

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: December 8, 2020

Consent                     Regular  
 Public Hearing            Workshop

Department: Information Systems Services  
Submitted by: Information Systems Services  
Submitted for: Information Systems Services

I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve:** an Interlocal Agreement with the City of Lake Worth Beach providing a formal process for usage of Lake Worth Beach power poles for attachment of antennas.

**Summary:** Palm Beach County and the City of Lake Worth Beach have identified the need to implement a pole attachment program to provide for distance learning. This Interlocal Agreement provides a formal process for usage of the City of Lake Worth Beach power poles for antenna placement. District 3 (DB)

**Background and Justification:** This Interlocal Agreement provides a formal process for antenna placement on the City of Lake Worth Beach power poles to provide for distance learning at no cost to either party.

**Attachment:**

- 1. Interlocal Agreement with the City of Lake Worth Beach (3 originals)

|                 |  |                     |
|-----------------|--|---------------------|
| Recommended by: | <br>_____ | 11/4/2020<br>_____  |
|                 | Department Director  | Date                |
| Approved by:    | <br>_____ | 11/18/2020<br>_____ |
|                 | Deputy County Administrator  | Date                |



**INTERLOCAL AGREEMENT FOR  
POLE ATTACHMENTS  
BETWEEN  
CITY OF LAKE WORTH BEACH  
AND  
PALM BEACH COUNTY**

**This Interlocal Agreement for Pole Attachments** ("Agreement") is dated this \_\_\_\_ day of \_\_\_\_ 2020, and is made by and between City of Lake Worth Beach, Florida (the "Licensor"), a Florida municipal corporation, and Palm Beach County ("Licensee"), a political subdivision of the State of Florida.

### **RECITALS**

**WHEREAS**, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969," authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

**WHEREAS**, Part I of Chapter 163, Florida Statutes, permits public agencies to enter into agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

**WHEREAS**, the Licensor and Licensee recognize the immediate need for the residents', guests' and citizens' school age children within the City of Lake Worth Beach to have free public virtual access to the Palm Beach County School District and related on-line learning tools during the COVID-19 pandemic ("Student Wi-Fi Access"); and

**WHEREAS**, the Licensor and Licensee recognize their ability to partner and leverage their resources for the greater good and provide Student Wi-Fi Access for the benefit of the City's residents, guests and citizens; and

**WHEREAS**, Licensee proposes to install and maintain, fiber optic and or coaxial cables, wires, antennas and associated wireline and wireless communications equipment on Licensor's Poles to provide Student Wi-Fi Access and all related lawful Communications Services to the public; and

**WHEREAS**, Licensor is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee's Attachments on Licensor's Poles, provided that Licensor may refuse, on a non-discriminatory basis, to issue a Permit where in its reasonable judgment there is insufficient capacity (of space or pole loading requirements) or for reasons of safety, reliability and generally applicable engineering purposes; and

**WHEREAS**, the Licensor supports the rapid deployment of communications facilities within its service area pursuant to prudent pole attachment terms and conditions that will not (i) compromise the safety and reliability of the Licensor's electric distribution system; (ii) detrimentally affect the Licensor's ability to deliver exceptional customer service; or (iii) unreasonably interfere with the functionality of third-party communications

networks that share Licensor Poles. This Agreement shall be interpreted consistent with these principles; and,

**WHEREAS**, the Licensor, in support of the partnership with Licensee and desire to provide Student Wi-Fi Access, is willing to waive the Licensor's fees, assessments and charges set forth in this Agreement in order to provide an in-kind contribution that benefits the City of Lake Worth Beach; and,

**WHEREAS**, the City Commission of the City of Lake Worth Beach and the Palm Beach County Board of Commissions desire to partner with each other in the provision of Student Wi-Fi Access and finds such partnership, including the in-kind contribution set forth herein by both parties, is in the best interests of the City of Lake Worth Beach and Palm Beach County and serves a valid public purpose.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions and remunerations herein provided, and the rights and obligations created hereunder, the parties hereto agree as follows:

## **AGREEMENT**

### **I. DEFINITIONS**

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

- A. Affiliate: when used in relation to Licensee or other Attaching Entity, means another entity who owns or controls, is owned or controlled by, or is under common ownership or control with such Attaching Entity.
- B. Anchor: means a metal plate or screw placed in the ground to provide a counter load to the stringing tensions of Licensor and/or Licensee. Anchors shall be of sufficient size to hold the load placed on them.
- C. Applicable Standards: means all applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of all work, including Make-Ready Work, in or around electric Licensor Facilities and includes the most current versions of National Electric Safety Code ("NESC"), the National Electrical Code ("NEC"), the regulations of the Occupational Safety and Health Administration ("OSHA"), and the applicable laws of Florida, each of which is incorporated by reference in this Agreement, and/or other reasonable

safety and engineering requirements of Licensor or other authority with jurisdiction over Licensor Facilities.

- D. Attaching Entity: means any public or private entity that attaches to a Licensor Pole to provide Communications Service.
- E. Attachment: means the point of connection to a Licensor Pole of a cable or fiber optic wire facility or other Communications Facility utilized to provide Communications Service, together with all associated equipment (excluding climbing aids) necessary to physically attach such facility to Licensor's Poles, placed directly on Licensor's Poles within the Communication Zone. For billing purposes, an Attachment shall be counted only for each 12 inches of space occupied by a strand attached with through-bolt.
- F. Cable: means any communications cable, wire, or strand, including without limitation fiber optic cable, coaxial cable, and twisted pair copper cable.
- G. Communications Facilities: means a wire or other facility utilized to provide Communications Service, together with all associated equipment necessary to physically attach such facility to Licensor's Poles.
- H. Communications Service: means the transmission [or receipt] of voice, video, data, internet or other forms of digital or analog signals over wire or other facilities, but does not include any such transmission [or receipt] by Licensor when utilized to provide internal, non-commercial communications related to the operation of the Licensor.
- I. Communication Zone: means the space above the lowest permitted point of strand attachment minimum grade on a Pole, as defined by the NESC and other Applicable Standards that is available for Attachments.
- J. Make-Ready Work: means all work required by Applicable Standards, as reasonably determined by Licensor, required to accommodate Licensee's Communications Facilities. Such work includes, but is not limited to, rearrangement and/or transfer of Licensor Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance or storm restoration purposes), pole strengthening and construction by pole removal and replacement.
- K. Outside Plant Facilities or OSP Facilities or Licensor Facilities: means all personal property and real property owned or controlled by Licensor, including but not limited to Poles and fiber.

