accommodate Licensee's Attachments, bear the expense of such replacement and transfer its Attachments to the new pole. Should Licensee fail within the 20-day notice period to vacate the space or arrange to have the pole replaced, Licensor may (x) remove Licensee's Attachments, or (y) replace the pole with a larger pole that can accommodate Licensee's Attachments at Licensee's Imposition Cost expense and transfer Licensee's Attachments.

11.4. Costs for Installation, Removal and Transfer of Licensee's Attachments.

Licensee shall be solely responsible for all Costs of installation, removal or transfer of its Attachments on, from or to Licensor's Poles.

11.5. Costs for Rearrangement or Transfer of Other Facilities. In any case where the facilities of Licensor and/or another attacher(s) are required to be rearranged on existing poles of Licensor, or transferred to replacement poles of Licensor, in order to accommodate Licensee's Attachments, Licensee shall reimburse Licensor and the other attacher(s) the total reasonable Costs incurred by Licensor or the other attacher(s) in rearranging or transferring such facilities to accommodate Licensee's Attachments.

11.6. Emergencies.

- (a) In an emergency involving safety of persons or protection of property, as determined by Licensor in its sole judgment, Licensor may, without prior notice to Licensee and at Licensee's sole risk and expense, temporarily replace, relocate, remove, modify or perform any other work in connection with Licensee's Attachments on any Pole. Licensor will use commercially reasonable efforts to notify Licensee in advance of any such replacement, relocation, removal, modification or other work, and to avoid disruption of service to Licensee's customers, but will have no liability with respect to any such disruption.
- (b) Licensee shall reimburse Licensor for the Costs that Licensor may incur for such emergency work. In such event, Licensor shall notify Licensee of both the Pole affected and the work performed.

**12. ABANDONMENT OR REMOVAL OF ATTACHED POLES; COMPLIANCE WITH GOVERNMENT DIRECTIVES**

12.1. Right to Abandon or Remove; Licensee Obligations. Upon thirty (30) days notice to Licensee, Licensor may in its sole discretion abandon or remove any Attached Pole. Within this 30-day period, Licensee shall remove its Attachments and may place its facilities underground if authorized to place its facilities underground, transfer its facilities to the nearest facilities owned by Licensor if authorized by Licensor, or take other action not inconsistent with this Agreement. If, at the expiration of the 30-day period, Licensor shall have no attachments on such pole but Licensee shall not have removed all of its Attachments, ownership of such pole shall transfer to Licensee at the sole option of Licensor. If Licensor elects to transfer ownership of such pole, Licensor shall provide Licensee with a record of that transfer using the "Transfer of Pole Ownership" form attached hereto at Exhibit 12.1. Licensee shall receive the pole "as is," and shall indemnify, defend and hold harmless Licensor from all obligation, liability, Cost, claim, damage, expense or charge related thereto or raised thereafter, including for Licensor's own negligence. Should Licensor elect to sell such pole, Licensee shall take title to the pole for all purposes. Because poles and related items may contain various hazardous chemicals or properties, Licensee shall comply with the terms and directions of the appropriate material safety data sheet and with state and federal law regarding the maintenance, replacement, and/or disposal of the pole. Licensor does not warrant, guarantee, or imply that such pole possesses sufficient mechanical strength as required by or for any use of Licensee. Licensor makes no representations or guarantees concerning any right to occupy the premises where the pole is currently located upon the removal of Licensor's facilities.

12.2. Governmental Requirement to Remove. In the event that the use of any Pole is or becomes lawfully forbidden by federal, state, county or municipal authorities or by owners of private

property, Licensor shall provide thirty (30) days notice to Licensee that the Authorization covering the use of such pole will be terminated, and that the Attachment(s) of Licensee must be removed from the affected pole at Licensee's expense. Notwithstanding the foregoing, if the federal, state, county or municipal authority, or private landowner requires discontinuance of the pole in less than thirty (30) days, the notice provided by Licensor shall be reduced accordingly.

