



**CITY OF SEGUIN**

**POLE ATTACHMENT AGREEMENT  
AND  
TECHNICAL DESIGN MANUAL**

Updated September - 2017

## **What is the purpose of the City of Seguin’s Pole Attachment Agreement and Technical Design Manual?**

The City of Seguin developed the Pole Attachment Agreement and Technical Design Manual to govern the primary relationship between the attaching entity and the City. It will serve as the primary guide and “rulebook” regarding how an attaching entity may attach to the City’s facilities and delineates how the City will facilitate the attachment process.

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## **What is the process for working with the City on a pole attachment application?**

Step-1: An attaching entity to request this document from the City, along with all applicable appendices and forms.

Step-2: The City will provide these documents and be available to answer questions regarding the document(s).

Step-3: Complete and submit either Request to Attach to Poles Form (Appendix A) or the Request to Modify Attachments on Existing Poles Form (Appendix B) – and send/submit to the City of Seguin by one of these methods:

- a. electronic mail with electronic mail "read" receipt obtained, or
- b. by certified mail with return receipt obtained, or
- c. by delivery with signature of recipient obtained.

Step-4: For most applications the attaching entity will be notified within fifteen (15) business days after the receipt of a completed application whether the application is approved or rejected. Please see Section IV of the Pole Attachment Agreement for detailed scenarios and timeframes.

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## **Where can I get a Request to Attach to Poles Form (Appendix A) or the Request to Modify Attachments on Existing Poles Form (Appendix B)?**

These forms are attached to the Pole Attachment Agreement document (part of this document set). This document can be downloaded from the City of Seguin’s website [www.seguintexas.gov](http://www.seguintexas.gov)

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## **Who is the contact person(s) for applications for the City of Seguin?**

The Director of Electric Utilities is the primary contact for pole attachments for the City of Seguin. Contact information:

Email: [Csmith@sequintexas.gov](mailto:Csmith@sequintexas.gov)

Phone: 830-379-3212

Mailing Address: City of Seguin, Texas ♦ 205 N River Street, Seguin TX, 78155

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## **STANDARD POLE ATTACHMENT LICENSE AGREEMENT**

**BETWEEN**

**CITY OF SEGUIN, TX**

**AND**

**Zayo Group, LLC**

**DATED:**

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## PREAMBLE

The City of Seguin, (hereinafter called the "Utility"), and Zayo Group, LLC, a corporation organized under the laws of the State of Delaware (hereinafter called the "Attacher"), desiring to enter into this Pole Attachment License Agreement ("Agreement") for the use of Utility's poles, erected or to be erected within the areas in which both parties render service in the State of Texas, whenever and wherever such use shall, in the estimation of both parties, be compatible with their respective needs and consistent with the terms of this Agreement, do hereby, in consideration of the promises and the mutual covenants herein contained, covenant and agree for themselves and their respective successors and assigns as follows, effective \_\_\_\_\_, 2019 ("Effective Date"):

## WITNESSETH

WHEREAS, the Utility and the Attacher desire to continue joint use of steel or other types of poles and in the future to establish further joint use of their respective poles when and where joint use shall be of mutual advantage; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

## ARTICLE I - SCOPE OF AGREEMENT

- A. This Agreement shall be in effect in the area in which both of the Parties render service in the State of Texas, and shall cover all poles now existing or hereafter erected in the above territory when said poles are brought under this Agreement in accordance with the procedure hereinafter provided.
- B. The Utility reserves the right for good cause to exclude from use any of its facilities for objective reasons of safety, reliability, capacity, and generally applicable engineering standards.

## ARTICLE II - EXPLANATION OF TERMS

For the purpose of this Agreement, the following terms shall have the following meanings:

- A. **Attacher** is any entity other than the Utility who either attaches to Utility facilities or installs equipment within the public right of way, and is the party having the right under this Agreement to make and maintain Attachments on a Joint Pole that the other party owns
- B. **Attachment** is any Attacher cable, wire, strand, circuit, service drop, over-lashing, appurtenance, equipment, pedestal or apparatus of any type attached to the pole.
- C. **Bonded-Ground** is a pedestal or other ground mounted equipment bonded to the vertical ground on a pole but not attached to the Pole.
- D. **Communications Facility** means a wire or cable facilities including, but not limited to, a fiber optic, copper and/or coaxial cable or wire utilized by an Attaching Entity to

provide Communications Services, including any and all associated equipment. A Communications Facility also includes a Messenger or other material, appurtenance, or apparatus of any sort necessary or desirable for use in the provision of an Attaching Entity's Communications Services. A Communication Facility shall not include an Antenna or wireless Remote Radio Head.

E. **Communications Services** means the provision of service, including but not limited to Telecommunications Services, Cable Services, Video Services, or Information Services over wire or cable facilities utilizing Attachments to Poles. This definition excludes Attachments made by private entities and public organizations, such as schools, universities, and units of local government, that operate a Private Network used for noncommercial communications purposes.

F. **Communications Space** means the portion of a Pole's usable space designated for the installation of Communications Facilities, the top of which is forty (40) inches below CPS Energy's Neutral or lowest electrical supply conductor.

G. **Cost in Place** is the cost of the bare pole, labor to install the pole and associated overheads, including engineering.

H. **Infrastructure Provider** means an Attacher that is a Wireless provider which may or may not be a Certificated Provider that owns no licensed frequencies, but that invests in Wireless Installations for the purpose of leasing its Communication Facilities and Wireless Installations to a Certificated Mobile Radio Service (as set out in 47 C.F.R. §203.3) Provider ("**CMRS Provider**") that utilizes such facilities to embed proprietary technology that allows the leased facilities to transmit and receive the CMRS Provider's licensed frequencies. Such leased facilities are interconnected with the CMRS Providers wireless network to expand network capacity. Infrastructure Provider shall also include Wireless providers who use right-of-way within the city limits for the placement of poles, antennas or any other means of service not directly attached to Normal Poles.

I. **Infrastructure Provider Sublicense** means a CMRS Provider that leases Communication Facilities and Wireless Installations from an Infrastructure Provider for the purpose of providing or expanding wireless network capacity that has executed an Infrastructure Provider Sublicense Wireless License Agreement.

J. **Infrastructure Provider Sublicensee Wireless License Agreement** means an executed agreement between the Utility and an Infrastructure Provider Sublicensee that grants a license to use the Utility's Poles, a Joint Pole, or a Node Support Pole for the purpose of operating a wireless network. The agreement recognizes, among other issues, that the Infrastructure Provider

Sublicense leases Wireless Installations owned by an Infrastructure Provider and that the Utility shall look to the Infrastructure Provider for compliance with these Standards, but otherwise the Infrastructure Provider Sublicensee has a duty to ensure that its proprietary technology and FCC licensed frequencies do not result in any Wireless Interference with the City of Seguin's wireless systems and equipment. The agreement includes additional legal protections and obligations of the Parties not specifically covered in the Standards or Technical Manual. An Infrastructure Provider Sublicense Wireless License Agreement may be referred to generally in this Agreement or the Technical Manual as a "pole attachment contract."

K. **Initial Safety Inspection** is a safety inspection of Utility poles to identify and remediate non-conforming Attachments (e.g. NESC violations) and other safety conditions on Utility poles, performed after the Effective Date as explained in ARTICLE VIII hereof.

L. **Joint Pole** is a pole for which joint use is established or continued pursuant to the terms of this Agreement.

M. **Make-ready** is all work necessary or appropriate to make space for or otherwise accommodate new or changed Attachments, including, if necessary or appropriate, Rearrangements, removal and replacement of the pole, Transfers and other work incident thereto.

N. **NESC** is the National Electrical Safety Code.

O. **NJUNS** is the National Joint Utilities Notification System and for the purposes of this Agreement and for the purposes of notice a work order on NJUNS shall serve as official notice from or to the City for those attached to poles governed herein.

P. **Non-guyed Service Drop** is a Service Drop that requires no guys under the Attacher's design standards or the applicable specifications of ARTICLE III - SPECIFICATIONS. (If, atypically, a wire used to connect to a customer's location were to require guying under the Attacher's design standards or the applicable specifications of ARTICLE III, then it would not be treated as a Non-guyed Service Drop under this Agreement but would be treated as a cable.)

