

## POLE ATTACHMENT LICENSE AGREEMENT

**T**his Pole Attachment Licensing Agreement (the “Agreement”) dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ is made by and between Columbia City Municipal Electric Utility (hereinafter referred to as “Utility”), a municipally owned electric utility located in Columbia City, Indiana, 46725 and \_\_\_\_\_, having its principal place of business at \_\_\_\_\_, (hereinafter referred to as “Licensee”)

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# AGREEMENT

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## Article 1—Definitions

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

- 1.1 **Affiliate**: when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
- 1.2 **Applicable Standards**: means all applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around electric Utility Facilities and includes the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), the regulations of the Occupational Safety and Health Administration (“OSHA”), Indiana Occupational Safety and Health Administration (“IOSHA”), Indiana Administrative Code (“IAC”), Indiana as well as the engineering and safety standards established by the Utility, each of which is incorporated by reference in this Agreement, and/or other reasonable Utility provided safety and engineering requirements or other federal, state or local governmental entity with jurisdiction over Utility Facilities.
- 1.3 **Assigned Space**: means space on Utility Poles that can be used, as defined by the Applicable Standards, for the attachment or placement of wires, cables and associated equipment for the provision of Communications Service or electric service. The neutral zone or safety space is not considered Assigned Space.
- 1.4 **Attaching Entity**: means any public or private entity, other than the Utility or Licensee, which, pursuant to a license agreement with the Utility, places an Attachment on the Utility’s Pole to provide Communications Service.
- 1.5 **Attachment**: An Attachment shall be considered as any cable/messenger of the Licensee, regardless of its purpose or type, which contacts a Utility Pole, but does not include a Riser, or support and safety attachments attached to a single Pole where Licensee has an existing Attachment on such Pole. Each attachment provides one foot of vertical space on a Pole and provides for one point of contact.
- 1.6 **Capacity**: means the ability of a Pole to accommodate an Attachment based on Applicable Standards, including space and loading considerations.

- 1.7 **Climbing Space:** means that portion of a Pole’s surface and surrounding space that is free from encumbrances to enable Utility employees and contractors to climb, access and work on Utility Facilities and equipment safely.
- 1.8 **Common Space:** means space on Utility Poles that is not used for the placement of wires or cables but which jointly benefits all users of the Poles by supporting the underlying structure and/or providing safety clearance between attaching entities and electric Utility Facilities.
- 1.9 **Communications Facilities:** means wire or cable facilities including but not limited to fiber optic, copper and/or coaxial cables or wires utilized to provide Communications Service including any and all associated equipment. Unless otherwise specified by the parties, the term “Communications Facilities” does include Pole mounted wireless antennas, receivers or transceivers. Strand-mounted wireless equipment that does not restrict climbing space shall be considered Communications Facilities.
- 1.10 **Communications Service:** means the transmission or receipt of voice, video, data, Internet or other forms of digital or analog signals over Communications Facilities.
- 1.11 **Licensee:** means \_\_\_\_\_ its authorized successors and assignees.
- 1.12 **Make-Ready Work:** means all work, as reasonably determined by the Utility, required to accommodate Licensee’s Communications Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, Pre-Construction Survey, rearrangement and/or transfer of Utility Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes) or Pole replacement and construction.
- 1.13 **Occupancy:** means the use or specific reservation of Assigned Space for Attachments on a Utility Pole.
- 1.14 **Overlash:** means to place an additional wire or cable Communications Facility onto an existing Attachment owned by Licensee.
- 1.15 **Pedestals/Vaults/Enclosures:** means above- or below-ground housings that are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices and/or provide a service connection point and that shall not be attached to Utility Poles (see Appendix D—Specifications).
- 1.16 **Permit:** means written or electronic authorization (see Appendix C) of the Utility for Licensee to make or maintain Attachments to specific Utility Poles pursuant to the requirements of this Agreement.

- 1.17 **Pole:** means a Pole owned by the Utility used for the distribution of electricity and/or Communications Service that is capable of supporting Attachments for Communications Facilities.
- 1.18 **Pole face:** is the side of the Pole defined by the tangent line at the location of the Pole gain.
- 1.19 **Pole gain:** the manufacturer's identifying tag or brand affixed on the Pole.
- 1.20 **Post-Construction Inspection:** means the inspection required by the Utility to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Permit.
- 1.21 **Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or the Utility to determine the potential Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole. Such work includes, but is not limited to, field inspection. The Pre-Construction Survey shall be coordinated with the Utility and include Licensee's representative.
- 1.22 **Reserved Capacity:** means capacity or space on a Pole that the Utility has identified and reserved for its own Utility requirements pursuant to a reasonable projected need or business plan.
- 1.23 **Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect communications wires and cables.
- 1.24 **Tag:** means to place distinct markers for wires, cables and risers coded by means specified by the Utility and applicable federal, state or local regulations, that will readily identify its owner and cable type and be legible from the ground.
- 1.25 **Utility Facilities:** means all personal property and real property owned or controlled by the Utility, including but not limited to, Poles and anchors.

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## Article 2—Scope of Agreement

- 2.1 **Grant of License.** Subject to the provisions of this Agreement, the Utility hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain permitted Attachments to Utility Poles.
- 2.2 **Parties Bound by Agreement.** Licensee and the Utility agree to be bound by all provisions of this Agreement.
- 2.3 **Permit Issuance Conditions.** The Utility will issue a Permit(s) to Licensee only when the Utility determines, in its sole judgment, which shall not be unreasonable

withheld, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set forth in this Agreement, (iii) such Permit(s) comply with all Applicable Standards, and (iv) Licensee is current in all its obligations owed to the Utility.

- 2.4 Assigned Space.** Access to Assigned Space on Utility Poles will be made available to Licensee with the understanding that such access will not be within the Utility's Reserved Capacity. On giving Licensee at least sixty (60) calendar days prior notice, the Utility may reclaim such Assigned Space anytime during the period following the installation of Licensee's Attachment in which this Agreement is effective if required for the Utility's future use. The Utility shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand capacity so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 9.
- 2.5 No Interest in Property.** No use, however lengthy, of any Utility Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of Utility Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of the Utility's rights to Utility Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.
- 2.6 Licensee's Right to Attach.** Unless otherwise specified in this Agreement, Licensee must have a Permit issued pursuant to Article 6, prior to attaching Licensee's Communications Facilities to any specific Pole.
- 2.7 Utility's Rights over Poles.** The parties agree that this Agreement does not in any way limit the Utility's right to locate, operate, maintain or remove its Poles in the manner that will best enable it to fulfill its statutory service requirements.
- 2.8 Expansion of Capacity.** The Utility will take reasonable steps, at Licensee's sole expense, to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require the Utility to install, retain, extend or maintain any Pole for use when such Pole is not needed for the Utility's service requirements.
- 2.9 Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit the Utility from fulfilling any agreement or arrangement regarding Poles into which the Utility has previously entered, or may enter in the future, with others not party to this Agreement.

**2.10 Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals stated above and no other use shall be allowed without the Utility's express written consent to such use. Nothing in this Agreement shall be construed to require the Utility to allow Licensee to use Utility Poles after the termination of this Agreement, subject to the provisions of Article 11 and Article 23 of this Agreement.

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

**2.11.1** A Permit shall be obtained for each Overlashing pursuant to Article 6. Absent such authorization, Overlashing constitutes an unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A, Item 3.

**2.11.2** If Licensee demonstrates that the Overlashing of Licensee's Attachment(s) is required to accommodate Licensee's Communications Facilities, and such overlashing does not exceed a combined cross-sectional area of three square inches (two-inch diameter), the Utility shall not withhold Permits for such Overlashing if it can be done consistent with Paragraph 2.3. Overlashing performed pursuant to this Paragraph 2.11.3 shall not increase the Annual Attachment Fee paid by Licensee pursuant to Appendix A, Item 1. Licensee, however, shall be responsible for all Make-Ready Work and other charges associated with the Overlashing but shall not be required to pay a separate Annual Attachment Fee for such Overlashed Attachment.

**2.11.3** If Overlashing is required to accommodate facilities of a third party, such third party must enter into a license agreement with the Utility and obtain Permits and must pay a separate Attachment Fee (Appendix A, Item 1) as well as the costs of all necessary Make-Ready Work required to accommodate the Overlashing. No such Permits to third parties may be granted by the Utility allowing Overlashing of Licensee's Communications Facilities unless Licensee has consented in writing to such Overlashing. Overlashing performed under this Paragraph 2.11.4 shall not increase the fees and charges paid by Licensee pursuant to Appendix A, Item 1. Nothing in this Agreement shall prevent Licensee from seeking a contribution from an Overlashing third party to defray fees and charges paid by Licensee.

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

- 2.12 Enclosures.** Licensee shall not place Pedestals, Vaults and/or other Enclosures on or within four (4) feet of any Pole or other Utility Facilities without the Utility's prior written permission. If permission is granted to place a Pedestal, Vault and/or other Enclosure within four (4) feet of a Utility Pole, all such installations shall be per the Specifications in Appendix D of this Agreement. Such permission shall not be unreasonably withheld. If the Utility installs or relocates Utility Facilities within four (4) feet from Licensee's existing Pedestal, vault, and/or enclosure, Licensee shall not be in violation per Article 4.5 of this Agreement.
- 2.13 Documentation.** The Parties shall mutually cooperate to provide documentation reasonably required to perform under the terms of the Agreement, including confirmation of Utility's title or legal interest in the Poles, supporting documentation for a Supplement, Internal Revenue Service Form W-9, or equivalent, applicable state or local withholding forms, bank routing information for purposes of electronic funds transfer, and other documentation reasonably requested to comply with the requirement of any applicable laws, rules, regulations, ordinances, directives, or covenants now in effect, or which may hereafter come into effect.
- 2.14 Utility Attachment to Licensee Owned Poles.** In the event that the Utility in this Agreement maintains attachments on Licensee owned Poles, the Utility will compensate the Licensee by deducting the number of licensee owned Poles it contacts from the number of Utility owned Poles contacted by the licensee to arrive at a net total of attachments to be billed to the licensee as described in Article 3.3. Licensee shall make no charge to the Utility for Licensee's Poles contacted by the Utility for which an off-set is given by the Utility against Licensee's fees.

With regard to Licensee owned Poles contacted by the Utility, the Utility agrees to abide by the terms of this Agreement as a Licensee.