12.3. Governmental Requirement to Shorten Pole. If a governmental authority requires Licensor to reduce the height of a Pole such that the continued presence of Licensee's Attachments would not comply with the requirements of this Agreement, then the Authorization covering Licensee's Attachments to the pole shall immediately terminate upon notice from Licensor, and Licensee shall remove its Attachments from the affected pole at its own expense by the date specified by Licensor.

12.4. Removal of Attachments. Licensee may at any time and in its sole discretion remove any of its Attachments from Licensor's Poles, but shall provide seven (7) business days notice of such removal to Licensor. Such notice shall fully identify, by pole number and location, the poles from which such Attachments are being removed. Licensee's obligations to make Pole Attachment Rental Fee payments shall continue until (i) Licensor receives such notice, and (ii) Licensee actually removes its Attachments. No refund of any rental fee will be due on account of such removal unless that removal is triggered by a Default of this Agreement by Licensor. Licensee shall immediately treat all affected poles with an industry-acceptable wood preservative, plug all holes left by such Attachments, and repair such facilities as reasonable and appropriate in Licensor's judgment.

### **13. REPRESENTATIONS, WARRANTIES AND COVENANTS**

13.1. Common Representations. Each Party represents and warrants that: (a) it has full authority to enter into and perform this Agreement; (b) this Agreement does not conflict with any other document or agreement to which it is a party or is bound, and this Agreement is fully enforceable in accordance with its terms; (c) it is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was formed; (d) the execution and delivery of this Agreement and performance hereunder will not conflict with or violate or constitute a breach or default under its formation documents and will not violate any law, rule or regulation applicable to it; and (e) no consents need be obtained from any governmental agency or regulatory authority to allow it to execute, deliver and perform its obligations under this Agreement

13.2. Required Authorizations. Licensee represents and warrants that it has obtained all Required Authorizations, and covenants that it will maintain and comply with the Required Authorizations throughout the Term.

13.3. LIMITATIONS ON WARRANTIES. THERE ARE NO WARRANTIES UNDER THIS AGREEMENT EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH HEREIN. THE PARTIES SPECIFICALLY DISCLAIM AND EXCLUDE ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSOR SPECIFICALLY DISCLAIMS ANY WARRANTY OR REPRESENTATION REGARDING THE CONDITION, SAFETY AND LONGEVITY OF LICENSOR'S POLES.

### **14. INDEMNIFICATION**

14.1. LICENSEE INDEMNIFICATION. LICENSEE SHALL INDEMNIFY, PROTECT, SAVE HARMLESS AND INSURE LICENSOR, ITS OFFICERS, DIRECTORS,

EMPLOYEES AND MEMBERS, FROM AND AGAINST ANY AND ALL CLAIMS AND DEMANDS FOR, OR LITIGATION WITH RESPECT TO, SERVICE INTERRUPTIONS, DAMAGES TO PROPERTY AND FOR INJURY OR DEATH TO PERSONS, INCLUDING PAYMENTS MADE UNDER ANY WORKER'S COMPENSATION LAW OR UNDER ANY PLAN FOR EMPLOYEE DISABILITY AND DEATH BENEFITS AND INCLUDING ALL EXPENSES INCURRED IN DEFENDING AGAINST ANY SUCH CLAIMS OR DEMANDS, OR OTHER DAMAGES WHICH MAY ARISE OUT OF, OR BE CAUSED BY LICENSEE OR ITS AGENTS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS WITH RESPECT TO, THE ERECTION, OPERATION, MAINTENANCE, PRESENCE, USE, REPAIR, REARRANGEMENT OR REMOVAL OF LICENSEE'S ATTACHMENTS OR UNAUTHORIZED ATTACHMENTS, LICENSEE'S REARRANGEMENT, MODIFICATION OR TRANSFER OF THE FACILITIES OF ANOTHER ATTACHER, OR THE PROXIMITY OF LICENSEE, ITS AGENTS AND EMPLOYEES ON OR IN THE VICINITY OF LICENSOR'S POLES. THIS INDEMNITY SHALL ALSO APPLY TO CLAIMS, DEMANDS, LITIGATION OR OTHER DAMAGES CAUSED BY LICENSOR'S NEGLIGENCE.

