

City of Austin, Texas
Purchasing Office

Price Agreement No: NS100000019
Date Issued: February 12, 2010
Page 1 of 1

Distribution:

CTM- Kevin Burns
Buyer

Contracting Agency:

Purchasing Office

CSN/SCC, Commodity Code No.:

96879

Commodity/Service:

Distribution Pole License Agreement

Estimated Dollar Value:

NTE \$12,633.30

Cash Payment Terms:

Net 30

F.O.B. Point:

Destination, Freight Prepaid & Allowed

Contract Period:

May 1, 2010 through April 30, 2015

Extension Options:

None

Source, Address, Phone and

Oncor Electric Delivery Company
1601 Bryan St.
Dallas, TX 75201

Replaces contract no.:

Buyer Name and Signature:



Mick Osborne, Specialist Sr. Buyer
Purchasing Office, (512)974-2995

Contract No.

NS100000019

Requisition No.:

RQM 5600 09120700095

Tracking No.:

N/A

mso



Supply Chain Services

VIA CERTIFIED MAIL 7100 0000 9540 3000 2351

June 21, 2007

Legal Department
City of Austin dba COA - CTM - GAATN
P O Box 1088
Austin, Texas 78701

RE: Updated W-9 for Oncor Electric Delivery Company – Agreement No. S0504402C ("the Agreement") by and between Oncor Electric Delivery Company, formerly TXU Electric Delivery Company, and City of Austin dba COA - CTM - GAATN

To Whom It May Concern:

As you were previously notified, TXU Electric Delivery Company has recently changed its name to Oncor Electric Delivery Company. Enclosed with this letter, please find an updated W-9 reflecting the new Oncor name (the tax identification number remains the same). Please update your records using the enclosed W-9 so as to avoid any backup withholding taxes.

Oncor appreciates your attention to this matter. Please contact Ron Coan at 214/812-2211 should you have any questions concerning this correspondence.

Best Regards,

A handwritten signature in cursive script that reads "Paul Dickens".

Paul Dickens, Manager Supply Chain
Oncor Electric Delivery Company
By: Capgemini Energy LP, Its Limited Partner

Enclosure

AMENDMENT NO. 1

DATED OCTOBER 18, 2006

TO

DISTRIBUTION POLE LICENSE AGREEMENT

S0504402C

BY AND BETWEEN

**CITY OF AUSTIN – COMMUNICATIONS AND TECHNOLOGY
MANAGEMENT – GREATER AUSTIN AREA
TELECOMMUNICATIONS NETWORK
dba COA-CTM-GAATN**

AND

TXU ELECTRIC DELIVERY COMPANY

DATED MAY 1, 2006

FULLY - EXECUTED

10-24-06

CMR

AMENDMENT

The Effective Date of this Amendment is October 18, 2006.

This Amendment modifies, alters or changes specific terms and conditions of Contract No. S 0504402 C ("Agreement") that exists between the parties hereto. Except as modified in this Amendment or previous amendments, the Agreement will remain in full force and effect.

The Agreement is modified as follows:

The existing Insurance provisions SECTION 13.1 to 13.3 are replaced in their entirety with provisions 13.1 to 13.3 below:

Licensee shall, a) at its sole expense and during the term of this Agreement, purchase and maintain insurance in accordance with the requirements of Attachment (Licensee's Insurance Requirements); or b) if Licensee does not perform the installation, maintenance, repair, or removal of Equipment located on the Poles (or other TXU Electric Delivery facilities), and utilizes a contractor(s) for the installation, maintenance, repair, or removal of Equipment located on the Poles (or other TXU Electric Delivery facilities), Licensee shall at its sole expense, purchase and maintain, during the term of this Agreement, insurance policies with substantial and sound insurers, having coverage of the types and in the amounts specified in the Certificate of Insurance (or some other proof of insurance), if any, submitted by Licensee prior to the execution of this Agreement and attached hereto. Licensee represents and warrants to TXU Electric Delivery that all contractors of Licensee responsible for the installation, maintenance, repair, or removal of Equipment located on the Poles (or other TXU Electric Delivery facilities) will comply with items 1 through 8 of Licensee's Insurance Requirements.

Licensee will notify TXU Electric Delivery as soon as practical of any accidents or occurrences resulting in injuries to any person, including death, or any property damage (including, without limitation, damage to any Equipment or Pole), arising out of or relating to this Agreement.

Nothing in this Section 13, nor the provision of any insurance required by this Section 13, shall affect, limit or otherwise reduce the indemnity obligations provided for in Section 12.

The existing Notices provision SECTION 19 is replaced in its entirety with the following:

Any notice, other than Permit Applications, required to be given or made in connection with this Agreement shall be in writing and shall be deemed properly or sufficiently given or made if: (a) delivered in person with receipt acknowledged in writing by the person specified below; (b) sent by registered or certified mail, return receipt requested, to the person and address specified below; (c) sent by confirmed fax transmission to the person and fax number specified below; (d) sent electronically to the recipient's designated email address; provided that the recipient acknowledges receipt of that notice; or (e) sent or delivered by such other method as will ensure evidence of its receipt by the person specified below:

EFFECTIVE DATE

PURPOSE

MODIFICATIONS

SECTION 13. INSURANCE

13.1 Coverage Requirements

13.2 Notification of Accident, Injury and Damage

13.3 Enhancement of Indemnification

SECTION 19. NOTICES

19.1 Method of Notice

Oct-23-2006 08:24am From-

T-239 P.004/005 F-474

Amendment No. 1

AMENDMENT

If to Licensee:

COA-CTM-GAATN
P.O. Box 1068
Austin, Texas 7801

Attention: Martha Kirschke
Phone: 512-974-2482
Fax: 512-974-3000
Email: Martha.Riekenberg@cl.austin.tx.us

If to TXU Electric Delivery:

TXU Electric Delivery Company
1601 Bryan Street, Suite 24-140
Dallas, Texas 75201

Attention: Ron Coan
Phone: 214-812-2211
Fax: 214-812-7450
Email: rcoan@capgeminienergy.com

Notices given or made pursuant to or in connection with this Agreement shall be effective as of the time of delivery to or receipt by the Party to whom such notice is addressed; provided, however, that no notice shall be effective unless it is given or made in compliance with this Section 19.

The person, address or fax number of any Party to which notice shall be given pursuant to Section 19 may be changed at any time, upon written notice given pursuant to Section 19 to the other Party.

The following attachment is made a part of this Amendment:

1. LICENSEE'S INSURANCE REQUIREMENTS

19.2 Changes in
Person's Address
and Fax number

ATTACHMENTS

The parties have signed this Amendment acknowledging their agreement to its provisions as of the effective Date.

COA-CTM-GAATN

Signature: Chris BakerName: Chris BakerTitle: StreetLight Systems Admin.Date: 10/24/06

TXU ELECTRIC DELIVERY COMPANY

By: Capgemini Energy LP, its Limited Agent

Signature: Richard Lynch

Name: Richard Lynch

Title: Supply Chain Portfolio Manager

Date: 10-23-2006

ATTACHMENT - LICENSEE'S INSURANCE REQUIREMENTS

LICENSEE will, at its own expense, maintain in force throughout the period of this document or agreement, or as otherwise specified, and until released by TXU Electric Delivery Company the following minimum insurance coverages, with insurers acceptable to TXU Electric Delivery Company.

- 1) Workers' Compensation and Employers' Liability Insurance, providing statutory benefits in accordance with the laws and regulations of the State of Texas or state of jurisdiction as applicable. The minimum limits for the employers' liability insurance will be five hundred thousand dollars (\$500,000) bodily injury each accident, five hundred thousand dollars (\$500,000) each employee bodily injury by disease, five hundred thousand dollars (\$500,000) policy limit bodily injury by disease.
- 2) Commercial General Liability Insurance, including bodily injury and property damage, personal and advertising injury, contractual liability, and including products and completed operations coverage [continuing for two (2) years after Final Acceptance, or completion of the Work, whichever is later], with minimum limits of one million dollars (\$1,000,000) per occurrence for bodily injury, including death and property damage.
- 3) Automobile Liability Insurance for coverage of owned, non-owned and hired autos, trailers or semi-trailers with a minimum combined single limit of one million dollars (\$1,000,000) per accident for bodily injury, including death, and property damage.
- 4) Excess Liability Insurance over and above the employers' liability, commercial general liability and automobile liability insurance coverage, with a minimum limit of two million dollars (\$2,000,000) per occurrence. Coverage must replace exhausted aggregate limits under the coverages referenced in #1 (employers' liability), and #2 above. Coverage must continue for two (2) years after Final Acceptance, or completion of the Work, whichever is later.
- 5) The required limits of insurance can be satisfied by any combination of primary and excess coverage.
- 6) The commercial general liability insurance, automobile liability insurance and excess liability insurance policies will contain provisions that specify that the policies are primary and will apply without consideration for other policies separately carried and will state each insured is provided coverage as though a separate policy had been issued to each, except with respects to limits of insurance, and that only one deductible will apply per occurrence regardless of the number of insureds involved in the occurrence. LICENSEE will be responsible for any deductibles or retentions.
- 7) The commercial general liability insurance, automobile liability insurance and excess liability insurance policies, if written on a claims-made basis, will be maintained in full force and effect for two (2) years after Final Acceptance or completion of the Work, whichever is later.
- 8) All policies must be issued by carriers having an *A.M. Best's* rating of "A-" or better, and an *A.M. Best's* financial size category of "VIII", or better and/or *Standard & Poor Insurance Solvency Review* of "A-", or better. If requested in writing by TXU Electric Delivery Company, LICENSEE will make available to TXU Electric Delivery Company a certified copy of any or all insurance policies or endorsements required of LICENSEE.

The requirements contained herein as to the types and limits of all insurance to be maintained by LICENSEE are not intended to and will not, in any manner, limit or qualify the liabilities and obligations assumed by LICENSEE under this document or agreement.

Prior to commencement of Work, LICENSEE will provide to TXU Electric Delivery Company certificates of insurance evidencing the coverage required herein. TXU Electric Delivery Company's review of certificates or policies will not be construed as accepting any deficiencies in LICENSEE's insurance or relieve LICENSEE of any obligations set forth herein. In addition, LICENSEE will require each of its subcontractors to provide adequate insurance. Any deficiencies in the insurance to be provided by subcontractors will be the responsibility of LICENSEE.

Certificates of Insurance must show TXU Corp. and its direct and indirect subsidiaries as the certificate holder, and as an additional insured (including completed operations) as respects all of the required coverages except workers' compensation. Workers' compensation shall include TXU Corp. and its direct and indirect subsidiaries as an alternate employer. All of the required coverages must provide a waiver of subrogation in favor of the certificate holder. Certificates of Insurance should also state that the certificate holder will receive thirty (30) days advance written notice prior to non-renewal or cancellation.

LICENSEE agrees to report to the manager of the claims department of the TXU Electric Delivery Company in writing as soon as practical all instances of damage to the Work and all accidents or occurrences which may result in injuries to any person, including death, and any property damage, arising out of the performance of the Work.

If the insurance obligations required in this document or agreement exceed the maximum limits permitted by law or do not otherwise conform with any applicable law, then this agreement will be deemed amended so as to only require LICENSEE to provide insurance to the maximum extent allowed by law.

LICENSEE's insurance obligations are to include coverage supporting its obligations to defend, indemnify and hold harmless TXU Electric Delivery Company Group for CLAIMS arising out of TXU Electric Delivery Company's sole or concurrent negligence, with minimum limits described above or the maximum amount permitted by law for these indemnification provisions.

Category of "VIII" or better, and/or *Standard & Poor Insurance Solvency Review* of "A-" or better. If requested in writing by TXU Electric Delivery, the Licensee will make available to TXU Electric Delivery a certified copy of any or all insurance policies or endorsements required of the Licensee.

- 10) The requirements contained herein as to the types and limits of all insurance to be maintained by the Licensee are not intended to and will not, in any manner, limit or qualify the liabilities and obligations assumed by the Licensee under the Agreement.
- 11) Within ten (10) days following the execution of the Agreement, and annually thereafter, the Licensee will provide to TXU Electric Delivery certificates of insurance evidencing the coverage required herein. TXU Electric Delivery's review of certificates or policies will not be construed as accepting any deficiencies in the Licensee's insurance or relieve the Licensee of any obligations set forth herein. In addition, the Licensee will require each of its contractors to provide adequate insurance. Any deficiencies in the insurance to be provided by contractors will be the responsibility of the Licensee.