- L. Overlash: means to lash an additional wire or other facility to an existing facility attached to a Pole.
- M. Permit: means written or electronic authorization of Licensor for Licensee to make, or maintain, Attachments to specific Poles pursuant to the requirements of this Agreement.
- N. Pole: means a pole owned by Licensor used for the distribution or transmission of electricity of less than 69kV that is capable of supporting Attachments for Communications Services. Generally the distribution Poles subject to this Agreement shall consist of 50 foot, class 2, wood poles which meet the requirements of the NESC for Pole Capacity, support and clearance of supply and communication conductors under conditions existing at the time this Agreement was established. The foregoing definition is not intended to preclude the use of Poles of different heights or strengths.
- O. Pole Capacity: is the maximum allowable stress, strain, or force the Pole can be subjected to, as determined by Licensor's Standards and the guidelines within the NESC.
- P. Pre-Permit Survey: means all work or operations required by Applicable Standards or Licensor to determine the Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole. Such work includes, but is not limited to, field inspection, and loading calculations.
- Q. Rearrange or Rearranging: is the moving of Attachments from one position to another on the same Pole.
- R. Reserve Capacity: means capacity or space on a Pole that Licensor has identified in writing at the time of attachment and reserved for its own electric utility requirements, pursuant to a reasonable, bona fide projected need or business plan for the provision of its core utility service.
- S. Riser: means metallic or plastic encasement materials placed vertically on the Pole to guide and protect communications wires and cables.
- T. Tag: means to place distinct markers on wires and cables, coded by color or other means specified by Licensor that will readily identify the type of Attachment and its owner.
- U. Transfer or Transferring: is the moving of Attachments from one Pole and placing them upon another.
- V. Unauthorized Attachment: means an Attachment to a Licensor Pole without Licensor's authorization required hereunder, including unauthorized third

party Overlapping as more specifically set forth in Section II L of this Agreement.

- W. Vertical Ground Wire: means a conductor of either party attached vertically to the Pole and extending from the multi-grounded neutral through the Communication Zone to the base of the Pole where it may be either butt wrapped on the Pole or attached to a ground electrode.
- X. Wireless Telecommunications Attachment: means any installation on a pole that sends and/or receives radio frequency signals, including but not limited to directional, omnidirectional and parabolic antennas, structures to support sending or receiving and/ or transmitting devices, cabinets, accessory equipment and other ancillary equipment. A span wire required to support an unbalanced load for a wireless telecommunication attachment shall be considered a pole attachment if the operator does not have a licensed attachment on that same pole.

## II. SCOPE OF AGREEMENT

- A. Grant of License. Subject to the provisions of this Agreement, Licensor hereby grants Licensee a nonexclusive license authorizing Licensee to attach and maintain Attachments to Licensor's Poles subject to Licensor's termination rights set forth in Article XXII.
- B. Parties Bound by Agreement. Licensee and Licensor agree to be bound by all provisions of this Agreement and of the Permit(s) issued pursuant to this Agreement.
- C. Permit Issuance Conditions. Licensor will issue a Permit(s) to Licensee when Licensor determines, in its reasonable judgment that: (i) it has sufficient capacity (as it relates to both space for the equipment and pole loading requirements) to accommodate the requested Attachments within the Communication Zone; (ii) Licensee meets all requirements set forth in this Agreement; and (iii) such Permit(s) comply with all Applicable Standards. Sufficient capacity will be presumed to exist where the pole can accommodate Licensee's attachment consistent with Applicable Standards with or without Make-Ready Work.
- D. Reserve Capacity. Access to Poles will be made available to Licensee with the understanding that such access is subject to Licensor's Reserve Capacity as that term is defined herein. On giving Licensee at least ninety (90) days prior notice, Licensor may reclaim such Reserve Capacity anytime during the life of the Agreement following the installation of Licensee's Attachment if required for Licensor's future electric service use, including the attachment of communications lines for internal Licensor operational requirements. Licensor shall give Licensee the option to remove



its Attachment(s) from the affected Pole(s) or to request modifications needed to expand capacity so that Licensee can maintain its Attachment on the affected Pole(s) or to transfer its facilities to the nearest Pole. The parties will work together to address the requested modifications. If any Attachments permitted on the Pole in reserved capacity are not removed after ninety (90) days' notice or such additional time as is reasonably necessary under the circumstances, Licensor may, at its sole option, after providing three (3) business days' advance notice, remove or relocate said facilities. To the extent feasible, Licensor shall assist Licensee in finding other Licensor poles which may be suitable for Licensee's attachments

- E. No Interest in Property. No use, however lengthy, of any Licensor Facilities, nor the payment of any cost related to Licensee's Facilities, shall create or vest in Licensee any easements or other ownership or property rights of any nature in any portion of such Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of Licensor's rights to the Licensor Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a mere licensee.
  
- F. Licensee's Right to Attach. Nothing in this Agreement, other than a Permit issued pursuant to Article VI, shall be construed as granting Licensee any right to attach Licensee's Communications Facilities to any specific Pole or to compel Licensor to grant Licensee the right to attach to any specific Pole.
  - 1. Licensor reserves the right to deny Attachments to Licensor Poles on a non-discriminatory basis for capacity, safety, reliability, or engineering concerns.
  
  - 2. Pursuant to the right provided for in the above subsection, Licensor hereby excludes its Poles used to provide street lighting service only and limits use to Poles used to support those distribution and transmission lines in voltages below 69 kV. The Licensor may allow, under special circumstances and at the Licensor's discretion, cable attachments to Poles used to support transmission lines in excess of 69 kV and Poles used to provide street lighting service only.
  
- G. Necessity of Authorizations. Licensee is obligated to obtain all legally necessary certification, permitting, and franchising from Federal, State and Local authorities prior to making any Attachments.
  
- H. Licensor's Rights over Poles. The parties agree that this Agreement does not in any way limit Licensor's right to locate, operate and maintain its Poles in the manner that it reasonably believes will best enable it to fulfill its own service requirements.