14.2. LICENSOR INDEMNIFICATION. LICENSOR SHALL INDEMNIFY, PROTECT, SAVE HARMLESS AND INSURE LICENSEE FROM AND AGAINST ANY AND ALL CLAIMS AND DEMANDS FOR, OR LITIGATION WITH RESPECT TO, DAMAGES TO PROPERTY, AND FOR INJURY OR DEATH TO PERSONS, INCLUDING PAYMENTS MADE UNDER ANY WORKER'S COMPENSATION LAW OR UNDER ANY PLAN FOR EMPLOYEE DISABILITY AND DEATH BENEFITS AND INCLUDING ALL EXPENSES INCURRED IN DEFENDING AGAINST ANY SUCH CLAIMS OR DEMANDS, WHICH MAY ARISE OUT OF OR BE CAUSED BY ANY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR OR ITS AGENTS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS ON OR IN THE VICINITY OF LICENSEE'S AUTHORIZED ATTACHMENTS.

14.3. NOTICE. IN THE EVENT OF ANY CLAIM, DEMAND OR LITIGATION SPECIFIED IN THIS SECTION, THE PARTY TO BE INDEMNIFIED (THE "INDEMNIFIED PARTY") SHALL GIVE PROMPT NOTICE TO THE OTHER PARTY (THE "INDEMNIFYING PARTY") OF SUCH CLAIM, DEMAND OR LITIGATION. THE INDEMNIFYING PARTY SHALL HAVE SOLE CONTROL OF THE DEFENSE OF ANY ACTION OR LITIGATION ON SUCH A CLAIM OR DEMAND (INCLUDING THE SELECTION OF APPROPRIATE COUNSEL) AND ALL NEGOTIATIONS FOR THE SETTLEMENT OR COMPROMISE OF THE SAME, EXCEPT THAT THE INDEMNIFYING PARTY MAY NOT MAKE ANY NON-MONETARY SETTLEMENT OR COMPROMISE WITHOUT THE INDEMNIFIED PARTY'S CONSENT, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD. THE INDEMNIFIED PARTY SHALL COOPERATE WITH THE INDEMNIFYING PARTY IN THE DEFENSE AND/OR SETTLEMENT OF ANY CLAIM, DEMAND OR LITIGATION. NOTHING HEREIN SHALL BE DEEMED TO PREVENT THE INDEMNIFIED PARTY FROM PARTICIPATING IN THE DEFENSE AND/OR SETTLEMENT OF ANY CLAIM, DEMAND OR LITIGATION BY THE INDEMNIFIED PARTY'S OWN COUNSEL AT THE INDEMNIFIED PARTY'S OWN EXPENSE. NOTICE UNDER THIS SECTION MUST BE PROVIDED VIA PERSONAL DELIVERY, OVERNIGHT DELIVERY, OR CERTIFIED U.S. MAIL.

## **15. LIMITATIONS ON DAMAGES**

UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, LICENSOR SHALL NOT BE LIABLE TO LICENSEE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY LICENSEE OR BY ANY SUBSCRIBER, CUSTOMER OR PURCHASER OF LICENSEE FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY PROVISION OF INDEMNITY, OR OTHERWISE, REGARDLESS OF

THE THEORY OF LIABILITY UPON WHICH ANY SUCH CLAIM MAY BE BASED. THE TOTAL CUMULATIVE LIABILITY OF LICENSOR AND ITS SUBCONTRACTORS AND SUPPLIERS ARISING FROM THE PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THIS AGREEMENT, WHETHER IN TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE, INCLUDING ALL EXPENSES INCURRED OR PAYABLE BY LICENSOR IN SATISFACTION OF ITS OBLIGATIONS UNDER THIS AGREEMENT, SHALL NOT EXCEED THE TOTAL FEES PAID TO LICENSOR PURSUANT TO THIS AGREEMENT BY LICENSEE. ALL ACTIONS AGAINST LICENSOR BY LICENSEE IN WARRANTY, TORT, CONTRACT OR OTHERWISE MUST BE COMMENCED WITHIN ONE (1) YEAR OF THE DATE OF ACCURAL OF SUCH ACTION.