If the insurance obligations contained herein exceed the maximum limits permitted by law or do not otherwise conform with any applicable law, then this Agreement will be deemed amended so as to only require the Licensee to provide insurance to the maximum extent allowed by law.

The Licensee's insurance obligations include coverage supporting its obligations to defend, indemnify and hold harmless TXU Electric Delivery Parties for Claims arising out of TXU Electric Delivery Parties' sole or concurrent negligence, with minimum limits of Three Million Dollars (\$3,000,000) or the maximum amount permitted by law for these indemnification provisions.

Certificate of Insurance should show TXU Corp. and its direct and indirect subsidiaries as the Certificate Holder, each as an Additional Insured as respects the above coverages except Workers Compensation. The above coverages shall provide a Waiver of Subrogation in favor of the Certificate Holder. If policy requires endorsement for coverage, proof of the endorsement must be provided.

DISTRIBUTION POLE LICENSE AGREEMENT

BY AND BETWEEN

**CITY OF AUSTIN – COMMUNICATIONS AND TECHNOLOGY
MANAGEMENT – GREATER AUSTIN AREA
TELECOMMUNICATIONS NETWORK
dba COA - CTM - GAATN**

AND

TXU ELECTRIC DELIVERY COMPANY

DATED

MAY 1, 2006

NO. S 0504402 C

DISTRIBUTION POLE LICENSE AGREEMENT

THIS DISTRIBUTION POLE LICENSE AGREEMENT (the "Agreement") is made and effective as of May 1, 2006 by and between TXU ELECTRIC DELIVERY COMPANY, a Texas Corporation ("TXU Electric Delivery"), and City Of Austin - Communications And Technology Management - Greater Austin Area Telecommunications Network dba CO - CTM - GAATN, a municipality organized under the laws of and existing within the State of Texas ("Licensee").

EFFECTIVE DATE

WHEREAS, TXU Electric Delivery is a public utility company transmitting and distributing electric power to its customers, and owns or has acquired the right to use certain rights of way and easements for the construction and operation of its business, and has installed distribution poles on portions of such rights of way and easements in connection with the construction and operation of its business; and

RECITALS

WHEREAS, Licensee desires to attach to and thereafter maintain its Equipment (as hereinafter defined) that is attached pursuant to this Agreement on Poles (as hereinafter defined) solely for the purpose of engaging in the Permitted Use; and

WHEREAS, TXU Electric Delivery is willing to allow Licensee, pursuant to the terms and conditions of this Agreement, to attach to and thereafter maintain its Equipment on Poles solely for the purpose of allowing Licensee to engage in the Permitted Use;

NOW, THEREFORE, in consideration of the covenants, agreements and undertakings set forth below, the Parties agree as follows:

The words and phrases listed in this Section 1 shall have the corresponding meanings set forth in this Section 1, wherever such words and phrases appear in this Agreement with an initial capital letter on each word. The meanings stated in this Section 1 shall control the meanings of all such words and phrases when so capitalized, notwithstanding the context or associations in which such words or phrases may appear in this Agreement. Words and phrases not listed in this Section 1, and words and phrases contained in this Section 1 without initial capital letters, shall have the meanings necessary to achieve the intentions of the Parties as expressed in this Agreement.

SECTION 1. DEFINITIONS

This word shall mean any other person or entity, directly or indirectly controlling or controlled by, or under the direct or indirect common control with, a specified person or entity. The term "control" (including the terms "controlling," "controlled by," and "under the direct or indirect common control with") of a specified person or entity means the possession, direct or indirect, of the power to: (a) vote fifty percent (50%) or more of the voting securities or other voting interests of any such entity; or (b) affirmatively direct, or cause the direction of, the management and policies of any such person or entity, whether through the ownership of voting shares, by contract or otherwise.

1.1 Affiliate

DISTRIBUTION POLE LICENSE AGREEMENT

This word shall mean this Distribution Pole License Agreement, including all attachments and exhibits to this Distribution Pole License Agreement, whether now or hereafter existing.

1.2 Agreement

This phrase shall mean the individuals identified on Attachment B to this Agreement and any replacements for them made pursuant to the procedures prescribed in Section 21.

1.3 Authorized
Representatives

This word shall mean any and all claims, losses, expenses, damages, demands, judgments, attorneys' fees, causes of action, suits and liability, whether in tort, warranty, contract, or asserted or claimed on any other basis, and of every kind and character, including, without limitation, claims, losses, expenses, damages, demands, judgments, causes of action, suits and liability on account of personal injuries or death, damage to property or economic loss.

1.4 Claims

This word shall mean the equipment, including appurtenances, attached by or on behalf of Licensee to any Pole. Such equipment shall include, without limitation, fiber optic or other cables, amplifiers, wires (including Service Drops), and appliances, together with associated cable messengers and anchors, as well as radios, antennas, cameras, and other wireless equipment.

1.5 Equipment

This phrase shall mean a public utility company, governmental entity, or other person or entity, which owns or controls equipment attached to any Pole, or has a right or privilege to attach equipment it owns or controls to a Pole.

1.6 Joint User

This word shall mean City Of Austin - Communications And Technology Management - Greater Austin Area Telecommunications Network dba CO - CTM - GAATN.

1.7 Licensee

This phrase shall mean (a) Licensee; (b) any official, employee, independent contractor, supplier, customer, licensee or concessionaire of Licensee; or (c) any director, officer, agent, servant, or employee of the independent contractor, supplier, customer, advertiser, client, licensee or concessionaire of Licensee.

1.8 Licensee Party

This term shall have the meaning specified in section 4.1.3.

1.9 NJUNS

This word shall mean the practice of tying or connecting fiber optic cable, conductors, or other telecommunications equipment, to Equipment attached to Poles.

1.10 Overlashing

This word shall mean TXU Electric Delivery or Licensee; collectively TXU Electric Delivery and Licensee shall be referred to as "Parties."

1.11 Party

This phrase shall mean a written application in the form of Attachment A to this Agreement, as the same may be amended by TXU Electric Delivery from time to time.

1.12 Permit
Application

DISTRIBUTION POLE LICENSE AGREEMENT

This phrase shall mean the transmission and exchange of information (including image and video signals) by means of the Equipment, among and between Licensee's facilities, solely in furtherance of Licensee's governmental services or purposes, and at no time for commercial or profit-making activities or purposes.

1.13 Permitted Use

This word shall mean distribution poles and street light standards owned solely by TXU Electric Delivery, each of which has a circuit with a nominal voltage of less than 69,000 volts. Such term does not mean or include, without limitation, poles owned by TXU Electric Delivery which are used for the transmission, rather than distribution, of electric energy.

1.14 Poles

This phrase shall have the meaning specified in Section 4.1.2

1.15 Preparation
Costs

This phrase shall mean a service line or wire connection between a Pole and a building or other structure, being served by other Equipment.

1.16 Service Drops

This word shall have the meaning specified in Section 4.2

1.17 Standards

This phrase shall mean TXU Electric Delivery Company.

1.18 TXU Electric
Delivery

This phrase shall mean: (a) TXU Electric Delivery; (b) any Affiliate of TXU Electric Delivery; (c) any director, officer, agent, servant, employee, independent contractor or supplier of TXU Electric Delivery or any Affiliate of it; or (d) any director, officer, agent, servant or employee of the independent contractors and suppliers of TXU Electric Delivery or any Affiliate of it.

1.19 TXU Electric
Delivery Party

This phrase shall mean any agent or contractor, as designated in writing by TXU Electric Delivery, and acting, at TXU Electric Delivery's discretion, for or on behalf of TXU Electric Delivery or in furtherance of TXU Electric Delivery's rights or obligations, pursuant to or in connection with this Agreement, and as authorized in accordance with such written designation.

1.20 TXU Electric
Delivery
Representative

The singular of a word shall also refer to the plural and visa versa, unless the context otherwise requires.

1.21 Singular and
Plural Words

Subject to the provisions of this Agreement, Licensee shall be permitted to attach Equipment to, and thereafter maintain, replace, relocate, repair, or modify its Equipment on, Poles, solely for the purpose of engaging in the Permitted Use.

**SECTION 2. TXU ELECTRIC
DELIVERY'S GRANT OF
PRIVILEGE TO LICENSEE
TO ATTACH, MAINTAIN,
REPLACE, RELOCATE,
REPAIR AND MODIFY
EQUIPMENT ON POLES**

DISTRIBUTION POLE LICENSE AGREEMENT

Licensee shall not attach Equipment on any TXU Electric Delivery equipment or facilities other than Poles, including, without limitation, any portion of TXU Electric Delivery's underground duct system.

2.1 Facilities to Which License Applies

Licensee shall exercise its license under this Agreement solely to engage in the Permitted Use, in accordance with the terms of this Agreement and any applicable franchises and/or permits needed to operate its Equipment and engage in the Permitted Use. Licensee shall not lease or sublet the Equipment, including, without limitation, dark fiber, to a third party, or otherwise allow a third party to attach its equipment to Licensee's Equipment; provided, however, that Licensee may allow third parties to use the Equipment on Licensee's behalf, but only in furtherance of Licensee engaging in the Permitted Use. Further, in the event that Licensee's Equipment requires the supply or provision of electric power, Licensee shall be solely responsible for separately arranging for such power with its retail electric provider.

2.2 Use of Equipment

Nothing in this Agreement shall be construed as requiring TXU Electric Delivery to give Licensee permission to use any particular Pole or to allow Licensee to continue to use any particular Pole after Licensee has received TXU Electric Delivery's permission to do so. TXU Electric Delivery may refuse Licensee permission to use any Pole, or may, as provided for in this Agreement, require Licensee to replace, relocate, modify, remove or perform other work with respect to Licensee's Equipment on any Pole.

2.3 Rights of Pole Use

No use, however extended, of Poles under this Agreement shall create or vest in Licensee any ownership or property right in them, but Licensee's rights in such Poles shall be and remain a mere license terminable at any time as provided herein. Nothing in this Agreement shall be construed to compel TXU Electric Delivery to maintain any Pole for any period of time.

2.4 No Ownership of Poles

SECTION 3. FRANCHISES, LICENSES AND RIGHTS OF WAY

Licensee represents and warrants that: (a) it has obtained, or prior to undertaking any construction or other work by which it contacts TXU Electric Delivery's property it will obtain, all legally required franchises, licenses, waivers, consents, approvals, easements, rights of way and permits needed to construct and operate its Equipment and engage in the Permitted Use; (b) it shall use its best efforts to maintain such franchises, licenses, waivers, consents, approvals, easements, rights of way and permits in full force and effect throughout the term of this Agreement; (c) it shall comply with such franchises, licenses, waivers, consents, approvals, easements, rights of way and permits in connection with engaging in the Permitted Use; and (d) it shall promptly notify TXU Electric Delivery in writing of any change in the status of such franchises, licenses, waivers, consents, approvals, easements, rights of way and permits. Upon TXU Electric Delivery's

3.1 Licensee's Required Approvals and Rights of Way

DISTRIBUTION POLE LICENSE AGREEMENT

request, Licensee shall promptly deliver to TXU Electric Delivery documentation satisfactory to TXU Electric Delivery, evidencing that all such franchises, licenses, waivers, consents, approvals, easements, rights of way and permits have been obtained.

TXU Electric Delivery shall not be required to obtain any additional license, waiver, consent, easement, right of way or permit in connection with this Agreement; provided, however, upon Licensee's request, TXU Electric Delivery may provide such assistance as TXU Electric Delivery deems appropriate to Licensee, in furtherance of obtaining any such license, waiver, consent, easement, right of way or permit, as Licensee may need in order to engage in the Permitted Use. Licensee shall reimburse TXU Electric Delivery for any expenses reasonably incurred by TXU Electric Delivery in providing such assistance. All costs of obtaining such additional licenses, waivers, consents, easements, rights of way or permits needed by Licensee will be borne by Licensee.

