

AGENDA ITEM 36

Discuss and take appropriate action on Pole Contract Agreement with the City of Georgetown.

ITS Director Jay Schade stated that the agreement allowed the County to hang the fiber optic cables on the City of Georgetown's existing poles at the rate of \$7.50 per pole per year, which amounts to approximately \$750 per year.

Moved: **Commissioner Boatright**

Seconded: **Commissioner Hays**

Motion: To approve a Pole Contract Agreement with the City of Georgetown to use the City's poles for fiber optic lines.

Vote: **5 - 0**

< Attachment >

**LICENSING AGREEMENT
FOR
COMMUNICATIONS ATTACHMENTS TO UTILITY FACILITIES**

This Licensing Agreement (hereinafter, the "Agreement"), dated August 27, 2002, is made by and between the City of Georgetown a municipal corporation of the State of Texas (hereinafter called "Utility"), and Williamson County (hereinafter called "Licensee").

RECITALS

- A. Licensee proposes to continue to install new cables, wires and associated equipment on Utility's Poles.
- B. Subject in all instances to considerations of Utility's service requirements including considerations of capacity, safety, reliability, and generally applicable engineering purposes, Utility is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee's Attachments on Utility's Poles, provided Utility shall have the right to refuse to issue any Permit hereunder whenever Utility reasonably determines consistent with applicable law, that the issuance of such Permit is not possible because of insufficient physical capacity on the Poles for reasons of safety, reliability and generally applicable engineering purposes.

In consideration of the promises, the mutual covenants, and the terms and the conditions contained in this Agreement, the parties mutually agree as follows:

I. DEFINITIONS

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

- A. Assigned Space: means space on Utility's 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 considered Assigned Space.
 - B. Attaching Entity: means any public or private entity that attaches to Utility's Poles to provide Communications Service.
 - C. Attachment: means each aerial cable together with its associated messenger cable, guy wire, anchors, associated hardware, repeater, receiver, appliance or other device or piece of equipment affixed to a Utility Pole utilized to provide Communications Service, provided, however, that overlashing an existing Attachment shall not be counted as a separate Attachment if the same entity, or a commonly owned or controlled affiliate, owns the overlashed cable or the new cable. This definition shall not apply to communications wires or facilities
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installed by the Utility for its own internal communications requirements or to provide energy information services such as automatic meter reading.

- D. 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 National Electric Safety Code ("NESC"), the National Electrical Code ("NEC"), the Texas Health & Safety Code, Chapter 752 (Vernon 1992) and any subsequent amendments which relate to the maintenance of proper clearances and related safety issues, the regulations of the Occupational Safety and Health Act ("OSHA") and/or other reasonable requirements of Utility applied on a non-discriminatory basis.
- E. Cable Service: means the provision of one-way transmission to subscribers of video programming; or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service by a cable system.
- F. Common Space: means space on Utility's Poles that is not used for the placement of wires or cables but which jointly benefits all users of the Poles or Conduit System by supporting the underlying structure.
- For Poles its shall include that portion of the Pole beneath ground level up to the lowest place on the Pole at which a telecommunications circuit may be attached;
- G. Communications Service: means the provision of Telecommunications Service, Cable Service or other lawful communications services over wire or cable facilities utilizing Attachments to Utility's poles.
- H. Joint User: means any governmental body, or other entity, including other public utilities which owns poles that are jointly used by Utility and to which Utility has extended, or in the future shall extend, privileges to jointly use Utility's Poles.
- I. Licensee's Affiliates: means an entity owned or controlled by or under common control with Licensee.
- J. Licensee's Communications Facilities: means all Attachments, including but not limited to cables, equipment and all associated equipment required to physically place or install such wires or cables, owned and/or utilized by the Licensee which attach to Utility's Poles.
- K. Make-Ready Work: means all work, as reasonably determined by Utility, required to accommodate the Licensee's Communications Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement and/or transfer of existing Attachments, inspections, engineering work, permitting work, tree trimming, Pole strengthening, and construction.

- L. Occupancy: means the use or specific reservation of space for Attachments on the same Utility Pole.
- M. Other Licensee: means a Joint User or any entity, other than the Licensee, to which Utility has extended, or in the future extends, a license to attach facilities to Utility's poles.
- N. Pedestals: means above ground housings, usually constructed of metal, which are used to enclose a cable splice and/or provide a service wire connection point.
- O. Pole: means a pole owned or controlled by Utility that is capable of supporting Attachments for Communications Services.
- P. Permit: means written authorization of Utility for Licensee to make, or maintain, Attachments to specific Poles pursuant to the requirements of the Agreement.
- Q. Pre-Permit Survey: means all work or operations required by Applicable Standards or Utility to determine the Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole. Such work includes, but is not limited to, field inspection, loading calculations and administrative processing.
- R. Reserved Space: means designated space on a pole that the Utility has reserved for its core electric utility service, pursuant to a development plan that reasonably and specifically projects a need for that space for the provision of core electric service, including moving the neutral as part of converting phases. Such reservation may include space for the future attachment of internal communications lines owned by the Utility, or hanging a transformer.
- S. Riser: means metallic or plastic encasement materials placed on vertically on the Pole to guide and protect communications wires and cables.
- T. Service Drop: means the last span that is installed to provide service to an individual customer(s).
- U. Tag: means to place distinct markers on wires and cables, coded by color or other means specified by Utility, that will readily identify the type of Attachment and its owner.
- V. Telecommunications Service: means the offering of telecommunications, for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- W. Utility Facilities: means all personal property and real property owned or controlled by Utility, including Poles.

II. SCOPE OF AGREEMENT

- A. Subject to the provisions of this Agreement, Utility hereby grants Licensee a revocable, assignable, and nonexclusive license authorizing Licensee to install and maintain Attachments to Utility's Poles.
- B. Licensee and Utility agree to be bound by all provisions of this Agreement and of the Permit(s) issued pursuant to this Agreement C. The parties agree that Utility will issue a Permit(s) to Licensee only when Utility reasonably determines in its sole judgment that (i) it has sufficient capacity to accommodate the requested Attachments, (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards. The parties further agree that any access to Utility's Poles made available to Licensee pursuant to this Agreement is to Utility's reserve capacity which may be reclaimed by Utility for future electric service use, including the attachment of its communications lines that are used for internal Utility operational requirements.
- C. No use, however lengthy, of any of Utility's Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easements or other ownership or property rights of any nature in any portion of such Facilities. After issuance of any Permit, Licensee shall be and remain a mere licensee. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of Utility's rights to the Utility Facilities.
- D. Nothing in this Agreement shall be construed as granting Licensee any right to attach Licensee's Communications Facilities to any specific Pole or to compel Utility to grant Licensee the right to attach to any specific Pole; provided, however, any denial of Licensee's request to attach or to maintain or modify an existing attachment to Utility's Poles shall be made by Utility on a non-discriminatory basis and only where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes. The National Electrical Safety Code is presumed to define safety, reliability and generally applicable engineering standards of access.
- E. Licensee is obligated to obtain all necessary certification, permitting, and franchising from federal, state and local authorities prior to making any Attachments.
- F. The parties agree that this Agreement does not in any way limit Utility's right to locate, operate and maintain its Poles in the manner that it believes will best enable it to fulfill its own service requirements.

