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Rule No: R161-17.02e

ADOPTION DATE: August 31, 2017

NOTICE OF EMERGENCY RULE ADOPTION

By: Elaine Hart, Interim City Manager

The City Manager has adopted the following emergency rule. This notice is issued under Chapter 1-2 of the City Code.

EFFECTIVE DATE OF EMERGENCY RULE

The rule adopted by this notice is effective on September 1, 2017 and expires on December 31, 2017 (not later than the 121st day after the effective date). The rule may be renewed one time after the expiration date. If the rule is renewed, it will expire on the 61st day after the renewal date.

A copy of the complete text of the adopted rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

- Office of the City Clerk, City Hall, located at 302 West 2nd Street, Austin, Texas.

TEXT OF EMERGENCY RULE

The Transportation Criteria Manual is amended to repeal existing Section 12 and replacing it with a new Section 12. Section 12 as replaced:

- Provides rules governing the application process, information required, design standards, design guidelines, design districts, and a pole attachment agreement form for permits for public right-of way use by wireless network providers for placement of wireless network equipment in the public right-of-way and on City-owned poles.

The Utilities Criteria Manual is amended to add a new Section 6. Section 6:

- Provides rules governing the application process, information required, design standards, design guidelines, and pole attachment agreement forms for wireless network providers placing wireless network equipment on City-owned poles.

NATURE OF EMERGENCY

Adoption of this rule on an emergency basis is necessary to implement, administer, enforce and comply with Chapter 284 of the Texas Local Government Code, as well as amendments to Chapter 14-11 (*Use of Right-of-Way*) of the City Code and amendments to Chapter 15-7 (*Use of City-Owned Utility Infrastructure*) of the City Code necessary to comply changes in state law, as those amendments to City Code were adopted by Ordinance No. 20170817-045,

effective August 17, 2017 relating to use of public right-of-way and City utility infrastructure in the public right-of-way for small cell wireless network providers.

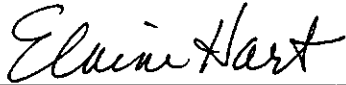
AUTHORITY FOR ADOPTION OF RULE

The authority and procedure for the adoption of a rule to assist in the implementation, administration, or enforcement of a provision of City Code is established in Chapter 1-2 of the City Code. The authority to regulate the private use of public right-of-way and City-owned utility infrastructure is established in City Code Chapters 14-11 (*Use of Right-of-Way*) and 15-7 (*Use of City-Owned Utility Infrastructure*).

CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Emergency Rule Adoption (Rule No. **R161-17.02e**) the City Attorney certifies that the City Attorney has reviewed the rule and finds adoption of the rule to be a valid exercise of the City Manager's authority.

REVIEWED AND APPROVED



Elaine Hart, Interim City Manager



Anne L. Morgan, City Attorney

This NOTICE OF THE EMERGENCY RULE ADOPTION was posted on a central bulletin board at City Hall by the City Clerk. You may find the time and date stamp on the front of this notice.

1 **SECTION 12 - RULES AND DESIGN MANUAL FOR SMALL CELL NETWORK FACILITIES IN THE**
2 **RIGHT OF WAY**

3
4 **12.1 - Purpose**

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6 This section 12 ("this Rule") is adopted to administer those parts of Article 2 of Chapter
7 14-11 (*Use of Right-of-Way for Construction, Excavation, Facility Installation, or*
8 *Temporary Use*) of the Austin City Code exercising the City's authority to manage and
9 regulate the private use of City public right-of-way by small cell wireless network
10 providers as that use is granted by Chapter 284 of the Texas Local Government Code.

11
12 This Rule sets forth process, terms, and conditions for requesting and permitting the use
13 of City public right-of-way and City-owned traffic signal poles in City public right-of-way by
14 network providers for network nodes, node support poles, and transport facilities. The
15 parts of this Rule related to attachments to traffic poles administers those parts of
16 Chapter 15-7 (*Use of City-Owned Utility Infrastructure*) of the City Code governing
17 attachments to traffic poles.

18
19 This Rule also sets forth design parameters, limits, and standards that include aesthetic
20 and concealment requirements for network nodes, node support poles, and transport
21 facilities intended to be placed in City right-of-way under Chapter 284 of the Texas Local
22 Government Code whether a facility is subject to City permitting or exempt by state law.

23
24 Unless otherwise determined by the director in writing, the terms of this Rule and all
25 design parameters, limits, or standards set out in this Rule for network nodes, node
26 support poles, and transport facilities, comprise the City's design manual for the purposes
27 of Section 284.108 of the Texas Local Government Code. Unless otherwise apparent by
28 the context and common meaning of a term, the terms used in this Rule have the
29 meanings attributed to them by Section 284.002 of the Texas Local Government Code as
30 those terms may be construed and further described by applicable Austin City Code.

31
32 In addition to complying with City of Austin City Code, in particular Chapters 14-11 and
33 15-7, a network provider as that term is defined by Section 284.002 of the Texas Local
34 Government Code, must comply with the provisions in this Rule.

35
36 As of September 1, 2017, the City will no longer issue or grant site licenses under the
37 terms of a ***Master License Agreement for Wireless Facilities in the Right-of-Way***
38 ***Downtown Small Cell*** (the "Pilot Project MLA"), the terms of the Pilot Project MLA having
39 been superseded by the enactment of Chapter 284 of the Texas Local Government Code
40 and the adoption of this Rule. If by judicial order or ruling, the effect of Chapter 284 of
41 the Texas Local Government Code is suspended or enjoined, in whole or in part, the
42 director in the director's sole discretion and subject to applicable law, may resume
43 processing and issuing requests for licenses under the Pilot Project MLA.

46
47 **12.2 – General Provisions: Network Nodes, Node Support Poles, and Transport Facilities Within**
48 **Public Right-of-Way**
49

50 **12.2.1 Network Provider Responsibilities**

- 51 A. A network provider shall be responsible and liable for the acts, submissions and
52 omissions of the network provider's employees, temporary employees, officers,
53 directors, consultants, agents, affiliates, subsidiaries, authorized agents,
54 authorized joint licensees, and subcontractors.
- 55 B. A network provider shall provide and maintain current contact information for an
56 authorized representative to participate in regularly scheduled Austin Utility
57 Location and Coordination Committee (AULCC) meetings.
- 58 C. A network provider must submit an application to place a network node in the
59 public right-of-way. In addition to the right-of-way permit, a network provider
60 must follow the application process to collocate on a pole or place a node support
61 pole in the public right-of-way. The application to place a network node in a public
62 right-of-way can be submitted at the same time and with an application to
63 construct a network node support pole or collocate on a service pole. Application
64 forms are available from the director.
- 65 D. If the director determines that due to the absence or inaccuracy of essential
66 information provided, a network provider has failed to submit an application in
67 good faith, the submission is not an application and the director may reject the
68 submission without an obligation to comment on completeness.
- 69 E. A network provider shall not install a facility in public right-of-way without all
70 applicable approvals, including, but not limited to: attachment agreements, node
71 support pole permits, temporary use of right-of-way permits, excavation permits,
72 electrical permits, etc.
- 73 F. Accuracy and compliance of the plans is the responsibility of the network provider
74 and the professional engineer of record. The network provider is responsible for
75 bringing any installation into compliance with all applicable laws and regulations at
76 any time.

77 **12.2.2– Restrictions on Placement**

- 78 A. A network provider must obtain approval from the City before collocating
79 network nodes or installing node support poles in an area zoned or otherwise
80 designated as a historic district or a design district if the design district has
81 decorative poles. Approval shall be obtained from the Planning and Zoning
82 Department.
- 83 B. Network nodes, node support poles, transport facilities, and related equipment
84 and facilities may not be placed in a manner that in the director's opinion:

obstructs, impedes, or hinders the usual pedestrian or vehicular travel; affects public safety; obstruct the legal use of right-of-way by public utilities; violates applicable law; violates or conflicts with public right-of-way design standards, specifications, or design district requirements; violates the federal Americans With Disabilities Act of 1990; or in any way creates a risk to public health, safety, or welfare. The network provider shall be responsible for correcting the noncompliant installation.

- C. Placement of network nodes, node support poles, and transport facilities must comply with undergrounding requirements that prohibit installing aboveground structures in a public right-of-way imposed by applicable ordinances, City Codes, zoning regulations, state law, public or private covenants or restrictions, or applicable criteria manuals, including this Rule, other sections of the Transportation Criteria Manual, and the Utilities Criteria Manual.

12.2.3 – Size Limitations of Equipment

- A. Unless otherwise specified in this Rule, a network node installed on any pole within the public right-of-way must conform to the following:
1. Each antenna that does not have exposed elements and is attached to an existing structure or pole:
 - a. Must be located inside an enclosure of not more than six cubic feet in volume;
 - b. May not exceed a height of three feet above the existing structure or pole; and
 - c. May not protrude from the outer circumference of the existing structure or pole by more than two feet;
 2. If an antenna has exposed elements and is attached to an existing structure or pole, the antenna and all of the antenna's exposed elements:
 - a. Must fit within an imaginary enclosure of not more than six cubic feet;
 - b. May not exceed a height of three feet above the existing structure or pole; and
 - c. May not protrude from the outer circumference of the existing structure or pole by more than two feet;
 3. The cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:
 - a. Be more than 28 cubic feet in volume; or
 - b. Protrude from the other circumference of the existing structure or pole by more than two feet;
 4. Ground-based enclosures, separate from the pole, may not be higher than three feet six inches from grade, wider than three feet six inches, or deeper than three feet six inches; and

5. Pole-mounted enclosures may not be taller than five feet.
- B. The following types of associated ancillary equipment are not included in the calculation of equipment volume under subsection A:
1. Electric meters;
 2. Concealment elements;
 3. Telecommunications demarcation boxes;
 4. Grounding equipment;
 5. Power transfer switches;
 6. Cut-off switches; and
 7. Vertical cable runs for the connection of power and other services.
- C. Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.
- D. Equipment attached to a utility pole must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and the utility pole owner's construction standards.

12.2.4 – No Overhead Lines

No network provider shall install overhead lines connecting to a network node collocated on a service pole or a node support pole, unless approved by the director for temporary maintenance or repair not to exceed ten days. All lines, including power and transport facilities, connecting to a pole mounted network node, shall be placed in duct or conduit that is buried below ground, provided that a network node attached to a utility pole may connect to aerial transport facilities for which an attachment right has been granted for attachment to the utility pole by the utility pole owner.

12.2.5 – Generators Not Allowed

Electric generators are prohibited in the public right-of-way to provide back-up power to a network node.

12.2.6 - Tree Maintenance

A network provider shall ensure appropriate clearance from any trees and obtain any required permits if tree trimming is warranted.

12.2.7 - Signage

- A. A network provider shall post its name, location identifying information, and emergency telephone number in an area on the network node, aerial equipment, manholes and fiber that is visible to the public but that shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the director.
- B. A network provider shall not post any other signage or advertising in the public right-of-way.

12.2.8 - Repair

A network provider will promptly repair any damage to City property from the network provider's installation, placement, attachment, repair, modification, removal, operation, use, or relocation of a network node promptly and repair and return such property to its original condition. The City may opt to perform the repair and charge it to the network provider if the network provider fails to perform the repair if the unrepaired condition creates an imminent danger to the public.

12.2.9 - Graffiti Abatement

A network provider shall remove all graffiti on any of its network nodes, transport facilities, poles, or other property or equipment located in the public right-of-way.

12.2.10 - No Interference and No Liability

- A. A network provider, by operating its network nodes, must not cause interference to the City's radio and emergency radio frequency, wireless network, traffic signal network, or communications operations.
- B. Following installation or modification of a network node, the director may require a network provider to test the network node's radio frequency and other functions to confirm it does not interfere with the City's operations or equipment.
- C. The City is not responsible for any inconvenience, annoyance, or injury to facilities or activities conducted by a network provider, arising from the need to repair any portion of the public right-of-way, or from the making of any necessary alteration or improvements, in, or to, any portion of the public right-of-way, or in, or to the City's fixtures, appurtenances or equipment.
- D. A network provider shall maintain all its equipment and appurtenances in a timely and responsible manner.

12.2.11 - Abandoned Facilities

A network provider must remove all abandoned network nodes, node support poles, or transport facilities from the public right-of-way. Unless the director determines that the abandoned network nodes, node support poles, or transport facilities must be removed immediately to ensure public health, safety, and welfare, a network provider has a reasonable time to completely remove the abandoned network node, not to exceed 30 days after abandoning the network node.

12.2.12 - Removal Required by City

- A. A network provider must, at its cost, promptly disconnect, remove, or relocate a network node if the director determines that the disconnection, removal, or relocation (a) is necessary to protect the public health, safety, or welfare, or City property, (b) the network node is adversely affecting City operation or operations of City property, or (c) a network provider fails to obtain permits and certifications required by law. If there is imminent danger to the public, then the City may

immediately disconnect, remove, or relocate the applicable network node at the network provider's expense.

- B. A network provider shall reimburse City for the City's actual cost of removal of its network node within 45 days of receiving the invoice from the City.

12.2.13 - Removal or Relocation by Network Provider

- A. If the network provider removes or relocates a network node at its own discretion, it shall notify the director in writing not less than 10 business days prior to removal or relocation. The network provider shall obtain all permits required for relocation or removal of its network node prior to relocation or removal.

- B. A network provider's removal or relocation does not entitle the network provider to fee or rate refunds for network nodes that have been removed or relocated.

12.2.14 - Removal or Relocation Required For City Project

- A. A network provider shall remove or relocate a network provider's facility at the network provider's cost whenever the director determines that the relocation or removal is required for the construction, completion, repair, widening, relocation, or maintenance of public right-of-way or City or other public utility facility, or use in connection with any City construction or maintenance project.

- B. If the network provider fails to remove or relocate its facility within the time period identified by the director, the City will remove the facility at the network provider's cost, without further notice, and the network provider will reimburse the City for its removal expenses (including reasonable overhead and storage).

12.2.15 – No City Affiliation

A network provider, and its employees, contractors, and agents shall not at any time represent themselves as being associated with the City of Austin. A network provider shall inform any person asking of the company they work for and that it is allowed to work on service poles pursuant to state law.

12.2.16 - Restoration

A network provider shall repair any damage to the right of way and City property, and the property of any third party resulting from the network provider's removal or relocation activities within 10 days following the date of removal or relocation, at the network provider's cost, including restoration of the right of way and property to substantially the same condition as it was immediately before the date the network provider installed its facility, including restoration or replacement of any damaged trees, shrubs or other vegetation.

12.2.17 – Safety

- A. A network provider shall use protective equipment to ensure the safety of all personnel working on the network provider's network nodes and transport facilities, as well as pedestrians and vehicular traffic. A network provider shall

ensure all personnel are qualified to work in the public right-of-way. A network provider shall ensure its workers follow all appropriate safety protocols.

- B. Whenever traffic is diverted, detoured, or impacted, a network provider must ensure that competent and certified individuals are on site to provide temporary traffic control. A network provider shall not perform work over an active travel lane or pedestrian route without the appropriate traffic control in place.
- C. City inspectors may halt work if safety practices or City standards are violated. The City will not be responsible for any additional expenses that are incurred, to include extension of permits or investigation fees.
- D. In the event of contact with electrical lines, call 512-322-9100 to provide information on the incident. Call 911 if emergency response is required.
- E. In the event of contact with traffic signal lines or equipment, call 512-974-2000 and (512) 974-4075 to report the incident.

12.2.18 – Radio Frequencies

- A. A network provider must identify the proposed frequency or frequencies to be used by the network node. The director may deny the application or request a different frequency be used if use of such frequencies would interfere with City operations.
- B. A network provider must provide a Radio Frequency Emission Certification for each network node by a Telecommunications Engineer certified by the International Association for Radio, Telecommunications and Electromagnetics (IARTE) or similarly recognized certifying body with experience regarding radio frequency transmissions.
- C. A network provider shall adhere to the FCC's most current federal radio frequency emissions standards set forth in OET Bulletin 65, as may be updated or amended, or other applicable regulation.

12.2.19 -Facility Inventory

- A. Network provider shall maintain, and provide to the director upon request, a list of its network nodes, node support poles, transport facilities, and associated equipment, in the public right-of-way.
- B. Network provider shall maintain and make available to the director accurate as-built drawings of its network nodes and transport facilities in a format approved by the director and in accordance with any applicable City criteria manual.

12.2.20 – Unauthorized Network Nodes and Transport Facilities

- A. The director will review proposed network nodes, transport facilities, and other equipment to ensure compliance with applicable laws.
- B. The director shall deem as unauthorized any type of facility, node, or equipment not authorized by law or installed or operated in violation of law. The director at his or her sole discretion may, after providing 30 days written notice, remove or

require the network provider to remove unauthorized equipment at the provider's expense without any liability to the City. The City will invoice and the provider shall reimburse the City within 45 days of receipt of the invoice for the City's cost for removal of unauthorized equipment.

- C. Unauthorized equipment, if determined by the director to interfere with the normal operation of City infrastructure or public right-of-Way, may be removed immediately by the City upon the expiration of 24-hours advance notice to a provider. The City will invoice and the provider shall reimburse the City within 45 days of receipt of the invoice for the City's cost for removal of unauthorized equipment.

12.2.21 - Installation

- A. Installation of network nodes will be done in a good and workmanlike manner and in accordance with the requirements established by the director in compliance with all applicable laws, ordinances, codes, standards, criteria, rules and regulations.
- B. Installation of a network node or network node support pole shall not interfere with the operation of city infrastructure unless approved by the city for a specific time and location. Interference with traffic signal operations may require the presence of city employees.
- C. Installation or maintenance activities shall not impede traffic unless authorized by a permit.

12.2.22- Electrical Supply

- A. A network provider shall be responsible for obtaining any required electrical power service to the network node. The City will not be liable to the network provider for any stoppages or shortages of electrical power furnished to the network node, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the City or the act or omission of any other tenant or user of the structure. The network provider will not be entitled to any abatement of any fee for any such stoppage or shortage of electrical power.
- B. The network provider shall be responsible, at the network provider's expense, for correcting any discovered pre-existing non-conforming conditions related to the provision of power for a network node.
- C. If the network node is to be installed on a different pole than the electric service is installed, it is the network provider's responsibility to install the necessary underground conduit and cabling to provide power to the network node.
- D. Network provider shall install a device or devices to disconnect network provider's network node, such as a fused linkage, cut-off switch or similar mechanism that is capable of disconnecting and de-energize network provider's network nodes so that the City personnel performing maintenance may quickly and safely shut down the network node so that they are not exposed to dangerous electrical current or radiofrequency radiation or electromagnetic fields generated by the network

node. The disconnect device must be clearly identified and easily accessed, and the operation of the cut-off switch must be obvious and intuitive. The City will instruct its maintenance personnel to use the disconnect device to de-activate the network node while performing work in proximity to the network node.

- E. Network provider electric meter may not be installed on a traffic pole.

12.3 - Network Node

A network provider must submit an application in a form to be determined by the director and receive a permit to install a network node in the public right-of-way. An application to install a network node must include information that the director determines is necessary to review and approve the application, including, but not limited to:

1. A completed application on a form approved by the director, for each location requested;
2. A map showing the intended location of the proposed facility in the public right-of-way, with distances from any historic landmarks, parks, schools, or residentially zoned property, if any. This map should also include all existing utilities and surface features (including trees, street furniture, etc.) within 20 feet of the proposed node support pole location;
3. Representative drawings or pictures of the specific node location;
4. Artistic renderings, drawings, cut sheets, or pictures showing the location with network provider's equipment installed, including conduit, attachment method, and shroud; and
5. Details and graphics on the type of network facility to be installed and installation method proposed for the City's approval.

12.4 – Collocation on a Traffic Pole

12.4.1- Eligibility and Application

- A. Network providers may request to collocate network nodes on traffic poles provided that network nodes or associated equipment may only be installed and enclosed in the manner according to the allowed design, installation, and construction details for a traffic pole collocation shown and described in **Exhibit A (Figures 1 through 7)** incorporated into and attached to this Rule. For traffic poles with street light fixtures mounted by a vertical extension to the traffic pole, the director may allow an antennae to be mounted to the vertical extension supporting the street light in a manner that does not materially deviate from the construction details for a traffic pole collocation shown and described in **Exhibit A (Figures 1 through 7)**, provided the overall height for the top of the antenna shroud is not more than 35 feet above ground level.

- B. To be eligible to request a collocate a network node on a traffic pole, a network provider must execute a **Traffic Pole Attachment Agreement** in the form attached and incorporated into this Rule as **Exhibit B**. No attachment may be placed on a traffic pole unless an application for the attachment is submitted and approved by the director in accordance with Chapter 15-7 (*Use of City-Owned Utility Infrastructure*) of the City Code.
- C. In order to minimize structural impact to the traffic pole or negative visual impact to the surrounding area, the director may deny an application for attaching to a traffic pole upon which a network node has been attached or for which a complete application for attachment has been approved or is pending approval.
- D. A network node or any associated equipment may not obstruct the visibility of a traffic control device or sign. A network node or any associated equipment may not interfere in any way with the function or operation of a traffic control device or sign. Should traffic control devices or signs be added, modified, or moved, a network provider shall relocate or remove its equipment after receiving written notice.
- E. Network providers shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.
- F. Unless approved by the director, a network node, including any shroud or mounting structure, shall be installed a minimum of 6" above the traffic mast arm infrastructure. The upper height limit for an antenna placed atop a traffic pole is 35 feet above ground level.
- G. Exposed equipment and shrouds shall match the existing pole color to the extent possible.
- H. If the director determines that cable necessary to connect the components of a node located on a traffic pole cannot be located internally within the traffic pole, external cables and wires must be enclosed in conduit. The maximum number and size of conduit that maybe attached to a traffic pole is two 1-1/2" EMT conduit. External conduit attached to a traffic pole must match the color of the existing pole. External conduit should be installed flush to the pole and in an unobtrusive manner as possible. If needed, the network provider may have a one foot radius drip loop exposed. Conduit shall be installed as to not conflict with access to any traffic signal activities.
- I. An application to collocate on a traffic pole must include information that the director determines is necessary to review and approve the application, including, but not limited to:
1. A completed application on a form approved by the director, for each location requested;
 2. A map showing the intended location of the proposed network node and transport facilities serving that network node in the public right-of-way, with distances from any historic landmarks, parks, schools, or residentially

zoned property, if any. The map must also include all existing utilities and surface features (including trees, street furniture, etc.) within 20 feet of the proposed node support pole location;

3. Representative drawings or pictures of the specific traffic pole location.
4. Artistic renderings, drawings, cut sheets, or pictures showing the location with network provider's equipment installed, including conduit, attachment method, and shroud;
5. Details on the attachment method proposed for the City's approval. No penetration of the traffic pole is allowed;
6. A photograph of the specific traffic pole to be attached to;
7. Pole load analysis in accordance with Section 12.4.2; and
8. Construction plan sheets (11 inches by 17 inches) at a scale of no smaller than 1 inch = 40 feet in plan view, and 1 inch = 6 feet in profile view, sealed by a professional engineer licensed in the State of Texas that represents:
 - a. the specific location of the existing traffic pole;
 - b. location and method of proposed installation (trench, bore, existing conduit pull) of proposed and existing transport facilities necessary to connect the network node to the PSTN;
 - c. horizontal alignment of proposed or existing fiber or conduit in relation to the proposed fiber assignment;
 - d. proposed work areas required to install infrastructure that will disrupt or divert traffic;
 - e. placement of network node and equipment on the traffic pole as well as any ground equipment, cabinets, etc.;
 - f. any and all existing utilities, both underground and overhead; and
 - g. the specific location of the existing traffic pole using latitude/longitude in decimal degrees to the 6th decimal point.

12.4.2 – Traffic Pole Load Analysis

- A. Each application for collocation of a network node on a service pole shall include a load analysis prepared by a Texas Registered Professional Engineer and must conform to the Transportation Department's approved process and methodology.
- B. The load analysis shall take into account and allow space for all attachments which are currently constructed or planned for future construction.
- C. The following information is required to be submitted:
 1. Specific location with X,Y coordinates and Traffic Signal Pole ID;
 2. Picture of entire Traffic Signal Pole;

3. Traffic Signal Pole brand information (height & class);
4. Height of each existing attachment present on the traffic pole and proposed height of wireless attachment;
5. Identification of each attachment present on the traffic pole;
6. Detailed drawings of the proposed wireless attachments and physical specifications (weight and dimensions);
7. Electric Service Planning Application in accordance with the Austin Energy Design Criteria Manual;
8. Type, height, and size of all attachments present on the traffic pole; and
9. Ownership information on all attachments.

12.4.3 - Inspections

- A. Authorized City employees may inspect the collocation of network nodes on a traffic pole to ensure compliance with all applicable laws. Such inspection may occur during or after construction.
- B. In the event of an emergency situation, the director may, but is not required to, notify a network provider of an inspection. The City may take action necessary to resolve the emergency situation and the director shall notify the network provider as soon as practically possible after resolution is complete.
- C. The director may perform visual inspections of any network nodes located in the public right-of-way as the director deems appropriate without notice. If the inspection requires physical contact with the network node, the director shall provide written notice to the network provider within five business days of the planned inspection. The network provider may have a representative present during such inspection.