Q. **Normal Pole** is a pole which is just tall enough to provide Normal Space, as Normal Space is hereinafter defined, for the respective parties and just strong enough to meet the requirements of the specifications mentioned in ARTICLE III - SPECIFICATIONS for the Attachments ordinarily placed by the parties in their respective Normal Spaces. Such pole for the purpose of this Agreement shall be a forty (40)-foot class 3 wood pole as classified by the pole classification tables of the American National Standards Institute. The foregoing definition of Normal Pole is not intended to preclude the use of Joint Poles shorter or of less strength than the Normal Pole in locations where such poles will meet the requirements of the parties hereto.

R. **Normal Space** is the following described space:

1. For the Utility, the uppermost six and a half (6 ½) feet measured from top of pole on thirty-five (35)-foot poles and the uppermost nine (9) feet measured from top of pole on forty (40)-foot poles.

2. For the Attacher a space of one (1) foot on both thirty-five (35)-foot and forty (40)-foot poles at a sufficient distance below the space of the Utility to provide at all times the minimum clearance required by the specifications mentioned in ARTICLE III - SPECIFICATIONS and at a sufficient height above ground to provide the proper vertical clearance above ground or track rails for the lowest horizontally run line wires or cables attached in such space. When practicable, the Attacher will, after the Effective Date, make its initial Attachments one foot above the lowest possible point that provides such ground clearance, which is the midpoint of its Normal Space.
  3. In the event the Utility installs a pole larger than the Normal Pole solely in anticipation of its future requirements or additions, the Normal Space for the Utility, as defined above, for that pole shall be increased to include the additional above ground space provided by the Utility.
- S. **Outside Party** is any person or entity which is not a party to this Agreement and which has a right to use the pole of either party.
- T. **Permit** means authorization from the Utility to the Attacher to attach an Attachment pursuant to this Agreement.
- U. **Rearrangement** is the moving of Attachments from one position to another on a pole.
- V. **Service Drop** means a wire used to connect to a customer's location. A Service Drop may run directly from a pole used to service many customers to a specific customer's location, without the use of any other poles, or a Service Drop may itself be supported by more than one pole to carry the Service Drop to the customer's location.
- W. **Space** is the linear portion of a joint pole parallel to its axis reserved for the exclusive use of one of the parties (subject only to the exceptions provided for in this Article and the specifications mentioned in ARTICLE III - SPECIFICATIONS which in certain instances permit the making of certain Attachments by one party in the space reserved for the other party).
- X. **Technical Design Manual** is the binding policy governing non-utility pole attachments and nodal attachments as found in Appendix E. If, in any circumstance, the Technical Design Manual and this Agreement are in conflict, this Agreement shall take precedence.
- Y. **Transfer** is the removal of Attachments from one pole and the placement of them or substantially identical Attachments upon another.
- Z. **Utility** means the Electric Utility of the City of Seguin or any other departments designated by the City Manager to review, approve, and manage any attachment to City facilities or installations within the public right of way.
- AA. The Definitions found in the Technical Manual are adopted as part of this Agreement.

## **ARTICLE III - SPECIFICATIONS**

Except as otherwise provided in ARTICLE VII - MAINTENANCE OF POLES AND ATTACHMENTS F., referring to construction that has not yet been brought into conformity with the specifications mentioned herein, the joint use of the poles covered by this Agreement shall at all times be in conformity with all applicable: (1) accepted published modern methods; (2) requirements of the National Electrical Safety Code and subsequent revisions thereof ("NESC"); (3) lawful requirements of public authorities; (4) the requirements of APPENDIX C; and the applicable requirements of Appendix E. It is understood by both parties that the requirements of the NESC are minimum requirements and that reasonable, additional requirements for height and strength may be required for good practice for the given local conditions.

Modifications of, additions to, or construction practices supplementing wholly or in part the requirements of the NESC, shall, when accepted in writing by both parties hereto through their agents authorized to approve such changes, likewise govern the joint use of poles, which acceptance shall not be unreasonably withheld.

## **ARTICLE IV - ESTABLISHING ATTACHMENT TO POLES**

A. Before Attacher shall make use of Utility's Poles under this Agreement, it shall comply with the requirements set forth herein and shall include a pole loading analysis sealed by an appropriately licensed engineer. APPENDIX A or B shall be sent either (i) by electronic mail with electronic mail "read" receipt obtained, or (ii) by certified mail with return receipt obtained, or (iii) by delivery with signature of recipient obtained.

B. APPENDIX A PROCEDURE. Except in connection with (i) the placement of Non-Guyed Service Drops; (ii) the placement of distribution terminals; (iii) the placement of power secondary wires; (iv) the placement of street lighting fixtures; (v) making safety corrections; (vi) Rearrangements or Transfers required by the Utility, whenever either party desires to place an Attachment on any pole of the other that is not then in joint use (including road improvement projects and reconstruction of pole lines) or where existing joint use consists solely of one or more Non-guyed Service Drops, it shall submit a completed written application therefor on the form attached hereto and identified as APPENDIX A or such other form as may be mutually agreed upon, specifying fully, to the extent applicable, the information shown on APPENDIX A. In the case of overlashing, except for overlashing of Wireless Communications Facilities (that require separate Application) Attacher may submit after-the-fact notification, so long as Appendix A information, including engineering calculations and a pole loading study, are submitted. Within fifteen (15) business days after the receipt of such completed application the Utility shall notify the applicant in writing whether the application is approved or rejected. If so approved or if not rejected within the fifteen (15) day period, the pole will become a Joint Pole, and the Attacher shall have the right to place Attachments on such pole as provided in this Agreement. If the Utility rejects the application in whole or in part, the Utility will specify the reason(s). The application shall be rejected only for good cause. Upon receipt of notice from the Utility that the application has been

approved or in the absence of rejection of the application within fifteen (15) business days from the receipt of the completed application, and after the completion of any transferring or rearranging which is required to permit the attaching of the applicant's Attachments on such poles, including any necessary pole replacements, the applicant shall have the right as Attacher hereunder to place such Attachments on such poles in accordance with the terms of the application and of this Agreement (including ARTICLE III).

C. APPENDIX B PROCEDURE. Except in connection with (1) the placement of Non-guyed Service Drops; (ii) the placement of distribution terminals; (iii) the placement of power secondary wires; (iv) the placement of street lighting fixtures; (v) the vertical use of the unused space on a pole as provided in ARTICLE IV.E. below; (vi) Rearrangements; (vii) Transfers required by the Utility and (viii) overlashing, whenever the Attacher desires to modify its existing Attachments or place one or more additional Attachments on a Joint Pole, the Attacher shall submit a completed written application therefor on the form attached hereto and identified as APPENDIX B or such other form as may be mutually agreed upon, specifying fully, to the extent applicable, the information shown on APPENDIX B. Unless the Utility rejects the completed form within fifteen (15) business days from the date of receipt, the Attacher may proceed with making such Attachments or changes as are identified in the form in accordance with the terms of the application and this Agreement (including ARTICLE III - SPECIFICATIONS). If the Utility rejects the application in whole or in part, the Utility will specify the reason(s). The application shall be rejected only for good cause. If the Utility determines that any such Attachments do not comply with the terms of this Agreement (including the provisions of ARTICLE III), then the parties will work together to minimize the cost of correcting any such deficiencies, but the Attacher shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto.

D. Any Non-guyed Service Drop that is placed by Attacher on Utility's pole shall be subject to all the terms and provisions of this Agreement, except as expressly provided in this Agreement. The placement of one or more Non-guyed Service Drops shall not, alone and without more, create Normal Space.

E. Either party, without following the APPENDIX A or APPENDIX B procedure, may utilize vertical unused space below its Normal Space as defined in ARTICLE II - EXPLANATION OF TERMS for street lighting, terminals, risers or other vertical Attachments if the existing joint use of such pole is authorized, such use does not interfere with the other party's operations, and such use complies with the terms of this Agreement (including the provisions of ARTICLE III - SPECIFICATIONS).

F. Each party shall place, Transfer and rearrange its own Attachments, and shall place guys and anchors to sustain any unbalanced loads caused by its Attachments. On existing poles, each party will perform any tree trimming or cutting necessary for their initial or additional Attachments. Anchors and guys shall be in place and in effect prior to the installation of Attachments and cables.

Each party shall, with due diligence, attempt at all times to execute such work promptly and in such manner as not to interfere with the service of the other party.

G. The cost of establishing the joint use of existing poles as provided herein, including the making of any necessary pole replacements, shall be borne by the parties hereto in the manner provided in ARTICLE IX - DIVISION OF COSTS.

