

CITY OF MONROE
PUBLIC ENTERPRISE COMMITTEE
300 W. CROWELL STREET, MONROE, NC 28112
TUESDAY, JANUARY 7, 2025 - 4:00 PM
AGENDA
www.monroenc.org

1. Minutes of the December 5th Public Enterprise Committee Meeting
2. Updates for Stormwater Management Ordinance Section 159.402 and corresponding Operation and Maintenance Agreement
3. Award of bid for Hal-Coan Substation Protective Relay Panel Replacement Contract
4. Sanitary Sewer Evaluation Study Contract Change Order
5. Energy Services Pole Attachment Agreement - Staff Report
6. US 74 and Secrest Shortcut Rd Improvement Project
7. Monroe's Proposed Candidate Project List for the 2055 Metropolitan Transportation Plan (MTP) for the Charlotte Regional Transportation Planning Organization (CRTPO).
8. Mechanically Stabilized Earth Wall Enhancements-Concord Avenue Bridge Replacement (BR-0049)

Public Enterprise Committee Minutes
December 5, 2024
City Hall Conference Room
2:30 p.m.

Members Present: Council Member James Kerr (Chair), Council Member Julie Thompson,
Council Member Franco McGee

Staff: Mark Watson, Terry Sholar, Scott Clark, Rob Miller, Lisa Strickland,
Richard Long, Rich Riser, Cole Hancock, Bradley Lucore, Pete Hovanec,
Charles Derrick, Lisa Hollowell, Jeff Wells, Sandra Slifer

Council Member James Kerr called the December 5, 2024 Public Enterprise Committee meeting to order at 2:30 p.m.

Item #1: Adoption of Minutes of the November 5, 2024 Meeting

Recommendation:

Council Member James Kerr asked if anyone had any questions or concerns about the minutes, if not, if anyone would like to make a motion that the minutes of the November 5, 2024 Public Enterprise Committee be approved.

Motion: Adopt November 5, 2024 meeting minutes

Motion made by: Council Member Julie Thompson

Second: Council Member Franco McGee

Voting: **In Favor** – Council Member James Kerr, Council Member Julie Thompson, Council Member Franco McGee
Opposed – None

Action: Motion approved

Item #2: Contract Award – Richardson Creek Outfall Interceptor Gravity Sewer Main Rehabilitation

Recommendation:

Water Resources is requesting Public Enterprise Committee to consider a contract award for the complete rehabilitation of approximately 2,165 LF of 18” Richardson Creek Outfall Interceptor located within the City of Monroe Golf Course.

Presentation and Discussion:

Cole Hancock, Civil Engineer II of Water Resources advised that informal quotes for Cured in Place (CIPP), manhole rehab, Pre-lining CCTV, and cleaning services of the Richardson Creek Outfall Interceptor. The project involves the water inversion CIPP lining of the 18” gravity outfall sewer main and cementitious coating of manholes located inside the City of Monroe golf

course. Staff is recommending award of the contract to the third highest bidder out of five responses.

Staff is withholding the contract award of \$298,665.22 to Insituform Technologies, LLC due to the inability to line gravity sewer main from one location, inability to CCTV & clean from just two locations, and their considerably longer estimated bypass pumping time required. This additional pumping time will increase the pumping cost and will bring their final cost closer to that of Bio-Nomic Services, LLC. The City has also had a negative experience on recent contract and quote processes.

Staff is withholding contract award of \$305,343.00 from AM-Liner East due to their lack of experience with the City of Monroe, poor details given on quote regarding means/methods, material specifications, scheduling, and warranty information along with their inability to clean from just two locations and longer pumping time.

Staff is recommending contract award of \$356,435.00 to Bio-Nomic Services, Inc. This award is based on their ability to line gravity sewer main from single location, ability to CCTV and clean from just two locations, their detailed specifics in quote on thickness of liner used, manhole rehab material used, warranty information, assurance of ability to schedule and perform work, and bypass pumping time required. They further presented the most noninvasive means of traversing City of Monroe Golf Course.

Motion: Award contract for rehabilitation of the Richardson Creek Outfall Interceptor to Bio-Nomic Services, Inc., in the amount of \$356,435.00, authorization for the City Manager to execute the necessary documents and to send to Council for approval on the December 10, 2024 consent agenda.

Motion made by: Council Member Franco McGee

Second: Council Member Julie Thompson

Voting: **In Favor** – Council Member James Kerr, Council Member Julie Thompson, Council Member Franco McGee
Opposed – None

Action: Motion approved

Additional Items/Discussion:

Item #1: CLEANcarolinas Letter of Collaboration

Robert Miller, Director of Energy Services, presented information on a collaboration opportunity with CLEANcarolinas. Their goal is to recruit the companies that build the components for the offshore wind industry coming off the Carolinas and have those industries come to North Carolina. The next step for CLEANcarolinas is to compete for a \$100M grant through the National Science Foundation.

Motion: Authorization of the City Manager to sign the Letter of Collaboration with CLEANcarolinas.

Motion made by: Council Member James Kerr
Second: Council Member Julie Thompson
Voting: **In Favor** – Council Member James Kerr, Council Member Julie Thompson, Council Member Franco McGee
Opposed – None
Action: Motion approved

Item #2: Rate Study Update with Raftelis

Scott Clark, Director of Water Resources, along with Melissa Levin and Ford Moriarty with Raftelis (virtual) presented an update to their recommendations for the water and sewer rate structure and System Development Fees. Raftelis provided an overview of the WWTP expansion costs and the impact on Water Resources capital reserve and debt structure. Their recommendation is a 5.5% base rate increase over the next 3 years. They explained how the tiered rate structure would be based on water consumption and the impacts on both residential and commercial customers.

This presentation was for informational purposes only and will be presented at the City Council Strategic meeting on December 10, 2024.

There being no further business, the meeting is adjourned at 3:25 p.m.

James Kerr, Chair

Next Meeting – December 5, 2024



STAFF REPORT

TO: Public Enterprise Committee

VIA: Mark Watson, City Manager

DATE: January 7, 2025

FROM: Sarah McAllister, P.E., Engineering Director

PREPARED BY: Bonnie Fisher, P.E. – Stormwater Engineering Manager

SUBJECT: Updates for Stormwater Management Ordinance Section 159.402 and corresponding Operation and Maintenance Agreement

SUMMARY STATEMENT

The Public Enterprise Committee is requested to consider recommended updates regarding the City of Monroe Stormwater Management Ordinance and Operation and Maintenance Agreement form.

REVIEW

In 2023 the General Assembly adopted S.L. 2023-108, which amended G.S. 160D-925 to prohibit local governments from requiring an owner of a privately owned and maintained Stormwater control project to make payments to the local government for future maintenance, repair, or replacement costs of the project. The local government may require the owner to retain funds in a segregated account for maintenance, repair, replacement, and reconstruction costs, with a value not to exceed ten percent (10%) of the Stormwater control project's original cost of construction. The owner shall have a period of five (5) years to fully deposit escrow funds in the account.

RECOMMENDATION

Staff recommends that Stormwater Management Ordinance Section 159.402 and the City's Standard Operation & Maintenance Agreement be updated to reflect the NC legislative changes. If the Public Enterprise Committee is in agreement, the items will be placed on the consent agenda for consideration by City Council at the next meeting on January 14, 2025.

Attachments: Revised Stormwater Ordinance Section 159.402 (with tracked changes)
Revised Operation & Maintenance Agreement

§ 159.402 OPERATION AND MAINTENANCE AGREEMENT.

(A) *In general.*

- (1) Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to this Ordinance, and prior to issuance of any permit for development or redevelopment requiring a structural BMP pursuant to this Ordinance, the applicant ~~and~~ ~~or~~ owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP. Until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.
 - (2) The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP. In addition, it shall grant to the City of Monroe a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the City of Monroe to assume responsibility for the structural BMP.
 - (3) The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be recorded with the county Register of Deeds. The deed book and page shall be referenced on all plats, including the final plat referenced on the final plat and shall be recorded with the county Register of Deeds upon all final plats approved by the City of Monroe and recorded.
- (B) *Operation and Maintenance Agreements* ~~Special requirement for homeowners' and other associations. For all structural BMPs required pursuant to this Ordinance and that are to be or are owned and maintained by a homeowners association, property owners association, or similar entity, the~~ A required ~~O~~operation and m~~M~~aintenance agreement shall include all of the following provisions:
- (1) Acknowledgment that the ~~owner or homeowners'~~ association shall continuously operate and maintain the Stormwater control and management facilities.
 - (2) ~~Establishment of a segregated escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural BMPs. If structural BMPs are not performing adequately or as intended or are not properly maintained, the City of Monroe, in its sole discretion, may remedy the situation, and in such instances the City of Monroe shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the owner or homeowners' association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural BMPs, upon written notification to the City of Monroe.~~

Commented [BAF1]: Clarifying the intent with separate sentences

Commented [BAF2]: Information in this section repeats other sections in the Agreement; recommend to remove it.

(3)(2) Upon acceptance of the ~~Stormwater controls~~ structural BMP, the owner or homeowners' ~~or other~~ association shall establish and maintain a segregated escrow account held by the owner or homeowners' ~~or other~~ association to hold funds for the purpose of sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural BMPs. The amount of the escrow account shall not exceed ten (10%) percent of the ~~Stormwater control~~ structural BMP project's original cost of construction as indicated by a sealed engineer's estimate. The owner or homeowners' ~~or other~~ association shall have a period of five (5) years from the time the ~~Stormwater controls~~ structural BMP are is accepted by the City to fully deposit escrow funds in the account, and: Upon acceptance of the Stormwater controls, the owner shall deposit and retain in the account at least two (2%) percent of the project's original cost of construction annually for five years until fully funded. Once fully funded at ten (10%) of the engineer's estimated cost, that amount shall be retained and maintained in the segregated escrow account, and The escrow account shall be held and maintained by the owner or homeowners' ~~or other~~ association in the segregated escrow account and shall annually provide the City of Monroe verification of the amount held in the escrow account.

Commented [BAF3]: Keep consistent name throughout the document

Commented [TS4R3]: I included "homeowners or other association" because not all are called homeowners association. HOW is most common, but I have seen several other names. The intent is for it to apply to all regardless of what they are called. Agree that should be consistent through out.

Commented [BAF5]: This text matches the Agreement

(4)(3) Granting to the City of Monroe a right of entry to inspect, and monitor the BMPs and the right of entry and access for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural BMPs upon failure of the owner to take necessary action after notice by the City and a reasonable opportunity to correct.

Commented [BAF6]: Using "owner or homeowners' association" through the document seemed to be missed here with the previous review

(5)(4) Allowing the City of Monroe to recover from the escrow account any and all costs the City of Monroe expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the City of Monroe all of its expended costs, after forty-five ~~days~~ days' written notice, shall constitute a breach of the agreement. In case of a deficiency, the City of Monroe shall thereafter be entitled to bring an action against the owner or homeowners' ~~or other~~ association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.

Commented [BAF7]: Same comment as above

(6)(5) A statement that this agreement shall not obligate the City of Monroe to maintain or repair any structural BMPs, and the City of Monroe shall not be liable to any person for the condition or operation of structural BMPs.

(7)(6) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the City of Monroe to enforce any of its Ordinances as authorized by law.

(8)(7) A provision indemnifying and holding harmless the City of Monroe for any costs and injuries arising from or related to the structural BMP, unless the City of Monroe has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

~~(9)~~(8) A provision that a financial statement shall be provided and included as part of the annual inspection report documenting the available funding established in the escrow account for operation and maintenance of the stormwater control and management facilities.

(Ord. O-2007-24, passed 9-18-07)

§ 159.404 PERFORMANCE SECURITY FOR INSTALLATION.

(A) *May be required.* The City of Monroe may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural BMPs are installed by the permit holder as required by the approved Stormwater management plan. ~~;~~ ~~and/or~~

(B) *Amount.*

(1) Installation. The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 10%.

(2) Maintenance. The ~~owner~~ ~~or~~ ~~and~~ applicant shall keep the property on which the BMP's are located reasonably maintained and in a fit and proper condition prior to being accepted by the City of Monroe.

Commented [BAF8]: Matches the correction made in section (A)

(C) *Uses of performance security.*

(1) Forfeiture provisions. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this Ordinance, approvals issued pursuant to this Ordinance, or an operation and maintenance agreement established pursuant to this Ordinance.

(2) Default. Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement.

(3) Costs in excess of performance security. If the City of Monroe takes action upon such failure by the applicant ~~or~~ ~~and~~ owner, the City of Monroe may collect from the applicant ~~or~~ ~~and~~ owner the difference between the amount of the reasonable cost of such action in addition to any other penalties or damages due to the City of Monroe.

Commented [TS9]: Is the applicant and owner always the same entity? If so, "and" is OK. If not "or" is more appropriate.

~~(4)~~ Refund. Within sixty days of ~~the final approval~~ ~~acceptance by the City~~, the installation performance security shall be refunded to the applicant or terminated. ~~;~~ ~~except any~~

amount attributable to the cost (plus 10%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

(Ord. O-2007-24, passed 9-18-07)

DRAFT

**STATE OF NORTH CAROLINA
UNION COUNTY**

**STORMWATER OPERATION, MAINTENANCE,
AND ESCROW AGREEMENT**

THIS AGREEMENT made pursuant to City of Monroe Stormwater Management Ordinance, and entered into this ____ day of _____ 202__ by and among The CITY OF MONROE, a North Carolina municipal corporation, party of the first part (hereinafter referred to as "CITY") and _____ (hereinafter referred to as "Owner") and _____ (hereinafter referred to as the "Association" if applicable), parties of the second part in connection with the Stormwater Management System(s) of the _____ project located at _____

WITNESSETH:

WHEREAS, the City has adopted certain stormwater management regulations applicable to the property of the Owner located in the City of Monroe, Union County, North Carolina, and more particularly described as:

Said property was obtained by the Owner by deed recorded in Book ____, Page ____, Union County Registry and further identified as tax parcel number(s) _____ (the "Property"); and

WHEREAS, such regulations require the Owner or Association, as appropriate, to construct, continuously operate, maintain, and inspect each private on-site engineered stormwater control facility or facilities (the "Facility") located on the property to satisfy the requirements of such regulations; and

WHEREAS, the boundaries and detail of the Facility will be described in the approved construction plans and final as-built plans filed with the City; and

WHEREAS, as a condition of the development of the Property, Owner/Association is required to enter into a Stormwater Operation and Maintenance Agreement which provide for the operation, long-term maintenance, inspection, repair, and replacement/reconstruction of the Facility (such as, but not limited to, sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction) and enter into and fund a Stormwater Escrow account the funds of which are available to provide for the long-term maintenance, repair, replacement of the Facility; and

WHEREAS, the Stormwater Management Ordinance of the CITY, requires the establishment of a segregated escrow account which is used solely to fund sediment removal, structural, biological, or vegetative replacement, major repair, or reconstruction of the failing Facility and requires reimbursement of expenses incurred by the City for those maintenance, repairs, or replacement costs expended by the City pursuant to this Agreement; and

WHEREAS, prior to the Owner conveying operation and control of the Facility operation, maintenance, and repair to a Homeowner's Association or other entity (collectively hereafter the "Association"), the Owner will be required to assign this Agreement requiring the Association, or entity, to assume all rights and obligations, both operational and financial, of the Owner as set forth in this Agreement; and

WHEREAS, the Owner is developing a _____ development known as _____, and agrees to provide the CITY with the assurances and accountings required by Chapter 159 of the City Code regarding the Escrow Account required herein.

NOW, THEREFORE, for and in consideration of the premises and the approval by the City of the development activities on the Property, the Owner/Association does hereby covenant and agree with the City that the Facility shall be held, operated, maintained, and encumbered pursuant to the covenants and conditions hereinafter set forth;

1. Operation and Maintenance Plan. Owner/Association shall operate, maintain, repair, and, if necessary, reconstruct the Facility in accordance with approved as-built plans, North Carolina Department of Environmental Quality's Stormwater Design Manual, City of Monroe Standard Specifications and Detail Manual, and City of Monroe Stormwater Management Ordinance. The plan is fully incorporated herein by reference.

2. Escrow Agreement.

The Owner/Association shall establish and maintain a separate Escrow Account the funds from which may be used solely to provide for the operation, long-term maintenance, inspection, repair, and replacement/reconstruction (sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction) of the Facility, as required by the Stormwater Management Ordinance of the City and in accordance with approved construction plans and specifications, the Operation and Maintenance Agreement among the Owner, the Association, and the City, the Operation and Maintenance Manual(s), and the Permit (as set out in the plans, specifications, and permit approved by the City Engineer).

The amount of the required escrow account shall not exceed ten (10%) percent of the Stormwater control project's original cost of construction as indicated by a sealed engineer's estimate. The Owner or Association shall have a period of five (5) years from the time the Facility is accepted by the City to fully deposit the required amount in the Escrow Account. Upon acceptance of the Facility by the City, the owner shall deposit and retain in the account at least two (2%) percent of the projects original cost of construction annually for five years until fully funded. Once fully funded at ten (10%) of the engineer's estimated cost, that amount shall be retained and maintained by the Owner/Association in the segregated Escrow Account, and the Owner or Association shall annually provide the City of Monroe verification of the amount held in the escrow account. The Escrow Account required herein shall be maintained at the amount required by City Code as long as the Facility remains in place until released by the City in writing.

The Owner is responsible for all Escrow Account fund deposits required herein until such time as the Association assumes full responsibility for the requirement set out in this Agreement. The Owner shall assign (as Assignor) and the Association (as Assignee) shall assume all requirements for the operation, maintenance, control, inspection, management, and repair, including financial responsibility required in this Agreement. Once the Association has taken ownership or legal or managerial authority/control of the Facility which is the subject of this Agreement, the Association will establish or continue to maintain the Escrow Account as required herein.

3. The Escrow Account shall be held and funds disbursed only for the purpose of maintaining, repairing, or replacing the Facility as required by this Agreement and no other purpose.

4. Upon determination by an authorized City agent that the Facility is not performing adequately or as intended, or is not properly maintained in accordance with the Stormwater Management Ordinance, this Operation and Maintenance Agreement, the Operation and Maintenance Manual(s), or the Permit (as those terms are defined in the Operation and Maintenance Agreement), the Owner/Association shall make the necessary repairs as determined by the City with funds on deposit in the Escrow Account established pursuant to this Agreement or other funds of the Owner/Association at its discretion. If the City has determined that, pursuant to the Ordinance, it must take over and perform any such uncompleted operation, maintenance, inspections, repairs, and replacement/reconstruction which the Owner or Association fails to perform, the Owner or Association Agrees to reimburse the City or otherwise use the funds on deposit in the Escrow Account for such purposes. Any expense incurred by the City in excess of the amount available from the Escrow Account shall be reimbursed by the Owner or Association pursuant to Paragraph 6 below.

5. The Owner or the Association, whichever is responsible, agrees to comply with the requirement of the Ordinance that any funds drawn down from the Escrow Account shall be replaced and the account balance shall be maintained at the level required by ordinance and this Agreement by the Owner/Association.

6. In the event that this escrow agreement should fail for any reason to cover the costs of operation, maintenance, inspection, repair, and replacement/reconstruction, including any deficiency as to form or execution, then, the Owner, the Association, and their successors, transferees, or assigns, acknowledge that whichever party is deemed responsible by the City shall assume full responsibility for the costs of such maintenance and repair, and any such costs incurred by the City and unpaid by the Owner/Association shall be enforced pursuant to Paragraph 9 below.

7. **Annual Inspection Report(s).** Annually, the Owner, Association, or responsible entity shall provide an inspection report for each Facility on the Property. Inspection reports are to be completed in accordance with Section 159.401(B)4 of the City of Monroe's Stormwater Management Ordinance. A financial statement shall be provided by the Owner/Association documenting the available funding established in the Escrow Account for operation and maintenance of the stormwater control and management facilities and that statement must be included as part of the annual inspection report for

the Owner or Association. Each inspection report must be accompanied by an administrative fee. The administrative fee can be found on the City of Monroe's Fee Schedule.

8. Any notice which any party, hereto, may send to the other pertaining to this Agreement shall be in writing and shall be considered delivered when deposited in the United States mail, certified with postage prepaid. The addresses are as stated below:

If to the City:

City of Monroe
Stormwater Administrator
P.O. Box 69
Monroe, NC 28111

If to the Owner/Association:

Address registered with North Carolina Secretary of State or
Union County Tax Assessor's Office

9. Remedies for Violations of this Agreement.

a) If the Owner/Association shall fail to maintain or repair the Facility as set forth herein, or otherwise violates this Agreement, the City Stormwater Administrator may order the Owner/Association to undertake the necessary repair or maintenance or to correct such violation. If the Owner/Association shall fail to comply with such order within thirty (30) days from the date thereof, the Owner/Association shall be considered in violation of this agreement and Chapter 159 of the City of Monroe Code of Ordinances, Stormwater Management Ordinance, and will be subject to penalties as provided in section 159.502 of the City of Monroe Code of Ordinances and pursuant to the authority contained in North Carolina State Statute Chapter 160D, Local Planning and Development Regulation and 15A NCAC 2B.0258. Should the Owner/Association fail to make the required corrections within 30 days of the issuance of the civil penalty, the City may enter the Property and perform all necessary work to place the Facility in proper working condition. The full cost of performing the work including administrative costs and penalties shall be assessed as a lien on the property if unreimbursed from the Escrow Account or by the Owner/Association. Any lien shall be on all of the property or common areas owned by the Owner or Association on which the facilities are located.

b) If the City determines that the Facilities pose an immediate danger to the public health, safety, or welfare, the City will notify the Owner/Association, and with due notice, may enter the property and take whatever steps it deems necessary to return the Facility or facilities to good working order. This provision shall not be construed to allow the City to erect any structure of a permanent nature on the property. It is expressly understood and agreed that the City is under no obligation to maintain or repair the Facility or facilities and in no event shall this Agreement be construed to impose any such obligation on the City.

c) The City shall have the right to bring an action and recover sums due, damages, seek injunctive relief, and/or such other and further relief as may be just and appropriate.

d) The remedies provided by this paragraph are cumulative and are in addition to any other remedies provided by law.

e) Reference to statutes, ordinances, or regulations include all statutory, ordinance, or regulatory provisions consolidating, amending, or replacing the statute, ordinance, or regulation. References to contracts and agreements shall be deemed to include all amendments to them.

f) This agreement shall not obligate the City of Monroe to maintain or repair any structural BMPs, and the City of Monroe shall not be liable to any person for the condition or operation of structural BMPs.

10. No Waiver of Breach. In the event of a breach of any term of this Agreement, any delay or failure on the part of the City to exercise any rights, powers, or remedies herein provided, it shall not be construed as a waiver thereof or acquiescence of such breach or any future breach.

11. Amendments. This Agreement may be amended, revised or modified only by a written document signed by the parties.

12. Binding Effect. The conditions and restrictions set forth herein with regard to the Facility shall run with the land and shall bind the Owner/Association and its successors and assigns and all parties claiming by, through, or under them shall be taken to hold, agree, and covenant with the City, with its successors and assigns, and with each of them to conform to and observe said conditions and restrictions. The City shall be deemed a beneficiary of the conditions and restrictions set forth herein and such conditions and restrictions shall run with the land in favor of the City.

13. Warranties of Title. The Owner/Association covenants and warrants that it has lawfully seized and possesses the Facility and real estate described by deed recorded in Book ____, Page ____, Union County Registry, that it has good, right and lawful authority to enter into this Agreement for the purposes herein expressed, and that no consent or waiver by the holder of any mortgage, deed of trust, or other security instrument, or any other person, firm, or corporation is required prior to entering into this Agreement, or such consent has been obtained by the Owner/Association.

14. Interpretation. Use of the masculine gender herein includes the feminine and neuter, and the singular number used herein shall equally include the plural. The captions preceding the various provisions of this Agreement are for the convenience of reference only and shall not be used as an aid in interpretation or construction of this Agreement.

15. Severability. Invalidity of any one of these covenants or conditions by judgment or order of any court shall in no way affect any of the other provisions, which shall remain in full force and effect.

16. Liability Disclaimer. The Owner/Association, its officers, administrators, executors, successors, heirs, or assigns hereby indemnifies and holds harmless the City, its authorized agents and employees, for any and all damages, accidents, casualties, occurrences or claims that may arise or be asserted against the City from the construction, presence, existence or maintenance of the Facility or facilities by the Owner/Association or the City. In the event a claim is asserted against the City, its authorized agents and employees, the City shall promptly notify the Owner/Association, and the Owner/Association shall defend at its own expense any suit based on such claim. If any judgment or claims against the City, its authorized agents or employees, shall be allowed, the Owner/Association shall pay for all costs and expenses in connection herewith.