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## Article 3—Fees and Charges

- 3.1 Payment of Fees and Charges.** Licensee shall pay to the Utility the fees and charges specified in Appendix A and shall comply with the terms and conditions specified herein.
- 3.2 Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from the Utility pursuant to this Agreement within thirty (30) calendar days of the billing date of the invoice.
- 3.3 Billing of Attachment Fee.** The Utility shall invoice Licensee in advance for the per-Pole Attachment fee annually. The Utility will submit to Licensee an invoice for the annual rental period on or about January 1 of each year. The initial rental period shall commence on \_\_\_\_\_, \_\_\_\_\_, 20\_\_ and conclude on December 31, 20\_\_ Attachment fees for the initial rental period will be billed on a pro-rated basis and, if applicable, attachment fees collected under a previous contract for this same initial rental period will be credited toward this billing on the same pro-rated basis. Each subsequent annual rental period shall commence on the following January 1st, and conclude on December 31st of the same year. The invoice shall set forth the total number of Utility Poles on which Licensee was issued and/or holds a Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits. Attachment fees for permits issued throughout a rental period shall commence on the date of permit approval and be pro-rated for the remainder of the current rental period.
- 3.4 Refunds.** No fees or charges as specified in Appendix A shall be refunded on account of any surrender of a Permit granted hereunder. Nor shall any refund be owed if the Utility abandons a Pole.
- 3.5 Late Charge.** If the Utility does not receive payment for any fee or other amount owed within thirty (30) calendar days of the billing date, Licensee, upon receipt of fifteen (15) calendar days written notice, shall pay interest on the amount due to the Utility, at the maximum rate allowed by Indiana State law, currently One and One Half Percent (1.5%) per month.
- 3.6 Payment for Work.** Licensee will be responsible for payment of all reasonable costs to the Utility for all work the Utility or the Utility's contractors perform pursuant to this Agreement to accommodate Licensee's Communications Facilities.
- 3.7 Advance Payment.** At the discretion of the Utility, Licensee may be required to pay in advance all reasonable costs, including but not limited to construction, inspections and Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Communications Facilities pursuant to the procedures set forth in Articles 6 and 7 below.

- 3.8 True Up.** Wherever the Utility, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of activity exceeds the advance payment of estimated expenses, Licensee agrees to pay the Utility for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, the Utility agrees to refund to Licensee the difference in cost.
- 3.9 Determination of Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by the Utility, the charge for such work shall include all reasonable material, labor, engineering, and applicable overhead costs. The Utility shall bill its services based upon actual costs, and such costs will be determined in accordance with the Utility's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, number of persons employed by classification and materials used and cost of materials. In addition, if Licensee is required to perform work and fails to perform such work necessitating its completion by the Utility, the Utility will charge the actual cost to perform such work plus either an additional ten percent (10%) to its costs, or assess the fee specified in Appendix A (4), whichever is the greater amount.
- 3.10 Work Performed by the Utility.** Wherever this Agreement requires the Utility to perform any work, Licensee acknowledges and agrees that the Utility, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work.
- 3.11 Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond sixty (60) days shall constitute a default of this Agreement.

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## Article 4—Specifications

- 4.1 Installation/Maintenance of Communications Facilities.** When a Permit is issued pursuant to this Agreement, Licensee's Communications Facilities shall be installed and maintained in accordance with the requirements and specifications of Appendix D. All of Licensee's Communications Facilities must comply with all Applicable Standards; the National Electrical Safety Code (NESC), the National Electrical Code (NEC), the Utility's Construction Standards and all other applicable federal, state and local codes and requirements. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards. Upon execution of this Agreement, Licensee is not required to modify, update, or upgrade its existing Attachments where not required to do so by the terms and conditions of this or prior Agreements, prior editions of the National Electrical Safety Code (NESC) or prior editions of the National Electrical Code (NEC).

- 4.2 Tagging.** Licensee shall Tag all of its Communications Facilities as specified in Appendix D and applicable federal, state and local regulations upon installation of such Facilities, prior authorized Attachments of Licensee shall be tagged within five (5) years of the execution of this Agreement. Failure to provide proper tagging will be considered a violation of the Applicable Standards.
- 4.3 Interference.** Licensee shall not allow its Communications Facilities to impair the ability of the Utility or any third party to use the Utility's Poles nor shall Licensee allow its Communications Facilities to interfere with the operation of any Utility Facilities. The attachment rights subsequently granted by the Utility to other attaching entities pursuant to licenses, permits, or rental agreements shall not limit nor interfere with any prior attachment rights granted to the Licensee hereunder or result in further rearrangement or make-ready costs without reimbursement.
- 4.4 Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities, consistent with applicable standards. Licensee shall at its own expense install protective devices designed to handle the voltage and current impressed on its Communications Facilities in the event of a contact with the supply conductor, as specified in applicable standards. Except as provided in Paragraph 16.1, the Utility shall not be liable for any actual damage to Licensee's Communication Facilities or Licensee's customer's facilities, nor for consequential damages as a result of damage to Licensee's Communications Facilities or Licensee's customers' facilities.
- 4.5 Violation of Specifications.** If Licensee's Communications Facilities, or any part thereof, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within sixty (60) calendar days from receipt of written notice of the violation(s) from the Utility, the Utility at its option, may correct such conditions or consider the violation an unauthorized attachment, pursuant to Article 14.1. The Utility will attempt to notify Licensee in writing prior to performing such work whenever practicable. When the Utility reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of the Utility's service obligations or pose an immediate threat to the physical integrity of Utility Facilities, the Utility may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable thereafter, the Utility will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all costs incurred by the Utility in taking action pursuant to this Paragraph.
- 4.6 Restoration of Utility Service.** The Utility's service restoration requirements shall take precedence over any and all work operations of Licensee on Utility Poles.
- 4.7 Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days of the effective date of such right and any extension thereof, the Utility may use the space scheduled for Licensee's Attachment(s) for its own needs or other

Licensees. In such instances, the Utility shall endeavor to make other space available to Licensee, upon written application per Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions.

- 4.8 Interference Test Equipment.** To the extent Licensee furnishes cable television service it shall maintain test equipment to identify signal interference to its customers, and shall not identify the Utility as the source of such interference absent a test report verifying the source.
- 4.9 Removal of Nonfunctional Attachments.** At its sole expense, Licensee shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service (“Nonfunctional Attachment”) as provided in this Paragraph 4.9. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an Unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A, Item 3. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one year (365 days) of the Attachment becoming nonfunctional, unless Licensee receives written notice from the Utility that removal is necessary to accommodate the Utility’s or another Attaching Entity’s use of the affected Pole(s), in which case Licensee shall remove the Nonfunctional Attachment within sixty (60) days of receiving the notice. Where Licensee has received a Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until the Utility notifies Licensee that removal is necessary to accommodate the Utility’s or another Attaching Entity’s use of the affected Pole(s). Licensee shall give the Utility notice of any Nonfunctional Attachments as provided in Article 15.

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## Article 5—Private and Regulatory Compliance

- 5.1 Necessary Authorizations.** Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Communications Facilities on public and/or private property before it occupies any portion of the Utility’s Poles. Licensee’s obligations under this Article 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith. Licensee shall defend, indemnify and hold harmless the Utility for all loss and expense, including reasonable attorney’s fees, that the Utility may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee’s Communications Facilities on the Utility’s Poles.

- 5.2 Lawful Purpose and Use.** Licensee's Communications Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state and local laws.
- 5.3 Forfeiture of the Utility's Rights.** No Permit granted under this Agreement shall extend to any Pole on which the Attachment of Licensee's Communications Facilities would result in a forfeiture of the Utility's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of the Utility's rights, is invalid. Further, if any of Licensee's existing Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Facilities upon receipt of written notice from the Utility. The Utility will perform such removal at Licensee's expense not sooner than the expiration of thirty (30) calendar days from the Utility's issuance of the written notice.
- 5.4 Effect of Consent to Construction/Maintenance.** Consent by the Utility to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

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## Article 6—Permit Application Procedures

- 6.1 Permit Required.** Licensee shall not install any Attachments on any Pole without first applying for and obtaining a Permit pursuant to the applicable requirements of Appendix B. Unless otherwise notified, Pre-existing Attachment(s) of Licensee as of the effective date of this Agreement shall be grandfathered with respect to Permitting, but shall be subject to Attachment Fees in future billing periods. Licensee shall provide the Utility with a list, on the Utility's provided spreadsheet, of all such pre-existing Attachments within six (6) months of the effective date of this Agreement. All such pre-existing Attachments shall comply with the terms of this Agreement within eighteen (18) months of the effective date of this Agreement. Attachments to or rights to occupy Utility Facilities not covered by this Agreement must be separately negotiated.
- 6.1.1 Service Drops.** The Licensee will notify the Utility within thirty (30) days of the attachment of a service drop where an existing permitted Attachment exists.

In the event that a service drop constitutes the initial Attachment to a given Pole, Licensee will be required to follow the permitting process set forth in paragraph 6.1. In this case, the Licensee will be allowed 30 days after the Attachment is made to complete the permitting process.

- 6.2 Permits for Modifications or Overlashing.** Permits are required for any modifications to permitted attachments allowed under this Agreement, including Overlashing, as set out in Paragraph 2.11. Licensee, Licensee's Affiliate or other third party, as applicable, shall pay any necessary Make-Ready Work costs to accommodate such Overlashing.
- 6.3 Professional Certification.** As part of the Permit application process and at Licensee's sole expense, a qualified and experienced professional engineer, or an employee or contractor of Licensee who has been approved by the Utility, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee's Communications Facilities can be and were installed on the identified Poles in compliance with the standards in Paragraph 4.1 and in accordance with the Permit. The professional engineer's, (or representative's as described above), qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems.
- The Utility, at its discretion, may waive the requirements of this Paragraph 6.3, with respect to service drops.
- 6.4 Utility Review of Permit Application.** Upon receipt of a properly executed Application for Permit (Appendix C), which shall include the Pre-Construction Survey, certified per Paragraph 6.3 above, and detailed plans for the proposed Attachments in the form specified in Appendix D, the Utility will review the Permit Application within thirty (30) days, and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. In the event of unusually large requests, the Utility may require up to thirty (30) additional days of processing time. Failure of the Utility to process an application within the times prescribed above shall not be the basis for any claim against the Utility. The Utility acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis.
- 6.5 Permit as Authorization to Attach.** After receipt of payment of all costs and fees required by this Agreement, the Utility will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s).

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## Article 7—Make-Ready Work/Installation

- 7.1 Estimate for Make-Ready Work.** In the event the Utility determines that it can accommodate Licensee's request for Attachment(s), including Overlashing of an existing Attachment, it will advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment.
- 7.2 Payment of Make-Ready Work.** The Utility will require payment in advance for Make-Ready Work based upon the estimated cost of such work. Upon completion Licensee

shall pay the Utility's actual cost of Make-Ready Work. The costs of the work shall be itemized as per Paragraph 3.9 and trued up as per Paragraph 3.8.