3.2 Additional
Approvals and
Rights of Way

TXU ELECTRIC DELIVERY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE THAT ITS EXISTING OR FUTURE RIGHTS OF WAY, EASEMENTS OR OTHER PROPERTY RIGHTS, PRIVATE OR PUBLIC, WERE, ARE, OR WILL BE SUFFICIENT TO PERMIT THE ATTACHMENT, MAINTENANCE, REPLACEMENT, RELOCATION, REPAIR, MODIFICATION OR REMOVAL OF EQUIPMENT ON OR BETWEEN ANY POLES. FURTHER, TXU ELECTRIC DELIVERY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WITH RESPECT TO THE CONDITION OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY POLE OR POLES OR ANY OF ITS OTHER REAL OR PERSONAL PROPERTY WHICH LICENSEE MAY USE. LICENSEE CONFIRMS THAT IT HAS NOT IN THE PAST RELIED, IT IS NOT PRESENTLY RELYING, AND IT WILL NOT IN THE FUTURE RELY, ON ANY REPRESENTATION OR WARRANTY OF TXU ELECTRIC DELIVERY CONCERNING: (A) TXU ELECTRIC DELIVERY'S EXISTING OR FUTURE RIGHTS OF WAY, EASEMENTS OR OTHER PROPERTY RIGHTS, PUBLIC OR PRIVATE, OR (B) THE CONDITION OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY POLE OR POLES OR ANY OTHER REAL OR PERSONAL PROPERTY OR PROPERTY RIGHT OF TXU ELECTRIC DELIVERY.

3.3 NO
WARRANTIES
AS TO TXU
ELECTRIC
DELIVERY'S
RIGHTS OF
WAY

SECTION 4. ATTACHMENT, REPLACEMENT, RELOCATION AND MODIFICATION OF EQUIPMENT

Throughout the term of this Agreement, Licensee may designate a Pole or Poles on which it desires to attach, replace, relocate or modify any Equipment. For purposes of this requirement, modification of Equipment shall include, without limitation, any Overlashing, on or undertaken with respect to that Equipment or the equipment of any

4.1 Permit Applications
for the Attachment,
Replacement,
Relocation or
Modification of
Equipment

DISTRIBUTION POLE LICENSE AGREEMENT

third party. Each such designation shall be made by Licensee, by submitting to TXU Electric Delivery or, as appropriate, a TXU Electric Delivery Representative, at least thirty (30) days before the date when Licensee desires to begin such work, a Permit Application, in such number, manner, and format as prescribed by TXU Electric Delivery from time to time, signed by any Authorized Representative of Licensee and specifying, in the appropriate spaces thereon, the type of work Licensee desires to perform and the Pole or Poles on which such work is to be performed, and providing drawings, data and specifications necessary to review and evaluate such Permit Application.

Notwithstanding the requirements of Section 4.1, Licensee may attach a Service Drop to any Pole without first submitting a Permit Application requesting such attachment; provided, however, that Licensee shall notify TXU Electric Delivery within fifteen (15) days after Licensee makes such attachment. Licensee shall thereafter notify TXU Electric Delivery within fifteen (15) days after Licensee makes any change to a Service Drop previously attached to any Pole, as more fully described in Attachment A. Within thirty (30) days of receiving any such notice, TXU Electric Delivery may, at Licensee's sole cost, inspect the Service Drop, for the purpose of confirming that such attachment is in compliance with the Standards. In the event that TXU Electric Delivery (or, as appropriate, a TXU Electric Delivery Representative) determines that such attachment is not in compliance with the Standards, Licensee shall, at its sole cost, promptly correct any condition of such attachment, as necessary to ensure that such attachment is in compliance with the Standards.

Licensee acknowledges that TXU Electric Delivery or, as appropriate, a TXU Electric Delivery Representative, shall incur various costs and expenses in reviewing and responding to each Permit Application; such costs may include, without limitation, costs incurred in connection with inspection, design, construction, attachment or removal activities, and related processes, pertaining to the Poles or Equipment identified or described in the Permit Application (the "Preparation Costs"). TXU Electric Delivery may, in its sole discretion, invoice Licensee for any Preparation Costs, at any time after TXU Electric Delivery, or a TXU Electric Delivery Representative, has either incurred such Preparation Costs, or has provided to Licensee an estimate of such Preparation Costs to be reasonably incurred. Section 10.8 notwithstanding, Licensee shall pay the full amount of such Preparation Costs to TXU Electric Delivery within ten (10) days following its receipt of such invoice.

Licensee shall pay Preparation Costs, to the extent actually incurred by TXU Electric Delivery or a TXU Electric Delivery Representative, notwithstanding Licensee's withdrawal, cancellation, or suspension of the related Permit Applications, or TXU Electric Delivery's disapproval of such Permit Applications. In the event that Licensee fails to pay the full amount of such Preparation Costs to TXU Electric Delivery within that ten (10) day period, TXU Electric Delivery may suspend further

4.1.1 Service Drops

4.1.2 Preparation Costs Incurred in Reviewing and Responding to Permit Application

DISTRIBUTION POLE LICENSE AGREEMENT

efforts, pertaining to its review of and response to that Permit Application, until Licensee has paid the full amount of such Preparation Costs.

TXU Electric Delivery may, upon advance written notice of at least thirty (30) days, direct Licensee to submit each Permit Application by means of such formats and electronic procedures as TXU Electric Delivery may reasonably specify, consistent with customary or accepted practices within the utility industry. Such formats and electronic procedures may include, without limitation, those prescribed by the National Joint Utilities Notification System ("NJUNS"). Licensee will thereafter submit each Permit Application by means of such formats and electronic procedures. In addition, Licensee will, to the extent directed by TXU Electric Delivery, make any other notifications or submittals, as required or contemplated by this Section 4, or by other provisions of this Agreement, by means of such formats and electronic procedures. Licensee shall be responsible, at its sole cost and expense, for obtaining the necessary resources and capabilities to enable it to use such designated formats and electronic procedures in the manner contemplated by this Agreement.

4.1.3 Applicable Formats and Electronic Procedures

TXU Electric Delivery shall deny, approve or conditionally approve each Permit Application for the attachment, replacement, relocation or modification of Equipment by returning one copy of it to Licensee, reflecting TXU Electric Delivery's denial, approval or conditional approval in the appropriate spaces thereon. All work undertaken by or on behalf of Licensee on any Poles shall be performed in accordance with the following safety and engineering standards: (a) the National Electrical Safety Code; (b) the rules and regulations of the Occupational Safety & Health Administration ("OSHA"); (c) other applicable laws or regulations of any governing authority or regulatory body, having jurisdiction over the subject matter of this Agreement; and (d) TXU Electric Delivery's standards and procedures applicable to the Poles, as referred to or included in Attachment "C" hereto, which are reasonably in furtherance of and not expressly inconsistent with the other engineering and safety standards referenced above. Such engineering and safety laws, regulations, and standards, as described in subsections (a) through (d) above, both as effective on the Effective Date of this Agreement and as may be hereafter amended from time to time, are hereinafter collectively referred to as the "Standards". No approval or other response to a Permit Application shall constitute a guarantee or representation that adequate space exists on the subject Poles for the attachment of Equipment.

4.2 TXU Electric Delivery's Response to Permit Applications

TXU Electric Delivery may approve a Permit Application for the attachment, replacement, relocation or modification of Equipment attached to Poles, on the condition that Licensee modify the Permit Application in certain respects. In such event, TXU Electric Delivery or, as appropriate, a TXU Electric Delivery Representative, shall return one copy of the Permit Application to Licensee, reflecting such conditional approval and detailing the required modifications to the

4.2.1 Approval Conditioned Upon Modifications to Permit Application

DISTRIBUTION POLE LICENSE AGREEMENT

Permit Application and the estimated costs of making any resulting or related modification or rearrangement, whether of Equipment or existing attachments. If Licensee is willing to assume all costs associated with such modification or rearrangement, Licensee shall return that copy of the Permit Application to TXU Electric Delivery within thirty (30) days of its receipt, signed by an Authorized Representative of Licensee and reflecting Licensee's acceptance of such costs in the appropriate spaces thereon. The copy of the Permit Application shall be accompanied by payment (payable to TXU Electric Delivery) of the amount of the estimated cost of making such modifications. Upon receipt by TXU Electric Delivery, or by a TXU Electric Delivery Representative, of the modified Permit Application and the accompanying payment, the Permit Application, as modified, shall be deemed approved. Sections 4.2.2 and 4.2.3 are specific examples of situations in which TXU Electric Delivery may conditionally approve a Permit Application for the attachment, replacement, relocation, or modification of Equipment. Those sections shall not be construed as limiting TXU Electric Delivery's right to conditionally approve Permit Applications in other situations, or to impose other or additional conditions in the future.

If approval of a Permit Application for the attachment, replacement, relocation or modification of Equipment will require a modification or rearrangement of the attachments of Licensee, TXU Electric Delivery, any other TXU Electric Delivery Party, or a Joint User on any Pole, TXU Electric Delivery may approve the Permit Application on the condition that Licensee agrees to assume all costs associated with such modification or rearrangement. In such event, TXU Electric Delivery or, as appropriate, a TXU Electric Delivery Representative, shall return one copy of the Permit Application to Licensee, reflecting such conditional approval and detailing the attachments that must be modified or rearranged, and the estimated cost of making the modification or rearrangement in the appropriate spaces thereon. If Licensee is willing to assume all costs associated with such modification or rearrangement, Licensee shall return that copy of the Permit Application to TXU Electric Delivery, within thirty (30) days of its receipt, signed by an Authorized Representative and reflecting Licensee's acceptance of such costs in the appropriate spaces thereon. The copy of the Permit Application shall be accompanied by payment (payable to TXU Electric Delivery) of the amount of the estimated cost of making such modification or rearrangement. Upon receipt by TXU Electric Delivery, or by a TXU Electric Delivery Representative, of the modified Permit Application, the Permit Application, as modified, shall be deemed approved.

If approval of a Permit Application for the attachment, replacement, relocation or modification of Equipment will require the replacement of one or more Poles to accommodate the attachments of Licensee, any other TXU Electric Delivery Party, and any Joint Users, TXU Electric Delivery may approve the Permit Application on the condition that Licensee agrees to assume all costs associated with the replacement of the existing Poles with new poles sufficient to accommodate the

4.2.2 Approval
Conditioned
Upon
Modification or
Rearrangement
of Existing
Attachments

4.2.3 Approval
Conditioned
Upon
Replacement of
Poles

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attachments of Licensee, any other TXU Electric Delivery Party, and any Joint Users. In such event, TXU Electric Delivery shall return a copy of the Permit Application to Licensee, reflecting such conditional approval and specifying the conditions for approval in the appropriate spaces thereon. If Licensee is willing to assume all costs associated with such replacement, Licensee shall return that copy of the Permit Application to TXU Electric Delivery, within thirty (30) days of its receipt, signed by an Authorized Representative and reflecting Licensee's acceptance of such costs in the appropriate spaces thereon. The copy of the Permit Application shall be accompanied by payment (payable to TXU Electric Delivery) of the amount of the estimated cost of making such replacement. Upon receipt by TXU Electric Delivery, or by a TXU Electric Delivery Representative, of the modified Permit Application, and said payment, the Permit Application, as modified, shall be deemed approved.

If TXU Electric Delivery conditionally approves a Permit Application applicable to a Pole pursuant to the provisions of Sections 4.2.2 or 4.2.3, and at or about the same time TXU Electric Delivery approves a request of a third party for use of such Pole, requiring that such Pole be replaced, or that attachments thereon be modified or rearranged to provide additional space, to provide room for the attachments of TXU Electric Delivery, any other TXU Electric Delivery Party, Licensee and the third party, TXU Electric Delivery shall pro rate between Licensee and the third party the costs of such modification, rearrangement or replacement. Such costs, as pro rated to Licensee, shall be deemed to be and considered part of the Preparation Costs pertaining to that Permit Application. TXU Electric Delivery shall notify Licensee of such pro ration, and such modification, rearrangement or replacement shall take place as provided for in Sections 4.2.2 or 4.2.3.

Licensee shall limit its submission of Permit Applications for the attachment, replacement, relocation or modification of Equipment to TXU Electric Delivery so as to allow TXU Electric Delivery to respond to them in an orderly and timely fashion. In particular, and except as may be otherwise expressly agreed to by TXU Electric Delivery, Licensee shall, within any thirty (30) day period, submit no more than ten (10) Permit Applications, collectively requesting a total of no more than one hundred twenty (120) attachments to the Poles. TXU Electric Delivery shall use reasonable efforts to respond to each Permit Application within thirty (30) days of its submission. If Licensee submits more than one such Permit Application at the same time or submits additional Permit Applications during the pendency of another such Permit Application, Licensee shall designate, in writing, an order of priority for their review by TXU Electric Delivery. In the absence of such a designation, TXU Electric Delivery shall review them in the order of their submission.