17. Right of Entry and Access Easement. Owner/Association, its officers, administrators, executors, successors, heirs, or assigns hereby grants and conveys to the City, its authorized agents and employees, the perpetual right of access and easement over, across, and upon the Property as shown on the final plat(s) to be recorded in Union County Register of Deeds or upon file with the City. The City shall be granted the right of entry to inspect, monitor, maintain, repair and reconstruct the Facility whenever the City deems necessary.

18. E-Verify Requirement. Owner/Association shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if Owner/Association utilizes a subcontractor in the performance of this Agreement, Owner/Association shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

19. Effective Date. This Stormwater Operation and Maintenance Agreement will become effective when the Facility has received a final inspection and approval by the Stormwater Administrator.

20. Recording. This Agreement shall be recorded in the Office of Register of Deeds of Union County, North Carolina and shall run with the land and be binding on successor, heirs, and assigns.

21. Governmental Function. This agreement shall not in any way diminish, limit, or restrict the right of the City of Monroe to engage in or carry out any of its governmental functions or enforce any of its ordinances as authorized by law.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this the day and year first above written.

{SIGNATURES APPEAR ON THE FOLLOWING PAGES.}

ATTEST:

OWNERS/COMPANYS NAME

NAME AND TITLE

By: _____
NAME AND TITLE

(Corporate Seal)

HOMEOWNERS' ASSOCIATION

By: _____
NAME AND TITLE

CITY OF MONROE

William Mark Watson, City Manager

ATTEST:

Bridgette H. Robinson, City Clerk

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public in and for said County and State, do hereby
certify that _____ personally appeared before me this day and acknowledged
that he/she is the _____ of _____, a North Carolina _____
company, and that he/she, as _____, being duly authorized to do so, executed
the foregoing instrument on behalf of the company.

Witness my hand and official seal this _____ day of _____, 20____.

Notary Public

(OFFICIAL SEAL)

My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF UNION

I, _____, a notary public in and for said county and state, certify that Bridgette H. Robinson personally appeared before me this day, stated that she is the City Clerk of the City of Monroe, a North Carolina municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract was signed in its corporate name by its City Manager, sealed with its corporate seal, and attested by herself as its said City Clerk.

This the _____ day of _____, 20____.

Notary Public

(OFFICIAL SEAL)

My Commission Expires:

APPROVED AS TO FORM:

City Attorney

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public in and for said County and State, do hereby certify that _____ personally appeared before me this day and acknowledged that he/she is the _____ of _____ Association, and that he/she, as _____, being duly authorized to do so, executed the foregoing instrument on behalf of the company.

Witness my hand and official seal this _____ day of _____, 20____.

Notary Public

(OFFICIAL SEAL)

My Commission Expires: _____



STAFF REPORT

TO: Public Enterprise Committee
VIA: William M. Watson, City Manager
DATE: January 7, 2024
FROM: Robert Miller, Director of Energy Services
PREPARED BY: Scott Cureton, Energy Services Substation Engineer
SUBJECT: Award of bid for Hal-Coan Substation Protective Relay Panel Replacement Contract

SUMMARY STATEMENT

Energy Services staff requests the Public Enterprise Committee to consider approving a contract for Booth and Associates to provide services for the installation, programming, and commissioning of new protective relay panels and communications equipment at the Hal Coan substation.

REVIEW

The Energy Services department advertised a Request for Proposals (RFP) in July 2024 to perform the installation of modernized protective relay panels at our Hal-Coan substation. On September 2024, the City of Monroe Energy Services Department received bids from four (4) responders. The review of the bids received concluded that Booth and Associates is the recommended contractor. While two (2) other bidders were lower, the proposals were incomplete and the cost to supplement the omitted services exceeds the total cost from Booth.

The contract is for the installation, programming, and commissioning of new relay panels that provide protection and modernized data-gathering capabilities for the Hal-Coan Substation transformers. The services will be provided over a two (2) month construction timeline with a planned start date on March 2025. There are sufficient funds budgeted to contract the services.

RECOMMENDATION

Energy Services Staff recommends that the Public Enterprise Committee approve sending this request to City Council for consideration and approval of a contract for Booth and Associates in the amount of \$224,000.00 to provide services for the installation, programming, and

commissioning of new protective relay panels and communications equipment at the Hal-Coan substation. Energy Services staff also requests the City Council authorizes the City Manager to execute the contract. Staff requests that this item is placed on the City Council consent agenda.

Attachment(s):

Hal-Coan Relay Panel Replacement Bid Summary

	Vendor Bid	Does Bid Have Exceptions?	Specific Exceptions	Estimated Time Frame?	Cost to Cover Omitted Services	Total Cost	anticipated additional project hours by COM Staff
Booth	\$ 224,000	Yes	Old Panel Removal	March 31- April 23	\$ -	\$ 224,000	9 hrs (pull old panels)
SEL	\$ 141,410	Yes	Drawing Package/ SCADA Programming	March 31 - April 14	\$ 140,500.00	\$ 281,910	200 hours (5 weeks)
Rocky River	\$ 150,000	Yes	Drawing Package/RTAC/ Commissioning	March 31- May 2	\$ 141,936.55	\$ 291,937	200 hours (5 weeks)
RMS	\$ 265,358	Yes	Drawing Package	Not Provided	\$ 100,000.00	\$ 365,358	200 hours (5 weeks)



STAFF REPORT

TO: Public Enterprise Committee

VIA: William M. Watson, City Manager

DATE: January 7, 2025

FROM: Scott Clark, Water Resources Director

PREPARED BY: Richard Riser, Water Resources Engineering and Construction Manager

SUBJECT: Contract Change Order – Sanitary Sewer Evaluation Study to Reduce Inflow and Infiltration

SUMMARY STATEMENT

Public Enterprise Committee is requested to consider a contract change order to continue sewer flow monitoring and data analysis in an effort to locate and reduce the amount of Inflow and Infiltration (I&I) impacting the City of Monroe sewer system and wastewater treatment plant.

REVIEW

The City of Monroe is experiencing significant increased wastewater flows in the sanitary sewer system during rain events. The increased flow is attributed to rainwater I&I entering the sanitary sewer system. The I&I is overloading the sewer system and wastewater treatment plant. In an effort to locate and eliminate sources of I&I, the City of Monroe entered into a contract with CHA Consulting, Inc. to perform sewer system evaluation in an attempt to locate sources of I&I. As part of the CHA contract the primary effort that CHA has undertaken is installation of nine (9) sewer flow meters that belong to the City of Monroe, referred to as permanent meters. CHA has also installed thirty-five (35) sewer flow meters that are rented, referred to as temporary meters. They have also reviewed data from these meters in order to locate unusual flows during rain events and wet periods. These meters were installed across a broad area of the sewer system as a first step to attempt to isolate I&I sources. This change order will provide for additional in depth sub-basin monitoring by relocation of temporary meters to divide basins into smaller components in the effort of I&I sources. This change order will allow for the evaluation efforts to continue through the remainder of FY25.

Budgeted funds are currently available for this project.

RECOMMENDATION

It is the recommendation of Staff that Public Enterprise Committee take the following action:

Staff recommends a motion to approve the contract change order in the amount of \$225,000.00, authorization for the City Manager to execute the necessary documents and send to Council for approval on the January 14 consent agenda.



CITY OF MONROE
NORTH CAROLINA

CHANGE ORDER

CHANGE ORDER NUMBER: 1

DATE: 12-12-24

PROJECT: Sanitary Sewer Evaluation Study to Reduce Inflow and Infiltration (I&I)

PROJECT NUMBER: 24-100

CONTRACT NUMBER: 12501

CONTRACTOR: CHA Consulting, Inc.

ADDRESS: 6592 Bob White Trail, Stanley, NC 28164

THE CONTRACTOR IS HEREBY AUTHORIZED AND REQUESTED TO MAKE THE FOLLOWING CHANGES TO THE ABOVE DESCRIBED CONTRACT:

ORIGINAL CONTRACT AMOUNT \$ 195,000.00

Contingency Included in Contract	\$ <u>0</u>	
Contingency Deduct	\$ <u>0</u>	(cumulative)
Remaining Contingency	\$ <u>0</u>	

NET CHANGE BY PREVIOUS CHANGE ORDER \$ 0.00

CONTRACT TOTAL PRIOR TO THIS CHANGE ORDER \$ 195,000.00

AMOUNT OF THIS CHANGE ORDER \$ 225,000.00

REVISED CONTRACT TOTAL INCLUDING THIS CHANGE ORDER \$ 420,000.00

CHANGE ORDER INCLUDES THE FOLLOWING WORK TO BE PERFORMED:

In an effort to locate I&I sources the City of Monroe entered into a contract with CHA. As part of the contract the primary effort that CHA has undertaken to date is installation and monitoring of nine (9) sewer flow meters that belong to the City of Monroe, referred to as permanent meters. CHA has also installed thirty-five (35) sewer flow meters that are rented, referred to as temporary

meters. These meters were installed across a broad area of the sewer system as a first step to attempt to isolate I&I sources. This change order will provide for additional in depth sub-basin monitoring by relocation of temporary meters to divide basins into smaller components in the effort to find I&I sources.

RECOMMENDED:

BY: _____
Contractor

DATE: _____

BY: _____
City Project Manager

DATE: _____

BY: _____
Department Head

DATE: _____

APPROVED:

BY: _____
City Manager

DATE: _____

**This instrument has been pre-audited in the manner required
by the Local Government Budget and Fiscal Control Act.**

Signature: _____
Finance Officer

Date: _____



STAFF REPORT

TO: Public Enterprise Committee
VIA: William M. Watson, City Manager
DATE: January 7, 2024
FROM: Robert Miller, Director of Energy Services
PREPARED BY: Darwin De Los Santos, Energy Services General Manager of Engineering
SUBJECT: Adoption of new Pole Attachment Agreement for Energy Services.

SUMMARY STATEMENT

Energy Services staff requests the Public Enterprise Committee consider approving the new version of the pole Energy Services attachment agreement. This agreement will govern the terms and conditions for joint pole use between the City of Monroe Energy Services department and Third Party Attaching Entities.

REVIEW

The Federal Communications Commission (FCC) regulates pole attachments through the Pole Attachment Act of 1978. Through this act the FCC requires utilities to provide nondiscriminatory access to their poles to telecommunications carriers and cable television systems. In September 2024, the Energy Services department engaged with Entrust Solutions Group to create a new pole attachment agreement for the Energy Services department. The new agreement was aimed at clarifying the responsibilities, privileges, and cost distribution for the Utility and Third Party Attaching Entities.

RECOMMENDATION

Energy Services Staff recommends that the Public Enterprise Committee approve sending the Energy Services Pole Attachment Agreement to City Council for approval. Energy Services staff also request City Council authorizes the City Manager to execute future agreements within the authority of the position. Staff requests that this item is placed on the City Council consent agenda.

Attachment(s):

City of Monroe – Energy Services Joint Use Agreement

WIRELESS POLE ATTACHMENT RIDER LICENSE AGREEMENT

BETWEEN



CITY OF MONROE, NC

AND

DATED: _____

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WIRELESS POLE ATTACHMENT RIDER LICENSE AGREEMENT

This Wireless Rider to the Pole Attachment Licensing Agreement (“Rider”) is dated as of _____, 202_ (the “Effective Date”) and is attached to and made a part of the Pole Attachment Licensing Agreement, dated as of _____, 202__ (the “Agreement”) between the City of Monroe, North Carolina acting through its municipally owned electric utility (“Utility”), and _____, (“Licensee”), a Communications Provider. Utility and Licensee may be referred to hereafter individually as a “Party” and collectively as the “Parties.” .

Recitals

Whereas, the City of Monroe owns and operate municipally-owned electric utility (“Utility”) that performs the essential public services of distributing electric power and providing streetlighting to the citizens, businesses and institutions of the City of Monroe, North Carolina; and

Whereas, Utility is responsible for safeguarding the integrity, safety, and reliability of its electric and streetlighting system and services, and obtaining fair compensation for the use of its infrastructure through collection of fees and other charges; and

Whereas, Utility’s Streetlight Poles were structurally designed for a specific single purpose and often have limited capacity to accommodate access and use by others for attachments to provide Wireless Communications Services; and

Whereas, the Parties previously entered into a Pole Attachment Licensing Agreement (“Agreement”) authorizing Licensee to obtain permits to install wireline Communications Facilities on to Utility’s electric distribution poles; and

Whereas, Licensee now proposes to install, maintain, and operate, Wireless Communications Facilities and associated equipment on Utility’s Streetlight Poles or Wireless Mono Poles installed by Utility; and

Whereas, Utility is willing, when it may lawfully do so, to issue Permits authorizing the placement or installation of Licensee’s Wireless Attachments on Utility’s Streetlight Poles and/or Wireless Mono Poles, provided that Utility, may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient capacity or for reasons relating to safety, reliability, generally applicable engineering purposes, and/or any other Applicable Standards.

RIDER AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Rider, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Utility and Licensee do hereby agree as follows.

Article 1—Definitions

For the purposes of this Rider, capitalized words and phrases shall have the meanings set forth in the Pole Attachment License Agreement, unless more specifically defined herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 Applicable Standards:** means all applicable engineering and safety standards governing the installation, maintenance and operation of Wireless Communications Facilities and the performance of all work in or around electric Utility Streetlight and other Utility Facilities and includes the most current versions of National Electrical Safety Code (“NESC”), the National Electrical Code (“NEC”), the regulations of the Occupational Safety and Health Administration (“OSHA”), North Carolina Occupational Safety and Health Administration (“NCOSHA”), North Carolina Administrative Code (“NCAC”), as well as the engineering and safety standards established by Utility, each of which is incorporated by reference in this Agreement, and/or other reasonable Utility provided safety and engineering requirements or other federal, state or local governmental entity with jurisdiction over Wireless Communications Facilities or Utility Facilities.
- 1.2 Assigned Space:** means space on Utility Streetlight Poles or Mono Poles that can be used, as defined by the Applicable Standards, for the attachment or placement of Wireless Communications Facilities and associated wireless equipment for the provision of Wireless Communications Service.
- 1.3 Attaching Entity:** means any public or private entity, including Licensee, which, pursuant to an agreement with the Utility, places a Wireless Attachment on the Utility’s Poles to provide Wireless Communications Service.
- 1.4 Attachment:** means Wireless Communications Facilities that are placed directly on or within Utility Streetlight Poles or Mono Poles, including, but not limited to radios, antennae, and associated cables and hardware shall be considered.

- 1.5 **Capacity:** means the ability of a Streetlight Pole or Mono Pole to accommodate a Attachment based on Applicable Standards, including space and loading considerations.
- 1.6 **Make-Ready Work:** means all work, as reasonably determined by Utility, required to accommodate Licensee's Wireless Communications Facilities on Utility's Streetlight Pole(s) and/or to comply with all Applicable Standards. Such work includes, but is not limited to, Pre-Construction Survey, rearrangement and/or transfer of Utility Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes) or Pole replacement and construction. Make-Ready Work shall also include the construction and installation of a new Mono Pole for Licensee's Wireless Communications Facilities.
- 1.7 **Permit:** means written or electronic authorization (see Appendix C – Application for Permit, in the associated Pole Attachment License Agreement) of Utility for Licensee to make or maintain Attachments to specific Utility Streetlight Poles or Mono Pole s pursuant to the requirements of this Agreement.
- 1.8 **Pole:** means either a Streetlight Pole or Wireless Mono Pole, owned or controlled by Utility. For purposes of this Rider, unless otherwise agreed by Utility this term shall not include Utility electric distribution or transmission poles or towers, or water towers.
- 1.9 **Streetlight Poles:** means a Pole structure owned and/or controlled by Utility the primary function of which is to support equipment used to provide overnight streetlight service or all-night area light service and which is capable of supporting a Wireless Communication Facility Attachment.
- 1.10 **Utility Facilities:** means all personal property and real property owned or controlled by the Utility, including but not limited to, Streetlight Poles, Wireless Communications Mono Poles, and associated equipment.
- 1.11 **Wireless Communications Mono Poles or Mono Poles:** means self-supporting poles constructed, installed, and owned by Utility for the purpose of supporting Wireless Communications Facilities.
- 1.12 **Wireless Communication Facility or Wireless Facility:** means a facility or Facilities owned and/or controlled by Licensee that are intended to be used for the provision of Wireless Communication Service, including but not limited to antennas, remote radio heads, transmitters, transceivers, and associated Equipment. Wireline Facilities used for backhaul are not Wireless Communication Facilities, nor are mid-span wireless installations.
- 1.13 **Wireless Communications Service:** means the means the wireless transmission or receipt of fixed or mobile Communications Services using Wireless Communications Facilities.

- 1.14 **Wireline Attachment License Agreement:** means either the associated Pole Attachment License Agreement or Joint Use Attachment License Agreement, whichever applies.

Article 2—Scope of Rider Agreement

- 2.1 **Grant of License.** Subject to the provisions of this Rider and the Wireline Attachment License Agreement, the Utility hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain permitted Attachments to Utility Streetlight Poles and/or Wireless Communications Mono Poles (collectively referred to as Poles).
- 2.2 **Parties Bound by Rider.** Licensee and the Utility agree to be bound by all provisions of this Rider to the Wireline Attachment License Agreement. The Wireline Attachment License Agreement is hereby incorporated in full to this Rider except to the extent that this Rider contains additional provisions specifically applicable to Attachments of Licensee's Wireless Communications Facilities to Utility's Streetlight Poles and/or Wireless Mono Poles.
- 2.3 **Permit Issuance Conditions.** The Utility will issue a Permit(s) to Licensee only when the Utility determines, in its sole judgment, which shall not be unreasonable withheld, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.
- 2.3.1 The above notwithstanding, Utility shall not deny Licensee access to a specific Pole for reasons of insufficient capacity, safety, reliability, or generally applicable engineering purposes, if the basis for the denial may be remedied by rearranging Facilities on the Pole through reasonable Make-Ready Work.
- 2.5 **No Interest in Property.** No use, however lengthy, of any Utility Streetlight Poles or Wireless Mono Poles, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any ownership or property right of any nature in any portion of such Utility Poles. Neither this Rider, nor any Permit granted under this Rider, shall constitute an assignment of any of Utility's rights to Streetlight Poles or Wireless Mono Poles. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.
- 2.6 **Licensee's Right to Attach.** Unless otherwise specified in this Agreement, Licensee must have a Permit issued pursuant to Article 6 – Permit Application Procedures, in the associated Wireline Attachment License Agreement, prior to attaching Licensee's Wireless Communications Facilities to any specific Streetlight Poles or Wireless Mono Poles.

- 2.7 Utility's Rights over Poles.** The Parties agree that, except as specifically agreed for Wireless Communications Mono Poles, this Agreement does not in any way limit the Utility's right to locate, operate, maintain or remove its Streetlight Poles in the manner that will best enable it to fulfill its service requirements.
- 2.8 Expansion of Capacity.** The Utility will take reasonable steps, at Licensee's sole expense, to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require the Utility to install, retain, extend or maintain any Streetlight Pole for use when such Pole is not needed for the Utility's service requirements. The above notwithstanding, if Utility agrees hereunder to construct and install a new Wireless Communications Mono Pole for Licensee's Wireless Communications Facilities, Licensee shall have on-going rights to maintain such Wireless Communications Facilities on the associated Mono Poles in accordance with this Rider and Applicable Law for the term of this Rider.
- 2.9 No Wireless Attachments to Electric Poles.** This Rider does not contemplate or authorize the attachment of Wireless Facilities to Utility's electric distributions Poles, irrespective of whether such Poles may have streetlight Facilities attached to them.
- 2.10 Other Agreements.** Except as provided herein and the associated Agreement, nothing in this Rider shall limit, restrict, or prohibit the Utility from fulfilling any agreement or arrangement regarding access to Streetlight Poles or Wireless Mono Poles into which the Utility has previously entered, or may enter in the future, with others not party to this Rider.
- 2.11 Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals stated above and no other use shall be allowed without the Utility's express written consent to such use. Nothing in this Agreement shall be construed to require the Utility to allow Licensee to use Utility Streetlight Poles or Mono Poles after the termination of this Agreement, subject to the provisions of Article 11 – Removal of Licensee's Facilities and Article 23 – Termination of Agreement, in the associated Wireline Attachment License Agreement.
- 2.12 Electric Power.** To the extent Licensee requires electric service for its Wireless Communications Facilities, it shall obtain such power pursuant to the applicable standard process for obtaining electric service.

Article 3—Fees and Charges

- 3.1 Payment of Fees and Charges.** Licensee shall pay to the Utility the fees and charges specified in Appendix A – Fees and Charges, in the associated Wireline Attachment License Agreement, and shall comply with the terms and conditions specified herein.

- 3.2 **Agreement Payment Terms and Conditions Applicable.** Unless otherwise specified herein the terms and conditions applicable to payments under the Wireline Attachment License Agreement shall apply to all fees and charges owed and payable under this Rider.

Article 4—Specifications

- 4.1 **Installation.** Licensee's Wireless Communications Facilities shall be installed and maintained in accordance with the requirements, specifications, and conditions of Applicable Standards.
- 4.2 **Maintenance of Facilities.** Licensee shall, at its own expense, make and maintain its Attachment(s) in safe condition and good repair, in accordance with all Applicable Standards. Licensee shall not be required to update or upgrade its Attachments if they met Applicable Standards and Pole Attachment Permit conditions at the time they were made, unless such updates or upgrades are required by any revised Applicable Standard.
- 4.3 **Minimal Disruption.** Licensee shall coordinate construction and maintenance of its Wireless Communications Facilities with all other City of Monroe agencies or departments having Facilities on or in the vicinity of the impacted Poles to minimize unnecessary disruption. Prior to commencing construction, installation or maintenance activities Licensee shall acquire all necessary permits from City.
- 4.4 **Tagging.** Licensee shall place distinct markers on Wireless Communications Facilities, coded by color or other means specified by Utility, that will readily identify the owner of the Attachment and all of its Attachments to Utility Streetlight Poles and/or Wireless Mono Poles.
- 4.5 **Interference.** Licensee shall not allow its Wireless Communications Facilities to impair the ability of the Utility or City to use Streetlight Poles, or otherwise interfere with the operations of Utility or City Facilities, or with the Facilities of other Attaching Entities.
- 4.6 **Power Down.** In order to protect the safety of Utility workers and contractors working on or around Streetlight Poles, Licensee shall implement a process, subject to the Utility's prior review and approval, through which Wireless Communications Facility emissions may temporarily be reduced or turned off by the Utility or its authorized contractors, through means accessible by Utility's authorized and qualified employees and/or contractors.
- 4.7 **Restoration of Utility Service.** The Utility's service restoration requirements shall take precedence over any and all work operations of Licensee on Poles.
- 4.8 **Failure to Exercise Attachment Rights.** If Licensee does not diligently exercise any construction or installation rights to particular Streetlight Poles granted pursuant to applicable Pole Attachment Permits within one hundred twenty (120) calendar days of the effective date of such Permits (unless such time period is extended in writing), the Utility may, but shall have no obligation to, use the space on such Poles for its own needs,

make the space available to other entities, or allow use the space for other purposes. If an authorized Wireless Communications Facility at a particular location is not activated and used for its intended use within twelve (12) months, (365 calendar days) from the date of Pole Attachment Permit issuance, the applicable permit(s) shall terminate, and no refunds for Permit Application Fees or Attachment Fees will be issued.

Article 5—Term of Agreement

- 5.1 This Rider shall become effective upon its execution and, unless otherwise mutually agreed in writing, if not terminated in accordance with other provisions of this Rider or the associated Wireline Attachment License Agreement, shall be coterminous with the Term of the Wireline Attachment License Agreement unless Agreement and any renewals thereof.