- G. Nothing in this Agreement shall be construed to require Utility to install or retain any Pole for use by the Licensee when such Pole is not needed for Utility's own service requirements. Nothing in this Agreement shall be construed to require Utility to allow Licensee to use Utility's Poles after the termination of this Agreement.
- H. Licensee agrees that this Agreement is limited to the uses specifically authorized in this Agreement and any other use shall be considered a breach of this Agreement.

III. FEES AND CHARGES

- A. Licensee shall pay to Utility the fees and charges specified in Appendix A and shall comply with the terms and conditions specified in Appendix A.
- B. Attachment fees shall be calculated and payable for the entire year in which a Permit for such Attachment is issued under this Agreement; provided, however, (i) the amount of attachment fees due for the first year of this Agreement (*i.e.*, 2002) for all Licensee's attachments initially covered by this Agreement shall be calculated by multiplying the annual attachment fee by a fraction in which the numerator of the fraction is the number of days remaining in the current calendar year and the denominator is 365, and then subtracting from that amount a credit calculated by multiplying the same fraction by the amount Licensee has already paid in attachment fees this year under the prior agreement between the parties for the same attachments; and (ii) when a permit is issued for a new attachment after the beginning of the year for which payment is due, then the initial annual attachment fee for such permit shall be calculated by multiplying the annual attachment fee by a fraction in which the numerator of the fraction is the number of days remaining in the calendar year and the denominator is 365.
- C. Utility shall invoice Licensee for attachment fees annually. Licensee shall pay all invoices no later than forty-five (45) days after Licensee's receipt thereof; provided, however, if Licensee shall in good faith contest any portion of such invoice, then Licensee may withhold payment of that disputed portion of the invoice until the parties resolve the disputed amount and any amount then remaining due and payable after such resolution shall be subject to interest at the annual rate of 8%. (compounded monthly) beginning on the original due date of the invoice.
- D. Licensee shall submit annually to Utility, in a form mutually agreed upon by the parties, an inventory listing the number of Poles to which it has Attachments and the locations of all such Attachments provided, however, the initial inventory under this Agreement shall be jointly prepared by Licensee and Utility by Verizon to establish Licensee's baseline pole attachment count, such joint inventory to be based on Utility's existing plant records, including recent Utility field inspections, and any necessary additional field surveys/inspections. Subsequent inventories

shall be effective from January 1 of each year and shall be submitted by Licensee to Utility no later than February 1 of each year. Utility reserves the right to compare the information contained on the inventory to any actual field inspection or survey. Any Poles upon which Licensee has Attachments but that are not properly identified in the initial inventory under this Agreement shall be billed at two times the current annual rate. In the event that Licensee fails to submit an inventory, Licensee shall pay Utility, in addition to the current annual rates, all actual costs associated with Utility's performance of an inventory of Licensee's Attachments.

- E. If Utility does not receive any fee or other amount owed by Licensee within thirty (30) days after it becomes due, Licensee, upon receipt of ten (10) days written notice, shall pay interest to Utility, at the annual rate of 8%. (compounded monthly) beginning on the original due date of the invoice.
- F. Utility may make changes annually to the Fees and Charges set forth in Appendix A; provided, however, that Utility shall provide Licensee with at least three (3) month's prior written notice of the changes. Notwithstanding any other provision of this Agreement, Licensee may terminate this Agreement at the end of such notice period if the change in Fees and Charges is not acceptable to the Licensee by giving the Utility written notice of its election to terminate this Agreement at least ten (10) days prior to the end of the 3-month notice period. All fees contained in Appendix A are in effect and payable until adjusted pursuant to this Agreement.
- G. Licensee will be responsible for the costs of Make-Ready Work performed by Utility or an authorized contractor approved by Utility and required to accommodate Licensee's Communications Facilities on Utility's Poles consistent with the procedures and requirements set forth in Articles.
- H. Licensee shall not use risers on Poles without Utility's express prior written permission; provided, however, Licensee's existing risers on Utility's Poles shall be deemed to have express written permission. On all Poles on which there are electric air switches or risers, Licensee shall install its Attachments to such Poles using stand-off brackets approved by Utility.
- I. Wherever this Agreement requires Licensee to pay for work done or contracted by Utility, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overheads. Utility shall bill its services based upon actual costs, and such costs will be determined in accordance with Utility's cost accounting systems used for recording capital and expense activities.
- J. Wherever this Agreement requires estimated expenses to be paid prior to the undertaking of an activity and the actual cost of activity exceeds the estimated cost, Licensee agrees to pay Utility for the difference in cost. To the extent that

the actual cost of the activity is less than the estimated cost, Utility agrees to refund to Licensee the difference in cost.

- K. Subject to Article III, Paragraph C. above, nonpayment of any amount due under this Agreement beyond ninety (90) days shall constitute a default of this Agreement.

IV. SPECIFICATIONS

- A. 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 C-E, including the electrical design and physical design specifications applicable. All of Licensee's Communications Facilities must comply with all Applicable Standards including the then current editions of the NEC, the NESC and the Texas Health & Safety Code, Chapter 752 (Vernon 1992) and any subsequent amendments which relate to the maintenance of proper clearances and related safety issues, each of which is incorporated by reference in this Agreement; with the rules and regulations of the OSHA; and with any lawful rules or orders now in effect or hereafter issued by Utility or other authority having jurisdiction over the premises.
- B. Licensee agrees to Tag all of its Communications Facilities as specified in Appendix C within 24 months of the execution date of this Agreement.
- C. 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, and in a manner consistent with Applicable Standards.
- D. Licensee's Communications Facilities shall not interfere with the use of Utility's Poles by Utility or with the authorized use of such Utility's Poles by any Joint User or Other Licensee, nor shall Licensee allow its Communications Facilities to interfere with the operation of any Utility Facilities.
- E. 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 thirty (30) calendar days from receipt of written notice of the violation(s) from Utility, Utility may at its own option terminate and correct said conditions. Utility will attempt to notify Licensee in writing prior to performing such work whenever practicable. When Utility reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of Utility's service obligations, or pose an immediate threat to the physical integrity of Utility's Facilities, Utility may perform such work and/or take such action as reasonably necessary to eliminate such immediate threat without first giving written notice to the Licensee. As soon as practicable thereafter, Utility will advise Licensee in writing of the work performed or the

action taken. Licensee shall be responsible for paying Utility for all reasonable costs Utility incurred taking action under this subsection. Notwithstanding the above, failure of the Licensee to timely cure a violation shall constitute grounds for the Utility to terminate either the entire Agreement or individual Permits.