Licensee may, with TXU Electric Delivery's prior express, written consent, submit Permit Applications that exceed the quantity limitations specified above, for either Permit Applications or attachments. TXU Electric Delivery shall not unreasonably withhold

4.2.4 Proration of
Costs of
Replacing
Poles, or
Modifying or
Rearranging
Attachments

4.3 Number and
Priority of
Permit
Applications;
Time to
Respond

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its consent to such submittals, provided that the Parties shall first agree to a reasonable period of time, in excess of thirty (30) days, during which TXU Electric Delivery may review and respond to such submittals.

If Licensee desires to locate Equipment on any right of way, easement or other property right of TXU Electric Delivery on which no Poles or an insufficient number of Poles are located, Licensee shall so notify TXU Electric Delivery. Within a reasonable time after TXU Electric Delivery's receipt of such notice, the Parties shall commence good faith negotiations to determine the locations of Poles that will meet the present or anticipated future service requirements of both TXU Electric Delivery and Licensee. At its option, TXU Electric Delivery may install the necessary Poles, and Licensee shall pay all of the costs associated with their installation. Notwithstanding such payment, such Poles shall be owned by TXU Electric Delivery and Licensee shall not acquire any ownership or property interest in them.

4.4 Location of Equipment on TXU Electric Delivery Right of Way That Has Insufficient Poles

Except as permitted by Sections 4.7 and 7.1, in the event Licensee attaches, replaces, relocates or modifies Equipment on one or more Poles without first obtaining TXU Electric Delivery's approval of a Permit Application for such work, Licensee shall pay TXU Electric Delivery as a processing charge, upon receipt of an invoice therefor and in addition to any unpaid rental due for such Equipment (together with interest applied to such unpaid rental, calculated in accordance with Section 10.8) and any other expenses or costs incurred by TXU Electric Delivery on account of such work, fifty dollars (\$50.00) for each such attachment, replacement, relocation or modification. In the event that the time of any such unauthorized work cannot be determined, such work shall be deemed to have occurred on the date succeeding the day on which the last physical inspection was made in accordance with Section 10.6; provided, however, that, with respect to any such unauthorized work, Licensee shall not be obligated to pay any unpaid rental, or any such fifty dollars (\$50.00) processing charge, for or attributable to any period more than five (5) years prior to the date on which TXU Electric Delivery notifies Licensee of such unauthorized work. At the option of and upon notice from TXU Electric Delivery, Licensee, at its sole risk and expense, shall either: (a) remove, replace, relocate or modify all or any portion of such Equipment within the time period specified in the notice; or (b) prepare and submit one or more Permit Applications for such Equipment. Licensee shall notify TXU Electric Delivery of the performance of such work within fifteen (15) days of its completion. If Licensee fails to perform such work within the period specified in the notice, TXU Electric Delivery may, without notice or demand to Licensee, and at the sole expense of Licensee, either perform all or any portion of such work or remove all or any portion of the Equipment from such Poles.

4.5 Unauthorized Work

After the approval of a Permit Application for the attachment, replacement, relocation or modification of Equipment and the completion of all work required in connection with that Permit Application (including work for which any Preparation Costs were paid

4.6 Time to Complete Work After Approval of a Permit Application

DISTRIBUTION POLE LICENSE AGREEMENT

and other required engineering or make-ready construction work), Licensee may, at its sole expense, consistent with that approval, attach, replace, relocate or modify the Equipment identified in the Permit Application on the Poles specified in that Permit Application, during a period of ninety (90) days from the date of its approval, but not thereafter unless a new Permit Application is submitted to, and approved by, TXU Electric Delivery, pursuant to the procedures described in this Section 4. Notwithstanding Licensee's rights as provided for in the preceding sentence, in the event that Licensee determines that the locations, configuration, or other physical characteristics of equipment attached to such Poles (including, without limitation, equipment attached to such Poles by any third parties) are materially different from those identified or depicted in that approved Permit Application, or if Licensee otherwise determines that it cannot complete its work, as contemplated by or approved in that Permit Application, in accordance with the Standards, then Licensee shall promptly notify TXU Electric Delivery, and shall not undertake any such work until such time as TXU Electric Delivery has authorized such work. While performing any work identified in and approved pursuant to a Permit Application, the Licensee Party performing such work shall maintain a copy of that Permit Application at the location where such work is being performed. That copy of the Permit Application shall be made available for inspection by TXU Electric Delivery, or by TXU Electric Delivery Representatives, upon request.

Upon written notice from TXU Electric Delivery, Licensee shall, at its sole expense and within the period specified in the notice, replace, relocate or modify all or any portion of the Equipment on a Pole that TXU Electric Delivery requests in such notice. Licensee, in the exercise of its sole discretion and in accordance with the provisions of Sections 6.1, 6.5 and 8, may, instead of performing such work, remove all of the Equipment on the Pole, within the time period specified in the notice, and provided that such removal does not create a safety hazard or otherwise result in a condition of non-compliance with the Standards. Licensee may perform such work without prior notice to TXU Electric Delivery and without first submitting a Permit Application to TXU Electric Delivery; provided, however, Licensee shall notify TXU Electric Delivery of the performance of such work within fifteen (15) days of its completion. If Licensee fails to perform such work within the period specified in the notice, TXU Electric Delivery may, without notice or demand to Licensee and at the sole expense of Licensee, either perform all or any portion of such work, or remove all or any portion of the Equipment from that Pole.

Licensee shall notify TXU Electric Delivery before it begins any work authorized by a Permit Application, approved by TXU Electric Delivery pursuant to the procedures prescribed by this Section 4; such notice shall include, without limitation, the date on which Licensee anticipates beginning that work. TXU Electric Delivery may have a representative present during all or any portion of such work. Licensee shall notify TXU Electric Delivery of the attachment,

4.7 Relocation,
Replacement or
Modification of
Equipment at
TXU Electric
Delivery's
Request

4.8 Notice to TXU
Electric Delivery

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replacement, relocation or modification of Equipment on any Pole within fifteen (15) days of the completion of such work. The notice shall identify the nature of the work and the Equipment and Poles involved. TXU Electric Delivery may inspect all or any portion of such work at any time after its completion, for the purpose of: (a) initially evaluating the work, to determine if it was performed in accordance with the Permit Application; and (b) subsequently evaluating any follow-up or "punch list" work performed by Licensee, reasonably determined to be necessary during the initial evaluation. Licensee shall reimburse TXU Electric Delivery or, as appropriate, TXU Electric Delivery Representatives, for all expenses incurred by TXU Electric Delivery or, as appropriate, TXU Electric Delivery Representatives, in connection with such entities' presence at or inspection of such work, or for all expenses otherwise incurred by TXU Electric Delivery or TXU Electric Delivery Representatives in completing the post-work evaluations described above.

Except as otherwise expressly authorized in writing by TXU Electric Delivery's designated representative, Licensee shall not attach any Equipment to any portions of a Pole consisting of: (a) guy wires or anchor rods; or (b) cross-arms or brackets. In addition, when making attachments to any non-wood Poles, Licensee shall comply with any applicable specialized attachment methods, as prescribed in the Standards or otherwise specified by TXU Electric Delivery.

At such time as any Equipment is attached to a Pole, Licensee shall attach or otherwise securely affix to that Equipment an identification tag, readable from ground level beneath the Pole, that identifies such Equipment as belonging to Licensee and contains an emergency phone number at which Licensee's Authorized Representative may be contacted. The identification tag and required attachment hardware shall be provided by the Licensee. Licensee shall not attach any other identification tag to its Equipment, attached to any Pole, without the prior written consent of TXU Electric Delivery's designated representative. Licensee shall attach or otherwise affix the identification tag to its Equipment, attached to any Pole, as close to that Pole as is practicable, consistent with the Standards. As part of its routine and periodic maintenance of its Equipment, and throughout the term of this Agreement, Licensee will ensure that the identification tags remain securely attached or otherwise affixed to that Equipment, including any Equipment which may have been previously attached to a Pole without an identification tag. In the event that Licensee determines that any of its Equipment, attached to any Pole, is no longer tagged, Licensee shall thereafter promptly attach to that Equipment a replacement identification tag. In addition to and apart from the requirements provided for above in this Section 4.10, Licensee shall, with respect to its Equipment, comply with any other tagging, labeling, or other identification requirements, as may be imposed by any governmental entities.

4.9 Guy Wires,
Anchor Rods,
Cross-arms And
Brackets/Non-
Wood Poles

4.10. Identification of
Licensee's
Equipment

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SECTION 5. MAINTENANCE AND REPAIR OF EQUIPMENT

Licensee shall, at its sole expense, maintain all Equipment on Poles in a safe condition and in thorough repair (including, without limitation, in compliance with the Standards). Licensee may perform maintenance and repair work on such Equipment without giving prior notice to, or obtaining the prior approval of, TXU Electric Delivery. If Licensee fails to maintain any such Equipment in a safe condition and in thorough repair, TXU Electric Delivery may, in its sole discretion, without notice or demand to Licensee and at the sole expense of Licensee, perform such repairs or maintenance as it deems necessary to restore that Equipment to a safe condition and in thorough repair. As part of its maintenance work, Licensee shall promptly remove, from the vicinity of any Pole, any debris (including, without limitation, wood chips or cut limbs) resulting from Licensee's maintenance or repair of its Equipment. Licensee's right to maintain and repair its Equipment, as provided for in this Section 5.1, shall not extend to or include the attachment or other positioning of new Equipment, or the placement of new facilities to upgrade or increase the capacity of Licensee's existing Equipment, or any Overlashing, of or pertaining to existing Equipment.

5.1 Maintenance of Equipment

At an interval no more frequent than once every twelve (12) months, TXU Electric Delivery may inspect all or any portion of the Equipment on any Pole, for the purpose of determining whether such Equipment is in a safe condition and in thorough repair (including, without limitation, in compliance with the Standards). Upon notice from TXU Electric Delivery, Licensee shall, at its sole expense and within such reasonable period as may be specified in the notice, perform any repair or maintenance work, relating to the Equipment on any Pole specified in such notice, as necessary to ensure that such Equipment is in a safe condition and in thorough repair. Licensee shall notify TXU Electric Delivery of the performance of such work within fifteen (15) days of its completion. If Licensee fails to perform such work, TXU Electric Delivery may, without notice or demand to Licensee, and at the sole expense of Licensee, either perform all or any portion of such necessary work, or remove all or any portion of the Equipment from that Pole. TXU Electric Delivery's actions and decisions in either performing or choosing not to perform such inspections shall not operate to relieve Licensee of any responsibility, obligation, or liability Licensee may have pursuant to this Agreement.

5.2 Routine Inspection of Equipment by TXU Electric Delivery

In addition to the inspection rights provided for in Section 5.2, in the event that TXU Electric Delivery should otherwise determine or discover that one or more of Licensee's attachments of Equipment to Poles is not in compliance with the Standards or, in TXU Electric Delivery's reasonable judgment, otherwise presents a safety hazard, TXU Electric Delivery may, at Licensee's expense, inspect all or any portion of Licensee's other Equipment on any Pole, for the purpose of

5.3 Special Inspection of Equipment by TXU Electric Delivery

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determining whether such Equipment is in a safe condition and in thorough repair (including, without limitation, in compliance with the Standards). Upon notice from TXU Electric Delivery, Licensee shall, at its sole expense and within such reasonable period as may be specified in the notice, perform any repair or maintenance work, relating to the Equipment on any Pole specified in such notice, as necessary to ensure that such Equipment is in a safe condition and in thorough repair. Licensee shall notify TXU Electric Delivery of the performance of such work within fifteen (15) days of its completion. If Licensee fails to perform such work, TXU Electric Delivery may, without notice or demand to Licensee, and at the sole expense of Licensee, either perform all or any portion of such necessary work or remove all or any portion of the Equipment from that Pole. TXU Electric Delivery's actions and decisions in either performing or choosing not to perform such inspections shall not operate to relieve Licensee of any responsibility, obligation, or liability Licensee may have pursuant to this Agreement.