## 16. INSURANCE

16.1. Insurance Requirement. Licensee shall carry insurance in such form and issued by such companies as are reasonably satisfactory to Licensor to protect the Parties from and against any and all claims, demands, actions, judgments, Costs, expenses and liabilities of every name and nature which may arise or result directly or indirectly from or by reason of any loss, injury, death or damage involving any Attachment. Throughout the Term of this Agreement, Licensee shall take out and maintain, and shall ensure that its agents, contractors and subcontractors take out and maintain, insurance that, at a minimum, conforms with the RUS insurance requirements of 7 CFR §1788.11, as it may be amended, which currently requires:

- (a) Workers' compensation and employer's liability insurance, as required by law, covering all employees who perform any of Licensee's obligations under this Agreement. If workers' compensation or employer's liability insurance is not required by law in the state in which the poles subject to this Agreement are located, then insurance shall be obtained by Licensee that is equivalent to what would be applicable if workers' compensation and employer's liability laws were in effect.
- (b) Public liability insurance covering all of Licensee's operations under the Agreement with limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage of not less than \$1 million each occurrence, and \$1 million aggregate for accidents during the policy period. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.
- (c) Automobile liability insurance on all motor vehicles used in connection with the Agreement, whether owned, non-owned, or hired, with limits for bodily injury or death of not less than \$1 million per person and \$1 million per occurrence, and property damage limits of \$1 million for each occurrence. This required insurance may also be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

16.2. Certificate of Insurance. Within thirty (30) days of the Execution Date, Licensee shall furnish to Licensor a certificate evidencing compliance with the above insurance requirements. This certificate shall list Licensor as additional insured and shall note specific cancellation language, as follows: "In the event of cancellation or material change of said policies, the insuring company shall give the Party to whom this certificate is issued thirty (30) days prior notice of such cancellation or material change." If Licensee fails to renew adequate insurance, Licensor may terminate this Agreement pursuant to Section 17 (Defaults).

16.3. Responsibility for Contractors. Licensee shall bear full responsibility for ensuring that its agents, contractors and subcontractors are in full compliance with the requirements of this section before they perform any work for Licensee in connection with this Agreement.

16.4. No Limitation on Indemnities. The purchase of the insurance required by this section shall not relieve Licensee of its liability or obligations under this Agreement or otherwise limit Licensee's liability under Sections 14.1 and 14.3.

## 17. **DEFAULTS**

17.1. Licensee Default. If Licensee is in Default under this Agreement and fails to correct such Default within the cure period specified below, Licensor may, at its option, and without further notice:

- (a) declare this Agreement to be terminated in its entirety;
- (b) terminate the Authorization covering the Pole(s) with respect to which such Default shall have occurred;
- (c) decline to authorize additional Attachments under this Agreement until such Defaults are cured;
- (d) suspend Licensee's access to or work on any or all of Licensor's Poles;
- (e) correct such Default and charge Licensee as provided in this Agreement; and/or
- (f) seek specific performance of the terms of this Agreement through a court of competent jurisdiction.

17.2. Licensee Cure Period. For a period of thirty (30) days following receipt of notice from Licensor, Licensee shall be entitled to take all steps necessary to cure any Defaults. The 30-day notice and cure period does not apply to any Default by Licensee of its payment obligations under this Agreement. Notice under this section must be provided via personal delivery, overnight delivery, or certified U.S. mail.

17.3. Termination Because of Licensee Default. If Licensor terminates this Agreement because of Licensee's Default, Licensee shall not be entitled to any refund of any Pole Attachment Rental Fee.

17.4. Reimbursement for Licensor Work. If Licensee fails to cure a Default with respect to the performance of any work that Licensee is obligated to perform under this Agreement, Licensor may elect to perform such work, and Licensee shall reimburse Licensor for all Imposition Costs related thereto.

17.5. Licensor Default. If Licensor is in Default under this Agreement, Licensor shall have thirty (30) days following notice from Licensee within which to correct such Default. If Licensor does not cure its Default within the allotted time period, Licensee may, at its sole discretion, either terminate this Agreement or seek specific performance of the terms of this Agreement through a court of competent jurisdiction. If Licensee elects to terminate the Agreement, Licensor shall within thirty (30) days refund to Licensee on a pro rata basis any Pole Attachment Rental Fee paid for the current annual rental period. Notice under this section must be provided via personal delivery, overnight delivery, or certified U.S. mail.