- F. Utility's service restoration requirements shall take precedence over any and all work operations of the Licensee on Utility's Poles
- G. If the Licensee does not exercise any access right granted pursuant to this Agreement and applicable permit within one hundred twenty (120) days of the effective date of such right and any extension thereof, Utility may use the space scheduled for Licensee's Attachment. In such instances, Utility shall endeavor to make other space available to Licensee, upon written request, as soon as reasonably possible.

V. PRIVATE AND REGULATORY COMPLIANCE

- A. (1) 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 Utility's Poles. Utility retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations under this Article 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.
(2) Licensee shall defend, indemnify and reimburse Utility for all loss and reasonable expense, including attorneys' fees, that Utility may reasonably 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 Utility's Poles. Utility shall give Licensee prompt written notice of the making of any claim or the commencement of any litigation or other proceeding covered by this Article V, Paragraph A.
- B. Licensee's Communications Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable local, state and federal laws.
- C. No Permit granted under this Agreement shall extend to any Pole on or within which the attachment of Licensee's Communications Facilities would result in a forfeiture of Utility's rights. If Licensee's Communications Facilities would cause such a forfeiture, Licensee shall promptly remove its Facilities upon receipt of written notice from the Utility. Utility will perform such removal at Licensee's expense after the expiration of sixty (60) calendar days from Licensee's receipt of the written notice.

- D. Consent by Utility to the construction or maintenance of any Attachments of Licensee shall not be deemed to be an acknowledgment that Licensee has the necessary authority to construct or maintain any such Attachments.

VI. APPLICATION FOR PERMIT PROCEDURES

- A. Licensee shall not install any Attachments on any Pole without first applying for and obtaining a Permit pursuant to the applicable requirements of Appendix C-E. Notwithstanding the foregoing, Licensee may attach, replace, relocate or modify subscriber drop lines attached to any pole, including lift/drop poles, without prior notice to Utility and without first submitting a Permit application to Utility or otherwise obtaining Utility's prior approval for such work. If Licensee attaches a subscriber drop line to a pole not previously authorized for Attachments by Licensee, then Licensee shall submit a Permit application to Utility within thirty (30) days of its initial attachment to such Pole. If Licensee already has Attachment(s) on poles on the effective date of this Agreement, it shall, within six (6) months submit a Permit Application for all such Attachments pursuant to the applicable requirements of Appendix B. Attachments to or rights to occupy other Utility Facilities not covered by this Agreement will only be allowed upon the execution of a separate Rider and/or a separate form of Agreement pursuant to applicable permitting.
- B. Consistent with applicable law, the overlashing of an existing Attachment by a non-affiliated third-party is considered a separate Attachment requiring a separate Agreement and prior authorization through the Permitting process. Absent such prior authorization, non-affiliated (i.e., not owning a majority equity interest in Licensee) third-party overlashing constitutes an unauthorized Attachment.
- C. Consistent with applicable law, the overlashing of Licensee's Communications Facilities by Licensee or Licensee's Affiliate is not considered a separate Attachment under this Agreement and therefore does not require any Permitting approval; but Licensee is required to provide the Utility with prior notification of such overlashing and are required to have a registered engineer certify that the overlashing can be accomplished in compliance with the standards identified in ARTICLE IV, Paragraph A.
- D. As part of the Permit application process, a professional engineer must conduct a Pre-Permit Survey and certify that Licensee's Communications Facilities can be installed on the identified Poles and/or portions of the Conduit System in compliance the standards identified in Article IV, Paragraph A. The professional engineer's experience must include prior work on cable communications attachments to electric utility poles.
- E. Within ninety (90) days of the receipt of a properly executed Application, including certified Pre-Permit Survey, Utility will complete its review and make a preliminary determination to grant or deny Licensee's Permit Applications subject

to completion of any necessary Make-Ready Work; and during such period the parties will discuss any issues regarding such applications, including any unusual engineering or Make-Ready requirements. Utility acceptance of the submitted design documents does not relieve the professional engineer or Licensee of full responsibility for any errors and/or omissions in the engineering analysis.

- F. If Make-Ready Work is required to accommodate Licensee's Attachments, Utility, Licensee or authorized contractors approved by the Utility shall perform such work pursuant to Article VII. Utility may maintain a list of approved contractors who are pre-authorized to perform Make-Ready Work and other required work on Licensee's Attachments. Licensee may submit additional contractors for Utility approval in advance of Make-Ready Work or other required work. Licensee shall be entitled to select one or more of the pre-approved contractors to complete the required Make-Ready Work or other required work on Licensee's Attachments.
- G. If the Utility receives Permit Applications for the same Pole or portion of Conduit System from two or more Licensees within (60) days of one another, and accommodating their respective requests would require replacement or modification of the Pole or Conduit or rearrangements of existing Attachments, Utility shall follow the procedures of Article IX.
- H. Upon completion of Make-Ready Work performed by Utility, Utility shall submit an invoice to Licensee for such Make-Ready Work consistent with Article III of this Agreement. Within three (3) business days after receipt of payment for any Make Ready Work, Utility will sign and return to Licensee the Application Permit which shall serve as authorization for Licensee to make its Attachment(s). Where advance payment for such Make-Ready Work has been made by Licensee, then Utility shall sign and return the Application Permit to Licensee immediately upon completion of the Make-Ready Work.

VII. MAKE-READY WORK/INSTALLATION

- A. In the event Utility determines that it can accommodate Licensee's request for Attachments, it will upon request advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment.
- B. Upon completion Licensee shall pay Utility's actual cost of Make-Ready Work. Utility at its discretion may require payment in advance based upon the estimated cost of Make-Ready Work.
- C. The parties agree that unless specifically determined otherwise as part of the individual Permit grant, all Make-Ready Work shall be performed only by Utility or a contractor selected by Licensee and authorized by Utility to perform such work, such authorization not to be unreasonably withheld.