Licensee, in the exercise of its sole discretion, may remove any Equipment on any Pole, without prior notice to or the prior approval of TXU Electric Delivery; provided, however, that Licensee shall submit a Permit Application pertaining to such completed work, pursuant to Section 6.5. If TXU Electric Delivery determines that such removal or related work performed by Licensee resulted in a safety hazard (including, without limitation, a condition of non-compliance with the Standards) then Licensee shall, at its sole expense and within such reasonable period as may be specified in the notice, replace such Equipment or perform any other corrective action, as necessary to correct that safety hazard or other condition of non-compliance. Licensee shall notify TXU Electric Delivery of the performance of such work within fifteen (15) days of its completion. If Licensee fails to perform such work within the period specified in the notice, TXU Electric Delivery may, without notice or demand to Licensee and at the sole expense of Licensee, perform all or any portion of such work.

In the event that Licensee either: (a) discontinues its use of any Equipment for purposes of the Permitted Use; or (b) does not use any Equipment, for purposes of the Permitted Use, for any consecutive period of one-hundred eighty (180) days, then Licensee shall, at its sole expense and within thirty (30) days of either such occurrence, remove that Equipment from any Pole. The Overlashing of any Equipment shall not constitute use of that Equipment, for purposes of this paragraph.

Upon notice from TXU Electric Delivery, Licensee shall, at its sole expense, remove all of the Equipment on any Pole, which TXU Electric Delivery is abandoning, or otherwise discontinuing its use of for purposes of providing electric utility service (including, without limitation, discontinuance due to TXU Electric Delivery being required

SECTION 6. REMOVAL OF EQUIPMENT

6.1 Removal of Equipment by Licensee

6.2 Removal of Equipment Upon Abandonment of Pole, or Discontinuance of Utility Service

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to relocate its facilities to underground locations). Licensee shall remove all such Equipment within thirty (30) days of receiving such notice.

In the event that TXU Electric Delivery contracts to sell or sells a Pole on which Equipment is attached, TXU Electric Delivery shall notify Licensee of such fact. Unless Licensee obtains the permission of the new owner of the Pole to maintain its Equipment on the Pole, Licensee shall, at its sole expense, remove the Equipment from that Pole within the time period specified in such notice.

Licensee shall, at its sole expense, remove all of the Equipment on all Poles prior to the end of the term of this Agreement (as provided for in Section 9) or within thirty (30) days of receiving notice of TXU Electric Delivery's intent to terminate this Agreement for other reasons, as expressly provided for in this Agreement (including, without limitation, pursuant to Section 11).

Whenever Licensee removes any Equipment from a Pole, it shall submit to TXU Electric Delivery, within fifteen (15) days thereafter, a Permit Application, signed by an appropriate Authorized Representative and identifying, in the appropriate spaces thereon, the Equipment removed and the Pole from which it was removed.

In the event that Licensee fails to remove all or any portion of the Equipment on any Pole within the time period required by the provisions of this Section 6 or by other applicable provisions of this Agreement, TXU Electric Delivery may, without notice or demand to Licensee, remove such Equipment. Such removal shall be at the sole expense of Licensee and Licensee shall pay TXU Electric Delivery, upon receipt of an invoice therefor and in addition to any expenses incurred by TXU Electric Delivery in connection with such removal, as a processing charge, fifty dollars (\$50) for each Pole from which Equipment is removed.

In the event of an emergency pertaining to a Pole, Licensee shall, at its sole risk and expense, have the right to attach, replace, relocate or modify Equipment on any Pole without first obtaining TXU Electric Delivery's approval of a Permit Application for such work; provided, however, that before performing such work, an Authorized Representative shall obtain the oral approval of TXU Electric Delivery's designated representative, and provided further that such work is performed within the time period and under such conditions as may be reasonably specified by such representative of TXU Electric Delivery. Any such oral approval shall be confirmed, within five (5) days of the performance of the work, by Licensee to TXU Electric Delivery in writing, identifying both the work performed and the Poles

6.3 Removal when
TXU Electric
Delivery Sells a
Pole

6.4 Removal Upon
Termination of
this Agreement

6.5 Submission of a
Permit
Application
Following the
Removal of
Equipment on a
Pole

6.6 Licensee's
Failure to
Timely Remove
Equipment

SECTION 7. EMERGENCIES

7.1 Licensee's
Rights in an
Emergency

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affected. If TXU Electric Delivery determines that such emergency attachment, replacement, relocation or modification resulted in a safety hazard (including, without limitation, a condition of non-compliance with the Standards), and TXU Electric Delivery provides Licensee with a written notice of such determination, then Licensee shall, at its sole expense and within such reasonable period as may be specified in the notice, remove, replace, relocate or modify all or any portion of such Equipment, as necessary to correct that safety hazard or other condition of non-compliance. Licensee shall notify TXU Electric Delivery of the performance of such work within fifteen (15) days of its completion. If Licensee fails to perform such work, TXU Electric Delivery may, without notice or demand to Licensee and at the sole expense of Licensee, either perform all or any portion of such work or remove the Equipment from the Pole.

In the event of an emergency, TXU Electric Delivery may, without prior notice to Licensee and at Licensee's sole expense, permanently or temporarily replace, relocate, modify, remove or perform any other work in connection with the Equipment on any Pole. In such event, TXU Electric Delivery shall notify Licensee of both the work performed and the Pole affected by such work within a reasonable time after its performance.

7.2 TXU Electric
Delivery's
Rights in an
Emergency

SECTION 8. DISCHARGE OF LIENS; PERFORMANCE OF WORK

Licensee agrees that it will not, directly or indirectly, create, incur, assume or suffer to exist any lien (whether mechanics, materialman or other) or other encumbrances on the Equipment attached to any Pole, or to any property, real or personal, owned or controlled by a TXU Electric Delivery Party, resulting from or arising out of any work performed by or on behalf of Licensee (including, without limitation, by any Licensee Party) pursuant to this Agreement. Licensee will, at its sole expense, promptly take any action as may be necessary to discharge any such lien or encumbrance.

8.1 Discharge of
Liens or other
Encumbrances

All work performed by any Licensee Party, pursuant to or within the scope of this Agreement, shall be undertaken and completed in a safe, good and workmanlike manner (including, without limitation, in compliance with the Standards) and shall not interfere with the use of any equipment of any TXU Electric Delivery Party or any Joint User. Licensee shall ensure that any Licensee Party, performing any such work, is properly trained with respect to, and otherwise familiar with, all applicable safety procedures and requirements (including, without limitation, those pertaining to the risks associated with making contact with electrical conductors, and prohibitions against coming into closer proximity to the electrical conductors of TXU Electric Delivery than is

8.2 Licensee's
Performance of
Work

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permitted by the Standards).

This Agreement, if not terminated earlier in accordance with the provisions of Section 11, shall continue in effect for a term of one (1) year and thereafter until terminated as provided herein. This Agreement may be terminated in its entirety or with respect to any one or more of the Poles, or with respect to one or more designated areas in which TXU Electric Delivery provides utility service, at the end of the initial one year term, or at any time thereafter, by either Party giving to the other Party at least sixty (60) days' written notice. Upon termination of this Agreement for any reason, all obligations of the Parties pursuant to this Agreement shall terminate, except for those which, by their sense and context, are intended to survive such termination, including, without limitation, obligations pertaining to indemnification.

SECTION 9. TERM

SECTION 10. RENTAL AND OTHER PAYMENTS

In each calendar year during the term of this Agreement, Licensee shall make an advance rental payment to TXU Electric Delivery. During the first calendar quarter of each year, TXU Electric Delivery shall submit to Licensee an invoice designating the advance rental payment due for that calendar year; further, TXU Electric Delivery shall make a reasonable effort to submit that invoice to Licensee during the month of January of each year. That invoice shall be paid in accordance with the provisions of Sections 10.8 and 10.9.

10.1 Advance Rental Payment

The advance rental payment shall be equal to the rental payment specified in Section 10.3 times the sum of the individual Poles on which Equipment is attached, on January 1 of the calendar year for which the advance rental payment is being paid, as determined from the perpetual inventories maintained by the Parties pursuant to Section 10.6

10.2 Computation of the Advance Rental Payment

The rental rate for attachments of Equipment to each Pole shall be in the amount specified in Attachment D.

10.3 Rental Rate

The rental rate will be adjusted each calendar year by the amount of any increase in the Consumer Price Index (published by the Bureau of Labor Statistics of the U.S. Department of Labor), for the twelve month period ending September 30 of the year immediately preceding the year with respect to which the rate adjustment is being made.

10.4 Adjustments to Rental Rate

The advance rental payment may be adjusted, at TXU Electric Delivery's discretion, for all additional Poles on which Equipment is attached during any calendar year. If invoiced by TXU Electric Delivery, Licensee shall make payments to TXU Electric Delivery reflective of additional Poles on which Equipment is attached at any time during such calendar year.

10.5 Adjustment to the Advance Rental Payment

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TXU Electric Delivery shall maintain a perpetual compilation of the Permit Applications and notices submitted to it by Licensee pursuant to this Agreement. Licensee and TXU Electric Delivery shall maintain perpetual inventories of the Equipment attachments on Poles and the Poles on which Equipment is attached. Such inventories shall be based on the physical inspections specified in this Section 10.6, together with the Permit Applications and notices pertaining to attachments of Equipment required by this Agreement. The Parties will conduct, or will cause to have conducted, a physical inspection of the Equipment attached to Poles every five (5) years, at a time designated by TXU Electric Delivery. Such inspection will be conducted either: (a) by joint physical inspection, utilizing both Licensee and TXU Electric Delivery employees; or (b) when TXU Electric Delivery and Licensee employees are not available to perform the inspection, by a contractor selected by TXU Electric Delivery, in its reasonable judgment. In the event that the inspection is performed by a contractor, TXU Electric Delivery will, from time to time during the course of that inspection, review the contractor's work to assess whether the inspection is being performed accurately. TXU Electric Delivery shall use reasonable efforts to have the physical inspection conducted in cooperation with Joint Users (including, as appropriate, having the inspection performed with respect to all attachments on Poles, rather than with respect to just the Licensee's attachments), and the costs of any joint physical inspection, undertaken in cooperation with Joint Users, shall be borne pro rata by the Licensee and Joint Users. Nevertheless, Licensee will otherwise be charged for and shall pay all costs for, or incurred in connection with, the inspection, regardless of the method utilized. Such costs will include, but are not limited to, costs of materials employees, and contractors, transportation costs, and any miscellaneous charges necessary for conducting the inspection.

Licensee acknowledges that TXU Electric Delivery may, in its discretion, contract with or otherwise arrange for one or more TXU Electric Delivery Representatives to act for or on behalf of TXU Electric Delivery, or in furtherance of TXU Electric Delivery's rights, pursuant to or in connection with this Agreement. Licensee agrees that TXU Electric Delivery, or a TXU Electric Delivery Representative, may invoice Licensee for all costs and expenses incurred by TXU Electric Delivery, or by TXU Electric Delivery Representatives, in furtherance of such actions.

Subject to Section 4.1.2 pertaining to Preparation Costs, Licensee shall pay each invoice submitted to it by TXU Electric Delivery or, as appropriate, by a TXU Electric Delivery Representative, within thirty (30) days of its receipt of that invoice and will remit payment to the address indicated on each invoice, as TXU Electric Delivery or TXU Electric Delivery Representatives may designate from time to time. Any portion of an invoice not paid when due shall bear interest at a rate of one and one-half percent (1.5%) per month or the maximum rate allowed by law, whichever is less, unless such amount is

10.6 Compilation of
 Permit
 Applications and
 Notices;
 Perpetual
 Inventories;
 Physical
 Inspection

10.7 Licensee's
 Payment of
 Costs and
 Expenses
 Incurred by TXU
 Electric Delivery
 or TXU Electric
 Delivery
 Representatives

10.8 Payment of
 Invoices

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disputed and is paid into escrow pursuant to Section 10.9.

Unless otherwise agreed to by the Parties, whenever Licensee in good faith disputes a payment, it shall deposit the amount in dispute in an interest bearing escrow account acceptable to TXU Electric Delivery within the time period provided by Section 10.8. Any amount so deposited shall remain in such escrow account until the dispute is resolved. Upon resolution of the dispute, the amount so deposited, plus interest earned on that amount, shall be paid to the Party determined to be entitled to the amount in the escrow account.