17.6. Attorney Fees and Court Costs. If either Party fails to cure a Default with respect to any of its obligations under this Agreement and it becomes necessary for the other Party to obtain the services of an attorney, who is not a salaried employee of that Party, to enforce its rights under this

Agreement, the defaulting Party agrees to pay all reasonable attorney fees and court costs of litigation associated with such enforcement, if the other Party is successful.

#### **18. TERMINATION OF AGREEMENT**

Upon termination of this Agreement, Licensee shall remove all of its Attachments from all of Licensor's Poles within sixty (60) days. If any Attachments are not so removed within sixty (60) days following such termination, Licensor shall have the right to remove such Attachments, and to use, dispose of or sell same, at Licensee's sole expense and without any liability to Licensee.

#### **19. WAIVER OF TERMS OR CONDITIONS**

The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but such conditions and terms shall be and remain at all times in full force and effect.

#### **20. MODIFICATIONS**

Except as otherwise specified in this Agreement, this Agreement may be amended or supplemented at any time only upon written agreement by the Parties hereto. Notwithstanding the foregoing, all Exhibits may be modified by Licensor upon thirty (30) days notice to Licensee. The names, addresses, facsimile numbers and electronic mail addresses to which notices must be sent may be modified by either Party upon notice to the other. Notice under this section must be provided via personal delivery, overnight delivery, or certified U.S. mail.

#### **21. PAYMENT OF TAXES**

Each Party shall pay all taxes and assessments lawfully levied on its own property and services subject to this Agreement.

#### **22. NOTICES**

Unless otherwise specified in this Agreement, any notice, request, consent, demand, designation, approval or statement required to be made to either Party by the other shall be in writing and such written notice may be delivered via personal delivery, Federal Express (or other equivalent, generally recognized overnight delivery service), electronic mail transmission, or certified U.S. mail return receipt requested. Notice given by electronic mail shall be deemed given when directed to an electronic mail address at which the recipient has consented to receive such notice. Notice given by personal delivery, overnight delivery, or certified U.S. mail shall be effective upon receipt.

#### **23. FORCE MAJEURE**

Except as may be expressly provided otherwise, neither Party shall be liable to the other for any failure of performance hereunder due to causes beyond its reasonable control, including but not limited to: (a) acts of God, fire, explosion, vandalism, storm, or other similar occurrences; (b) national emergencies, insurrections, riots, acts of terrorism, or wars; or (c) strikes, lockouts, work stoppage, or other labor difficulties. To the extent practicable, the Parties shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the force majeure event causing the failure or delay has ceased. Each Party shall promptly notify the other Party of any delay in performance under this section and its effect on performance required under this Agreement.

**24. CONSTRUCTION OF AGREEMENT**

This Agreement was reached by each Party after arms' length negotiations and upon the opportunity for advice of counsel, and shall not in any way be construed against either Party on the basis of having drafted all or any part of this document. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "including" or "includes" do not limit the preceding words or terms.

**25. OWNERSHIP RIGHTS**

All Attached Poles under this Agreement shall remain the property of Licensor, and Licensee's rights in Licensor's Poles shall be and remain a mere license for as long as authorized under the terms and conditions of this Agreement. Nothing herein shall be construed to obligate Licensor to maintain any of its Poles if Licensor no longer has a need for the Pole.

**26. THIRD PARTY BENEFICIARIES**

Except as otherwise provided in this Agreement, this Agreement is intended to benefit only the Parties and may be enforced solely by the Parties, their successors in interest or permitted assigns. It is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, except as provided herein.

**27. SEVERABILITY**

Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any law, such law shall prevail. In such event, however, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirement, and no other provisions of this Agreement shall be affected thereby and all such other provisions shall continue in full force and effect.

**28. PRIOR AGREEMENTS SUPERSEDED**

This Agreement embodies the entire agreement between Licensor and Licensee with respect to the subject matter of this Agreement, and supersedes and replaces any and all previous agreements entered into by and between Licensor and Licensee, written or unwritten, with respect to that subject matter. All Licensee facilities attached to Licensor's Poles which had been subject to a previous agreement are now subject to this Agreement.