- D. In performing all Make-Ready Work to accommodate Licensee's Communications Facilities, Utility will endeavor to include such work in its normal work schedule, but in any event no later than sixty (60) days after Licensee has accepted the proposed Make-Ready Work. In the event Licensee requests that the Make-Ready Work be performed on a priority basis or outside of Utility's normal work hours, Licensee agrees to pay any resulting increased costs. Nothing herein is intended, however, to require performance of Licensee's work before other scheduled Utility work.
- E. Before commencing any new installation or material modification of its Communications Facilities on Utility's Poles, Licensee must obtain Utility's approval, where required under Article VI of this Agreement, of Licensee's plans for such installation and/or modification, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. Where Licensee proposes to remove its Communications Facilities from Utility's Poles, Licensee shall notify and coordinate such activities with Utility; however, no Permit shall be required for such removal activity. All such work is subject to the insurance requirements of Article XVIII.

[Paragraph F. intentionally left blank.]

- G. Except as otherwise required in this Agreement, 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 or materially affect the structural integrity of Utility's Poles, or other Utility Facilities or any other facilities or equipment attached thereto.
- H. All of Licensee's installation, removal and maintenance work performed on Utility's Poles, or in the vicinity of other Utility Facilities, either by its own employees or contractors, shall be in compliance with all applicable regulations specified in Article IV, Paragraph A. Licensee shall assure that any person installing, maintaining, or removing its Communications Facilities be duly qualified and familiar with the regulations specified in Article IV, Paragraph A and the provisions of Article XVII.
- I. In the event that Licensee's Permit requests for Attachments are approved and Licensee agrees to have Utility commence work and steps are actually taken by Utility to perform any necessary engineering, administrative, and Make-Ready work and Licensee thereafter cancels, causing the job not to be done or completed, Licensee shall reimburse Utility for the Actual Costs incurred by Utility. --

VIII. TRANSFERS OF COMMUNICATIONS FACILITIES

- A. If Utility determines that a transfer of Licensee's Communications Facilities is necessary, Licensee agrees to allow such transfer Subject to the cost allocation

requirements contained in Article IX, Paragraph E of this Agreement, Licensee will perform such transfer within sixty (60) days after receiving notice from Utility, and shall notify Utility, in writing, within ten (10) days of the date of the transfer of Licensee's Communications Facilities that the transfer has occurred. as a result of Licensee's failure to take timely action. Utility shall not be liable for damage to Licensee's Communications Facilities except to the extent provided in Article XVI. Section A.

- B. If Utility performs the transfer(s) it will bill the Licensee for actual costs, including reasonable administrative costs, plus any associated damages as specified above if Licensee failed to timely transfer. Licensee shall reimburse Utility within thirty (30) days of the receipt of the invoice consistent with the requirements of Article III of this Agreement.

IX. FACILITY MODIFICATIONS AND/OR REPLACEMENTS

- A. In the event that any Pole to which Licensee desires to make Attachments is inadequate to support or accommodate the additional facilities in accordance with all Applicable Specifications, Utility will notify Licensee of the changes necessary to provide adequate space to accommodate the Attachment. Licensee shall pay to Utility the actual cost of making the changes. Utility may in its discretion require advance payment.
- B. If Utility receives Permit Applications for the same Pole from two or more Licensees within sixty (60) days of one another, and accommodating their respective requests would require replacement or modification of the Pole or Conduit or rearrangements of existing Attachments, Utility will allocate among them equitably the applicable costs associated with such replacement or rearrangement..
- C. Any strengthening, reinforcing or stabilizing of Poles, including 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 F.
- D. If in rearranging existing Attachments on a Pole to accommodate Licensee's Attachments, or if in replacing a Pole to accommodate such Attachments, it would become necessary to cut or trim one or more trees to clear the new location of Utility's cables or wires, to the extent not otherwise accounted for in the capital or maintenance costs of the pole, the actual cost of such tree cutting or trimming shall be included in the costs to be paid by Licensee under this Article. During storm restoration, tree removal costs will be shared equally among all Attaching Entities
- E. The costs for any rearrangement, relocation, transfer and removal of Licensees' Communications Facilities or the replacement of a Pole shall be allocated to Utility or Licensee or other Attaching Entity on the following basis:

1. If any Attaching Entity seeks to make an additional Attachment or modify an existing Attachment, or if Utility seeks to modify or add to its Utility Facilities, and such action requires the rearrangement, relocation or removal of existing facilities located on the Poles or the replacement of a Pole, the entity requesting the modifications or changes shall bear the entire cost of rearrangement, relocation and/or removal of the existing Communications Facilities and other facilities on the Pole, as well as the costs of any new pole. Except that Utility shall not be responsible for relocation and/or rearrangement costs in instances where it is reclaiming reserved space.
 2. In all other cases, where the rearrangement, relocation and/or removal of facilities are required by an event that is independent of any particular party, each party shall pay its own costs and expenses for the rearrangement, relocation and removal of its Attachments and facilities.
 3. If Utility intends to modify or alter a Pole, it shall provide Licensee with sixty (60) days written notification prior to making the proposed modification or alteration in order to provide Licensee a reasonable opportunity to modify or add to its existing Attachment. The notification requirement of this section shall not apply to routine maintenance or emergency situations. If the Licensee adds to or modifies its Communications Facilities after such notice, the Licensee shall bear the proportionate costs incurred by Utility, as reasonably determined by Utility, in making the space on the Poles accessible to Licensee.
- F. Except as otherwise required by applicable law, no provision of this Agreement shall be construed to require Utility to relocate its Attachments for the benefit of Licensee unless Licensee agrees to pay for the costs and expenses related to such relocation.

X. ABANDONMENT AND REMOVAL OF UTILITY FACILITIES

- A. Except with regard to routine maintenance of Utility's Facilities, if Utility desires at any time to abandon or remove any Utility Facilities to which Licensee's Communications Facilities are attached, it shall give Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon and remove such Utility Facilities. If, following the expiration of said 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 Facilities pursuant to Paragraph B of this Article, Utility shall have the right, to the extent consistent with applicable law, to remove and/or transfer such Facilities at Licensee's expense.

- B. Should Utility desire to abandon any Utility Facilities, Utility may at its sole discretion grant Licensee the option of purchasing said Facilities at the then present book value of such assets. Licensee must notify Utility in writing within ten (10) days of the date of receipt of Utility's notice of abandonment that Licensee desires to purchase the abandoned Facilities. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals allowing Licensee to independently own and access such Facilities. Should Licensee fail to secure the necessary governmental approvals, or should Utility and Licensee fail to enter into an agreement for Licensee to purchase Utility's Facilities prior to the end of the 60-day period under Paragraph A of this Article, then Licensee must remove its attachments as required under Paragraph A of this Article.
- C. Upon receipt of not less than sixty (60) days prior written notice from Utility to Licensee that any Utility Facilities must be removed by reason of any Federal, State, County, Municipal or other governmental requirement, including, but not limited, to underground conversion, or the requirement of a property owner, the license covering the use of said Utility Facilities shall terminate and Licensee's Communications Facilities shall be removed promptly from the affected Utility Facilities. If Licensee fails to remove its Communications Facilities from such Utility Facilities, Utility shall have the right to remove such facilities at Licensee's expense.