H. Joint use of a pole shall automatically be continued under the terms of this Agreement if either of the following circumstances applies:

1. The pole was a Joint Pole under the Old Joint Use Agreement as of the Effective Date.
2. Both parties had Attachments on the pole - the pole was actually in joint use – as of the Effective Date.

I. Both before and after any termination of the right to place Attachments on additional poles, the Attacher shall have the right to Transfer its Attachments from an existing pole to a new pole installed as part of a road widening project and to continue joint use on such pole. If the Attacher is materially breaching this Agreement or acting in bad faith or failing to cooperate or communicate as provided in this Agreement, the Utility may terminate the Attacher's rights under this ARTICLE IV.I upon Utility providing one hundred and twenty (120) days written notice to Attacher.

J. To facilitate the implementation of this Agreement, each party will share with the other party information about its future pole line projects within the region where Utility has poles, as appropriate, to facilitate the other party's planning and budgeting.

K. To facilitate any preparation of APPENDIX A or APPENDIX B, the parties' representatives will, as reasonably necessary and appropriate and if requested by a party, discuss with one another the matters that are the subject of APPENDIX A or APPENDIX B.

## **ARTICLE V - PLACEMENT OF NEW POLES**

A. Whenever either party hereto requires new pole facilities for any reason, including an additional pole line, an extension of an existing pole line, or in connection with the reconstruction of an existing pole line, it may promptly notify the other party to that effect in writing through a work order entered into INJUNS (verbal notice subsequently confirmed in writing may be given in cases of emergency) stating the proposed location and character of the new poles and the character of circuits it intends to use thereon and indicating whether or not such pole facilities will be, in the estimation of the party proposing to construct the new pole facilities, suitable for joint use. In case of emergency verbal notice with written notice provided as soon as reasonably possible, the other party will preliminarily respond verbally on an expedited basis that it does or does not want to seek initial joint use of the new poles and will generally describe its planned initial Attachments. Within a reasonable period (not to exceed thirty (30) business days after the receipt of such written notice, the other party will submit an APPENDIX A if required by ARTICLE IV above, and the provisions of ARTICLE IV will govern.

B. Each party shall place its own Attachments on the new Joint Poles and place guys and anchors to sustain any unbalanced loads caused by its Attachments except as otherwise provided under ARTICLE IV - ESTABLISHING ATTACHMENT TO NEW POLES. Each party shall, with due diligence, attempt to execute its work promptly and in such manner as not to interfere with the service of the other party.

C. Any new poles that are placed within the public right of way by any entity that are not subject to Utility use must not interfere with the safe use, operations, and maintenance of Utility facilities.

## **ARTICLE VI - RIGHT OF WAY FOR ATTACHER'S ATTACHMENTS**

While the Utility and Attacher will cooperate as far as may be practicable in obtaining rights-of way for both parties on Joint Poles, the Utility does not warrant or assure to the Attacher any right-of-way privileges or easements on, over or across streets, alleys and public thoroughfares, and private or publicly owned property, and if the Attacher shall at any time be prevented from placing or maintaining its Attachments on the Utility's poles, no liability on account thereof shall attach to the Utility of the poles.

## **ARTICLE VII - MAINTENANCE OF POLES AND ATTACHMENTS**

A. The Utility shall maintain all Joint Poles in a safe and serviceable condition and in accordance with the specifications mentioned in ARTICLE III - SPECIFICATIONS and shall replace, reinforce or repair should a pole become defective.

B. When replacing a Joint Pole carrying terminals of aerial cable, underground connection, or transformer equipment, the new pole shall be set in the same hole which the replaced pole occupied, or immediately adjacent, and in a manner to facilitate Transfer of Attachments, unless Utility and Attacher both agree that special conditions make it desirable to set it in a different location. Replacement poles where risers (dips) are installed should be set as close as possible to the existing pole. The Utility will make reasonable effort to conduct a joint field review or otherwise coordinate with Attacher to determine the location of the proposed pole. Reasonable effort will be made to coordinate locations of risers and Non-guyed Service Drops with the locations of the power facilities serving the customer.

C. Whenever it is necessary to replace or relocate a Joint Pole, the Utility shall, before making such replacement or relocation give reasonable notice thereof by electronic mail or NJUNS (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing) to the Attacher, specifying in such notice the time of such proposed replacement or relocation and the Attacher shall at the time so specified Transfer its Attachments to the new or relocated Joint Pole.

1. Should the Attacher fail to Transfer its Attachments to the new Joint Pole on the date specified for such Transfer of Attachments (after all Utility Transfers have been accomplished), the

Utility may elect to relinquish the ownership of the old pole from which it has removed its Attachments, with the giving of verbal notice to be subsequently followed in writing. If the Utility so elects, such old pole shall thereupon, at no cost to the Attacher, become the property of the Attacher, as is, and the Attacher shall save harmless the former Utility of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring because of, or arising out of, the presence or condition of such pole or of any Attachments thereon. The unused portion of the pole above the Attacher's Attachments shall be cut off and removed by the Utility before relinquishing ownership, if the pole remains in structural conflict with the power route.

2. Should the Attacher fail to Transfer its Attachments to the new Joint Pole within five (5) business days or forty-eight (48) hours in cases of emergency, after the date specified for such Transfer of Attachments and after all third party and Utility responsible Transfers have been accomplished, whichever is later ("Attacher Transfer Date"), and if the Utility does not elect to relinquish the ownership of the old pole from which it has removed its Attachments, the Utility may use its own personnel or hire a third-party contractor to make the transfer. Attacher agrees to pay the actual costs of such transfer, plus a 15% administrative fee. The intent of this paragraph is to ensure timely Transfers and minimize situation of two or more poles needlessly remaining at the same location for extended periods of time. The aforementioned provisions of this paragraph will only apply when poles are installed in a manner consistent with ARTICLE VII.B.

D. Each party shall at all times maintain all of its Attachments in accordance with the specifications mentioned in ARTICLE III and shall keep them in safe condition and in thorough repair.

E. Each party shall be responsible for right-of-way maintenance for its own circuits at its own expense.

F. Any existing joint use construction of the parties hereto which does not conform to the specifications mentioned in ARTICLE III - SPECIFICATIONS shall be brought into conformity therewith as soon as practicable. To the extent such construction is compliant with the specifications in effective at the time of installation, neither party will be required to retrofit such existing, compliant attachments and at all times NESC grandfathering rules will apply. When such existing construction shall have been brought into conformity with said specification, it shall at all times thereafter be maintained as provided in Sections A and D of this ARTICLE VII.

G. The cost of maintaining poles and Attachments and of bringing existing joint use construction into conformity with said specifications shall be borne by the parties hereto in the manner provided in this Agreement.

H. Where a pole currently exists, and different, new or replacement poles are needed in substantially the same place to accommodate the Attacher's desired additional Attachments or desired new joint use, then, if joint use is established or to be established as provided in this Agreement, the Utility will construct and own the new poles, and the costs will be paid as provided

in ARTICLE IX - DIVISION OF COSTS. If the Utility does not commit to build the poles within the time reasonably needed by the Attacher, then the Attacher may build the poles and the costs will be paid as provided in ARTICLE IX - DIVISION OF COSTS, with the party owning the existing poles owning the new poles. (This section addresses overbuilding of existing poles by the Attacher.)

I. The Utility shall have the right to require the Attacher, within ninety (90) days after the Attacher Transfer Date (as defined in ARTICLE VII - MAINTENANCE OF POLES AND ATTACHMENTS), either (a) to Transfer its Attachments from an existing pole to a new pole that is erected to carry the same or a similar service or Attachments as those on the existing pole, or (b) to remove its Attachments from the existing pole and terminate joint use as to the existing pole. The choice of option (a) or (b) will be the Utility's. Or, if neither the Utility nor the Attacher desires a Transfer, the Utility may elect to abandon the existing pole to the Attacher as provided in ARTICLE VII - MAINTENANCE OF POLES AND ATTACHMENTS C. I. In the case of any such Transfer, the costs of transferring the Attacher's Attachments will be paid by the Attacher, unless such Transfer is required due to the requirements of an Outside Party, in which case the Outside Party shall reimburse the Attacher upon demand. Should the Attacher fail to either abandon the existing pole, or transfer its Attachments, within the 90 day timeframe, then the Attacher shall be deemed to have agreed to Utility's transferring said Attachments at Utilities actual cost plus a 15% administrative fee.