Article 6— Wireless Streetlight Pole Attachment Permit Issuance, Make-Ready Work, and Installation Process

- 6.1 Unless otherwise mutually agreed in writing, in making Wireless Streetlight Pole Attachments the Parties shall follow and apply the permitting, Make-Ready Work, and installation processes, terms and conditions set forth in the Wireline Attachment License Agreement.
- 6.2 If a suitable Streetlight Pole is not available to accommodate Licensee's Wireless Communications Facilities, the Licensee may request and Utility shall reasonably consider the construction and installation of a new Wireless Mono Pole. Utility shall own and construct such Wireless Mono Poles and permit Licensee to install its Wireless Communications Facilities on such Streetlight Poles. This Rider shall become effective upon its execution and, unless otherwise mutually agreed, if not terminated in accordance with other provisions of this Rider or the associated Wireline Attachment License Agreement, shall be coterminous with the Term of the Wireline Attachment License Agreement.

Article 7— All Other Provisions Pole Attachment Agreement Incorporated

Unless otherwise mutually agreed in writing, all other provisions of the in Wireline Attachment License Agreement that are not specifically contradicted herein, shall be applicable to both Parties under this Rider, with respect to the installation and operation of Licensee's Wireless Communications Facilities, including but not limited to all insurance, indemnification, default, and termination provisions.

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

LICENSOR

THE UTILITY

CITY OF MONROE

By: _____
Mark Watson, City Manager

[CITY SEAL]

Attest:

Bridgette H. Robinson, City Clerk

LICENSEE

Name _____

BY: _____

Title: _____

STATE OF _____

: ss

County of _____

I, the undersigned, a Notary Public in and for the State of _____, hereby certify that on the _____ day of _____, 202____, personally appeared before me [NAME] _____, [TITLE] _____ to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he/she signed and sealed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

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

Notary Public in and for the
State of _____, residing at
_____, _____

POLE ATTACHMENT LICENSE AGREEMENT

BETWEEN



CITY OF MONROE, NC

AND

DATED: _____

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POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment Licensing Agreement (the “Agreement”) dated this ____ day of _____, 202 ____ is made by and between City of Monroe, North Carolina (hereinafter referred to as “Utility”), a municipally owned electric utility located in Monroe , North Carolina, and _____, having its principal place of business at _____ , (hereinafter referred to as “Licensee”)

Recitals

- A. Whereas, Licensee proposes to install and maintain Communications Facilities and associated communications equipment on Utility Poles to provide Communications Services to the public; and
- B. Whereas, the Utility is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee’s Attachments on Utility Poles, provided that the Utility may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally applicable engineering purposes and/or any other Applicable Standard; and
- C. On _____, 20____, Utility and Licensee entered into a Pole Attachment License Agreement; and
- D. By registered letter dated _____, Utility gave notice to Licensee that Utility / Licenser was terminating said Agreement effective _____; and
- E. The parties intend that this agreement replace said Agreement on its termination; and
- F. 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

Article 1—Definitions

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

- 1.1 **Affiliate**: when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
- 1.2 **Applicable Standards**: means all applicable engineering and safety standards governing the installation, maintenance and operation of Facilities and the performance of all work in or around electric Utility Facilities and includes the most current versions of National Electrical Safety Code (“NESC”), the National Electrical Code (“NEC”), the regulations of the Occupational Safety and Health Administration (“OSHA”), North Carolina Occupational Safety and Health Administration (“NCOSHA”), North Carolina Administrative Code (“NCAC”), as well as the engineering and safety standards established by the Utility, each of which is incorporated by reference in this Agreement, and/or other reasonable Utility provided safety and engineering requirements or other federal, state or local governmental entity with jurisdiction over Utility Facilities.
- 1.3 **Assigned Space**: means space on Utility Poles that can be used, as defined by the Applicable Standards, for the attachment or placement of wires, cables and associated equipment for the provision of Communications Service or electric service. The neutral zone or safety space is not considered Assigned Space.
- 1.4 **Attaching Entity**: means any public or private entity, other than the Utility or Licensee, which, pursuant to a license agreement with the Utility, places an Attachment on the Utility’s Pole to provide Communications Service.
- 1.5 **Attachment**: shall be considered as any cable/messenger of the Licensee, regardless of its purpose or type, which contacts a Utility Pole, but does not include a Riser, Overlash, Anchor, or support and safety attachments attached to a single Pole where Licensee has an existing Attachment on such Pole. Unless otherwise specified each Attachment is assumed to occupy one foot of vertical space on a Pole and provides for one point of contact. Service Drops shall be considered Attachments but shall not be subject to separate permitting or Attachment Fees except as specified in Paragraph 6.1.

- 1.6 **Capacity:** means the ability of a Pole to accommodate an Attachment based on Applicable Standards, including space and loading considerations.
- 1.7 **Climbing Space:** means that portion of a Pole’s surface and surrounding space that is free from encumbrances to enable Utility employees and contractors to climb, access and work on Utility Facilities and equipment safely.
- 1.8 **Common Space:** means space on Utility Poles that is not used for the placement of wires or cables but which jointly benefits all users of the Poles by supporting the underlying structure and/or providing safety clearance between attaching entities and electric Utility Facilities.
- 1.9 **Communications Facilities:** means wire or cable Facilities including but not limited to fiber optic, copper and/or coaxial cables or wires utilized to provide Communications Service including any and all associated equipment. Unless otherwise specified by the parties, the term “Communications Facilities” does not include Pole mounted wireless antennas, receivers or transceivers. Strand-mounted Micro Wireless Facilities that do not restrict climbing space shall be considered Communications Facilities, and authorized as specified below in 1.19.
- 1.10 **Communications Make Ready Work:** means Make-Ready Work required to be performed on a Pole within the Communications Space to rearrange or relocate existing Communications Facilities or otherwise accommodate new Attachments within the Communications Space. As a general matter unless otherwise specified, Communications Make-Ready Work shall be performed by or on behalf of the entity that owns the Communications Facilities being rearranged or relocated and shall not be performed by Utility.
- 1.11 **Communications Service:** means the transmission or receipt of voice, video, data, Internet or other forms of digital or analog signals over Communications Facilities.
- 1.12 **Communications Space:** means the Assigned Space on the Pole where Communications Facilities can be attached to a Pole below the electric and safety space in accordance with Applicable Standards.
- 1.13 **Electric Space:** means the Assigned Space on the Pole where Utility Electric Facilities can be attached to a Pole above the Communications Space and safety space in accordance with Applicable Standards.
- 1.14 **Emergency:** means a situation exists which, in the reasonable discretion of Utility or Licensee, if not remedied immediately, poses an imminent threat to public health, life, or safety, damage to property or a service outage.

- 1.15 Force Majeure Event:** means an event constituting or arising from any substantial and extraordinary cause beyond a Party's reasonable control, including, without limitation, acts of war, acts of God, earthquake, hurricanes, embargo, riot, sabotage, strikes, governmental act, insurrections, epidemics, quarantines, terrorist activity, extraordinarily severe or prolonged flooding, extraordinarily severe or prolonged ice and snow storms, extraordinarily severe and widespread fire or other similar casualty, or other substantial and extraordinary accidents not caused by the Party asserting such Force Majeure Event, or strikes, or utility company delays not resulting from the responsible Party's or such Party's subcontractor's failure to timely take necessary actions.
- 1.16 Imposition Cost:** means all costs, including but not limited to the cost of materials and equipment, fully loaded direct and indirect labor, engineering, supervision and over-head, associated with performance by Utility of required tasks that Licensee failed to undertake in a timely manner as specified in this Agreement, plus an additional twenty percent (20%).
- 1.17 Licensee:** means _____, its authorized successors and assignees.
- 1.18 Make-Ready Work:** means all work, as reasonably determined by the Utility, required to accommodate Licensee's Communications Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, Pre-Construction Survey, rearrangement and/or transfer of Utility Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes) or Pole replacement and construction.
- 1.19 Micro Wireless Facility:** means a small strand-mounted wireless facility that is installed on an existing authorized Attachment of Licensee and is not larger than 24 inches in length, 15 inches in width, and 12 inches in height and that has no exterior antenna longer than 11 inches.
- 1.20 Occupancy:** means the use or specific reservation of Assigned Space for Attachments on a Utility Pole.
- 1.21 Overlash:** means to place an additional wire or cable Communications Facility onto an existing Attachment owned by Licensee. Overlash shall not be counted as a separate Attachment for purposes of calculating annual Pole Attachment Fees.
- 1.22 Pedestals/Vaults/Enclosures:** means above- or below-ground housings that are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices and/or provide a service connection point and that shall not be attached to Utility Poles (see APPENDIX D—Specifications for Licensee's Attachments to The Utility Poles).

- 1.23 **Permit**: means written or electronic authorization (see APPENDIX C—Application for Permit) of the Utility for Licensee to make or maintain Attachments to specific Utility Poles pursuant to the requirements of this Agreement.
- 1.24 **Pole**: means a Pole owned by the Utility used for the distribution of electricity and/or Communications Service that is capable of supporting Attachments for Communications Facilities.
- 1.25 **Post-Construction Inspection**: means the inspection required by the Utility to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Permit.
- 1.26 **Pre-Construction Survey**: means all work or operations required by Applicable Standards and/or the Utility to determine the potential Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole. Such work includes, but is not limited to, field inspection. The Pre-Construction Survey shall be coordinated with the Utility and include Licensee's representative.
- 1.27 **Reserved Capacity**: means capacity or space on a Pole that the Utility has identified and reserved for its own Utility requirements pursuant to a reasonable projected need or business plan.
- 1.28 **Riser**: means metallic or plastic encasement materials placed vertically on the Pole to guide and protect communications wires and cables.
- 1.29 **Service Drop**: means a non-guyed communications cable that extends to a Licensee customer's location from a mainline distribution network Pole where Licensee has a Permit for an authorized Attachment. A Service Drop may attach to one or more drop/lift Poles but may not be attached to more than one mainline distribution Pole.
- 1.30 **Tag**: means to place distinct markers for wires, cables and risers coded by means specified by the Utility and applicable federal, state or local regulations, that will readily identify its owner and cable type and be legible from the ground.
- 1.31 **Utility Facilities**: means all personal property and real property owned or controlled by the Utility, including but not limited to, Poles and anchors.
- 1.32 **Utility Make-Ready Work**: means Make-Ready Work required to performed on a Pole within safety space or Electric Space to rearrange or relocate existing Utility Electric Facilities or otherwise accommodate new Attachments. Unless otherwise specifically authorized by Utility all Utility Make-Ready Work shall be performed by Utility or its approved contractors and shall not be performed by Licensee or its contractors.
- 1.33 **Wireless Facility**: means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i)

equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment regardless of technological configuration. Wireless Facilities does not include fibers or cables installed to provide backhaul for wireless communications services.

Article 2—Scope of Agreement

2.1 Grant of License. Subject to the provisions of this Agreement, the Utility hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain permitted Attachments to Utility Poles. This Agreement applies only to Utility electric distribution poles and shall not apply to transmission structures or poles with voltages in excess of 35kV.

2.2 Parties Bound by Agreement. Licensee and the Utility agree to be bound by all provisions of this Agreement.

2.3 Permit Issuance Conditions. The Utility will issue a Permit(s) to Licensee only when the Utility determines, in its sole judgment, which shall not be unreasonable withheld, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.

2.3.1 The above notwithstanding, Utility shall not deny Licensee access to a specific Pole for reasons of insufficient capacity, safety, reliability, or generally applicable engineering purposes, if the basis for the denial may be remedied by rearranging Facilities on the Pole through reasonable Make-Ready Work.

2.4 Reserved Capacity. Access to Assigned Space on Utility Poles will be made available to Licensee with the understanding that certain Poles may be subject to Reserved Capacity for future Utility service use. At the time of Permit issuance, Utility shall notify Licensee if Capacity on particular Poles is being reserved for future electric or other Utility use. Utility may reclaim such Reserved Capacity for Utility's future utility service by giving Licensee at least sixty (60) calendar days prior notice at any time following the installation of Licensee's Attachment. Utility shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity so that Licensee can maintain its Attachment on the affected Pole(s). If Licensee selects neither option, Utility may remove Licensee's Attachment(s) without liability to Licensee and charge Licensee the Imposition Cost expense for completing such work.

2.5 No Interest in Property. No use, however lengthy, of any Utility Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion

of Utility Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of the Utility's rights to Utility Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.

- 2.6 Licensee's Right to Attach.** Unless otherwise specified in this Agreement, Licensee must have a Permit issued pursuant to Article 6—Permit Application Procedures, prior to attaching Licensee's Communications Facilities to any specific Pole.
- 2.7 Utility's Rights over Poles.** The Parties agree that this Agreement does not in any way limit the Utility's right to locate, operate, maintain or remove its Poles in the manner that will best enable it to fulfill its service requirements.
- 2.8 Expansion of Capacity.** The Utility will take reasonable steps, at Licensee's sole expense, to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require the Utility to install, retain, extend or maintain any Pole for use when such Pole is not needed for the Utility's service requirements.
- 2.9 No Wireless Attachments.** This Agreement does not contemplate or authorize the attachment of Wireless Facilities to Utility's Poles other than strand-mounted Micro Wireless Facilities. The installation of Wireless Facilities shall only be allowed pursuant to a separately negotiated wireless pole attachment agreement or rider/amendment hereto.
- 2.10 Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit the Utility from fulfilling any agreement or arrangement regarding Poles into which the Utility has previously entered, or may enter in the future, with others not party to this Agreement.
- 2.11 Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals stated above and no other use shall be allowed without the Utility's express written consent to such use. Nothing in this Agreement shall be construed to require the Utility to allow Licensee to use Utility Poles after the termination of this Agreement, subject to the provisions of Article 11—Removal of Licensee's Facilities and Article 23—Termination of Agreement, of this Agreement.
- 2.12 Electric Power.** To the extent Licensee requires electric service for its Communications Facilities, it shall obtain such power pursuant to the applicable standard process for obtaining electric service.
- 2.13 Enclosures.** Licensee shall not place Pedestals, Vaults and/or other Enclosures on or within five (5) feet of any Pole or other Utility Facilities without the Utility's prior written permission. If permission is granted to place a Pedestal, Vault and/or other Enclosure within five (5) feet of a Utility Pole, all such installations shall be per the

Specifications in APPENDIX D—Specifications for Licensee’s Attachments to The Utility Poles, of this Agreement. Such permission shall not be unreasonably withheld. If the Utility installs or relocates Utility Facilities within five (5) feet from Licensee’s existing Pedestal, vault, and/or enclosure, Licensee shall not be in violation per Paragraph 4.5 of this Agreement. However, the Utility reserves the right to request the Licensee relocate its enclosure within sixty (60) calendar days at the Utility’s sole expense.

Article 3—Fees and Charges

- 3.1 Payment of Fees and Charges.** Licensee shall pay to the Utility the fees and charges specified in Appendix A and shall comply with the terms and conditions specified herein.
- 3.2 Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from the Utility pursuant to this Agreement within thirty (30) calendar days of the billing date of the invoice.
- 3.2.1 Disputed Invoice.** If Licensee pays any amount under protest or dispute, Licensee shall make full payment consistent with the above proscribed timeframe and shall designate payment as “PAID UNDER PROTEST.” Licensee shall provide Utility with a written notice and explanation as to the disputed portion of the invoice. Failure to contest or otherwise dispute an invoice within ninety (90) calendar days of receipt shall be deemed to be acceptance by the Licensee.
- 3.3 Billing of Attachment Fee.** The Utility shall invoice Licensee in advance for the per-Pole Attachment fee annually. The Utility will submit to Licensee an invoice for the annual rental period on or about July 1 of each year. The initial rental period shall commence on _____, _____, 20____ and conclude on June 30, 20____. Attachment fees for the initial rental period will be billed on a pro-rated basis and, if applicable, attachment fees collected under a previous contract for this same initial rental period will be credited toward this billing on the same pro-rated basis. Each subsequent annual rental period shall commence on the following July 1st, and conclude on June 30th of the next year. The invoice shall set forth the total number of Utility Poles on which Licensee was issued and/or holds a Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits. Attachment fees for permits issued throughout a rental period shall commence on the date of permit approval and be pro-rated for the remainder of the current rental period.
- 3.4 Refunds.** No fees or charges as specified in Appendix A shall be refunded on account of any surrender of a Permit granted hereunder. Nor shall any refund be owed if the Utility abandons a Pole.
- 3.5 Late Charge.** If the Utility does not receive payment for any fee or other amount owed within thirty (30) calendar days of the billing date, Licensee, upon receipt of fifteen (15) calendar days written notice, shall pay interest on the amount due to the Utility, at the

maximum rate allowed by North Carolina State law or One and One Half Percent (1.5%) per month, whichever is less.

- 3.6 Payment for Work.** Licensee will be responsible for payment of all actual, documented costs to the Utility for all work the Utility or the Utility's contractors perform pursuant to this Agreement to accommodate Licensee's Communications Facilities.
- 3.7 Advance Payment.** At the discretion of the Utility, Licensee may be required to pay in advance all reasonable costs, including but not limited to construction, inspections and Utility Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Communications Facilities pursuant to the procedures set forth in Article 6—Permit Application Procedures, and Article 7—Make-Ready Work/Installation, below.
- 3.8 True Up.** Wherever the Utility, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of activity exceeds the advance payment of estimated expenses, Licensee agrees to pay the Utility for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, the Utility agrees to refund to Licensee the difference in cost.
- 3.9 Determination of Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by the Utility, make ready or otherwise, the charge for such work shall include all reasonable material, labor, engineering and applicable overhead costs. The Utility shall bill its services based upon actual costs, and such costs will be determined in accordance with the Utility's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, number of persons employed by classification and materials used and cost of materials. In addition, if Licensee is required to perform work and fails to perform such work necessitating its completion by the Utility, the Utility will charge Licensee the Imposition Costs, equal to the actual cost to perform such work plus either an additional ten percent (10%), or assess the fee specified in APPENDIX A—Fees and Charges (4), whichever is the greater amount.
- 3.10 Work Performed by the Utility.** Wherever this Agreement requires the Utility to perform any work, Licensee acknowledges and agrees that the Utility, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work.
- 3.11 Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond sixty (60) calendar days shall constitute a default of this Agreement.

Article 4—Specifications

- 4.1 Installation/Maintenance of Communications Facilities.** When a Permit is issued pursuant to this Agreement, Licensee's Communications Facilities shall be installed and maintained in accordance with the requirements and specifications of APPENDIX D—Specifications for Licensee's Attachments to The Utility Poles. All of Licensee's Communications Facilities must comply with all Applicable Standards, including; the National Electrical Safety Code (NESC), the National Electrical Code (NEC), the Utility's Construction Standards and all other applicable federal, state and local codes and requirements. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards. Upon execution of this Agreement, Licensee must modify, update or upgrade its existing Attachments, thereby bringing the entire attached plant into compliance with the latest applicable editions of the NESC and the NEC. The above notwithstanding, if applicable NESC standards allow existing attachments made under prior versions of the NESC to remain in place until new construction work is performed such existing Attachments shall be grandfathered.
- 4.2 Tagging.** Licensee shall Tag all of its Communications Facilities as specified in APPENDIX D—Specifications for Licensee's Attachments to The Utility Poles, and applicable federal, state and local regulations upon installation of such Facilities, prior authorized Attachments of Licensee shall be tagged within five (5) years of the execution of this Agreement. Failure to provide proper tagging will be considered a violation of the Applicable Standards.
- 4.3 Interference.** Licensee shall not allow its Communications Facilities to impair the ability of the Utility or any third party to use the Utility's Poles nor shall Licensee allow its Communications Facilities to interfere with the operation of any Utility Facilities. The attachment rights subsequently granted by the Utility to other attaching entities pursuant to licenses, permits, or rental agreements shall not limit nor interfere with any prior attachment rights granted to the Licensee hereunder or result in further rearrangement or make-ready costs without reimbursement.
- 4.4 Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and Facilities, consistent with applicable standards. Licensee shall at its own expense install protective devices designed to handle the voltage and current impressed on its Communications Facilities in the event of a contact with the supply conductor, as specified in applicable standards. Except as provided in Paragraph 16.1, the Utility shall not be liable for any actual damage to Licensee's Communication Facilities or Licensee's customer's Facilities, nor for consequential damages as a result of damage to Licensee's Communications Facilities or Licensee's customers' Facilities.

- 4.5 Violation of Specifications.** If Licensee's Communications Facilities, or any part thereof, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within sixty (60) calendar days from receipt of written notice of the violation(s) from the Utility, the Utility at its option, may correct such conditions or consider the violation an unauthorized attachment, pursuant to Paragraph 14.1. The Utility will attempt to notify Licensee in writing prior to performing such work whenever practicable. When the Utility reasonably believes, however, that such violation(s) create an Emergency situation that poses an immediate threat to the safety of any person, interferes with the performance of the Utility's service obligations or poses an immediate threat to the physical integrity of Utility Facilities, the Utility may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable thereafter, the Utility will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all costs incurred by the Utility in taking action pursuant to this Paragraph. In such situation, Utility shall not be liable for damage to Licensee's Facilities except to the extent provided in Paragraph 16.1.
- 4.6 Restoration of Utility Service.** The Utility's service restoration requirements shall take precedence over any and all work operations of Licensee on Utility Poles.
- 4.7 Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days of the effective date of such right and any extension thereof, the Utility may use the space scheduled for Licensee's Attachment(s) for its own needs or other Licensees. In such instances, the Utility shall endeavor to make other space available to Licensee, upon written application per Article 6—Permit Application Procedures, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions.
- 4.8 Removal of Nonfunctional Attachments.** At its sole expense, Licensee shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service ("Nonfunctional Attachment") as provided in this Paragraph 4.8. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an Unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in APPENDIX A—Fees and Charges, Item 3. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one year (365 calendar days) of the Attachment becoming nonfunctional, unless Licensee receives written notice from the Utility that removal is necessary to accommodate the Utility's or another Attaching Entity's use of the affected Pole(s), in which case Licensee shall remove the Nonfunctional Attachment within sixty (60) calendar days of receiving the notice. Where Licensee has received a Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until the Utility notifies Licensee that removal is necessary to accommodate the Utility's or another Attaching

Entity's use of the affected Pole(s). Licensee shall give the Utility notice of any Nonfunctional Attachments as provided in Article 15—Reporting Requirements.

Article 5—Private and Regulatory Compliance

- 5.1 Necessary Authorizations.** Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Communications Facilities on public and/or private property before it occupies any portion of the Utility's Poles. Licensee's obligations under this Article 5—Private and Regulatory Compliance, include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith. Licensee shall defend, indemnify and hold harmless the Utility for all loss and expense, including reasonable attorney's fees, that the Utility may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Communications Facilities on the Utility's Poles.
- 5.2 Lawful Purpose and Use.** Licensee's Communications Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state and local laws.
- 5.3 Forfeiture of the Utility's Rights.** No Permit granted under this Agreement shall extend to any Pole on which the Attachment of Licensee's Communications Facilities would result in a forfeiture of the Utility's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of the Utility's rights, is invalid. Further, if any of Licensee's existing Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Facilities upon receipt of written notice from the Utility. The Utility will perform such removal at Licensee's expense not sooner than the expiration of thirty (30) calendar days from the Utility's issuance of the written notice.
- 5.4 Effect of Consent to Construction/Maintenance.** Consent by the Utility to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

Article 6—Permit Application Procedures

- 6.1 Permit Required.** Licensee shall not install any Attachments on any Pole without first applying for and obtaining a Permit pursuant to the applicable requirements of APPENDIX

B—Pole Attachment

Permit Application Process. Unless otherwise notified, Pre-existing Attachment(s) of Licensee as of the effective date of this Agreement shall be grandfathered with respect to Permitting, but shall be subject to Attachment Fees in future billing periods. Licensee shall provide the Utility with a list, on the Utility's provided spreadsheet, of all such pre-existing Attachments within six (6) months of the effective date of this Agreement. All such pre-existing Attachments shall comply with the terms of this Agreement within eighteen (18) months of the effective date of this Agreement. Attachments to or rights to occupy Utility Facilities not covered by this Agreement must be separately negotiated.

- 6.1.1 Service Drops.** The Licensee will notify the Utility within thirty (30) calendar days of the attachment of a Service Drop where an existing permitted Attachment exists and no Permit Application shall be required.
- 6.1.2** If a Service Drop constitutes the initial Attachment to a given Pole, Licensee will be required to follow the permitting process set forth in Paragraph 6.1. In this case, the Licensee will be allowed thirty (30) calendar days after the Attachment is made to complete the permitting process.
- 6.2 Permits for Modifications.** Permits are required for any non-deminimus modifications to permitted Attachments allowed under this Agreement.
- 6.3 Quantity Limitation of Permit Application.** A maximum of 40 utility owned poles identified may be included in each proposed application. No more than 500 poles shall be submitted in any calendar month.
- 6.4 Professional Certification.** As part of the Permit application process and at Licensee's sole expense, per N.C. Gen. Stat. § 89C-2, a qualified and experienced professional engineer licensed by the State of North Carolina, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee's Communications Facilities can be and were installed on the identified Poles in compliance with the NESC and all other Applicable Standards and in accordance with the Permit. The professional engineer's, qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems.
 - 6.4.1** To the extent consistent with Applicable Law the Utility, at its discretion, may waive the requirements of this Paragraph 6.4, with respect to service drops.