XI. REMOVAL OF COMMUNICATIONS FACILITIES

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) days of expiration or termination, Utility shall have the right, to the extent consistent with applicable law, to remove such facilities at Licensee's expense.

XII. TERMINATION OF PERMITS

- A. 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 covered by the Permit.
- B. If after ninety (90) days from the issuance of a Permit, Licensee has not attached its Communications Facilities, and there is no evidence of ongoing construction, Utility reserves the right to cancel said Permit upon thirty (30) days written notice to Licensee.

- C. Licensee may at any time surrender any Permit for Attachment and remove its Communications Facilities from the affected Pole(s) and shall immediately give Utility written notice of such removal. 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 Utility's Poles or Conduit System within thirty (30) days thereafter, Utility shall have the right to remove Licensee's Attachments at Licensee's expense.

XIII. INSPECTION OF LICENSEE'S FACILITIES

- A. Utility reserves the right to make reasonable inspections of Licensee's Communications Facilities at any time, utilizing its own employees or contractors, and Licensee shall reimburse Utility for the actual expense of such inspections, provided, however, that utility shall not charge Licensee for the costs of inspection of Utility's own facilities that are unrelated to Licensee's Attachments. Utility may undertake such inspections annually, but Licensee shall not be responsible for the actual costs of any inspection conducted more frequently than every three (3) years, unless the inspection reveals that Licensee is in violation of this Agreement.
- B. Utility will give Licensee ninety (90) days advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.
- C. Licensee agrees to bring its Attachments into full compliance with this Agreement in the event that any inspection results in a finding by Utility that Licensee is not in compliance with this Agreement within thirty (30) days of receipt of notice. In addition to inspecting Attachments in order to ensure that they are consistent with the Applicable Standards, Utility will also identify any and all unauthorized Attachments and may utilize Licensee's annual inventory to assist in this process.
- D. The making of periodic inspections, or the failure to do so, shall not operate to impose upon Utility any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing

XIV. UNAUTHORIZED OCCUPANCY OR ACCESS

- A. If any of Licensee's Communications Facilities, including overlashing by an unaffiliated third-party (i.e., a party not owning a majority equity share of Licensee), are found occupying any portion of any of Utility's Poles for which no Permit has been issued and remains in effect, Utility, without prejudice to its other rights or remedies under this Agreement, may (i) terminate the Licensee's Permits related to the Poles that have the unauthorized occupancy, (ii) terminate this Agreement, (iii) assess an Unauthorized Access Fee (as specified in Appendix A) and/or (iv) remove Licensee's Communications Facilities at Licensee's expense.
- B. No act or failure to act by Utility with regard to said unauthorized use shall be deemed as ratification of the unauthorized use and if any Permit should be subsequently issued, said Permit shall not operate retroactively or constitute a waiver by 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 said unauthorized use from its inception.

XV. PREPAYMENT OF FEES

Utility reserves the right , at its sole discretion, to require the Licensee to furnish advance payment for each Attachment in the amount of the annual attachment rate as specified in Appendix A .

XVI. LIABILITY AND DAMAGES

- A. Utility reserves to itself the right to maintain and operate its Poles and Conduit System in such manner as will best enable it to fulfill its own service requirements. Utility shall exercise reasonable precaution to avoid damaging Licensee's Communications Facilities and shall make an immediate report to the Licensee of the occurrence of any such damage caused by its employees, agents or contractors. Subject to Article XVI, Paragraph C, Utility agrees to reimburse the Licensee for all reasonable costs incurred by the Licensee for the physical repair of such facilities damaged by the negligence of Utility, provided, however, that Utility shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's Communications Facilities. Utility shall not be liable to Licensee for any special, indirect, punitive, or consequential damages or any fines and penalties arising in any manner whatsoever, including, but not limited to, Utility's negligence, out of the use of Utility's Poles or Conduit System or Utility's actions or omissions in regards thereto, provided, however, Utility shall be liable for such damages, fines and penalties arising from the gross negligence or willful misconduct of Utility, its employees, agents or contractors.

B. Unless resulting from the negligent acts of Utility, including its agents, employees, servants or contractors and subject to Paragraph D of this Article, and only to the extent permitted by law, Licensee shall defend, indemnify and hold harmless Utility and all associated, affiliated, allied and subsidiary entities of Utility, whether existing now or in the future, and their respective officials, officers, departments, agencies, counties, boards, representatives, employees, agents, contractors and attorneys against any and all liability, claims, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses, demands, lawsuits or disputes (including reasonable attorney fees of counsel selected by Utility and all other costs and expenses of litigation) arising in any way from any of the following:

1. Any acts or omissions from the construction, maintenance, use or operation of Licensee's Communications Facilities, including, but not limited to, claims and demands for damages or loss from intellectual property infringement, for libel and slander, for trespass, for unauthorized use of television or radio broadcast programs and other program material and for infringement of patents with respect to the manufacture, use and operation of Licensee's Communications Facilities on Utility's Poles, or otherwise;
2. Any work performed by Utility that was necessitated by the installation, maintenance, presence, use or removal of Licensee's Communications Facilities or from any work this Agreement authorizes Utility to perform on Licensee's behalf;
3. Any damage to property, injury to or death of any persons, including payments made by Utility under any Workmen's Compensation Laws or under any plan for employees' disability and death benefits, arising out of the erection, maintenance, repair, presence, use, relocation, transfer or removal of Licensee's Communications Facilities or the proximity of Licensee's Communications Facilities to the Utility's Facilities or the property of any other Attaching Entity, or by any act or omission of Licensee on or in the vicinity of Utility's Poles;
4. Any property damage, injury or death arising out of the performance or nonperformance of any work or obligation undertaken by Licensee pursuant to this Agreement;
5. Any occurrence related to the erection, maintenance, repair, presence, use, relocation, transfer or removal of Licensee's Communications Facilities, including liabilities incurred as a result of violation of any law, rule, or regulation of the United States, State of Texas or any other governmental entity or administrative

agency; provided, however, that Licensee shall not be obligated to defend, indemnify or hold harmless Utility or its affiliated entities and persons for violations of any law, rule or regulation by Utility or its affiliated entities or persons.