- I. Expansion of Capacity. Licensors will take reasonable steps to expand Pole capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require Licensor to install, retain, extend, or maintain any Pole for use by Licensee when such Pole is not needed for Licensor's own service requirements.
- J. Other Agreements. Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit Licensor from fulfilling any agreement or arrangement regarding Poles, including Joint Use Agreements, into which Licensor has previously entered, or may enter in the future, with others not party to this Agreement.
- K. Permitted Uses. This Agreement is limited to the uses specifically stated in the Recitals and no other use shall be allowed without Licensor's express written consent to such use. Nothing in this Agreement shall be construed to require Licensor to allow Licensee to use Licensor's Poles after the termination of this Agreement except to the extent that the parties are in good faith negotiations to extend this Agreement or enter into a new Agreement, in which case the terms of this Agreement shall govern until such renewed or new Agreement is executed.
- L. Overlapping. The following provisions will apply to Overlapping:
  - 1. Prior notice, but no permit, is needed for Licensee's overlapped cable. Licensee will stay in compliance with generally accepted engineering practices when installing the overlapped cable. Licensor has the right to deny the overlapped attachment for reasons of safety, reliability or generally applicable engineering reasons.
  - 2. Licensee shall not sub-license space on the pole to any third-party, or place an Attachment or Overlap for the benefit of any third-party. An affiliate of Licensee shall not be deemed a third-party. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Communications Facilities by third-parties (including, but not limited to, leases of dark fiber or leased telecommunications services) that involves no additional Attachment or Overlap is not subject to the provisions of this Section II L.
  - 3. Except as otherwise set forth herein, if Overlapping is required to accommodate facilities of a third party who is not affiliated with Licensee, such third party must obtain Permits and a License Agreement with Licensor, and pay an Annual Attachment Fee. No such Permits to third parties may be granted by Licensor allowing Overlapping of Licensee's Communications Facilities unless Licensee has consented in writing to such Overlapping.

4. Make-Ready procedures set forth in Article VII shall apply, as necessary, to all Overlashing.
- M. Risers and Climbing Aids. Licensee shall not place risers, vertical grounds, climbing aids or J-hooks on any Poles without Licensors prior written permission. Such permission shall not be unreasonably withheld.

### III. FEES AND CHARGES

- A. [WIRELINE]. Annual Fee and Fee Adjustments. Licensors shall waive the annual pole fee.
- B. [WIRELESS]. Annual Fee and Fee Adjustments. Licensors shall waive the annual fee for any antennas attached to the pole.
- C. Payment of Agreed to Charges. If Licensee requests that the Licensors, or its contractor(s), perform Make Ready Work, Rearranging, Transferring or any other work necessary to add, remove or otherwise accommodate Licensee's Facilities including Attachments, the parties' Project Managers shall agree prior to such work commencing as to whether Licensors will waive the cost of such work or whether Licensee will pay for all or a portion of such work. If Licensee's Project Manager agrees to pay for all or a portion of such work or any other amount due under this Agreement, payment to the Licensors shall be made within thirty (30) days of Licensors providing an invoice for such agreed to cost. Nothing in this Agreement shall require Licensors to perform Make Ready Work, Rearranging, Transferring or any other work necessary to add, remove or otherwise accommodate Licensee's Facilities.

### IV. SPECIFICATIONS

- A. Installation/Maintenance of Communications Facilities. When a Permit is issued pursuant to this Agreement, Licensee's Communications Facilities shall be installed and maintained in accordance with Licensors installation and maintenance requirements and specifications, which may be amended on a non-discriminatory basis from time to time upon thirty (30) days' prior notice, and may not run afoul to the terms of this agreement. All of Licensee's Communications Facilities must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards. Notwithstanding the foregoing, Licensee shall not be required to retrofit any Attachments that were installed in compliance with the requirements and specifications at the

time of installation except to the extent required by the NESC, including NESC Rule 013B.

- B. Additional Attachments. Licensee shall not have the right to place any equipment in addition to that initially authorized by its Permit, nor shall Licensee change the position of any Attachment to any Pole without first making application for and receiving permission to do so, as prescribed herein.
- C. Installation of Attachments. Licensee's fiber and/or cable Attachments on each Pole shall be restricted to one foot of pole space in the Communication Zone, utilizing any pre-drilled holes or banding. Licensee **may not** create any new holes in a concrete pole or ductile iron pole without Licensor's approval. If Licensee fails to install its Attachment at the lowest permitted point of the Pole and if Licensor should require the Licensee to lower its facilities for Licensor needs, Licensor will not be required to reimburse the Licensee for its modification expense.
- D. Tagging of Attachments. Licensee shall, upon written notice from Licensor, commence Tagging or marking all its Communications Facilities so they can be easily identified from the ground and distinguished from other similar cables on the pole. Commencing on the effective date of this Agreement, all cables shall be marked at the time of installation and be secured so as to remain permanently affixed to the attaching company's cable. The tagging requirement shall apply immediately to all new Attachments that are made subsequent to the execution of this Agreement. All other existing Attachments not already tagged shall be tagged by Licensee whenever Licensee has reason, in the normal course of business, to complete work on such attachments.
- E. Interference. Licensee shall not allow its Communications Facilities to impair the ability of Licensor or any third party to use Licensor's Poles (provided that such third party's equipment was installed and in operation on the applicable Licensor's Pole prior to the issuance of the applicable Permit to Licensee), nor shall Licensee allow its Communications Facilities to interfere with the operation of any Licensor Facilities.
- F. Protective Equipment. Licensee, its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee shall at its own expense install protective devices designed to handle the voltage and current impressed on its Communications Facilities in the event of a contact with the supply conductor.
- G. Violation of Specifications. If Licensee's Communications Facilities, or any part thereof, are installed, used, or maintained in violation of this

Agreement, and Licensee has not corrected the violation(s) within forty five (45) calendar days from receipt of written notice of the violation(s) from Licensor, Licensor may at its own option correct said conditions. Licensor will attempt to notify Licensee in writing prior to performing such work whenever practicable. When Licensor reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of Licensor's service obligations, or pose an immediate threat to the physical integrity of Licensor OSP Facilities, after a good faith attempt to notify Licensee, unless Licensee can immediately remedy the violation, then Licensor may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable thereafter, Licensor will advise Licensee of the work performed or the action taken. Licensee shall be responsible for paying Licensor for all costs Licensor incurred taking action under this subsection.

- H. Restoration of Licensor Service. Licensor's service restoration requirements shall take precedence over any and all work operations of Licensee on Licensor's Poles.
- I. Effect of Failure to Exercise Access Rights. If Licensee does not exercise any access right granted pursuant to this Agreement and applicable Permit within the period prescribed and any extension thereof, Licensor may use the space scheduled for Licensee's Attachment, for its own needs or other Attaching Entities. In such instances, Licensor shall endeavor to make other space available to Licensee, upon reapplication for a Permit, as soon as reasonably possible.