10.9 Disputed
Invoices or
Adjustments

SECTION 11. DEFAULT AND TERMINATION

If Licensee:

11.1 Default by
Licensee

(a) fails to pay fully or deposit in escrow all monies due TXU Electric Delivery or TXU Electric Delivery Representatives on the date that the payment is due, pursuant to the provisions of Section 10, and such failure shall continue, in whole or in part, for a period of more than thirty (30) days; or

(b) fails to comply with any term, condition or covenant of this Agreement, other than any provision providing for the payment of monies due TXU Electric Delivery or TXU Electric Delivery Representatives, and such failure remains uncured for a period of thirty (30) days following Licensee's receipt of written notice of the kind, character and nature of the failure by Licensee (or if such non-compliance cannot reasonably be cured within thirty (30) days of such notice, Licensee has not commenced to cure and satisfy the failure within thirty (30) days and shall not thereafter proceed to cure such failure with reasonable diligence and good faith); then, in any such event, Licensee shall pay all monies owed to TXU Electric Delivery or TXU Electric Delivery Representatives under this Agreement in accordance with the provisions of Section 10, and TXU Electric Delivery may pursue any one or more of the following remedies, and TXU Electric Delivery Representatives may pursue the remedies contained in subsection (iii) below, without any notice or demand whatsoever to Licensee:

(i) cancel and terminate this Agreement in its entirety, or with respect to one or more designated areas in which TXU Electric Delivery provides utility service, or with respect to any one or more of the Poles; or

(ii) revoke Licensee's permission to use any Poles involved in such default or non-compliance; or

(iii) institute suit or other adjudicatory proceedings.

Licensee shall pay all of the costs and expenses, including, without

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limitation, reasonable attorneys' fees, incurred by TXU Electric Delivery or, as appropriate, TXU Electric Delivery Representatives, by reason of the foregoing events of default, and in seeking any remedy for, or relief from, such events of default. TXU Electric Delivery's, or TXU Electric Delivery Representatives', pursuit of any of the respective remedies available to them pursuant to this Section 11.1, shall not preclude TXU Electric Delivery or TXU Electric Delivery Representatives from pursuing any other remedies provided for in this Agreement or otherwise provided by law, nor shall TXU Electric Delivery's, or TXU Electric Delivery Representatives', pursuit of any remedy provided in this Agreement constitute a forfeiture or waiver of any payment of monies due to TXU Electric Delivery or TXU Electric Delivery Representatives under this Agreement, or of any damages accruing to TXU Electric Delivery or TXU Electric Delivery Representatives by reason of Licensee's failure to comply with any of the terms, conditions or covenants of this Agreement.

In the event any lawfully required franchise, license, permit, waiver, consent or easement held by Licensee, and required for or in furtherance of Licensee's use of any Equipment attached to Poles, is revoked or denied to Licensee for any reason, in whole or in part, Licensee's rights under this Agreement shall immediately terminate to such extent, and Licensee shall, within thirty (30) days, remove such Equipment from Poles as may be required to comply with such revocation or denial of authority.

11.2 Termination
Upon
Licensee's Loss
of its Franchise

SECTION 12. INDEMNIFICATION AND CONSEQUENTIAL DAMAGES

(a) To the fullest extent allowed by Texas law, Licensee agrees to defend, protect, indemnify and hold harmless each TXU Electric Delivery Party from and against all Claims asserted by any person or entity, including, without limitation, any Licensee Party, in any way arising out of, related to, caused by or incident to this Agreement, including, but not limited to: (i) Claims arising out of, related to, caused by or incident to Licensee's breach of this Agreement or any representation, warranty, covenant or obligation of Licensee set forth herein; (ii) Claims arising out of, related to, caused by or incident to the attachment, maintenance, replacement, relocation, repair, modification, removal, use or operation of, or in any other way arising out of, related to, caused by or incident to, any Equipment; (iii) Claims arising out of, relating to, caused by or incident to the Permitted Use; or (iv) Claims arising out of, related to, caused by or incident to any interruption, disruption, interference or termination of the Permitted Use. **IT IS THE EXPRESS INTENT OF THE PARTIES THAT, FOR THE PURPOSES OF THIS SECTION 12.1(a), CLAIMS SHALL INCLUDE, BUT NOT BE LIMITED TO, CLAIMS ARISING OUT OF OR RESULTING FROM THE TXU ELECTRIC DELIVERY PARTIES' SOLE OR CONCURRENT (1)**

12.1 Obligation to
Indemnify

DISTRIBUTION POLE LICENSE AGREEMENT

NEGLIGENCE, (2) STRICT LIABILITY, OR (3) OTHER FAULT OF ANY NATURE; PROVIDED, HOWEVER, THAT, IN THE EVENT THAT A FINDING AS TO THE COMPARATIVE FAULT OR RESPONSIBILITY OF THE TXU ELECTRIC DELIVERY PARTIES AND THE LICENSEE PARTIES IS MADE OR ENTERED BY A COURT, LICENSEE SHALL ONLY BE OBLIGATED TO INDEMNIFY THE TXU ELECTRIC DELIVERY PARTIES AS TO THAT PERCENTAGE OR PORTION OF FAULT OR RESPONSIBILITY ATTRIBUTABLE TO THE LICENSEE PARTIES.

- (b) The obligations provided for in this Section 12.1(b) apply to any of Licensee's contracts with contractors, whether now or hereafter in effect, under the terms of which any such contractors attach, maintain, replace, relocate, or modify any Equipment on a Pole (the "Attachment Contracts"). Licensee shall use its best efforts to ensure that each of the Attachment Contracts includes provisions whereby the subject contractor acknowledges and agrees that TXU Electric Delivery (whether identified by name or description) shall have the full benefit of any indemnity obligation, insurance coverage (with TXU Electric Delivery being designated as an insured or additional insured Party under the terms of the applicable policies), and limitations of liability, applicable to or protecting Licensee under the terms of that contractor's Attachment Contract.
- (c) To the extent necessary to permit the TXU Electric Delivery Parties to enforce the indemnity obligations provided for in Section 12.1(a), Licensee agrees that, with respect to any Claims, it shall and does, to the fullest extent legally permissible, hereby waive, and shall require each of its insurers to waive, as to the TXU Electric Delivery Parties, any and all defenses, limitations of liability, or other protections Licensee may have or claim pursuant to the laws of the State of Texas, including, without limitation, those provided for in the Texas Tort Claims Act (Chapter 101 of the Texas Civil Practice and Remedies Code), and the Texas Workers' Compensation Act (Chapter 401 of the Texas Labor Code).
- (d) The Parties acknowledge and agree that, within their lawful and reasonable contemplation, all payments which may be made by Licensee, pursuant to its indemnity obligations or other potential liabilities under this Agreement, can and will reasonably be paid and satisfied from some fund in the immediate control of Licensee, readily available for the purpose of satisfying and paying such indemnity obligations and other potential liabilities. Nevertheless, in the event any such indemnity obligation or potential liability accrues and becomes ascertainable in amount and, further, if the amount of such indemnity obligation or liability exceeds the funds then available to Licensee to satisfy such indemnity obligation or liability, Licensee agrees that, in each year during which such indemnity obligation or liability ascertainable in amount exists, arising from or relating to a Claim, it will, promptly and as soon as permissible under applicable law, levy a tax, with

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full allowances being made for tax delinquencies and costs of tax collection, which will be sufficient to raise and produce the money required (including, without limitation, any applicable sinking fund) to ensure that all indemnity obligations or liabilities ascertainable in amount, arising from or relating to a Claim, are satisfied and discharged.

- (e) If, for whatever reason, any provision of this Agreement is held by a court to be in conflict with or contradictory to Licensee's duty to indemnify the TXU Electric Delivery Parties, as provided for in this Agreement, such conflicting or contradictory provision shall be subjugated to, and shall not impair, affect, or invalidate, Licensee's duty to indemnify the TXU Electric Delivery Parties, and such duty shall remain in full force and effect.
- (f) With regard to Licensee's obligations of indemnification and other potential liabilities provided for in this Agreement, the Parties acknowledge and agree that Licensee has entered into this Agreement in furtherance of public purposes, and that no payment made or obligation incurred by Licensee hereunder shall constitute or be construed as an application or lending of Licensee's credit, or an application of public funds for private use.

Under no circumstance whatsoever shall any TXU Electric Delivery Party be liable to Licensee in contract, in tort (INCLUDING SOLE OR CONCURRENT, ACTUAL OR IMPUTED NEGLIGENCE, OR STRICT LIABILITY), under any warranty, or otherwise, for any special, indirect, incidental, or consequential loss or damage of any nature, including, without limitation, for the cost of capital, loss of profits or revenues or the loss of use thereof, attorneys' fees (except as otherwise expressly provided for in this Agreement) or the cost of purchased or replacement services, or claims of Licensee's users, licensees, concessionaires, or any other person, firm or entity in such regard, and to the extent allowed by law, Licensee agrees to indemnify and hold each TXU Electric Delivery Party harmless from and against such losses or damages.

No TXU Electric Delivery Party shall have any liability to any Licensee Party, for any expense, damage or loss caused, in whole or in part, by the action of any TXU Electric Delivery Party that damages or injures any Equipment, except to the extent directly attributable to the gross negligence or willful misconduct of a TXU Electric Delivery Party.

Within a reasonable period after receiving or becoming aware of the assertion of any Claim within the scope of Section 12.1, TXU Electric Delivery shall notify Licensee of the assertion of such Claim. TXU Electric Delivery's failure to provide such notice shall not, however, alter or, in any manner, impair Licensee's obligations of indemnity, as provided for in Section 12.1, except to the limited extent that such failure directly and adversely affects Licensee's efforts or ability to fulfill such obligations of indemnity.

12.2 The Licensee's
Waiver of
Consequential
Damages

12.3 No Liability for
Damage to
Equipment or
Termination,
Disruption or
Interruption of
Service

12.4 Notice Of Claim
To Licensee

DISTRIBUTION POLE LICENSE AGREEMENT

SECTION 13. INSURANCE

Licensee or, with TXU Electric Delivery's prior, written consent, Licensee's designated contractor having primary or exclusive responsibility for maintaining Equipment located on the Poles, shall, at its sole expense and throughout the term of this Agreement, maintain insurance in accordance with the requirements of Attachment E.

13.1 Coverage Requirements

Licensee will notify TXU Electric Delivery as soon as practical of any accidents or occurrences resulting in injuries to any person, including death, or any property damage (including, without limitation, damage to any Equipment or Pole), arising out of or relating to this Agreement.

13.2 Notification of Accident, Injury, or Damage

Nothing in this Section 13, nor the provision of any insurance required by this Section 13, shall affect, limit or otherwise reduce the indemnity obligations provided for in Section 12.

13.3 Enhancement of Indemnification

SECTION 14. NON-EXCLUSIVITY OF THIS AGREEMENT

The license granted to Licensee hereunder with respect to any Pole shall be non-exclusive, in that TXU Electric Delivery reserves the right to use any or all of such Pole for any lawful purpose or business, or to lease or otherwise permit any other person or entity the right to lease or use any or all of such Pole for any lawful purpose.

14.1 TXU Electric Delivery

Licensee has and retains whatever rights it may have to install and construct its Equipment, separate and apart from this Agreement; provided, however, that in no event shall Licensee make any use of Poles, or any other facilities or equipment of TXU Electric Delivery, except in accordance with, and subject to, the terms and conditions of this Agreement; and provided further, however, that Licensee shall not locate poles, guys, or other facilities where they will (a) interfere with access to Poles or the operation of TXU Electric Delivery's electric system; or (b) result in or cause a condition of non-compliance with any provision of the Standards.

14.2 Licensee

SECTION 15. ASSIGNMENTS

In addition to the limitations provided for in, and without limiting Licensee's responsibilities under, Section 2.2, Licensee shall not, without the prior written consent of TXU Electric Delivery, transfer, assign, delegate or sublet any of its rights or obligations under this Agreement.

15.1 Assignment by Licensee

Except to the extent expressly consented to by TXU Electric Delivery (such consent not to be unreasonably withheld), no permitted transfer,

15.2 Non-Release

DISTRIBUTION POLE LICENSE AGREEMENT

assignment, delegation or subletting by Licensee shall release or relieve Licensee, or Licensee's successor-in-interest, of any of its obligations under this Agreement, and Licensee, or Licensee's successor-in-interest, shall remain fully obligated and liable to TXU Electric Delivery under this Agreement, notwithstanding any such permitted transfer, assignment, delegation or subletting.