12.5 – Node Support Poles and Associated Facilities

A network provider must submit an application in a form to be determined by the director and receive a permit to install a node support pole in the public right-of-way.

12.5.1 Application for Installation of Node Support Pole within the Right-of-Way

- A. An application for placing or constructing a node support pole in the public right-of-way must be made to the Development Services Department in a form to be provided by the director and comply with all applicable laws and regulations, including any applicable zoning or design standards or manuals.
- B. An application to install a node support pole must include information that the director determines is necessary to review and approve the application, including, but not limited to:
 1. A completed application on a form approved by the director, for each location requested;

2. A map showing the intended location of the proposed facility in the public right-of-way, with distances from any historic landmarks, parks, schools, or residentially zoned property, if any. The map must include all existing utilities and surface features (including trees, street furniture, etc.) within 20 feet of the proposed node support pole location;
3. Representative drawings or pictures of the specific pole location;
4. Artistic renderings, drawings, cut sheets, or pictures showing the location with network provider's equipment installed, including conduit, attachment method, and shroud;
5. Details and graphics on the type of network facility to be installed and installation method proposed for the City's approval;
6. Justification for installation of new facility, including analysis for any nearby poles determined as unsuitable; and
7. Construction plan sheets (11 inches by 17 inches) at a scale of no smaller than 1 inch = 40 feet in plan view, and 1 inch = 6 feet in profile view, sealed by a professional engineer licensed in the State of Texas that represents:
 - a. the specific location of the proposed node network pole and associated facilities;
 - b. location and method of proposed installation (trench, bore, existing Conduit pull) of proposed and existing transport facilities necessary to connect the node to provider's network;
 - c. horizontal alignment of proposed or existing fiber or conduit in relation to the proposed fiber assignment;
 - d. proposed work areas required to install infrastructure that will disrupt or divert traffic;
 - e. placement of network node and equipment on the network pole as well as any ground equipment, cabinets, etc.;
 - f. any and all existing utilities, both underground and overhead; and
 - g. the specific location of the proposed node support pole using latitude/longitude in decimal degrees to the 6th decimal point.

12.6 – Transport Facilities

- A. A network provider must obtain right-of-way permits by submitting an application in a form to be determined by the director for excavation and facility installation and coordinate installation with utilities.
- B. A network provider must submit an application to the Development Services Department in a form to be determined by the director and obtain a permit to construct transport facilities in the public right-of-way.

12.6.1 Application for Transport Facility

- A. An application must be made to the Development Services Department and comply with all applicable laws and regulations, including any applicable zoning or design manuals.
- B. An application to install a node support pole must include information that the director determines is necessary to review and approve the application, including, but not limited to:
 1. A completed application on a form approved by the director, for each location requested;
 2. A map showing the intended location of the proposed facility in the public right-of-way, with distances from any historic landmarks, parks, schools, or residentially zoned property, if any;
 3. Representative drawings or pictures of the specific location;
 4. Artistic renderings, drawings, cut sheets, or pictures showing the location with network provider's equipment installed, including conduit, attachment method, and shroud;
 5. Details and graphics on the type of transport facility to be installed and installation method proposed for the City's approval;
 6. Justification for installation of new facility, including analysis for any nearby transport facilities determined as unsuitable; and
 7. Construction plan sheets (11 inches by 17 inches) at a scale of no smaller than 1 inch = 40 feet in plan view, and 1 inch = 6 feet in profile view, sealed by a professional engineer licensed in the State of Texas that represents:
 - a. the specific location of the proposed network nodes pole and associated facilities being served by the transport facility;
 - b. location and method of proposed installation (trench, bore, existing conduit pull) of proposed and existing transport facilities necessary to connect the node to the network provider's network;
 - c. horizontal alignment of proposed or existing fiber or conduit in relation to the proposed fiber assignment;
 - d. proposed work areas required to install infrastructure that will disrupt or divert traffic;
 - e. placement of facilities as well as any ground equipment, cabinets, etc.;
 - f. any and all existing utilities, both underground and overhead; and
 - g. the specific location of the existing traffic pole using latitude/longitude in decimal degrees to the 6th decimal point.

12.7 – Design Standards

The intent of the design standards is to ensure that the installation of network nodes, node support poles, and equipment cabinets is compatible with existing land use and urban design regulations.

The design standards in this section apply to the installation of network nodes, node support poles, cabinets, and associated equipment within public right-of-way throughout the City unless more specific design elements, concealment measure, or camouflage requirements are set out for a specific design or historic district. A design district is an area within the City with a zoning classification or other City Code designation for which unique design and aesthetic standards are applied uniformly. Design districts include, but are not limited to:

- (1) the Central Business District (CBD);
- (2) numerous Planned Unit Developments, Neighborhood Conservation Combining Districts, Planned Development Agreements, Master Development Agreements, and small-area Regulating Plans;
- (3) the Waterfront Overlay District;
- (4) neighborhoods subject to the Residential Design & Compatibility Standards and/or adopted neighborhood plans;
- (5) numerous historically significant districts, such as the East 6th/Pecan Street Overlay, Castle Hill Historic District, and general Historic District & Historic Area Combining Districts;
- (6) the University Neighborhood Overlay District;
- (7) the Lake Austin Overlay District;
- (8) the Traditional Neighborhood District; and
- (9) commercial and multi-family development subject to standards codified as "Design Standards and Mixed Use."

12.7.1 -Design Standards City-Wide

- A. Where design district or historic district boundaries overlap, the more restrictive of the standards shall apply.
- B. Site Selection – It is the City's policy to preserve as open, as much as possible, the surface and air above the public right-of-way to keep sight-lines open for public safety and aesthetic purposes. To achieve that end, permits to use the public right-of-way for network nodes and node support poles will be prioritized in the following order:
 1. First, colocation on existing utility poles. The allowed design, installation, and construction details, for utility pole colocation is shown and described in the Utilities Criteria Manual.
 2. Second, colocation on existing traffic poles - In order to minimize visual clutter and maintain future infrastructure availability for both the City and other projects, a maximum of two traffic poles per intersection may be

589 made available for network node installation. Only one antenna and base
590 equipment cabinet may be permitted on a traffic pole. The design,
591 installation, and construction must comply with section 12.4.1 of this Rule.

592 3. Third, collocation on non-decorative streetlight poles. Network nodes may
593 not be placed on decorative poles. The allowed design, installation, and
594 construction details for non-decorative streetlight poles is shown and
595 described in the Utilities Criteria Manual.

596 4. Last, node support poles. In order to receive a permit to install a node
597 support pole, the network provider must demonstrate that no collocation
598 options are available for the service area. Node support poles must be
599 separated by at least 300 feet.

600 C. Underground Utility Districts.

601 1. Nodes support poles may not be placed in public right-of-way in areas of
602 the City where wireline based public utilities such as electricity and
603 telecommunications are provided by underground distribution networks
604 rather than by aerial support on utility poles. Such an area is, for the
605 purposes of this Rule, an Underground Utility District: an area where poles,
606 overhead wires, and other above-ground utility equipment have been
607 removed and placed underground or have been approved for future
608 placement underground.

609 2. If the director determines that a section of public right-of-way within an
610 Underground Utility District has, as of September 1, 2017, utility poles
611 supporting aerial wireline based public utility distribution extending more
612 than 300 feet, node support poles may be placed in that section of right-of-
613 way subject to the requirements in this Rule applicable to node support
614 poles.

615 3. Except for base-mounted and shrouded equipment for collocations on
616 traffic poles consistent with construction details for a traffic pole
617 collocation set out in section 12.4.1 of this Rule, network node equipment,
618 other than the antenna, must be placed below ground in an Underground
619 Utility District.

620 D. Equipment shall be installed in a manner that does not hinder pedestrian
621 walkways or interfere with traffic signal equipment. All attachments to a pole that
622 are projecting, or any equipment or appurtenance mounted on the ground, shall
623 comply with the Americans With Disabilities Act and shall not obstruct an existing
624 or planned sidewalk.

625 E. For network nodes placed on existing poles, the color of the network nodes shall
626 match the existing pole color, such that the network nodes blend with the existing
627 pole.

628 F. Where applicable, node support poles shall be placed within the planting zone in
629 alignment with existing street trees or light poles. Poles shall be placed

equidistant between street trees, with a minimum separation of 15 feet from tree to pole. The planting zone is an area adjacent to the curb in which street trees may be planted. The zone is also intended for the placement of street furniture, public utility equipment such, and similar elements in a manner that does not obstruct pedestrian access or motorist visibility.

- G. Faux Treatments - Concealment may not include faux trees, faux landscaping, or other faux decorative items.
- H. The network provider is responsible for all make-ready costs, whether performed by the provider, a third party or the City.

12.7.2 – Design District Requirements

12.7.2.1 Downtown Austin District

- A. Downtown Austin is an area bounded by MLK Blvd., IH -35, Lady Bird Lake, and Lamar Blvd., established in the Downtown Austin Plan.
- B. Site Selection – Network nodes may only be located in the following public right-of-way locations in Downtown Austin by order of preference:
 - 1. First, Colocation on Traffic Poles - Great Street standards consist of eight traffic pole foundations at each intersection. In order to minimize visual clutter and maintain future infrastructure availability for both the City and other projects, a maximum of two traffic poles per intersection may be made available for small cell equipment installation. Only one antenna and equipment cabinet may be permitted on a traffic pole and must comply with the allowed design, installation, and construction details for a traffic pole collocation set out in section 12.4.1 of this Rule.
 - 2. Second, colocation on existing service poles and other non-decorative poles. Great Street poles are considered decorative poles and not available for the attachment of network nodes.
- C. Underground Utility District – Downtown Austin is an Underground Utility District.
- D. If an existing utility conflict makes underground placement unfeasible, applicants may request a cabinet on the sidewalk and coordinate with City Urban Design on the design and placement of the cabinet to ensure that the cabinet does not interfere with the development of Great Street standard streetscapes. If surface placement is requested due to utility conflicts, an equipment cabinet:
 - 1. may only be placed in the designated planting zone; and
 - 2. may not be located so as to inhibit a consistent, uniform streetscape, or tree trimming necessary to maintain the tree's natural shape and growth pattern.

- 670 E. Network nodes must be designed to be compact and unobtrusive so as to
671 minimize the visual impact on the surrounding streetscape. The applicant shall
672 avoid using enclosures that are bulky or include distracting materials.

673
674 **12.7.2.2 University Neighborhood Overlay**

- 675 A. The University Neighborhood Overlay (UNO) includes the West Campus
676 neighborhoods of Outer West Campus, Inner West Campus, Guadalupe, and
677 Dobie. The boundaries of UNO are established by Appendix C of Chapter 25-2
678 of the City Land Development Code.
- 679 B. Network nodes may not be placed on the UNO Pecan Street decorative poles.
- 680 C. Node support poles shall be placed within the planting zone, in alignment with
681 existing or future UNO decorative poles and street trees. Poles shall be placed
682 equidistant between street trees, with a minimum separation of 15 feet from
683 tree to pole.
- 684 D. Nodes support poles may not be located so as to inhibit a consistent, uniform
685 streetscape, or tree trimming. Any tree trimming must maintain the tree's
686 natural shape and growth pattern.
- 687 E. Network node and Node Support Pole Design – Network nodes and node
688 support poles must be designed to be compact and unobtrusive so as to
689 minimize the visual impact on the surrounding streetscape. The applicant shall
690 avoid using enclosures that are bulky or include distracting materials.
- 691 1. Placement – Network nodes and equipment should be grouped or stacked
692 close together on the same side of the pole. Large gaps between
693 equipment and enclosures should be avoided.
- 694 2. Color - The color of network nodes and node support poles must match the
695 color of the UNO Pecan Street decorative pole such that they blend with
696 the color of the district's streetscape elements.
- 697 3. The total height of a node support pole plus any network equipment may
698 not exceed 30 feet from ground level.
- 699 F. Cabinet Placement and Design – Equipment cabinets may be mounted to the
700 pole, placed in the designated street furniture area, or located underground.
701 Cabinets placed on poles must be located at least nine feet above ground level
702 and follow the design standards described above in subsection D.
- 703 1. The center of the cabinets must be located the same distance from the
704 face of curb as street trees and service poles. Cabinets shall be designed to
705 be unobtrusive and compatible with the surrounding environment.
- 706 2. Applicant shall coordinate the placement of any proposed sidewalk cabinet
707 with Urban Design to ensure that that the cabinet does not interfere with
708 the development of UNO standard streetscapes.

12.7.2.3 Core Transit Corridors, Waterfront Overlay, Special Regulating Districts, Planned Unit Developments (PUD), and Planned Development Agreements (PDA)

A. Geographic Areas

1. Core Transit Corridors - Core Transit Corridors (CTCs) and Future Core Transit Corridors (FCTCs) were established in 2005 and 2006 by City Council in order to improve design standards along major roadways. The roads identified as CTCs and FCTCs are established in Chapter 25-2, subchapter E of the City Land Development Code.
2. The Waterfront Overlay encompasses land surrounding Lady Bird Lake and the Colorado River and includes parkland, part of Downtown, and the South Central Waterfront. The boundaries of the Waterfront Overlay district are established by Appendix B of Chapter 25-2 of the City Land Development Code.
3. Special Regulating Districts are areas zoned as Transit Oriented Development (TOD), North Burnet Gateway (NBG), and East Riverside Corridor (ERC).
4. Planned Unit Developments (PUDs) are a type of special purpose zoning district established in Chapter 25-2 of the City Land Development Code.
5. Planned Development Agreements (PDAs) are a type combining zoning district established in Chapter 25-2 of the City Land Development Code.

B. Node support poles shall be placed within the planting zone in alignment with existing street trees or light poles. Poles shall be placed equidistant between street trees, with a minimum separation of 15 feet from tree to pole.

C. Poles may not be located so as to inhibit a consistent, uniform streetscape, or tree trimming. Any tree trimming must maintain the tree's natural shape and growth pattern.

D. Node and Pole Design – Network nodes and node support poles must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.

1. Placement – Network nodes and equipment shall be grouped or stacked close together on the same side of the pole. Large gaps between equipment and enclosures should be avoided.
2. The color of a network node placed on any existing pole must match the color of the existing pole.

E. Cabinet Placement and Design – Equipment cabinets may be mounted to the pole, placed in the designated street furniture area, or located underground. Cabinets placed on poles must be located at least nine feet above ground level and follow the design standards described above in subsection E. The center

of the cabinets must be located the same distance from the face of curb as street trees and service poles. Cabinets shall be designed to be unobtrusive and compatible with the surrounding environment.

12.7.3 – Historic Districts

- A. The City of Austin has both locally designated historic districts and National Register Historic Districts. Properties in Local Historic Districts are indicated by the addition of “HD” in the zoning designation for each parcel. National Register Historic Districts are administered by the Texas Historical Commission. A list of contributing properties and district maps can be found on the City of Austin’s Historic Districts webpage. Nothing in this section is a local allowance or variance from approval under applicable federal law and regulations implementing the National Historic Preservation Act.
- B. Node support poles shall be placed within the planting zone and aligned with any existing trees or poles. Node support poles shall be placed between street trees, with a minimum separation of 15 feet from tree to pole.
- C. Node support poles may not be placed in the public right-of-way within the Congress Avenue, Bremond Block, or Sixth Street National Register Historic Districts.
- D. Network nodes may not be placed on historic or decorative poles.
- E. Network Node and Node Support Pole Design – Network nodes and node support poles must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.
 - 1. Placement - Nodes and equipment should be grouped or stacked close together on the same side of the pole. Large gaps between equipment and enclosures should be avoided.
 - 2. The color of a new node placed on any existing pole must match the color of the existing pole. For new poles in districts with a designated historic pole, the pole and node shall match the color of the designated historic pole for that district.
- F. Cabinet Placement and Design - Equipment cabinets may be mounted to the pole, placed in the designated street furniture area, or located underground. Cabinets placed on poles must be located at least nine feet above ground level and follow the design standards described above in subsection E. The center of the cabinets must be located the same distance from the face of curb as street trees and service poles. Cabinets shall be designed to be unobtrusive and compatible with the surrounding environment.

12.7.4 – Historic Landmarks

- A. Historic Landmarks in the City of Austin are indicated by the addition of “-H” zoning designation for each parcel. Nothing in this section is a local allowance or

789 variance from approval under applicable federal law and regulations implementing
790 the National Historic Preservation Act.

791 B. Site Selection – Nodes or new node poles must be placed at least 20 feet from a
792 property zoned as a Historic Landmark.
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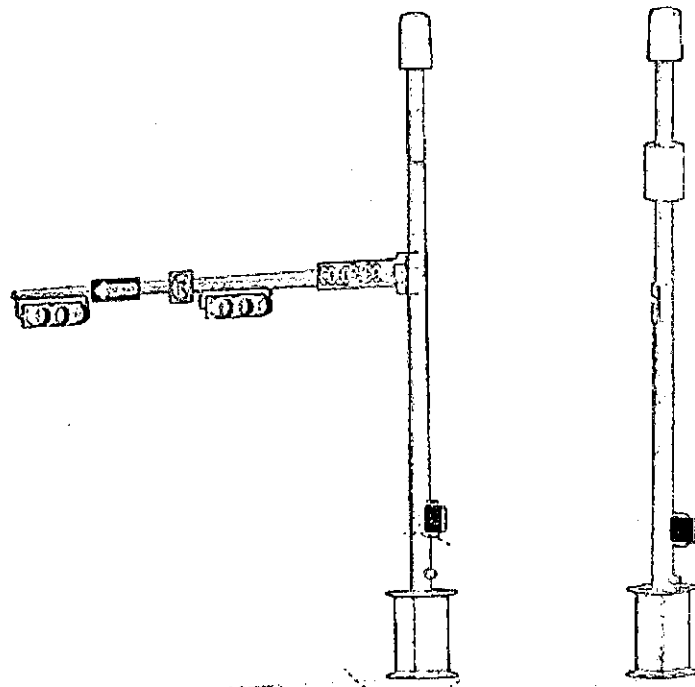
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EXHIBIT A

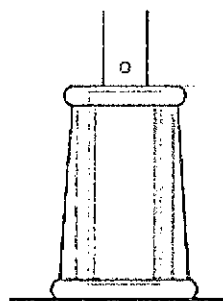
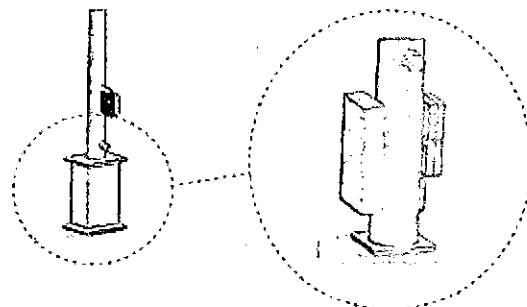
ANTENNA SPECIFICATIONS			
Antenna Type	Panel	Panel	Panel
Dimensions (HxWxD)	8" x 8" X 4"	9.7" X 12.8" X 3.3"	24.3" X 12.1" X 7"
Weight	9.9 lbs	11.5 lbs	13.0 lbs
Cable type	Coaxial Cable	Coaxial Cable	Coaxial Cable
Mounting	Pole or wall	Pole or wall	Pole or wall
Antenna Type	Panel	Canister (omni)	Canister (omni)
Dimensions (HxWxD)	9.7" X 12.8" X 4.7"	24.6" X 16" (dia.)	24" X 14.6" (dia.)
Weight	17 lbs	39.9 lbs	22.1 lbs
Cable type	RJ 45 or Coaxial Cable	Coaxial Cable	Coaxial Cable
Mounting	Pole or Base	Pole or Base	Pole or Base

RF SOURCE SPECIFICATIONS				
Dimensions (HxWxD)	7.87" X 7.87" X 3.93"	20.125" X 15.912" X 7.904"	8.42"X5.9"X2.75"	8" X 13" X 6.5"
Weight	9.92 lbs	11.2 lbs	1.65 lbs	15.8 lbs
Mounting	Base	Base	Base	Base
Power Requirement (AC)	8 Amps	10 Amps	5 Amps	10 Amps

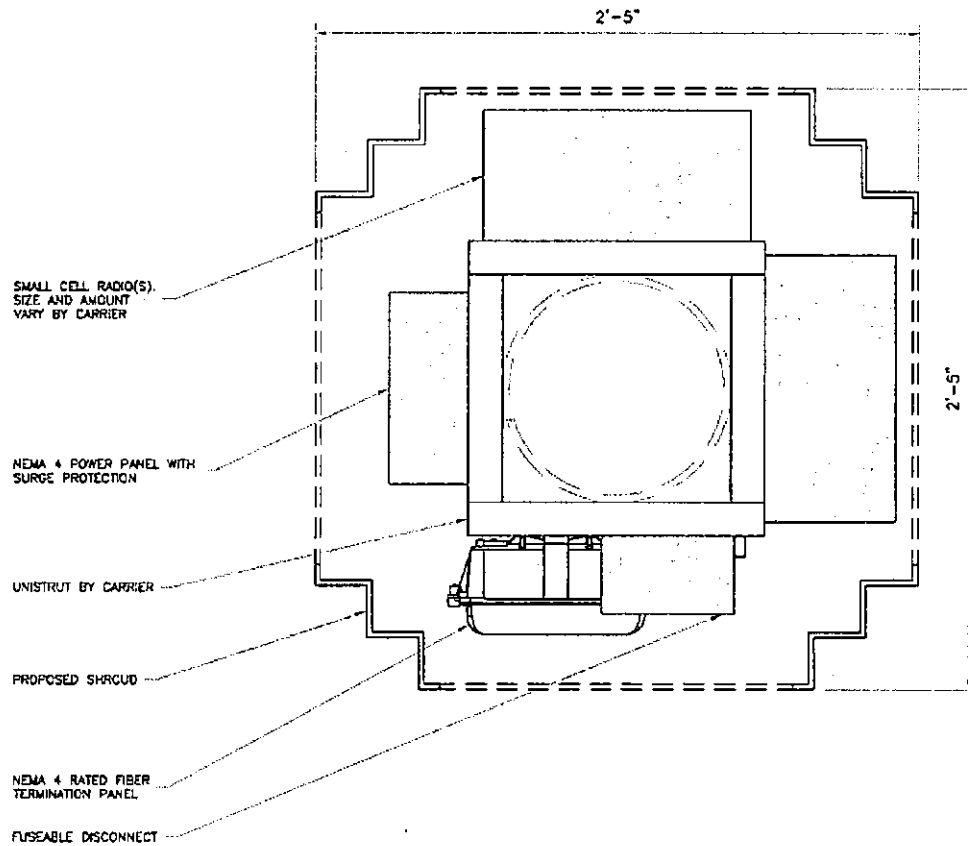
Figure 1



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802 **Figure 2 – Pole Elevation**



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804 **Figure 3 – Equipment Enclosure**



EXAMPLE EQUIPMENT LAYOUT

Figure 4a – Equipment Cabinet Plan

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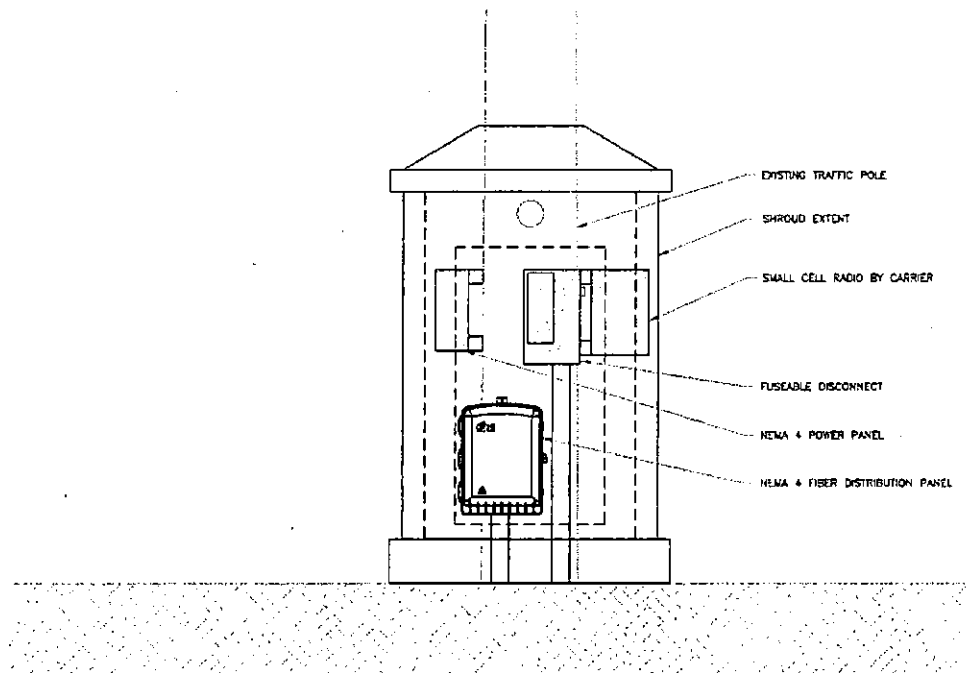
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EXAMPLE ELEVATION I
N.T.S.