- 6.5 Utility Review of Permit Application.** Upon receipt of a properly executed Application for Permit (APPENDIX C—Application for Permit), which shall include the Pre-Construction Survey, certified per Paragraph 6.4 above, and detailed plans for the proposed Attachments in the form specified in APPENDIX D—Specifications for Licensee’s Attachments to The Utility Poles, and payment of the Application Fee as specified in APPENDIX A—Fees and Charges, in full, the Utility will review the Permit Application within forty-five (45) calendar days, and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. In the event of unusually large requests, the Utility may require up to thirty (30) additional calendar days of processing time. Failure of the Utility to process an application within the times prescribed above shall not be the basis for any claim against the Utility. The Utility acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis.
- 6.6 Permit as Authorization to Attach.** Upon completion of all required Make-Ready Work, and receipt of payment for all such work, the Utility will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s).
- 6.7 Overlashing.** Before Licensee may Overlash its existing Attachments, Licensee shall request permission by submitting a Permit Application, indicating the characteristics and nature of the existing and new Facilities as specified on the application form. Utility will use commercially reasonable efforts to respond to each application for Overlashing within thirty (30) calendar days of the date that a complete application is received by Utility. A Permit Application for Overlashing shall not require the payment of an Application Fee. If Utility does not approve or reject Licensee's application for Overlashing within such thirty (30) calendar days, Licensee may proceed to Overlash its existing Attachments as specified in its Permit Application, provided that: (i) the bundle of Licensee's cable following the Overlashing does not exceed a combined cross-sectional area of three square inches (two-inch diameter) and one-half (2.5") inches in diameter; (ii) such activity will not cause the Attachment to become non-compliant with the Applicable Standards; and (iii) Licensee pays for any Make-Ready Work that is required for the Overlash to comply with the Applicable Standards. Any Overlashing of existing Attachments with respect to which the bundle of Licensee's cable exceeds or will exceed two and one-half (2.5") inches in diameter must comply with the Permit Application process specified for proposed new Attachments in this Article 6—Permit Application Procedures. Any Overlashing that has not complied with the requirements of this subsection shall cause the Overlashed Attachment to be an Unauthorized Attachment.
- 6.7.1** Licensee shall provide written notice to Utility no later than thirty (30) calendar days following the placement of Overlash, whereupon Utility may inspect the installed Overlash and require Licensee to correct any violations of Applicable Standards at Licensee’s expense.

6.7.2 Licensee shall not allow a third-party to Overlash Licensee's Attachments absent Utility's prior authorization which shall not be unreasonably denied. Any such third-party shall be required to enter into an agreement with Utility to allow for such Overlash. There shall be no additional fee for third-party Overlash. Licensee shall assume liability and indemnify Utility for any third-party Overlash.

6.8 Micro Wireless Facilities. Before Licensee may install Micro Wireless Facilities onto its existing Attachments, Licensee shall request permission by submitting a Permit Application, indicating the characteristics and nature of the existing and new Facilities as specified on the application form. The Application to install Micro Wireless Facilities shall require the payment in full of the Application Fee specified in Appendix A. Utility will use commercially reasonable efforts to respond to each application for Overlashing within thirty (30) calendar days of the date that a complete application is received by Utility. If Utility does not approve or reject Licensee's application for installation of Micro Wireless Facilities within such thirty (30) calendar days, Licensee may proceed to install the Micro Wireless Facilities on its existing Attachments as specified in its Permit Application, provided that such Facilities will not cause the Attachment to become non-compliant with the Applicable Standards; and Licensee pays for any Make-Ready Work that is required for the Micro Wireless Facilities to comply with the Applicable Standards. Any Micro Wireless Facilities installed that do not comply with the requirements of this subsection shall cause the Micro Wireless Facilities to be treated as an Unauthorized Attachment.

6.8.1 Licensee shall provide written notice to Utility no later than thirty (30) calendar days following the placement of Micro Wireless Facilities, whereupon Utility may inspect the installed Micro Wireless Facilities and require Licensee to correct any violations of Applicable Standards at Licensee's expense.

6.8.2 Authorized Micro Wireless Facilities shall not be subject to a separate Pole Attachment Fee unless the presence of such Facilities causes the need for additional space within the one foot of Assigned Space of the underlying Attachment or any associated sag requires additional mid-span separations to be consistent with Applicable Standards.

6.8.3 Licensee shall not allow a third-party to install Micro Wireless Facilities Micro Wireless Facilities onto Licensee's Attachments absent Utility's prior authorization which shall not be unreasonably denied. Any such third-party shall be required to enter into an agreement with Utility to allow for such Micro Wireless Facilities. There shall be no additional fee for third-party Micro Wireless Facilities. Licensee shall assume liability and indemnify Utility for any third-party Micro Wireless Facilities.

Article 7—Make-Ready Work/Installation

- 7.1 Estimate for Make-Ready Work.** In the event the Utility determines that it can accommodate Licensee's request for Attachment(s), including Overlapping of an existing Attachment, it will advise Licensee of any estimated Utility Make-Ready Work charges necessary to accommodate the Attachment.
- 7.1.1** Estimates for Utility Make-Ready Work shall not include the costs of Communications Make-Ready Work related to the rearrangement or transfers of existing Communications Facilities of Other Attaching Entities.
- 7.1.2** (not used)
- 7.1.3** Utility's estimate of Utility of Make-Ready Work shall include the names and contact information of all other Attaching Entities with existing Communications Facilities on the impacted Poles.
- 7.2 Payment of Make-Ready Work.** Licensee shall have fifteen (15) calendar days from receipt to accept a Utility Make-Ready Estimate. The Utility will require payment in advance for Utility Make-Ready Work based upon the estimated cost of such work. Upon completion Licensee shall pay the Utility's actual cost of Utility Make-Ready Work. The costs of the work shall be itemized as per Paragraph 3.9 and trued up as per Paragraph 3.8.
- 7.3 Who May Perform Make-Ready and Installation Work.** Utility Make-Ready Work shall be performed only by the Utility and/or a qualified contractor authorized by the Utility to perform such work.
- 7.4 Communications Make-Ready Work on Facilities of Other Attaching Entities.** At the time Licensee submits a Permit Application to Utility, Licensee shall submit evidence in writing, that it has made arrangements to reimburse all other affected Attaching Entities for their costs caused by the transfer or rearrangement of their existing Facilities. Utility shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with such Transfer or rearrangement of another Attaching Entity's Facilities.
- 7.4.1** Licensee may seek permission from other third-party Attaching Entity to employ a qualified contractor to perform Communications Make Ready work on the third-party Attaching Entity Facilities. Persons performing said work must comply with all Applicable Standards.
- 7.5 Scheduling of Make-Ready.** In performing all Utility Make-Ready Work to accommodate Licensee's Communications Facilities, the Utility will endeavor to include such work in its normal work schedule, with a goal of completing Utility Make-Ready Work on applications of 100 or less poles within sixty (60) calendar days of Licensee's acceptance of the Make-Ready Estimate. In the event Licensee requests that the Make-

Ready Work be performed on a priority basis or outside of the Utility's normal work hours, Licensee agrees to pay any resulting increased costs. Nothing herein shall be construed to require performance of Licensee's work before other scheduled work or Utility service restoration. The Utility will not perform Communications Make-Ready Work involving the relocation or transfer of existing Communications Facilities of other Attaching Entities.

7.5 Upon Licensee's acceptance of the Utility Make-Ready estimate, and the payment of any advance payment required, Utility shall notify all other Attaching Entities with existing Communications Facilities on the impacted Pole and to the extent allowed under applicable law direct such Attaching Entities to perform necessary Communications Make-Ready Work to rearrange or relocate their existing Attachments within thirty (30) calendar days of receipt (unless a longer period is specified) at Licensee's expense.

7.6 **Written Approval of Installation Plans Required.** With the exception of customer Service Drops, before making any Attachments to the Utility's Poles, including modification of existing Attachments, the applicant must obtain the Utility's written approval of detailed plans for the Attachments. Such detailed plans shall accompany a Permit application as required under Paragraph 6.5.

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

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

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

7.8 **Post Installation Inspection.** Within thirty (30) calendar days of installation of its Attachments, Licensee shall provide written notice to Utility that Licensee has completed installation. The notice of completion of installation shall be accompanied by photos in .jpg format to document the quality of workmanship. Each photo must show the base of the Pole and the subject Attachments.

- 7.8.1** Upon receipt of the notice of installation Utility may perform a post-installation inspection at Licensee's expense for each such Attachment. If any such post-installation inspection is performed, Licensee shall pay the costs for the inspection and of any corrections that are required.
- 7.8.2** If Utility elects not to perform any post-installation inspection, such non-inspection shall not be grounds for imposing any liability on Utility or for waiving any liability of Licensee.
- 7.8.3** If the post-installation inspection reveals that Licensee's Facilities have been installed in violation of Applicable Standards or the approved design described in the Application, Licensee shall correct such installation at its own expense. For non-Emergency violations, following receipt of notice from Utility, Licensee shall have sixty (60) calendar days to correct such violation, or such other period as the Parties may agree upon in writing. If the violation creates an Emergency, Utility may correct the violation itself at Licensee's expense. Licensee shall notify Utility when such correction work is complete. Within thirty (30) calendar days of receiving such notice, Utility may perform subsequent post-installation inspections at Licensee's expense to verify that the correction has been made.

Article 8—Rearrangements and Transfers

- 8.1 Rearrangements and Transfers of Licensee's Communications Facilities.** The Utility will notify Licensee when it is necessary to rearrange or transfer its Communications Facilities. If Licensee fails to rearrange or transfer its Facilities within thirty (30) calendar days after receiving such notice from the Utility, the Utility shall have the right but not the obligation to rearrange or transfer Licensee's Facilities using its personnel and/or contractors at Licensee's expense, including the Imposition Cost, as specified in Paragraph 3.9. The Utility shall not be liable for damage to Licensee's Facilities except to the extent provided in Paragraph 16.1. The Utility shall then provide written notice of any such actions taken within thirty (30) calendar days of the occurrence. Irrespective of who owns them, Licensee is responsible for the rearrangement and transfer of Facilities that are overlashed on to Licensee's Attachments.
- 8.2 Emergency Rearrangements or Transfers of Licensees Communications Facilities.** If in the event of an Emergency the Utility reasonably determines that a rearrangement or transfer of Licensee's Communications Facilities is immediately necessary, Licensee agrees to allow such rearrangement or transfer. In such instances, the Utility will, at its option, either perform the work using its personnel, and/or contractors. The Utility shall not be liable for damage to Licensee's Facilities except to the extent provided in Paragraph 16.1. The Utility shall provide written notice of any such actions taken within ten (10) calendar days of the occurrence. Irrespective of who owns them, Licensee is

responsible for the rearrangement or transfer of Facilities that are Overlashed on to Licensee's Attachments. The Utility will bill Licensee at the Utility's cost.

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

Article 9—Pole Modifications and/or Replacements

- 9.1 Licensee's Action Requiring Modification/Replacement.** In the event that any Pole, as constructed, to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional Facilities in accordance with all Applicable Standards, the Utility will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including but not limited to replacement of the Pole, and rearrangement or transfer of the Utility's Facilities. Licensee is responsible for obtaining costs associated with rearrangement or transfer of the Communications Facilities of any existing Licensees already on the Pole. If Licensee elects to go forward with the necessary changes, Licensee shall pay to the Utility and any other existing Licensees, the actual cost of the Make-Ready Work, performed by the Utility, per Paragraph 3.9 or performed by the other existing Licensees to accommodate the new Licensee. The Utility and existing attaching entities, at their discretion, may require advance payment.
- 9.2 Treatment of Multiple Requests for Same Pole.** Assuming a permit has not yet been issued and the Utility receives additional applications for the same Pole from additional prospective Licensees, and accommodating their respective requests would require modification or replacement of the Pole, the Utility will allocate equitably among such licensees the applicable costs associated with such modification or replacement.
- 9.3 Guying.** The use of guying to accommodate Licensee's Attachments shall be provided by and at the expense of Licensee and to the satisfaction of the Utility as specified in APPENDIX D—Specifications for Licensee's Attachments to The Utility Poles. Licensee shall not attach its guy wires to the Utility's anchors without prior written permission of the Utility. If permission is granted, any make-ready charges, and a one-time anchor attachment fee as specified in APPENDIX A—Fees and Charges, Item 2, will apply.
- 9.4 Allocation of Costs.** The costs for any rearrangement or transfer of Licensee's Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of the Utility's cables or wires) shall be allocated to the Utility and/or Licensee and/or other Attaching Entity on the following basis:

- 9.4.1** If the Utility intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Licensee, however, shall be responsible for all costs associated with the rearrangement or transfer of Licensee's Communications Facilities. If Licensee elects to add to or modify its Communications Facilities, Licensee shall bear the total incremental costs incurred by the Utility in making the space on the Poles accessible to Licensee.
- 9.4.2** If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than the Utility or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring Licensee's Communications Facilities. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's Facilities.
- 9.4.3** If another Attaching Entity seeks to make a new Attachment or the modification of an existing Attachment requiring Licensee to rearrange or transfer its existing Facilities the Utility shall provide Licensee with notice of such Communications Make-Ready Work. The notice shall:
- 9.4.3.1 Identify the Attaching Entity seeking the new Attachment or modification of an existing Attachment, including the name and email address of a person with the Attaching Entity to contact for more information about the Communications Make-Ready as well as corresponding contact information for the Utility.
 - 9.4.3.2 Specify the Poles and Communications Make-Ready Work required to be performed.
 - 9.4.3.3 Establish a date for completion of the Communications Make-Ready, which unless otherwise specified shall be no later than thirty (30) days after notification is received by Licensee.
 - 9.4.3.4 Specify that if Licensee does not complete Communications Make-Ready is not completed by the completion date set by the Utility the Attaching Entity seeking the new Attachment or modification may complete the Communications Make-Ready using a qualified contractor.

9.4.4 If the Pole must be modified or replaced for other reasons unrelated to the use of the Pole by Attaching Entities (e.g., storm, accident, deterioration), The Utility shall pay the costs of such modification or replacement; provided, however, that Licensee shall be responsible for the costs of rearranging or transferring its Communications Facilities.

9.4.5 If the modification or replacement of a Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Pole and for the costs associated with the transfer or rearrangement of any other Attaching Entity's Communications Facilities. Licensee shall submit to the Utility evidence, in writing, that it has made arrangements acceptable to all other Attaching Entities for reimbursement for the cost to transfer or rearrange such Attaching Entities' Facilities at the time Licensee submits a Permit Application to the Utility. The Utility shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Facilities pursuant to this Paragraph 9.4.5.

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

Article 10—Abandonment or Removal of Utility Facilities

10.1 **Notice of Abandonment or Removal of Utility Facilities.** If the Utility desires at any time to abandon, remove or underground any Pole(s) to which Licensee's Communications Facilities are attached, it shall give Licensee notice in writing to that effect at least ninety (90) calendar days prior to the date on which it intends to abandon or remove such Pole(s). Notice may be limited to thirty (30) calendar days if the Utility is required to remove or abandon its Pole(s) as the result of the action of a third party or other cause and the greater notice period is not practical. Such notice shall indicate whether the Utility is offering Licensee an option to purchase the Pole(s). If, following the expiration of the notice period, Licensee has not yet removed and/or transferred all of its Communications Facilities therefrom and has not entered into an agreement to purchase the Utility's Pole(s) pursuant to Paragraph 10.2, the Utility shall have the right, but not the obligation, subject to any applicable laws and regulations, to have Licensee's Communications Facilities removed and/or transferred from the Pole(s) without liability and the Licensee shall be subject to the Imposition Cost of moving such Facilities. The Utility shall give Licensee prior written notice of any such removal or transfer of Licensee's

Facilities. Licensee's failure to remove its Facilities as required under this Paragraph 10.1 shall subject Licensee to the failure to timely transfer, abandon or remove Facilities fee provisions of APPENDIX A—Fees and Charges.

- 10.2 Option to Purchase Abandoned Poles.** Should the Utility desire to abandon any Pole, the Utility, in its sole discretion, may grant Licensee the option of purchasing such Pole at a rate, which is the value in place, at that time, of such abandoned Pole. Licensee must notify the Utility in writing within thirty (30) calendar days of the date of the Utility's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should the Utility and Licensee fail to enter into an agreement for Licensee to purchase the Pole prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 10.1. The Utility is under no obligation to sell Licensee Poles that it intends to remove or abandon.
- 10.3 Underground Relocation.** If the Utility moves any portion of its aerial system underground, and purchase of the Poles under Paragraph 10.2 is not an option, Licensee shall remove its Communications Facilities from any affected Poles within ninety (90) calendar days of receipt of notice from the Utility and either relocate its affected Facilities underground or find other means to accommodate its Facilities. Licensee's failure to remove its Facilities as required under this Paragraph 10.3 shall subject Licensee to the failure to timely transfer, abandon or remove Facilities fee provisions of Appendix A.

Article 11—Removal of Licensee's Facilities

- 11.1 Removal on Expiration/Termination.** At the expiration or other termination of this License Agreement or individual Permit(s), Licensee shall remove its Communications Facilities from the affected Poles at its own expense. If Licensee fails to remove such Facilities within sixty (60) calendar days of expiration or termination or some greater period as allowed by the Utility, the Utility shall have the right to have such Facilities removed at Licensee's expense without liability.
- 11.2 Licensee Abandonment of Attachments.** Licensee shall remove any Abandoned Attachment and submit to Utility a "Notification of Attachment Removal" no later than sixty (60) calendar days after such removal. If Utility notifies Licensee of any suspected Abandoned Attachment, then within thirty (30) calendar days of such notice, Licensee must either remove the Abandoned Attachment or provide to Utility evidence that the Attachment is not an Abandoned Attachment. Prior to the thirty (30) calendar day deadline,

Licensee may request in writing, and Utility may grant, a reasonable extension of that deadline. If Licensee fails to remove such Facilities within the thirty calendar day period (or any extension) the Utility shall have the right to have such Facilities removed without liability and subject to Licensee paying the Imposition Costs.

Article 12—Termination of Permit

- 12.1 Automatic Termination of Permit.** Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Communications Facilities on public or private property at the location of the particular Pole(s) covered by the Permit. Notwithstanding the foregoing, to the extent Licensee is pursuing a challenge of the revocation of any such permission; Licensee may remain on the particular Pole(s) until such time as all appeals and remedies are exhausted.
- 12.2 Surrender of Permitted Attachment(s).** Licensee may at any time surrender any Permitted Attachment(s) and remove its Communications Facilities from the affected Pole(s). Before commencing any such removal Licensee must submit to the Utility a Permit Application indicating the name of the party performing such work, the number of attachments being removed, a sketch or other depiction showing the location of the removal(s) and the proposed date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18—Insurance. No refund of any fees or costs will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from the Utility's Facilities within the time frame set forth in the approved plan above, the Utility shall have the right to remove Licensee's Attachments without liability and require Licensee to pay the Imposition Costs of such removal.

Article 13—Inspection and Audits of Licensee's Facilities

- 13.1 General Inspections.** Utility reserves the right to make periodic inspections, as conditions may warrant, of some or all of Licensee's Attachments on Utility's Poles.
- 13.2 Periodic Safety Inspections and Inventory.** Upon sixty (60) calendar days' advance written notice from Utility, and not more frequently than every five (5) years, Utility may, at its option, perform a safety inspection and Attachment inventory in all or in part of the territory covered by this Agreement to identify any safety violations of Attachments and inventory the installation of Facilities on Utility Poles ("Safety Inspection and Inventory"). Such notice shall describe the scope of the inspection and inventory and provide Licensee and all Attaching Entities an opportunity to participate in

the field inspection and inventory. Licensee, Utility and other Attaching Entities shall share proportionately in the Safety Inspection and Inventory costs (based on the proportion of Attachments of Utility, Licensee and each other Attaching Entity). Any Unauthorized Attachments found through the Safety Inspection and Inventory shall be subject to the requirements of Article 14—Unauthorized Occupancy or Attachment.

13.2.1 The above notwithstanding, Utility may at its own cost undertake an inventory of its Poles and existing Attachments more frequently than once every five years. Any of Licensee's Attachments found to be Unauthorized shall be subject to the requirements of Article 14—Unauthorized Occupancy or Attachment, governing Unauthorized Attachments. If such an inventory finds that five percent (5%) or more of Licensee's Attachments are either in non-compliance or Unauthorized, Licensee shall pay its pro-rata share of the costs of the entire inspection. The pro-rata share cost shall be determined by taking the total cost of the entire inspection times the number of Licensee's attachments, divided by the total number structures inspected.

13.3 Corrections. If any of Licensee's Facilities are found to be in violation of the Applicable Standards and such violations do not pose potential Emergency conditions, Utility shall give Licensee notice, whereupon Licensee shall have sixty (60) calendar days from receipt of notice to Correct any such violation, or such longer time frame if mutually agreeable, but not to exceed an additional sixty (60) calendar days. If Licensee fails to Correct a non-Emergency violation within the specified time period, Utility may Correct the violation at Licensee's Imposition Cost expense and without incurring any liability to Licensee.

13.4 The above notwithstanding, if Poles are identified in the Initial Inventory as being out of compliance with Applicable Standards, and the Attaching Entity responsible for such non-compliance is not ascertainable, Utility shall undertake at its own cost to repair, strengthen, or replace such Pole, and Licensee shall be responsible for the costs of rearranging or transferring its Attachments within the timeframe specified by Utility, which shall not be less than thirty (30) calendar days except in the case of an Emergency. If Licensee fails to perform the Transfer within the specified time period, Utility may Transfer Licensee's Attachments at Licensee's Imposition Cost expense and without incurring any liability to Licensee.

13.5 No Liability. Inspections performed under this Article 13—Inspection and Audits of Licensee's Facilities, or the failure to do so, shall not operate to impose upon the Utility any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.

Article 14—Unauthorized Occupancy or Attachment

- 14.1 Unauthorized Occupancy or Access Fee.** If any of Licensee's Attachments are found occupying any Pole for which no Permit has been issued, the Utility, without prejudice to its other rights or remedies under this Agreement, will provide written notice to Licensee of the Unauthorized Attachment(s) and allow Licensee thirty (30) calendar days to contest such determination with evidence that the Attachment(s) are authorized. Failure of the Licensee to reasonably demonstrate that the Attachment(s) at issue are authorized shall subject such Licensee to the payment of the Unauthorized Attachment Fee as specified in APPENDIX A—Fees and Charges, Item 3 and require the submittal of an Application for Permit as set forth under Article 6—Permit Application Procedures, for all such Unauthorized Attachments. Submittal of the Application for Permit does not guarantee the approval of the attachment. In the event Licensee fails to pay such Fee and submit the Application for Permit within thirty (30) calendar days of the billing date of the invoice, the Utility has the right to remove such Communications Facilities at Licensee's Imposition Cost expense.
- 14.2 No Ratification of Unlicensed Use.** No act or failure to act by the Utility with regard to any unlicensed use shall be deemed as ratification of the unlicensed use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by the Utility of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to the unauthorized use from its inception.

Article 15—Reporting Requirements

Notwithstanding the above inspection and inventory provisions of Article 13—Inspection and Audits of Licensee's Facilities, Licensee is obligated to furnish the Utility on an annual basis no later than December 31 of each year, an up-to-date map and electronic file such as a spread sheet or database, depicting the locations and number of its Attachments in an electronic format specified by the Utility.

Article 16—Liability and Indemnification

- 16.1 Utility Liability.** The Utility reserves to itself the right to maintain and operate its Poles and other Utility Facilities in such manner as will best enable it to fulfill its statutory service requirements. Licensee agrees to use the Utility's Poles at Licensee's sole risk. Notwithstanding the foregoing, the Utility shall exercise reasonable precaution to avoid damaging Licensee's Communications Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to Paragraph 16.5, the Utility agrees to reimburse Licensee for all reasonable costs

incurred by Licensee for the physical repair of such Facilities to the extent damaged by the negligence or willful misconduct of the Utility, provided, however, that the aggregate liability of the Utility, to Licensee, in any fiscal year, shall not exceed the amount of the total Annual Attachment Fees paid by Licensee to the Utility for that year as calculated based on the number of Attachments under Permit at the time of the damage per APPENDIX A—Fees and Charges, Item 1.