## V. PRIVATE AND REGULATORY COMPLIANCE

- A. Necessary Authorizations. Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Communications Facilities on public and/or private property before it occupies any portion of Licensor's Poles. Licensor retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Licensee to the extent such authorizations are actually required or applicable. Licensee's obligations under this Article V include, but are not limited to, Licensor franchise agreements and/or registration requirements, Florida P.S.C. certification, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith.
- B. Lawful Purpose and Use. Licensee's Communications Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable local, state and federal laws.

- C. Forfeiture of Licensor's Rights. No license granted under this Agreement shall extend to any Pole on or within which the Attachment of Licensee's Communications Facilities would result in a forfeiture of Licensor's rights. If Licensee's Communications Facilities would cause such forfeiture, Licensee shall promptly remove its Communications Facilities upon receipt of written notice from Licensor. Licensor will perform such removal at Licensee's expense after the expiration of sixty (60) calendar days from Licensee's receipt of the written notice.
- D. Effect of Consent to Construction/Maintenance. Consent by Licensor to the construction or maintenance of any Attachments of Licensee shall not be deemed to be an acknowledgment that Licensee has the necessary authority to construct or maintain any such Attachments. It is Licensee's responsibility to obtain all necessary approvals from all appropriate parties or agencies.
- E. Responsibility for Other Payments. If Licensee's use of Licensor's OSP Facilities create liability for any taxes, assessments, and governmental charges of any kind whatsoever lawfully levied or assessed, including without limitation, all franchise and other fees due to any federal, state, county, city or other jurisdiction having the authority to levy any such charges, the parties' Project Managers shall discuss such charges and determine if such charges should be waived by Licensor, shared or paid by solely by Licensee. Licensor shall pay any taxes, fees, or charges attributable to its ownership of Licensor OSP Facilities when such taxes, fees, or charges are not based on or imposed by virtue of Licensee's use of any such Facilities.

## **VI. APPLICATION FOR PERMIT PROCEDURES**

- A. Permit Required. Licensee shall not install any Attachments on any Pole without first applying for ("Application") and obtaining a Permit pursuant to the applicable requirements of the Procedure. The rights to lease or occupy other Licensor OSP Facilities, including right of way, power supply space, ducts or conduits, or transmission towers (except as specifically provided herein) are not covered by this Agreement and must be separately negotiated. Licensee shall notify Licensor on a quarterly basis, of all service drops made during the previous quarter.
- B. Permits for Third Party Overlapping. As set out in Article II, Paragraph L, Permits and a separate pole attachment agreement are required for any third party Overlapping.
- C. Pre-Permit Survey. As part of the Permit application process, the Licensee shall collect field data for, provide digital photographs of each Pole, perform

pole loading calculations and submit them to Licensor with the permit Application. Each digital photograph shall be identified by address and street name. Pole loading calculations shall be performed for each height and class worst case pole (s) included in the permit survey.

- D. Certification of Use. Licensee must certify in its application that it will attach its Communications Facilities to the Poles within ninety (90) calendar days of the grant of Permit or such additional time as agreed to by the parties for minor system additions or upgrades. The time frame shall be extended to one hundred and twenty days (120) or such additional time as agreed to by the parties for major system upgrades or initial system build out occurring throughout Licensor's entire service territory. Licensee may apply at any time for an extension of the applicable attachment period which will at the discretion of Licensor be granted for a reasonable period of time upon a finding of good cause and that the grant of such extension does not materially prejudice any pending requests for Attachment(s).
- E. Licensor Review of Permit Application.
1. Upon receipt of a properly executed Application, including certified Pre-Permit Survey, Licensor will review the Permit Application as promptly as possible, and discuss any issues with Licensee, including unusual engineering or Make-Ready Work requirements associated with the Application. Licensor's acceptance of the submitted design documents does not relieve the professional engineer and Licensee of full responsibility for any errors and/or omissions in the engineering analysis. Within forty five (45) days of Licensor's receipt of a properly executed application for permit, Licensor shall issue a response to Licensee granting, denying or seeking additional information on the permit. No Permit shall be granted in advance of Licensee obtaining all requisite federal, State and local authorizations.
  2. Licensor may enter into an agreement with a third-party contractor who shall pursuant to Applicable Standards receive permit information, coordinate issue and/or deny Permits, perform design work and determine Make-Ready Work requirements on Licensor's behalf.
- F. Timing. Licensor, or its duly authorized agent, shall process Permits and establish Attachment rights on a non-discriminatory basis, based upon the time in which properly executed applications are received.
- G. Performance of Make-Ready Work. If Make-Ready Work is required to accommodate Licensee's Attachments, Licensor or its contractors may in

its sole discretion perform such work to the extent such work does not require modification, transfer or removal of Licensee facilities. The Licensee has the option of hiring a Licensor approved contractor to perform the Make-Ready Work.

- H. Permit as Authorization to Attach. If Licensor finds the Permit Application to be satisfactory and in accordance with the requirements of this Agreement and applicable law, Licensor will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s), provided, that Licensee has obtained all necessary federal, state and local authorizations.
- I. Failure to Construct. Absent circumstances beyond its control, if the Licensee fails to construct its facilities within ninety (90) calendars days of grant for minor system additions or upgrades and one hundred and twenty days (120) of grant for major system upgrades or initial system build out occurring throughout Licensor's entire service territory, all applicable Permits expire, unless waived or extended for good cause by Licensor. Upon expiration of a Permit, Licensee must resubmit all permit application materials.

## VII. MAKE-READY WORK/INSTALLATION

- A. Estimate for Make-Ready Work. In the event Licensor determines that it can accommodate Licensee's request for Attachment(s) it will upon request, advise Licensee of any estimated Make-Ready Work and the parties' Project Managers shall discuss the costs necessary to accommodate the Attachment. The parties shall agree to such costs prior to Licensor or its contractor commencing any Make-Ready Work.
- B. Who May Perform Make-Ready Work. Make-Ready Work involving modification or removal of Licensor's facilities shall be performed only by Licensor or a contractor authorized by Licensor to perform such work. If Licensor does not agree to perform the Make-Ready Work to accommodate Licensee's Communications Facilities within ninety (90) days of Licensee's request for Attachments, Licensee may employ a contractor, approved by Licensor, to perform such work. Notwithstanding the forgoing, in the event that required Make-Ready Work involves ten (10) or fewer poles, and Licensor does not agree to perform the Make-Ready Work to accommodate Licensee's Communications Facilities within thirty (30) days, Licensee may employ a contractor, approved by Licensor, to perform such work.
- C. Scheduling of Make-Ready Work. If Licensor agrees to perform Make-Ready Work to accommodate Licensee's Communications Facilities, Licensor will include such work in its normal work schedule. Nothing herein



is intended, however, to require performance of Licensee's work before other prior scheduled work.