## **ARTICLE VIII - SAFETY INSPECTIONS**

A. INSPECTION PERFORMANCE. If the Utility has reasonable cause to believe Code Violations or unsafe conditions (or other violations of ARTICLE III) involving the Attacher exist on its system, it will provide documentation of this belief to the Attacher, and it may, not more than once every year, perform a periodic safety inspection of Utility's Poles, including Attachments under this Agreement. The scope of the safety inspection may include the entire system or may be limited to a smaller portion of the system, such as one circuit or the circuits fed by one substation, at the discretion of the Utility. At least three (3) months prior to any such safety inspection, Utility shall provide notice of the safety inspection to the Attacher, which shall describe the scope of the inspection and provide Attacher with notice of the anticipated date of the inspection. Utility and Attacher shall share equally in the cost of the Initial Safety Inspection and any subsequent safety inspection only to the extent that safety issues are directly attributable to Attacher, whether performed directly by Utility or a third party contractor engaged by Utility, provided that to the extent that any person or entity which is not a party to this Agreement is also bound by contract or otherwise to share in the cost of any safety inspection, then the cost of any such safety inspection shall also be shared with any such person or entity not a party to this Agreement in accordance with its contractual or other obligations.

B. CORRECTIONS. In the event Attacher's facilities are in violation of the specifications set forth in ARTICLE III, and such violation poses an imminent danger to persons or property ("Imminent Danger Violation"), such party shall correct such violation immediately, but at least within twenty- four (24) hours, unless otherwise agreed to by the parties. Should Attacher fail to correct such violation after notice, the Utility may correct the violation and bill the Attacher for the Actual Costs

incurred plus a 15% administrative fee. Attacher shall not be subject to any safety violation penalties pursuant to a system-wide Safety Inspection provided that Attacher corrects any safety violation that is not an Imminent Danger Violation (a “Non-Imminent Danger Violation”) discovered during the Safety Inspection within eighteen (18) months of the documentation and reporting of the violation or unsafe conditions. For Safety Inspections involving a smaller scope of work (such as one circuit or the circuits fed by one substation), if any facilities of the Attacher are found to be a Non-Imminent Danger Violation, and Attacher has caused the violation, Attacher shall have sixty (60) days to correct any such violation upon written notice from Utility, or within a longer, mutually agreed-to time frame. If correction of the violation is not possible within sixty (60) days, such extended time to be not more than an additional sixty (60) days. Notwithstanding the foregoing grace periods, in the event Utility or any other third party prevents Attacher from properly correcting a Non-Imminent Danger Violation, the timeframe for correcting such violation shall be extended to account for the time during which Attacher was unable to correct the violation due to such actions of the Utility or the third party. Attacher will not be responsible for the costs associated with violations caused by others. In all circumstances, all of the parties on the Pole will work together to maximize safety while minimizing the cost of correcting any such deficiencies, but the Attacher shall be responsible for the full cost of any necessary or appropriate corrective measures associated with violations caused by Attacher, including removal and replacement of the pole and all Transfers or other work incident thereto. Attacher shall insure that its employees, agents, or contractors, which Attacher causes to work on Utility Poles, will be notified of pending, unresolved Poles requiring corrective actions, prior to activities on such Poles, and Attacher shall not allow unqualified, or improperly equipped personnel to work on such poles.

C. PENALTIES. Utility may impose a penalty in the amount of one hundred (\$100) dollars for any violation caused by Attacher that is not corrected in accordance with the terms of this Agreement.

D. OBSERVED SAFETY VIOLATIONS. For avoidance of doubt, Attacher shall be required to correct any safety violations as provided herein whether or not such are observed or noticed.

## **ARTICLE IX - DIVISION OF COSTS**

A. NEW POLES INSTALLED WHERE NONE CURRENTLY EXIST. Whenever Utility requires new pole facilities within the Attacher’s service territory for any reason, including an additional Pole line, an extension of an existing pole line, or in connection with the reconstruction of an existing Pole line, it shall make a best effort to notify Attacher to that effect in writing (verbal notice subsequently confirmed in writing may be given in cases of emergency) stating the proposed location of the new pole. In the case of emergency, the Attacher will preliminarily respond verbally on an expedited basis that it does or does not want to attach its Attachments and will generally describe its planned Attachments. Within a reasonable period (not to exceed fifteen (15) business days) after the receipt of such written notice, the Attacher shall submit the notice required under ARTICLE IV - ESTABLISHING JOINT USE OF POLES AND PERMISSION FOR JOINT USE. If Attacher chooses to attach to a newly installed pole(s) and requires more than the 12” of space on such pole, then the Attacher shall pay the incremental cost of the required new pole. If in connection with the

construction of a pole(s) the Attacher makes the payment required by this paragraph, then the Attacher shall in the future be entitled to attach on such pole(s) even if the pole(s) does not at that time become a Joint Pole. If joint use is established pursuant to ARTICLE V – PLACEMENT OF NEW POLES A. above, the cost to erect new Joint Poles coming under this Agreement, to construct new pole lines, or to make extensions to existing pole lines shall be borne by the parties as set forth in this ARTICLE IX – DIVISION OF COSTS A. If joint use is not established pursuant to ARTICLE V - PLACEMENT OF NEW POLES A. above, the provisions of ARTICLE IX – DIVISION OF COSTS below will control.

1. A Normal Pole, or if adequate a Joint Pole smaller than the Normal Pole, shall be erected at the sole expense of the Utility.
  2. A pole larger than the Normal Pole, the extra height or strength of which is due wholly to the Utility's requirements including owner's requirements for pole space in excess of Normal Space set forth in ARTICLE II - EXPLANATION OF TERMS and requirements as to keeping the Utility's wires clear of trees shall be erected at the sole expense of the Utility.
  3. In the case of a pole larger than the Normal Pole, the extra height or strength of which is due wholly to the Attacher's requirements including Attacher requirement for pole space in excess of Normal Space set forth in ARTICLE II - EXPLANATION OF TERMS and requirements as to keeping the Attacher's wires clear of trees, the Utility shall pay all costs associated with the construction of a Normal Pole and the Attacher shall pay to the owner the remaining costs of erecting the larger than Normal Pole. If in connection with the construction of a pole the Attacher makes the payment required by this paragraph, then the Attacher shall in the future be entitled to its Space on such pole even if the pole does not at that time become a Joint Pole; provided, however, if the Attacher does not attach to the pole within three years from the date the pole was set, then the Attacher shall no longer be entitled to its Space on such pole.
  4. In the case of a pole larger than the Normal Pole, the extra height or strength of which is due to the requirements of both parties for greater than Normal Space or the requirements for proper ground clearance or of public authorities or of property owners, (other than requirements with regard to keeping the wires of one party only clear of trees), the difference between the Cost in Place of such pole and the Cost in Place of a Normal Pole shall be shared equally by the Attacher and the Utility, with the rest of the cost of erecting such pole to be borne by the Utility.
  5. A pole, including all appurtenances or fixtures, erected between existing poles to provide sufficient clearance and furnish adequate strength to support the circuits of both the owner and the Attacher, which it would have been unnecessary except solely due to Attacher's use had not been undertaken, shall be erected at the sole expense of the Attacher.
- B. PAYMENTS DO NOT AFFECT OWNERSHIP. Any payments for poles made by the Attacher under any provisions of this Article shall not entitle the Attacher to the ownership of any part of the poles for which it has contributed in whole or in part.

C. **REPLACEMENT OF EXISTING POLES.** Where an existing pole is replaced for maintenance purposes, Utility shall erect a pole adequate for the existing Attachments and additional Attachments for which Applications have been delivered, unless such Application is denied in accordance herewith, and the Utility will pay all the costs of installing the replacement pole. Attacher will pay to replace its existing Attachments. The replaced pole shall be removed and retained by Utility.

1. A pole larger than the existing pole, which is installed to replace an existing pole, the extra height or strength of which is due wholly to the Utility's requirements, such as providing service, normal maintenance, or keeping the Utility's wires clear of trees, shall be erected at the sole expense of the Utility. The Utility shall bear the full expense of replacing or transferring all the Utility's Attachments and the Attacher shall bear the full expense of replacing or transferring all the Attacher's Attachments within 90 days from date Utility notifies Attacher that the new pole is ready for transfer.