6. A violation of any state or federal law arising out of Licensee's erection, installation, construction, maintenance, repair, presence or use, relocation, transfer or removal of Licensee's Communications Facilities or the proximity of Licensee's Communications Facilities to Utility's Facilities or the property of any Attaching Entity, or by any act or omission of Licensee on or in the vicinity of Utility's Poles.
- C. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by Utility of the provisions of Texas law limiting municipal liability. No indemnification provision contained in this Agreement under which Licensee indemnifies Utility shall be construed in any way to limit any other indemnification provision contained in this Agreement.
 - D. Utility shall give Licensee prompt written notice of the making of any claim or the commencement of any litigation or other proceeding covered by this Article.

XVII. DUTIES, RESPONSIBILITIES, AND EXCULPATION

- A. Licensee acknowledges and agrees that Utility does not warrant the condition or safety of Utility's Poles, or the premises surrounding the Poles, and **LICENSEE HEREBY ASSUMES ALL RISKS OF ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF THE POLES, CONDUIT SYSTEM AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN, OR SURROUNDING THE POLES.**
- B. 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.
- C. **UTILITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO UTILITY'S POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- D. Licensee acknowledges that Utility does not warrant that all Poles, and agrees that Utility is not liable for any injuries or damages caused by or in connection with

missing labels or otherwise improperly labeled Poles, Licensee further agrees to immediately notify the Utility or replace any tags that are missing or otherwise improper.

- E. The parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, servants, employees, contractors and subcontractors will work near electrically energized lines, transformers, or other equipment of Utility, 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, servants, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of Utility, and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, servants, 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 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.
- F. In the event 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 Utility in full for all costs and expenses incurred in order to comply with Licensee's request for de-energization of any equipment or line. In the event that Licensee shall cause an interruption of service by damaging or interfering with any equipment of Utility, Licensee at its expense shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify Utility immediately.
- G. Licensee further warrants that it is apprised of, conscious of, and understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on Utility's Poles or around Utility's Conduit System by Licensee's employees, servants, agents, contractors or subcontractors, and accepts it as its duty and sole responsibility to notify and inform Licensee's employees, servants, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

XVIII. INSURANCE

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

1. **Worker's Compensation and Employers' Liability Insurance.** Statutory worker's compensation benefits and employers' liability insurance with a limit of liability no less than \$1,000,000 each accident. This policy shall be endorsed to include a waiver of subrogation in favor of Utility. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
 2. **Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities (commonly known as XCU coverage). Limits of liability not less than \$1,000,000 general aggregate, \$1,000,000 products/completed operations aggregate, \$1,000,000 personal injury, \$1,000,000 each occurrence.
 3. **Automobile Liability Insurance.** Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.
 4. **Umbrella Liability Insurance.** Coverage to be in excess of employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than \$4,000,000 each occurrence, \$4,000,000 aggregate.
 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's 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.
- B. The insurer must be approved by Utility or authorized to do business under the laws of the State of Texas and have an "A" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, worker's compensation, comprehensive public liability and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article with the same limits.
- C. Prior to the execution of this Agreement and upon renewal of each insurance policy during the term of this Agreement, Licensee will furnish Utility with a

Certificate of Insurance and upon request, certified copies of the required insurance policies. The Certificate shall reference this Agreement and worker's compensation and property insurance waivers of subrogation required by this Agreement. Utility shall be given thirty (30) days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. Utility, its council, boards, commissions, agencies, officers, employees and representatives (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except worker's compensation, which shall be so stated on the Certificate of Insurance. All policies, other than worker's compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles. Licensee shall defend, indemnify and hold harmless Utility and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article.

- D. The limits of liability set out in this Article 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 Utility's or Licensee's exposure to risk.
- E. 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 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's employees or agents, (4) that exclude coverage of liability for injuries or damages caused by Licensee's contractors or contractor's employees, servants or agents, or (5) that contain a standard form pollution exclusion or exclude claims or suits that arise from the effects of electromagnetic fields or radiation (to the extent such coverage cannot be obtained through CGLI, Licensee shall obtain equivalent insurance to insure the property against environmental hazards). This list of prohibited provisions shall not be interpreted as exclusive.
- F. 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.

XIX. AUTHORIZATION NOT EXCLUSIVE

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.

XX. ASSIGNMENTS OF RIGHTS

- A. This License Agreement and associated Permits may not be assigned, transferred, sold, or disposed of in whole or in part by voluntary sale, merger, consolidation, or otherwise by force or involuntary sale, without the express consent of Utility, expressed by passage by the City Council of the City of Georgetown of an ordinance. Any such consent shall not be unreasonably withheld. Assignment, transfer, sale, disposal, merger, or consolidation shall include a change of operating control of Licensee, expressly excepting an assignment or transfer to entities that own a majority equity interest in Licensee, or are controlled by Licensee.
- B. Without Utility's prior written consent, Licensee shall not sub-license its rights under this Agreement to an unaffiliated third party, including but not limited to allowing such third parties to place Attachments on or within Utility's Poles, directly or through overloading, or to place Attachments for the benefit of such third parties on Utility's Poles. Any such action shall constitute a material breach of this Agreement.

XXI. FAILURE TO ENFORCE

Failure of 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.

XXII. TERMINATION OF AGREEMENT

- A. Notwithstanding Utility's rights under Article XII, Utility shall have the right 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:
1. Construction, operation or maintenance of Licensee's Communications Facilities in violation of law or in aid of any unlawful act or undertaking; or
 2. Construction, operation or maintenance of Licensee's Communications Facilities after any authorization required of the Licensee has lawfully been denied or revoked by any governmental or private authority or violation of any other agreement with the municipality; or
 3. Construction, operation or maintenance of Licensee's Communications Facilities without the insurance coverage required under Article XVIII.

- B. Utility will notify Licensee in writing within ten (10) days of any condition(s) applicable to Paragraph A above. Licensee shall take immediate corrective action to eliminate any such condition(s) within ten (10) days and shall confirm in writing to 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, Utility may immediately terminate this Agreement. In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, Utility may seek removal of Licensee's Communications Facilities pursuant to the terms of Article XI, provided, that Licensee shall be liable for and pay all fees and Charges pursuant to terms of this Agreement to Utility until Licensee's Communications Facilities are actually removed.

XXIII. TERM OF AGREEMENT

- A. This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect until August 27, 2012. Either party may terminate this Agreement at the end of the term by giving to the other party written notice of an intention to terminate the Agreement at least six (6) months prior to the end of the said term.
- B. Even after the termination of this Agreement, Licensee's and Utility's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's Communications Facilities as provided for in Article XVI.