- D. Written Approval of Installation Plans Required. Before commencing any installation of its Communications Facilities on Licensor's Poles, Licensee must obtain Licensor's written approval of Licensee's plans for installation; including the identity of any third party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of this Agreement.
- E. Licensee's Installation/Removal/Maintenance Work.
1. All of Licensee's installation, removal and maintenance work shall be performed at Licensee's sole cost and expense unless otherwise provided in this Agreement, in a good and workmanlike manner, and must not adversely or materially affect the structural integrity of Licensor's Poles or Licensor OSP Facilities or any other facilities or equipment attached thereto.
  2. All of Licensee's installation, removal and maintenance work performed on Licensor's Poles or in the vicinity of other Licensor Facilities, either by its own employees or contractors, shall be in compliance with all applicable regulations specified in Article IV, Paragraph A. Licensee shall assure that any person installing, maintaining, or removing its Communications Facilities is duly qualified and familiar with all Applicable Standards and the provisions of Article XIX.

## VIII. TRANSFERS AND REARRANGEMENTS

- A. Required Transfers and Rearrangements of Licensee's Communications Facilities. If Licensor reasonably determines that a Transfer or Rearrangement of Licensee's Communications Facilities is necessary to accommodate Licensor's or a third party's needs, Licensee will perform such Transfer or Rearrangement within sixty (60) days after receiving notice from Licensor or such additional time as agreed to by the parties. If Licensee fails to Transfer or Rearrange its Communications Facilities within sixty (60) days after receiving such notice from Licensor or such additional time as agreed to by the parties, Licensor shall have the right in its sole discretion to Transfer or Rearrange Licensee's Communications Facilities using its own personnel or Licensee's pre-approved contractors at no cost to the Licensee, or remove Licensee's Communications Facilities. Licensor shall not be liable for damage to Licensee's Facilities if Licensee fails to Transfer or Rearrange its Communication Facilities within sixty (60) days after receiving notice from Licensor or such additional time as agreed to by the parties. Within 30 days of the execution of this Agreement, Licensee shall

submit to Licensor a list of Licensee Approved Contractors who are qualified and available for Licensor to call upon. Licensee shall update such list quarterly.

- B. Removed Communication Facilities. If Licensor removes Licensee's Communication Facilities because Licensee failed to timely Transfer or Rearrange the same as set forth above, Licensor shall hold the removed Communication Facilities for thirty (30) days for the Licensee to retrieve from Licensor. After thirty (30) days, Licensor may dispose of such Communication Facilities in Licensor's sole discretion.

#### **IX. POLE MODIFICATIONS AND/OR REPLACEMENTS**

- A. Licensee's Action Requiring Modification/Replacement. In the event that any Pole to which Licensee desires to make Attachments is unable to support or accommodate the additional facilities in accordance with all Applicable Specifications, Licensor will notify Licensee of the changes necessary to provide an NESC compliant Pole, including but not limited to replacement or extension of the Pole. Licensor generally shall not increase pole height to exceed fifty (50) feet.
- D. Strengthening/Guying. Licensee shall place guys and anchors to sustain any unbalanced loads caused by Licensee's attachments. Any strengthening of Poles through the use of guying to accommodate Licensee's Attachments shall be provided to the satisfaction of Licensor. Communications cables must be properly guyed and anchored before tensioning and if necessary the Licensee must install separate guying and anchoring devices to secure their cables.
- E. Grounding/Bonding. Licensee may bond its Attachments on Licensor Poles to the Vertical Ground Wire where the same exists. Under no condition will the Licensor Vertical Ground Wire be broken, cut, severed, or otherwise damaged by Licensee. The Licensee shall immediately repair any damage to the vertical grounds caused by the Licensee.
- F. Costs. If there are any costs for any Rearrangement or Transfer of Licensee's Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of Licensor's cables or wires), the parties' Project Managers shall agree to how such costs shall be waived, shared or otherwise apportioned. No Rearrangement, Transfer or replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of Licensor's cables or wires) shall commence until an agreement on the costs for the same is made by the parties' Project Managers. Nothing in this Agreement shall require Licensor to remove, relocate or otherwise modify Licensor's equipment, poles or other facilities.

## X. ABANDONMENT AND CHANGE-OUT

- A. Notice of Abandonment/ Change-Out/ Removal of Licensor Facilities. If Licensor desires at any time to abandon, replace, or relocate any Licensor Facilities to which Licensee's Communications Facilities are attached, it shall give Licensee notice in writing to that effect. Within sixty (60) days of receipt of said notice or such longer period mutually agreed to by the parties, Licensee shall remove and/or Transfer all of its Communications Facilities therefrom. Licensor shall reimburse Licensee for such removal and Transfer. Should Licensee not remove or Transfer its Communications Facilities within the prescribed time period or additional agreed to time, Licensor shall have the right, if necessary under applicable laws and regulations, to have Licensee's Communications Facilities removed and/or transferred from the Pole at Licensee's expense. Licensee shall indemnify and hold Licensor harmless for any such removal or Transfer of Licensee's Communications Facilities except to the extent any claim, action, loss, damage, injury, liability, cost or expense is caused by the sole negligence or willful misconduct of Licensor. Licensor shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities.
- B. Required Removal of Licensor Facilities. Upon receipt of not less than forty-five (45) days' prior written notice from Licensor to Licensee that any Licensor Facilities must be removed by reason of any Federal, State, County, Municipal or other governmental requirement, or the requirement of a property owner, the license covering the use of said Licensor Facilities shall terminate and Licensee's Communications Facilities shall be removed promptly from the affected Licensor Facilities. Notwithstanding the foregoing, Licensee shall have a reasonable opportunity to pursue and exhaust its available legal and administrative remedies prior to termination of its Permit, provided, that no enforcement action is being taken or threatened against Licensor and no order has been issued directing Licensor to remove Licensee's facilities, and that Licensee agrees to indemnify and hold harmless Licensor for Licensee's continued attachment pending any such exhaustion of remedies. If Licensee fails to remove its Communications Facilities from such Licensor Facilities in accordance with this paragraph, Licensor shall have the right, to remove such facilities at Licensee's expense.
- C. Removal on Expiration/Termination. At the expiration or other termination of this License Agreement or individual Permit(s), unless the parties are in good faith negotiations to renew the, or enter a new, pole attachment agreement, Licensee shall remove its Communications Facilities from the affected Poles at its own expense. If Licensee fails to remove such facilities within ninety (90) calendar days of written notice from Licensor of

such expiration or termination or some greater period as allowed by Licensor, Licensor shall have the right to have such facilities removed, or, if necessary under applicable laws and regulations, have such facilities declared "abandoned" and remove such facilities at Licensee's expense..