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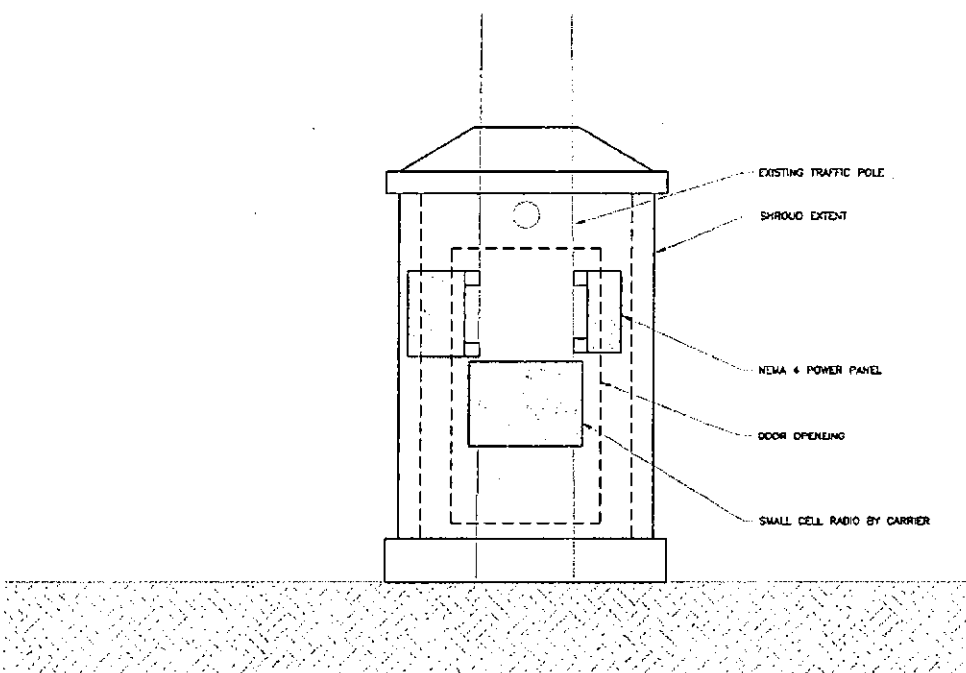
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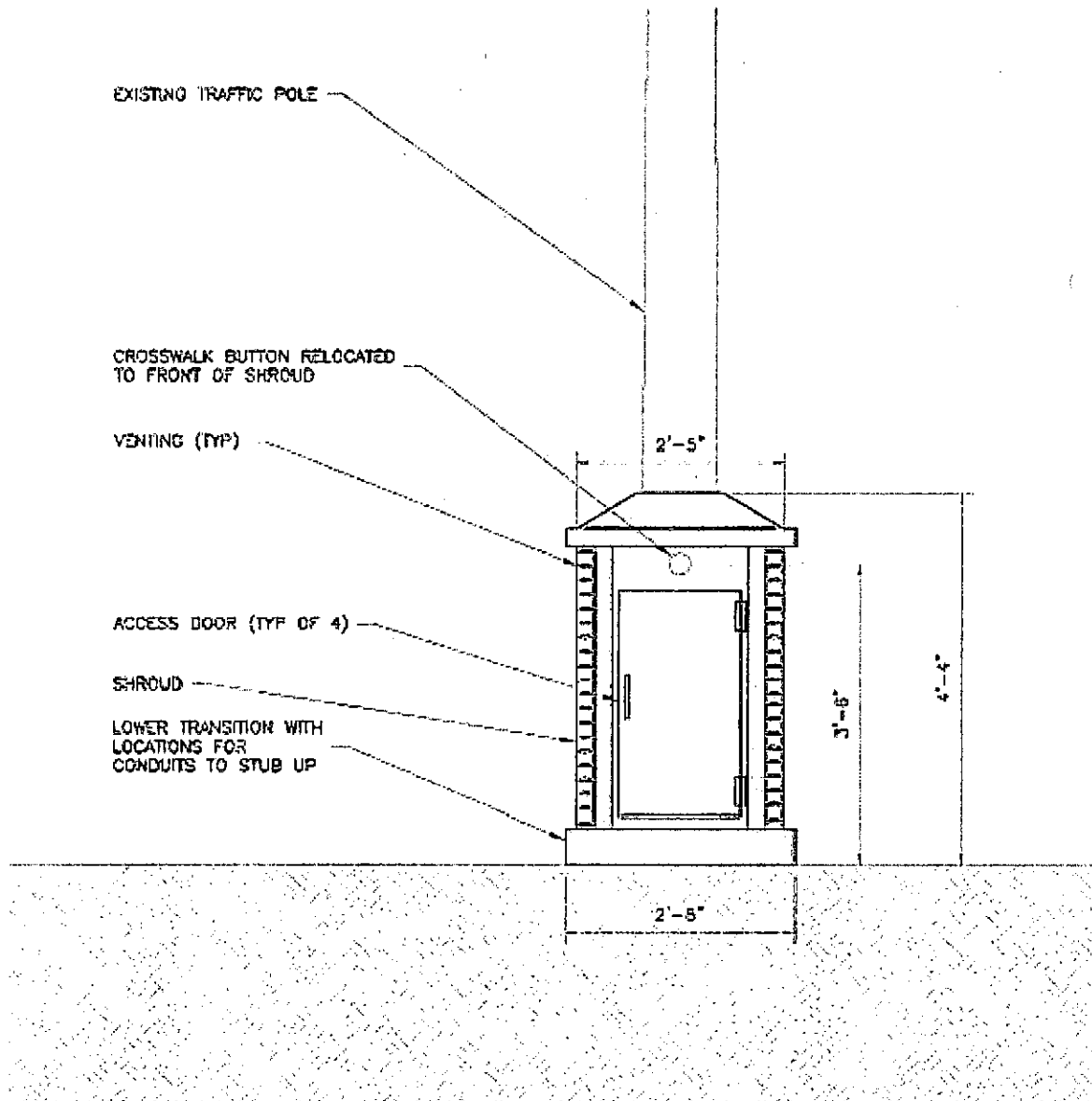
EXAMPLE ELEVATION II
N.T.S.

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Figure 4b – Equipment Cabinet Elevation



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840 Figure 5 – Elevation

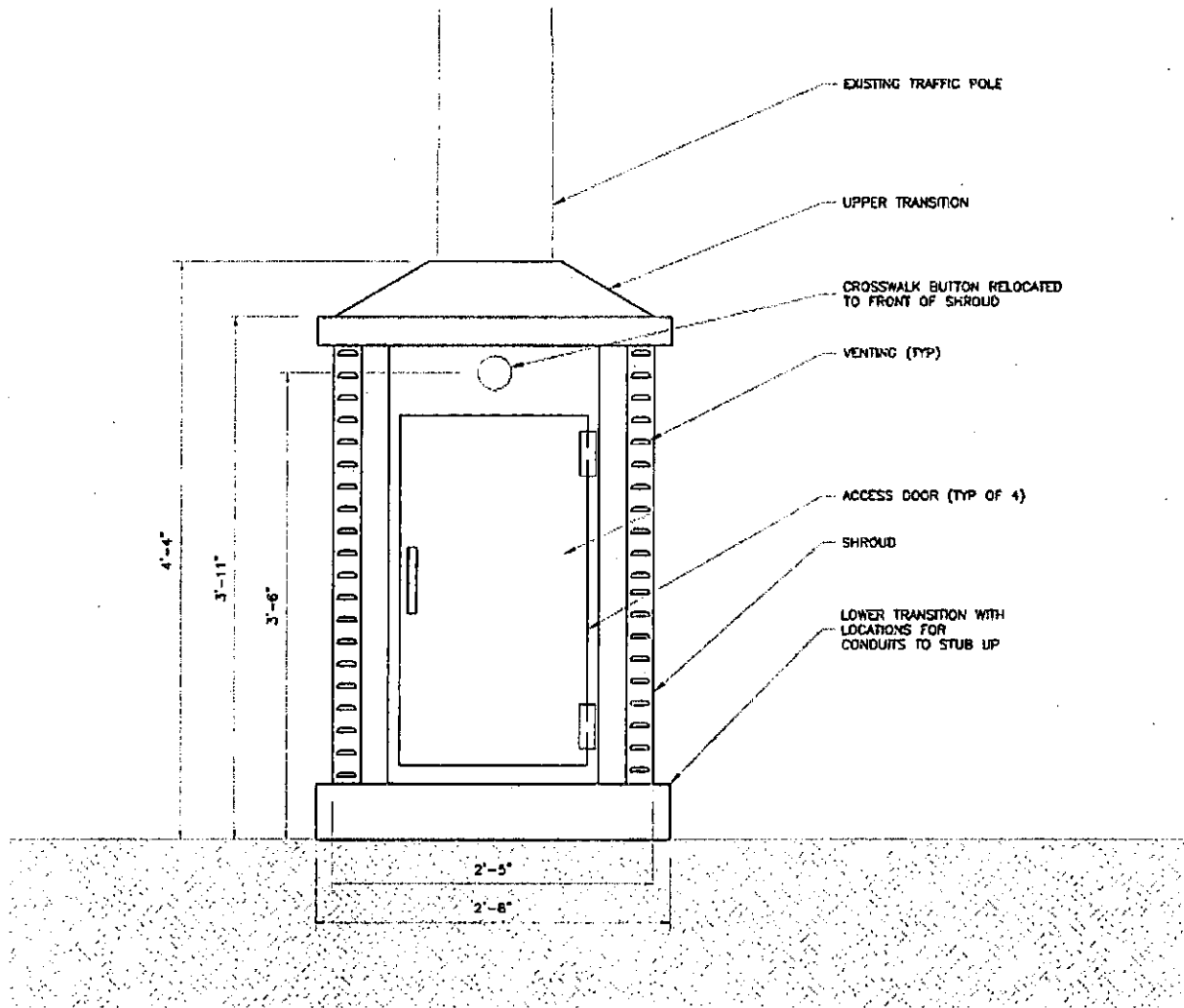
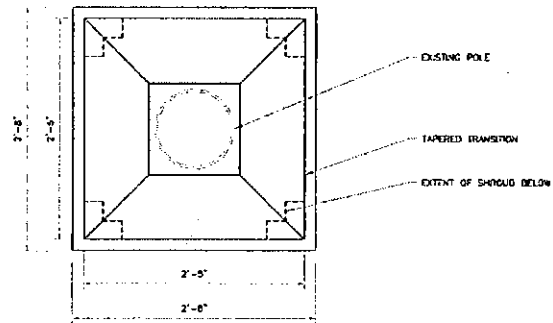
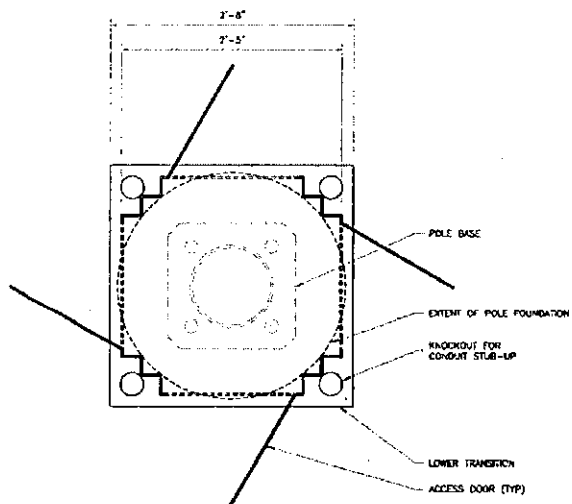


Figure 6– Elevation Detail

Figure 7 – Plan View



UPPER PLAN VIEW



LOWER PLAN VIEW

881

882 **Exhibit B**

883

884 **TRANSPORTATION CRITERIA MANUAL**

885 **INFRASTRUCTURE USAGE AGREEMENT**

886 **(Traffic Signal Pole)**

887

888 **License Agreement between City of Austin and Network Provider**

889

890 This License Agreement ("Agreement") is between the City of Austin, a Texas home-rule municipal
891 corporation ("COA"), and [name], a [state] [corporate form] ("Licensee"); hereinafter referred to individually
892 as "Party" or collectively as "Parties".

893 WHEREAS, Licensee desires to attach equipment to provide wireless services within the City of
894 Austin; and

895 WHEREAS, Licensee will need to place and maintain equipment and other facilities within the City's
896 jurisdiction and desires to place such equipment and facilities on City-owned traffic signal poles, and within
897 the public right-of-way; and

898 WHEREAS, the City is willing to grant Licensee revocable, non-exclusive licenses to use certain COA
899 owned traffic signal poles on the strict terms and conditions set forth in this Agreement and subject to the
900 terms of the City of Austin code (Austin City Code Chapter 15-7) and the rules and regulations of the City of
901 Austin adopted thereunder, as each may be amended from time to time; and

902 WHEREAS, COA is willing to allow Licensee to undertake the make-ready construction work
903 necessary to prepare certain COA-owned traffic signal poles to accommodate Licensee's equipment, and
904 facilities under the strict terms and conditions set forth in this Agreement.

905 NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, COA
906 and Licensee do hereby mutually covenant and agree as follows:

907

Article 1

Definitions and Construction

1.1 **Definitions:** For purposes of this Agreement, unless specifically set out below, terms have the meanings assigned to them by Section 15-7-1 of the City of Austin City Code:

A. **Annual Usage Charge** means the recurring charge that Licensee is to pay COA annually under this Agreement for the use of Traffic Poles. The Annual Usage Charge is in addition to any Costs and Filing Fees Licensee may incur during a Contract Year, and shall be determined by COA as of December 1 of each Contract Year, other than the first Contract Year. To the extent lawfully permitted, the Annual Usage Charge for any Contract Year shall be the number of Attachments shown on COA's records to exist as of December 1 of the preceding Contract Year multiplied by the Usage Rate for the new Contract Year. Unless otherwise expressly provided in this Agreement, Annual Usage Charges are not refundable.

B. **Application** means Licensee's formal request in the form required by the COA to attach Licensee's network node to a Traffic Pole.

C. **Attachment** means each network node or equipment of a Licensee supported by, affixed to, contained in, or placed on or in a Traffic Pole.

D. **Attachment License** means the contract granting Licensee an Attachment Right to a Traffic Pole.

E. **Collocate and Collocation** means the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a Traffic Pole.

F. **Contract Year** means any calendar year during which this Agreement is in effect, beginning January 1 and ending December 31, except that the first Contract Year shall run from the Effective Date until December 31 of that year and the final Contract Year shall run from January 1 of that year until the date of termination.

G. **Contractor** includes subcontractors.

H. **Cost** means the total cost reasonably incurred by COA for any particular task under this Agreement, and includes without limitation reasonable labor, material, equipment usage, outside Contractor and vendor charges, reasonable overhead, and reasonable general and administrative expenses. Costs may be incurred for, without limitation, engineering and engineering review, Make-Ready Work, inspections and oversight, auditing, public relations and intervention, and other services. Certain Cost rates are specified in the fee schedule adopted by the City of Austin commonly referred to as the City of Austin Fee Schedule. Cost rates shall be based on COA's actual and reasonable cost of labor, materials, and equipment usage. Subject to the foregoing, Costs shall be determined by COA in its reasonable

judgment and reasonable discretion, and shall be paid by Licensee in accordance with either of the following, at COA's sole option:

1. Any advance estimate provided by COA, in which event COA shall have the right to refuse to incur the Costs until the estimate is paid; and/or

2. Any final invoice submitted by COA. In the event an advance estimate was paid by Licensee for Costs, the final invoice will reflect such payment.

I. **Effective Date** means the last date on which a party signs this Agreement as shown on the signature page of this Agreement.

J. **Filing Fee** means the initial, non-refundable fee charged to Licensee for filing an Application for an Attachment License. Filing Fees are currently set by city ordinance, though will be set by COA to the extent they are no longer set by ordinance (in which case the Filing Fee shall not exceed the actual and reasonable cost to COA of reviewing and processing an Application). The Filing Fee is solely to compensate COA for reviewing and processing an Application and does not include or offset Costs or Annual Usage Charges.

K. **Infrastructure Usage Ordinance** means Austin City Code Chapter 15-7 and any other City ordinance that may be enacted to govern Traffic Pole usage or rental.

L. **Make-Ready Work** means work required to accommodate a network provider's attachments to COA infrastructure to ensure the installation meets all City codes and generally accepted engineering and construction standards.

M. **Unauthorized Attachment** means an Attachment or any other affixing or placing of Licensee's facilities onto COA property for which Licensee does not have a valid Attachment License, or which does not comply with the terms of this Agreement, the Transportation Criteria Manual or Design Documents.

N. **Usage Rate** means, for each given Contract Year, the amount Licensee must pay COA for each Attachment.

1.2 **Interpretation.** Except as otherwise expressly provided herein, all nouns, pronouns and variations thereof shall be deemed to refer to the singular and plural. The descriptive headings in this Agreement are only for the convenience of the parties and shall not be deemed to affect the meaning or construction of any provision. The rule of construction that ambiguities in a contract are to be construed against the drafting party shall not apply to this Agreement. Any reference to a law, code or document shall mean such law, code or document as it may be amended from time to time.

1.3 **Compliance with Infrastructure Usage Ordinance and Rules** This Agreement is intended to further the goals and policies of the Infrastructure Usage Ordinance and the Transportation Criteria Manual. To the extent they do not directly and irreconcilably conflict, this Agreement, the Transportation Criteria Manual and the Infrastructure Usage Ordinance are cumulative and applicable to Licensee. To the extent a provision of the Infrastructure Usage Ordinance or Transportation Criteria Manual has been rendered

invalid or preempted by state or federal law, this Agreement shall control unless preempted by state or federal law. The absence in this Agreement of a provision that appears in the Infrastructure Usage Ordinance or Transportation Criteria Manual, or vice versa, shall not be construed to relieve Licensee from complying with or being subject to such provision.

Article 2

Scope and Term of Agreement

2.1 Term This Agreement commences on the Effective Date and continues thereafter until terminated by either Party by written notice provided at least ninety (90) days prior to the date of termination, or until terminated without such advance notice due to Licensee's uncured default in accordance with this Agreement. This paragraph is subject to and conditioned upon any lawful requirements or limits imposed by City franchise or by Chapter 66 of the Texas Utilities Code.

2.2 Existing Facilities Only Except as otherwise set forth in the Transportation Criteria Manual, (i) COA is under no obligation to add, build, keep, maintain, or replace Traffic Poles or any other facilities for the use or convenience of Licensee; and (ii) the maintenance, replacement, removal, relocation, or addition of Traffic Poles and facilities shall remain within the sole province and discretion of COA.

2.3 Poles Only This Agreement addresses only Attachments to Traffic Poles. This Agreement does not authorize Licensee to install or maintain Attachments on other COA property and facilities, including without limitation conduits, mast arms, and buildings.

2.4 City Rights-of-Ways Nothing in this Agreement shall be construed to grant Licensee any right or authorization to use or occupy the public streets or rights-of-way of the City of Austin, except for the placement of Attachments on Traffic Poles or other facilities covered by this Agreement which may be located in the public streets or rights-of-way, including access in the public streets or rights-of-way to such Attachments, subject to permit approval.

2.5 No Property Rights in Poles All Traffic Poles shall remain the property of COA and no payment made by Licensee shall create or vest in Licensee any ownership right, title, or interest in any Traffic Pole, but Licensee's interest shall remain a bare license. The existence of such a license shall not in any way alter or affect COA's right to use, change, operate, maintain, or remove its Traffic Poles, subject to the terms and conditions hereof.

2.6 License not Exclusive Licensee acknowledges that COA has entered into before, and may enter into in the future, similar or other agreements concerning the use of Traffic Poles by third parties, including Licensee's competitors. Nothing in this Agreement shall be construed to limit or in any way affect COA's right or ability to enter into or honor other agreements, or to grant any rights, licenses, or access concerning any Traffic Pole, irrespective of the character or degree of economic competition or loss caused to Licensee.

2.7 **No Cost or Expense to COA** The engineering, construction, installation, use, operation, and maintenance of Licensee's Attachments shall be at Licensee's sole expense. Unless otherwise expressly provided herein, nothing in this Agreement shall be construed to require COA to expend any funds or to incur or bear any cost or expense.

Article 3

Usage Rates and Charges

3.1 **Calculation of Usage Rates** For each Contract Year, the Usage Rate shall be calculated per the Ordinance governing Traffic Pole attachments.

A. If Licensee disagrees in good faith with COA's determination of the Usage Rate, Licensee may protest in writing within thirty (30) days of receipt of the notice. The protest shall include copies of all records and other documentation that support Licensee's position.

B. Failure to timely protest COA's proposed Usage Rate shall constitute agreement to and acceptance of COA's determination.

C. If Licensee does timely protest a proposed Usage Rate, the parties shall endeavor in good faith to negotiate a resolution of the dispute.

D. If the dispute is not resolved by the time the Annual Usage Charge invoice is issued, Licensee shall nonetheless pay the invoice based upon the disputed Usage Rate. Payment by Licensee of the invoice shall not prejudice Licensee's ability to continue to contest the Usage Rate, and COA agrees not to interpose any claim, defense, or counterclaim that Licensee has waived its right to contest the Usage Rate by paying the disputed invoice.

3.2 **Subsequent Annual Usage Charges** In each January of each Contract Year and continuing thereafter until the termination of this Agreement, COA will invoice for, and Licensee shall pay, within forty-five (45) days after receipt of invoice, the Annual Usage Charge for the new Contract Year.

3.3 **Invoice Disputes** If Licensee believes in good faith that an invoice is incorrect, it may pay the invoice under protest. To protest an invoice, Licensee must give COA written notice of the nature of its protest no later than the due date for payment of the invoice together with copies of records and other documentation supporting its position. If Licensee's protest concerns the Attachment count used to calculate the Annual Usage Charge, the parties shall promptly meet to resolve the discrepancies in their records to determine the correct Attachment count. If the parties are unable to resolve a discrepancy as to the correct count, the parties shall jointly conduct a physical inventory of a statistically significant number of geographical grids or other mutually agreeable census to determine the correct count. The cost to conduct such inventory or census shall be equally divided between the parties.

3.4 **Adjustments** If upon resolution of a dispute between the parties under paragraph 3.1 or paragraph 3.3, a refund is due to Licensee, COA shall refund the amount of the overcharge together with interest at the rate specified in paragraph 9.5 from the date of COA's receipt of the protested Annual Usage Charge payment. If Licensee owes additional money, a corrected invoice shall be issued by COA for the additional Annual Usage Charge due, plus accrued interest at the rate specified in paragraph 9.5 from the due date of the original invoice.

3.5 **No Allowances** Unless otherwise expressly stated in this Agreement, there shall be no offsets against any sums due under this Agreement, or any other allowances, for system improvement, materials or labor supplied, upgrading, life extension, or other direct or incidental benefits conferred by Licensee upon COA or its Traffic Poles, system, or facilities. All such improvements and benefits belong solely to COA, and the fact that such improvements or benefits may accrue shall in no way alter or affect Licensee's obligations under this Agreement.

Article 4

General Requirements

4.1 **Public Safety** In performing any work on or near Traffic Poles supporting traffic control or warning devices. It has been determined that these devices are necessary for the safe and convenient movement of various modes of traffic. Licensee shall take all steps to ensure their construction activities do not adversely impact the operation of these devices. Should the Licensee's activities impact the effectiveness of these devices, the Licensee shall take every step necessary to return these devices to their fully functioning capacity. LICENSEE SHALL DEFEND, INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, SUITS AND JUDGMENTS ARISING FROM OR CONCERNING A BREACH BY LICENSEE OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

4.2 **Laws** To the extent that the Code of the City of Austin lawfully requires Licensee to possess a valid franchise or construction permit before engaging in a particular act, Licensee must comply with such requirement before beginning Make-Ready construction or installing Attachments. Nothing in this Agreement shall be construed as waiving other City requirements or permitting the construction of facilities other than Attachments. Attachments must conform to local, state, and federal law. Licensee's Attachments and Licensee's use of any Traffic Pole shall at all times conform to the requirements of the City Code, the Infrastructure Usage Ordinance, and the published policies and rules promulgated by the City pursuant thereto, including the Transportation Criteria Manual.

4.3 **Design Manual** The Licensee shall adhere and comply with the Rules and Design Manual for Network Nodes in the right of way, as defined in Section 12 of the Transportation Criteria Manual and .

Article 5

Unauthorized Attachments

5.1 **Unauthorized Attachments** Licensee shall not place any Attachments on a Traffic Pole or other COA infrastructure except as authorized by an Attachment License. If one or more unauthorized Attachments are discovered, COA may, but shall not be required to, remove the unauthorized Attachment

without incurring any liability to Licensee and at Licensee's sole Cost. With respect to any unauthorized Attachment, COA may opt to:

- A. require that Licensee remove such unauthorized Attachment upon demand or, if Licensee fails to do so, COA may remove such Attachment at Licensee's sole cost and risk; or
- B. require that Licensee submit an Application for each such unauthorized Attachment, together with the then-current application filing fee and Annual Usage Charge relating back to the installation date of such unauthorized Attachment, or the time at which such Attachment was deemed an unauthorized Attachment pursuant to the terms and conditions of under the terms of the License Agreement. If such Application and charges are not received by COA within fifteen (15) days of notice of the unauthorized Attachment, COA may then opt to proceed under part A of this section.