16.2 Indemnification. Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless the Utility and its officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by the Utility under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of the Utility and all other costs and expenses of litigation) ("Covered Claims" or "Claims") arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents or contractors, of Licensee's Communications Facilities, except to the extent of the Utility's negligence or willful misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

16.2.1 Intellectual property infringement, libel and slander, trespass, unauthorized use of copyright protected and other program material, and infringement of patents;

16.2.2 Cost of work performed by the Utility that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents or contractors, to install, maintain, use, transfer or remove Licensee's Communications Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes the Utility to perform on Licensee's behalf;

16.2.3 Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents or contractors, pursuant to this Agreement or claims arising out of the presence or use of a Pole no longer used by the Utility;

16.2.4 Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents or contractors, of any law, rule, or regulation of the United States, State of North Carolina or any other governmental entity or administrative agency.

16.3 Procedure for Indemnification.

16.3.1 The Utility shall give prompt notice to Licensee of any Covered Claim or threatened Claim, specifying the factual basis for such Claim and the amount of the Claim. If the Claim relates to an action, suit or proceeding filed by a third party against the Utility, the Utility shall give the notice to Licensee no later than fourteen (14) calendar days after the Utility receives written notice of the action, suit or proceeding.

16.3.2 The Utility's failure to give the required notice will not relieve Licensee from its obligation to indemnify the Utility unless and only to the extent Licensee is materially prejudiced by such failure.

16.3.3 Licensee will have the right at any time, by notice to the Utility, to participate in or assume control of the defense of the Claim with counsel of its choice. The Utility agrees to cooperate fully with Licensee. If Licensee so assumes control of the defense of any third-party Claim, the Utility shall have the right to participate in the defense at its own expense. If Licensee does not so assume control or otherwise participate in the defense of any third-party Claim, Licensee shall be bound by the results obtained by the Utility with respect to the Claim.

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

16.4 Environmental Hazards. Licensee represents and warrants that its use of Utility Poles will not generate any Hazardous Substances, that it will not store or dispose on or about Utility Poles or transport to Utility Poles any hazardous substances and that Licensee's Communications Facilities will not constitute or contain and will not generate any hazardous substance in violation of federal, state or local law now or hereafter in effect including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules

now or hereafter in effect including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration or other disaster, its Communications Facilities would not release any Hazardous Substances. Licensee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless the Utility and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage or discovery of any Hazardous Substances on, under or adjacent to the Utility's Poles attributable to Licensee's use of the Utility's Poles.

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

16.5 Municipal Liability Limits. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the Utility of any applicable State limits on municipal liability including any limitation on indemnification by Utility allowed by North Carolina law. No indemnification provision contained in this Agreement under which Licensee indemnifies the Utility shall be construed in any way to limit any other indemnification provision contained in this Agreement.

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

Article 17—Duties, Responsibilities, And Exculpation

17.1 Duty to Inspect. Licensee acknowledges and agrees that the Utility does not warrant the condition or safety of the Utility's Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect Utility Poles and/or premises surrounding the Poles, prior to commencing any work on Utility Poles or entering the premises surrounding such Poles. Licensee's responsibility is limited only to the extent necessary to perform Licensee's work.

17.2 Knowledge of Work Conditions. By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this

Agreement and that it fully understands or will acquaint itself with the Facilities, difficulties and restrictions attending the execution of such work.

17.3 DISCLAIMER. THE UTILITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO UTILITY POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND THE UTILITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. THE UTILITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

17.4 Duty of Competent Supervision and Performance. The parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, employees, contractors and subcontractors will work near electrically energized lines, transformers or other Utility Facilities, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except in an emergency endangering life, grave personal injury or property. Licensee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of the Utility and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of the Utility's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

17.5 Requests to De-energize. In the event the Utility de-energizes any equipment or line at Licensee's request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse the Utility in full for all costs and expenses incurred, in accordance with Paragraph 3.9, in order to comply with Licensee's request. Before the Utility de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Licensee's request. Notwithstanding the foregoing de-energization shall be at the Utility's sole discretion and the Utility shall determine the schedule for de-energization.

17.6 Interruption of Service. In the event that Licensee causes an interruption of service by damaging or interfering with any equipment of the Utility, Licensee at its expense shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify the Utility immediately, and shall save, defend, indemnify and hold the Utility harmless from claims arising from such damage and shall compensate the Utility in full for its damages.

- 17.7 **Duty to Inform.** Licensee further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on the Utility's Poles by Licensee's employees, agents, contractors or subcontractors, and accepts as its duty and sole responsibility to notify and inform Licensee's employees, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

Article 18—Insurance

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

18.1.1 **Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by North Carolina State law at the time of the application of this provision for each accident. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

18.1.2 **Employer's Liability Insurance.** Employer's liability insurance with a limit of not less than \$500,000.

18.1.3 **Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$1,000,000 each occurrence.

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

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

18.1.6 **Property Insurance.** Each party will be responsible for maintaining property insurance on its own Facilities, buildings and other improvements, including all

equipment, fixtures, and Utility structures, fencing or support systems that may be placed on, within or around Utility Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as “extended coverage” insurance or self-insure such exposures.

18.1.7 Requirement to provide this agreement to Insurance Carrier. The parties to this pole attachment agreement shall provide a copy of this agreement to the insurance carrier for each party and as a condition of this agreement obtain a letter indicating that said carrier will provide the appropriate commercial, automobile, umbrella and property insurance as further set forth in Article 18—Insurance, of this agreement. Further, the Licensee shall provide the Licensor with a certificate of additional insured with coverage thresholds meeting the provisions of 18.1.2 through 18.1.5.

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

18.3 Certificate of Insurance; Other Requirements. Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish the Utility with a certificate of insurance (“Certificate”) and, upon request, copies of the required insurance policies. The Certificate shall reference this Agreement and workers’ compensation and property insurance waivers of subrogation required by this Agreement. The Utility shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. The Utility, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, “Additional Insureds”) shall be named as Additional Insureds under all of the policies, except workers’ compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers’ compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed \$100,000, or such greater amount as expressly allowed in writing by the Utility. Licensee shall defend, indemnify and hold harmless the Utility and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to the Utility upon request.

- 18.4 Limits.** The limits of liability set out in this Article 18—Insurance, may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Licensee’s exposure to risk.
- 18.5 Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Agreement with the Utility except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to Utility employees or agents directly caused by the negligence of Licensee, or (4) that exclude coverage of liability for injuries or damages caused by Licensee’s contractors or the contractors’ employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.
- 18.6 Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

Article 19—Authorization Not Exclusive

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

Article 20—Assignment

- 20.1 Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of the Utility, which consent shall not be unreasonably withheld, conditioned or delayed. Licensee shall furnish The Utility with written notice of the transfer or assignment, together with the name and address of the transferee or assignee. It shall be unreasonable for the Utility to withhold consent without cause to an assignment of all of Licensee’s interests in this Agreement to its Affiliate.
- 20.2 Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 20—Assignment, shall be allowed until the assignee or transferee becomes a

signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement.

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

Article 21—Failure to Enforce

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

Article 22— Dispute Resolution

- 22.1 Dispute Resolution.** Except for an action seeking a temporary restraining order or an injunction or to compel compliance with this dispute resolution procedure, the Parties can invoke the dispute resolution procedures in this Article at any time to resolve a controversy, claim, or breach arising under this Agreement. Each Party will bear its own costs for dispute resolution activity.
- 22.2 Initial Meeting.** At either Party's written request, each Party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The Parties will conduct any meeting in-person or via conference call, as reasonably appropriate.
- 22.3 Executive Meeting.** If sixty (60) days after the first in-person meeting of the senior representatives, the parties have not resolved the dispute to their mutual satisfaction, each Party will designate executive representatives at the director level or above to meet and negotiate in good faith to resolve the dispute.
- 22.4 Joint Field Review.** In the event of a dispute regarding any compliance or non-compliance with all Applicable Standards, including which entity is responsible for any non-compliance and what corrective action, if any, is necessary or appropriate to remedy

any such non-compliance, then the Parties shall each arrange for a representative to make a joint field visit to the Pole location(s) to investigate whether a violation exists and if so, any corrective action needed and the entity or entities responsible. The Parties will make a diligent and good faith effort to resolve such disputes at the local level by the Parties' respective local engineers and local managers.

- 22.5 Unresolved Dispute. If after sixty (60) days from the first executive-level, in-person meeting, the Parties have not resolved the dispute to their mutual satisfaction; either may invoke any legal means available to resolve the dispute, including enforcement of the default procedures set out in Article 23—Termination of Agreement.
- 22.6 Confidential Settlement. To the extent consistent with Applicable Law including the North Carolina Public Records Law, unless the Parties otherwise agree in writing, communication between the Parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery and inadmissible in litigation.
- 22.7 Business as Usual. During any dispute resolution procedure or lawsuit, the Parties will continue providing services to each other and performing their obligations under this Agreement.
- 22.8 Penalties and Remedies. Penalties and remedies for failures to act, including default remedies, will apply as specified in this Agreement during the dispute resolution process.

Article 23—Termination of Agreement

- 23.1 Notwithstanding the Utility's rights under Article 12—Termination of Permit, the Utility shall have the right, pursuant to the procedure set out in Paragraph 23.2, to terminate this entire Agreement, or any Permit issued hereunder, whenever Licensee is in default of any term or condition of this Agreement, including but not limited to the following circumstances:
 - 23.1.1 Construction, operation or maintenance of Licensee's Communications Facilities in violation of law or in aid of any unlawful act or undertaking; or
 - 23.1.2 Construction, operation or maintenance of Licensee's Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority, subject to Paragraph 12.1; or violation of any other agreement with the Utility; or
 - 23.1.3 Construction, operation or maintenance of Licensee's Communications Facilities without the insurance coverage required under Article 18—Insurance, or

23.1.4 Bankruptcy declared by the Licensee, or its parent company or direct affiliate having operational influence over the Licensee.

- 23.2** The Utility will notify Licensee in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition(s) applicable to Paragraph 0 above. Licensee shall take immediate corrective action to eliminate or cure any such condition(s) within thirty (30) calendar days, or if such default by its nature cannot be readily cured within the thirty (30) calendar day period, this period will be extended if Licensee commences to cure such default within such thirty (30) calendar day period and proceeds diligently thereafter, to the satisfaction of Utility to effect such cure. Upon correction or cure Licensee shall confirm in writing to the Utility that the cited condition(s) has (have) ceased or been cured. If Licensee fails to discontinue or cure such condition(s) or commence a cure within the above time frames, the Utility may immediately terminate this Agreement or any Permit(s). In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, the Utility may seek removal of Licensee's Communications Facilities pursuant to the terms of Article 11—Removal of Licensee's Facilities, provided, that Licensee shall be liable for and pay all fees and charges pursuant to terms of this Agreement to the Utility until Licensee's Communications Facilities are actually removed.

Article 24—Term of Agreement

- 24.1** This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years. Either party may terminate this Agreement at the end of the initial five (5) year term by giving to the other party written notice of an intention to terminate this Agreement at least one hundred eighty (180) calendar days prior to the end of the term. Upon failure to give such notice, this Agreement shall automatically continue in force on a year-to-year basis until terminated by either party after one hundred eighty (180) calendar day's written notice.
- 24.2** Even after the termination of this Agreement, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to this Agreement.

Article 25—Amending Agreement

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

Article 26—Notices

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

If to the Utility, at: **City of Monroe**

Monroe, North Carolina

If to Licensee, at:

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

- 26.2** Licensee must notify the Utility in writing within thirty (30) calendar days of any change to the contact information provided under Paragraph 26.1, Notices. Failure to comply with this notification process will result in a \$250.00 fine.
- 26.3** The above notwithstanding, the Parties agree that Utility may direct Licensee to utilize electronic communications through an electronic portal, as well as verified email for notifications related to the Permits applications, Make-Ready, rearrangements, transfer and/or Pole modifications. Licensee shall provide an email contact for all such communications on its Permit Applications.
- 26.4** Licensee shall maintain a staffed twenty-four (24)-hour emergency telephone number where the Utility can contact Licensee to report damage to Licensee's Facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to the Utility's concerns and requests. Failure to maintain an emergency contact shall subject Licensee to a fee of \$100 per incident, and shall eliminate the Utility's liability to Licensee for any actions that the Utility deems reasonably necessary given the specific circumstances.

Article 27—Entire Agreement

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

Article 28—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.

Article 29—Governing Law

29.1 The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of North Carolina or any regulatory agency of competent jurisdiction. The sole and exclusive venue of any legal action in regard to this Agreement should be in the Circuit or Superior Courts of Union County, North Carolina.

Article 30—Incorporation of Recitals and Appendices

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

Article 31—Performance Bond

On execution of this Agreement, Licensee shall provide to the Utility a performance bond in an amount that is equal to two (2) times the annual Pole attachment fee set forth in APPENDIX A—Fees and Charges, Item 1 per Licensee Pole Attachment or Ten Thousand Dollars (\$10,000.00), whichever is greater. The required bond amount may be adjusted periodically to account for additions or reductions in the total number of Licensee's Pole Attachments. The bond shall be with an entity and in a form acceptable to the Utility. The purpose of the bond is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties and fees due to the Utility which arise by reason of the construction, operation, maintenance or removal of Licensee's Communications Facilities on or about Utility Poles. The Utility, at its sole discretion, may waive the requirement of a performance bond if the proposed Licensee, or its predecessor, is a regionally or nationally recognized communications provider having formally been in existence for a minimum of ten years and can demonstrate financial responsibility. The Utility may waive the provisions of this Article for small government Licensees.

Article 32—Force Majeure

- 31.1** In the event that either the Utility or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of a Force Majeure Event, then performance of such acts shall be excused for the period of the unavoidable delay, and any such party shall endeavor to remove or overcome such inability as soon as reasonably possible. Licensee shall not be responsible for any charges associated with Utility Facilities for any periods that such Facilities are unusable.
- 31.2** With the exception of Emergency work done to Licensees Facilities to correct for a violation in Licensees attachments (including emergency transfers), the Utility shall not impose any charges on Licensee stemming solely from Licensee's inability to perform required acts during a period of a Force Majeure Event , provided that Licensee present the Utility with a written description of such Force Majeure Event within a reasonable time after occurrence of the event or cause relied on, and further provided that this provision shall not operate to excuse Licensee from the timely payment of any fees or charges due the Utility under this Agreement, except to the extent allowed under Paragraph 31.1.

Article 33— Counterparts

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

[Remainder of page intentionally left blank – signature page follows]

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

LICENSOR

THE UTILITY

CITY OF MONROE

By: _____
Mark Watson, City Manager

[CITY SEAL]

Attest:

Bridgette H. Robinson, City Clerk

LICENSEE

Name _____

BY: _____

Title: _____

STATE OF _____

: ss

County of _____

I, the undersigned, a Notary Public in and for the State of _____, hereby certify that on the _____ day of _____, 202____, personally appeared before me [NAME] _____, [TITLE] _____ to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he/she signed and sealed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

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

Notary Public in and for the
State of _____, residing at
_____, _____

APPENDIX A—FEES AND CHARGES

Pole Attachment Fees and Charges

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

Effective July 1, 2025: \$14.49 per attachment per year for all attachments to distribution structures (35kV and below) other than small wireless Facilities, Overlash, and Micro Wireless Facilities.

Effective July 1, 2025: \$28.98 per attachment per year for all attachments to sub-transmission and transmission structures (greater than 35kV) other than small wireless Facilities.

Effective July 1, 2025: \$100.00 per attachment per year for small wireless facilities attached to poles having a branded height of not more than forty-five feet (45'). Fee is inclusive of any applicable ROW access fee and fee for attachment to municipally owned structures in the ROW.

Effective July 1, 2025: \$250.00 per attachment per year for small wireless facilities attached to poles having a branded height of more than forty-five feet (45') and not more than eighty feet (80'). Fee is inclusive of any applicable ROW access fee and fee for attachment to municipally owned structures in the ROW.

Adjustment of Annual Pole Attachment Fee:

Annual Rental shall be automatically adjusted each year on July 1 by two and one half percent (2.5%) rounded down to the nearest whole penny. If such changed rate is not acceptable to the Licensee, Licensee may terminate this agreement subject to terms provided for in Article 23—Termination of Agreement, of this agreement.

2. Non-Recurring Fees:

- Permit Application Fee\$100.00 per Permit Application
(up to 30 Poles or each Micro Wireless Facility)
- Permit Application Fee\$250.00 per Permit Application
(31 to 300 Poles)
- Permit Application Fee (removals only).....No charge
- Make Ready Work ChargesSee Article 7 of Agreement
- Miscellaneous ChargesSee Article 3 of Agreement
- Inspection Fees.....See Article 13 of Agreement
- Anchor Attachment Fee.....\$25.00
- Pole Removal Fee.....\$150.00

NOTE: Permit Application fees may be adjusted periodically, but not more often than annually, to reflect increases in operating costs. The Utility reserves the right to waive permit application costs for assets already in place under a previous agreement.

3. Unauthorized Attachment Fee:

- 3.1 For each Unauthorized Attachment discovered Licensee shall be subject to an Unauthorized Attachment Fee penalty that is equal to five (5) times the Annual Attachment Fee, per occurrence, for each year from the date of contract execution or the period since the date of the last Inventory, whichever is less.
- 3.2 The above notwithstanding, to the extent consistent with applicable law, Utility reserves the right to impose an additional Unauthorized Attachment Fee that is equal to ten (10) times the Annual Attachment Fee, per occurrence, for each year from the date of contract execution or the period since the date of the last Inventory, whichever is less, in instances where Licensee demonstrates a repeated and persistent pattern of making a large number of Unauthorized Attachments. For purposes of this additional Unauthorized Attachment penalty a large number of Unauthorized Attachments is an instance where fifteen percent (15%) or more of Licensee's Attachments are found to continue to be Unauthorized after the assessment of initial Unauthorized Attachment Fees following an Inventory.

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

Utility may transfer, rearrange, remove, or correct Licensee's Communications Facilities without liability for any damages, unless caused by Utility's negligence, and Licensee shall pay Utility the Imposition Costs of such work. Utility may also invoke any legal rights including find Licensee to be in breach of the Agreement.

5. After Hours Call Out

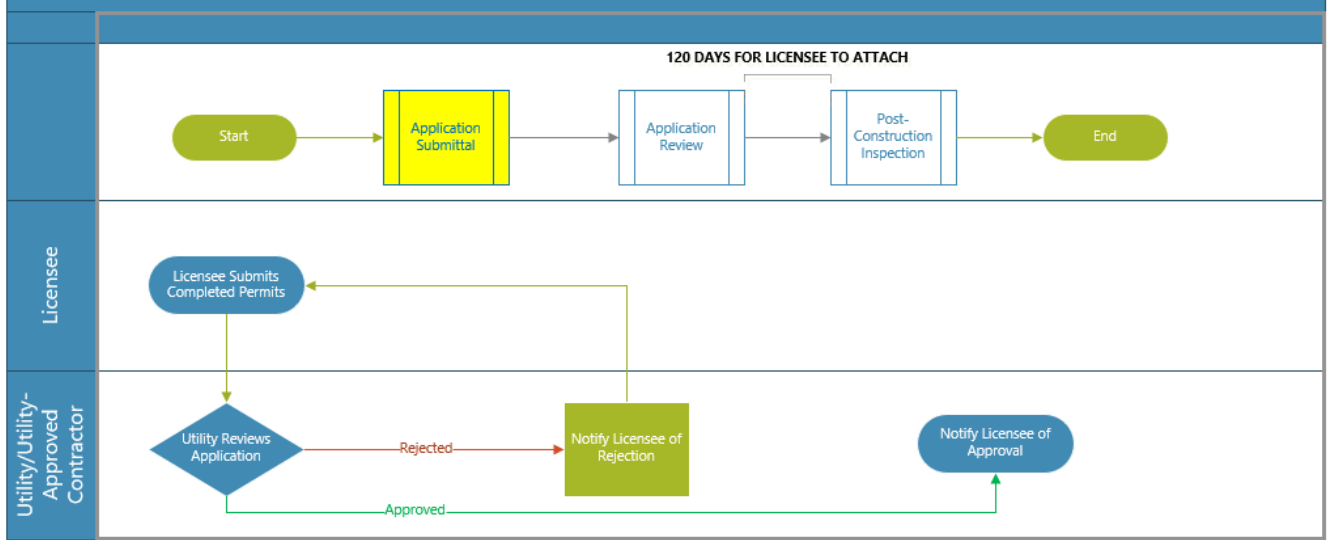
- If Licensee requires assistance from the Utility outside of normal working hours, Licensee agrees to pay for all Utility personnel hours worked at rates that are 1.5x their published standard hourly rates. The minimum billable hours for each Utility person shall be four (4) per incident.

APPENDIX B—POLE ATTACHMENT PERMIT APPLICATION PROCESS

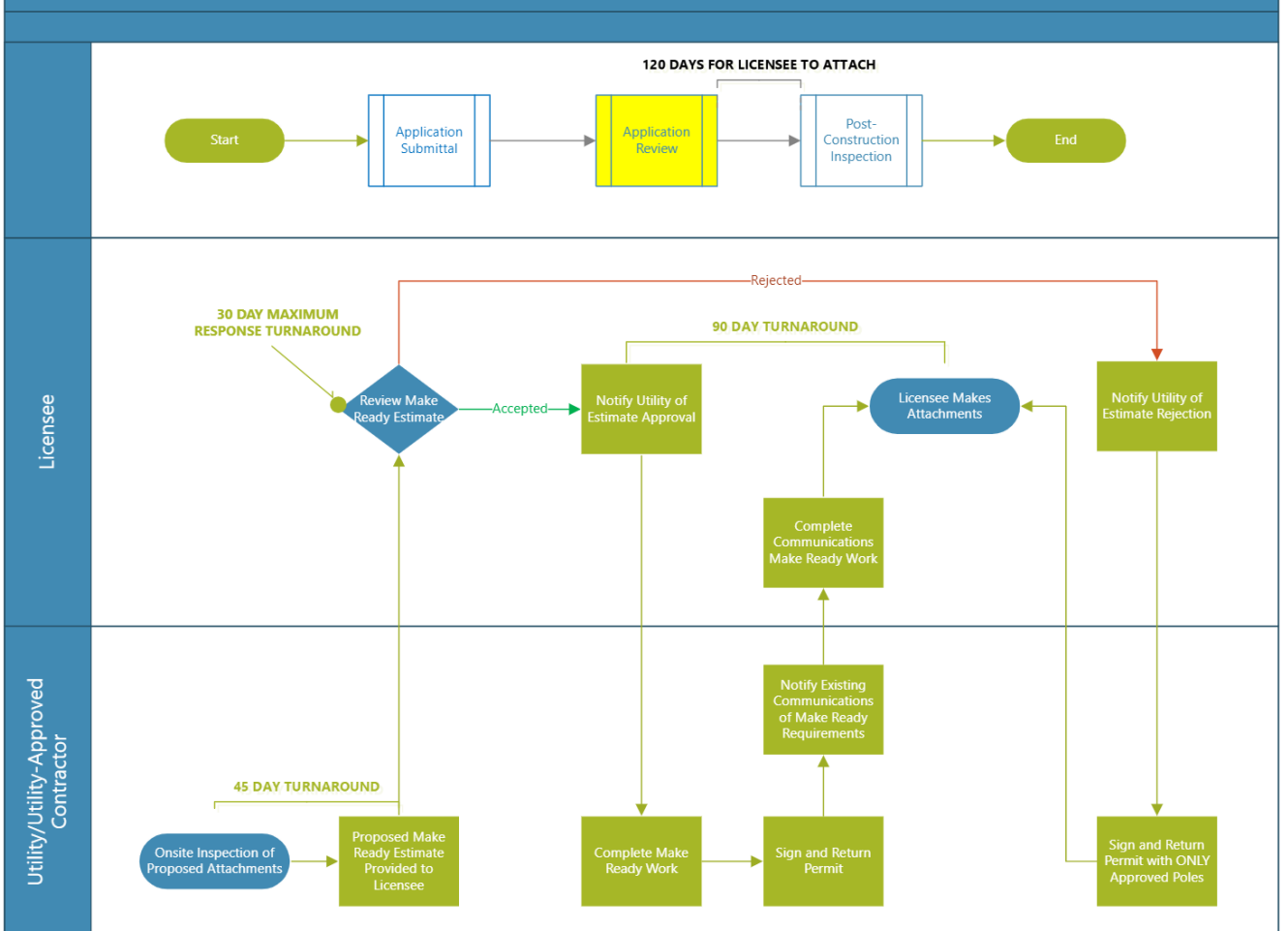
The following procedure is to be followed by each Licensee seeking to make new Attachments on Utility Poles. Note that no entity may make any Attachments to Utility Poles without having first entered into a binding Pole Attachment Licensing Agreement.