## XI. TERMINATION OF PERMIT

- A. Automatic Termination of Permit. Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Communications Facilities on public or private property at the location of the particular Pole covered by the Permit. Notwithstanding the above, Licensee shall have a reasonable opportunity to pursue and exhaust its available legal and administrative remedies prior to termination of its Permit, provided, that no enforcement action is being taken or threatened against Licensor and no order has been issued directing Licensor to remove Licensee's facilities, and that Licensee agrees to indemnify and hold Licensor harmless for Licensee's continued Attachment pending any such exhaustion of remedies.
- B. Right to Cancel. Unless the length of time to make attachment under a Permit is extended for good cause, Licensor retains the right to cancel, with thirty (30) days written notice, any Attachment Permit not utilized by placement of Licensee's Communications Facilities therein within ninety (90) calendar days of Permit issue date for minor system additions or upgrades, and one hundred and twenty (120) calendar days for major system upgrades or initial system build out occurring throughout Licensor's entire service territory, unless an extension is granted.
- C. Surrender of Permit. Licensee may at any time surrender any Permit for Attachment and remove its Communications Facilities from the affected Pole(s) at its own expense. All such work is subject to the insurance requirements of Article XVIII. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from Licensor's Poles within forty five (45) days thereafter or if removal cannot be completed within forty five (45) days, such additional time as agreed to by the parties, Licensor shall have the right to remove Licensee's Attachments at Licensee's expense.

## XII. INSPECTION OF LICENSEE'S FACILITIES

- A. Initial Inventory, Inspection and Audit.
  - 1. The Parties agree that the initial inventory of Licensee's attachments to Licensor's poles is accurately depicted on **Exhibit A (if any)**.

2. At the end of each year of the term of this Agreement, Licensor may conduct an audit of Licensee attachments. If the results of the pole audit show attachments to poles by Licensee not previously authorized by Licensor, Licensor may add such poles to the Inventory or provide Licensee with ten (10) days notice to obtain a Permit or remove the same. If Licensee fails to obtain a Permit or remove the unauthorized attachments, Licensor in its sole discretion may remove the unauthorized attachments.
  3. Inspections. Licensor shall have the right at any time to make periodic inspections of Licensee's Communications Facilities, utilizing its own employees or contractors, and Licensee shall reimburse Licensor for the actual and reasonable expense of such inspections, but only for the costs of inspecting the poles on which Licensee is found to be in violation of any Applicable Standard.
- B. Notice. Licensor will give Licensee reasonable advance written notice of such audits or inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.
  - C. No Liability. The making of any inspections under this Article XV, or the failure to do so, shall not operate to impose upon Licensor any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.
  - D. PSC Violations. Licensee agrees to correct any and all violations it causes as required by the Florida Public Service Commission ("PSC") within ten (10) business days' notice from Licensor or such longer period as may be permitted by the PSC.

### **XIII. UNAUTHORIZED OCCUPANCY OR ACCESS**

- A. Unauthorized Attachment. Within 30 days of the effective date of this Agreement, Licensee shall submit to Licensor, a complete list of all its attachments and such list shall become **Exhibit B** to this Agreement. After that 30 day period, if any of Licensee's Attachments are found occupying any Pole for which no Permit has been issued, Licensee shall immediately submit a Permit Application for any such attachment or in the event it causes a material safety violation (as determined by Licensor), shall immediately remedy such violation or remove at Licensee's own cost. In the event Licensee fails to remedy or remove its Unauthorized Attachments in accordance with this paragraph within ten (10) days of notification, Licensor may remove such Unauthorized Attachments at Licensee's expense.

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

#### **XIV. LIABILITY AND INDEMNIFICATION**

- A. Licensor Reservation. Licensor 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. Licensor shall exercise reasonable precaution to avoid damaging Licensee's Communications Facilities and shall make an immediate report to Licensee of the occurrence of any such damage caused by its employees, agents or contractors.
- B. Responsibility for Negligence. The parties to this Agreement recognize that each party is entitled to sovereign immunity under the law. Without waiving their rights to sovereign immunity, each party agrees to be responsible for its negligence which arises from or is a result of this Agreement.
- C. Indemnification by Licensee's Contractor(s). The Licensee agrees that its use of any of Licensee's approved contractor(s), including their subcontractor(s), which perform work on behalf of Licensee under this Agreement, each such contractor, including each of its subcontractor(s), shall agree in writing to indemnify, defend, save and hold harmless the Licensor, and all of its commissioners, officers, employees, agents, successors and assigns against any claim, action, loss, damage, injury, liability, cost or expense including, but not limited to, reasonable attorneys' fees and court costs at all trial and appellate levels, directly or indirectly arising out of or related to the contractor's, including its subcontractors, its directors, officers, employees, agents, licensees or representatives, negligent acts and/or negligent omissions. Proof of such indemnification shall be provided to the Licensor upon request.
- D. Waiver of Consequential Damages. Neither party shall be liable to the other for any indirect, incidental, consequential, special, punitive or exemplary damages (including but not limited to loss of profits, damages to business reputation, lost opportunity, or other remote items of damage) caused by the use of Licensor's poles hereunder.
- E. Liens. Licensee shall not allow any lien upon Licensor property, facilities or plant arising from any work performed, materials furnished or other obligations incurred by Licensee relating to this Agreement. Licensee shall

comply with Chapter 255, Florida Statutes, and any other applicable laws and shall indemnify and hold Licensor harmless for any such claim or cause of action.

- F. Indemnification Shall Survive Termination. Any indemnification set forth in this Agreement shall be in addition to any other remedy available under this Agreement or at law or equity and shall survive the term of this Agreement executed pursuant hereto, with respect to any circumstance or event occurring before termination.
- G. Environmental Hazards. Licensee represents and warrants that its use of Licensor's Poles and Licensee's Communications Facilities attached to Licensor Poles will not constitute, contain or generate any hazardous substance, and that it will not store or dispose on or about Licensor's Poles or transport to Licensor's Poles any hazardous substances in violation of state or federal law now or hereafter in effect including any amendments. "Hazardous substance" shall be interpreted broadly to mean any substance or material designated or defined now or in the future by any federal, state, or local laws, regulations or rules as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance or other similar term.
- F. Sovereign Immunity. Nothing in this Agreement shall be interpreted as waiving or abrogating Licensor's or Licensee's right of sovereign immunity, pursuant to Section 768.28, Florida Statutes, or any successor statute. Nothing herein shall be construed as the parties' intention to be sued by third parties.