**7.3 Who May Perform Make-Ready Work.** Make-Ready Work shall be performed only by the Utility and/or a contractor authorized by the Utility to perform such work. If the Utility cannot perform the Make-Ready Work to accommodate Licensee's Communications Facilities within forty-five (45) calendar days of Licensee's request for Attachments, Licensee may seek permission from the Utility for Licensee to employ a qualified contractor to perform such work.

**7.4 Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Licensee's Communications Facilities, the Utility will endeavor to include such work in its normal work schedule. In the event Licensee requests that the Make-Ready Work be performed on a priority basis or outside of the Utility's normal work hours, Licensee agrees to pay any resulting increased costs. Nothing herein shall be construed to require performance of Licensee's work before other scheduled work or Utility service restoration.

**7.5 Written Approval of Installation Plans Required.** With the exception of customer service drops, before making any Attachments to the Utility's Poles, including modification of existing Attachments, the applicant must obtain the Utility's written approval of detailed plans for the Attachments. Such detailed plans shall accompany a Permit application as required under Paragraph 6.4.

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

**7.6.1** All of Licensee's installation, removal and maintenance work shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of the Utility's Poles or other Facilities or other Attaching Entity's facilities or equipment attached thereto. All such work is subject to the insurance requirements of Article 18.

**7.6.2** All of Licensee's installation, removal and maintenance work performed on Utility Poles or in the vicinity of other Utility Facilities, either by its employees or contractors, shall be in compliance with all applicable standards specified in Paragraph 4.1. Licensee shall assure that any person installing, maintaining, or removing its Communications Facilities is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the Minimum Design Specifications contained in Appendix D.

**7.7 Electrical Service Required.**

**7.7.1** If requested by Licensee, Utility shall extend power to the Premises at Licensee's expense. Utility shall, during the term, provide electrical service within the Premises. Licensee shall pay Utility for the power and energy supplied to

Licensee and Licensee's equipment. Utility retains the discretion to change the rates for the sale and purchase of electricity over the time provided the rates are consistent with the rates charged to other similar uses in the City of Columbia. The Parties agree that the sale of power and energy under this Agreement shall be made under the rates then in effect each month. All invoices for power consumption shall be sent by Utility to Licensee at such other address as provided by Licensee, on a monthly basis (the "Invoice Period"), and shall include the amount of electricity used by Licensee in the preceding month, and the rate(s) charged. Payment is due within thirty (30) days of the invoice. Payment may be made by electronic funds transfer, as mutually agreed upon by the Parties.

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

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## Article 8—Transfers

- 8.1 Transfers of Licensee's Communications Facilities.** The Utility will notify Licensee when it is necessary to transfer its facilities. If Licensee fails to transfer its Facilities within thirty (30) calendar days after receiving such notice from the Utility, the Utility shall have the right but not the obligation to transfer Licensee's Facilities using its personnel and/or contractors at Licensee's expense as specified in Article 3.9. The Utility shall not be liable for damage to Licensee's Facilities except to the extent provided in Paragraph 16.1. The Utility shall then provide written notice of any such actions taken within ten (10) days of the occurrence. Irrespective of who owns them, Licensee is responsible for the transfer of Facilities that are overlashed on to Licensee's Attachments. At the option of the Utility, the Utility can be contracted to perform all such transfer work as part of the normal course of business. The Utility will bill Licensee at the Utility's cost. If Licensee chooses this option a separate agreement must be executed with the Utility.
- 8.2 Emergency Transfers of Licensees Communications Facilities.** When the Utility reasonably determines that a transfer of Licensee's Communications Facilities is immediately necessary, Licensee agrees to allow such transfer. In such instances, the



Utility will, at its option, either perform the transfer using its personnel, and/or contractors. The Utility shall not be liable for damage to Licensee's Facilities except to the extent provided in Paragraph 16.1. The Utility shall provide written notice of any such actions taken within ten (10) days of the occurrence. Irrespective of who owns them, Licensee is responsible for the transfer of Facilities that are overlashed on to Licensee's Attachments. The Utility will bill Licensee at the Utility's cost.

**8.3 Billing for Transfers Performed by the Utility.** If the Utility performs the transfer(s), the Utility will invoice the Licensee for actual costs per Paragraph 3.9. Licensee shall reimburse the Utility within thirty (30) calendar days of the billing date of the invoice.

**8.4 Pole Removal.** The last Licensee on a Pole shall be required to remove the Pole as part of the transfer and dispose of the Pole in a manner acceptable to the Utility. If Licensee is incapable of removing the Pole, Licensee shall provide prompt notification to the Utility, and the Utility will perform the removal and charge a Pole Removal Fee as specified in Appendix A. 2.

**8.5 Transfer Indemnification.** Licensee agrees to save, defend, indemnify and hold the Utility harmless from all claims under all theories of recovery for personal injury, death or property damage arising out of the presence or use of the Pole following the Utility's termination of its use of the Pole.

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## Article 9—Pole Modifications And/Or Replacements

**9.1 Licensee's Action Requiring Modification/Replacement.** In the event that any Pole, as constructed, to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional facilities in accordance with all Applicable Standards, the Utility will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including but not limited to replacement of the Pole, and rearrangement or transfer of the Utility's Facilities. Licensee is responsible for obtaining costs associated with rearrangement or transfer of the Communications Facilities of any existing Licensees already on the Pole. If Licensee elects to go forward with the necessary changes, Licensee shall pay to the Utility and any other existing Licensees, the actual cost of the Make-Ready Work, performed by the Utility, per Paragraph 3.9 or performed by the other existing Licensees to accommodate the new Licensee. The Utility and existing attaching entities, at their discretion, may require advance payment.

**9.2 Treatment of Multiple Requests for Same Pole.** Assuming a permit has not yet been issued and the Utility receives additional applications for the same Pole from additional perspective Licensees, and accommodating their respective requests would require modification or replacement of the Pole, the Utility will allocate equitably among such licensees the applicable costs associated with such modification or replacement.

- 9.3 Guying.** The use of guying to accommodate Licensee's Attachments shall be provided by and at the expense of Licensee and to the satisfaction of the Utility as specified in Appendix D. Licensee shall not attach its guy wires to the Utility's anchors without prior written permission of the Utility. If permission is granted, any make-ready charges, and a one-time anchor attachment fee as specified in Appendix A, Item 2, will apply.
- 9.4 Allocation of Costs.** The costs for any rearrangement or transfer of Licensee's Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of the Utility's cables or wires) shall be allocated to the Utility and/or Licensee and/or other Attaching Entity on the following basis:
- 9.4.1** If the Utility intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Licensee, however, shall be responsible for all costs associated with the rearrangement or transfer of Licensee's Communications Facilities. If Licensee elects to add to or modify its Communications Facilities, Licensee shall bear the total incremental costs incurred by the Utility in making the space on the Poles accessible to Licensee.
- 9.4.2** If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than the Utility or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring Licensee's Communications Facilities. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's facilities.
- 9.4.3** If the Pole must be modified or replaced for other reasons unrelated to the use of the Pole by Attaching Entities (*e.g.*, storm, accident, deterioration), The Utility shall pay the costs of such modification or replacement; provided, however, that Licensee shall be responsible for the costs of rearranging or transferring its Communications Facilities.
- 9.4.4** If the modification or replacement of a Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Pole and for the costs associated with the transfer or rearrangement of any other Attaching Entity's Communications Facilities. Licensee shall submit to the Utility evidence, in writing, that it has made arrangements acceptable to all Licensees for reimbursement for the cost to transfer or rearrange such Licensee's Facilities at the time Licensee submits a Permit Application to the Utility. The Utility shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the

transfer or rearrangement of another Licensee's Facilities pursuant to this Paragraph 9.4.4.

- 9.5 The Utility Not Required to Relocate.** No provision of this Agreement shall be construed to require the Utility to relocate its Attachments or modify/replace its Poles for the benefit of Licensee, provided, however, any denial by the Utility or modification of the Pole is based on nondiscriminatory standards of general applicability.

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## Article 10—Abandonment or Removal of Utility Facilities

- 10.1 Notice of Abandonment or Removal of Utility Facilities.** If the Utility desires at any time to abandon, remove or underground any Utility Facilities to which Licensee's Communications Facilities are attached, it shall give Licensee notice in writing to that effect at least ninety (90) calendar days prior to the date on which it intends to abandon or remove such Utility's Facilities. Notice may be limited to thirty (30) calendar days if the Utility is required to remove or abandon its Facilities, as the result of the action of a third party or other good cause and the greater notice period is not practical. Such notice shall indicate whether the Utility is offering Licensee an option to purchase the Pole(s). If, following the expiration of the notice period, Licensee has not yet removed and/or transferred all of its Communications Facilities therefrom and has not entered into an agreement to purchase the Utility's Facilities pursuant to Paragraph 10.2, the Utility shall have the right, but not the obligation, subject to any applicable laws and regulations, to have Licensee's Communications Facilities removed and/or transferred from the Pole at Licensee's expense. The Utility shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities.
- 10.2 Option to Purchase Abandoned Poles.** Should the Utility desire to abandon any Pole, the Utility, in its sole discretion, may grant Licensee the option of purchasing such Pole at a rate, which is the value in place, at that time, of such abandoned Pole. Licensee must notify the Utility in writing within thirty (30) calendar days of the date of the Utility's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should the Utility and Licensee fail to enter into an agreement for Licensee to purchase the Pole prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 10.1. The Utility is under no obligation to sell Licensee Poles that it intends to remove or abandon.

- 10.3 Underground Relocation.** If the Utility moves any portion of its aerial system underground, and purchase of the Poles under Article 10.2 is not an option, Licensee shall remove its Communications Facilities from any affected Poles within ninety (90) calendar days of receipt of notice from the Utility and either relocate its affected Facilities underground with the Utility or find other means to accommodate its Facilities. Licensee's failure to remove its Facilities as required under this Paragraph 10.3 shall subject Licensee to the failure to timely transfer, abandon or remove facilities fee provisions of Appendix A.

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## Article 11—Removal of Licensee's Facilities

**Removal on Expiration/Termination.** At the expiration or other termination of this License Agreement or individual Permit(s), Licensee shall remove its Communications Facilities from the affected Poles at its own expense. If Licensee fails to remove such facilities within sixty (60) calendar days of expiration or termination or some greater period as allowed by the Utility, the Utility shall have the right to have such facilities removed at Licensee's expense.