2. A pole larger than the existing pole, which is installed to replace an existing pole, the extra height or strength of which is due wholly to the Attacher's requirements, including Attacher's requirements as to keeping the Attacher's wires clear of trees, the Attacher shall pay to the Utility the Make-ready cost of the new pole.

3. A pole larger than the existing pole, which is installed to replace an existing pole, the extra height or strength of which is due wholly to Attacher's requirements such as providing service, correcting a safety violation or keeping Attacher's wires clear of trees, Attacher shall pay all of the Make-ready cost of the new pole, including any costs associated with replacing or Transferring Attacher's Attachments.

4. In the case of a pole larger than the existing pole, which is installed to replace an existing pole, the extra height or strength which is due to the requirements of all parties on the pole, such as when the parties share responsibility for correcting a safety violation, the difference between the Cost in Place of such pole and the Cost in Place of the existing pole shall be shared equally by the Attacher and the Utility, and other third parties, if applicable, the rest of the cost of erecting such pole to be borne by the Utility. The Utility and Attacher shall replace or Transfer all Attachments at their own expense.

5. In the case of a pole larger than the existing pole, which is installed to replace an existing pole, the extra height or strength which is due wholly to the requirements of an Outside Party, the Outside Party shall pay all of the Make-Ready cost of the new pole, including any costs associated with replacing or Transferring Attacher's Attachments.

D. **RESPONSIBILITY FOR OWN ATTACHMENTS.** Each party shall place, maintain, rearrange, Transfer and remove its own Attachments at its own expense except as otherwise expressly provided herein.

E. **SERVICE DROPS.** Where an existing pole is replaced by a taller one to provide the necessary clearance for the Attacher's Service Drop, the Attacher shall pay to the Utility the installed cost of

the new pole plus the labor costs of replacing or Transferring of the Attachments on the existing pole and the cost to remove the existing pole, minus any salvage value to the Utility.

F. PAYMENT BASIS. Payments made under the provisions of this Article may be based on the estimated or Actual Cost, as mutually agreed upon, of making such changes but in no event, however, shall either Party be required to pay for such changes more than 100% of the estimated cost supplied by the other if such cost estimate shall have been requested and furnished before the changes were made.

G. UTILITIES INSTALLING LARGER POLES FOR UTILITY'S FUTURE USE. In the event the Utility installs a utility pole larger than is initially required for Utility's and Attacher's use in anticipation of Utility's future requirements or additions, the additional space provided by Utility shall be reserved for Utility's sole use. Attacher may request documentation to validate the need for future space.

H. CORRECTIVE MEASURES.

1. If any Attachment of the Attacher is found to be in violation of the terms of this Agreement, then the parties will work together to minimize the cost of correcting any such deficiencies, but the Attacher shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto.

2. If any Attachment of the Utility is found to be in violation of the terms of this Agreement, then the parties will work together to minimize the cost of correcting any such deficiencies, but the Utility shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto.

3. If there exists a violation of the terms of this Agreement (including the provisions of ARTICLE II - EXPLANATION OF TERMS and ARTICLE III - SPECIFICATIONS), and it cannot be determined whose Attachment has caused such violation or there is a mixture of the parties causing the violation, then the parties will work together to minimize the cost of correcting any such deficiencies; provided, however, that if a party can modify its Attachments so that they no longer may be a cause of the violation or deficiency, then such party may elect to make such modification instead of otherwise sharing in any costs. Such a modification shall not relieve a party from sharing in such costs if the party making the modification could still have been a cause of any deficiency that remains.

4. If one or more Outside Party Attacher(s) caused the violation, then such Outside Party Attacher(s) will pay the corrective costs incurred by all who have Attachments on the pole, including for the Attacher, Utility and any other Attachers; and the Utility will make reasonable effort to cause the Outside Party to make such payment.

I. WHEN EXISTING POLES NOT IN JOINT USE BECOME JOINT POLES.

1. If an existing pole not in joint use was constructed before the Effective Date and becomes a Joint Pole, the Attacher shall pay all necessary Make-ready costs associated with the Attacher attaching to the pole.
2. If an existing pole not in joint use was constructed after the Effective Date and becomes a Joint Pole, then:
  - a. The Attacher shall pay all Make-ready costs associated with the Attacher attaching to the pole if (i) the Utility gave notice pursuant to ARTICLE V.A. but (a) the Attacher did not, if required, submit an APPENDIX A as provided in ARTICLE IV - ESTABLISHING JOINT USE OF POLES AND PERMISSION FOR JOINT USE and, if applicable, ARTICLE V.A.; or (ii) both (a) the pole is a Normal Pole or larger and (b) was constructed in connection with a project involving three (3) or fewer poles.
  - b. If (i) the Utility did not give notice pursuant to ARTICLE V.A. with respect to the pole, and (ii) either (a) the pole is smaller than a Normal Pole or (b) the pole was constructed in connection with a project involving four (4) or more poles, then the Utility shall pay all Make-ready costs associated with the Attacher attaching to the pole.
- J. BUILDING DOWN. If one party installs Attachments that encroach or needs to install Attachments that would encroach upon the other party's use of its own Normal Space (sometimes known as "building down"), the party installing or needing to install such Attachments must pay the Make-ready costs necessary to permit the other party to use its own Normal Space.
- K. MAKE-READY WHEN APPENDIX A OR APPENDIX B NOT REQUIRED. Except as provided in ARTICLE IX.I. above, the Utility shall not be obligated to pay Make-Ready costs for any initial or additional Attacher Attachment for which an APPENDIX A or APPENDIX B is not required.

## **ARTICLE X - UNAUTHORIZED ATTACHMENTS**

If any Attachment made after the Effective Date of this Agreement is identified for which the APPENDIX A or APPENDIX B requirements (as set forth herein) have not been satisfied ("Unauthorized Attachment"), then the Attacher shall pay to the Utility a one-time fee of fifty dollars (\$50) per pole plus a sum equal to the adjustment payments that would have been payable from and after the date the Attachment was first placed on the Utility's pole as determined from Attacher's records or other evidence; provided, however, that if the date on which the Attachment was made cannot be determined, then the Attacher will pay a sum equal to the adjustment payments that would have been payable from and after the date the last Actual Inventory of Joint Poles was conducted, subject to any applicable laws regarding statutes of limitations. In addition, the Utility may, without prejudice to its other rights or remedies under this Agreement, require the Attacher to submit within fifteen (15) business days of verification by Attacher that an Attachment is an Unauthorized Attachment (provided that Attacher has 30 days to verify or deny that an Unauthorized Attachment exists upon receiving written notice from Utility), an APPENDIX A or APPENDIX B, as appropriate, along with supporting engineering design data for each such

Attachment, and upon review of such information, the Utility may require the Attacher to make or pay for such modifications as may be specified by mutual consent of the parties or if non-approval of APPENDIX A or APPENDIX B is justified, remove the Unauthorized Attachment at Attacher's expense within 90 days or by mutual agreement after Attacher has verified that the Attachment is an Unauthorized Attachment. If Attacher has failed to submit an APPENDIX A or APPENDIX B, as appropriate, or has not removed such Unauthorized Attachments within the 90 days or by mutual agreement if such non-approval is justified, then the Utility may remove such Attachments at the Attacher's expense and with no liability to Utility, in which event the Attacher shall reimburse the Utility upon demand for the cost the Utility incurred in making such removal and shall indemnify and save the Utility harmless from and against all loss, liability, or expense (including but not limited to claim of third parties) resulting from the removal of such Unauthorized Attachment, except in cases of negligence, gross negligence or intentional misconduct. Nothing herein shall relieve the Attacher of its obligation to maintain Attachments at all times in conformity with ARTICLE III - SPECIFICATIONS.

## **ARTICLE XI - ABANDONMENT OF JOINT USE POLES**

A. If the Utility desires at any time to abandon any Joint Pole, it shall, except as provided in ARTICLE VII - MAINTENANCE OF POLES AND ATTACHMENTS C., give the Attacher notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. If at the expiration of said period the Utility shall have no Attachments thereon, but Attacher has not removed its Attachments, such pole shall thereupon become the property of the Attacher, as is, and the Attacher shall save harmless Utility from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring because of or arising out of the presence or condition of such pole or of any Attachments thereon; and shall pay the Utility the then depreciated value in place of the pole to the Utility. The Utility shall further evidence transfer of title to the pole by appropriate means. Credit shall be allowed for any payments which the Attacher may have made under the provisions of ARTICLE IX - DIVISION OF COSTS, when the pole was originally set, provided the Attacher furnishes proof of such payment.