#### **XV. DUTIES, RESPONSIBILITIES, AND EXCULPATION**

- A. Duty to Inspect. Licensee acknowledges and agrees that Licensor does not warrant the condition or safety of Licensor's Poles, or the premises surrounding the Poles, and Licensee further acknowledges and agrees that it has an obligation to inspect Licensor's Poles and/or premises surrounding the Poles, prior to commencing any work on Licensor's Poles or entering the premises surrounding the Poles.
- B. **DISCLAIMER. LICENSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO LICENSOR'S POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- C. Licensee agrees to warn its employees, agents, contractors, and invitees of the fact that the electrical facilities and appurtenances installed or to be installed by Licensor are of high voltage electricity and to inform such

persons as to safety and precautionary measures which he or she must use when working on or near Licensor poles and other facilities.

- D. Licensee shall ensure that its permanent or temporary employees and its contractor's/subcontractor's employees, working on Licensor owned Poles have received training in pole safety and are knowledgeable of the electrical hazards present as required by OSHA or other authority.
- E. Drug and Alcohol Free Workplace. The Licensor wants to ensure that all employees working on Licensor projects and facilities are fully able to do their job and are not impaired by drug or alcohol use – a major cause of work site accidents. Licensee shall provide, and shall also require that its contractor(s) and subcontractor(s) who work on Licensor structures provide, pre-employment testing for drugs and alcohol.
- F. Licensor representatives will periodically visit job sites to ensure safety programs are being followed. Licensor reserves the right to stop work relating to Licensor Poles where Licensee or its contractor or subcontractor's activities constitute an imminent danger to life or health. Licensor shall provide Licensee with a 24-hour number for technical assistance on safety related issues. Licensee shall provide Licensor with a 24-hour number of a designated safety representative who has the authority to correct unsafe conditions.
- G. Requests to De-energize. In the event Licensor de-energizes any equipment or line at Licensee's request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse Licensor in full for all costs and expenses incurred in order to comply with Licensee's request for de-energization of any equipment or line. Before Licensor de-energizes any equipment or line, it shall provide upon request an estimate of all costs and expenses to be incurred in accommodating Licensee's request
- H. Interruption of Service. In the event that Licensee shall cause an interruption of Licensor's service by damaging or interfering with any equipment of Licensor, Licensee at its expense shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting there from and shall notify Licensor immediately. In the event that Licensor shall cause an interruption of Licensee's service by damaging or interfering with any equipment of Licensee, Licensor at its expense shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting there from and shall notify Licensee immediately
- I. Force Majeure. Neither party shall be liable for any failure or delay in the performance of its obligations under this Agreement due to a force majeure event, including but not limited to, acts of civil or military authority, acts of



courts and/or regulatory agencies, war, riot or insurrection, embargoes, sabotages, strikes or lockouts (provided such strike or lockout does not arise from inequitable labor practices), epidemics, fires, floods, earthquakes, tornadoes, hurricanes. In the event of any failure or delay resulting from such causes, upon notice to the other party within five (5) days of occurrence of the event giving rise to the delay or such additional time as agreed to by the parties, the time for performance hereunder shall be extended for a period of time reasonably necessary to overcome the effects of such delays.

## **XVI. INSURANCE**

- A. Coverage. Without limiting or otherwise altering its liability as stated elsewhere herein, Licensee is a self-insured political subdivision of the State of Florida subject to the limitations of section 768.28, Florida Statutes, as amended. Licensee shall maintain a prudent fiscal program with regard to its liability obligations under this Agreement. Further, should Licensee utilize any third-party to perform any work under this Agreement, Licensee shall require such third-party contractors to provide and maintain in force, from companies authorized to do business in the State of Florida and rated A-, VII or better by AM Best, policies of insurance with minimum limits as follows:
1. Workers' Compensation and Employer's Liability insurance for all of Licensee's employees. Limit of insurance for Employer's Liability shall be a minimum of \$500,000 per accident.
  2. General Liability insurance for bodily injury and property damage of \$1,000,000 each occurrence and \$2,000,000 annual aggregate, combined single limit.
  3. Automobile Liability for bodily injury and property damage (covering owned, hired or non-owned vehicles) of \$1,000,000 each occurrence, combined single limit.
  4. Excess Liability insurance for bodily injury and property damage of \$8,000,000 each occurrence and annual aggregate, combined single limit. This is additional coverage and limits above the following primary insurance: Employer's Liability, Commercial General Liability, and Automobile Liability. Overall limits of liability insurance may be met through any combination of primary and excess liability policies.
  5. Licensee shall specify Licensor as an additional insured for all required coverage to the extent permitted by 768.28, Florida Statutes, except Workers' Compensation and Employer's Liability.

Such insurance shall be primary to any and all other insurance or self-insurance maintained by Licensor as required by state law and with respect to losses for which Licensee is responsible hereunder.

- B. Certificates. Within thirty (30) days of the effective date of this Agreement, Licensee shall furnish Licensor proof of self-insurance in compliance with the 768.28, Florida Statutes, as amended.

#### **XVII. AUTHORIZATION NOT EXCLUSIVE**

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

#### **XVII. ASSIGNMENT**

Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of Licensor, which shall be not be unreasonably withheld, delayed, or conditioned. Notwithstanding the foregoing, Licensee shall have the right to assign this Agreement without consent to any Affiliate of Licensee.