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## Article 12—Termination of Permit

- 12.1 Automatic Termination of Permit.** Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Communications Facilities on public or private property at the location of the particular Pole(s) covered by the Permit. Notwithstanding the foregoing, to the extent Licensee is pursuing a challenge of the revocation of any such permission; Licensee may remain on the particular Pole(s) until such time as all appeals and remedies are exhausted.
- 12.2 Surrender of Permitted Attachment(s).** Licensee may at any time surrender any Permitted Attachment(s) and remove its Communications Facilities from the affected Pole(s). Before commencing any such removal Licensee must submit to the Utility a Permit Application indicating the name of the party performing such work, the number of attachments being removed, a sketch showing the location of the removal(s) and the proposed date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18. No refund of any fees or costs will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from the Utility's Facilities within the time frame set forth in the approved plan above, the Utility shall have the right to remove Licensee's Attachments at Licensee's expense.

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## Article 13—Inspection of Licensee’s Facilities

- 13.1 Inspections.** The Utility may conduct an inventory and inspection of Attachments at any time. Licensee shall correct all Attachments that are not found to be in compliance with Applicable Standards within sixty (60) calendar days of notification or such lesser time as may be required for safety reasons. Except as provided for in Article 6.1, if it is found that Licensee has made an Attachment without a Permit, Licensee shall pay a fee as specified in Appendix A, Item 3 in addition to applicable Permit and Make-Ready charges. If it is found that five percent (5%) or more of Licensee’s Attachments are either in non-compliance or not permitted, Licensee shall pay its *pro-rata* share of the costs of the entire inspection.
- 13.2 Notice.** The Utility will provide reasonable notice of such inspections to the Licensee, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until notice has been received. When notified, Licensee will notify the Utility if it wishes to participate in the inspection.
- 13.3 No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon the Utility any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.
- 13.4 Attachment Records.** Notwithstanding the above inspection provisions, Licensee is obligated to furnish the Utility on an annual basis an up-to-date map depicting the locations of its Attachments in an electronic format specified by the Utility. If a map is not available, the Licensee will provide a list in an electronic format specified by the Utility.

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## Article 14—Unauthorized Occupancy or Attachment

- 14.1 Unauthorized Occupancy or Access Fee.** If any of Licensee’s Attachments are found occupying any Pole for which no Permit has been issued, the Utility, without prejudice to its other rights or remedies under this Agreement, will assess an Unauthorized Attachment Fee as specified in Appendix A, Item 3 and require the submittal of a Application for Permit as set forth under Article 6. Submittal of the Application for Permit does not guarantee the approval of the attachment. In the event Licensee fails to pay such Fee and submit the Application for Permit within thirty (30) calendar days of the billing date of the invoice, the Utility has the right to remove such Communications Facilities at Licensee’s expense.

- 14.2 No Ratification of Unlicensed Use.** No act or failure to act by the Utility with regard to any unlicensed use shall be deemed as ratification of the unlicensed use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by the Utility of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to the unauthorized use from its inception.

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## Article 15—Reporting Requirements

- 15.1** Upon receipt of request by the Utility, but not more often than annually, the Licensee shall report attachments per Article 13.4.

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## Article 16—Liability and Indemnification

- 16.1 Liability.** The Utility reserves to itself the right to maintain and operate its Poles in such manner as will best enable it to fulfill its statutory service requirements. Licensee agrees to use the Utility's Poles at Licensee's sole risk. Notwithstanding the foregoing, the Utility shall exercise reasonable precaution to avoid damaging Licensee's Communications Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to Paragraph 16.5, the Utility agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of such facilities damaged by the negligence or willful misconduct of the Utility, provided, however, that the aggregate liability of the Utility, to Licensee, in any fiscal year, shall not exceed the amount of the total Annual Attachment Fees paid by Licensee to the Utility for that year as calculated based on the number of Attachments under Permit at the time of the damage per Appendix A, Item 1.
- 16.2 Indemnification.** Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless the Utility and its officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by the Utility under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of the Utility and all other costs and expenses of litigation) ("Covered Claims") arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents or contractors, of Licensee's Communications Facilities, except to the extent of the Utility's negligence or willful

misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

- 16.2.1** Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;
- 16.2.2** Cost of work performed by the Utility that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents or contractors, to install, maintain, use, transfer or remove Licensee's Communications Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes the Utility to perform on Licensee's behalf;
- 16.2.3** Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents or contractors, pursuant to this Agreement or claims arising out of the presence or use of a Pole no longer used by the Utility;
- 16.2.4** Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents or contractors, of any law, rule, or regulation of the United States, State of Indiana or any other governmental entity or administrative agency.

### **16.3 Procedure for Indemnification.**

- 16.3.1** The Utility shall give prompt notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against the Utility, the Utility shall give the notice to Licensee no later than ten (10) calendar days after the Utility receives written notice of the action, suit or proceeding.
- 16.3.2** The Utility's failure to give the required notice will not relieve Licensee from its obligation to indemnify the Utility unless Licensee is materially prejudiced by such failure.
- 16.3.3** Licensee will have the right at any time, by notice to the Utility, to participate in or assume control of the defense of the claim with counsel of its choice. The Utility agrees to cooperate fully with Licensee. If Licensee so assumes control of the defense of any third-party claim, the Utility shall have the right to participate in the defense at its own expense. If Licensee does not so assume control or otherwise participate in the defense of any third-party claim, Licensee shall be bound by the results obtained by the Utility with respect to the claim.

**16.3.4** If Licensee assumes the defense of a third-party claim as described above, then in no event will the Utility admit any liability with respect to, or settle, compromise or discharge, any third-party claim without Licensee's prior written consent, and the Utility will agree to any settlement, compromise or discharge of any third-party claim which Licensee may recommend which releases the Utility completely from such claim. Notwithstanding the foregoing, the provisions set forth above shall not apply in the event that Licensee has not assumed responsibility to indemnify the Utility in full and satisfied the Utility of Licensee's financial capacity to satisfy Licensee's defense and indemnification obligations to the Utility. In the event the Utility deems itself at risk, it retains the right to settle the claim and to assert the negligence of Licensee, seek recovery against Licensee, and settle any claim on such terms as the Utility deems proper.

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

Should the Utility's Poles be declared to contain Hazardous Substances, the Utility, shall be responsible for the disposal of its Pole. Provided, however, if the source or presence of the Hazardous Substance is solely attributable to particular parties, such costs shall be borne solely by those parties. Notwithstanding the above, the Utility agrees to defend, indemnify and hold harmless Licensee for any claims against Licensee related to Hazardous Substances or Conditions to the extent caused or created by the Utility.

**16.5 Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the Utility of any applicable State limits on municipal liability. No indemnification provision contained in this Agreement under



which Licensee indemnifies the Utility shall be construed in any way to limit any other indemnification provision contained in this Agreement.

- 16.6 Attorney's Fees.** If the Utility brings a successful action in a court of competent jurisdiction to enforce this Agreement, Licensee shall pay the Utility's reasonable attorney's fees.

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## Article 17—Duties, Responsibilities, And Exculpation

- 17.1 Duty to Inspect.** Licensee acknowledges and agrees that the Utility does not warrant the condition or safety of the Utility's Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect Utility Poles and/or premises surrounding the Poles, prior to commencing any work on Utility Poles or entering the premises surrounding such Poles. Licensee's responsibility is limited only to the extent necessary to perform Licensee's work.
- 17.2 Knowledge of Work Conditions.** By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties and restrictions attending the execution of such work.
- 17.3 DISCLAIMER. THE UTILITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO UTILITY POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND THE UTILITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. THE UTILITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 17.4 Duty of Competent Supervision and Performance.** The parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, employees, contractors and subcontractors will work near electrically energized lines, transformers or other Utility Facilities, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except in an emergency endangering life, grave personal injury or property. Licensee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of the Utility and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate

tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of the Utility's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

- 17.5 Requests to De-energize.** In the event the Utility de-energizes any equipment or line at Licensee's request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse the Utility in full for all costs and expenses incurred, in accordance with Paragraph 3.9, in order to comply with Licensee's request. Before the Utility de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Licensee's request. Notwithstanding the foregoing de-energization shall be at the Utility's sole discretion and the Utility shall determine the schedule for de-energization.
- 17.6 Interruption of Service.** In the event that Licensee causes an interruption of service by damaging or interfering with any equipment of the Utility, Licensee at its expense shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify the Utility immediately, and shall save, defend, indemnify and hold the Utility harmless from claims arising from such damage and shall compensate the Utility in full for its damages.
- 17.7 Duty to Inform.** Licensee further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on the Utility's Poles by Licensee's employees, agents, contractors or subcontractors, and accepts as its duty and sole responsibility to notify and inform Licensee's employees, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

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## Article 18—Insurance

- 18.1 Policies Required.** At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:
- 18.1.1 Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Indiana State law at the time of the application of this provision for each accident. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
- 18.1.2 Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations,

products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence.

**18.1.3 Automobile Liability Insurance.** Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles used in connection with work under this Agreement. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.

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

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

**18.2 Qualification; Priority; Contractors' Coverage.** The insurer must be authorized to do business under the laws of the State of Indiana and have an "A" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability and automobile liability insurance coverage of the type that Licensee is required to obtain under this Article 18 with the same limits.

**18.3 Certificate of Insurance; Other Requirements.** Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish the Utility with a certificate of insurance ("Certificate") and, upon request, 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 of Insurance. 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. Licensee 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. Licensee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to the Utility upon request.

- 18.4 Limits.** The limits of liability set out in this Article 18 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 which would materially increase or decrease Licensee's exposure to risk.
- 18.5 Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Agreement with the Utility except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to Utility employees or agents directly caused by the negligence of Licensee, or (4) that exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.
- 18.6 Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

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## Article 19—Authorization Not Exclusive

The Utility shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use Utility Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

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## Article 20—Assignment

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

furnish The Utility with written notice of the transfer or assignment, together with the name and address of the transferee or assignee. It shall be unreasonable for the Utility to withhold consent without cause to an assignment of all of Licensee's interests in this Agreement to its Affiliate.

**20.2 Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement

**20.3 Sub-licensing.** Assignment, transfer or sub-licensing of any right under this Agreement is void and not merely voidable, unless approved in writing by the Utility. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Communications Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlapping is not subject to this Paragraph 20.3.