B. The Attacher may at any time abandon the use of a Joint Pole by removing therefrom any and all Attachments it may have thereon and by giving written notice thereof.

## **ARTICLE XII – ADJUSTMENT PAYMENTS**

A. At intervals of five (5) years, unless otherwise mutually agreed by the parties, an actual inventory of Joint Poles shall be made by representatives of the parties (the "Actual Inventory"). At the request of either party, an Actual Inventory shall be initiated within a year of the Effective Date and be promptly completed as the parties may more particularly agree. For the purpose of such Actual Inventory, any pole used by the Attacher for the sole purpose of attaching wires or cables thereto shall be considered a Joint Pole. Each Outside Party shall pay a prorated share of the cost

of performing the Actual Inventory, based on the number of poles to which each Attacher has Attachments on Utility's poles.

B. For a year in which there is no Actual Inventory, the number of Joint Poles used in calculating the adjustment payments provided for herein shall be based on the number of applications submitted by the Attacher.

C. For a year for which there is an Actual Inventory, the adjustment payments provided for herein shall be based on the Actual Inventory; but there shall also be the adjustment provided for in ARTICLE XII.D. below.

D. For a year for which there is an Actual Inventory, the following adjustment shall be made:

1. The difference between the number of Joint Poles found by the Actual Inventory for the year in question and the number of Joint Poles found by the previous Actual Inventory, whenever conducted, including any Actual Inventory conducted prior to the Effective Date of this Agreement, shall be prorated evenly based on the assumption that such poles were added evenly over the years between the Actual Inventories in order to calculate, on the basis of such proration, a prorated number of poles for each year between the year of the previous Actual Inventory and the year of the present Actual Inventory.

2. If the adjustment payment so calculated pursuant to this section is greater than the adjustment payment that was actually made, the difference shall constitute an additional amount owed by the Attacher to the Utility; if less, the difference shall constitute an amount owed by the Utility or a credit to the Attacher.

### **ARTICLE XIII – FEES AND CHARGES**

A. Payment of Fees and Charges. Attacher shall pay to Utility fees and charges and shall comply with the terms and conditions specified in the Agreement.

B. Payment Period. Unless otherwise expressly provided, Attacher shall pay any invoice it receives from Utility pursuant to this Agreement within thirty (30) calendar days after Attacher receives the invoice.

C. The applicable computation of payments and calculations as above provided shall be made on or about December 1st of the calendar year prior to the Attachment rental year, each party acting in cooperation with the other. For example, on or about December 1st, 2017, Utility will issue the rental invoice for the rental period covering January 1, 2018 through December 31, 2018.

D. Annual Pole Attachment Fee per pole per year shall be as follows:

Duration: Jan.1, 2018 - Dec. 31, 2018

Rate: As set forth on the attached Rate Chart.

For years 2019 and after, the annual adjustment payment shall be determined by applying the most recent twelve (12) months' percentage change in the Handy Whitman Index (HWI) July index

numbers for the North Central Region Account 364, Poles Towers and Fixtures, to the previous year's rate. In the event the HWI is no longer usable for this purpose, the parties shall use the Consumer Price Index-All Urban Consumers-Not Seasonally Adjusted for the Midwest Urban area, or such other index as is the closest equivalent thereof. The rate for each such year shall be calculated as in the following example:

For 2017, the adjusted rate would be the Percentage of Change (PC) in the HWI 2016 and the HWI 2015 multiplied by the Amount Payable by Attacher (in 2016).

OR:  $AC = AP + IC$  where

AC = Adjusted Rate Current Year (for 2017)

AP = Adjusted Rate Previous Year for the Attacher and Utility

IC = Incremental Change =  $PC \times AP$

$PC = (HWI\ 2016 - HWI\ 2015) / HWI\ 2016$

The adjusted rates for subsequent years would be calculated in like manner.

F. Notwithstanding any other provision hereof, a pedestal or other ground mounted equipment with a Bonded-Ground will have a one-time attachment fee of fifty dollars (\$50) rather than an annual pole charge. The fee is tabulated at the time of the Actual Inventory. During the Actual Inventory, there shall be a count of the total number of pedestals or mounted equipment with a Bonded-Ground. Subtracted from this count will be the prior Actual Inventory count of the total number of pedestals or mounted equipment with a Bonded-Ground. The increase will be billed at a rate of fifty dollars (\$50).

G. Non-Recurring Fees:

a. Permit Application Fee:

Number of Poles Affected	Application Fee (Per Application)
1-10	\$50
11-20	\$150
21-25	\$250
26+	Cost Estimate Will Be Provided

b. Make Ready Charges: See Article IX

c. Miscellaneous Charges: See Article IX

d. Unauthorized Attachment Fee: See Article X

e. Safety Inspection Fees: See Article VIII

- f. Inventory Inspection Fees: See Article XII
- g. Timely Transfer Fees: See Article VII

## **ARTICLE XIV – DEFAULTS**

A. If either party shall default in any of its obligations under this Agreement and such default continues thirty (30) days after due notice thereof in writing by the other party, the party not in default may suspend the rights of the party in default insofar as concerns the granting of future joint use and if such default shall continue for a period of ninety (90) days after such suspension, the party not in default may forthwith terminate this Agreement.

B. If after reasonable notice either party shall make default in the performance of any work it is obligated to do under this Agreement at its sole expense, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof. Failure on the part of the defaulting party to make such a payment within thirty (30) days upon presentation of bills therefor shall, at the election of the other party, constitute a default under this ARTICLE XIV.

## **ARTICLE XV - RIGHTS OF OTHER PARTIES**

A. If either of the parties hereto has, prior to the execution of this Agreement, conferred upon Outside Parties, by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, nothing herein contained shall be construed as affecting said rights or privileges with respect to existing Attachments of such Outside Parties, which Attachments shall continue in accordance with the present practice; all future Attachments of such Outside Parties shall be in accordance with the requirements of ARTICLE XV.B. below, except where such Outside Parties have by agreements entered into prior to the execution of this Agreement acquired enforceable rights or privileges to make Attachments which do not meet such space allocations. The Utility shall derive all of the revenue accruing from such Outside Parties. Any contractual rights or privileges of Outside Parties recognized in this paragraph shall include renewals of or extensions of the term (period) of such contracts.

B. If either party hereto desires to confer upon Outside Parties, by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, it shall have the right to do so, provided all such Attachments of such Outside Parties are made in accordance with the following: (1) such Attachments shall be maintained in conformity with the requirements of ARTICLE III - SPECIFICATIONS, and (2) such Attachments shall not be located within the space allocation of Attacher. The Utility shall derive all of the revenue accruing from such Outside Parties.

C. With respect to any rights and privileges granted by pole owner under this Article to others not parties hereto, owner shall reimburse Attacher's cost for transferring and rearranging Attacher's Attachments to provide space for Attachments for such Outside Parties.

D. Outside Parties shall be responsible for their pro rata share of any costs mentioned in ARTICLE IX-DIVISION OF COSTS.

E. An Infrastructure Provider Sublicensee Wireless License Agreement shall be required in all instances wherein the Attacher is serving as an infrastructure provider leasing its facilities to a CMRS Provider, or other provider offering wireless services.

## **ARTICLE XVI - ASSIGNMENTS OF RIGHTS**

Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the Joint Poles, or the Attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the other party, except to the United States of America or any agency thereof; provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges, and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage or in case of lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser at foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be; and provided further that, subject to all of the terms and conditions of this Agreement, either party may permit any corporation conducting a business of the same general character as that of such party, and owned, operated, leased and controlled by it or associated or affiliated with it, the use of all or any part of the space reserved hereunder on any pole covered by this Agreement for the Attachments used by such party in the conduct of its said business; and for the purpose of this Agreement, all such Attachments maintained on any such pole by the permission as aforesaid of either party herein shall be considered as the Attachments of the party granting such permission, and the rights, obligations and liabilities of such party under this Agreement, with respect to such Attachments, shall be the same as if it were the actual owner thereof.

## **ARTICLE XVII - 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 the same shall be and remain at all times in full force and effect.