5.2 Excessive Unauthorized Attachments If COA determines that Licensee has made more than fifty (50) Unauthorized Attachments cumulatively during any Contract Year, Licensee shall be considered to be in material breach of this Agreement and COA will have the right to terminate this Agreement and require removal of Licensee's Attachments in accordance with Article 6 of this Agreement.

5.3 Remedies Cumulative The remedies afforded COA under this agreement is in addition to any civil or criminal penalties provided by the Infrastructure Usage Ordinance for Unauthorized Attachments or related rules.

5.4 Ratification Must Be in Writing No act or failure to act by COA with respect to an Unauthorized Attachment or any other unauthorized use of COA Traffic Poles or property shall be considered to be a ratification, licensing, or permitting of the unauthorized use, irrespective of any otherwise applicable doctrine of waiver or laches.

Article 6

Termination

6.1 Right of Suspension If Licensee fails either to make any payment required under this Agreement, including timely payments to Contractors for Make-Ready Work, or to perform timely any material obligation under this Agreement, and such default continues for thirty (30) days after the date the payment or performance is due, then, in addition to any other available right or remedy, COA may, upon written notice to Licensee, immediately suspend all Attachment Licenses of Licensee and decline to review any application for Attachment Licenses of Licensee, until such time as the default is cured. The payment under protest of a disputed amount in order to avoid, or lift, suspension of Attachment Licenses shall not prejudice the rights of Licensee to continue the payment dispute. A suspension of Attachment Licenses under this paragraph shall not prevent Licensee from operating, maintaining, repairing or removing its existing Attachments, but Licensee shall not install any new or additional Attachments or make any changes to existing Attachments (except for removal or routine repair or maintenance necessary to continue to provide services to then-existing Licensee customers) during the period of suspension.

6.2 Termination of Agreement by COA If Licensee fails either to pay any payment required under this Agreement, including timely payments to Contractors for Make-Ready Work, or timely perform any material obligation under this Agreement, and if such default has not been cured within three (3) months of Licensee's receipt of written notice of default, COA may terminate this Agreement and all Attachment Licenses upon written notice to Licensee. Upon receipt of a notice of termination, Licensee shall promptly begin the process of removing all Attachments from Traffic Poles. All such Attachments shall be removed within thirty (30) days after the date of the notice of termination, or within such time as COA may agree. Until all of Licensee's Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Such payment by Licensee or acceptance by COA of Annual Usage Charges shall not act to cure the default that triggered the termination nor shall it reinstate this Agreement or Licensee's Attachment Licenses hereunder.

6.3 **Failure to Remove Attachments** If Licensee has not removed all its Attachments within the period of time specified in the preceding paragraph, or such additional period of time granted by COA in writing, then COA may remove Licensee's Attachments at Licensee's sole Cost and risk, in which event Licensee shall pay to COA as liquidated damages, and not as a penalty, for the use and occupancy of Traffic Poles a sum equal to one half of the monthly Usage Rate for each Traffic Pole Contact for each month (or part thereof) until all such Attachments have been removed. Alternatively, COA may, in its reasonable discretion and upon written notice to Licensee, deem the Attachments to have been abandoned and assume ownership thereof.

6.4 **Termination of Agreement by Licensee** Licensee may terminate this Agreement upon sixty (60) days written notice to COA, in which event all Attachments shall be removed within one hundred-twenty (120) days after the date of the notice of termination or within such other time as COA agrees. Until all of Licensee's Traffic Pole Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Termination by Licensee during a Contract Year shall not relieve Licensee from payment for the full Annual Usage Charge for that Contract Year or any other sums owing COA.

6.5 **Survival** Licensee's obligations under this Article shall survive termination of this Agreement.

Article 7

Assignments

7.1 **Permissible Assignments** Licensee may not assign or otherwise transfer this Agreement or any Attachment Licenses without COA's prior written consent, except that Licensee may without consent:

A. transfer or assign this Agreement to an affiliate or subsidiary of Licensee. Licensee's rights and obligations hereunder shall pass to such successor only upon receipt by COA of written notice of such transfer or assignment, together with true copies of the documents specified in paragraph 7.2 below; and

B. mortgage any or all of its property, rights, privileges and franchises, or to enter into any merger, consolidation, or sale of its assets in the City of Austin substantially in their entirety. Licensee shall provide advance written notice of foreclosure, merger, consolidation or sale, together with true copies of the documents specified in paragraph 7.2 below within thirty (30) days of closing such transaction.

7.2 Information to COA In the event of a transfer or assignment of this Agreement, Licensee shall provide COA with true and complete copies of the transfer or assignment documents; documents showing the ownership of the assignee and its relationship to Licensee, if any; a copy of the assignee's most current audited annual financial statement (or unaudited financial statement if an audited annual financial statement has not been prepared); a copy of the assignee's franchise with the City, if any; copies of all insurance certificates and bonds required by this Agreement; and such other information as COA may reasonably request.

7.3 Other Assignments Void A purported assignment or transfer made in violation of the provisions of this Article 7 shall not be binding upon COA and shall be deemed to be a material default of this Agreement.

7.4 Assignment by COA COA may assign this Agreement in whole or in part without the consent of Licensee. COA shall give Licensee written notice of the transaction within ten (10) days after closing.

7.5 Partial Assignments If Licensee sells, conveys, or transfers some, but not all, of Licensee's Attachments, and such assignment complies with this Article 7, the assignee must nonetheless obtain a separate agreement from COA for the assignee's Attachments in accordance with City of Austin and COA policies, rules, regulations and Ordinances in effect at that time. Until the assignee executes a separate agreement, the assignment is not binding upon COA and the assignee's Attachments shall continue to be deemed to be the Attachments of Licensee for all purposes hereunder, including billing and payment of Annual Usage Charges.

Article 8

Liability & Indemnity; Warranty

8.1 COA Liability COA reserves to itself the right to maintain and operate its Traffic Poles in such manner as will best enable it to fulfill public safety requirements, subject in all respects to the terms and conditions of this Agreement. COA shall not be liable for any damages incurred by Licensee for damage or interruption to its Attachments except for actual repair costs caused by the negligence or intentional misconduct of COA; provided, however, that COA shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's Attachments. **NEITHER COA NOR LICENSEE SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THE USE OF OR DAMAGE TO COA'S OR LICENSEE'S FACILITIES.**

8.2 No Warranties by COA Licensee is expected to inspect the Traffic Poles on which its Attachments will be placed and shall rely solely on such inspection to determine the suitability of the Traffic Poles for its purposes. **COA DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY EXPRESS OR**

1200 **IMPLIED WARRANTIES CONCERNING ANY TRAFFIC POLE, INCLUDING WITHOUT LIMITATION THE**
1201 **WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACCEPTS THE**
1202 **USE OF ALL TRAFFIC POLES AS IS, WHERE IS, AND WITH ALL FAULTS, EXCEPT AS OTHERWISE PROVIDED**
1203 **HEREIN.**

1204 8.3 **Unsafe Traffic Poles** Licensee acknowledges and agrees that COA does not warrant the
1205 condition or safety of Traffic Poles, or the premises surrounding the Traffic Poles, and LICENSEE HEREBY
1206 ASSUMES ALL RISKS OF AND INDEMNIFIES COA FROM ANY DAMAGE, INJURY OR LOSS OF ANY NATURE
1207 WHATSOEVER CAUSED BY OR IN CONNECTION WITH LICENSEE'S OR LICENSEE'S CONTRACTORS' USE OF THE
1208 TRAFFIC POLES AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN, OR SURROUNDING THE TRAFFIC
1209 POLES. Licensee expressly agrees that it will undertake responsibility for inspecting and evaluating the
1210 condition of any Traffic Pole before allowing any workers, whether those of Licensee or Licensee's
1211 Contractors, to work on such Traffic Pole. If Licensee discovers any Traffic Poles that are unsafe for
1212 Attachment installation, Licensee shall immediately report such unsafe condition to COA. Licensee further
1213 acknowledges that COA does not warrant that all Traffic Poles are properly labeled, and agrees that COA is
1214 not liable for any injuries or damages caused by or in connection with missing labels or otherwise improperly
1215 labeled Traffic Pole. Licensee further agrees to immediately notify COA if labels or tags are missing or
1216 otherwise improper.

1217 8.4 **Dangerous Nature of the Work** Licensee acknowledges that in performing the work
1218 contemplated by this Agreement, Licensee and its agents, servants, employees, and Contractors will work
1219 within the public right of way and on Traffic Poles with existing energized equipment. Licensee shall ensure
1220 that its employees, servants, agents, and Contractors have the necessary qualifications, skill, knowledge,
1221 training, and experience to protect themselves, their fellow employees, employees of COA, and the general
1222 public, from harm or injury while performing work permitted by this Agreement. In addition, Licensee shall
1223 furnish its employees, and shall require its agents and Contractors to furnish their employees, with
1224 competent supervision and sufficient and adequate tools and equipment for their work to be performed in
1225 a safe manner. Licensee further warrants that it is apprised of, conscious of, and understands the imminent
1226 dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH) inherent in the work necessary to make
1227 installations on Traffic Poles by Licensee's employees, servants, agents, and Contractors, and accepts it as
1228 its duty and sole responsibility to notify and inform Licensee's employees, and to require its agents and
1229 Contractors to inform their employees, of such dangers, and to keep them informed regarding same.

1230 8.5 **Licensee Liability and Indemnity** Subject only to paragraph 8.7, Licensee shall defend,
1231 indemnify and hold harmless COA and all affiliated entities of COA, whether existing now or in the future,
1232 and their respective officials, officers, departments, agencies, boards, representatives, employees, agents,
1233 Contractors and attorneys against any and all liability, claims, costs, damages, fines, taxes, penalties,
1234 punitive damages, expenses, demands, lawsuits or disputes (including reasonable attorney fees of counsel
1235 selected by COA and all other costs and expenses of litigation) arising from or related to any of the following:

- 1236 A. All acts or omissions by Licensee or its Contractors done in the course of Make-Ready or
1237 installation construction or in the maintenance, use, or operation of Licensee's
1238 Attachments;

- 1239 B. Any work performed by COA that was necessitated by the installation, maintenance,
1240 presence, use or removal of Licensee's Attachments or from any work this Agreement
1241 authorizes COA to perform on Licensee's behalf;
- 1242 C. All claims or causes of action for damage to property or injury to or death of any persons,
1243 including payments made by COA under any Worker's Compensation Laws or under any
1244 plan for employees' disability and death benefits, arising out of the erection, maintenance,
1245 repair, presence, use, relocation, transfer or removal of Licensee's Attachments or the
1246 proximity of Licensee's Attachments to COA's facilities or the property of any other Third
1247 Party User, or by any act or omission of Licensee on or in the vicinity of Traffic Poles;
- 1248 D. All claims or causes of action for property damage, bodily injury or death arising out of the
1249 performance or nonperformance of any work or obligation undertaken by Licensee
1250 pursuant to this Agreement;
- 1251 E. Any claim or cause of action related to Licensee's erection, maintenance, repair, presence,
1252 use, relocation, transfer or removal of Licensee's Attachments, including liabilities incurred
1253 as a result of violation of any law, rule, or regulation of the United States, State of Texas or
1254 any other governmental entity or administrative agency;
- 1255 F. A violation of any state or federal law arising out of Licensee's erection, maintenance,
1256 repair, presence or use, relocation, transfer or removal of Licensee's Attachments or the
1257 proximity of Licensee's Attachments to COA's facilities or the property of any Third Party
1258 User, or by any act or omission of Licensee on or in the vicinity of Traffic Poles, whether
1259 such violation is the result of a violation of a statute by COA or the Licensee solely or any
1260 joint violation thereof.
- 1261 G. Claims of governmental bodies, property owners or others alleging that Licensee does not
1262 have a sufficient right or authority for placing and maintaining Licensee's facilities at the
1263 locations of Traffic Poles.
- 1264 H. Claims for taxes by others that arise directly or indirectly from the construction, maintenance
1265 or operation of Licensee's facilities.
- 1266 I. Claims or causes of action caused by or relating in any manner to a breach of this Agreement
1267 or a failure to follow the terms of this Agreement by Licensee or its agents and employees or
1268 by Licensee's contractors or their agents and employees.
- 1269 J. All claims or causes of action of Third Party Users alleging interference from Licensee's
1270 Attachments or damage to Third Party User Attachments or facilities.
- 1271 K. Any third party claims or causes of action alleging that Licensee's use of any hardware,
1272 software or other materials embedded in Licensee's Attachments infringes or

1273 misappropriates such third party's intellectual property rights in such hardware, software
1274 or other materials.

1275 8.6 **COA Fault** SUBJECT ONLY TO PARAGRAPH 8.7, IT IS THE EXPRESS INTENT OF THE PARTIES
1276 THAT THE FOREGOING INDEMNITY IS TO PROTECT AND INDEMNIFY COA AGAINST THE CONSEQUENCES
1277 OF ITS OWN FAULT WHERE COA'S FAULT IS A CONCURRENT CAUSE OF THE INDEMNIFIED LIABILITY.

1278 8.7 **Joint Liability** The indemnity obligations set forth in paragraph 8.5 shall apply to fully
1279 protect and indemnify COA from all such claimed damages unless the indemnified liability was the result of
1280 intentional or reckless misconduct or negligence on the part of COA, or their agents, servants, employees,
1281 or contractors, in which case each party shall be liable for its found percentage of damages in accordance
1282 with Texas law based upon a final judgment in which a finder of fact determines COA's percentage of
1283 responsibility for the indemnified liability.

1284 8.8 **Other Indemnification Provisions** No indemnification provision contained in this Article
1285 shall be construed in any way to limit any other indemnification provision contained in this Agreement.

1286 8.9 **Licensee's Construction Warranty** LICENSEE WARRANTS AND GUARANTEES TO COA THAT
1287 ALL MAKE-READY WORK WILL CONFORM TO THE COA'S UTILITY CRITERIA MANUAL AND TRANSPORTATION
1288 CRITERIA MANUAL AND THE DESIGN DOCUMENTS, BE PERFORMED IN A GOOD AND WORKMANLIKE
1289 MANNER IN ACCORDANCE WITH THIS AGREEMENT, AND WILL NOT BE DEFECTIVE. LICENSEE'S WARRANTY
1290 AND GUARANTEE HEREUNDER EXCLUDES DEFECTS OR DAMAGE CAUSED BY: (I) ABUSE, MODIFICATION OR
1291 IMPROPER MAINTENANCE OR OPERATION BY PERSONS OTHER THAN LICENSEE, ITS SUBCONTRACTORS OR
1292 SUPPLIERS; OR (II) NORMAL WEAR AND TEAR UNDER NORMAL USAGE.

1293 8.10 **Survival** This Article 8 shall survive the termination of this Agreement.

1294 Article 9

1295 Insurance

1296
1297
1298 9.1 **Insurance Required** Licensee, and all Contractors of Licensee performing work on a
1299 Traffic Pole, shall at all times carry insurance issued by companies duly licensed to provide insurance in the
1300 State of Texas and approved by the director to protect Licensee (or its contractor) and the City of Austin
1301 against any and all claims, demands, actions, judgments, costs, expenses, or liabilities of every kind that
1302 may arise, directly or indirectly, from or by reason of losses, injuries, or damages described in this Section.

1303 9.2. **Minimum Coverages** At a minimum, Licensee and its contractors shall carry and
1304 maintain the following coverages and shall furnish the City Risk Manager certificates of insurance as
1305 evidence thereof:

- 1306 A. Commercial General Liability coverage in the minimum amount of \$2,000,000 per
1307 occurrence;
- 1308 B. Worker's Compensation coverage with statutory benefits as set forth in the Texas
1309 Worker's Compensation Act and Employer's Liability coverage of not less than

1310 \$1,000,000 bodily injury per accident, \$1,000,000 bodily injury per disease and
1311 \$1,000,000 per disease per employee;

1312 C. Business Automobile Liability Insurance for all owned, non-owned and hired
1313 vehicles with a minimum combined single limit of \$1,000,000.

1314 9.3 **City as Additional Insured** The Commercial General Liability and Business Liability Policies
1315 shall name the City of Austin as an additional insured as its interest may appear. The City's risk manager
1316 will be included as a party to be notified under the policy before any non-renewal, cancellation or material
1317 change in coverage in accordance with the terms of such policy. The "other insurance" clause shall not
1318 apply to the City; it being the intention of the parties that the above policies covering Licensee and the
1319 City shall be considered primary coverage. Each policy shall contain a waiver of all rights of recovery or
1320 subrogation against the City, its officers, agents, employees, and elected officials.

1321 Article 10

1322 Miscellaneous Provisions

1323

1324 10.1 **Integration** This Agreement constitutes the entire understanding of the parties relating to
1325 the use of Traffic Poles hereunder; and there shall be no modification or waiver hereof except by writing,
1326 signed by the party asserted to be bound thereby. There are no oral representations or agreements
1327 between the parties. All previous agreements, correspondence, statements, and negotiations are
1328 superseded by this Agreement.

1329 10.2 **No Waiver** The failure of either party to enforce or insist upon compliance with any of the
1330 terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such
1331 terms or conditions, but the same shall be and remain at all times in duly force and effect.

1332 10.3 **Applicable Law** The parties hereto agree and intend that all disputes that may arise from,
1333 out of, under or respecting the terms and conditions of this Agreement, or concerning the rights or
1334 obligations of the parties hereunder, or respecting any performance or failure of performance by either
1335 party hereunder, shall be governed by the laws of the State of Texas, without application of its Conflict of
1336 Laws provisions. The parties further agree and intend that venue shall be proper and shall lie exclusively in
1337 Travis County, Texas, except where otherwise provided herein and except where the Texas Public Utilities
1338 Commission lawfully has jurisdiction.

1339 10.4 **Severability** If any term, covenant, or condition of this Agreement is held by a court of
1340 competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants and
1341 provisions of this Agreement shall remain in full force and effect.

1342 10.5 **Payments & Interest** All monetary payments under this Agreement shall be due and
1343 payable within forty-five (45) days after receipt of invoice. All overdue balances shall accrue interest at the
1344 rate of one-percent (1%) per month from the due date until paid, or the maximum rate allowed by law,
1345 whichever is less.

1346 10.6 **Notices** When notice is required to be given under this Agreement by either party, it shall
1347 be in writing mailed or delivered to the other party at the following address or to such other address as
1348 either party may from time to time designate in writing for that purpose. All notices shall be effective upon
1349 receipt.

City

Licensee

Austin Transportation Department

[*Contact Information*]

3701 Lake Austin Boulevard

Austin, TX 78703

Phone (512)

Fax (512)

Attn: Asst. Director,

1350

1351

1352 IN WITNESS WHEREOF, the undersigned have executed this Agreement through their duly authorized
1353 representatives.

1354

1355 **LICENSEE:**

1356 **[NAME]**

1357

1358 By: _____
1359 Name: _____
1360 Title: _____
1361 Date: _____

1362

1363

1364 **CITY OF AUSTIN**

1365 **BY ITS TRANSPORTATION DEPARTMENT**

1366

1367 By: _____
1368 Name: _____
1369 Title: _____
1370 Date: _____

1371

1372

1373

1374

SECTION 6 – AUSTIN ENERGY POLE ATTACHMENTS

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SECTION 6 – AUSTIN ENERGY POLE ATTACHMENTS

6.1 – PURPOSE, SAFETY, DEFINITIONS

6.1.1 – PURPOSE

This section implements City Code Chapter 15-7 pertaining to the use of Austin Energy distribution and street lighting infrastructure by providers of cable television, telecommunication, and certain other data or communication services, including wireless service, who possess the right by virtue of city, state, or federal law to access and operate on electric utility infrastructure. It is intended to set forth the general terms and conditions under which Austin Energy will accommodate pole attachments by these service providers, including standard license agreements that must be executed before pole attachments will be permitted. It also provides the engineering design and construction standards and practices that must be adhered to by all entities attaching to Austin Energy infrastructure.

Adherence to the standards, guidelines, procedures, and requirements of this section will support the application process, and will allow completion of providers' installation projects with minimum delay and conflict while helping ensure the safety and reliability of Austin Energy's system.

Execution of a license agreement does not guarantee permission for an attachment will be granted. Austin Energy may always deny access to a pole where insufficient space or other capacity exists, or reasons of safety, reliability, or generally accepted engineering or electrical grid operating practices.

This document is intended only as standards and guidelines and is not an engineering specification. This section is to be used in conjunction with the current version of the National Electrical Safety Code (NESC), which establishes the minimum design requirements with regard to the design and installation of communication cables and other facilities on electric infrastructure. Austin Energy's design standards may nonetheless exceed those of the NESC – in any given instance the more stringent of the two requirements shall apply unless a specific variance has been granted by Austin Energy in writing.

Service providers attaching to Austin Energy infrastructure must comply with all standards and requirements set forth in this section or otherwise required by law. In all situations it is the responsibility of the attaching provider to be familiar with and adhere to the current versions of applicable laws and regulations during the installation, maintenance, and operation of their facilities on Austin Energy infrastructure.

Austin Energy will publish and adopt amendments to this document as it deems necessary.

6.1.2 – SAFETY

Austin Energy's poles are part of an overhead electrical distribution system, and power lines attached to these Poles should be presumed energized at all times. All persons, including an attaching service provider's employees and contractors, must exercise proper caution and take reasonable precautions when working on or near electric utility poles and lines. Federal state statutes and regulations directly address construction activity in the vicinity of overhead electric lines, and violators may be subject to criminal penalties and civil liabilities. These laws apply to employees, contractors, owners and any other parties or persons responsible for or engaged in construction activities.

Employees and contractors of attaching service providers shall install and use adequate protective equipment and clothing to ensure the safety of all personnel working within the electric supply space. Safety practices shall include those recommended by the American Public Power Association (APPA). Austin Energy or City personnel may halt any work, at any time, if a safety violation is observed.

Service providers shall ensure their employees and those of their contractors are qualified to work on or near electric distribution lines. Work above the communications space on poles may be performed only by contractors pre-approved by Austin Energy to perform such work.

Communication cables must be properly guyed and anchored before tensioning. A separate guy and anchor is required – use of Austin Energy’s supply guys and/or anchors is prohibited. Attaching companies are responsible for the costs of any damage to Austin Energy facilities resulting from improper guying, anchoring, and/or loading.

EMERGENCY SITUATIONS - In the event of contact by construction equipment with overhead or underground electric lines, call 512-322-9100 to provide information as to the location of the incident and whether the situation is life threatening. In all instances call 911 immediately if emergency response is required.

6.1.3 – DEFINITIONS

AE DISTRIBUTION CONSTRUCTION STANDARDS – All engineering and construction standards, specifications, and designs maintained and referenced internally by AE, and complied with in all material respects by AE, for its own distribution construction and engineering work.

APPLICABLE STANDARDS – All federal, state and local laws, rules and regulations (including this Section and other parts of the City of Austin Utilities Criteria Manual), the National Electric Code, the National Electrical Safety Code, AE’s Distribution Construction Standards, AE’s Attachment Application Guidelines, and applicable industry standards).

APPLICATION – The application form promulgated by Austin Energy together with all required documents, maps, proposed routes, project descriptions, and proposed schedules that Licensee must submit, in full, in order to trigger consideration of a request for an Attachment License.

ATTACHMENT – (1) Each Cable owned, controlled, or used by Licensee that is affixed to a Pole for wireline transmission, together with its associated messenger strand, guy wires, anchors, and other appurtenant and incidental facilities, or (2) if allowed, each amplifier, repeater, controller, appliance, device, or piece of equipment occupying one linear-foot of space or less that is owned, controlled, or used by Licensee for wireline transmission and affixed to a Pole, or (3) a Network Node.

ATTACHMENT APPLICATION GUIDELINES – The procedures by which a Licensee may apply for an Attachment License as approved by Austin Energy and described on its website.

ATTACHMENT LICENSE – The revocable, non-exclusive license to make an Attachment to a Pole, pursuant to Austin Energy’s approval of an Application and subject to (1) any modifications, conditions, and specifications imposed by AE pursuant to this Criteria Manual or applicable law when approving the Application and (2) all Design Documents issued by AE with respect to the Attachment and Pole in question. An Attachment License authorizes Attachments solely for lawful communications purposes. The use of any Attachment for purpose other than providing services authorized by (1) City franchise or

interlocal governmental agreement, (2) Chapters 283 or 284 of the Texas Local Government Code, (3) Chapter 66 of the Texas Utilities Code, or (4) Title III of the Communications Act of 1934, as amended, is prohibited.

ATTACHMENT POINT – The point, referenced as a height above ground level, or a given distance from other equipment, attachment, or facilities on the Pole, of the centerline of the bolt or strap which provides the primary support for a Licensee's facilities on a Pole.

CABLE – A conductor, wire, or fiber, or a bound or sheathed assembly of conductors, wires, or fibers, used as a wire communications or transmission medium (a bare messenger is also a Cable).

COMMUNICATIONS SPACE – The area on a Pole, below and sufficiently remote from the Supply Space as required by National Electrical Safety Code, within which Attachments may lie. The term Communications Space has the equivalent meaning as that used in the National Electrical Safety Code.