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## Article 21—Failure to Enforce

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

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## Article 22—Termination of Agreement

**22.1** Notwithstanding the Utility's rights under Article 12, the Utility shall have the right, pursuant to the procedure set out in Paragraph 22.2, to terminate this entire Agreement, or any Permit issued hereunder, whenever Licensee is in default of any term or condition of this Agreement, including but not limited to the following circumstances:

**22.1.1** Construction, operation or maintenance of Licensee's Communications Facilities in violation of law or in aid of any unlawful act or undertaking; or

**22.1.2** Construction, operation or maintenance of Licensee's Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority, subject to Paragraph 12.1; or violation of any other agreement with the Utility; or

**22.1.3** Construction, operation or maintenance of Licensee's Communications Facilities without the insurance coverage required under Article 18.

**22.2** The Utility will notify Licensee in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition(s) applicable to Paragraph 22.1 above. Licensee shall take immediate corrective action to eliminate any such condition(s) within fifteen (15) calendar days, or such longer period mutually agreed to by the parties, and shall confirm in writing to the Utility that the cited condition(s) has (have) ceased or been corrected. If Licensee fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, the Utility may immediately terminate this Agreement or any Permit(s). In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, the Utility may seek removal of Licensee's Communications Facilities pursuant to the terms of Article 11, provided, that Licensee shall be liable for and pay all fees and charges pursuant to terms of this Agreement to the Utility until Licensee's Communications Facilities are actually removed.

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## **Article 23—Term of Agreement**

- 23.1** This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of two (2) years. Either party may terminate this Agreement at the end of the initial two (2) year term by giving to the other party written notice of an intention to terminate this Agreement at least one hundred eighty (180) calendar days prior to the end of the term. Upon failure to give such notice, this Agreement shall automatically continue in force on a year to year basis until terminated by either party after one hundred eighty (180) calendar day's written notice.
- 23.2** Even after the termination of this Agreement, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to this Agreement.

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## **Article 24—Amending Agreement**

Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.

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## **Article 25—Notices**

- 25.1** Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when mailed by certified mail, return

receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

If to the Utility, at: **Columbia City Electric Municipal Utility  
112 South Chauncey Street  
Columbia City, IN 46725**

If to Licensee, at: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

- 25.2** Licensee shall maintain a staffed 24-hour emergency telephone number where the Utility can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to the Utility's concerns and requests. Failure to maintain an emergency contact shall subject Licensee to a fee of \$100 per incident, and shall eliminate the Utility's liability to Licensee for any actions that the Utility deems reasonably necessary given the specific circumstances.

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## Article 26—Entire Agreement

This Agreement supersedes all previous agreements, whether written or oral, between the Utility and Licensee for placement and maintenance of Licensee's Communications Facilities on Utility Poles within the geographical service area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein.

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## Article 27—Severability

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the parties that this Agreement be administered as if not containing the invalid provision.

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## Article 28—Governing Law

The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State

of Indiana or any regulatory agency of competent jurisdiction. The sole and exclusive venue of any legal action in regard to this Agreement should be in Superior Court of Whitley County, Indiana.

If litigation arises out of this Agreement, the substantially prevailing party shall be entitled to recover all reasonable legal expenses including, but not limited to, attorney fees, expert witness fees, and travel and lodging expenses at trial and the appellate court level.

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## **Article 29—Incorporation of Recitals and Appendices**

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

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## **Article 30—Performance Bond**

The purpose of the bond is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties and fees due to the Utility which arise by reason of the construction, operation, maintenance or removal of Licensee's Communications Facilities on or about Utility Poles. The Utility, at its sole discretion, may waive the requirement of a performance bond if the proposed Licensee, or its predecessor, is a regionally or nationally recognized communications provider having formally been in existence for a minimum of ten years and can demonstrate financial responsibility. The Utility may waive the provisions of this Article for small government Licensees.

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## **Article 31—*Force Majeure***

**31.1** In the event that either the Utility or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and any such party shall endeavor to remove or overcome such inability as soon as reasonably possible. Licensee shall not be responsible for any charges associated with Utility Facilities for any periods that such facilities are unusable.



**31.2** With the exception of emergency work done to Licensees facilities to correct for a violation in Licensees attachments (including emergency transfers), the Utility shall not impose any charges on Licensee stemming solely from Licensee's inability to perform required acts during a period of unavoidable delay as described in Paragraph 31.1, provided that Licensee present the Utility with a written description of such *force majeure* within a reasonable time after occurrence of the event or cause relied on, and further provided that this provision shall not operate to excuse Licensee from the timely payment of any fees or charges due the Utility under this Agreement.

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

## L I C E N S O R

### THE UTILITY

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

Title: Mayor

STATE OF INDIANA

: ss

County of Whitley

I, the undersigned, a Notary Public in and for the State of INDIANA hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me [NAME] \_\_\_\_\_, [TITLE] \_\_\_\_\_ to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

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

\_\_\_\_\_  
Notary Public in and for the  
State of Indiana residing at

\_\_\_\_\_, \_\_\_\_\_

## LICENSEE

Name \_\_\_\_\_

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

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

STATE OF \_\_\_\_\_

: ss

County of \_\_\_\_\_

I, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, personally appeared before me [NAME] \_\_\_\_\_, [TITLE] \_\_\_\_\_ to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he/she signed and sealed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

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

\_\_\_\_\_  
Notary Public in and for the  
State of \_\_\_\_\_, residing at  
\_\_\_\_\_, \_\_\_\_\_

# APPENDIX A—FEES AND CHARGES

## Pole Attachment Fees and Charges

1. **Annual Pole Attachment Fee:** (fee will be charged on a per Pole basis per Article 3.3)

Effective May 1, 2022: **\$15.53** per attachment per year for all attachments other than small cell facilities.

Effective May 1, 2022: **\$57.14** per attachment per year for small cell facilities attached to poles having a branded height of not more than fifty-five feet (55').

Effective May 1, 2022: **\$82.48** per attachment per year for small cell facilities attached to poles having a branded height of at least sixty feet (60') and not more than eighty feet (80').

### Adjustment of Annual Pole Attachment Fee:

Annual Rental shall be automatically adjusted each year on January 1 by Consumer Price Index (CPI). If such changed rate is not acceptable to the Licensee, Licensee may terminate this agreement subject to terms provided for in Article 23 of this agreement.

### 2. Non-Recurring Fees:

- Permit Application Fee .....\$100.00 per Permit Application  
(up to 30 Poles or each small cell facility)
- Permit Application Fee .....\$250.00 per Permit Application  
(31 to 300 Poles)
- Permit Application Fee (removals only) .....No charge
- Make Ready Work Charges .....See Article 3 of Agreement
- Miscellaneous Charges .....See Article 3 of Agreement
- Inspection Fees.....See Article 3 of Agreement
- Anchor Attachment Fee.....\$25.00
- Pole Removal Fee.....\$150.00

**NOTE: Permit Application fees may be adjusted periodically, but not more often than annually, to reflect increases in operating costs.**

**3. Unauthorized Attachment Fee:**

- 3 x Annual Attachment Fee, per occurrence.

**4. Failure To Timely Transfer, Abandon or Remove Facilities Fee:**

- 1/5 Annual Attachment Fee per day, per Pole, first 30 days;
- Annual Attachment Fee per day, per Pole, second 30 days and thereafter.
- Facilities Removed by Utility at Licensee Expense

## APPENDIX B—POLE ATTACHMENT PERMIT APPLICATION PROCESS

The following procedure is to be followed by each Licensee seeking to make new Attachments on Utility Poles. Note that no entity may make any Attachments to Utility Poles without having first entered into a binding Pole Attachment Licensing Agreement.

1. Licensee shall submit a completed Permit Application (Appendix C) that includes: route map, information required in Appendix F, installation plans and recommendations on Make-Ready Work. Licensee shall prepare the Permit Application in adherence with the Applicable Standards (Section 1.2 of Agreement) and specifications (Appendix D).
2. The Utility will review the completed permit application and discuss any issues with the Licensee. Said review may involve an onsite inspection of proposed attachment(s) with Licensee's professional engineer or Utility approved Licensee employee or contractor.
3. Upon receipt of written authorization, the Utility will proceed with Make-Ready Work according to the specific agreed-upon installation plans and the terms of the Agreement, including payment for the Make-Ready Work charges as set out by the Utility and agreed to by the Licensee.
4. Upon completion of the Make-Ready Work, the Utility will sign and return the Application for Permit authorizing the Licensee to make its Attachment(s) in accordance with agreed-upon installation plans.
5. The Licensee's professional engineer, the Utility-approved employee or contractor shall submit written certification that he/she has completed the Post-Construction Inspection and that the installation was done in accordance with the provisions of the Permit. The Post-Construction Inspection shall be submitted within thirty (30) calendar days after installation is complete.

# APPENDIX C—APPLICATION FOR PERMIT

## APPLICATION FOR ATTACHMENT or REMOVAL

Columbia City Electric Municipal Utility  
112 South Chauncey Street, Columbia City  
Indiana 46725

Attn: Electric Superintendent  
(260) 248-5115 FAX (260) 248-5116

Date \* \_\_\_\_\_

### UTILITY INFORMATION (Licensee)

Utility Name: \_\_\_\_\_ \*

Address: \_\_\_\_\_ \*

Contact \_\_\_\_\_ \*

Person: \_\_\_\_\_ \*

Phone: \_\_\_\_\_ \* Fax No. \_\_\_\_\_ \*

Licensee hereby requests permission to occupy Utility's poles in accordance with the conditions set forth in Pole Contact Agreement, dated \* \_\_\_\_\_.

### GENERAL APPLICATION INFORMATION

Location (road name(s), general project description) \_\_\_\_\_ \*

Section, Township, Range \_\_\_\_\_ \*

Legal Authority (Provide information on documents applicable to project )

State Franchise/Permit # \_\_\_\_\_ \*

City/County Franchise/Permit # \_\_\_\_\_ \*

Private Property Easements A.F.# \_\_\_\_\_ \*

Utility Project Name, Work Order Number \_\_\_\_\_ \*

Project Schedule (planned date of construction) \_\_\_\_\_ \*

Name of Construction Company \_\_\_\_\_ \*

Address \_\_\_\_\_ \*

Phone \_\_\_\_\_ \* Fax No. \_\_\_\_\_ \*

Contact Person \_\_\_\_\_ \*

Construction Drawings (Attach maps, construction specifications, staking sheets, etc.)

Number of New poles contacted \* \_\_\_\_\_ Number of Utility anchors \* \_\_\_\_\_

Number of existing contacts to have added facilities \* \_\_\_\_\_

Terminate \* \_\_\_\_\_ pole contacts.