## **ARTICLE XVIII - PAYMENT OF TAXES**

Each party shall pay all taxes and assessments lawfully levied on its own property upon Joint Poles, and the taxes and the assessments which are levied on Joint Poles shall be paid by the pole owner Utility, but any tax, fee, or charge levied on Utility's poles solely because of their use by the Attacher shall be paid by the Attacher.

## ARTICLE XIX - BILLS AND PAYMENT FOR WORK

A. Upon the completion of work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other party, the party performing the work shall present to the other party within ninety (90) days after the completion of such work an itemized statement of the costs and such other party shall within thirty (30) days after such statement is presented pay to the party doing the work such other party's proportion of the cost of said work.

B. All amounts to be paid by either party under this Agreement shall be due and payable within thirty (30) days after the invoice is received. Except as provided in ARTICLE XIX.C. below, any payment not made within thirty (30) days from the due date shall bear interest at the rate of a half percent (.5%) per month until paid, or if a half percent (.5%) exceeds the maximum rate allowed by law, then at the maximum rate allowed by law. If party bills the interest provided for in this paragraph but then receives a payment showing that the payment was timely made, the billing party will write off and cancel the interest.

C. A party receiving a bill may, in good faith and for good cause, dispute the amount or adequacy of substantiation for the bill. In the event that a party so disputes only a portion of a bill, then such party shall promptly pay the undisputed amount. Upon resolution of the dispute, if the amount and substantiation were correct and sufficient, interest will be paid on the unpaid balance from the date of the initial bill at the rate of a half percent (.5%) per month until paid, or if a half percent (.5%) exceeds the maximum rate allowed by law, then at the maximum rate allowed by law; but, if the amount was not correct or substantiation was not sufficient, no interest will be payable unless the amount determined to be correct is not paid within thirty (30) days of receipt of substantiation and determination of the correct amount.

## ARTICLE XX – NOTICES

A. Except as otherwise provided in this Agreement, all notices and writings shall be made to the following people, who from time to time may be changed by written notice:

Attacher:

\_\_\_\_\_  
Zayo Group, LLC  
1805 29<sup>th</sup> Street, Suite 2050  
Boulder, CO 80301  
Attn: General Counsel

Utility:

Director of Electric Utilities  
City of Seguin  
3011 N. Austin Street  
Seguin, Texas 78155

B. By written notice pursuant hereto a party may from time to time specify a person in lieu of the person designated in ARTICLE XX.A. above to receive notices or writings with respect to specified matter(s) and/or geographic area(s), in which case such notices or writings shall be sent to that person as to such matter(s) and area(s).

C. Response to any notice or APPENDIX A or APPENDIX B shall be made to the sender rather than to the person designated in ARTICLE XX.A. or ARTICLE XX.B. above.

D. Unless otherwise provided in this Agreement, any notice shall be in writing, which may, when mutually agreeable, include preservable electronic means, such as email or facsimile.

E. A second copy of any notice given under ARTICLE XIV – DEFAULTS or ARTICLE XXI - RESOLUTION OF CERTAIN DISPUTES shall be given to the following persons, who may from time to time be changed by written notice:

Attacher:

Zayo Group, LLC  
1805 29<sup>th</sup> Street, Suite 2050  
Boulder, CO 80301  
Attn: VP ULR

Utility  
City Manager  
City of Seguin  
205 N. River Street  
Seguin, Texas 78155

F. The parties will develop and maintain a joint form designating the people to whom notices shall be given pursuant to the foregoing.

## **ARTICLE XXI - TERM OF AGREEMENT**

A. The Attacher shall have 180 days from the date the Utility has issued a Permit to complete attachment of Attacher's Attachment. If the Attachment has not been completed within the 180-day period, the Permit shall terminate without further notice to Attacher as to any pole or poles covered by the Permit to which Attacher has not attached its Attachment.

B. If at any time after Attacher has attached its Attachment to the Utility's poles, the Utility is informed or has reason to believe that such Attachment is not authorized by any governmental authority or private property owner, then Attacher shall remove its Attachment from any of the Utility's poles immediately after receiving notice from the Utility of such circumstance and the Permit covering such poles shall automatically terminate, provided, however, if Attacher is in the process of disputing such lack of authority, and has received permission to remain on the pole pending the outcome of the dispute, Attacher may maintain its Attachment without any liability to Utility thereto.

C. The Utility may, in addition to seeking any other remedy available to it, terminate this Agreement

or any Permit issued under this Agreement if Attacher fails to comply with any of the provisions of this Agreement and fails within 30 days (or such longer reasonable period if a 30 day cure period is not possible) after written notice from the Utility to correct such neglect, refusal, or default.

D. In the event a governmental entity at any time requires the Utility to remove 1 or more of its poles, any Permit issued to Attacher for such poles shall automatically terminate as to such poles, in which event the Utility shall refund to Attacher any unearned payments made pursuant to this Agreement.

E. Attacher may at any time terminate any right to attach an Attachment to any pole by removing its Attachment from such pole and notifying Utility of such removal. The Permit covering such pole shall terminate upon receipt of such notice by the Utility. Attacher may at any time terminate this Agreement by removing all of its Attachments from all of the Utility's poles and notifying the Utility of such removal.

F. Except as otherwise provided in this Agreement, the Attacher shall have 60 days within which to remove its Attachments from the Utility's pole or poles upon termination of this Agreement or of a Permit issued under this Agreement. If the Attacher fails to remove its Attachments from the Utility's pole or poles within such 60-day period, the Utility shall have the right to remove the Attacher's Attachments from said pole or poles, without notice or liability of any kind to the Attacher, in which event the Attacher shall reimburse the Utility upon demand for the cost the Utility incurred in making such removal. The Attacher shall indemnify and save the Utility harmless from and against all loss, liability, or expense resulting such removal, including but not limited to claims of third parties.

G. All Permits issued under this Agreement shall automatically terminate upon termination of this Agreement.

## **ARTICLE XXII - EXISTING CONTRACTS**

All existing agreements for Pole attachment license between the parties, and all amendments thereto (hereinafter "Old Joint Use Agreement") are by mutual consent hereby abrogated and superseded by this Agreement.

Nothing in the foregoing shall preclude the parties to this Agreement from entering such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

## **ARTICLE XXIII – LIABILITY**

Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or to the property of either party, or for injuries to other persons or their property arising out of the joint use of poles under this Agreement, or due to the proximity of the parties' Attachments to such Joint Poles, the liability for such damages as between the parties hereto shall be as follows:

A. Each party shall be responsible for all injuries to persons or damage to property to the extent caused by each party's negligence.

B. Each party shall be responsible for all injuries to its own employees or damage to its own property to the extent caused by each party's negligence.

C. Each party shall be responsible for all injuries to persons and property other than employees of any party hereto to the extent caused by each party's negligence.

D. Where, on account of injuries of the character described in the preceding paragraphs of this ARTICLE XXIII, either party hereto shall make any payments to its injured employee or to his relatives or representatives in conformity with (a) the provision of any Workers' Compensation Act or any act creating a liability in the employer to pay compensation for personal injury to an employee or (b) any plan for employees' disability benefits or employees' death benefits now established or hereafter adopted by the parties hereto, or either of them, such payments shall be construed to be damages or injuries within the terms of the preceding paragraphs numbered A and B and shall be paid by the parties hereto accordingly.

**E. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY SUCH PARTY OR BY ANY SUBSCRIBER, CUSTOMER OR PURCHASER OF SUCH PARTY 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 OR WHETHER IT (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.**

## **ARTICLE XXIV – CONSTRUCTION**

This Agreement was drafted by all parties to it and is not to be construed against any party. Neither the negotiations of the language of this Agreement, nor prior drafts of this Agreement, nor the inclusion or exclusion of any language from prior drafts shall be admissible or probative as to the meaning of this Agreement.

## **ARTICLE XXV - REMEDIES CUMULATIVE**

Unless otherwise provided in this Agreement, all remedies set forth in this Agreement are cumulative and in addition to any other remedies that may be available herein or at law or in equity, if any.

In witness whereof the parties hereto, have caused these presents to be executed in two (2) counterparts, each of which shall be deemed an original and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, as of the Effective Date.

## **ARTICLE XXVI – INSURANCE**

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

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

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

3. For an Attacher using space above Utilities electric lines, Attacher shall carry All Risks General Liability Insurance with limits of liability not less than \$10,000,000.00.