**29. ASSIGNMENT AND TRANSFER**

Licensee shall not assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior consent of Licensor. Licensor may condition such consent upon the assignee's or transferee's agreement to reasonable additional or modified terms or conditions. If there is a change of Control of Licensee, then Licensor shall have the right, in its reasonable discretion, immediately to terminate this Agreement in its entirety without further liability. Licensor may assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior consent of Licensee.

**30. ELECTRONIC SIGNATURES; COUNTERPARTS**

This Agreement may be executed using electronic signatures and such electronic version of the Agreement shall have the same legally binding effect as an original paper version. This Agreement may be executed in counterparts, each of which shall be deemed an original.

**31. SURVIVAL; LIMITATIONS ON ACTIONS**

Notwithstanding the termination of this Agreement for any reason, Sections 14, 15, 19, 22, and 24 through 28 shall survive termination for the applicable statute of limitations. Notwithstanding any provisions to the contrary, all rights, remedies, or obligations which arose or accrued prior to the termination or expiration of the terms hereof shall survive and be fully enforceable for the applicable statute of limitations.

**[END OF TERMS AND CONDITIONS]**

Exhibit 1.1

**Application, Conditions and Permit to Make Attachments of Fiber Optics/Telephone/Television Cable Along With Necessary Appurtenant Facilities**

Permit No. \_\_\_\_\_ Application Exchange: \_\_\_\_\_  
\_\_\_\_\_

In accordance with the terms of our agreement dated \_\_\_\_\_, application is hereby made for permission to make attachment of communication facilities to \_\_\_\_\_ of your poles in and in the vicinity \_\_\_\_\_ at the locations shown on the sketch attached.

\_\_\_\_\_  
Licensee

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

The following information is attached as part of this Application:

- (a) construction plans and drawings detailing Licensee's build out plan;
- (b) maps indicating specifically the GVEC Poles that Licensee proposes to use;
- (c) the number and character of the Attachments to be placed on each Pole;
- (d) all equipment to be included in Licensee's attachments;
- (e) Service Poles that Licensee intends to install;
- (f) the total tension, weight, and transverse loading data for the wires, including multiplication by the applicable overload factors of the NESC;
- (g) the size and type of messenger wire including weight/feet and design tension;
- (h) the size and type of cable including weight/feet, design tension, and diameter;
- (i) pole loading analysis report, stamped by a Professional Engineer licensed in Texas;
- (j) a drawing showing the type and manner of bolted Attachments;
- (k) a drawing showing installation specifications, rating, and guy and anchor requirements proposed to be used by Licensee;
- (l) any pedestal attachments; and
- (m) any other information necessary, in GVEC's sole judgment, for GVEC Licensor to determine if the requirements of Section 4.4 are met.

**CONDITIONS:**

In order to provide space on the poles set forth above, it will be necessary for the Guadalupe Valley Electric Cooperative, Inc. to make the following changes in its distribution system:

The approximate cost of doing this work, which is chargeable against you, is \$\_\_\_\_\_. If this meets with your approval, please indicate your acceptance in the space provided and pay the estimated amount. After receipt of your acceptance and payment, we will proceed to make such changes, and will true up your payment of the estimated amount based on the actual cost thereof

upon completion of the work.

ACCEPTED:

\_\_\_\_\_

By: \_\_\_\_\_

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

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

PERMIT:

Permission is hereby granted Licensee to make attachments to the poles at the locations set forth in the above application provided the following conditions are met:

1. Proper clearance must be maintained between Licensee's (Company Name) facilities and GVEC's facilities as set forth in the NESC.
2. Proper ground clearance must be maintained on Licensee's (Company Name) facilities as set forth in the NESC.
3. Licensee (Company Name) must add guy wires and anchors on all angles and dead-ends.
4. Licensee shall complete installation of its attachments within 180 days following GVEC's notice of completion of the Make Ready Work.
5. Were all property owners notified and all right-of-way easements obtained for these facilities?