1. Licensee shall submit a completed Permit Application (APPENDIX C—Application for Permit) that includes: route map, information required in APPENDIX F—Field Data Summary Sheet Instructions, installation plans and recommendations on Make-Ready Work. Licensee shall prepare the Permit Application in adherence with the Applicable Standards (Paragraph 1.2 of Agreement) and specifications (APPENDIX D—Specifications for Licensee’s Attachments to The Utility Poles). A maximum of 40 utility owned poles identified for proposed application per application. No more than 500 poles shall be submitted in any calendar month.
2. The Utility will review the completed permit application and discuss any issues with the Licensee. Said review may involve an onsite inspection of proposed attachment(s) with Licensee’s professional engineer or Utility approved Licensee employee or contractor.
3. Upon receipt of written authorization, the Utility will proceed with Utility Make-Ready Work according to the specific agreed-upon installation plans and the terms of the Agreement, including payment for the utility Make-Ready Work charges as set out by the Utility and agreed to by the Licensee. At the same time, Utility shall provide notice to all other Attaching Entities with existing Attachments on the impacted Poles of the need to perform Communications Make-Ready Work, the location of the Pole and timeframe for the work, as well as providing such other Attaching Entities with contact information for Licensee.
4. Upon completion of the Utility Make-Ready Work, the Utility will sign and return the Application for Permit authorizing the Licensee to make its Attachment(s) in accordance with agreed-upon installation plans.
5. The Licensee’s professional engineer, the Utility-approved employee or contractor shall submit written certification that he/she has completed the Post-Construction Inspection and that the installation was done in accordance with the provisions of the Permit. The Post-Construction Inspection shall be submitted within thirty (30) calendar days after installation is complete.

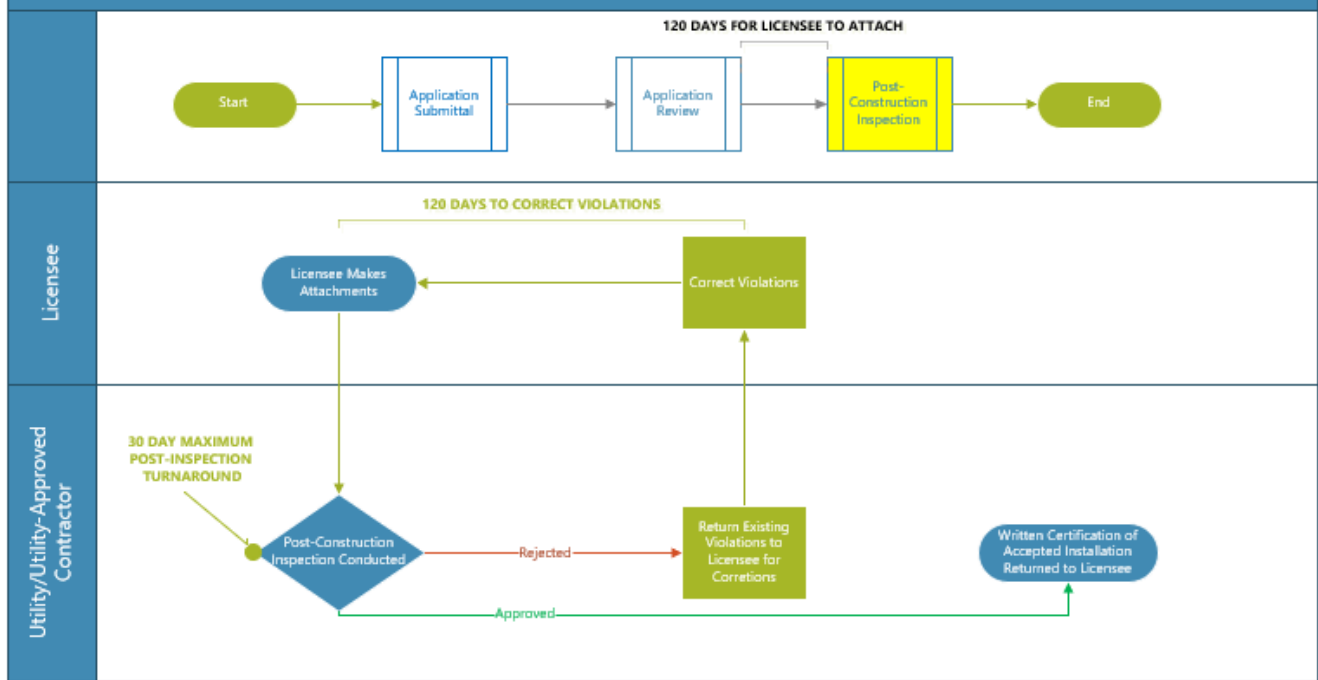
Application Submittal Sub-Process



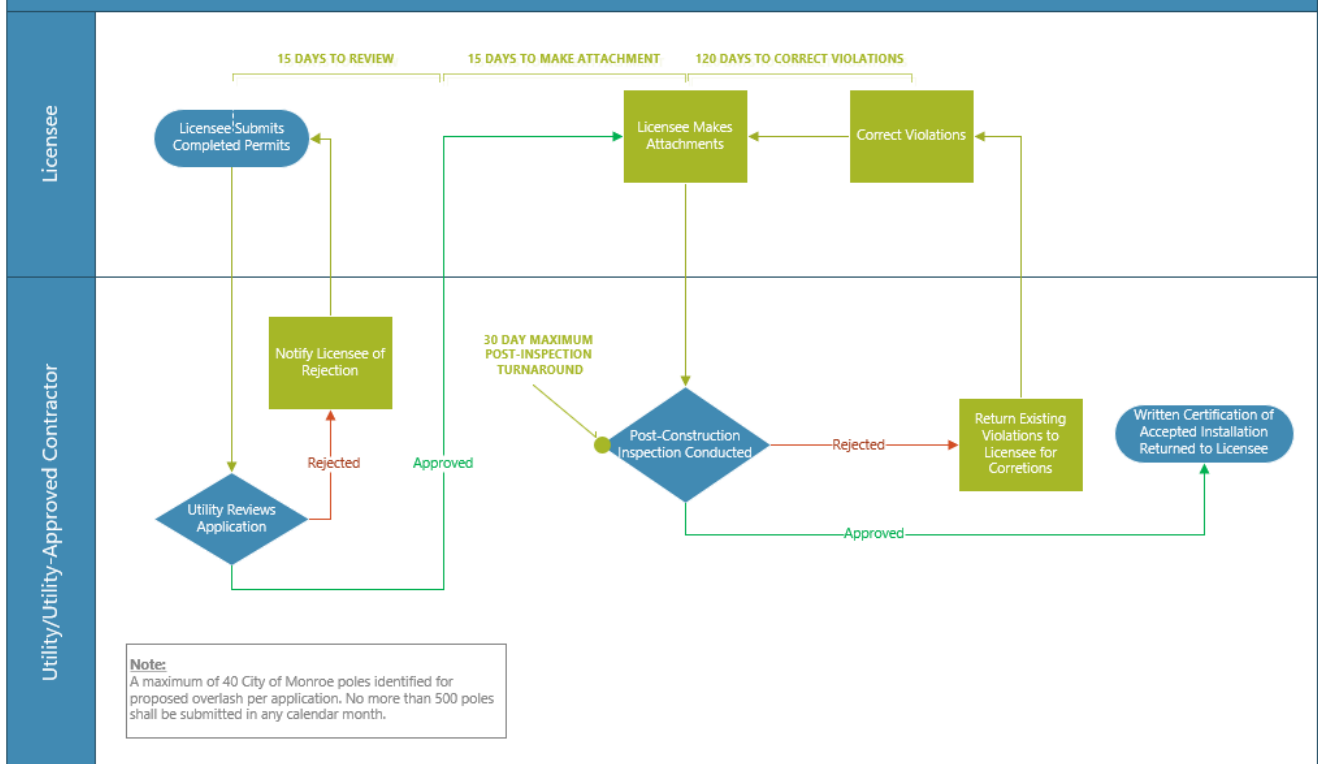
Application Review Sub-Process



Post-Construction Inspection Sub-Process



City of Monroe JUA Overlash Process



APPENDIX C—APPLICATION FOR PERMIT

APPLICATION FOR ATTACHMENT or REMOVAL

City of Monroe, NC
Attn: Electric Superintendent
(xxx) xxx-xxxx FAX (xxx) xxx-xxxx

Date * _____

UTILITY INFORMATION (Licensee)

Utility Name: _____ *

Address: _____ *

Contact

Person: _____ *

Phone: _____ * Fax No. _____ *

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

GENERAL APPLICATION INFORMATION

Location (road name(s), general project description) _____ *

Section, Township, Range _____ *

Legal Authority (Provide information on documents applicable to project)

State Franchise/Permit # _____ *

City/County Franchise/Permit # _____ *

Private Property Easements A.F.# _____ *

Utility Project Name, Work Order Number _____ *

Project Schedule (planned date of construction) _____ *

Name of Construction Company _____ *

Address _____ *

Phone _____ * Fax No. _____ *

Contact Person _____ *

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

Number of New poles contacted * _____ Number of Utility anchors * _____

Number of existing contacts to have added Facilities * _____

Terminate * _____ pole contacts.

TO BE COMPLETED BY UTILITY PERSONNEL

Date Application received _____ Field review _____ Final review _____

Application review by: _____

☐ Permit Application accepted Date _____

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

☐ Permit Application denied. Date Letter of explanation sent _____

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

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

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

B. Clearances

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

6. **Pedestals/Vaults/Enclosures:** Every effort should be made to install Pedestals, Vaults and/or Enclosures a minimum of five (5) feet from Poles or other Utility Facilities. If placement of Pedestals, Vaults and/or Enclosures a minimum of four (4) feet from Poles or other Utility Facilities is not practical, Licensee shall contact the Utility to obtain written approval of the proposed placement. Every effort should be made to install or relocate the Utility Facilities a minimum of four (4) feet from Licensee's existing Pedestals, vaults and/or enclosures.
7. **Cable Storage:** Cable storage must be centered at the attachment pole and no less than five (5) feet and no more than fifty (50) feet away from pole center. The Utility reserves the right to work with the Licensee regarding any practice that deviates from the cable storage described above.

C. Down Guys and Anchors

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

D. Certification of Licensee's Design

1. Licensee's Attachment Permit application must be signed and sealed by a professional engineer, registered in the State of North Carolina, or utility approved employee or contractor certifying that Licensee's aerial cable design fully complies with the NESC, the Utility's Construction Standards and any other applicable federal, state or local codes and/or requirements.

2. This certification shall include the confirmation that the design is in accordance with Pole strength requirements of the NESC, taking into account the effects of Utility Facilities and other Attaching Entities' Facilities that exist on the Poles without regard to the condition of the existing Facilities.

E. Miscellaneous Requirements

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

F. Utility Construction Drawings and Specifications

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

APPENDIX E—DISTRIBUTION LINE MINIMUM DESIGN REVIEW INFORMATION AND WORKSHEET

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

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

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

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

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

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

- **Confirm that you have:**

- _____ (y/n) Obtained appropriate franchise(s).
- _____ (y/n) Obtained Pole/anchor easements from land owners.
- _____ (y/n) Obtained crossing and overhang permits.
- _____ (y/n) Obtained permit to survey R/W.
- _____ (y/n) Completed State of North Carolina Department of Transportation requirements.

- _____ (y/n) Placed permit number on plans.
- _____ (y/n) Complied with North Carolina State Underground Facility Location requirements.
- _____ (y/n) Included sag/tension data on proposed cable.

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

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

The engineer for the Permit applicant shall provide for each Pole(s) the following information:
Note: Items marked with an * are required, other items are as requested by the Utility.

General:*

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

Proposed:

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

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

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

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

1. Vertical weight, bare = _____ [# / ft]

B. Tension data (final tensions on messenger)

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

2. 60° F, NO wind: _____[lbs]

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

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

APPENDIX F—FIELD DATA SUMMARY SHEET INSTRUCTIONS

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

FIELD DATA SHEET FOR ATTACHMENTS TO CITY OF MONROE. NC

Attaching Company Name:

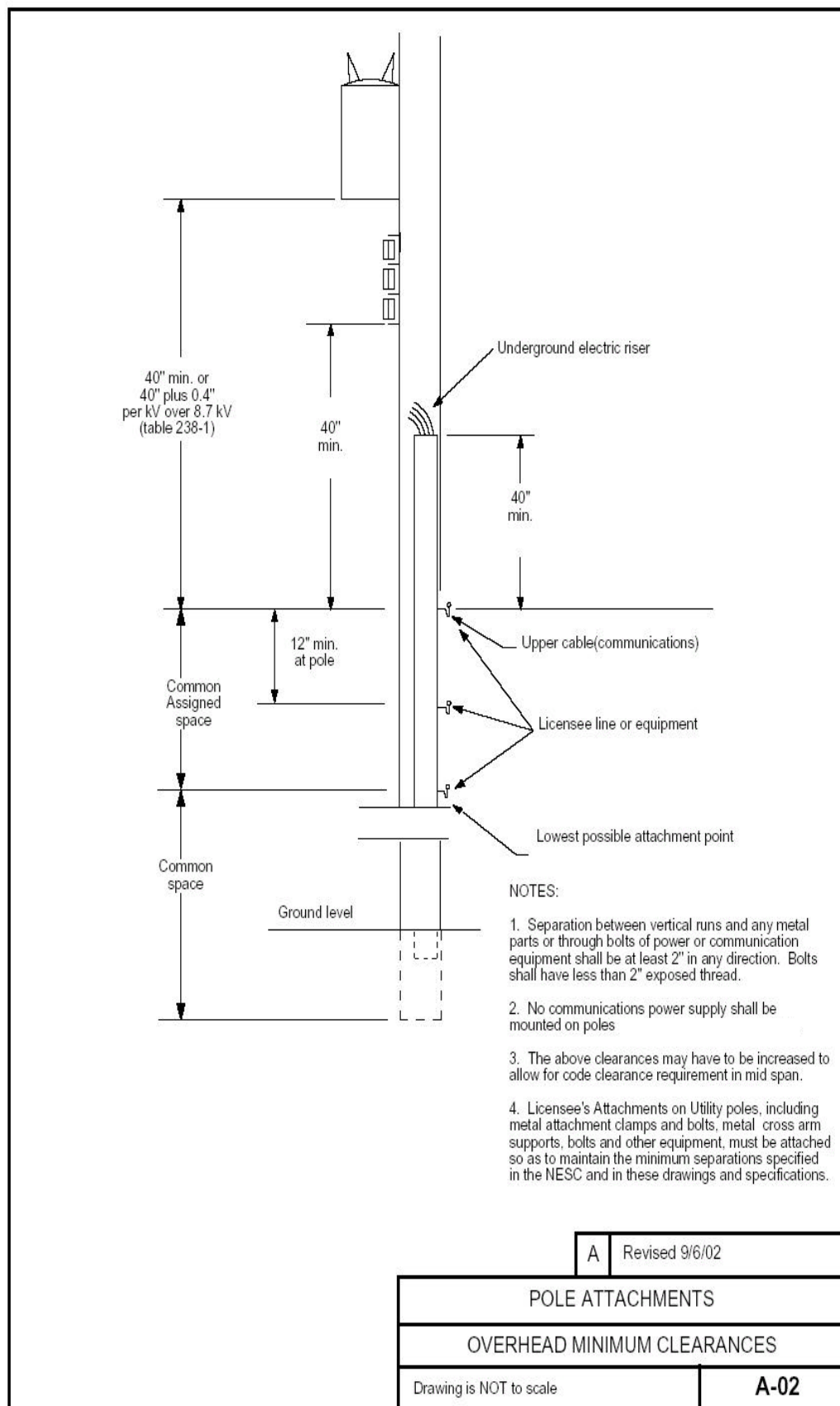
Type of Facility:

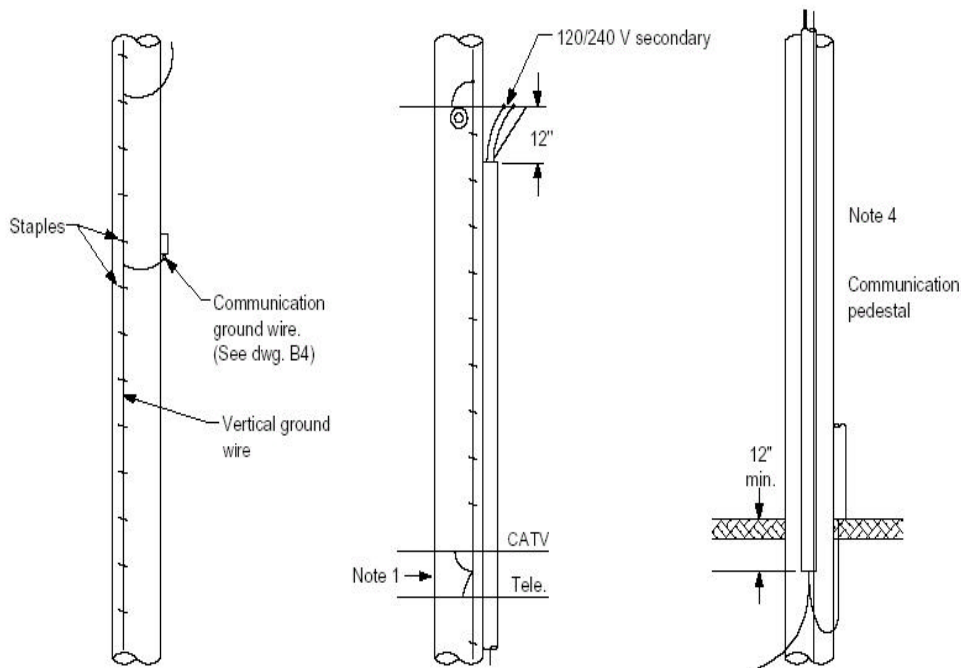
Project Name and/or Number:

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

SAMPLE

Excel spreadsheet available





NOTES:

No communications power supply shall be mounted on Poles

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

See Drawing #5

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

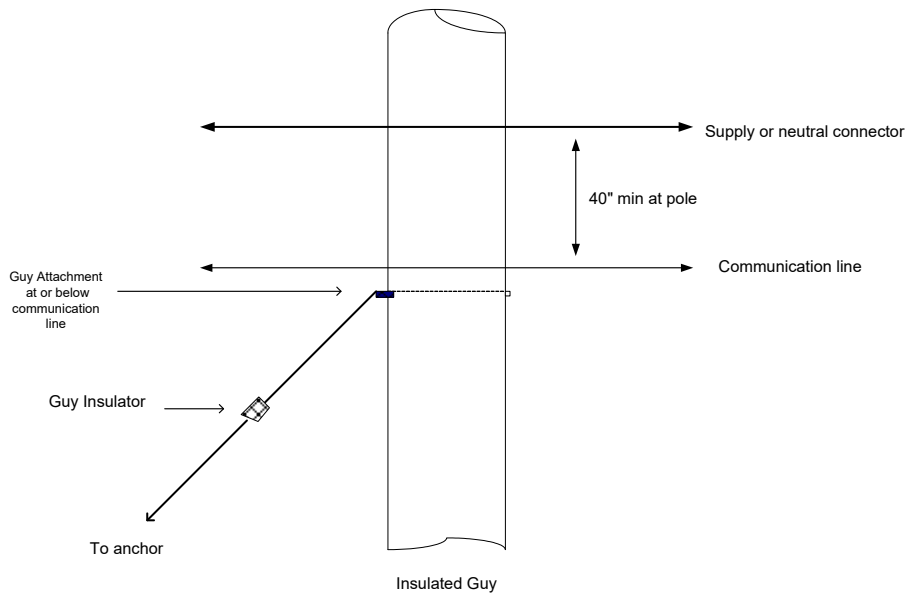
A Revised 9/6/02

POLE ATTACHMENTS

GROUNDING CONNECTIONS

Drawing is NOT to scale

A-03



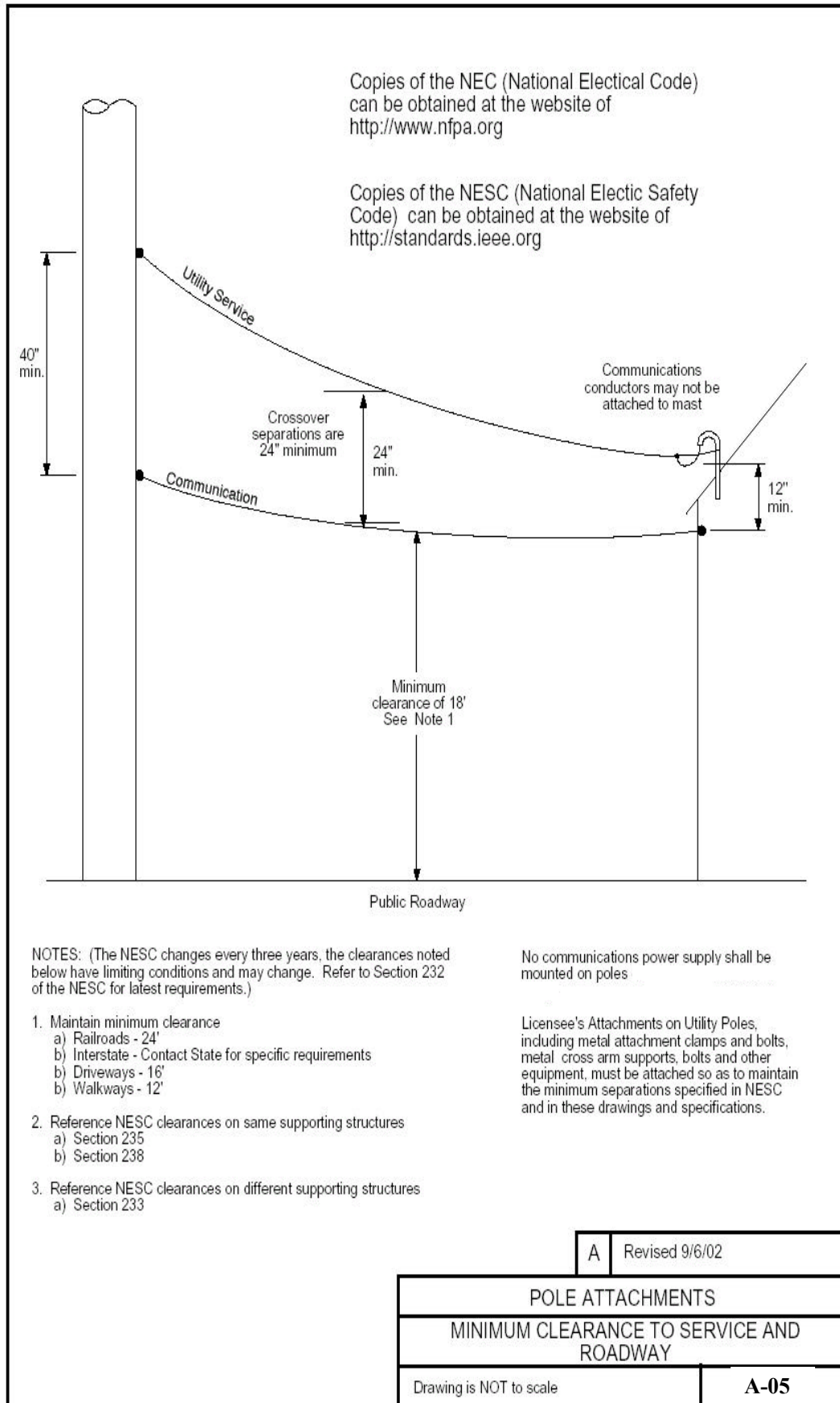
NOTES:

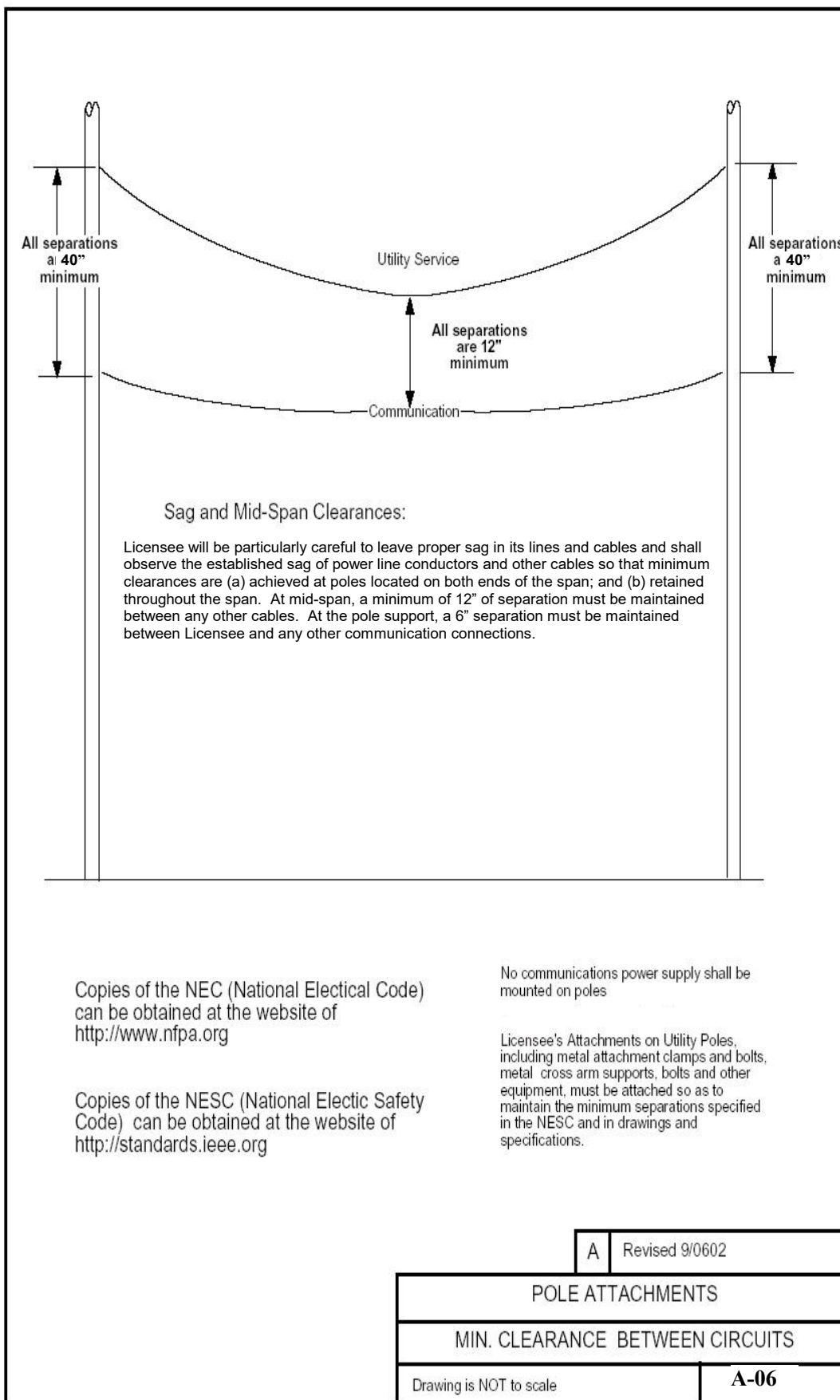
1. Licensee shall be responsible for procuring and installing all anchors and guy wires to support the additional stress placed on Licensor's poles by Licensee's Attachments.
2. Anchors and guy wires must be set on each Utility pole where there is a turn or angle and on all dead-end Utility poles.
3.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

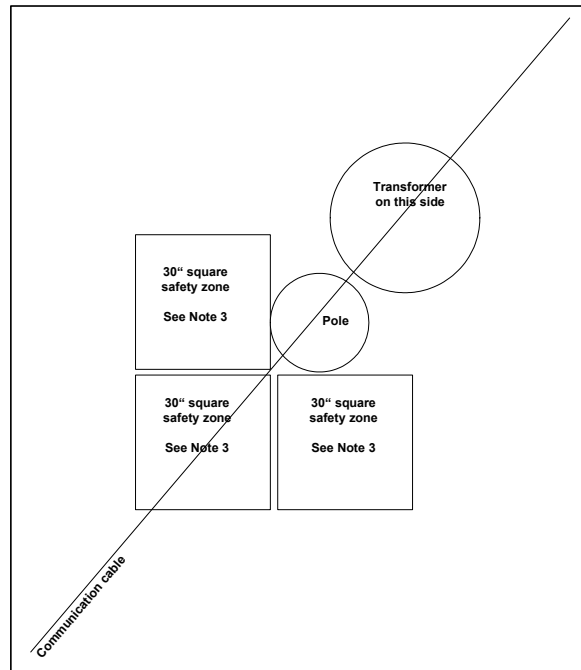
No communications power supply shall be mounted on poles.

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

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







NOTES:

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

No communications power supply shall be mounted on poles

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

A	Revised 9/6/02
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POLE ATTACHMENTS

CLIMBING SPACE REQUIREMENTS

Drawing is NOT to scale

A-07

JOINT USE POLE ATTACHMENT LICENSE AGREEMENT

BETWEEN



CITY OF MONROE, NC

AND

DATED: _____

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JOINT USE POLE ATTACHMENT LICENSE AGREEMENT

This Joint Use Pole Attachment Licensing Agreement (the “Agreement”) dated this ____ day of _____, 202 ____ is made by and between City of Monroe, North Carolina operating through its municipally owned-electric utility (“Utility”), and _____, having its principal place of business at _____, (“Carrier”). References in this Agreement to “Owner” and “Licensee” shall refer to either Party interchangeably as the context may require based on whether the Pole at issue is owned by the Utility or Carrier. Utility and Carrier may be referred to hereafter individually as a “Party” and collectively as the “Parties.”

Recitals

- A. Whereas, each Party owns and operate Poles in their respective, shared service territory located within the State of North Carolina; Utility for the sole purpose of supplying Electric Services and Carrier for the sole purpose of providing Communications Services; and
- B. Whereas, each Party is responsible for safeguarding the integrity of its respective Poles and Facilities, obtaining fair compensation for the use of its infrastructure through collection of fees and other charges, ensuring compliance with all Applicable Standards, and all applicable federal, State and local laws, rules and regulations, ordinances and standards and policies.,
- C. Whereas, each Party acting in its capacity as a Pole Owner is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee’s Attachments on Owner’s Poles, provided that either Party may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally applicable engineering purposes and/or any other Applicable Standard; and
- D. Whereas, on _____, 20____, Utility and Carrier entered into a joint use pole attachment license agreement (“Prior Agreement”); and
- E. Whereas, by registered letter dated _____, Utility gave notice to Carrier that Utility was terminating said Prior Agreement effective _____; and
- F. Whereas, the Parties intend that this Agreement replace said Prior Agreement on its termination; and

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Utility and Carrier.

Article 1—Definitions

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

- 1.1 **Affiliate**: when used in relation to either Party, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with such Party’s signatory Party to this Agreement.
- 1.2 **Applicable Standards**: means all applicable engineering and safety standards governing the installation, maintenance and operation of Facilities and the performance of all work in or around Owner’s Facilities and includes the most current versions of National Electrical Safety Code (“NESC”), the National Electrical Code (“NEC”), the regulations of the Occupational Safety and Health Administration (“OSHA”), North Carolina Occupational Safety and Health Administration (“NCOSHA”), North Carolina Administrative Code (“NCAC”), as well as the engineering and safety standards established by the Owner, each of which is incorporated by reference in this Agreement, and/or other reasonable Owner provided safety and engineering requirements or other federal, state or local governmental entity with jurisdiction over Owner’s Facilities.
- 1.3 **Assigned Space**: means space on Owner Poles that can be used, as defined by the Applicable Standards, for the attachment or placement of Electric Facilities or Communications Facilities and associated equipment for the provision of Electric Services or Communications Service. The neutral zone or safety space is not considered Assigned Space.
- 1.4 **Attaching Entity**: means any public or private entity, including Utility or Carrier when acting as a Licensee, which, pursuant to a license agreement with the Utility, places an Attachment on the Owner’s Poles.

- 1.5 **Attachment:** means any Communications Facilities or Electric Facilities, and associated equipment that are placed directly on Owner's Poles, but does not include a Riser, Overlash, Anchor, or support and safety attachments attached to a single Pole where Licensee has an existing Attachment on such Pole. Unless otherwise, Carrier's Attachments are assumed to occupy one foot of vertical space within the Communications Space on a Pole and Utility's Attachments are presumed to occupy seven feet of vertical space within the Electric Space on a Pole. Service Drops shall be considered Attachments but shall not be subject to separate permitting or Attachment Fees except as specified in Paragraph 6.1.
- 1.6 **Capacity:** means the ability of a Pole to accommodate an Attachment based on Applicable Standards, including space and loading considerations.
- 1.7 **Climbing Space:** means that portion of a Pole's surface and surrounding space that is free from encumbrances to enable Owner's employees and contractors to climb, access and work on Owner's Facilities and equipment safely.
- 1.8 **Common Space:** means space on Utility Poles that is not used for the placement of wires or cables but which jointly benefits all users of the Poles by supporting the underlying structure and/or providing safety clearance between the Communications Facilities of Attaching Entities and Electric Facilities.
- 1.9 **Communications Facilities:** means wire or cable Facilities including but not limited to fiber optic, copper and/or coaxial cables or wires utilized to provide Communications Service including any and all associated equipment. Unless otherwise specified by the Parties, the term "Communications Facilities" does not include Pole mounted wireless antennas, receivers or transceivers. Strand-mounted Micro Wireless Facilities that do not restrict climbing space shall be considered Communications Facilities, and authorized as specified below in 1.20.
- 1.10 **Communications Make-Ready Work:** means Make-Ready Work required to be performed on a Pole within the Communications Space to rearrange or relocate existing Communications Facilities or otherwise accommodate new Attachments within the Communications Space. As a general matter unless otherwise specified, Communications Make-Ready Work shall be performed by or on behalf of the entity that owns the Communications Facilities being rearranged or relocated and shall not be performed by Utility.
- 1.11 **Communications Service:** means the transmission or receipt of voice, video, data, Internet or other forms of digital or analog signals over Communications Facilities.
- 1.12 **Communications Space:** means the Assigned Space on the Pole where Communications Facilities can be attached to a Pole below the Electric Space and safety space in accordance with Applicable Standards.

- 1.13 **Electric Service:** means the provision of electric distribution services over Electric Facilities.
- 1.14 **Electric Space:** means the Assigned Space on the Pole where Electric Facilities can be attached to a Pole above the Communications Space and safety space in accordance with Applicable Standards.
- 1.15 **Emergency:** means a situation exists which, in the reasonable discretion of Utility or Licensee, if not remedied immediately, poses an imminent threat to public health, life, or safety, damage to property or a service outage.
- 1.16 **Force Majeure Event:** means an event constituting or arising from any substantial and extraordinary cause beyond a Party's reasonable control, including, without limitation, acts of war, acts of God, earthquake, hurricanes, embargo, riot, sabotage, strikes, governmental act, insurrections, epidemics, quarantines, terrorist activity, extraordinarily severe or prolonged flooding, extraordinarily severe or prolonged ice and snow storms, extraordinarily severe and widespread fire or other similar casualty, or other substantial and extraordinary accidents not caused by the Party asserting such Force Majeure Event, or strikes, or utility company delays not resulting from the responsible Party's or such Party's subcontractor's failure to timely take necessary actions.
- 1.17 **Imposition Cost:** means all costs, including but not limited to the cost of materials and equipment, fully loaded direct and indirect labor, engineering, supervision and over-head, associated with performance by Owner of required tasks that Licensee failed to undertake in a timely manner as specified in this Agreement, plus an additional twenty percent (20%).
- 1.18 **Licensee:** means either Carrier or Utility in circumstances where such entity has made or is seeking to make Attachments to a Pole owned by the other Party.
- 1.19 **Make-Ready Work:** means all work, as reasonably determined by the Owner of the Pole and/or the Attaching Entity with existing Attachments on a Pole, required to accommodate Licensee's Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, Pre-Construction Survey, rearrangement and/or transfer of Owner's Attachments and Attachments of other Attaching Entities, as well as inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes) or Pole replacement and construction.
- 1.20 **Micro Wireless Facility:** means a small strand-mounted wireless facility that is installed on an existing authorized Communications Attachment and is not larger than 24 inches in length, 15 inches in width, and 12 inches in height and that has no exterior antenna longer than 11 inches.
- 1.21 **Occupancy:** means the use or specific reservation of Assigned Space for Attachments on a Pole.

- 1.22 **Overlash**: means to place an additional wire or cable Communications Facility onto an existing Attachment owned by an Attaching Entity. Overlash shall not be counted as a separate Attachment for purposes of calculating annual Pole Attachment Fees.

PEDESTALS/VAULTS/ENCLOSURES: MEANS ABOVE- OR BELOW-GROUND HOUSINGS THAT ARE USED TO ENCLOSE A CABLE/WIRE SPLICE, POWER SUPPLIES, AMPLIFIERS, PASSIVE DEVICES AND/OR PROVIDE A SERVICE CONNECTION POINT AND THAT SHALL NOT BE ATTACHED TO POLES (SEE APPENDIX C2— APPLICATION FOR PERMIT – TELECOM

1.23 APPENDIX D—Specifications for Licensee’s Attachments to The Utility Poles).

**PERMIT: MEANS WRITTEN OR ELECTRONIC AUTHORIZATION
(SEE APPENDIX B2—POLE ATTACHMENT
PERMIT APPLICATION PROCESS – TELECOM**

- 1.24 APPENDIX C1—Application for Permit) of the Owner for Licensee to make or maintain Attachments to specific Owner Poles pursuant to the requirements of this Agreement.
- 1.25 **Pole:** means a Pole owned or controlled by the Owner used for the provision of Electric Services and/or Communications Service that is capable of supporting Attachments by the other Party. With respect Utility owned Poles the term Poles refers to electric distribution poles and shall not apply to electric transmission structures or poles with voltages in excess of 35kV.
- 1.26 **Post-Construction Inspection:** means the inspection required by the Owner to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Permit.
- 1.27 **Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or the Owner to determine the potential Make-Ready Work necessary to accommodate Licensee's Attachments on a Pole. Such work includes, but is not limited to, field inspection. The Pre-Construction Survey shall be coordinated with the Owner and include Licensee's representative.
- 1.28 **Reserved Capacity:** means capacity or space on a Pole that the Owner has identified and reserved for its own requirements pursuant to a reasonable projected need or business plan.
- 1.29 **Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect wires and cables.
- 1.30 **Service Drop:** means a non-guyed electric or communications cable that extends to a Licensee customer's location from a mainline distribution network Pole where Licensee has a Permit for an authorized Attachment. A Service Drop may attach to one or more drop/lift Poles but may not be attached to more than one mainline distribution Pole.
- 1.31 **Tag:** means to place distinct markers for wires, cables and risers coded by means specified by the Owner and applicable federal, State or local regulations, that will readily identify its owner and cable type and be legible from the ground.
- 1.32 **Utility Facilities:** means all personal property and real property owned or controlled by the Utility, attached or installed on to a Pole in support of its provision of Electric Services, including, but not limited to wires, conductors, Poles and anchors.
- 1.33 **Utility Make-Ready Work:** means Make-Ready Work required to performed on a Pole within safety space or Electric Space to rearrange or relocate existing Utility Electric Facilities or otherwise accommodate new Attachments. Irrespective of who own the Pole, unless otherwise specifically authorized by Utility, all Utility Make-Ready Work shall be

performed by Utility or its approved contractors and shall not be performed by Carrier or any other Attaching Entity.

- 1.33 Wireless Facility:** means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment regardless of technological configuration. Wireless Facilities does not include fibers or cables installed to provide backhaul for wireless communications services.

Article 2—Scope of Agreement

- 2.1 Grant of License.** Subject to the provisions of this Agreement, each Party hereby grants to the other Party a revocable, nonexclusive license authorizing such other Party to install and maintain permitted Attachments to the Owner's Poles. This Agreement only applies to Utility's electric distribution poles and shall not apply to Utility transmission structures or poles with voltages in excess of 35kV
- 2.2 Parties Bound by Agreement.** The Parties agree to be bound by all provisions of this Agreement.
- 2.3 Permit Issuance Conditions.** Each Party when acting in their capacity as Owner of Poles shall issue a Permit(s) to the other Party to make Attachments on Owner's Poles if the Owner determines, in its sole judgment, which shall not be unreasonably withheld, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.
- 2.3.1** The above notwithstanding, neither Party shall not deny the other Party access to a specific Pole for reasons of insufficient capacity, safety, reliability, or generally applicable engineering purposes, if the basis for the denial may be remedied by rearranging Facilities on the Pole through reasonable Make-Ready Work.
- 2.4 Reserved Capacity.** Access to Assigned Space on Poles will be made available to Licensee with the understanding that certain Poles may be subject to Reserved Capacity for future service use by the Owner. At the time of Permit issuance, Owner shall notify Licensee if Capacity on particular Poles is being reserved for future use by Owner in support of their core Electric Services or Communications Services. Owner may reclaim such Reserved Capacity for Owner's future service requirements by giving Licensee at least sixty (60) calendar days prior notice at any time following the installation of Licensee's Attachment. Owner shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity so that Licensee can maintain its Attachment on the affected Pole(s). If

Licensee selects neither option, Owner may remove Licensee's Attachment(s) without liability to Licensee and charge Licensee the Imposition Cost expense for completing such work.

- 2.5 No Interest in Property.** No use, however lengthy, of any space on Owner's Poles, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of Owner's Poles. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of the Owner's rights to Owner's Poles or associated Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.
- 2.6 Licensee's Right to Attach.** Unless otherwise specified in this Agreement, each Party must have a Permit issued pursuant to Article 6—Permit Application Procedures, prior to attaching their respective Facilities to any specific Pole owned or controlled by the other Party.
- 2.7 Owner's Rights over Poles.** The Parties agree that this Agreement does not in any way limit the Owner's right to locate, operate, maintain or remove its Poles in the manner that will best enable it to fulfill its service requirements.
- 2.8 Expansion of Capacity.** The Owner will take reasonable steps, at Licensee's sole expense, to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require the Owner to install, retain, extend or maintain any Pole for use when such Pole is not needed for the Owner's service requirements.
- 2.9 No Wireless Attachments.** This Agreement does not contemplate or authorize the attachment of Wireless Facilities to Owner's Poles other than strand-mounted Micro Wireless installed on authorized Communications Facility Attachments. The installation of Wireless Facilities shall only be allowed pursuant to a separately negotiated wireless pole attachment agreement or rider/amendment hereto.
- 2.10 Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit the Owner from fulfilling any agreement or arrangement regarding Poles into which the Owner has previously entered, or may enter in the future, with others not party to this Agreement.
- 2.11 Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals stated above and no other use shall be allowed without the Owner's express written consent to such use. Nothing in this Agreement shall be construed to require the Owner to allow Licensee to use Owner Poles after the termination of this Agreement, subject to the provisions of Article 11—Removal of Licensee's Facilities, and Article 23—Termination of Agreement, of this Agreement.

- 2.12 **Electric Power.** To the extent Licensee requires electric service for its Communications Facilities, it shall obtain such power pursuant to the applicable standard process for obtaining electric service.
- 2.13 **Enclosures.** Licensee shall not place Pedestals, Vaults and/or other Enclosures on or within five (5) feet of any Pole or other Owner Facilities without the Owner's prior written permission. If permission is granted to place a Pedestal, Vault and/or other Enclosure within five (5) feet of a Owner Pole, all such installations shall be per the Specifications in Appendix D of this Agreement. Such permission shall not be unreasonably withheld. If the Owner installs or relocates Owner Facilities within five (5) feet from Licensee's existing Pedestal, vault, and/or enclosure, Licensee shall not be in violation per Paragraph 4.5 of this Agreement. However, the Owner reserves the right to request the Licensee relocate its enclosure within sixty (60) calendar days at the Owner's sole expense.

Article 3—Fees and Charges

- 3.1 **Payment of Fees and Charges.** Licensee shall pay to the Owner the fees and charges specified in APPENDIX A—Fees and Charges, and shall comply with the terms and conditions specified herein.
- 3.2 **Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from the Owner pursuant to this Agreement within thirty (30) calendar days of the billing date of the invoice.
- 3.2.1 **Disputed Invoice.** If Licensee pays any amount under protest or dispute, Licensee shall make full payment consistent with the above proscribed timeframe and shall designate payment as "PAID UNDER PROTEST." Licensee shall provide Owner with a written notice and explanation as to the disputed portion of the invoice. Failure to contest or otherwise dispute an invoice within ninety (90) calendar days of receipt shall be deemed to be acceptance by the Licensee.
- 3.3 **Billing of Attachment Fee.** The Owner shall invoice Licensee in advance for the per-Pole Attachment fee annually. The initial rental period shall commence on _____, _____, 20____ and conclude on June 30, 20____. Attachment fees for the initial rental period will be billed on a pro-rated basis and, if applicable, attachment fees collected under a previous contract for this same initial rental period will be credited toward this billing on the same pro-rated basis. Each subsequent annual rental period shall commence on the following July 1st, and conclude on June 30th of the next year. The invoice shall set forth the total number of Owner Poles on which Licensee was issued and/or holds a Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits. Attachment fees for permits issued throughout a rental period shall commence on the date of permit approval and be pro-rated for the remainder of the current rental period.

- 3.3.1** By July 15 of each year, the Parties will exchange information on the total number of Licensee's Attachments on their respective Poles along with an invoice for each such Attachment. Thereafter, the Owner with the smaller number of Licensee's Attachments on its Poles shall pay the other Party the balance of the annual Pole Attachment Fee after subtracting the Attachment Fee owed by the other Party. Such Payment shall be payable by August 15 of the then current year.
- 3.4** **Refunds.** No fees or charges as specified in APPENDIX A—Fees and Charges shall be refunded on account of any surrender of a Permit granted hereunder. Nor shall any refund be owed if the Owner abandons a Pole.
- 3.5** **Late Charge.** If the Owner does not receive payment for any fee or other amount owed within thirty (30) calendar days of the billing date, Licensee, upon receipt of fifteen (15) calendar days written notice, shall pay interest on the amount due to the Owner, at the maximum rate allowed by North Carolina State law or One and One Half Percent (1.5%) per month, whichever is less.
- 3.6** **Payment for Work.** Licensee will be responsible for payment of all actual, documented costs to the Owner for all work the Owner or the Owner's contractors perform pursuant to this Agreement to accommodate Licensee's Attachments.
- 3.7** **Advance Payment.** At the discretion of the Owner, Licensee may be required to pay in advance all reasonable costs, including but not limited to construction, inspections and Owner Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Attachments pursuant to the procedures set forth in Article 6—Permit Application Procedures, and Article 7—Make-Ready Work/Installation, below.
- 3.8** **True Up.** Wherever the Owner, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of activity exceeds the advance payment of estimated expenses, Licensee agrees to pay the Owner for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, the Owner agrees to refund to Licensee the difference in cost.
- 3.9** **Determination of Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by the Owner, make ready or otherwise, the charge for such work shall include all reasonable material, labor, engineering and applicable overhead costs. The Owner shall bill its services based upon actual costs, and such costs will be determined in accordance with the Owner's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, number of persons employed by classification and materials used and cost of materials. In addition, if Licensee is required to perform work and fails to perform such work necessitating its completion by the Owner, the Owner will charge Licensee the Imposition Costs, equal to the actual cost to

perform such work plus either an additional ten percent (10%), or assess the fee specified in APPENDIX A—Fees and Charges (4), whichever is the greater amount.

3.10 Work Performed by the Owner. Wherever this Agreement requires the Owner to perform any work, Licensee acknowledges and agrees that the Owner, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work.

3.11 Default for Nonpayment. Nonpayment of any amount due under this Agreement beyond sixty (60) calendar days shall constitute a default of this Agreement.