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

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

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

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

C. Certificate of Insurance; Other Requirements. Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, the Attacher will furnish the Utility with a certificate of insurance ("Certificate") and, upon request, certified copies of the required insurance policies. The Certificate shall reference this Agreement and workers' compensation and property insurance waivers of subrogation required by this Agreement. The Utility shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. The Utility, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except workers' compensation, which shall be so stated on the Certificate. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed \$100,000, or such greater amount as expressly allowed in writing by the Utility. Attacher shall defend, indemnify and hold harmless the Utility and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Attacher shall obtain Certificates from its agents, contractors, and their subcontractors and provide a copy of such Certificates to the Utility upon request.

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

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

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

G. Any Attacher, including any subcontractor working for the Attacher, who installs equipment such as small cell or other network nodes above the electric space shall carry additional ALL RISKS LIABILITY INSURANCE in an amount of at least \$10,000,000.00 that names the City of Seguin as an additional insured.

H. Additional Insurance. The Utility shall have the right at any time to require public liability insurance and property damage liability insurance in greater amounts than those required in this ARTICLE XXVI. In any such event, the additional premium or premiums payable solely as the result of such additional insurance coverage shall be payable by Utility within thirty (30) days of the Attacher providing proof of such additional premium to the Utility and requesting payment therefor.

ARTICLE XXVII- GOVERNING LAW AND VENUE

This Agreement shall be construed in accordance with the laws of the State of Texas without regard to its rules regarding choice of law. Any action or claim arising from, under or pursuant to this Agreement shall be brought in the State Courts within Guadalupe County in the State of Texas, and the parties expressly waive the right to bring any legal action or claims in any other courts.

**ARTICLE XXVII - SEVERABILITY**

The provisions (or parts thereof) of this Agreement shall be severable. In the event that any provision (or part thereof) of this Agreement is determined to be illegal, invalid, or otherwise enforceable, then such illegality, invalidity or unenforceability shall not affect or impair the remainder of this Agreement.

In witness whereof the parties hereto, have caused these presents to be executed in two (2) counterparts, each of which shall be deemed an original and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, as of the Effective Date.

Utility

By:

\_\_\_\_\_  
Douglas G. Faseler  
City Manager  
Date  
\_\_\_\_\_

Attacher – Zayo Group, LLC

By:   
\_\_\_\_\_  
Printed Name

Ted Gilliam

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Title

General Counsel, Strategic Networks

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Date

June 7, 2019

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## APPENDIX A – REQUEST TO ATTACH TO POLE(S)

Attacher Job Number \_\_\_\_\_(to be completed by Attacher)

Pole Owner Job Number \_\_\_\_\_(to be completed by Pole Owner)

REQUEST FOR POLE OWNER'S APPROVAL TO PLACE ATTACHMENTS ON A POLE: *(To be completed by the Attacher)*

Make-ready work required: Yes \_\_\_\_No \_\_\_\_                      Number      of      poles      affected:

\_\_\_\_\_

To: \_\_\_\_\_

\_\_\_\_\_

POLE OWNER

DATE OF REQUEST

ADDRESS

*This is to request permission for this Company to use jointly certain of your poles under the terms and conditions of our agreement for Pole Attachment License Agreement ("Agreement"). Our present plan is to start this work about \_\_\_\_\_, 20\_\_ and complete the work about, \_\_\_\_\_, 20\_\_.*

*Attached are copies, which contain the above job number, of detailed construction plans and drawings, together with necessary maps, to indicate specifically your poles that we wish to use jointly, the point of attachment on each pole, the number and character of the attachments to be placed on such poles (including messenger type, cable type, guy type, anchor type, and anchor distance from poles), any rearrangements of fixtures and equipment necessary, as well as any relocations or replacements of existing poles, and any additional poles that may be required, in accordance with the procedure provided in Articles IV and V of the Agreement.*

*The included technical information represents our proposed facilities, and any changes in cables, messengers, guys, anchors, or points of attachment above ground will be submitted to the Pole Owner for approval prior to construction. Should additional information be required by the Pole Owner for verification of compliance with the NESC or other applicable standards, the Attacher will provide such information.*

*The Attacher will obtain all authorizations, permits, and approvals from all Municipal, State, and Federal authorities to the extent required by law for the Attacher's proposed service and all easements, licenses, rights-of-way and permits necessary for the proposed use of these poles.*

Number of poles affected: \_\_\_\_\_

*If the joint use proposed is agreeable, please signify your approval of this request in the spaces provided and return a copy to the Applicant.*

\_\_\_\_\_  
ATTACHER (COMPANY NAME)

\_\_\_\_\_  
CONTACT NUMBER

\_\_\_\_\_  
NAME OF APPLICANT

\_\_\_\_\_  
SIGNATURE OF APPLICANT

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
TITLE

APPROVAL TO PROCEED WITH ATTACHMENTS: *(To be completed by the Pole Owner and sent to the Applicant)*

\_\_\_\_\_  
DATE

*This is to advise you that the above request to use jointly certain poles of this system is approved. You may proceed with such joint use of poles on the terms and conditions of the Agreement referred to above, under the conditions outlined in your request, and subject to the changes and rearrangements at a cost to you of \$ \_\_\_\_\_.*

\_\_\_\_\_  
TITLE OF POLE OWNER'S REPRESENTATIVE

\_\_\_\_\_  
SIGNATURE OF POLE OWNER'S REPRESENTATIVE

\_\_\_\_\_  
CONTACT NUMBER

\_\_\_\_\_

## APPENDIX B – REQUEST TO MODIFY ATTACHMENTS ON EXISTING POLE

Attacher Job Number \_\_\_\_\_ (to be completed by Attacher)

Pole Owner Job Number \_\_\_\_\_ (to be completed by Pole Owner)

APPLICATION TO ADD OR MODIFY ATTACHMENTS ON AN EXISTING JOINT USE POLE: *(To be completed by the Attacher)*

Make-ready work required: Yes \_\_\_\_ No \_\_\_\_                      Number of poles affected:

\_\_\_\_\_  
To: \_\_\_\_\_  
                    POLE OWNER

\_\_\_\_\_  
DATE OF REQUEST

**ADDRESS**

*This is to apply to add or modify attachments on existing joint use poles under the terms and conditions of our agreement for Pole Attachment License Agreement ("Agreement"). Our present plan is to start this work about \_\_\_\_\_, 20\_\_ and complete the work about, \_\_\_\_\_, 20\_\_.*

*Attached are copies, which contain the above job number, of detailed construction plans and drawings, together with necessary maps, to indicate specifically the attachments we intend to add or modify, the point of attachment on each pole, the number and character of the attachments currently installed and those to be placed, replaced, or removed on such poles (including messenger type, cable type, GUY type, anchor type, and anchor distance from poles), any rearrangements of fixtures and equipment necessary, as well as any relocations or replacements of existing poles, and any additional poles that may be required, in accordance with the procedure provided in Articles IV and V of the Agreement.*

*The included technical information represents our existing and proposed facilities, and any changes in cables, messengers, guys, anchors, or points of attachment above ground other than those listed will be submitted to the Pole Owner for verification of compliance prior to construction. Should additional information be required by the Pole Owner for verification of compliance with the NESC or other applicable standards, the Attacher will provide such information. The Attacher will obtain all authorizations, permits, and approvals from all Municipal, State, and Federal authorities to the extent required by law for the Attacher's proposed service and all easements, licenses, rights-of way and permits necessary for the proposed use of these poles. If the additions or modifications proposed are agreeable, please signify your approval of this request in the spaces provided and return a copy to the Applicant.*

\_\_\_\_\_  
ATTACHER (COMPANY NAME)

\_\_\_\_\_  
CONTACT NUMBER

\_\_\_\_\_  
NAME OF APPLICANT

\_\_\_\_\_  
SIGNATURE OF APPLICANT

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
TITLE

**APPROVAL TO PROCEED WITH ATTACHMENTS:** *(To be completed by the Pole Owner and sent to the Applicant)*

**DATE**

*This is to advise you that the above request to use jointly certain poles of this system is approved. You may proceed with such joint use of poles on the terms and conditions of the Agreement referred to above, under the conditions outlined in your request, and subject to the changes and rearrangements at a cost to you of \$ \_\_\_\_\_.*

\_\_\_\_\_  
TITLE OF POLE OWNER'S REPRESENTATIVE

\_\_\_\_\_  
SIGNATURE OF POLE OWNER'S REPRESENTATIVE

\_\_\_\_\_  
CONTACT NUMBER