TXU Electric Delivery may transfer, assign or delegate any of its rights or obligations under this Agreement at any time, without the consent of or prior notice to Licensee. TXU Electric Delivery shall notify Licensee of any such transfer, assignment or delegation within thirty (30) days thereof.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, where assignment is permitted by this Agreement.

Licensee shall pay, in the normal course of its business and before they become delinquent, all taxes, assessments, fees and other governmental charges of any kind whatsoever properly levied or assessed against it, or against the Equipment or otherwise pertaining to the Permitted Use, including, without limitation, all franchise, license, permit, and other fees due to any cities or other governmental bodies in connection with Licensee engaging in the Permitted Use.

This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of Texas.

This Agreement and all Attachments attached hereto shall constitute the entire, complete and final agreement of the Parties with respect to the subject matter hereof, and all prior negotiations, undertakings, understandings, representations, statements and agreements between the Parties with respect to the subject matter hereof are merged into this Agreement.

Any notice, other than Permit Applications, required to be given or made in connection with this Agreement shall be in writing and shall be deemed properly or sufficiently given or made if: (a) delivered in person with receipt acknowledged in writing by the person specified below; (b) sent by registered or certified mail, return receipt requested, to the person and address specified below; (c) sent by confirmed telephonic document transfer to the person and fax number specified below; (d) sent electronically to the recipient's designated e-mail address; provided that the recipient acknowledges receipt of that notice; or (e) sent or delivered by such other method as will ensure evidence of its receipt by the person specified below:

15.3 Assignment by
TXU Electric
Delivery

15.4 Successors and
Assigns

SECTION 16. LICENSEE'S PAYMENT OF TAXES, ASSESSMENTS, FEES AND OTHER GOVERNMENTAL CHARGES

SECTION 17. CHOICE OF LAW

SECTION 18. COMPLETE AGREEMENT

SECTION 19. NOTICES

19.1 Method of
Notice

DISTRIBUTION POLE LICENSE AGREEMENT

(a) If to Licensee:

COA-CTM-GAATN
P.O. Box 1088
Austin, Texas 78701

Attn: Martha Krischke
Telephone Number: 512-974-2482
Fax Number: 512-974-3000
Email: Martha.Riekenberg@ci.austin.tx.us

(b) If to TXU Electric Delivery:

TXU Electric Delivery Company
1601 Bryan St., Suite 24-140
Dallas, Texas 75201

Attn: Ron Coan
Telephone Number: 214-812-2211
Fax Number: 214-812-7450
Email: rcoan@capgeminienergy.com

Notices given or made pursuant to or in connection with this Agreement shall be effective as of the time of delivery to or receipt by the Party to whom such notice is addressed; provided, however, that no notice shall be effective unless it is given or made in compliance with this Section 19.1.

The person, address, fax number, or Email address of any Party, to which notice shall be given pursuant to Section 19.1, may be changed at any time, upon written notice given pursuant to Section 19.1 to the other Party.

19.2 Change in
Person's
Address and
Fax Number

SECTION 20. COMPLIANCE WITH LAWS

Licensee shall, at its own cost, operate, attach, replace, relocate, repair, modify and remove its Equipment on or from Poles in compliance with the Standards, and all other applicable constitutions, statutes, ordinances, rules, regulations, codes, orders, decisions, ordinances and decrees of all governmental bodies with jurisdiction over the Licensee or subject matter of this Agreement. Where a difference in any of the foregoing specifications may exist, the more stringent shall apply.

20.1 Licensee's
Compliance

If any portion of this Agreement becomes or is determined by a governmental body with jurisdiction to be void, unenforceable, invalid or illegal, Licensee and TXU Electric Delivery shall modify, to the extent they are able to do so, such portion in a manner which

20.2 Severability

DISTRIBUTION POLE LICENSE AGREEMENT

preserves the intent and effect both of such portion and the remainder of this Agreement, to the maximum extent which is effective, enforceable, valid and legal. A void, unenforceable, invalid or illegal portion of this Agreement shall not affect the effectiveness, enforceability, validity or legality of the remainder of this Agreement.

Licensee may replace any or all of its Authorized Representatives, at any time or from time to time, by delivering to TXU Electric Delivery a written notice specifying: (a) the name of the new Authorized Representative; (b) if not an employee of Licensee, the employer and relationship to Licensee; (c) title; (d) business address; (e) business telephone number; (f) fax number; (g) Email address; (h) the name of the Authorized Representative being replaced; and (i) the date when the change becomes effective. Unless otherwise specified in the notice, the new Authorized Representative shall have the same authority as the Authorized Representative being replaced. Upon good cause shown by TXU Electric Delivery: (i) Licensee shall increase or decrease the number of Authorized Representatives or replace any or all of them; and (ii) TXU Electric Delivery may reject any replacement for an Authorized Representative

SECTION 21. REPLACEMENT OF AUTHORIZED REPRESENTATIVES

SECTION 22. AMENDMENTS AND WAIVERS

Only written amendments of this Agreement duly authorized and signed by the Parties shall be effective, and no writing shall constitute an amendment of this Agreement unless such writing is expressly identified as an amendment, with specific reference to the provisions of this Agreement to be amended. No amendment shall be effective prior to the date such amendment is signed by the Parties, unless such amendment expressly so provides. Notwithstanding the requirements of this Section 22.1, Licensee may replace any or all of its Authorized Representatives by delivering written notice to TXU Electric Delivery in accordance with Section 21, without any requirement that such notice be identified as, or be deemed to be, an amendment to this Agreement.

22.1 Amendments

No rights or duties under this Agreement shall be waived except as expressly provided in this Agreement, or unless the Party having the right expressly waives such rights or duties in a written instrument identified as a waiver. Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

22.2 Waiver

Except as specifically provided herein (and in particular, but without limitation, for or with respect to TXU Electric Delivery Representatives), this Agreement is entered into for the sole benefit of TXU Electric Delivery and Licensee and, where permitted, their respective successors and assigns. Nothing in this Agreement or in

SECTION 23. AGREEMENT FOR THE SOLE BENEFIT OF LICENSEE AND TXU ELECTRIC DELIVERY

DISTRIBUTION POLE LICENSE AGREEMENT

any approved Permit Application shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, Licensee's or TXU Electric Delivery's customers, concessionaires and licensees.

Nothing in this Agreement shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, partners or joint venturers between the Parties, it being understood and agreed that no such provision, or any acts of the Parties, shall be deemed to create any relationship between the Parties other than the relationship of licensor and licensee.

SECTION 24. RELATIONSHIPS OF THE PARTIES

SECTION 25. EXISTING CONTRACTS SUPERSEDED

Any existing agreements between the Parties or their predecessors, regarding the attachment of Equipment to Poles, are by mutual consent of the Parties hereby abrogated and superseded by this Agreement.

25.1 Existing
Contracts

Notwithstanding anything to the contrary in this Agreement, the Parties from time to time may prepare and implement such supplemental operating routines or working practices as they mutually agree in writing to be necessary or desirable to effectively administer the provisions of this Agreement.

25.2 Operating
Routines and
Working
Practices

Section and subsection headings are inserted in this Agreement for convenience of reference only and shall in no way modify or restrict any of the terms and provisions of this Agreement.

SECTION 26. HEADINGS

This Agreement may be simultaneously executed in several counterparts. All such counterparts, when executed and delivered, each as an original, shall constitute but one and the same instrument.

SECTION 27. EXECUTION IN COUNTERPARTS

No provision of this Agreement shall be construed against or interpreted to the disadvantage of either Party by any court or other governmental or judicial authority, by reason of such Party having or being deemed to have prepared, structured or dictated such provision.

SECTION 28. INTERPRETATION

As used in this Agreement, the term "Force Majeure" means acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or of any State, any arrests and restraints, civil disturbances, explosions, adverse weather conditions (including, without limitation, rain, snow, or ice), and inability despite reasonable diligence to obtain materials essential to the obligations to be performed under the Agreement.

SECTION 29. FORCE MAJEURE

DISTRIBUTION POLE LICENSE AGREEMENT

Should either Party be rendered unable, either wholly or in part, by an event of Force Majeure, the occurrence of which is beyond the affected Party's reasonable control, to fulfill its obligations under the Agreement, the obligation(s) affected by such event of Force Majeure shall be suspended only during the continuance of such inability. The Party so affected shall give notice of the existence, extent and nature of such event of Force Majeure, in writing, to the other Party within forty-eight (48) hours after the occurrence. The Party so affected shall remedy such inability with all reasonable dispatch and shall use due diligence in this regard.

The following are attached to and hereby made a part of this order:

Attachment A, Permit Application

Attachment B, Authorized Representatives

Attachment C, TXU Electric Delivery Standards

Attachment D, Rental Rate Schedule

Attachment E, Licensee's Minimum Insurance Requirements

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

LICENSEE

By: 

Signature

Name: Peter Collins

Title: Chief Information Officer

City of Austin

Date: 5/11/06

TXU ELECTRIC DELIVERY COMPANY

By: Capgemini Energy LP, Its Limited Agent

By: 

Signature

Name: Ron Coan

Title: Supply Chain Specialist

Date: 05-11-06

ATTACHMENT A
PERMIT APPLICATION/NOTIFICATION

Licensee - COA-CTM-GAATN
Address P.O. Box 1088
City & State Austin, Texas 78701

Permit Application # _____
Notification # _____
Town or Area _____

This Permit Application or notification is submitted pursuant to the terms of that Distribution Pole License Agreement by and between Licensee and TXU Electric Delivery, dated May 1, 2006, and is governed by the provisions of that Agreement. The definitions in Section 1 of that Agreement are hereby incorporated by reference in this Permit Application/Notification.

A. PERMIT APPLICATION

PART I (Licensee to check appropriate boxes, fill in blanks, date and sign)

☐ Attachment of Equipment on Poles

Licensee desires to make _____ attachments on _____ Pole(s) of which _____ have no existing Equipment on them. The attached drawing(s) and specifications identify each Pole on which Equipment is to be attached and describe the types and characteristics of the Equipment or other facilities to be attached to the Pole(s).

☐ Replacement or Modification of Equipment on Poles

Licensee desires to replace or modify existing Equipment on _____ Pole(s). The attached drawing(s) and specifications identify each Pole on which the Equipment is to be replaced or modified, and describe the types and characteristics of the Equipment involved in the replacement or modification.

☐ Relocation of Equipment to Poles

Licensee desires to relocate existing Equipment on _____ Pole(s) to _____ separate Pole(s). The attached drawing(s) and specifications identify each Pole on which the Equipment is to be relocated.

☐ Removal of Equipment from Poles

Licensee has removed Equipment from _____ Pole(s). The attached drawing(s) identifies each Pole from which Equipment was removed and the type of Equipment removed.

Dated: _____ Authorized Representative _____

PART II (TXU Electric Delivery to check appropriate boxes, fill in blanks, date and sign)

Licensee's application to attach, replace, relocate or modify Equipment is:

☐ Approved

☐ Denied

☐ Conditionally approved subject to the modifications and conditions set forth on the attachment hereto.

Dated: _____ TXU Electric Delivery Representative _____

PART III (Licensee to sign, date and return original / retain one copy for Licensee records)

Licensee hereby accepts the modifications and conditions set forth in Part II hereof and any pertinent attachment hereto (including responsibility for any estimated costs specified therein).

Dated: _____ Authorized Representative _____

PERPETUAL INVENTORY OF POLES USED BY LICENSEE
(For TXU Electric Delivery's use only)

<u>Type of Service</u>	<u>Number of Attachments</u>			
	<u>Previous Balance</u>	<u>Added</u>	<u>Removed</u>	<u>New Balance</u>
Cable	_____	_____	_____	_____
Telecommunications	_____	_____	_____	_____
All Other	_____	_____	_____	_____

B. NOTIFICATION

PART IV OVERLASHING

- ☐ Licensee gives notice of Overlashing, on or with respect to certain Equipment attached to _____ Poles. The attached drawing(s) and specifications identify each Pole containing Equipment which Licensee has Overlashed, and also describe the types and characteristics of the fiber optic cable or other equipment Overlashed. This Overlashing was completed on _____ [specify date].