Yes  No

Inventory of Poles  
Used by Licensee  
 Previous  
Balance

Added by this  
Permit

New  
Balance

\_\_\_\_\_

Guadalupe Valley Electric Cooperative, Inc.

By: \_\_\_\_\_

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

**Exhibit 1.11**

**Name of Licensee Company:**

**LOCATION OF LICENSEE SERVICE AREA**

Attached hereto is a map or sketch graphically depicting Licensee's Service Area. The map or sketch shall be:

- (i) no larger than 30" x 30";
- (ii) properly folded to a size of no greater than 8 1/2" x 11" for inclusion in this Agreement;  
and
- (iii) stapled to the Agreement in the upper left corner.

This map need not show the precise location of each of Licensor's poles to which attachment is sought, but should identify the general area in which Attachments currently exist or are planned.

**LICENSEE:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

**Exhibit 1.12**

**LICENSOR RULES AND PRACTICES FOR**  
**ATTACHMENTS**

1. Licensee shall install and maintain its Attachments at its own expense.
2. Any unbalanced loading of Licensor's Poles caused by the placement of Licensee's facilities shall be properly guyed and anchored by Licensee with a guy and anchor provided by Licensee prior to the placement of Licensee's Attachments, at Licensee's sole expense, risk and liability. Licensee will place guy markers on all such down guys and Licensor shall have no responsibility for placing, monitoring, or maintaining such markers. Licensee shall not attach any of its Attachments to any guy or anchor or Licensor. Licensee may not place new guy attachments on Licensor's anchors without Licensor's prior consent.
3. A preliminary "ride through" of the proposed route of Licensee's facilities shall be made by representatives of Licensor and Licensee upon request by Licensor.
4. Licensee shall check and verify the condition of any pole prior to climbing or performing work on it. If a pole is deemed unsafe, Licensee must immediately notify Licensor by telephone and in writing as soon as practicable.
5. All Attachments shall be located on the same side of each pole as any existing telephone or communications cable, or as otherwise designated by Licensor. (Designated side is typically the same side the neutral is on).
6. On Attached Poles where Licensor has secondary conductors, all Attachments shall be located on the same side of the pole as the secondary conductors, or as otherwise designated by Licensor.
7. Licensee shall cause all cabinets, enclosures, and messengers to be grounded by bonding to the existing pole ground with #6 solid, bare, soft drawn copper wire.
8. Licensee shall install no power supply on any of Licensor's poles on which underground electric services, capacitor banks, sectionalizing equipment or voltage regulators are already installed.
9. No electrical service connection to a communications power supply shall be made or installed by Licensee until after Licensor shall have completed inspection of an approved fused service disconnect switch or circuit breaker.
10. No bolt used by Licensee to attach its facilities shall extend or project more than one (1) inch beyond its nut.
11. All Attachments of Licensee shall have at least two inches clearance from unbonded hardware such as pedestals and any other enclosures containing equipment.
12. All of Licensee's Attachments shall comply with NESC clearance requirements and shall be

located a minimum of forty (40) inches below Licensor's lowest attached facilities. All mid-span clearances between Licensee's facilities and Licensor's lowest conductors shall comply with NESC clearance requirements.

13. Licensee may, with prior approval of Licensor, install cross arms, alley arms, or cable extension arms for the support of any of its facilities. However, Licensee shall not use any cross arm or alley arm brace above the arm that it supports.
14. Licensee shall install and maintain any and all of its facilities in a neat and workmanlike manner consistent with the maintenance of the overall appearance of the jointly used pole, subject to the approval of Licensor in its sole discretion.
15. In the event that any of Licensee's proposed attachments are to be installed upon poles already jointly used by Licensor and another party(ies), Licensee shall negotiate with such other party(ies) to determine clearances between its facilities and those of Licensor and such other party(ies), except that Licensee may not in any way modify the clearance requirements set forth in this Agreement.
16. Licensee shall provide to Licensor a statement summarizing the standards used by Licensee for its standard pole attachment installations. Such standards shall be signed and approved by a Professional Engineer representing Licensee, confirming that Licensee's standard installations conform with the NESC and good engineering design. With respect to non-standard Attachments, Licensee's Professional Engineer shall prepare or review plans for such non-standard Attachments, and submit such plans to Licensor with a statement that such non-standard Attachments comply with the NESC and good engineering design.