DESIGN DOCUMENTS – All specifications, drawings, schematics, blueprints, engineering documents, and written requirements for materials, equipment, design, construction, and workmanship issued by AE to Licensee or contained in this Section with respect to Make-Ready Work and installation work for a particular Attachment or group of Attachments.

DISTRIBUTION POLE – A pole supporting electric distribution lines having a nominal voltage of not more than 35kV. The term Pole does not include (1) night watchman poles, (2) poles or towers supporting transmission lines carrying a nominal voltage greater than 35kv, unless such poles are also used to support electrical lines carrying a nominal voltage of not more than 35kv, (3) any structure or facility within a substation, (4) conduits, (5) any structure not used for electric power distribution, (6) Street Light Poles, or (7) poles supporting signage or traffic-control devices.

LICENSEE – A party to a License Agreement with Austin Energy for the making of one or more Attachments to one or more Poles.

MAKE-READY WORK – All work required to accommodate Licensee's Attachments on a Pole with in accordance with the design standards and documents.

NETWORK NODE – Defined by Local Government Code Section 284.002(12).

PLA – Pole Loading Analysis

POLE – A Distribution Pole or a Street Light Pole

SAFETY SPACE – The space between the lowest point of supply conductors, neutral conductors, or Austin Energy equipment on a Pole and the highest allowed attachment or occupied space for communication cables or equipment as specified by the National Electrical Safety Code.

SERVICE POLE – a Distribution Pole that is out of line from Austin Energy's normal primary line location, and is installed for the support of service drops or secondary across a street, or to support service drops on a customer's property.

STREET LIGHT POLE – A pole located in a public right-of-way that supports only street lighting and that is not decorative in nature.

SUPPLY EQUIPMENT – Austin Energy equipment such as transformers, transformer banks, switches, sectionalizers, capacitor banks, regulators, reclosers, auto devices, AMI equipment or primary risers.

SUPPLY SPACE – The area on a Pole, above the Communications Space and Safety Space, reserved for the placement of electric supply lines, electrical equipment, and other AE facilities. The term Supply Space has the equivalent meaning as that used in the National Electrical Safety Code.

TRANSPORT FACILITY – Defined by Local Government Code Section 284.002(22).

WIRELINE ATTACHMENT – An attachment other than a Network Node or Transport Facility.

6.2 – GENERAL ADMINISTRATIVE PROVISIONS

6.2.1 – Fees and Charges

Approval of an Application shall be conditioned on Licensee's payment, within forty-five (45) days of receiving invoice, for (i) all applicable fees associated with an application, as set forth in the City of Austin fee schedule, and (ii) the then current Annual Usage Charge for each approved Attachment License, prorated to reflect the number of months remaining in the calendar year after AE's invoice, with any partial month deemed to be a full month.

All fees associated with Attachments, other than the Annual Usage Charge, are set forth in the fee schedule of the then-effective City of Austin budget ordinance.

Austin Energy may require payment for any sums due from Licensee be paid directly to a contractor, if any, retained by Austin Energy to administer oversight or performance all or any part of its Pole Attachment programs.

6.2.2 – License Agreement

Before a Licensee may be granted an Attachment License, the Licensee must execute a License Agreement with Austin Energy in the form set forth in Appendix B.

6.2.2 – Attachment Licenses

6.2.2.1 – Attachment License Required

Before a Licensee may make an Attachment or perform work on a Pole (other than inspections necessary to prepare an Application), Licensee must first obtain and accept an Attachment License. Licensee must have an Attachment License for each Pole or group of Poles to which Licensee's Attachments are to be affixed, identifying each separate Attachment to the Pole(s) by type.

6.2.2.2 – Overlapping

Licensee must obtain an Attachment License for any Attachment it seeks to overlap to an existing Attachment. Licensee may not allow a third party to overlap to Licensee's facilities unless the third party has a License Agreement and an Attachment License for the overlapping attachment. Licensee may not charge or accept any financial consideration for allowing a third party to overlap to an Attachment without AE's written consent.

6.2.2.3 – Application Process

An Application must be submitted in the then-approved AE format. The Application and all required supporting documentation and other procedures, are within the reasonable discretion

of AE unless a process or timeline is prescribed by applicable state law. Austin may change its processes from time to time unless such changes would be inconsistent with state law or the terms of a License Agreement. AE may reject entirely an incomplete Application, or it may request additional information to support the Application, in which event the requested information shall be promptly furnished.

6.2.2.4 – Order of Consideration

Applications for the same Pole will be considered and acted upon by AE in the order in which they are filed. For purposes of evaluating an Application with respect to pole capacity and existing attachments, AE will consider not only all existing attachments but also all valid Attachment Licenses and reserved AE space (if reserved pursuant to a *bona fide* development plan) as existing Attachments.

6.2.2.5 – Application Process for Network Nodes on Street Lights

Applications to attach a Network Node to a Street Light Pole shall be processed in accordance with AE-approved procedures to the extent consistent with Local Government Code Chapter 284.

6.2.2.6 – Engineering/Pole Loading Analyses

All PLAs and other engineering documents must be sealed by a professional engineer licensed in the State of Texas. AE shall accept and rely on such documentation, but shall reserve the right to perform, or have a firm retained by AE perform, its own engineering and field evaluation. All costs for such engineering and field evaluation shall be paid by Licensee. In granting an Attachment License, AE shall issue to Licensee the Design Documents governing the approved Attachment(s).

Austin Energy may require a PLA as part of any Application. PLA guidelines may be established by Austin Energy and changed from time to time. A PLA shall be required for (1) a Pole with five or more existing attachments, (2) a Pole bearing primary service lines running in two or more directions, (3) a transmission structure, and (4) an Application for a Network Node. The total usage of a Pole based on the available ground line moment capacity of the Pole shall remain less than eighty percent (80%). Any Pole that will exceed eighty percent (80%) capacity based on a PLA shall be replaced with a calculated Pole size that will pass the eighty percent (80%) usage capacity requirement after placement of Licensee's Attachment.

AE may accept and rely on documentation submitted by Licensee but reserves the right to perform, or have a firm retained by AE perform, its own engineering and field evaluation. All costs for such engineering and field evaluations shall be paid by Licensee.

6.2.2.7 – Application Approval

AE retains sole and complete discretion to deny or modify any Application in order to be able to preserve the safety, reliability, integrity, and effectiveness of the electric distribution system that constitutes the core of its business and its governmental mandate. AE may approve an Application as submitted, approve it on a modified or conditional basis, or may deny the Application in accordance with the procedures set forth in this Section and the policies adopted by AE pursuant thereto.

6.2.2.8 – Conditional Approval

If AE denies an Application and the Pole may be modified or replaced to resolve the reason for which the Application was denied, AE may, but is not obligated to, reconsider the Application if (i) the Licensee agrees in writing to pay AE's costs to so modify or replace the Pole, if any, and (ii) the Application is otherwise acceptable and grantable pursuant to the terms and conditions of the Licensee's License Agreement and applicable law. In such event, AE shall approve the application following receipt of payment for, and completion of, such Pole modification or replacement.

6.3 – GENERAL REQUIREMENTS

6.3.1 – Compliance with Design Requirements

Licensee shall perform all make-ready and installation work in accordance with the Design Documents and all Applicable Standards.

6.3.2 -- AE Oversight

AE shall have the right to conduct on-site field oversight and inspections of Licensee's Attachments, work, and operations on Poles and in AE easements. AE shall at all times have unrestricted access to Poles and to all field work sites of Licensee and Licensee's contractors. Both AE and AE's representative at any Pole site shall have complete and final authority to order the immediate suspension of Licensee's construction or installation activities if AE or AE's representative, in its sole discretion and judgment, deems such action necessary for reasons of safety, engineering, electrical service reliability, or property owner complaint. In the event of an oral suspension order, AE shall send written notice to Licensee within three days after such suspension, identifying the alleged violation. Such suspension shall be in effect until such time as the Licensee cures, at Licensee's sole Cost, the alleged violation. In no event shall AE be responsible for any damages, losses, or Costs incurred by Licensee as a result of such work stoppage unless such stoppage is a result of gross negligence or willful or intentional misconduct on the part of AE.

6.3.3 – Standards Conflicts

If there is a difference, conflict, or discrepancy between or among the requirements or practices of any Applicable Standard the following rules shall apply: (A) if one specification or practice is more stringent than the other, the more stringent shall apply; (B) if one is not more stringent than the other, the National Electric Safety Code shall govern; and (C) if the first two rules are insufficient to resolve the conflict in a clear and unambiguous manner, AE shall determine which standard shall apply, giving highest priority to safety considerations. If there a difference, conflict, or discrepancy between or among the requirements the Design Documents and AE Distribution Construction Standard, the Design Documents shall govern. In the event Licensee believes a Design Document or AE Distribution Construction Standard is inconsistent with Electrical Code or applicable law, Licensee shall refer the matter to AE for determination.

6.3.4 – Cabinets, Power Supplies and Other Equipment

No cabinets, power supplies, or equipment (other than an antenna array) may be attached to or placed on a Pole.

6.3.5 – Tagging

Each Attachment (including risers) made to an Pole shall be identified at each Pole and at all times by a Cable Tag in a form specified by AE's Attachment Application Guidelines or otherwise approved by AE. During the Permit Application process, the Licensee will be required to install or replace its cable tags to fully meet this requirement.

6.3.6 – Maintenance

Licensee shall, at its sole expense, make and maintain its Attachments in a safe condition and in good repair, and in such a manner as not to interfere with or interrupt AE's lines, facilities, and services or with other service providers' attachments, facilities, and services.

6.3.7 – Tree Trimming

Licensee shall be responsible for all tree trimming necessary for the safe and reliable installation, use, and maintenance of its Attachments, and to avoid stress on Poles caused by contact between tree limbs and Licensee's Attachments. All tree trimming shall be performed in accordance with then current AE tree-trimming policies (to the extent not inconsistent with the terms and conditions of under the terms of the License Agreement), including without limitation those relating to owner notification and consent.

6.3.8 – No Damage

Licensee shall not cause damage to AE or Third Party User facilities or operations. If Licensee, its contractors, agents, employees, or Attachments cause damage to AE or Third Party User facilities or operations, Licensee assumes all responsibility for, and shall, as determined by AE, either repair or promptly reimburse AE or the Third Party User for all loss and expense caused by such damage. Licensee shall immediately inform AE and all damaged Third Party Users of any damage to their facilities.

6.4 – MAKE-READY CONSTRUCTION

6.4.1 – Performance of Make-Ready Work

A Licensee shall perform all Make-Ready Work at its sole cost, including without limitation, costs of planning, engineering, construction, and Pole replacement.

6.4.2 – Existing Attachments

The Make-Ready Work costs that are to be paid by Licensee include all costs and expenses to relocate or alter the attachments or facilities of any pre-existing attachments as may be necessary to accommodate Licensee's Attachment. Licensee shall provide at least thirty (30) days' notice to each owner of the existing attachments of its need to relocate or alter their facilities, using the National Joint Utilities Notification System, if reasonably available for use, and make all other necessary arrangements to directly with the affected owners.

Licensee shall notify AE if Licensee determines that an existing attachment on a Pole is out of compliance with Applicable Standards, and AE shall provide notice to the owner of the non-compliant attachment to bring it into compliance within thirty (30) days of such notice. If after thirty (30) days the owner of the out-of-compliance attachment has not completed its work and brought its attachment in to compliance with Applicable Standards, or if AE is unable to identify the owner of the non-compliant attachment, AE shall declare the non-compliant attachment to be unauthorized, and AE or Licensee may relocate or alter the attachment at the owner's cost.

AE may suspend acceptance of applications from any Licensee that fails to move or modify an attachment in order to bring it into compliance with Applicable Standards.

6.4.3 – Construction

All work performed by or on behalf of Licensee pursuant to an Attachment License shall be done in a good and workmanlike manner. Licensee's acceptance of an Attachment License constitutes Licensee's agreement to be bound by its terms and conditions. All Attachments, Make-Ready Work, and other work performed or maintained by Licensee on a Pole shall strictly comply with the Design Documents and Applicable Standards. If Licensee fails to comply with any material requirement of the Design Documents and Applicable Standards, AE shall have the right to suspend Licensee's Make-Ready and installation operations, deem the violation an unauthorized attachment, and to seek specific performance.

6.4.4 – Coordination of Make-Ready Efforts

If multiple service providers have been granted Attachment Licenses for the same Pole and a disagreement arises between them as to construction and installation schedules, AE shall have the right to require a representative of Licensee who has authority to agree on these issues to attend a meeting called by AE to discuss and agree on these issues. Failure to reach an agreement shall result in mandatory submittal of these issues to binding arbitration at the applicants' expense; provided, however, that if AE in its reasonable discretion determines that Licensee is not bargaining in good faith, AE may revoke or modify Licensee's Attachment License.

6.4.5 – Authority to Proceed

An Attachment License is not authority to proceed with Make-Ready Work on a Pole. Before beginning Make-Ready Work, Licensee shall give AE not less than fourteen (14) days written notice of the Pole location, the proposed date on which work will commence, and whether any electrical service interruptions or de-energizations will be required. If AE does not approve of such date (such approval not to be unreasonably withheld, conditioned, or delayed), the parties shall mutually agree on a date for construction to take place and shall make all necessary arrangements and schedules for line and equipment de-energization. Licensee shall not begin Make-Ready Work without authority to proceed from AE, and shall comply with the agreed upon construction and de-energization schedule. Licensee shall be responsible for coordinating its efforts with AE field inspection personnel and for any actions or notifications required by the AE Energy Control Center.

6.4.6 – Service Interruptions

Licensee shall not cause any interruption of AE services without first obtaining AE's express written consent. If it is necessary for AE to de-energize any equipment or lines for Licensee's benefit, Licensee shall reimburse AE in full for all costs in doing so. In the event Licensee damages any of AE's equipment or lines or causes any service interruption, Licensee, at its sole expense, shall immediately do all things reasonable to avoid injury and further damage, direct and incidental, resulting therefrom and shall notify AE immediately. Licensee shall be liable for all costs resulting from such damage and any necessary repairs.

If AE agrees to a service outage and Licensee fails to comply with the agreed construction schedule, AE may opt immediately to revoke Licensee's Attachment License(s) for the Poles in question and restore the interrupted power and services at Licensee's sole Cost.

6.4.7 – Contractors

All work performed by or on behalf of Licensee above the Communications Space pursuant to an Attachment License shall be done by a Contractor selected from an AE issued list of approved Contractors. Licensee may propose Contractors for inclusion in such list, and AE may or may not approve such proposed Contractor in its reasonable judgment and discretion. Only orderly and competent workers shall be used. Neither Licensee's workers nor those of its Contractors may possess any weapon, or use, possess or be under the influence of any alcoholic or other intoxicating beverage, drug or controlled substance while performing any work on or around a Pole. If AE finds any Licensee or contract worker to be incompetent, disorderly, in the possession of any weapon, or in the possession of or under the influence of alcohol or drugs, Licensee shall promptly suspend work and remove such worker from all work on or around Poles, shall not resume work until such worker is and remains off-site, shall verify compliance of all work performed by such worker, and may not again use such worker on work on or around Poles without the prior express written consent of AE

6.4.8 – Materials

Licensee shall furnish all necessary materials and hardware including but not limited to poles, crossarms, mounting hardware, guys, anchors, insulators, conductors, and any associated miscellaneous hardware. All materials used by Licensee for Make-Ready Work on Poles shall be obtained, at its sole cost and expense, from AE-approved vendors and shall be new and of good quality and free from known material defects.

6.4.9 – AE Property

All Poles, materials, and equipment installed in the Make-Ready process shall become and remain AE's sole property, regardless of which entity procured or paid for them. Licensee shall execute any documents reasonably requested by AE to evidence the transfer of title to such Poles, materials, and equipment to AE, and Licensee shall brand and tag all new Poles to indicate AE ownership. Licensee's performance of Make-Ready Work or payment of any costs (A) shall in no way create or vest in Licensee any ownership right, title, or interest in any Pole or electrical facilities, (B) shall not entitle Licensee to any offsets, credits, payments, or income from AE's operation of the Pole or facilities, (C) shall not alter or affect AE's rights under the License Agreement Between AE and Licensee, or (D) shall not restrict AE's ability to allow access to a Pole by Third Party Users. Licensee's interest shall at all times remain a bare revocable license subject to the terms of the License Agreement.

6.5 – MODIFICATION OF ATTACHMENTS

6.5.1 – Unauthorized Modifications

Except for routine maintenance, Licensee shall not change the type, nature, or location of any Attachment or alter its use of a Pole without the prior written consent of AE. Licensee shall not construct any other or additional Attachments except as authorized by the License Agreement and Attachment Licenses. Any Attachment changed or added in violation of this section shall be deemed to be an unauthorized Attachment.

6.5.2 – Routine Modifications

Licensee does not need AE consent for (a) changes incident to routine maintenance and repair, including modifications permitted to be made without AE's consent by virtue of state law; (b) the

installation of service drops; (c) removal of Licensee's Attachments. Licensee shall nonetheless provide AE with a comprehensive report each month identifying all such changes in Attachments in the previous month.

6.5.3 -- AE Mandated Modifications

Within thirty (30) days of written request by AE, Licensee shall move or rearrange its Attachments in order to maximize the usable available Pole space and/or to accommodate AE facilities. Licensee shall do so at its sole cost and risk, except that Licensee shall not be responsible for any costs or expenses incurred to relocate or alter its Attachments to accommodate the Make-Ready Work of other Third Party Users. If Licensee fails or refuses to comply with the directions of AE to change, alter, improve, move, remove or rearrange any of its Attachments in accordance with the License Agreement, AE may then opt to change, alter, improve, move, remove or rearrange such Attachments without incurring any liability to Licensee and at Licensee's sole cost, or AE may proceed under the terms of the License Agreement.

6.5.4 – Emergencies

In case of an Emergency or a situation that materially and adversely interferes with the performance of AE or another Third Party User's service obligations, AE may move, rearrange or transfer Licensee's Attachments without notice and without liability to Licensee or to any other person, in which event Licensee shall also be responsible for all costs.

6.5.5 – Destroyed Poles

If any Pole on which Licensee has an Attachment is substantially destroyed or damaged by fire, storm, accident, or otherwise, AE shall be under no obligation to rebuild or replace such Pole, but may elect to terminate Licensee's Attachment License for such Pole without any liability to Licensee. AE shall notify Licensee in writing of a termination under this paragraph, and Licensee shall be entitled to a pro-rata refund of any prepaid but unearned Annual Usage Charge attributable to the Attachments on such damaged or destroyed Pole.

6.5.6 – Pole Transfers

If AE replaces an existing Pole supporting an Attachment with a new Pole, AE may use the National Joint Utilities Notification System to notify Licensee of transfers. If the timeline provided by the National Joint Utilities Notification System expires and the transfer has not been completed AE may elect to transfer or have its contractor transfer the Attachment at Licensee's sole cost and risk and/or to deem the Attachment an Unauthorized Attachment.

6.5.7 – Underground Conversion

Upon written notice, Licensee agrees that it will bear all costs associated with the relocation or re-routing of its Attachments in the event AE facilities are removed from a Pole and re-routed through underground conduits. In such event, AE shall be under no obligation to maintain any Poles that no longer support AE supply lines and may remove Licensee's Attachments when removing the abandoned Pole at Licensee's sole cost and risk and/or to deem the Attachment an Unauthorized Attachment.

6.6 – INVENTORY AND INSPECTION

6.6.1 – Right to Inspect

AE may inspect Licensee's work and Attachments at any time, for any purpose, including: AE may conduct these inspections for any purpose relating to Licensee's use of AE's Poles, including: (a) determining compliance with the Design Documents and Applicable Standards, and (b) auditing and inventorying. The making of an inspection by AE shall not operate in any way to relieve Licensee or Licensee's insurers of any responsibility, duty, obligation, or liability under the License Agreement or otherwise, nor does AE's ability to make inspections relieve Licensee from its obligations to exercise due care in the operation and inspection of its Attachments.

6.6.2 – Compliance

If an inspection of an existing Attachment reveals that corrections or other actions are required of Licensee under this Criteria Manual or the License Agreement, including without limitation those required for reasons of safety or structural integrity, Licensee shall make such corrections or take the requested actions within thirty (30) days after the date AE sends Licensee a written notice informing Licensee of the corrections to be made. AE may also perform such work without notice, at Licensee's sole Cost and risk, if AE determines in its reasonable judgment and discretion that an Emergency does not permit full advance notice to Licensee. If Licensee fails or refuses to comply with the directions of AE, the Attachments in question shall thereafter be deemed to be Unauthorized Attachments. AE may opt to change, alter, improve, move, remove or rearrange such Unauthorized Attachments without incurring any liability to Licensee, and at Licensee's sole Cost and risk.

6.6.3 – System-Wide Inventory

Periodically, but not more than once per year, AE may, but is under no obligation to, conduct a system-wide inventory of all Licensee Attachments and other attachments on its Poles, for which Licensee shall bear its proportionate share of costs. AE will notify Licensee of the times and places of such inventory, and Licensee may have representatives accompany AE on the inventory. AE may use the results of the inventory for purposes of calculating the Annual Usage Charge, but may also rely upon a statistically significant number of geographical grids or other mutually agreeable census to determine the correct count.

6.7 – LICENSE TERMINATION

6.7.1 – Expiration for Inactivity

An Attachment License shall expire if the Licensee fails to complete all Make-Ready Work and Attachment installation within one hundred-twenty (120) days following issuance of the Attachment License, or such longer period as (a) AE may agree to in writing upon a showing of good-cause from the Licensee or (b) may be required by applicable law.

6.7.2 – Termination

An attachment License shall terminate if the Licensee (a) removes the Attachment other than in the course of routine maintenance or replacement or due to emergency, (b) ceases to offer services through the Attachment or loses the legal authority by which it has access to AE infrastructure or the underlying right-of-way, or (c) fails to materially comply with a Design Document or Applicable Standard.

6.8 – INSURANCE

6.8.1 – Insurance Required

A Licensee, and all contractors of Licensee performing work on a Pole, shall at all times carry insurance issued by companies duly licensed to provide insurance in the State of Texas and approved by AE (which shall not be unreasonably withheld) to protect Licensee (or its contractor), AE, and the City of Austin against any and all claims, demands, actions, judgments, costs, expenses, or liabilities of every kind that may arise, directly or indirectly, from or by reason of losses, injuries, or damages described in this Section.

6.8.2 – Minimum Coverages

At a minimum, Licensee and its contractors shall carry and maintain the following coverages and shall furnish the City Risk Manager certificates of insurance as evidence thereof:

- A. Commercial General Liability coverage in the minimum amount of \$2,000,000 per occurrence;
- B. Worker's Compensation coverage with statutory benefits as set forth in the Texas Worker's Compensation Act and Employer's Liability coverage of not less than \$1,000,000 bodily injury per accident, \$1,000,000 bodily injury per disease and \$1,000,000 per disease per employee;
- C. Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000.

6.8.3 – AE as Additional Insured

The Commercial General Liability and Business Liability Policies shall name AE and the City of Austin as an additional insured as its interest may appear. The City's risk manager will be included as a party to be notified under the policy before any non-renewal, cancellation or material change in coverage in accordance with the terms of such policy. The "other insurance" clause shall not apply to the City; it being the intention of the parties that the above policies covering Licensee and the City shall be considered primary coverage. Each policy shall contain a waiver of all rights of recovery or subrogation against AE and the City, its officers, agents, employees, and elected officials.

6.9 – WIRELINE ATTACHMENTS TO UTILITY POLES

The standards set forth in this Subsection apply to Wireline Attachments to Distribution Poles.

6.9.1 – Communication Space.

Except as otherwise provided herein, all Wireline Attachments must be placed and remain in the Communications Space. Licensee operations in the Supply Space or in the Safety Space may be performed only with prior approval from AE using AE-approved contractors.

6.9.2 – Cable Position on the Pole

- A. AE will assign each Licensee a position on a Pole, determined by the position of existing attachments so as to minimize impact to the Pole and the existing attachments of other service providers.
- B. A Licensee must place all cables on the same side of the Pole as the electric neutral. If cables

are attached on both sides of the Pole (boxed in), the new cable will be placed on the same side of the Pole as the majority of the existing attachments (including the neutral); if evenly split, the new cable will be placed on the same side of the Pole as the neutral.

- C. No more than 5 cable Attachments may be placed within the Communication Space on a Pole.
- D. Installation of a horizontal extension arm requires the advance written permission of AE. AE will approve the request only if it determines the installation will not interfere with the safe and reliable operation of AE's electric distribution system.
- E. A Licensee may not weave its cables from one vertical position to another in relation to other cables on the same pole line route, or transition its cable from one position to another. Weaving from one side of the Pole to the other along the pole route is also not permitted.
- F. Bolts may not extend greater than two inches (2") beyond the tightened nut. A shorter bolt may be substituted if required, but no sawed bolts may be installed on AE Poles.
- G. Take-offs and guys must be on one Attachment Point.