PART V SERVICE DROPS

- ☐ Licensee gives notice that it has attached one or more Service Drops on _____ Pole(s). The attached drawing(s) and specifications identify each Pole on which one or more of those Service Drops was attached, and also describe the types and characteristics of those Service Drops. These Service Drops attachments were completed on _____ [specify date].
- ☐ Licensee gives notice that it has replaced, modified, relocated, or removed one or more existing Service Drops on _____ Pole(s). The attached drawing(s) and specifications identify each Pole with respect to which one or more of those Service Drops was replaced, modified, relocated, or removed, and also describes the types and characteristics of the Service Drops involved in that replacement, modification, relocation, or removal. The replacement, modification, relocation, or removal of those Service Drops was completed on _____.

ATTACHMENT B**AUTHORIZED REPRESENTATIVES**

The following individuals shall have the authority to sign Permit Applications on behalf of Licensee, as required by Sections 4 and 6 of the Agreement:

<u>Name</u>	<u>Employer</u>	<u>Title</u>	<u>Business Address</u>	<u>Business Telephone Number</u>	<u>Fax Number</u>	<u>Email Address</u>
Martha Krischke	City of Austin, TX	Contracts Manager	Mailing: PO Box 1088, Austin, TX 78701 Physical: 625 E. 10 th St., 6 th Flr., Austin, TX 78701	512-974-2482	512-974-3000	martha.riekenberg@ci.austin.tx.us

The following individuals shall have the authority to contact TXU ELECTRIC DELIVERY on behalf of Licensee in an emergency, as permitted by Section 7.1 of the Agreement:

<u>Name</u>	<u>Employer</u>	<u>Title</u>	<u>Business Address</u>	<u>Business Telephone Number</u>	<u>Fax Number</u>	<u>Email Address</u>
Jeff Kirk	Co Com Cabling Systems	Operations	Mailing: P.O. Box 1334, Pflugerville, TX 78691	512-252-7171	512-252-7278	jeff_k@cocomcabling.com

ATTACHMENT C

TXU ELECTRIC DELIVERY STANDARDS

The Standards are available for reference and other use by Licensee at the following website:

<http://www.txuelectricdelivery.com/community/construct/jointuse/default.asp>

USER ID: txued PASSWORD: txuedjum (refer to "Construction and Development"/"Joint Use Management" portion of website)

Without limiting the scope or applicability of the Standards, Licensee shall ensure that it complies with the following particular requirements, with respect to its Facilities:

1. Anchors/Guys

- (a) Licensee shall have its own anchor and properly tensioned guy, for each Pole to which it attaches Equipment, to the extent specifically required by the Standards.
- (b) Licensee shall not guy on the anchor of TXU Electric Delivery or any Joint User, on any Pole.
- (c) Except as otherwise expressly agreed to by TXU Electric Delivery, Licensee shall not attach or position its anchor, on any Pole, within five feet of any TXU Electric Delivery anchor.
- (d) Licensee shall avoid, and seek to promptly correct, any situation in which Licensee's guy, installed on any Pole, is broken or lacks tension.

2. Guy Markers

Licensee shall ensure that its guys on Poles, exposed to pedestrian traffic, are marked with an appropriate guy marker.

3. Bonding

- (a) Licensee shall ensure that its communications cable strand and down guy, installed on any Pole for which a down guy is required, are bonded and also connected to the TXU Electric Delivery Pole ground.
- (b) Licensee shall ensure that its pole-mounted Equipment (including power supply equipment) is bonded to the Pole ground.
- (c) Licensee shall ensure that its communications cable is bonded to the TXU Electric Delivery pole ground at every Pole. For attachments made prior to 11/01, four bonds (grounds) are required to be in place for each continuous mile of communications cable.
- (d) Licensee shall ensure that a bond is in place between its communications ground and any power supply ground, on the same Pole.

4. Clearances

- (a) Except as otherwise expressly agreed to by TXU Electric Delivery, Licensee shall ensure that its Equipment, attached to any Pole, has a clearance from the lowest TXU Electric Delivery power conductor of at least: (i) forty inches (40") at the Pole; and (ii) thirty inches (30") at mid-span between any two Poles (or twelve inches (12") in the case of a street light drip loop).

[Note that NESC exceptions allowing for communications equipment clearances of thirty inches (30") at the pole, and twelve inches (12") at mid-span, do not apply to any attachments of Licensee's Equipment to any Poles]

- (b) Licensee shall ensure that its Equipment meets the NESC ground clearance requirement under largest final sag.

ATTACHMENT D
RENTAL RATE SCHEDULE

During calendar year 2006, the rental rate for each Pole to which one or more attachments of Equipment is made shall be:

\$23.03

The rental rate specified herein is subject to, and shall be determined in accordance with, Section 10.4 of the Agreement.

ATTACHMENT E

LICENSEE'S MINIMUM INSURANCE REQUIREMENTS

Licensee will, at its own expense, maintain in force the following minimum insurance coverages, with insurers acceptable to TXU Electric Delivery.

- 1) Employers' Liability and Workers' Compensation Insurance, providing statutory benefits in accordance with the laws and regulations of the State of Texas or state of jurisdiction as applicable. The minimum limits for the Employers' Liability insurance will be One Million Dollars (\$1,000,000) each accident bodily injury by accident, One Million Dollars (\$1,000,000) each employee bodily injury by disease, One Million Dollars (\$1,000,000) policy limit bodily injury by disease.
- 2) Primary Commercial General Liability Insurance, including personal injury and property damage, contractual liability coverage, broad form property damage, products and completed operations coverage, continuing for two (2) years following termination of this Agreement, with minimum limits of One Million Dollars (\$1,000,000) per occurrence for personal injury, bodily injury, including death and property damage.
- 3) Comprehensive Automobile Liability Insurance for coverage of owned, non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, whether licensed or not with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.
- 4) Excess Liability Insurance over and above the Employers' Liability, Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum of Two Million Dollars (\$2,000,000) per occurrence. Coverage must "drop down" for exhausted aggregate limits under the coverages referenced in #2 and #3 above.
- 5) The required limits of insurance can be satisfied by any combination of primary and excess coverage.
- 6) The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance, and Excess Liability Insurance policies will include TXU Corp., and its direct and indirect subsidiaries, as an additional insured under the policies. All policies will contain provisions whereby the insurers waive all rights of subrogation against TXU Corp., and its direct and indirect subsidiaries, and provide thirty (30) days advance written notice to TXU Electric Delivery prior to renewal, cancellation or any material change in coverage or condition.
- 7) The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Liability Insurance policies will contain provisions that specify that the policies are primary and will apply without consideration for other policies separately carried, and will state each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability will not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Only one deductible will apply per occurrence, regardless of the number of insureds involved in the occurrence. The Licensee will be responsible for any deductibles or retentions.
- 8) To the extent that policies provided hereunder include aggregates applicable to coverage limits, the first One Million Dollars (\$1,000,000) of liability insurance will limit coverage to this Agreement.
- 9) The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Liability Insurance policies, if written on a claims-made basis, will be maintained in full force and effect for two (2) years after termination of this Agreement. All policies must be issued by carriers having an A.M. Best's Rating of "A" or better, and an A.M. Best's Financial Size

CITY OF AUSTIN



MBE/WBE
UTILIZATION FORM
&
UTILIZATION PLAN
FOR
SOLE/SINGLE SOURCE
AND
PROFESSIONAL SERVICES

Project Name: ON COR 974244

Contract Number: N/A

Date: 01/15/2010

JUNE 2009

MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)

MBE/WBE UTILIZATION FORM

- ☐ SOLE/SINGLE SOURCE
☐ PROFESSIONAL SERVICES

Even though no goals have been established for this contract, the Offeror is invited to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Offeror does not perform the service with its own workforce or if supplies or materials are required and the Offeror does not have the supplies or materials in its inventory, the Offeror is encouraged to contact the Small and Minority Business Resources Department (SM BR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Offeror is also encouraged to make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

No

Yes /

If yes, contact SM BR at (512) 974-7600 to obtain an availability list.

I understand that even though no goals have been established, I am encouraged to comply with the City of Austin's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this Form and Utilization Plan shall become a part of my Contract.

ONCON
 Company Name

Alan Quam SR. ENG.
 Name and Title of Authorized Representative (Print or Type)

Alan Quam
 Signature

1-22-2010
 Date

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

 / APPROVAL IS HEREBY GRANTED.

 APPROVAL IS HEREBY DENIED. CONTACT SM BR FOR ADDITIONAL INFORMATION.

Reviewed by Counselor

Date 2-4-10

UTILIZATION PLAN

(Please print name and address)

PROJECT NAME: ONCOR 974244

PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant	<u>ONCOR</u>		
Address	<u>115 W. 7TH. ST. STE-817</u>		
City, State Zip	<u>FT. WORTH, TX 76102</u>		
Phone	<u>817-215-6755</u>	Fax Number	
Name of Contact Person	<u>ALAN QUAM</u>		
Is company City certified?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>	

I understand that even though no goals have been established, I am encouraged to comply with the City of Austin's MBE/WBE Procurement Program if subcontracting areas are identified. I certify that the information included in this Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become a part of my Contract.

ALAN QUAM SR. ENG.
Name and Title of Authorized Representative (Print or Type)

Alan Quam
Signature

1-22-2010
Date

Provide a list of all proposed subcontractors/subconsultants/applicants that will be used in the performance of this Contract.

Sub-Contractor/Consultant	<u>UTILITY SUPPORT SYSTEMS</u>		
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Ethnic/Gender Code: <input checked="" type="checkbox"/> NON-CERTIFIED		
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

Sub-Contractor/Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED		
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

Please submit this completed form to:

Purchasing Office
Attn: (Insert Buyer Name)
124 E. 8th St., STE 308
Austin, Texas 78701
Phone: (512) 974-2500
Fax: (512) 974-2388

FOR SMALL AND MIDDLE MARKET BUSINESS RESOURCES DEPARTMENT USE ONLY:	
____ APPROVAL IS HEREBY GRANTED.	
____ APPROVAL IS HEREBY DENIED.	
Reviewing Counselor	Date

**PURCHASING OFFICE
CITY OF AUSTIN**

REQUEST FOR SOLE OR SINGLE SOURCE PROCUREMENT

DATE: February 1, 2010

TO: Purchasing Officer or Designee

FROM: Stephen Elkins

NAME: Mick Osborne

PHONE: 974-1656

1. Request approval for Sole Source or Single Source Procurement of goods and/or services for the reasons as described in Section 3 herein.
2. Describe item/service to be purchased This item is an annual contract with ONCOR Electric Delivery Company (ONCOR), 214-486-5322, contact Alan Quam, to lease space on 90 utility poles to carry the City of Austin's fiber optic network to far Northwest Austin (Anderson Mill, Four Points and River Place). The contracted price for the first year is \$2,379.50 with a 3% increase each year until 2014.

The City of Austin's fiber optic network needs a reasonable means to be carried to the Far Northwest area of Austin. Presently, ONCOR exclusively owns the easement rights and utility poles, to which the City of Austin is presently connected, servicing this corridor.

3. Procurement is: (Check only one)

<input type="checkbox"/>	Sole Source (Complete appropriate section A – C)
<input checked="" type="checkbox"/>	Single Source (Complete Section D)

This procurement is necessary because:

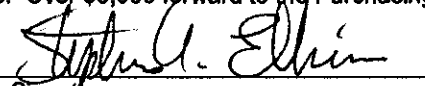
Sole Source	A.	There is no competitive product. The good/service is a one-of-a-kind or patented product, a copyrighted publication available from only one source or a unique item such as an artwork. <u>Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.</u> Detail Explanation:
	B.	The product is only available from a regulated or natural monopoly. For example, utilities, gravel from the only gravel pit in the area protected site, territorial/geographical area, or some similar situation. <u>Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.</u> Detail Explanation:
	C.	The product is a component of an existing system that is only available from one supplier. The replacement of a component or a repair part may only be available from the original supplier. <u>Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management</u> Detail Explanation:
Single	D	A Single Source is the one source among others in a competitive marketplace which for specific justifiable reasons has predominant qualifications for selection for contract award. Detail Explanation: Items are utility poles owned by ONCOR, the only source of utility poles and utility easement rights in this area of far Northwest Austin.

4.

I certify that a Sole Source or Single Source Procurement exists. Over \$5,000 forward to the Purchasing Office.

Stephen Elkins
Director (printed)

CTM
Department


Signature

2/11/10
Date


ACM Name (printed)
(Only if over \$50,000)

Signature

Date

Purchasing Office (Over \$5,000):

☒ Concur ☐ Do Not Concur


Purchasing Officer or Designee

2/11/10
Date