XXIV. 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.

XXV. NOTICES

Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail, return receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

If to Utility, at:

- City Manager
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627

If to Licensee, at

Information Technology Services Director
405 Martin Luther King Blvd
Georgetown TX 78626

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

XXVI. ENTIRE AGREEMENT

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

XXVII. 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 the Agreement to either party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the parties that the Agreement be administered as if not containing the invalid provision.

XXVIII. 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 Texas.

XXIX. INCORPORATION OF RECITALS AND APPENDICES

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

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

WITNESS:

CITY OF GEORGETOWN

BY: _____

TITLE: _____

WITNESS:

WILLIAMSON COUNTYJane E. Jablin
_____BY: John C. Dwyer 8-27-02TITLE: County Judge

APPENDIX A

ATTACHMENT FEES AND CHARGES

Effective Date: 8/27/2002

Pre-Permit Survey Fee
(Actual costs or by Licensee)

Make-Ready Charges
(Actual costs)

Annual Pole Attachment Fee
(Multiplied per pole)

\$7.50

Inspection Fee
(Actual costs)

Unauthorized Attachment Penalty Fee
(3 x annual attachment fee, per occurrence)

Failure To Tag Penalty
(1/4 the annual attachment fee, per occurrence)

Failure to move/remove facilities penalty
(1/4 annual rate per day, per pole)

APPENDIX B**POLE ATTACHMENT APPLICATION PROCESS**

The following procedure is to be followed by all Licensees seeking to make new attachments on Utility's poles. Note, no entity may make any attachments to Utility's poles without having first entered into a binding Pole License Agreement.

1. A Licensee seeking to make new attachment(s) shall obtain a Permit Application from the Utility (attached).
2. Licensee shall have a professional engineer complete a Pre-Permit Survey which will review the design of the proposed attachment(s) to determine the feasibility of the request and identify any necessary make ready-work to accommodate the attachment(s). Attached to this Appendix is a minimum design review information and a worksheet establishing the minimum specifications that the proposed attachment must meet.
3. Licensee shall submit the completed Permit Application including a copy of the Pre-Permit Survey design calculations and recommendations on make-ready work. The engineering analysis must be signed and sealed by the professional engineer.
4. The Utility will review the engineer's recommendations and discuss any issues with the Licensee.
5. Utility will complete the make-ready work according to the terms of the Agreement.
6. Utility will sign and return the Application Permit authorizing the Licensee to make its attachment(s).

APPENDIX C

APPLICATION FOR PERMIT

Application Date: ____/____/____

To: [Insert Address of Permitting Department]

☐ Desire to Attach to Poles☐ Desire to Modify Existing Attachments

Narrative Description of proposed activity:

In accordance with the terms and conditions of the License Agreement dated _____, application is hereby made for a permit to occupy/and or modify existing attachments to the poles in the locations detailed on the attached Field Data Sheets and Map Designs and pursuant to the attached "Minimum Design Review Information."

Licensee has attached a Pre-Permit Survey that has been certified by an engineer experienced with communications attachments to electric utility facilities. The engineer's name and registration number is _____, Reg# _____

Licensee _____

Contact Person _____

Signature _____

Title _____

Telephone No. _____

Permission is hereby granted to Licensee to attach and/or modify existing attachments to the poles listed on the attached Field Data Sheets, subject to payment of the necessary Make-Ready Work charges attached.

Date _____

Utility _____

Approved By _____

Title _____

Telephone No. _____

Signature _____

Date ____/____/____

APPENDIX D**SPECIFICATIONS FOR LICENSEE'S ATTACHMENTS****0 OVERHEAD UTILITY POLES**

The following engineering and construction practices will be followed by Licensee when making Attachments to Utility Poles.

- A. All attachments shall be made in accordance with the Applicable Standards as defined in Article I. Definitions.
- 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 National Electrical Safety Code (NESC) and in drawings and specifications Utility may from time to time furnish Licensee. (See Drawings T1-T5)
 - 2. Service Drop Clearance: The parallel minimum separation between Licensee's service drops and telephone service drops shall be twelve (12) inches, and the crossover separation between the drops shall be twenty-four (24) inches. (See Drawing T6)
 - 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 12" of separation must be maintained between any other cables. At the pole support, a 12" separation must be maintained between Licensee and any other connection. (See Drawing T7)
 - 4. Service Clearances: A four-inch (4") separation shall be maintained between Utility's service cable and/or any Other Licensee's facilities located on the customers private property in accordance with the National Electrical Code (NEC).
 - 5. Vertical Runs on Poles: All vertical runs on poles, including those for power feed for TV amplifiers, shall be placed on the quarter faces of the pole and shall be covered by a riser guard with a two-inch (2") clearance in any direction from cable, bolts clamps, metal supports and other equipment. Secondary cable providing service to street lights may be covered with non-metallic conduit to allow minimum clearances to communication cables as permitted in the NESC.

6. Climbing Space: A clear climbing space must be maintained at all times on the face of the pole. All Attachments must be placed as to allow and maintain a clear and proper climbing space on the face of the Utility Pole. Licensee's cable Attachments shall be placed on the same side of the pole as other communications cable. In general, all other Attachments and vertical runs should be placed on pole quarter faces. (See Drawings T9-T10)

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 the Utility'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 the Utility or Third Party User without the anchor owner's prior written consent.
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 the Utility's Pole and shall not provide a current path to ground from the pole ground or power system neutral..

D. Certification of Licensee's Design

1. The Licensee's application for attachment to Utility's poles must be signed and sealed by a registered Professional Engineer, certifying that the attaching company's aerial cable design fully complies with the NESC and the Utility's Construction Standards.
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 the Utility's facilities and other Third Party facilities that may be installed on the poles.

E. Miscellaneous Requirements

1. Cable Bonding: Licensee's messenger cable shall be bonded to Utility's pole ground wire at each pole that has a ground wire.
2. Customer Premises: Licensee's service drop into customer premises shall be protected as required by the most current edition of the NEC.

3. Telecommunication Cables. All telecommunication cables not owned by Utility shall be attached within the communication space that is located 40 inches below the Utility neutral. (See Drawings T1, T2, T5, T6, T7)
4. Riser Installations: All Licensee's riser installations shall be placed on metal stand-off brackets. (See Drawing T5)
5. Identification. All Licensee's Facilities, including all cable, shall be identified with a band type marker or other identification acceptable to Utility at each Attachment. The marker must identify the Licensee and must contain Licensee's emergency phone number. (See Drawing T8)
6. Safety Zone. No mounting brackets are permitted in the safety zone. The safety zone between communication facilities and supply facilities on the same pole extends horizontally out to the boundaries of the climbing space and working space. The safety zone is measured vertically from the level of the closest surface of the communication facility to the level of the closest surface of the supply facility. The required clearance of the safety zone is measured vertically between the levels of the equipment involved. Stand off bracket installation will not be allowed to meet the 40" clearance requirement. (See Drawings T9-T10)

F. Utility Construction Standards

1. Refer to the attached Utility Construction Standards, or obtain the applicable construction standards from the Utility in accordance with the affected Utility's requirements.
2. Apply the Utility Construction Standards in coordination of the applicable NESC, NEC or Texas Statute code requirements.