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***TO BE COMPLETED BY UTILITY PERSONNEL***

*Date Application received* \_\_\_\_\_ *Field review* \_\_\_\_\_ *Final review* \_\_\_\_\_

*Application review by:* \_\_\_\_\_

☐ *Permit Application accepted* *Date* \_\_\_\_\_

☐ *Permit Application fee received* \$\_\_\_\_\_ ☐ *Billing Dept. Rcvd by* \_\_\_\_\_

☐ *Permit Application denied. Date Letter of explanation sent* \_\_\_\_\_



## APPENDIX D—SPECIFICATIONS FOR LICENSEE’S ATTACHMENTS TO THE UTILITY POLES

Licensee, when making Attachments to Utility Poles, will adhere to the following engineering and construction practices.

A. All Attachments shall be made in accordance with the Applicable Standards as defined in Paragraph 1.2 of this Agreement.

### B. Clearances

1. **Attachment and Cable Clearances:** Licensee’s Attachments on Utility Poles, including metal attachment clamps and bolts, metal cross-arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the most recent applicable National Electrical Safety Code (“NESC”) and in drawings and specifications the Utility may from time to time furnish Licensee. (*See Drawings A-02 to A-07.*)
2. **Service Drop Clearance:** The parallel minimum separation between Utility service drops and communications service drops shall be twelve (12) inches, and the crossover separation between the drops shall be twenty-four (24) inches. (*See Drawings A-05 and A-06.*)
3. **Sag and Mid-Span Clearances:** Licensee will be particularly careful to leave proper sag in its lines and cables and shall observe the established sag of power line conductors and other cables so that minimum clearances are (a) achieved at Poles located on both ends of the span; and (b) retained throughout the span. At mid-span, a minimum of twelve (12) inches of separation must be maintained between any other cables. At the Pole support, a six (6) inch separation must be maintained between Licensee and any other communications connection/attachment. (*See Drawing A-06.*)
4. **Vertical Risers:** Unless otherwise directed by the Utility, all Risers shall be placed on existing stand-off brackets or in the absence of stand-off brackets the riser shall be placed on the field-face quarter section of the Pole. All risers must be installed in conduit attached to the Pole with stand-off brackets. A two (2) inch clearance in any direction from cable, bolts, clamps, metal supports and other equipment shall be maintained. (*See Drawing A-02.*)
5. **Climbing Space:** A clear Climbing Space must be maintained at all times on the face of the Pole. All Attachments must be placed so as to allow and maintain a clear and proper Climbing Space on the back side of the Utility Pole. Licensee’s cable/wire Attachments shall be placed on the same side of the Pole as those of other Attaching Entities. In general, all other Attachments and Risers should be placed on Pole field face quarter section. (*See Drawing A-07.*)

6. **Pedestals and Enclosures:** Every effort should be made to install Pedestals, Vaults and/or Enclosures a minimum of four (4) feet from Poles or other Utility Facilities. In the event that the placement of Pedestals, Vaults and/or Enclosures a minimum of four (4) feet from Poles or other Utility Facilities is not practical, Licensee shall contact the Utility to obtain written approval of the proposed placement. Every effort should be made to install or relocate the Utility Facilities a minimum of four (4) feet from Licensee's existing Pedestals, vaults and/or enclosures.

#### C. Down Guys and Anchors

1. Licensee shall be responsible for procuring and installing all anchors and guy wires to support the additional stress placed on Utility Poles by Licensee's Attachments. Guy wires must be anchored adequately.
2. Anchors and guy wires must be installed on each Utility Pole where an angle or a dead-end occurs. Licensee shall make guy attachments to Poles at or below its cable Attachment. No proposed anchor can be within four (4) feet of an existing anchor without written consent of The Utility.
3. Licensee may not attach guy wires to the anchors of the Utility or third-party user without the anchor owner's specific prior written consent.
4. No Attachment may be installed on a Utility Pole until all required guys and anchors are installed. No Attachment may be modified, added to or relocated in such a way as will materially increase the stress or loading on Utility Poles until all required guys and anchors are installed.
5. Licensee's down guys shall be insulated.

#### D. Certification of Licensee's Design

1. Licensee's Attachment Permit application must be signed and sealed by a professional engineer, registered in the State of Indiana, or utility approved employee or contractor certifying that Licensee's aerial cable design fully complies with the NESC, the Utility's Construction Standards and any other applicable federal, state or local codes and/or requirements.
2. This certification shall include the confirmation that the design is in accordance with Pole strength requirements of the NESC, taking into account the effects of Utility Facilities and other Attaching Entities' facilities that exist on the Poles without regard to the condition of the existing facilities.

#### E. Miscellaneous Requirements

1. **Cable Bonding:** Licensee's messenger cable shall be bonded to the Utility's Pole ground wire at each Pole where a ground wire is available. (*See Drawings A-03.*)
2. **Customer Premises:** Licensee's service drop into customer premises shall be protected as required by the most current edition of the NEC.
3. **Communication Cables:** All Communications cables/wires not owned by the Utility shall be attached within the Communications space as defined in Section 235 of the NESC. (*See Drawings A-01 through A-06.*)
4. **Riser Installations:** All Licensees' Riser installations shall be in Utility-approved conduit materials and placed on stand-off brackets. (*See Drawings A-02 to A-04.*)
5. **Tagging:** Licensee's cables shall be identified with a tag acceptable to the Utility within twelve (12) inches of each Attachment. The tag shall include at least the following: licensee name, and cable type. Tags shall be placed in such as way as to permit identification of Attaching Entity by observation from the ground.

#### F. Utility Construction Drawings and Specifications

1. Refer to the attached Utility Construction Drawings, and obtain additional construction specifications from the Utility in accordance with its requirements.
2. Apply the Utility's construction drawings and specifications in accordance with the NESC, NEC, WAC, RCW and any other federal, state or local code requirements.

## APPENDIX E—DISTRIBUTION LINE MINIMUM DESIGN REVIEW INFORMATION AND WORKSHEET

The following guidelines are provided, and corresponding information must be submitted with each Permit application for Pole Attachments on the Utility's system. The Utility may direct that certain Attachments do not require the submittal of Design Review Information. These Attachments are noted at the end of this section.

**Each Permit application must include a report from a professional engineer registered to practice in the State of Indiana, and experienced in electric Utility system design, or a Utility-approved employee or contractor of Licensee. This report must clearly identify the proposed construction and must verify that the Attachments proposed will maintain the Utility's compliance with NESC Class B construction for medium loading as outlined in the NESC Section 25.**

**The Utility may or may not require that all of the following information be submitted at the time of the Permit application. The applicant shall have performed all required calculations and be ready to provide the detailed information below within fifteen (15) calendar days of notice. Applicant shall keep copies of the engineering data available for a period of twenty (20) years.**

Licensee shall comply with any NESC and/or Utility safety factors; whichever is more conservative, in their designs. The engineer for the Permit applicant shall provide for each application the following confirmations:

- **Required permits that have been obtained** (insert n/a if not applicable):

- \_\_\_\_\_ (y/n) U.S. Corp of Engineers.
- \_\_\_\_\_ (y/n) Highway—state, county, city.
- \_\_\_\_\_ (y/n) Railroad.
- \_\_\_\_\_ (y/n) Local zoning boards, town boards, etc.
- \_\_\_\_\_ (y/n) Joint use permits, if required.

- **Confirm that you have:**

- \_\_\_\_\_ (y/n) Obtained appropriate franchise(s).
- \_\_\_\_\_ (y/n) Obtained Pole/anchor easements from land owners.
- \_\_\_\_\_ (y/n) Obtained crossing and overhang permits.
- \_\_\_\_\_ (y/n) Obtained permit to survey R/W.
- \_\_\_\_\_ (y/n) Completed State of Indiana Department of Transportation requirements.
- \_\_\_\_\_ (y/n) Placed permit number on plans.

\_\_\_\_\_ (y/n) Complied with Indiana State Underground Facility Location requirements.

\_\_\_\_\_ (y/n) Included sag/tension data on proposed cable.

Calculations are based upon the latest edition of the NESC and the latest editions of the requirements of the State of Indiana.

It is Licensee's responsibility to obtain all necessary permits and easements and provide the Utility with a copy of each, if requested.

The engineer for the Permit applicant shall provide for each Pole(s) the following information:

Note: Items marked with an \* are required, other items are as requested by the Utility.

**General:\***

- Licensee's Project No. \_\_\_\_\_
- Pole class \_\_\_\_\_ [existing—*i.e.*, 4, 3, 2...]
- Pole height \_\_\_\_\_ [existing—*i.e.*, 35, 40...]
- Pole type \_\_\_\_\_ Western Red, Cedar, Douglas Fir...]
- Pole fore span \_\_\_\_\_ [feet]
- Pole back span \_\_\_\_\_ [feet]
- Calculated bending moment at ground level \_\_\_\_\_ [ft-lbs]

**Proposed:**

- Proposed cable: Type \_\_\_\_\_ qty \_\_\_\_\_ dia \_\_\_\_\_ @ \_\_\_\_\_ ft above ground line\*
- Proposed cable: Type \_\_\_\_\_ qty \_\_\_\_\_ dia \_\_\_\_\_ @ \_\_\_\_\_ ft above ground line\*

The minimum vertical clearance under all loading conditions measured from the proposed cable to ground level on each conductor span shall be stated above. Variations in topography resulting in ground elevation changes shall be considered when stating the minimum vertical clearance within a given span.