6.9.3 – Clearance at the Pole

- A. The clearance between AE electrical facilities and Licensee's facilities must be in accordance with the most stringent requirement of the Applicable Standards.
- B. Vertical clearances must be measured at Attachment Points, bolt-to-bolt. If the Licensee is using banding, the measurement will be from messenger to messenger or from messenger to bolt.
- C. Diagonal measurements do not apply to the vertical clearance requirement.
- D. See Appendix D, Diagram 1.

6.9.4 – Non-Wooden Poles

Attachments to steel, concrete, or fiberglass distribution Poles must be clamped or banded to the Poles with stainless steel straps. The drilling of holes in these Poles for an attachment or any other purpose is prohibited, except in the instance that drilled holes in steel Poles at road crossings of greater than three hundred feet (300') are permitted if approved by AE.

6.9.5 – Sag and Mid-Span Clearances

Licensee shall leave proper sag in its lines and cables and shall observe the established sag of power line conductors and other cables so that during the life of the Attachment minimum clearances are (1) achieved at Poles located on both sides of the span and (2) maintained throughout the span. A minimum clearance between surfaces must be maintained between Licensee's and other service providers' cables at mid-span and between Licensee's and others' Attachments on the Poles.

- A. Sag Clearance between various electrical facilities and communications cables in the area between Pole attachments (mid-span) shall be as specified by the most stringent

requirement of the Applicable Standards.

- B. NESC specifies that the required vertical clearances must be measured surface-to-surface, not center-to-center.
- C. Any mid-span Service Drop or device mounted on a communications cable or messenger must be a minimum of fifteen inches (15") from the Pole face at its nearest point to ensure adequate climbing space.
- D. The minimum clearance between communications cables at all points shall be six inches (6").
- E. The maximum separation between communications cables at all points shall be 18 inches (18").
- F. See Appendix D, Diagram 2.

6.9.6 – Anchors and Guying

Licensee shall provide all anchors and guying necessary to accommodate the additional stress and load placed upon a Pole by its Attachments. Anchors shall not be placed outside of the easement in which a Pole stands.

- A. An anchor and guy rod with attached guy wire must be set for each turn or cable angle equal or greater than five (5) degrees on every dead-end Pole, and on each side of a road crossing and on any Pole AE has guyed.
- B. Slack spans may be no more than seventy feet (70') without guying.
- C. Slack spans under seventy feet (70') may be un-guyed provided both Poles meet AE's loading requirements.
- D. Sidewalk guys are prohibited unless specifically agreed to in writing by Licensee and AE, on a case-by-case basis.
- E. A Licensee may never attach its guy to an AE anchor.
- F. All anchors (supply and/or communications) must be at least three feet (3') apart.
- G. Anchor rod eyes must not be more than eight inches (8") above ground.
- H. No cable or messenger/strand shall be placed on a Pole until anchor rods and down guys are installed.
- I. All communications guys shall have guy markers installed for visibility.
- J. No communication anchor shall be installed closer than five feet from the service of the Pole.
- K. See Appendix D, Diagram 3.

6.9.7 – Bonding and Grounding Requirements

- A. All messengers and down-guys placed by the Licensee must be bonded directly to the pole

ground with #6 soft-drawn bare copper wire. All-dielectric self-supporting communications cables and all-dielectric communications cables supported by a non-metallic messenger strand are not required to be bonded and grounded.

- B. Any ground placed by a Licensee must be bonded to the AE ground near the level of the communications messenger.
- C. See Appendix D, Diagram 4.

6.9.8 – Climbing Space

An unobstructed climbing space must be maintained at all times on the face of all Poles as required by Applicable Standards, as well as adequate ground access to Poles. All Attachments must be placed as to allow and maintain a clear and proper climbing space.

6.9.10 – Service Drop Requirements

- A. Communications service drops shall be connected fifteen inches (15") from the Pole to the Attacher's cable main supporting Messenger.
- B. Service drops shall not exceed one hundred feet (100') without use of Messenger.
- C. See Appendix D, Diagram 5.

6.9.11 – Communications Cable Riser Requirements

- A. A Licensee may place a vertical run of communications cable, enclosed in conduit, shielded, or guarded, and attached to a stand-off bracket mounted to the Pole.
- B. The Licensee's communications cable riser should be composed of, or covered with, a suitable material and must at all points maintain the greater of (1) the Pole circumference or (2) two inches (2") from through-bolts or other metallic objects on the Pole:
- C. Although non-metallic conduit is preferred, metallic conduit may be used if it is properly grounded to existing pole grounds and is the initial section of riser.
- D. Supply and communications cable risers must maintain one side (180 degrees) of the Pole clear for climbing space and eventual replacement of the Pole. Communications cable risers should be located on the same side of the Pole as their overhead communications cables are attached.
- E. Communications cable risers should end no more than three inches (3") below the communications cable attachment point.
- F. The maximum number of riser conduits on a Pole is three (3), including AE risers. Risers mounted on a shared vertical run of standoff brackets shall count as one riser.
- G. Only one set of risers mounted to a vertical run of standoff brackets is allowed per Pole. The first Licensee to install a riser shall provide the brackets to mount riser conduit; future Licensees shall utilize the bracket until it is fully occupied.

H. Sharing of conduit or ducts is prohibited unless agreed to by AE in writing.

I. See Appendix D, Diagram 6.

6.10 WIRELESS FACILITIES

6.10.1 – Equipment Size and Dimensions

Network Nodes and related equipment installed on Poles shall not exceed dimensions and specification described in Texas Local Government Code Section 284.003 unless otherwise approved in writing by the AE.

6.10.2 – Signage

Licensee shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the Network Node that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the City. Two RF warning signs shall be installed. One sign shall be installed near the pole top at the level where the safe approach distance ends for FCC General Population/Uncontrolled power levels. The second sign shall be installed near the base of the Pole. This sign shall read, "Warning Antenna Approach Distance Is XX Feet". At a minimum, each sign or decal shall indicate the Antenna's owner/operator's name, emergency 24-hour contact number, and unique identifier for that Antenna site. Signage must be made of weather, corrosion, and UV resistant materials easily visible from the ground level.

Except as required by laws, Licensee shall not post any other signage. Licensee shall not place commercial advertising on any of its facilities on AE infrastructure.

6.10.3 – RF and EMF Compliance

Licensee shall comply with all laws and regulations relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs"), including without limitation, all applicable standards adopted by the Federal Communications Commission ("FCC"), whether such RF or EMF presence or exposure results from Licensee's Network Node alone or from the cumulative effect of Licensee's Network Node added to all other sources at a location. AE shall not agree to allow any Licensee to co-locate wireless equipment that would cause an increase in RF or EMF levels such that the cumulative levels exceed allowable levels. The City may from time to time require Licensee to document RF or EMF levels at a Licensed Location.

6.10.4 – Network Nodes on Distribution Poles

The standards set forth in this Subsection apply to Network Nodes on Distribution Poles.

- A. Network Nodes may be installed only on in-line tangent Poles or Service Poles that do not have Supply Equipment installed, provided that with prior AE approval, installation of Network Nodes on a Pole with a single transformer or secondary riser may be allowed. Network Nodes may not be installed on dead-ended, corner, or double-circuit Poles, or on Poles framed for primary junctions.

- B. Network Nodes may only be installed on Poles located in the public right-of way and that are bucket truck accessible. Exceptions must be evaluated on a case by case basis and approved by AE.
- C. Power supplies may not be mounted on a Pole or connected directly to AE's distribution system. All batteries, power sources, radio heads, or other equipment required to support a Network Node must be installed as ground furniture.
- D. Austin Energy may require a Licensee to install a new Pole to provide a five foot (5') clearance above AE's facilities to accommodate a Network Node to be installed on the top of AE Poles. The use of pole-top extensions is prohibited.
- E. The installation of Poles taller than sixty feet (60') or larger than Class 2 will not be considered.
- F. The standards for Wireline Attachments in subsection 6.9 apply to Wireless Attachments on Distribution Poles unless by their nature they could only apply to cable Attachments.
- G. All installations shall be in accordance with Appendix D, Diagrams 7 and 8.

6.10.5 – Network Nodes on Street Light Poles

The standards set forth in this Subsection 6.8 apply to Network Nodes on Distribution Poles.


- A. Network Nodes may not be powered from the light photo cell on Distribution Poles that have a street light installed.
- B. Licensee may not install overhead cables on a Street Light Pole. All cables, including power and fiber optic, connecting to the Network Node shall be placed in conduit that is to be buried below ground.
- C. Licensee's installation shall not block or hinder access to handheld covers.
- D. All installations shall be in accordance with Appendix D, Diagram 9.

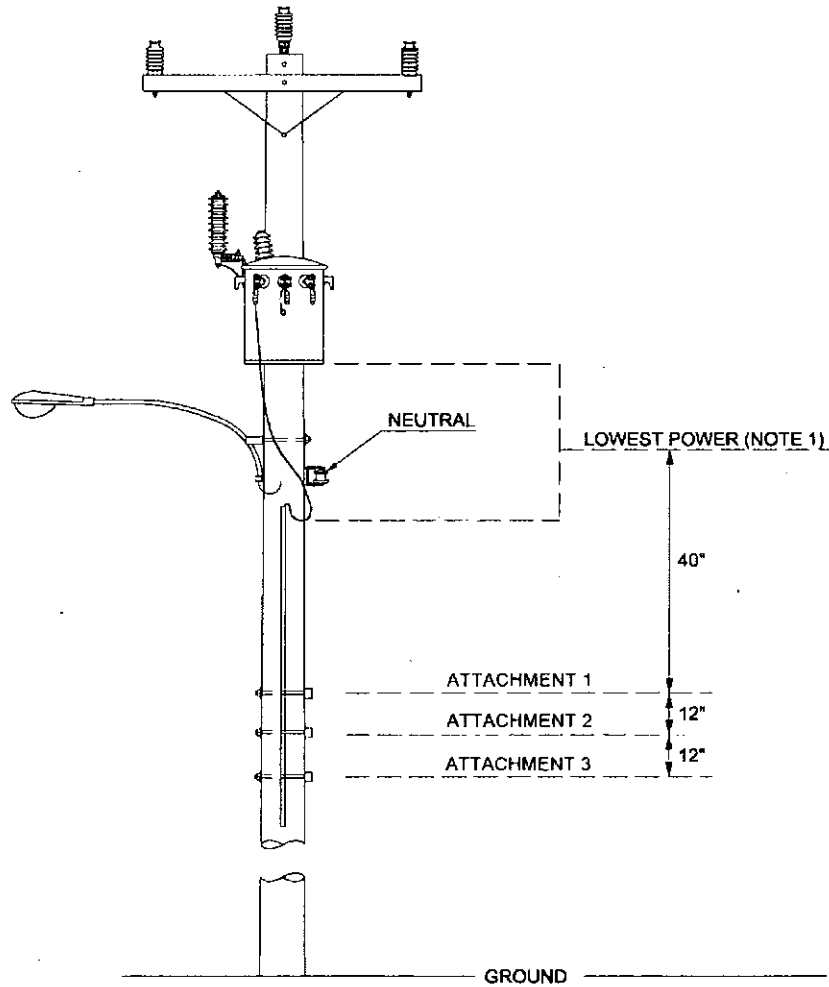
UTILITIES CRITERIA MANUAL

AUSTIN ENERGY POLE ATTACHMENTS

APPENDIX D – DIAGRAMS FOR POLE ATTACHMENTS

- DIAGRAM 1 Pole Clearances**
- DIAGRAM 2 Sag Clearances**
- DIAGRAM 3 Anchoring and Guying**
- DIAGRAM 4 Bonding and Grounding**
- DIAGRAM 5 Service Drop Attachment Point**
- DIAGRAM 6 Attachment Cable Risers**
- DIAGRAM 7 Wireless Antenna Tangent Pole Attachment**
- DIAGRAM 8 Wireless Attachments Communication Space**
- DIAGRAM 9 Wireless Antenna Installed on a Street Light Pole**
- DIAGRAM 10 Disconnect Switch and Lock**


	POLE CLEARANCES DIAGRAM 1	<div style="border: 1px solid black; height: 20px; width: 100%;"></div> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> <div style="border: 1px solid black; height: 20px; width: 100%; text-align: center;"> NOT TO SCALE </div>
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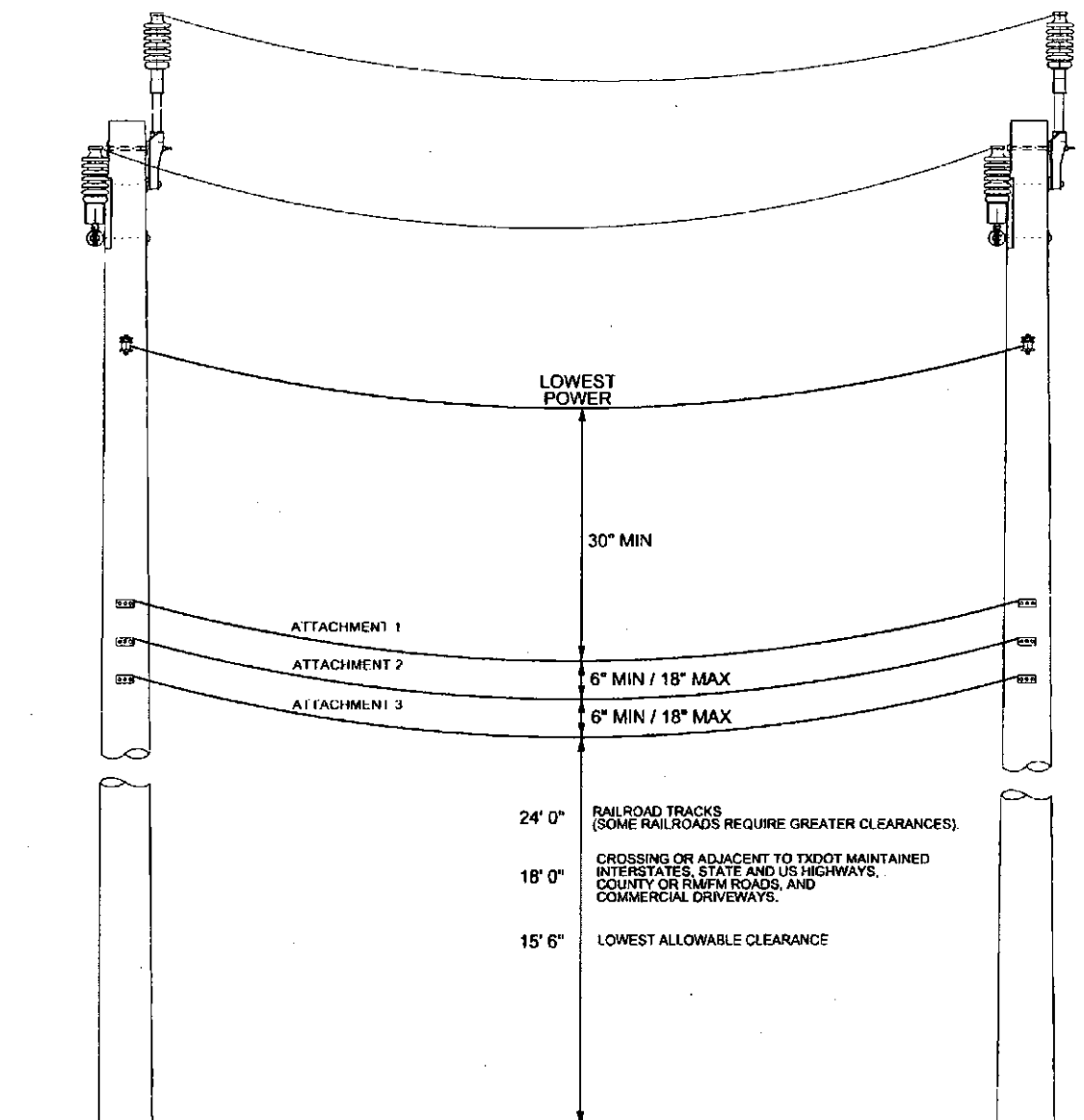


NOTE:

1. AN ATTACHMENT SHALL BE MINIMUM 40" BELOW LOWEST POWER WHICH INCLUDES BUT NOT LIMITED TO: NEUTRAL, DRIP LOOPS, ENERGIZED CONDUCTORS, BOTTOM OF TRANSFORMERS, TOP OF PRIMARY AND SECONDARY RISERS.


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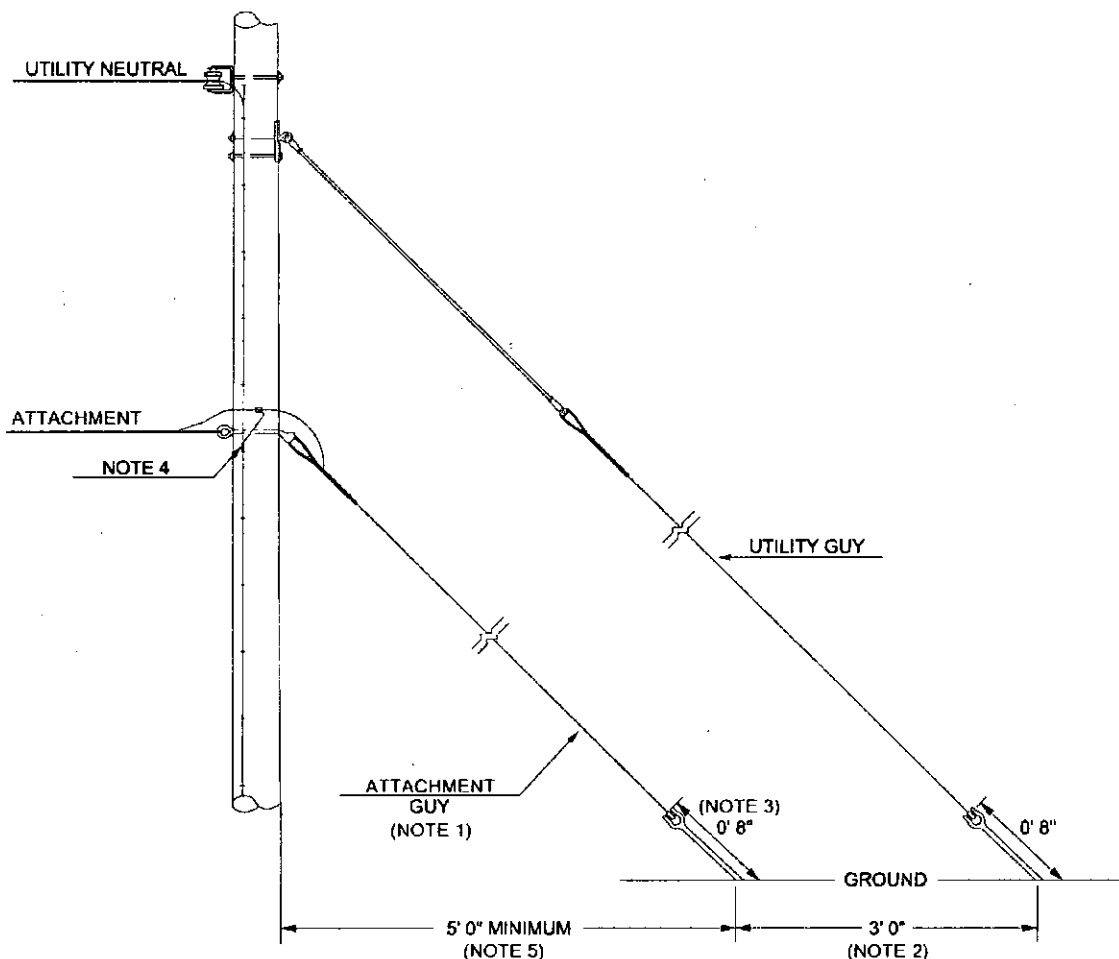
	<p style="text-align: center;">SAG CLEARANCES DIAGRAM 2</p>		<p style="text-align: center;">NOT TO SCALE</p>
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NOTE:

IN THE EVENT OF MULTIPLE GOVERNING AUTHORITIES THE MOST STRINGENT RULE SHALL APPLY.

	<p style="text-align: center;">ANCHORING AND GUYING</p> <p style="text-align: center;">DIAGRAM 3</p>		<p style="text-align: center;">NOT TO SCALE</p>
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NOTES:

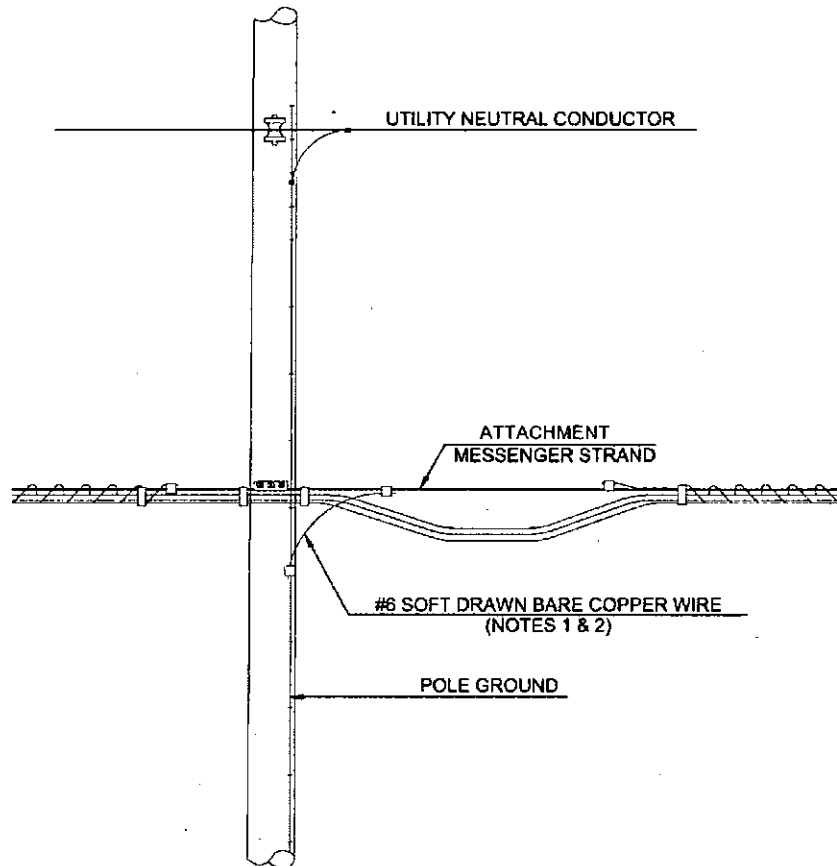
1. EACH COMPANY (AUSTIN ENERGY AND ATTACHER) SHALL INSTALL INDEPENDENT GUYS AND ANCHORS FOR THEIR RESPECTIVE FACILITIES. AUXILIARY ANCHOR EYES ON UTILITY ANCHOR RODS SHALL NOT BE UTILIZED BY AN ATTACHER.
2. ALL ANCHORS MUST BE SEPARATED BY AT LEAST THREE (3) FEET.
3. IF AGREED BY MULTIPLE ATTACHERS AND DESIGNED AS A SYSTEM TO SUPPORT THE TOTAL LOADS APPLIED, PROVIDED THE POINTS OF ATTACHMENT ARE RELATIVELY CLOSE TO EACH OTHER ON THE POLE, A COMMON ATTACHMENT GUY AND/OR ANCHOR CAN BE INSTALLED. ATTACHER INSTALLING THE ANCHOR SHALL COORDINATE DESIGN AND INSTALLATION WITH ALL PARTIES. DESIGN SHALL BE SUBMITTED TO AUSTIN ENERGY FOR APPROVAL BEFORE CONSTRUCTION.
4. ATTACHMENT STRAND AND GUY WIRES SHALL BE BONDED AND CONNECTED TO THE POLE GROUND. ATTACHERS SHALL FURNISH THE NECESSARY #6 SOFT DRAWN BARE COPPER WIRE AND CONNECTORS TO CONNECT DIRECTLY TO THE POLE GROUND.
5. NO ATTACHMENT ANCHOR SHALL BE INSTALLED CLOSER THAN FIVE (5) FEET FROM THE SURFACE OF THE POLE.