APPENDIX E

DRAWINGS

APPENDIX F**DISTRIBUTION LINE
MINIMUM DESIGN REVIEW INFORMATION
AND SUGGESTED WORKSHEET**

The following information is provided, and corresponding information must be submitted with each application for pole attachments on the power company 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 application must include a report from a professional engineer registered to practice in the state of Texas and experienced in electric utility system design. This report must clearly identify the proposed construction and must verify that the attachments proposed will maintain the power company's compliance with NESC Class B construction for the loading district 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 application. The applicant shall performed all required calculations and be ready to provide the detailed information below within a two (2) week notice. Applicant shall keep copies of the engineering data available for a period of 20 years.

In determining compliance, the following minimum conditions shall be used in the calculations for pole strength:

1. All single phase lines shall be assumed to have been reconductored to 4/0 AWG ACSR (code name Penguin) conductor for both phase and neutral. (If the Utility standard size conductor is larger, enter the larger size here) If a larger conductor size exists, the larger size shall be used in the calculations.
2. All three phase lines shall be assumed to have been reconductored to 4/0 AWG ACSR (code name Penguin) conductor for three (3) phases and neutral. (If the Utility standard size conductor is larger, enter the larger size here) If existing conductors are larger than 4/0 AWG ACSR, the larger size shall be used in the calculations.
3. All pole lines shall assume a secondary/service conductor, installed from pole to pole of #4/0 AWG triplex cable, with a messenger.
4. For pole strength calculations, all poles shall be as they actually exist, or be considered Class 4 for calculations.
5. All line angles or dead ends shall be guyed and anchored. Transverse pole strength shall not be assigned to attaching pole users for line angles.
6. Points of attachment shall be as they actually exist on the poles.

7. Any Utility approved joint anchors shall utilize guy insulators.

Lessee shall comply with any Utility safety factors in their designs. The engineer requesting an attachment shall provide for each project the following confirmations:

Required permits that have been obtained:

- _____ (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
- _____ (y/n) Notified other pole users of contacts or crossings

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 Texas Dept. of Transportation requirements
- _____ (y/n) Placed permit number on plans.
- _____ (y/n) Called Diggers Hotline or equivalent service.
- _____ (y/n) Included sag/tension data on proposed cable.

Calculations are based upon _____ (yr) edition of the NESC and _____ (yr) editions of the Texas State requirements.

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

The engineer requesting an attachment shall provide for each pole(s) to which an attachment is requested the following information:

Project ID _____
 Pole number _____ (if pole tag missing contact Utility)
 Pole class _____ (existing - i.e., 4, 3, 2...)
 Pole size _____ (existing - i.e., 35, 40)
 Pole type _____ (Southern Yellow Pine, Douglas Fir,....)
 Pole fore span _____ (feet)
 Pole back span _____ (feet)
 Calculated bending moment at ground level: _____ (ft-lbs)

Existing:

Power phase cond. ____ qty of ____ AWG @ ____ feet AGL
 Power neutral cond. ____ qty of ____ AWG @ ____ feet AGL
 Power sec. cond. ____ qty of ____ AWG @ ____ feet AGL
 Telco #1 cables ____ qty of ____ dia. @ ____ feet AGL
 CATV #2 cables ____ qty of ____ dia. @ ____ feet AGL
 User #3 cables ____ qty of ____ dia. @ ____ feet AGL
 User #4 cables ____ qty of ____ dia. @ ____ feet AGL
 User #5 cables ____ qty of ____ dia. @ ____ feet AGL
 User #6 cables ____ qty of ____ dia. @ ____ feet AGL

Proposed:

Proposed cables ____ qty of ____ dia. @ ____ feet AGL
 Proposed cables ____ qty of ____ dia. @ ____ feet AGL

AGL = Above ground level

The minimum vertical clearance under all loading conditions for the proposed cable and 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.

Calculated bending moment at ground level: ____ (ft-lbs)
 Pole breaking bending moment at ground level: ____ (ft-lbs)
 Calculated transverse safety factor: ____ (ratio)

Proposed loading data (provide similar data for each cable proposed):

A. Weight data (cable and messenger)

1) Vertical weight, bare SV = ____ #/ft

B. Tension data (final tensions on messenger)

1) NESC maximum load for area of const. ____ lbs

2) 60°F, NO wind ____ lbs.

The engineer requesting an attachment shall provide for each cable transverse guy, or dead end to which guys and/or anchors are attached, the following information:

Pole number _____

Calculated cable messenger tension under NESC maximum loading conditions: ____
 (lbs)

If connection is:

A dead end, is it a single or double? ____ (S, D)

A change in tension, what is change? ____ (lbs)

A line angle, what is angle change? ____ (degrees)

For each dead end:

Point of attachment for guy hook _____ (feet AGL)
Anchor distance from pole _____ (feet)
Calculated guy tension _____ (lbs)
Rated guy working strength _____ (lbs)

For each change in tension:

Point of attachment for guy hook _____ (feet AGL)
Anchor distance from pole _____ (feet)
Calculated guy tension _____ (lbs)
Rated guy working strength _____ (lbs)

For each line angle:

Point of attachment for guy hook _____ (feet AGL)
Anchor distance from pole _____ (feet)
Calculated guy tension _____ (lbs)
Rated guy working strength _____ (lbs)

For each anchor:

Anchor distance to nearest anchor _____ (feet)
Calculated anchor tension _____ (lbs)
Rated anchor strength _____ (lbs)
Soil composition
(sandy, loam, clay, rock) _____

AGENDA ITEM 37

Discuss and take appropriate action on proposals received for mechanical engineering.

Bob Space explained that this request pertains to mechanical engineering design and oversight at the Justice Center.

Proposals were received from the following:

Aguirre Corporation, Dallas, Texas

Hendrix Consulting Engineers, Round Rock, Texas

Novaré Engineers, Inc., Providence, Rhode Island

Moved: **Commissioner Heiligenstein**

Seconded: **Commissioner Hays**

Motion: To award the proposal for mechanical engineering at the Justice Center to Hendrix Consulting Engineers of Round Rock, Texas.

Vote: **5 - 0**

< Attachment >