Proposed loading data [provide similar data for each cable or equipment proposed]:\*

**A. Weight data (equipment, or cable and messenger)**

1. Vertical weight, bare = \_\_\_\_\_ [#ft]

**B. Tension data (final tensions on messenger)**

1. NESC maximum load for area of construction: \_\_\_\_\_ [lbs]

2. 60° F, NO wind: \_\_\_\_\_ [lbs]

Permit applicant's engineer shall provide for each transverse or dead end pole to which guy(s) are attached, the following information:\*

- Licensee's Plan Sheet Pole number(s) \_\_\_\_\_
- Corresponding Calculated guy tension under  
NESC maximum loading conditions \_\_\_\_\_ [lbs]

## APPENDIX F—FIELD DATA SUMMARY SHEET INSTRUCTIONS

<u>Column</u>	<u>Instructions</u>
<b>Licensee's Pole Number .....</b>	This must correspond with the Licensee's plan sheet
<b>Plan Sheet Pole Number.....</b>	Sequential pole count to match drawing.
<b>Pole Height and Class .....</b>	List the present Pole height and class and list the proposed Pole height and class if it is necessary for the Utility to replace the Pole for clearance, etc.
<b>Guy Attachments.....</b>	All unbalanced loading on Poles must be guyed. Attachments to Utility anchors will only be allowed if approved by the Utility.
<b>Attachment Height.....</b>	Licensee attachment centerline height above ground level.
<b>Inches Below Utility .....</b>	The number of inches Licensee is to be attached below the Utility while maintaining clearance, as required in Appendix D.
<b>Span Length.....</b>	List the span length between each point of attachment.
<b>Inches Sag .....</b>	List the messenger sag for the design listed on the cover sheet at 60 degrees Fahrenheit.
<b>Ground Clearance.....</b>	List the ground clearance at the low point of the span. Must not be less than the National Electrical Safety Code (latest edition).
<b>Small Cell / DAS.....</b>	Provide detailed, engineered stamped drawings depicting all equipment and their respective, dimensions, weights, attachment methods and part numbers,

# FIELD DATA SHEET FOR ATTACHMENTS TO COLUMBIA CITY ELECTRIC MUNICIPAL UTILITY

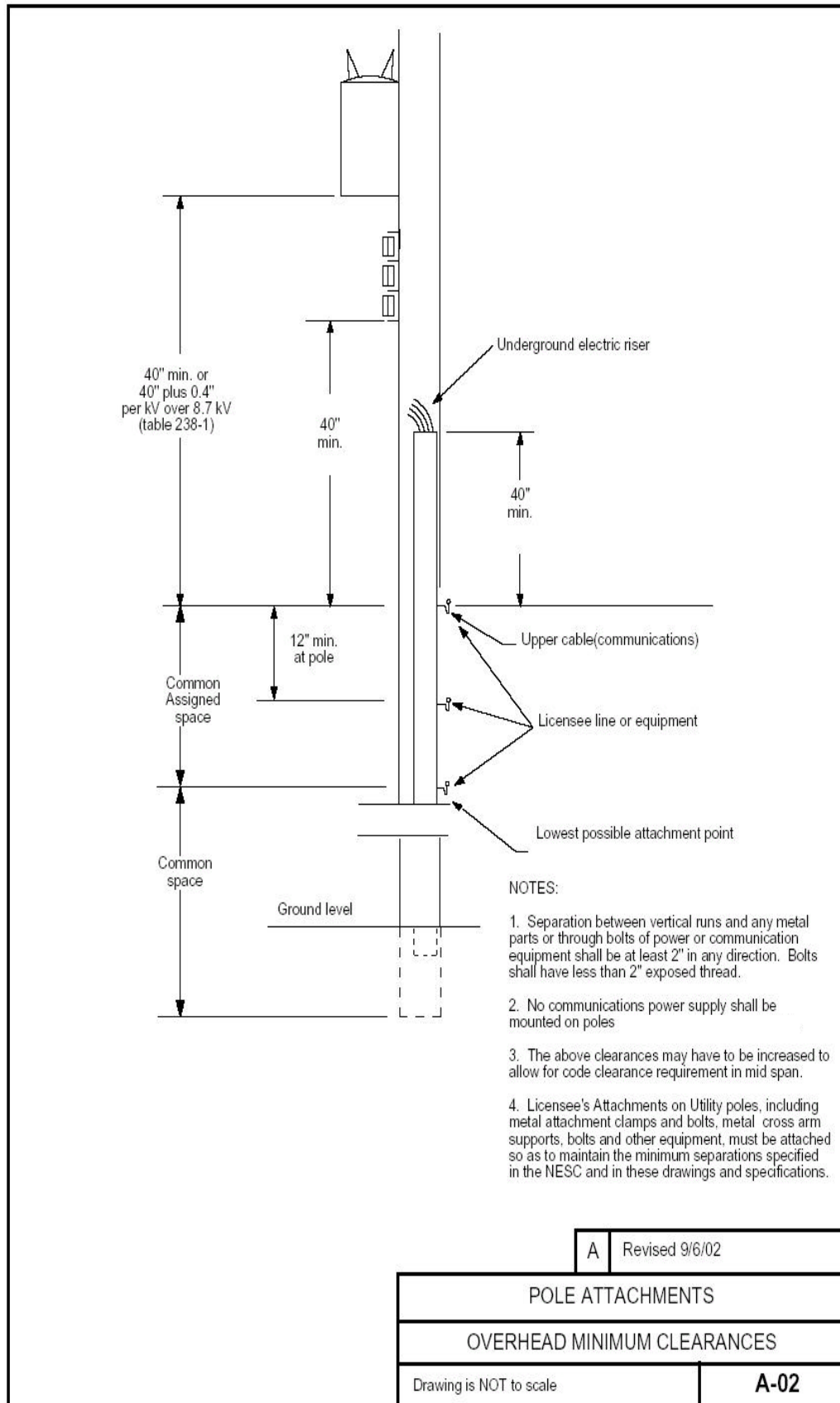
Attaching Company Name:

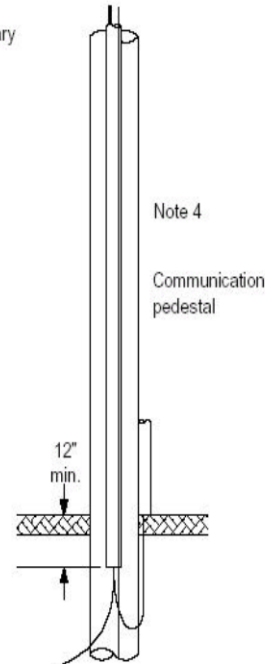
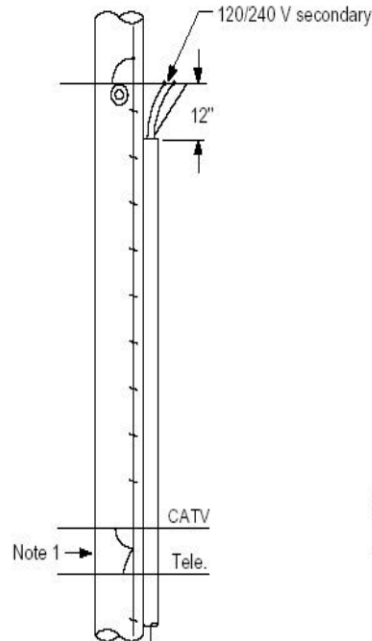
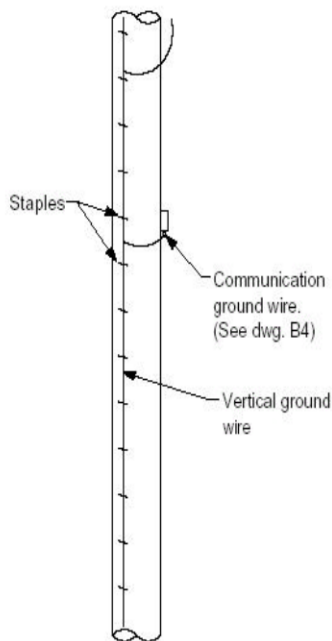
Type of Facility:

Project Name and/or Number:

Sequential Pole Count- Match to drawing	Attachments		Height above ground of Pri. Neutral (ft.)	Height above ground of lowest Power (ft.)				Height above ground of all Communications (ft.)				Design Criteria		Guying/ Anchor		Span (ft.)		Planned Date of Construction:		
				Secondary Triplex / Duplex	Secondary Drip Loop	Top of U/G Riser Conduit	Street Light Drip Loop	Other Power	Telephone Company	Cable Television	Communications Equipment	Other Communications Cable	Tangent/Line Angle (Deg)/Dead End (DE)	Stringing Tension (lbs) @ DEs only	If PUD Anchor, Load Calc (lbs)	PUD Anchor (Y/N)	Length			Minimum Ground Clearance
1																				Comment:
2																				
3																				
4																				
5																				
6																				
7																				
8																				
9																				
10																				







#### NOTES:

No communications power supply shall be mounted on Poles

Licensee's Attachments on Utility Poles, including metal attachment clamps and bolts, metal cross arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the NESC and in these drawings and specifications.

See Drawing #5

1. Licensee shall bond to Utility pole ground wherever Utility has a down ground on the pole. If the ground is under the metal U-guard, contact Utility to make the ground connection.
2. If no pole ground exists, the Utility will install a pole ground on the pole.
3. Bond wire shall be #6 bare copper or larger. If bond wire is unsupported for more than 12" long, staple to pole.
4. When communication's are underground, the power is overhead and it is required that the communications ground be interconnected to the power supply ground, the connection shall be made below grade.
5. In no case shall Licensee ground be connected to guys/anchors.
6. If a neutral isolation device is installed on this pole the attacher must contact Utility for special grounding instructions.
7. Licensee's messenger cable shall be bonded to Utility's pole ground wire at each pole