BONDING AND GROUNDING

DIAGRAM 4

NOT TO SCALE

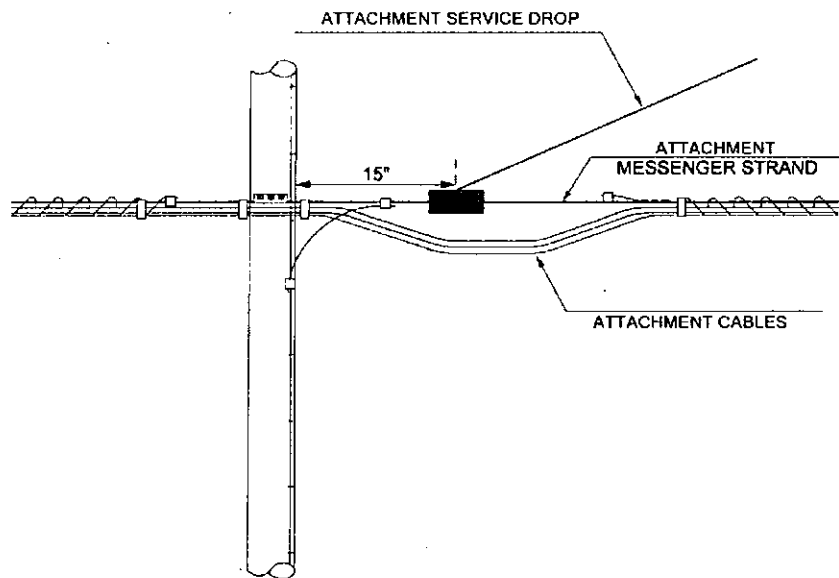
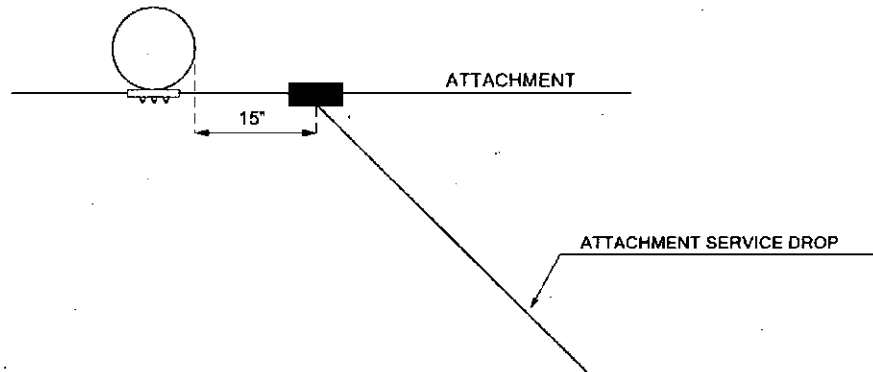


NOTES:


1. ATTACHMENT MESSENGER STRAND SHALL BE BONDED TO POLE GROUND ON EVERY POLE.
2. ATTACHER TO FURNISH #6 SOFT DRAWN BARE COPPER BONDING WIRE AND CONNECTORS AND CONNECT TO POLE GROUND.

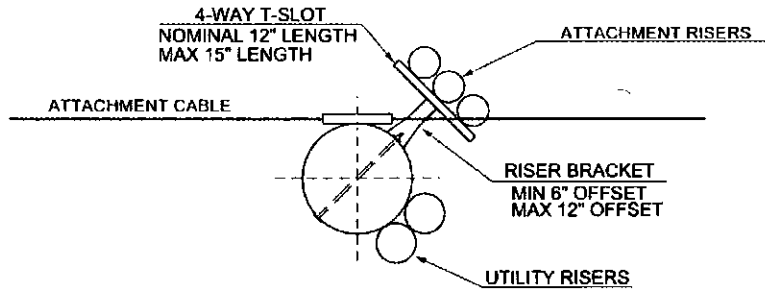
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	SERVICE DROP ATTACHMENT POINT DIAGRAM 5	
		NOT TO SCALE



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	ATTACHMENT CABLE RISERS DIAGRAM 6	
		NOT TO SCALE

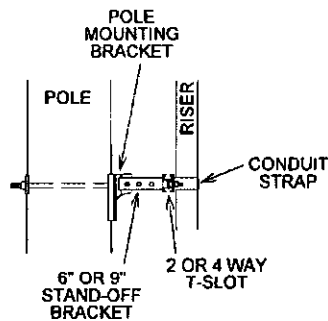


RISER PLAN VIEW

NOTES:

1. PLACE RISER BRACKETS EVERY SIX (6) VERTICAL FEET OR SPACE EVENLY. MINIMUM OF THREE (3) BRACKETS PER POLE.
2. UTILITY AND ATTACHMENT RISERS SHALL NOT BE MADE ON THE SAME POLE WHERE IT IS PRACTICABLE TO PLACE THEM ON SEPARATE POLES.
3. ALL RISERS SHALL BE SO ARRANGED AS NOT TO INTERFERE WITH CLIMBING OR WORKING SPACE.
4. CONSULT SECTION 239 OF THE NESC FOR SITUATIONS NOT COVERED BY THIS STANDARD.

RISER PROFILE VIEW

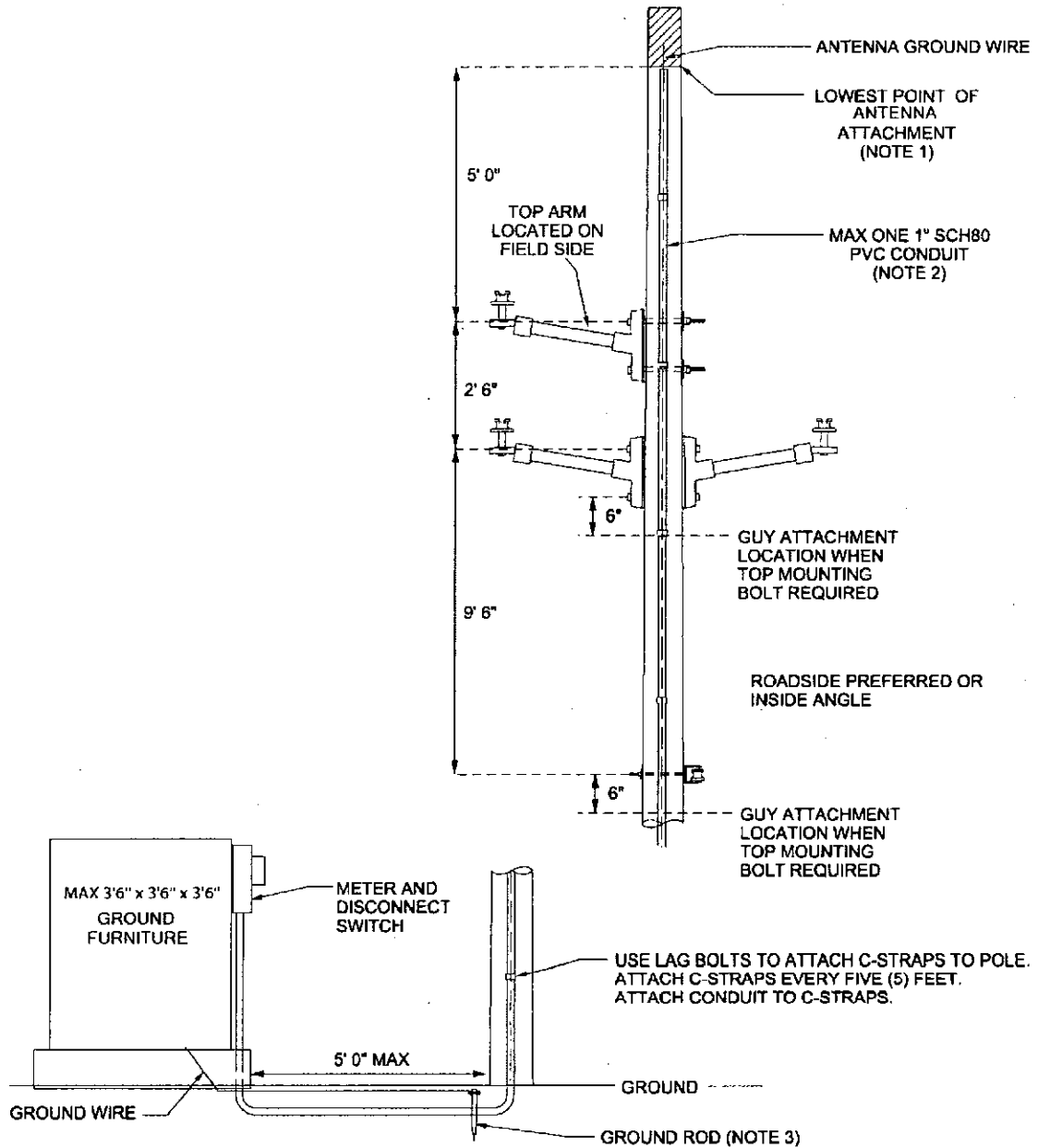


DESCRIPTION	SUPPLIER	CATALOG #	QUANTITY	NOTES
CONDUIT STANDOFF BRACKET KIT	HUBBELL	C9CSO12	1	9" OFFSET, 12" LONG T-SLOT
CONDUIT STRAP KIT	HUBBELL	CSTK4	1	FOR A 4" CONDUIT



WIRELESS ATTACHMENTS TANGENT POLE ATTACHMENT DIAGRAM 7

NOT TO SCALE



NOTES:

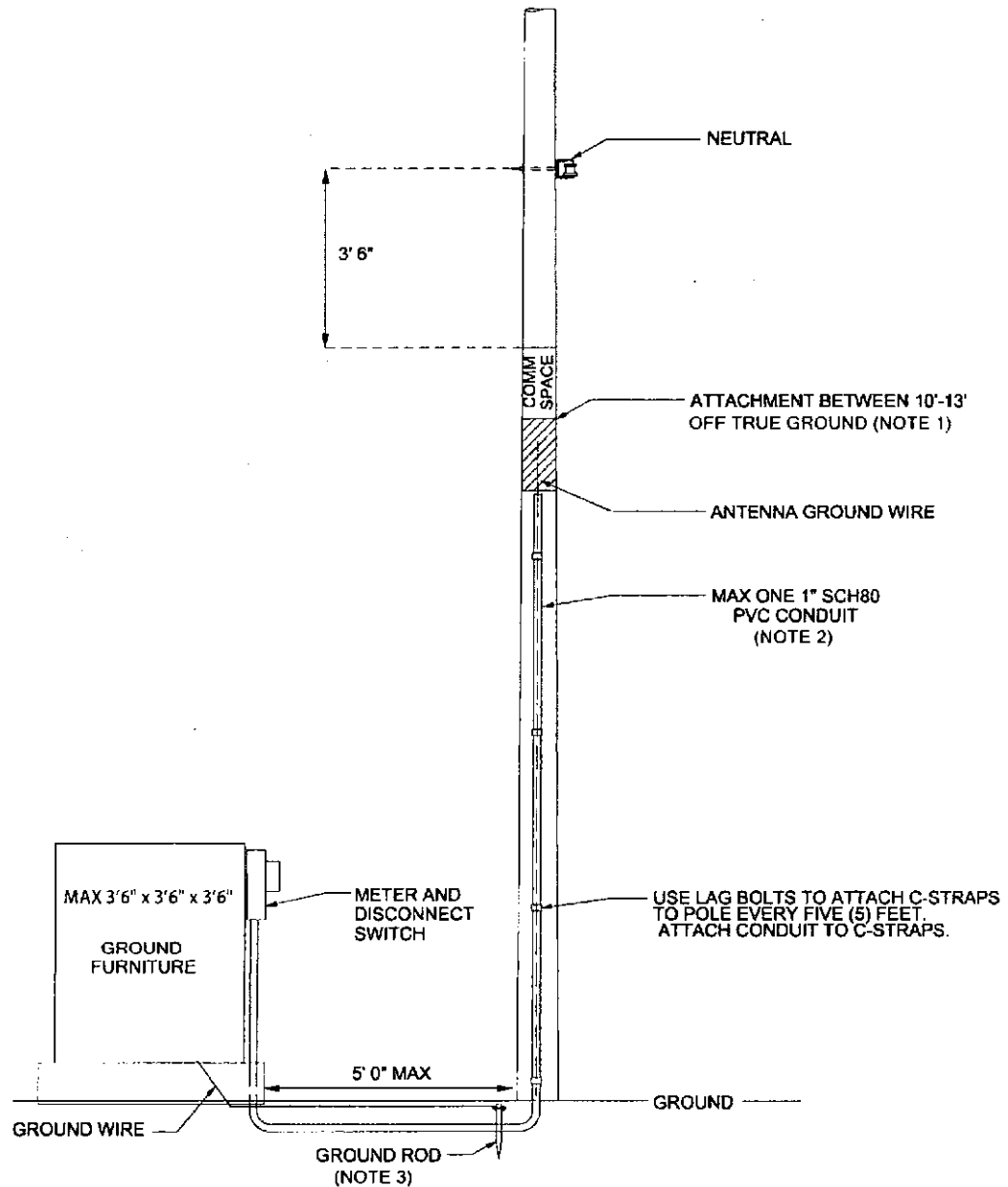
1. USE THROUGH BOLTS TO ATTACH TO WOOD POLES.
2. ON STEEL POLES USE BOLT-A-BAND EVERY FIVE (5) FEET AND ATTACH CONDUIT TO BANDS.
3. GROUND ANTENNA AND ENCLOSURE TO GROUND ROD INSTALLED BY LICENSEE.

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WIRELESS ATTACHMENTS COMMUNICATION SPACE DIAGRAM 8


NOT TO SCALE

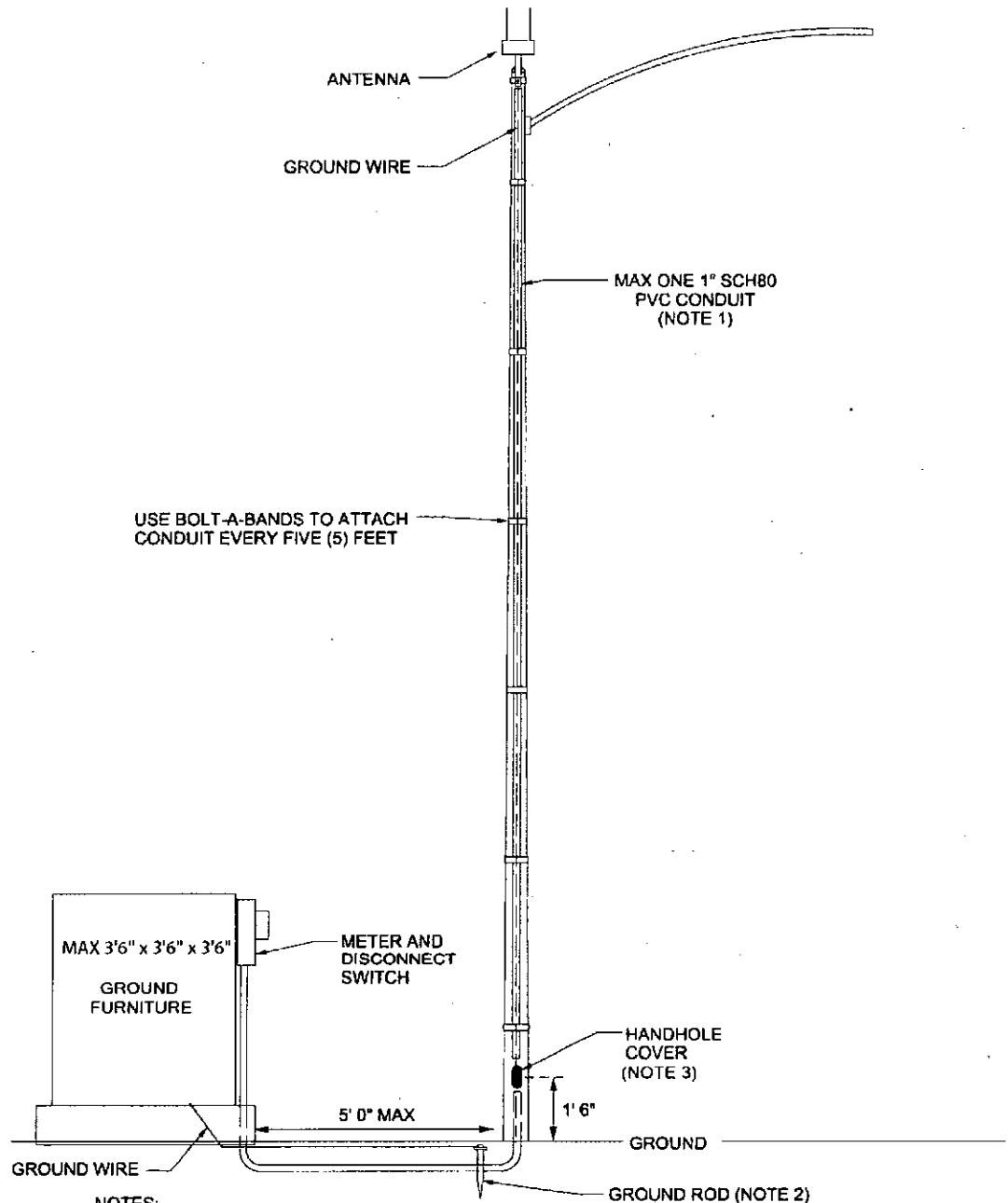


NOTES:

1. USE THROUGH BOLTS TO ATTACH TO WOOD POLES.
2. ON STEEL POLE USE BOLT-A-BAND EVERY FIVE (5) FEET AND ATTACH CONDUIT TO BANDS
3. GROUND ANTENNA AND ENCLOSURE TO GROUND ROD INSTALLED BY LICENSEE.

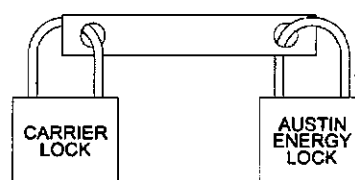
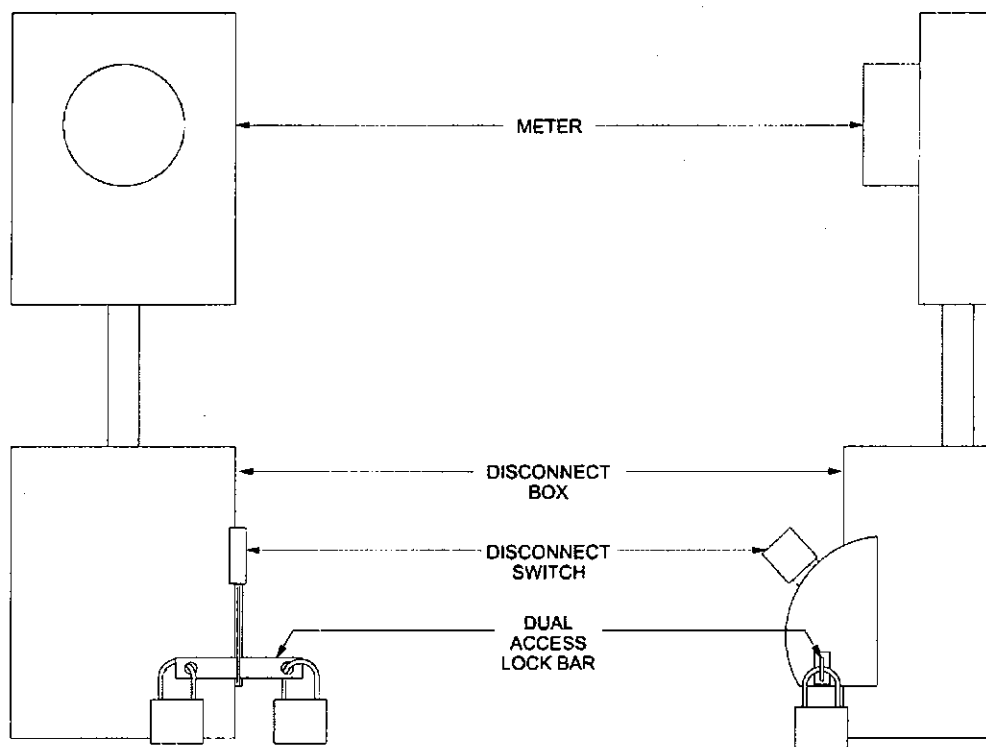
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	<p style="text-align: center;">WIRELESS ATTACHMENTS STREET LIGHT POLES DIAGRAM 9</p>	
		<p style="text-align: center;">NOT TO SCALE</p>



- NOTES:
1. ON STEEL POLES USE BOLT-A-BAND AND ATTACH CONDUIT TO BAND.
 2. GROUND ANTENNA AND ENCLOSURE TO GROUND ROD INSTALLED BY LICENSEE.
 3. INSTALLATIONS SHALL NOT BLOCK OR HINDER ACCESS TO HANDHOLE COVERS.

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DUAL ACCESS LOCK BAR

UTILITIES CRITERIA MANUAL

AUSTIN ENERGY POLE ATTACHMENTS

APPENDIX E – STANDARD POLE LICENSE AGREEMENT

This License Agreement ("Agreement") is between Austin Energy ("AE"), an electric utility wholly owned by the City of Austin, a Texas home-rule municipal corporation, and [name], a [state] [corporate form] ("Licensee"); hereinafter referred to individually as "Party" or collectively as "Parties".

WHEREAS, Licensee desires to provide telecommunications, video, internet, broadband or other data transmission services within AE's service area; and

WHEREAS, Licensee has obtained a franchise from the State of Texas or the City of Austin authorizing it to offer telecommunications, video, internet, broadband or other data transmission services, or is otherwise authorized by law to place attachments on AE Poles; and

WHEREAS, Licensee will need to place and maintain cables, equipment, or other facilities within AE's service area and desires to place such cables, equipment, and facilities on various Poles and easements owned by AE; and

WHEREAS, AE is willing to grant Licensee revocable, non-exclusive licenses to use certain AE Poles on the strict terms and conditions set forth in this Agreement and subject to the terms of the City of Austin's Infrastructure Usage Ordinance (Austin City Code Chapter 15-7) and the rules and regulations of the City of Austin adopted thereunder, as each may be amended from time to time; and

WHEREAS, AE is willing to allow Licensee to undertake the make-ready construction work necessary to prepare certain AE Poles to accommodate Licensee's cables, equipment, and facilities under the strict terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, AE and Licensee do hereby mutually covenant and agree as follows:

Article 1 – Definitions and Construction

1.1 **Definitions:** Capitalized terms in this Agreement shall have the same meanings given in Section 6 of the Utilities Criteria Manual (Pole Attachments). Otherwise, capitalized terms used in this Agreement are defined as follows:

Annual Usage Charge means the recurring charge that Licensee is to pay AE annually under this Agreement for the use of AE's Poles. The Annual Usage Charge is in addition to any Costs and Filing Fees Licensee may incur during a Contract Year, and shall be determined by AE as of December 1 of each Contract Year, other than the first Contract Year.

Contract Year means any calendar year during which this Agreement is in effect, beginning January 1 and ending December 31, except that the first Contract Year shall run from the Effective Date until December 31 of that year and the final Contract Year shall run from January 1 of that year until the date of termination.

Contractor includes subcontractors.

Cost means the total cost reasonably incurred by AE for any particular task under this Agreement, and includes without limitation reasonable labor, material, equipment usage, outside Contractor and vendor charges, reasonable overhead, and reasonable general and administrative expenses. Costs may be incurred for, without limitation, engineering and engineering review, Make-Ready construction, inspections and oversight, auditing, public relations and intervention, and other services. Certain Cost rates are specified in the fee schedules adopted as part of the City's annual budget ordinance, as may be amended. Cost rates shall be based on AE's actual and reasonable cost of labor, materials, and equipment usage. Subject to the foregoing, Costs shall be determined by AE in its reasonable judgment and reasonable discretion, and shall be paid by Licensee in accordance with either of the following, at AE's sole option:

1. Any advance estimate provided by AE, in which event AE shall have the right to refuse to incur the Costs until the estimate is paid; and/or
2. Any final invoice submitted by AE. In the event an advance estimate was paid by Licensee for Costs, the final invoice will reflect such payment.

Effective Date means the last date on which a party signs this Agreement as shown on the signature page of this Agreement.

Filing Fee means the initial, non-refundable fee charged to Licensee for filing an Application for an Attachment License. Filing Fees are currently set by city ordinance, though will be set by AE to the extent they are no longer set by ordinance (in which case the Filing Fee shall not exceed the actual and reasonable cost to AE of reviewing and processing an Application). The Filing Fee is solely to compensate AE for reviewing and processing an Application and does not include or offset Costs or Annual Usage Charges.

Infrastructure Usage Ordinance means Austin City Code Chapter 15-7 and any other City ordinance that may be enacted to govern electric utility infrastructure usage or rental.

Make-Ready means all work required to accommodate Licensee's Attachments on a Pole with respect to AE and Third Party User needs and in compliance with Applicable Standards, generally accepted engineering and construction practices, and applicable laws.

Third Party User means any attaching entity not part of this Agreement that has, or may be granted, a valid Attachment License or other right to attach with respect to an AE Pole.

Unauthorized Attachment means an Attachment or any other affixing or placing of Licensee's facilities onto AE property for which Licensee does not have a valid Attachment License, or which does not comply with the terms of this Agreement, the Section 6 of the Utilities Criteria Manual (Pole Attachments), Design Documents or the Electrical Code.

Usage Rate means, for each given Contract Year, the amount Licensee must pay AE for each Attachment.

1.2 **Interpretation.** Except as otherwise expressly provided herein, all nouns, pronouns and variations thereof shall be deemed to refer to the singular and plural. The descriptive headings in this Agreement are only for the convenience of the parties and shall not be deemed to affect the meaning or construction of any provision. The rule of construction that ambiguities in a contract are to be construed against the drafting party shall not apply to this Agreement. Any reference to a law, code or document shall mean such law, code or document as it may be amended from time to time.

1.3 **Third Party User Agreements** AE has in the past entered into other Pole usage agreements with Third Party Users. In construing this Agreement, no variations between this Agreement and other agreements with Third Party Users shall have any evidentiary value or be construed against AE.