\* \* \*

## APPLICATION PROCESSING TASKS

### **1. Initial Application Review**

Perform initial intake processing of Application upon receipt from Licensee. This review is required to verify that the submitted Application is complete

### **2. Conduct Initial Field Inspections**

Perform initial field inspection following receipt of Application from Licensee. This inspection is required to verify that field physical data provided on the Application is accurate.

Prepare pre-construction inspection report noting any deficiencies and required corrections.

### **3. Review Submitted Pole Loading Analysis**

Perform an engineering review of the Application and initial field inspection results to ensure that all Poles requiring a pole loading analysis (PLA) have the required PLA(s).

Review the submitted PLA(s) to ensure compliance with all applicable engineering standards.

### **4. Perform Pole Loading Analysis (as necessary)**

Perform PLA(s) to ensure compliance with all applicable engineering standards.

### **5. PE Stamping (upon request)**

Have Professional Engineer review Make Ready design and PLA, and submit cover sheet which includes PE stamp, signature and date

### **6. Make Ready Design**

Produce communications and electric Make Ready construction design recommendations

### **7. Make Ready Estimate**

Prepare the Make Ready Estimate by estimating the costs to perform Make Ready Work specified in the Make Ready construction design recommendation

### **8. Make Ready Coordination**

Coordination with Attaching Entities/Contractors and other Make Ready Work coordination, including but not limited to: on site meetings, quality assurance/quality control (QA/QC), preparing field inspection notes, staking locates, rejection notifications, invoice status, and final permitting.

### **9. Post-Construction Field Inspections**

Perform post-construction inspection following Licensee's notice that attachment installation work is complete, to verify that all construction was installed in compliance with the technical requirements and specifications of the Agreement. Data to be gathered at the job site includes: identification and measurements of all attachments.

Prepare post-construction inspection report noting any deficiencies and required corrections.

Email notifications for each instance in which communication construction was improperly performed

#### **10. Follow-up Post-Construction Field Inspections (when corrective work needed)**

Perform subsequent post-construction inspection following Licensee's notice that required corrective work has been completed, to verify that all construction was installed in compliance with the technical requirements and specifications of the Agreement. Data to be gathered at the job site includes: identification and measurements of all attachments.

Prepare post-construction inspection report noting any deficiencies and required corrections.

Email notifications for each instance in which communication construction was improperly performed

#### **11. Application Close-Out**

After an approved post-inspection, document all necessary "as-built" corrections, applicable field measurements, and inspection reports, and provide information for Licensor's design system.

Ensure all documentation related to the Application is complete and properly archived, including any cancelled applications and relevant work orders.

Exhibit 12.1

**TRANSFER OF POLE OWNERSHIP**

Pursuant to Section 12.1 of the Agreement, Guadalupe Valley Electric Cooperative, Inc. (“Licensor”) hereby transfers to City of Schertz, (“Licensee”) all right, title and interest in and to the Pole(s), identified on Exhibit 1 hereto, the responsibility for which Licensee accepts in exchange for Licensee’s ability to remain on the Pole(s).

As already agreed to by the Parties in the Agreement, Licensee shall receive the Pole(s) “as is,” and shall indemnify, defend and hold harmless Licensor from all obligation, liability, Cost, claim, damage, expense or charge related thereto or raised thereafter, including for Licensor’s own negligence. Licensee takes title to the Pole(s) for all purposes. Because Poles and related items may contain various hazardous chemicals or properties, Licensee shall comply with the terms and directions of the appropriate material safety data sheet and with state and federal law regarding the maintenance, replacement, and/or disposal of the Pole(s). Licensor does not warrant, guarantee, or imply that such pole(s) possesses sufficient mechanical strength as required by or for any use of Licensee. Licensor makes no representations or guarantees concerning any right to occupy the premises where the Pole(s) is currently located upon the removal of Licensor’s facilities.

GUADALUPE VALLEY ELECTRIC COOPERATIVE, INC.

BY: \_\_\_\_\_

NAME/TITLE \_\_\_\_\_