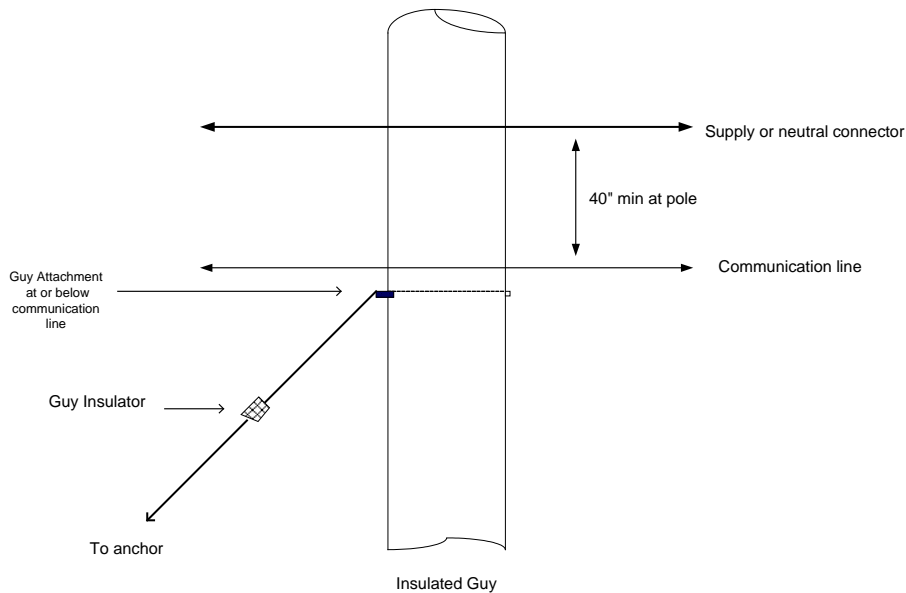
A Revised 9/6/02

POLE ATTACHMENTS

GROUNDING CONNECTIONS

Drawing is NOT to scale

A-03



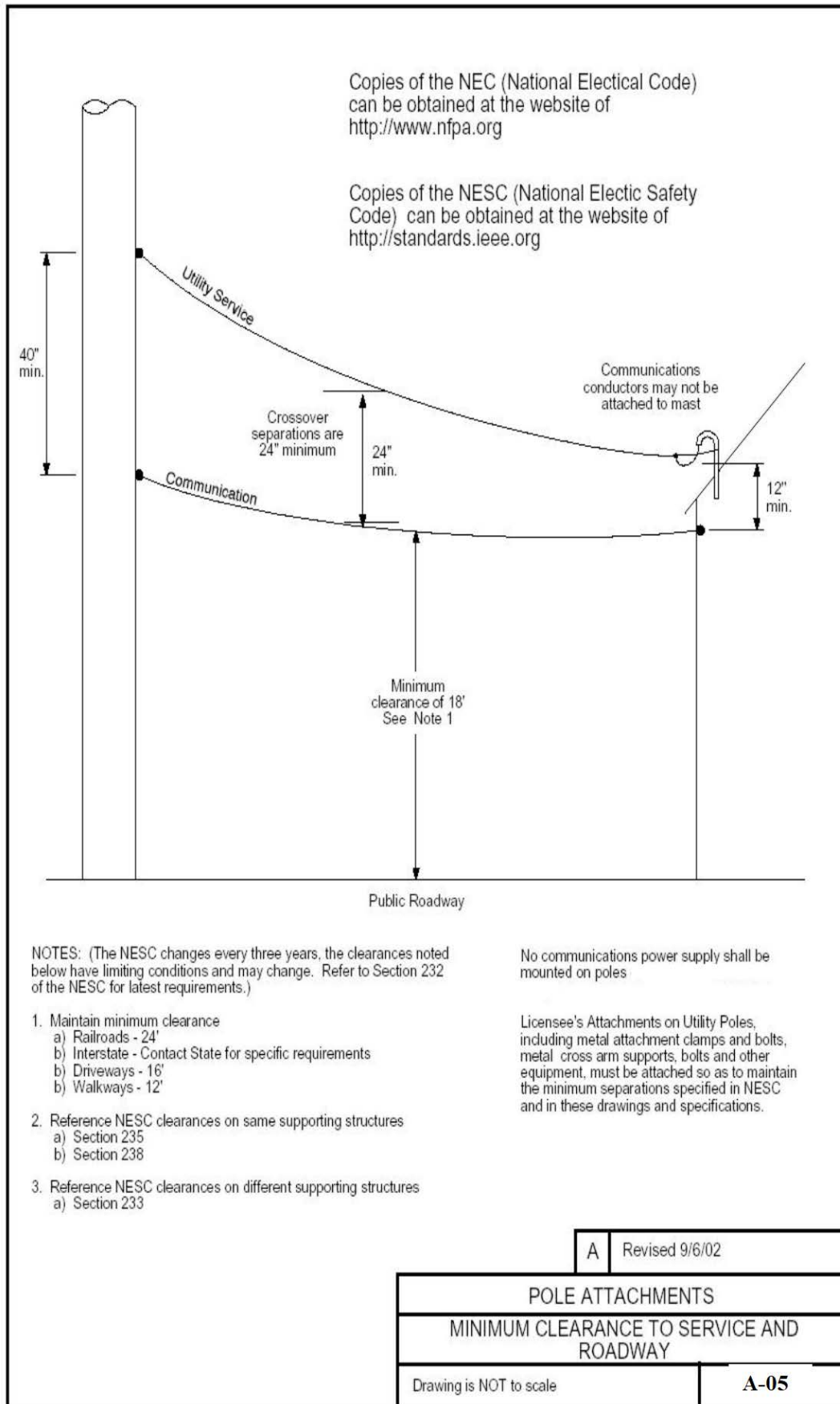
**NOTES:**

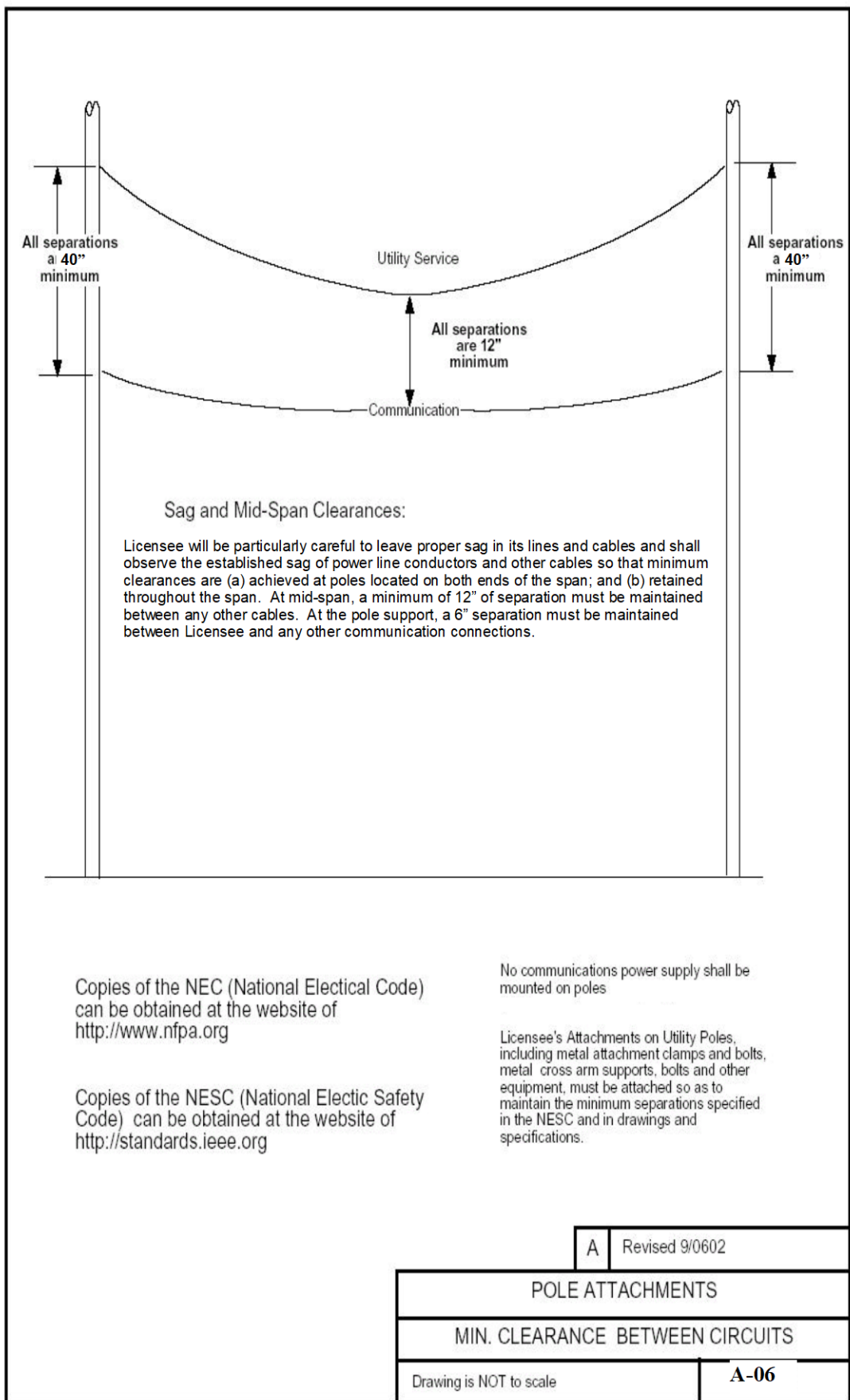
1. Licensee shall be responsible for procuring and installing all anchors and guy wires to support the additional stress placed on Licensor's poles by Licensee's Attachments.
2. Anchors and guy wires must be set on each Utility pole where there is a turn or angle and on all dead-end Utility poles.
3. Licensee may not place guy wires on the anchors of Licensor or Third Party User without prior written consent of all attaching entities and anchor owners.
4. No Attachment may be installed on a Utility pole until all required guys and anchors are installed, nor may any Attachment be modified or relocated in such a way as will materially increase the stress or loading on Utility poles until all required guys and anchors are installed.
5. Licensee's down guys shall not be bonded to ground or neutral wires of Licensor's pole and shall not provide a current path to ground from the pole ground or power system neutral.

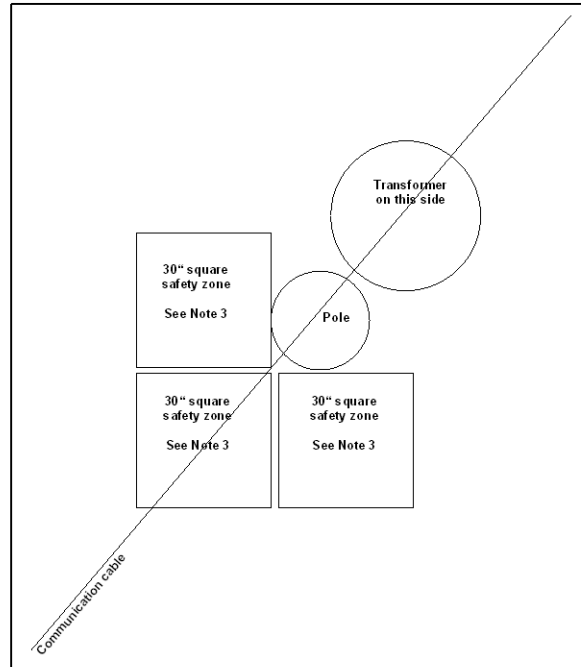
No communications power supply shall be mounted on poles.

Licensee's Attachments on Licensor's Poles, including metal attachment clamps and bolts, metal cross arm supports, bolts and other equipment must be attached so as to maintain the minimum separations specified in the NESC and in these drawings and specifications.

A	Revised 9/6/02
POLE ATTACHMENTS	
GUY WIRE REQUIREMENTS	
Drawing is NOT to scale	A-04







**NOTES:**

1. For new cable installations locate cable on the same side of the pole as Utility's lowest conductor.
2. Standoff brackets to mount cable to pole are not allowed without approval of Utility.
3. Climbing and workspace through the communication space shall extend from 40" below the lowest communication cable to the top of the pole.
4. On transformer poles the communication service drops shall be located so that they originate from the messenger on the side of the pole opposite the transformer.
5. Minimum clearances for climbing and working space shall be followed as per NESC section 236.

No communications power supply shall be mounted on poles

Licensee's Attachments on Utility Poles, including metal attachment clamps and bolts, metal cross arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the NESC and in these drawings and specifications.

A	Revised 9/6/02
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POLE ATTACHMENTS
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CLIMBING SPACE REQUIREMENTS
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Drawing is NOT to scale
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