#### **XIX. FAILURE TO ENFORCE**

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

#### **XX. TERMINATION OF AGREEMENT**

- A. Licensor shall have the right to terminate this entire Agreement, or any Permit issued hereunder, in the event that Licensee fails to cure a default of any term or condition of this Agreement, including but not limited to the following circumstances:
1. Construction, operation or maintenance of Licensee's Communications Facilities in violation of law or in aid of any unlawful act or undertaking; or
  2. Construction, operation or maintenance of Licensee's Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority, provided, however, Licensee shall have a

reasonable opportunity to pursue and exhaust its available legal and administrative remedies prior to termination of its Permit, provided that no enforcement action is being taken or threatened against Licensor, and no order has been issued directing Licensor to remove Licensee's facilities and Licensee agrees to indemnify and hold harmless Licensor for Licensee's continued attachment pending any such exhaustion of remedies; or

3. Construction, operation or maintenance of Licensee's Communications Facilities without the required insurance coverage.
- B. Licensor will notify Licensee in writing within ten (10) business days, or as soon as reasonably practicable, of any default(s). Licensee shall take immediate corrective action to eliminate any such condition(s) within thirty (30) business days after receipt of such notice, or if the default cannot reasonably be cured within thirty (30) business days after receipt of such notice and Licensee commences the cure and thereafter continuously and diligently pursues the cure to completion, or such longer period mutually agreed to by the parties, and shall confirm in writing to Licensor that the cited condition(s) has(have) ceased or been corrected. If Licensee fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, Licensor may immediately terminate this Agreement or any Permit(s). In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, Licensor may remove Licensee's Communications Facilities pursuant to the terms of Article X(C); however, the timeframe in Article X(C) shall not apply.
  - C. Licensee shall have the right to terminate this Agreement, without cause, for any reason, including, but not limited to, due to lack of funding or convenience, upon ten (10) business days' notice to Licensor. Licensee shall have thirty (30) days from the date of its notice to terminate to remove all of its Facilities. In the event of Licensee fails to timely remove its Facilities, Licensor may remove Licensee's Facilities pursuant to the terms of Article X(C); however, the timeframe in Article X(C) shall not apply.
  - D. Each party's performance and obligations under this Agreement for subsequent fiscal years is contingent upon annual appropriations from each party's governing body for its purpose. If no such annual appropriation is provided by a party's governing body, either party may terminate this Agreement in accordance with paragraph (C) above.

## **XXI. TERM OF AGREEMENT**

- A. This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of ten (10) years. By mutual written agreement

of the parties this Agreement may be extended for up to three (3) additional terms of five (5) years each, provided that Licensee has given Licensor sixty (60) days written notice prior to the end of the then current term of its desire to renew.

- B. All indemnity obligations set forth herein shall survive the expiration or termination of this Agreement.

**XXII. AMENDING AGREEMENT**

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

**XXII. NOTICES AND PROJECT MANAGERS**

- A. Any notice, demand, consent, request or other communication required or permitted to be given under this Agreement shall be in writing and delivered by hand, or by registered or certified mail, return receipt requested and postage prepaid, or by nationally recognized over-night courier, and shall be considered effective upon receipt, at:

If to Licensor, at:

City of Lake Worth Beach  
Attn: City Manager  
7 N. Dixie Highway  
Lake Worth Beach, FL 33460

With copy to: City of Lake Worth Beach  
Attn: City Attorney  
7 N. Dixie Highway  
Lake Worth Beach, FL 33460

And:

City of Lake Worth Beach Electric Utility  
Attn: Electric Utility Director  
1900 2<sup>nd</sup> Avenue North  
Lake Worth Beach, FL 33461

If to Licensee:

Verdenia C. Baker, County Administrator  
c/o Archie Satchell, Information Systems Services CIO  
Palm Beach County Board of County Commissioners  
301 N. Olive Avenue, 8<sup>th</sup> floor

West Palm Beach, FL 33401

With copy to: County Attorney's Office  
Palm Beach County Board of County  
Commissioners  
301 N, Olive Avenue, FL 33401

- B. Changes in the respective addresses to which such notice is to be directed may be made from time to time by written notice.
- C. Upon the effective date of this Agreement, each party shall identify a Project Manager and provide the other party with the Project Manager's (and alternate Project Manager) contact information including e-mail. As required herein, the parties' Project Manager's shall confer from time to time on issues and make decisions regarding issues. Such decisions shall be document via e-mail.

#### **XXIV. ENTIRE AGREEMENT**

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

#### **XXV. SEVERABILITY**

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

#### **XXVI. GOVERNING LAW**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida and federal law to the extent applicable. The venue of any legal action brought or filed relating to any matter arising under this Agreement shall be exclusively in the federal or state courts sitting in Palm Beach County, Florida, having jurisdiction over such legal action.

#### **XXVII. INCORPORATION OF RECITALS AND APPENDICES**

The Recitals, appendices to this Agreement, and applicable federal and state law at the time of this Agreement's adoption, are incorporated into and constitute part of this Agreement.

## **XXIX. SCRUTINIZED COMPANIES CERTIFICATION**

A. Licensee certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if the Licensee or any of its subcontractors are found to have submitted a false certification; or if the Licensee or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

B. If this Agreement is for one million dollars or more, the Licensee certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Agreement at its sole option if the Licensee, or any of its subcontractors are found to have submitted a false certification; or if the Licensee or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

C. The Licensee agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

D. The Licensee agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Agreement, including any and all renewals.

E. The Licensee agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the Licensee shall immediately notify the City of the same.

F. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

## **XXX. JOINT PREPARATION.**

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than the other.

**XXXI. CONTINUING OBLIGATION.**

Duties or obligations that are of a continuing nature extending beyond the Agreement's expiration or termination, including but not limited to the indemnification requirements, shall survive the Agreement's expiration or termination.

**XXXII. NO THIRD PARTY BENEFICIARIES.**

No provision of this Agreement is intended to or shall be construed to create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including without limitation, any citizen, resident, official, employee or volunteer of either party.

**XXXIII. PALM BEACH COUNTY IG.**

In accordance with Palm Beach County ordinance number 2011-009, the parties acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General.

**XXXIV. COUNTERPARTS.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**  
**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the parties hereto have executed this Interlocal Agreement for Pole Attachments on the day and year first written above.

**ATTEST:**

**Sharon R. Bock, Clerk & Comptroller**

**Palm Beach County, By Its  
Board of County Commissioners**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor

(SEAL)

**APPROVED AS TO LEGAL  
SUFFICIENCY**

**APPROVED AS TO TERMS AND  
CONDITIONS**

By: \_\_\_\_\_  
County Attorney

By: \_\_\_\_\_  
Archie Satchell, CIO, ISS

**CITY OF LAKE WORTH BEACH, FLORIDA**

**ATTEST:**

By: \_\_\_\_\_  
Deborah M. Andrea, City Clerk

By: \_\_\_\_\_  
Pam Triolo, Mayor

**APPROVED AS TO FORM AND  
SUFFICIENCY:**

**APPROVED FOR FINANCIAL LEGAL  
SUFFICIENCY**

By: \_\_\_\_\_  
Glen J. Torcivia,  
City Attorney

By: \_\_\_\_\_  
Bruce T. Miller,  
Financial Services Director



**EXHIBIT A  
INITIAL INVENTORY**

**EXHIBIT B  
INVENTORY**