1.4 **Compliance with Infrastructure Usage Ordinance and Rules** This Agreement is intended to further the goals and policies of the Infrastructure Usage Ordinance. The Infrastructure Usage Ordinance and Section 6 of the Utilities Criteria Manual (Pole Attachments) are incorporated by reference into, and are part of, this Agreement. Any changes to the Infrastructure Usage Ordinance or Section 6 of the Utilities Criteria Manual (Pole Attachments) shall be incorporated into and made part of this Agreement as of the effective date of the change. The absence in this Agreement of a provision that appears in the Infrastructure Usage Ordinance or Section 6 of the Utilities Criteria Manual (Pole Attachments), or vice versa, shall not be construed to relieve Licensee from complying with or being subject to such provision.

1.5 **State Law.** This Agreement is intended to comply with applicable state law. The terms of this Agreement govern Licensee's use of and access to AE Poles unless a term conflicts with a requirement of state law, in which case the state law shall govern.

Article 2 – Scope and Term of Agreement

2.1 **Term** This Agreement commences on the Effective Date and continues thereafter until terminated by either Party by written notice provided at least ninety (90) days prior to the date of termination, or until terminated without such advance notice due to Licensee's uncured default in accordance with this Agreement. This paragraph is subject to and conditioned upon any lawful requirements or limits imposed by City franchise or by Chapter 66 of the Texas Utilities Code.

2.2 **Existing Facilities Only** Except as otherwise set forth in the Section 6 of the Utilities Criteria Manual (Pole Attachments), (i) AE is under no obligation to add, build, keep, maintain, or replace Poles or any other facilities for the use or convenience of Licensee; and (ii) the maintenance, replacement, removal, relocation, or addition of AE Poles and facilities shall remain within the sole province and discretion of AE.

2.3 **Poles Only** This Agreement addresses only Attachments to AE Poles. This Agreement does not authorize Licensee to install or maintain Attachments on other AE property and facilities, including without limitation conduits, buildings, and towers.

2.4 **City Rights-of-Ways** Nothing in this Agreement shall be construed to grant Licensee any right or authorization to use or occupy the public streets or rights-of-way of the City of Austin, except for the placement of Attachments on Poles or other facilities covered by this Agreement which may be located in the public streets or rights-of-way, including access in the public streets or rights-of-way to such Attachments.

2.5 **No Property Rights in Poles** All Poles shall remain the property of AE and no payment made by Licensee shall create or vest in Licensee any ownership right, title, or interest in any Pole, but Licensee's interest shall remain a bare license. The existence of such a license shall not in any way alter or affect AE's right to use, change, operate, maintain, or remove its Poles, subject to the terms and conditions hereof.

2.6 **License not Exclusive** Licensee acknowledges that AE has entered into before, and may enter into in the future, similar or other agreements concerning the use of Poles by third parties, including Licensee's competitors. Nothing in this Agreement shall be construed to limit or in any way affect AE's right or ability to enter into or honor other agreements, or to grant any rights, licenses, or access concerning any Pole, irrespective of the character or degree of economic competition or loss caused to Licensee.

2.7 **No Cost or Expense to AE** The engineering, construction, installation, use, operation, and maintenance of Licensee's Attachments shall be at Licensee's sole expense. Unless otherwise expressly provided herein, nothing in this Agreement shall be construed to require AE to expend any funds or to incur or bear any cost or expense.

Article 3 – Usage Rates and Charges

3.1 **Calculation of Usage Rates** For each Contract Year, the Usage Rate shall be calculated per the Infrastructure Usage Ordinance governing Pole attachments within AE's service territory.

- A. To the extent lawfully permitted, the Annual Usage Charge for any Contract Year shall be, for Wireline Attachments, the number of Wireline Attachments shown on AE's records to exist as of December 1 of the preceding Contract Year multiplied by the Usage Rate for the new Contract Year. Provided, however, that the calculation of the Annual Usage Charge will not include Wireline Attachments overlashed to any of Licensee's Attachment for which a Usage Rate is chargeable, unless applicable state or federal law is amended to allow such a charge. The Annual Usage Charge for a Network Node shall be calculated using the Usage Rate for Wireline Attachments on a linear per-foot basis.
- B. If Licensee disagrees in good faith with AE's determination of the Usage Rate, Licensee may protest in writing within thirty (30) days of receipt of the notice. The protest shall include copies of all records and other documentation that support Licensee's position.
- C. Failure to timely protest AE's proposed Usage Rate shall constitute agreement to and acceptance of AE's determination.

- D. If Licensee does timely protest a proposed Usage Rate, the parties shall endeavor in good faith to negotiate a resolution of the dispute. If the parties are unable to resolve the dispute within sixty (60) days from the date of Licensee's protest, then either party may seek relief from the Texas Public Utilities Commission pursuant to Chapter 54.204 of the Texas Utilities Code, any successor regulation, or any other law conferring jurisdiction on the Texas Public Utilities Commission.
- E. If the dispute is not resolved by the time the Annual Usage Charge invoice is issued, Licensee shall nonetheless pay the invoice based upon the disputed Usage Rate. Payment by Licensee of the invoice shall not prejudice Licensee's ability to continue to contest the Usage Rate, and AE agrees not to interpose any claim, defense, or counterclaim that Licensee has waived its right to contest the Usage Rate by paying the disputed invoice.

3.2 **Subsequent Annual Usage Charges** In each January of each Contract Year and continuing thereafter until the termination of this Agreement, AE will invoice for, and Licensee shall pay, within forty-five (45) days after receipt of invoice, the Annual Usage Charge for the new Contract Year.

3.3 **Invoice Disputes** If Licensee believes in good faith that an invoice is incorrect, it may pay the invoice under protest. To protest an invoice, Licensee must give AE written notice of the nature of its protest no later than the due date for payment of the invoice together with copies of records and other documentation supporting its position. If Licensee's protest concerns the Attachment count used to calculate the Annual Usage Charge, the parties shall promptly meet to resolve the discrepancies in their records to determine the correct Attachment count. If the parties are unable to resolve a discrepancy as to the correct count, the parties shall jointly conduct a physical inventory of a statistically significant number of geographical grids or other mutually agreeable census to determine the correct count. The cost to conduct such inventory or census shall be equally divided between the parties.

3.4 **Adjustments** If upon resolution of a dispute between the parties under paragraph 3.1 or paragraph 3.3, a refund is due to Licensee, AE shall refund the amount of the overcharge together with interest at the rate specified in paragraph 9.5 from the date of AE's receipt of the protested Annual Usage Charge payment. If Licensee owes additional money, a corrected invoice shall be issued by AE for the additional Annual Usage Charge due, plus accrued interest at the rate specified in paragraph 9.5 from the due date of the original invoice.

3.5 **No Allowances** Unless otherwise expressly stated in this Agreement, there shall be no offsets against any sums due under this Agreement, or any other allowances, for system improvement, materials or labor supplied, upgrading, life extension, or other direct or incidental benefits conferred by Licensee upon AE or its Poles, system, or facilities. All such improvements and benefits belong solely to AE, and the fact that such improvements or benefits may accrue shall in no way alter or affect Licensee's obligations under this Agreement.

Article 4 – General Requirements

4.1 **Work Site Safety** In performing any work on or near Poles supporting energized electric lines, Licensee, and its Contractors, agents and employees shall comply with Chapter 752 of the Texas

Health and Safety Code and all federal, state and local laws, rules and regulations governing work in proximity to energized electric lines, including without limitation, those promulgated by the Occupational Safety and Health Administration. LICENSEE SHALL DEFEND, INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, SUITS AND JUDGMENTS ARISING FROM OR CONCERNING A BREACH BY LICENSEE OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

4.2 **Laws** To the extent that the Code of the City of Austin lawfully requires Licensee to possess a valid franchise or construction permit before engaging in a particular act, Licensee must comply with such requirement before beginning Make-Ready construction or installing Attachments. Nothing in this Agreement shall be construed as waiving other City requirements or permitting the construction of facilities other than Attachments. Attachments must conform to local, state, and federal law. Licensee's Attachments and Licensee's use of any Pole shall at all times conform to the requirements of the City Code, the Infrastructure Usage Ordinance, and the published policies and rules promulgated by the City pursuant thereto, including the Section 6 of the Utilities Criteria Manual (Pole Attachments).

Article 5 – Unauthorized Attachments

5.1 **Unauthorized Attachments** Licensee shall not place any Attachments on a Pole or other AE infrastructure except as authorized by an Attachment License. If one or more unauthorized Attachments are discovered, AE may, but shall not be required to, remove the unauthorized Attachment without incurring any liability to Licensee and at Licensee's sole Cost. With respect to any unauthorized Attachment, AE may opt to:

- A. require that Licensee remove such unauthorized Attachment upon demand or, if Licensee fails to do so, AE may remove such Attachment at Licensee's sole cost and risk or suspend processing of Licensee's Attachment Applications until the unauthorized Attachment is removed; or
- B. require that Licensee submit an Application for each such unauthorized Attachment, together with the then-current application filing fee and Annual Usage Charge relating back to the installation date of such unauthorized Attachment, or the time at which such Attachment was deemed an unauthorized Attachment pursuant to the terms and conditions of under the terms of the License Agreement. If such Application and charges are not received by AE within fifteen (15) days of notice of the unauthorized Attachment, AE may then opt to proceed under part A of this section.

5.2 **Excessive Unauthorized Attachments** If AE determines that Licensee has made more than fifty (50) Unauthorized Attachments of cable cumulatively during any Contract Year, or five (5) Unauthorized Attachments of Network Nodes, Licensee shall be considered to be in material breach of this Agreement and AE will have the right to terminate this Agreement and require removal of Licensee's Attachments in accordance with Article 6 of this Agreement.

5.3 **Remedies Cumulative** The remedies afforded AE under this Agreement are in addition to any civil or criminal penalties provided by the Infrastructure Usage Ordinance for Unauthorized Attachments or related rules.

5.4 **Ratification Must Be in Writing** No act or failure to act by AE with respect to an Unauthorized Attachment or any other unauthorized use of AE Poles or property shall be considered to be a ratification, licensing, or permitting of the unauthorized use, irrespective of any otherwise applicable doctrine of waiver or laches.

Article 6 – Termination

6.1 **Right of Suspension** If Licensee fails either to make any payment required under this Agreement, including timely payments to Contractors for Make-Ready Work, or to perform timely any material obligation under this Agreement, and such default continues for thirty (30) days after the date the payment or performance is due, then, in addition to any other available right or remedy, AE may, upon written notice to Licensee, immediately suspend all Attachment Licenses of Licensee and decline to review any application for Attachment Licenses of Licensee, until such time as the default is cured. The payment under protest of a disputed amount in order to avoid, or lift, suspension of Attachment Licenses shall not prejudice the rights of Licensee to continue the payment dispute. A suspension of Attachment Licenses under this paragraph shall not prevent Licensee from operating, maintaining, repairing or removing its existing Attachments, but Licensee shall not install any new or additional Attachments or make any changes to existing Attachments (except for removal or routine repair or maintenance necessary to continue to provide services to then-existing Licensee customers) during the period of suspension.

6.2 **Termination of Agreement by AE** If Licensee fails either to pay any payment required under this Agreement, including timely payments to Contractors for Make-Ready Work, or timely perform any material obligation under this Agreement, and if such default has not been cured within three (3) months of Licensee's receipt of written notice of default, AE may terminate this Agreement and all Attachment Licenses upon written notice to Licensee. Upon receipt of a notice of termination, Licensee shall promptly begin the process of removing all Attachments from Poles. All such Attachments shall be removed within thirty (30) days after the date of the notice of termination, or within such time as AE may agree. Until all of Licensee's Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Such payment by Licensee or acceptance by AE of Annual Usage Charges shall not act to cure the default that triggered the termination nor shall it reinstate this Agreement or Licensee's Attachment Licenses hereunder.

6.3 **Failure to Remove Attachments** If Licensee has not removed all its Attachments within the period of time specified in the preceding paragraph, or such additional period of time granted by AE in writing, then AE may remove Licensee's Attachments at Licensee's sole Cost and risk, in which event Licensee shall pay to AE as liquidated damages, and not as a penalty, for the use and occupancy of AE Poles a sum equal to one half of the monthly Usage Rate for each Pole Contact for each month (or part thereof) until all such Attachments have been removed. Alternatively, AE may, in its reasonable discretion and upon written notice to Licensee, deem the Attachments to have been abandoned and assume ownership thereof.

6.4 **Termination of Agreement by Licensee** Licensee may terminate this Agreement upon sixty (60) days written notice to AE, in which event all Attachments shall be removed within one hundred-twenty (120) days after the date of the notice of termination or within such other time as AE

agrees. Until all of Licensee's Pole Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Termination by Licensee during a Contract Year shall not relieve Licensee from payment for the full Annual Usage Charge for that Contract Year or any other sums owing AE.

6.5 **Survival** Licensee's obligations under this Article shall survive termination of this Agreement.

Article 7 – Assignments

7.1 **Permissible Assignments** Licensee may not assign or otherwise transfer this Agreement or any Attachment Licenses without AE's prior written consent, except that Licensee may without consent:

- A. transfer or assign this Agreement to an affiliate or subsidiary of Licensee. Licensee's rights and obligations hereunder shall pass to such successor only upon receipt by AE of written notice of such transfer or assignment, together with true copies of the documents specified in paragraph 7.2 below; and
- B. lease capacity on its telecommunications system and network to another service provider that provides telecommunications services, as defined in the Telecommunications Act of 1996. No such lease of capacity shall relieve Licensee of any of its obligations or duties hereunder, and any failure of performance, non-payment or other default by such lessee, shall be deemed to be a failure of performance, non-payment or default by Licensee, for which AE may assert all available rights and remedies under this Agreement or under law or in equity. In the event of a lease of capacity, Licensee shall deliver to AE contemporaneous copies of all information and documents that Licensee is required to provide AE under its franchise. Nothing in this Agreement shall be construed to grant any Attachment Licenses to any party leasing capacity from Licensee; and
- C. mortgage any or all of its property, rights, privileges and franchises, or to enter into any merger, consolidation, or sale of its assets in the area served by AE substantially in their entirety. Licensee shall provide advance written notice of foreclosure, merger, consolidation or sale, together with true copies of the documents specified in paragraph 7.2 below within thirty (30) days of closing such transaction.

7.2 **Information to AE** In the event of a transfer or assignment of this Agreement, Licensee shall provide AE with true and complete copies of the transfer or assignment documents; documents showing the ownership of the assignee and its relationship to Licensee, if any; a copy of the assignee's most current audited annual financial statement (or unaudited financial statement if an audited annual financial statement has not been prepared); a copy of the assignee's franchise with the City, if any; copies of all insurance certificates and bonds required by this Agreement; and such other information as AE may reasonably request.

7.3 **Other Assignments Void** A purported assignment or transfer made in violation of the provisions of this Article 7 shall not be binding upon AE and shall be deemed to be a material default of this Agreement.

7.4 **Assignment by AE** AE may assign this Agreement in whole or in part without the consent of Licensee. AE shall give Licensee written notice of the transaction within ten (10) days after closing.

7.5 **Partial Assignments** If Licensee sells, conveys, or transfers some, but not all, of Licensee's Attachments, and such assignment complies with this Article 7, the assignee must nonetheless obtain a separate agreement from AE for the assignee's Attachments in accordance with City of Austin and AE policies, rules, regulations and Ordinances in effect at that time. Until the assignee executes a separate agreement, the assignment is not binding upon AE and the assignee's Attachments shall continue to be deemed to be the Attachments of Licensee for all purposes hereunder, including billing and payment of Annual Usage Charges.

Article 8 – Liability & Indemnity; Warranty

8.1 **AE Liability** AE reserves to itself the right to maintain and operate its Poles in such manner as will best enable it to fulfill its own service requirements, subject in all respects to the terms and conditions of this Agreement. AE shall not be liable for any damages incurred by Licensee for damage or interruption to its Attachments except for actual repair costs caused by the negligence or intentional misconduct of AE; provided, however, that AE shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's Attachments. **NEITHER AE NOR LICENSEE SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THE USE OF OR DAMAGE TO AE'S OR LICENSEE'S FACILITIES.**

8.2 **No Warranties by AE** Licensee is expected to inspect the Poles on which its Attachments will be placed and shall rely solely on such inspection to determine the suitability of the Poles for its purposes. **AE DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTIES CONCERNING ANY POLE, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACCEPTS THE USE OF ALL POLES AS IS, WHERE IS, AND WITH ALL FAULTS, EXCEPT AS OTHERWISE PROVIDED HEREIN.**

8.3 **Unsafe Poles** Licensee acknowledges and agrees that AE does not warrant the condition or safety of AE's Poles, or the premises surrounding the Poles, and LICENSEE HEREBY ASSUMES ALL RISKS OF AND INDEMNIFIES AE FROM ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH LICENSEE'S OR LICENSEE'S CONTRACTORS' USE OF THE POLES AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN, OR SURROUNDING THE POLES. Licensee expressly agrees that it will undertake responsibility for inspecting and evaluating the condition of any Pole before allowing any workers, whether those of Licensee or Licensee's Contractors, to climb or otherwise work on such Pole. If Licensee discovers any Poles that are rotten or otherwise unsafe for climbing or Attachment installation, Licensee shall immediately report such unsafe condition to AE. Licensee further acknowledges that AE does not warrant that all Poles are properly labeled, and agrees

that AE is not liable for any injuries or damages caused by or in connection with missing labels or otherwise improperly labeled Pole. Licensee further agrees to immediately notify AE if labels or tags are missing or otherwise improper.

8.4 Dangerous Nature of the Work Licensee acknowledges that in performing the work contemplated by this Agreement, Licensee and its agents, servants, employees, and Contractors will work near electrically energized lines, transformers, and other electrical equipment, and it is the intention that the power flowing through such facilities will not be interrupted except by AE. Licensee shall ensure that its employees, servants, agents, and Contractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of AE, and the general public, from harm or injury while performing work permitted by this Agreement. In addition, Licensee shall furnish its employees, and shall require its agents and Contractors to furnish their employees, with competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee further warrants that it is apprised of, conscious of, and understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on AE's Poles by Licensee's employees, servants, agents, and Contractors, and accepts it as its duty and sole responsibility to notify and inform Licensee's employees, and to require its agents and Contractors to inform their employees, of such dangers, and to keep them informed regarding same.

8.5 Licensee Liability and Indemnity Subject only to paragraph 8.7, Licensee shall defend, indemnify and hold harmless AE and the City of Austin and all affiliated entities of AE and the City of Austin, whether existing now or in the future, and their respective officials, officers, departments, agencies, boards, representatives, employees, agents, Contractors and attorneys against any and all liability, claims, costs, damages, fines, taxes, penalties, punitive damages, expenses, demands, lawsuits or disputes (including reasonable attorney fees of counsel selected by AE and all other costs and expenses of litigation) arising from or related to any of the following:

- A. All acts or omissions by Licensee or its Contractors done in the course of Make-Ready or installation construction or in the maintenance, use, or operation of Licensee's Attachments;
- B. Any work performed by AE that was necessitated by the installation, maintenance, presence, use or removal of Licensee's Attachments or from any work this Agreement authorizes AE to perform on Licensee's behalf;
- C. All claims or causes of action for damage to property or injury to or death of any persons, including payments made by AE under any Worker's Compensation Laws or under any plan for employees' disability and death benefits, arising out of the erection, maintenance, repair, presence, use, relocation, transfer or removal of Licensee's Attachments or the proximity of Licensee's Attachments to AE's facilities or the property of any other Third Party User, or by any act or omission of Licensee on or in the vicinity of AE's Poles;

- D. All claims or causes of action for property damage, bodily injury or death arising out of the performance or nonperformance of any work or obligation undertaken by Licensee pursuant to this Agreement;
- E. Any claim or cause of action related to Licensee's erection, maintenance, repair, presence, use, relocation, transfer or removal of Licensee's Attachments, including liabilities incurred as a result of violation of any law, rule, or regulation of the United States, State of Texas or any other governmental entity or administrative agency;
- F. A violation of any state or federal law arising out of Licensee's erection, maintenance, repair, presence or use, relocation, transfer or removal of Licensee's Attachments or the proximity of Licensee's Attachments to AE's facilities or the property of any Third Party User, or by any act or omission of Licensee on or in the vicinity of AE's Poles, whether such violation is the result of a violation of a statute by AE or the Licensee solely or any joint violation thereof.
- G. Claims of governmental bodies, property owners or others alleging that Licensee does not have a sufficient right or authority for placing and maintaining Licensee's facilities at the locations of Poles owned by AE or joint users.
- H. Claims for taxes by others that arise directly or indirectly from the construction, maintenance or operation of Licensee's facilities.
- I. Claims or causes of action caused by or relating in any manner to a breach of this Agreement or a failure to follow the terms of this Agreement by Licensee or its agents and employees or by Licensee's contractors or their agents and employees.
- J. All claims or causes of action of Third Party Users alleging interference from Licensee's Attachments or damage to Third Party User Attachments or facilities.
- K. Any third party claims or causes of action alleging that Licensee's use of any hardware, software or other materials embedded in Licensee's Attachments infringes or misappropriates such third party's intellectual property rights in such hardware, software or other materials.

8.6 AE Fault SUBJECT ONLY TO PARAGRAPH 8.7, IT IS THE EXPRESS INTENT OF THE PARTIES THAT THE FOREGOING INDEMNITY IS TO PROTECT AND INDEMNIFY AE AND THE CITY OF AUSTIN AGAINST THE CONSEQUENCES OF ITS OWN FAULT WHERE AE'S OR THE CITY'S FAULT IS A CONCURRENT CAUSE OF THE INDEMNIFIED LIABILITY.

8.7 Joint Liability The indemnity obligations set forth in paragraph 8.5 shall apply to fully protect and indemnify AE and the City of Austin from all such claimed damages unless the indemnified liability was the result of intentional or reckless misconduct or negligence on the part of AE or the City of Austin, or their agents, servants, employees, or contractors, in which case each party shall be liable for

its found percentage of damages in accordance with Texas law based upon a final judgment in which a finder of fact determines AE's and/or the City of Austin's percentage of responsibility for the indemnified liability.

8.8 **Other Indemnification Provisions** No indemnification provision contained in this Article shall be construed in any way to limit any other indemnification provision contained in this Agreement.

8.9 **Licensee's Construction Warranty** LICENSEE WARRANTS AND GUARANTEES TO AE THAT ALL MAKE-READY WORK WILL CONFORM TO THE SECTION 6 OF THE UTILITIES CRITERIA MANUAL (POLE ATTACHMENTS) AND THE DESIGN DOCUMENTS, BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER IN ACCORDANCE WITH THIS AGREEMENT, AND WILL NOT BE DEFECTIVE. LICENSEE'S WARRANTY AND GUARANTEE HEREUNDER EXCLUDES DEFECTS OR DAMAGE CAUSED BY: (I) ABUSE, MODIFICATION OR IMPROPER MAINTENANCE OR OPERATION BY PERSONS OTHER THAN LICENSEE, ITS SUBCONTRACTORS OR SUPPLIERS; OR (II) NORMAL WEAR AND TEAR UNDER NORMAL USAGE.

8.10 **Survival** This Article 8 shall survive the termination of this Agreement.

Article 9 – Miscellaneous Provisions

9.1 **Integration** This Agreement constitutes the entire understanding of the parties relating to the use of Poles hereunder; and there shall be no modification or waiver hereof except by writing, signed by the party asserted to be bound thereby. There are no oral representations or agreements between the parties. All previous agreements, correspondence, statements, and negotiations are superseded by this Agreement.

9.2 **No Waiver** The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in duly force and effect.

9.3 **Applicable Law** The parties hereto agree and intend that all disputes that may arise from, out of, under or respecting the terms and conditions of this Agreement, or concerning the rights or obligations of the parties hereunder, or respecting any performance or failure of performance by either party hereunder, shall be governed by the laws of the State of Texas, without application of its Conflict of Laws provisions. The parties further agree and intend that venue shall be proper and shall lie exclusively in Travis County, Texas, except where otherwise provided herein and except where the Texas Public Utilities Commission lawfully has jurisdiction.

9.4 **Severability** If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants and provisions of this Agreement shall remain in full force and effect.

9.5 **Payments & Interest** All monetary payments under this Agreement shall be due and payable within forty-five (45) days after receipt of invoice. All overdue balances shall accrue interest at the rate of one-percent (1%) per month from the due date until paid, or the maximum rate allowed by law, whichever is less.

9.6 **Notices** When notice is required to be given under this Agreement by either party, it shall be in writing mailed or delivered to the other party at the following address or to such other address as either party may from time to time designate in writing for that purpose. All notices shall be effective upon receipt.

City

Austin Energy
721 Barton Springs Road
Austin, TX 78704
Phone (512) 322-6148
Fax (512) 505-3938
Attn: Vice President, ESD

Licensee

[Contact Information]

With a copy to:

Austin Energy - Infrastructure Asset
Management
Attn: Manager
721 Barton Springs Road
Austin, TX 78704

IN WITNESS WHEREOF, the undersigned have executed this Agreement through their duly authorized representatives.

LICENSEE:

[NAME]

By: _____
Name: _____
Title: _____
Date: _____

CITY OF AUSTIN d/b/a AUSTIN ENERGY

By: _____
Name: _____
Title: _____
Date: _____