Article 4—Specifications

INSTALLATION/MAINTENANCE OF COMMUNICATIONS FACILITIES. WHEN A PERMIT IS ISSUED PURSUANT TO THIS AGREEMENT, LICENSEE’S COMMUNICATIONS FACILITIES SHALL BE INSTALLED AND MAINTAINED IN ACCORDANCE WITH THE REQUIREMENTS AND SPECIFICATIONS OF APPENDIX C2— APPLICATION FOR PERMIT – TELECOM

- 4.1** APPENDIX D—Specifications for Licensee’s Attachments to The Utility Poles. All of Licensee’s Communications Facilities must comply with all Applicable Standards, including; the National Electrical Safety Code (NESC), the National Electrical Code (NEC), the Owner’s Construction Standards and all other applicable federal, state and local codes and requirements. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards. Upon execution of this Agreement, Licensee must modify, update or upgrade its existing Attachments, thereby bringing the entire attached plant into compliance with the latest applicable editions of the NESC and the NEC. The above notwithstanding, if applicable NESC standards allow existing attachments made under prior versions of the NESC to remain in place until new construction work is performed such existing Attachments shall be grandfathered.

TAGGING. LICENSEE SHALL TAG ALL OF ITS COMMUNICATIONS FACILITIES AS SPECIFIED IN APPENDIX C2—APPLICATION FOR PERMIT – TELECOM

- 4.2 APPENDIX D—Specifications for Licensee’s Attachments to The Utility Poles, and applicable federal, state and local regulations upon installation of such Facilities, prior authorized Attachments of Licensee shall be tagged within five (5) years of the execution of this Agreement. Failure to provide proper tagging will be considered a violation of the Applicable Standards.
- 4.3 **Interference.** Licensee shall not allow its Attachments to impair the ability of the Owner or any third party to use the Owner’s Poles nor shall Licensee allow its Attachments to interfere with the operation of any Owner Facilities. The attachment rights subsequently granted by the Owner to other Attaching Entities pursuant to licenses, permits, or rental agreements shall not limit nor interfere with any prior attachment rights granted to the Licensee hereunder or result in further rearrangement or make-ready costs without reimbursement.
- 4.4 **Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and Facilities, consistent with applicable standards. Licensee shall at its own expense install protective devices designed to handle the voltage and current impressed on its Communications Facilities in the event of a contact with the supply conductor, as specified in applicable standards. Except as provided in Paragraph 16.1, the Owner shall not be liable for any actual damage to Licensee’s Communication Facilities or Licensee’s customer’s Facilities, nor for consequential damages as a result of damage to Licensee’s Communications Facilities or Licensee’s customers’ Facilities.
- 4.5 **Violation of Specifications.** If Licensee’s Communications Facilities, or any part thereof, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within sixty (60) calendar days from receipt of written notice of the violation(s) from the Owner, the Owner at its option, may correct such conditions or consider the violation an unauthorized attachment, pursuant to Paragraph 14.1. The Owner will attempt to notify Licensee in writing prior to performing such work whenever practicable. When the Owner reasonably believes, however, that such violation(s) create an Emergency situation that poses an immediate threat to the safety of any person, interferes with the performance of the Owner’s service obligations or poses an immediate threat to the physical integrity of Owner Facilities, the Owner may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable thereafter, the Owner will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all costs incurred by the Owner in taking action pursuant to this Paragraph. In such situation, Owner shall not be liable for damage to Licensee’s Facilities except to the extent provided in Paragraph 16.1.
- 4.5.1 The above notwithstanding, in no event will Carrier undertake any work on Utility’s Electric Facilities.

- 4.6 Restoration of Owner Service.** The Owner's service restoration requirements shall take precedence over any and all work operations of Licensee on Owner Poles.
- 4.7 Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days of the effective date of such right and any extension thereof, the Owner may use the space scheduled for Licensee's Attachment(s) for its own needs or other Licensees. In such instances, the Owner shall endeavor to make other space available to Licensee, upon written application per Article 6—Permit Application Procedures, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions.
- 4.8 Removal of Nonfunctional Attachments.** At its sole expense, Licensee shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service ("Nonfunctional Attachment") as provided in this Paragraph 4.8. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an Unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in APPENDIX A—Fees and Charges, Item 3. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one year (365 calendar days) of the Attachment becoming nonfunctional, unless Licensee receives written notice from the Owner that removal is necessary to accommodate the Owner's or another Attaching Entity's use of the affected Pole(s), in which case Licensee shall remove the Nonfunctional Attachment within sixty (60) calendar days of receiving the notice. Where Licensee has received a Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until the Owner notifies Licensee that removal is necessary to accommodate the Owner's or another Attaching Entity's use of the affected Pole(s). Licensee shall give the Owner notice of any Nonfunctional Attachments as provided in Article 15—Reporting Requirements.

Article 5—Private and Regulatory Compliance

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

- 5.2 **Lawful Purpose and Use.** Licensee's Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state and local laws.
- 5.3 **Forfeiture of the Owner's Rights.** No Permit granted under this Agreement shall extend to any Pole on which the Attachment of Licensee's Facilities would result in a forfeiture of the Owner's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of the Owner's rights, is invalid. Further, if any of Licensee's existing Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Facilities upon receipt of written notice from the Owner. The Owner may perform such removal, subject to the limitations of Paragraph 4.5.1, at Licensee's expense not sooner than the expiration of thirty (30) calendar days from the Owner's issuance of the written notice.
- 5.4 **Effect of Consent to Construction/Maintenance.** Consent by the Owner to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

Article 6—Permit Application Procedures

- 6.1 **Permit Required.** Licensee shall not install any Attachments on any Pole without first applying for and obtaining a Permit pursuant to the applicable requirements of APPENDIX B1—Pole Attachment Permit Application Process. Unless otherwise notified, Pre-existing Attachment(s) of Licensee as of the effective date of this Agreement shall be grandfathered with respect to Permitting, but shall be subject to Attachment Fees in future billing periods. Licensee shall provide the Owner with a list, on the Owner's provided spreadsheet, of all such pre-existing Attachments within six (6) months of the effective date of this Agreement. All such pre-existing Attachments shall comply with the terms of this Agreement within eighteen (18) months of the effective date of this Agreement. Attachments to or rights to occupy Owner Facilities not covered by this Agreement must be separately negotiated.
- 6.1.1 **Service Drops.** The Licensee will notify the Owner within thirty (30) calendar days of the attachment of a Service Drop where an existing permitted Attachment exists and no Permit Application shall be required.
- 6.1.2 If a Service Drop constitutes the initial Attachment to a given Pole, Licensee will be required to follow the permitting process set forth in Paragraph 6.1. In this case, the Licensee will be allowed thirty (30) calendar days after the Attachment is made to complete the permitting process.

- 6.2 Permits for Modifications.** Permits are required for any non-deminimus modifications to permitted Attachments allowed under this Agreement.
- 6.3 Quantity Limitation of Permit Application.** A maximum of 40 Owner owned poles identified may be included in each proposed application. No more than 500 poles shall be submitted in any calendar month.
- 6.4 Professional Certification.** As part of the Permit application process and at Licensee's sole expense, per N.C. Gen. Stat. § 89C-2, a qualified and experienced professional engineer licensed by the State of North Carolina , must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee's Communications Facilities can be and were installed on the identified Poles in compliance with the NESC and all other Applicable Standards and in accordance with the Permit. The professional engineer's, qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems.
- 6.4.1 To the extent consistent with Applicable Law the Owner, at its discretion, may waive the requirements of this Paragraph 6.4, with respect to service drops.

**OWNER REVIEW OF PERMIT APPLICATION. UPON RECEIPT OF
A PROPERLY EXECUTED APPLICATION FOR PERMIT (APPENDIX
B2—POLE ATTACHMENT
PERMIT APPLICATION PROCESS – TELECOM**

**APPENDIX C1—APPLICATION FOR PERMIT), WHICH SHALL
INCLUDE THE PRE-CONSTRUCTION SURVEY, CERTIFIED PER
PARAGRAPH 6.4 ABOVE, AND DETAILED PLANS FOR THE
PROPOSED ATTACHMENTS IN THE FORM SPECIFIED IN
APPENDIX C2—APPLICATION FOR PERMIT – TELECOM**

- 6.5** APPENDIX D—Specifications for Licensee’s Attachments to The Utility Poles, and payment of the Application Fee as specified in Appendix A in full, the Owner will review the Permit Application within forty-five (45) calendar days, and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. In the event of unusually large requests, the Owner may require up to thirty (30) additional calendar days of processing time. Failure of the Owner to process an application within the times prescribed above shall not be the basis for any claim against the Owner. The Owner acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis.
- 6.6** **Permit as Authorization to Attach.** Upon completion of all required Make-Ready Work, and receipt of payment for all such work, the Owner will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s).
- 6.7** **Overlashing.** Before Carrier may Overlash its existing Attachments on Utility’s Poles, Licensee shall request permission by submitting a Permit Application, indicating the characteristics and nature of the existing and new Facilities as specified on the application form. Owner will use commercially reasonable efforts to respond to each application for Overlashing within thirty (30) calendar days of the date that a complete application is received by Utility. A Permit Application for Overlashing shall not require the payment of an Application Fee. If Utility does not approve or reject Licensee's application for Overlashing within such thirty (30) calendar days, Licensee may proceed to Overlash its existing Attachments as specified in its Permit Application, provided that: (i) the bundle of Licensee's cable following the Overlashing does not exceed a combined cross-sectional area of three square inches (two-inch diameter) and one-half (2.5") inches in diameter; (ii) such activity will not cause the Attachment to become non-compliant with the Applicable Standards; and (iii) Licensee pays for any Make-Ready Work that is required for the Overlash to comply with the Applicable Standards. Any Overlashing of existing Attachments with respect to which the bundle of Licensee's cable exceeds or will exceed two and one-half (2.5") inches in diameter must comply with the Permit Application process specified for proposed new Attachments in this Article 6—Permit Application Procedures. Any Overlashing that has not complied with the requirements of this subsection shall cause the Overlashed Attachment to be an Unauthorized Attachment.
- 6.7.1** Licensee shall provide written notice to Utility no later than thirty (30) calendar days following the placement of Overlash, whereupon Utility may inspect the installed Overlash and require Licensee to correct any violations of Applicable Standards at Licensee’s expense.
- 6.7.2** Licensee shall not allow a third-party to Overlash Licensee’s Attachments absent Utility’s prior authorization which shall not be unreasonably denied. Any such third-party shall be required to enter into an agreement with Utility to allow for

such Overlash. There shall be no additional fee for third-party Overlash. Licensee shall assume liability and indemnify Utility for any third-party Overlash.

6.8 Micro Wireless Facilities. Before Carrier may install Micro Wireless Facilities onto its existing Attachments on Utility's Poles, Licensee shall request permission by submitting a Permit Application, indicating the characteristics and nature of the existing and new Facilities as specified on the application form. The Application to install Micro Wireless Facilities shall require the payment in full of the Application Fee specified in Appendix A. Utility will use commercially reasonable efforts to respond to each application for Overlashing within thirty (30) calendar days of the date that a complete application is received by Utility. If Utility does not approve or reject Licensee's application for installation of Micro Wireless Facilities within such thirty (30) calendar days, Licensee may proceed to install the Micro Wireless Facilities on its existing Attachments as specified in its Permit Application, provided that such Facilities will not cause the Attachment to become non-compliant with the Applicable Standards; and Licensee pays for any Make-Ready Work that is required for the Micro Wireless Facilities to comply with the Applicable Standards. Any Micro Wireless Facilities installed that do not comply with the requirements of this subsection shall cause the Micro Wireless Facilities to be treated as an Unauthorized Attachment.

6.8.1 Licensee shall provide written notice to Utility no later than thirty (30) calendar days following the placement of Micro Wireless Facilities, whereupon Utility may inspect the installed Micro Wireless Facilities and require Licensee to correct any violations of Applicable Standards at Licensee's expense.

6.8.2 Authorized Micro Wireless Facilities shall not be subject to a separate Pole Attachment Fee unless the presence of such Facilities causes the need for additional space within the one foot of Assigned Space of the underlying Attachment or any associated sag requires additional mid-span separations to be consistent with Applicable Standards.

6.8.3 Licensee shall not allow a third-party to install Micro Wireless Facilities Micro Wireless Facilities onto Licensee's Attachments absent Utility's prior authorization which shall not be unreasonably denied. Any such third-party shall be required to enter into an agreement with Utility to allow for such Micro Wireless Facilities. There shall be no additional fee for third-party Micro Wireless Facilities. Licensee shall assume liability and indemnify Utility for any third-party Micro Wireless Facilities.

Article 7—Make-Ready Work/Installation

- 7.1 **Estimate for Make-Ready Work.** In the event the Owner determines that it can accommodate Licensee's request for Attachment(s) (including Overlapping of an existing Attachment) it will advise Licensee of any estimated Owner Make-Ready Work charges necessary to accommodate the Attachment.
- 7.1.1 On Utility owned Poles, estimates for Utility Make-Ready Work shall not include the costs of Communications Make-Ready Work related to the rearrangement or transfers of existing Communications Facilities of Other Attaching Entities.
- 7.1.2 On Carrier owned Poles, estimates for Carrier's Communications Make-Ready Work shall not include the costs of Communications Make-Ready Work related to the rearrangement or transfers of existing Communications Facilities of Other Attaching Entities.
- 7.1.3 Estimates of Owner's Make-Ready Work shall include the names and contact information of all other Attaching Entities with existing Communications Facilities on the impacted Poles.
- 7.2 **Payment of Make-Ready Work.** Licensee shall have fifteen (15) calendar days from receipt to accept Owner's Make-Ready Estimate. Each Party will require payment in advance for Owner's Make-Ready Work based upon the estimated cost of such work. Upon completion Licensee shall pay the Owner's actual cost of Utility Make-Ready Work or Communications Make-Ready Work as applicable. The costs of the work shall be itemized as per Paragraph 3.9 and trued up as per Paragraph 3.8.
- 7.3 **Who May Perform Make-Ready and Installation Work.** Irrespective of who owns the Pole, Utility Make-Ready Work shall be performed only by the Utility and/or a qualified contractor authorized by the Utility to perform such work.
- 7.4 **Communications Make-Ready Work on Facilities of Other Attaching Entities.** At the time Licensee submits a Permit Application to Owner, Licensee shall submit evidence in writing, that it has made arrangements to reimburse all other affected Attaching Entities for their costs caused by the transfer or rearrangement of their existing Facilities. Owner shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with such Transfer or rearrangement of another Attaching Entity's Facilities.
- 7.4.1 Licensee may seek permission from other third-party Attaching Entity to employ a qualified contractor to perform Communications Make Ready work on the third-party Attaching Entity Facilities. Persons performing said work must comply with all Applicable Standards.

7.5 Scheduling of Make-Ready. In performing all Owner Make-Ready Work to accommodate Licensee's Facilities, the Owner will endeavor to include such work in its normal work schedule, with a goal of completing Owner Make-Ready Work on applications of 100 or less poles within sixty (60) calendar days of Licensee's acceptance of the Make-Ready Estimate. In the event Licensee requests that the Make-Ready Work be performed on a priority basis or outside of the Owner's normal work hours, Licensee agrees to pay any resulting increased costs. Nothing herein shall be construed to require performance of Licensee's work before other scheduled work or Owner's own service restoration work. Neither Party is obligated under this Agreement to perform Communications Make-Ready Work involving the relocation or transfer of existing Communications Facilities of other Attaching Entities.

7.5 Upon Licensee's acceptance of the Owner's Make-Ready estimate, and the payment of any advance payment required, Owner shall notify all other Attaching Entities with existing Communications Facilities on the impacted Pole and to the extent allowed under applicable law direct such Attaching Entities to perform necessary Communications Make-Ready Work to rearrange or relocate their existing Attachments within thirty (30) calendar days of receipt (unless a longer period is specified) at Licensee's expense.

7.6 Written Approval of Installation Plans Required. With the exception of customer Service Drops, before making any Attachments to the Owner's Poles, including modification of existing Attachments, the Licensee must obtain the Owner's written approval of detailed plans for the Attachments. Such detailed plans shall accompany a Permit application as required under Paragraph 0.

7.7 Licensee's Installation/Removal/Maintenance Work.

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

ALL OF CARRIER'S INSTALLATION, REMOVAL AND MAINTENANCE WORK PERFORMED ON POLES WITH ELECTRIC FACILITY ATTACHMENTS, EITHER BY ITS EMPLOYEES OR CONTRACTORS, SHALL BE IN COMPLIANCE WITH ALL APPLICABLE STANDARDS SPECIFIED IN PARAGRAPH 0. CARRIER SHALL ASSURE THAT ANY PERSON INSTALLING, MAINTAINING, OR REMOVING ITS COMMUNICATIONS FACILITIES IS FULLY QUALIFIED AND FAMILIAR WITH ALL APPLICABLE

**STANDARDS, THE PROVISIONS OF ARTICLE 17—DUTIES,
RESPONSIBILITIES, AND EXCULPATION, AND THE MINIMUM
DESIGN SPECIFICATIONS CONTAINED IN APPENDIX C2—
APPLICATION FOR PERMIT – TELECOM**

7.7.2 APPENDIX D—Specifications for Licensee’s Attachments to The Utility Poles.

7.8 Post Installation Inspection. Within thirty (30) calendar days of installation of its Attachments, Licensee shall provide written notice to Owner that Licensee has completed installation. The notice of completion of installation shall be accompanied by photos in .jpg format to document the quality of workmanship. Each photo must show the base of the Pole and the subject Attachments.

7.8.1 Upon receipt of the notice of installation Owner may perform a post-installation inspection at Licensee’s expense for each such Attachment. If any such post-installation inspection is performed, Licensee shall pay the costs for the inspection and of any corrections that are required.

7.8.2 If Owner elects not to perform any post-installation inspection, such non-inspection shall not be grounds for imposing any liability on Owner or for waiving any liability of Licensee.

7.8.3 If the post-installation inspection reveals that Licensee’s Facilities have been installed in violation of Applicable Standards or the approved design described in the Application, Licensee shall correct such installation at its own expense. For non-Emergency violations, following receipt of notice from Owner, Licensee shall have sixty (60) calendar days to correct such violation, or such other period as the Parties may agree upon in writing. If the violation creates an Emergency, Owner may correct the violation itself at Licensee’s expense. Licensee shall notify Owner when such correction work is complete. Within thirty (30) calendar days of receiving such notice, Owner may perform subsequent post-installation inspections at Licensee’s expense to verify that the correction has been made.

Article 8—Rearrangements and Transfers

8.1 Rearrangements and Transfers of Licensee’s Facilities. The Owner will notify Licensee when it is necessary to rearrange or transfer its Attachments. If Licensee fails to rearrange or transfer its Attachments within thirty (30) calendar days after receiving such notice from the Owner, subject to the limitations of Paragraph 4.5.1, the Owner shall have the right but not the obligation to rearrange or transfer Licensee’s Facilities using its personnel and/or contractors at Licensee’s expense, including the Imposition Cost, as specified in Paragraph 3.9. The Owner shall not be liable for damage to Licensee’s Facilities except to the extent provided in Paragraph 16.1. The Owner shall then provide written notice of any such actions taken within thirty (30) calendar days of the occurrence. Irrespective of who owns them, Carrier is responsible for the rearrangement and transfer of Facilities that are overlashed on to its Attachments.

- 8.2 Emergency Rearrangements or Transfers of Licensees Facilities.** If in the event of an Emergency, the Owner reasonably determines that a rearrangement or transfer of Licensee's Facilities is immediately necessary, subject to the limitations of Paragraph 4.5.1, Licensee agrees to allow such rearrangement or transfer. In such instances, the Owner will, at its option, either perform the work using its personnel, and/or contractors. The Owner shall not be liable for damage to Licensee's Facilities except to the extent provided in Paragraph 16.1. The Owner shall provide written notice of any such actions taken within ten (10) calendar days of the occurrence. Irrespective of who owns them, Licensee is responsible for the rearrangement or transfer of Facilities that are Overlashed on to Licensee's Attachments. The Owner will bill Licensee at the Owner's cost.
- 8.3 Billing for Rearrangements or Transfers Performed by the Utility.** If the Owner performs the rearrangement(s) or transfer(s), the Owner will invoice the Licensee for the Imposition Costs per Paragraph 3.9. Licensee shall reimburse the Owner within thirty (30) calendar days of the billing date of the invoice.

Article 9—Pole Modifications and/or Replacements

- 9.1 Licensee's Action Requiring Modification/Replacement.** In the event that any Pole, as constructed, to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional Facilities in accordance with all Applicable Standards, the Owner will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including but not limited to replacement of the Pole, and rearrangement or transfer of the Owner's Facilities. Licensee is responsible for obtaining costs associated with rearrangement or transfer of the Communications Facilities of any Attaching Entities already on the Pole. If Licensee elects to go forward with the necessary changes, Licensee shall pay to the Owner and any other Attaching Entities, the actual cost of the Make-Ready Work, performed by the Owner, per Paragraph 3.9 or performed by the other Attaching Entities to accommodate Licensee's new Attachments. The Owner and other Attaching Entities, at their discretion, may require advance payment.
- 9.2 Treatment of Multiple Requests for Same Pole.** Assuming a permit has not yet been issued and the Owner receives additional applications for the same Pole from additional prospective Attaching Entities, and accommodating their respective requests would require modification or replacement of the Pole, the Owner will allocate equitably among such licensees the applicable costs associated with such modification or replacement.

GUYING. THE USE OF GUYING TO ACCOMMODATE LICENSEE'S ATTACHMENTS SHALL BE PROVIDED BY AND AT THE EXPENSE

**OF LICENSEE AND TO THE SATISFACTION OF THE OWNER AS
SPECIFIED IN APPENDIX C2—APPLICATION FOR PERMIT –
TELECOM**

9.3 APPENDIX D—Specifications for Licensee’s Attachments to The Utility Poles. Licensee shall not attach its guy wires to the Owner’s anchors without prior written permission of the Owner. If permission is granted, any make-ready charges, and a one-time anchor attachment fee as specified in APPENDIX A—Fees and Charges, Item 2, will apply.

9.4 **Allocation of Costs.** The costs for any rearrangement or transfer of Licensee’s Attachments or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of the Owner’s cables or wires) shall be allocated to the Owner and/or Licensee and/or other Attaching Entity on the following basis:

9.4.1 If the Owner intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Licensee, however, shall be responsible for all costs associated with the rearrangement or transfer of Licensee’s Facilities. If Licensee elects to add to or modify its Facilities, Licensee shall bear the total incremental costs incurred by the Owner in making the space on the Poles accessible to Licensee.

9.4.2 If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than the Owner or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring Licensee’s Facilities. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee’s Facilities.

9.4.3 If another Attaching Entity seeks to make a new Attachment or the modification of an existing Attachment requiring Licensee to rearrange or transfer its existing Facilities the Owner shall provide Licensee with notice of such third-party requested Make-Ready Work. The notice shall:

9.4.3.1 Identify the other Attaching Entity seeking the new Attachment or modification of an existing Licensee Attachment, including the name and email address of a person with the Attaching Entity to contact for more information about the Make-Ready Work as well as corresponding contact information for the Owner.

9.4.3.2 Specify the Poles and Make-Ready Work required to be performed.

9.4.3.3 Establish a date for completion of the Make-Ready Work, which unless otherwise specified shall be no later than thirty (30) calendar days for Communications Make-Ready Work and sixty

(60) calendar days for Utility Make-Ready Work, after notification is received by Licensee.

9.4.3.4 Specify that if Licensee does not complete the required Make-Ready Work within the date established above the Attaching Entity seeking the new Attachment or modification may complete the Make-Ready using a qualified and approved contractor.

9.4.4 If the Pole must be modified or replaced for other reasons unrelated to the use of the Pole by Attaching Entities (e.g., storm, accident, deterioration), The Owner shall pay the costs of such modification or replacement; provided, however, that Licensee shall be responsible for the costs of rearranging or transferring its Facilities.

9.4.5 If the modification or replacement of a Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Pole and for the costs associated with the transfer or rearrangement of any other Attaching Entity's Communications Facilities. Licensee shall submit to the Owner evidence, in writing, that it has made arrangements acceptable to all other Attaching Entities for reimbursement for the cost to transfer or rearrange such Attaching Entities' Facilities at the time Licensee submits a Permit Application to the Owner. The Owner shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Facilities pursuant to this Paragraph 9.4.5.

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

Article 10—Abandonment or Removal of Owner Facilities

10.1 **Notice of Abandonment or Removal of Owner Facilities.** If the Owner desires at any time to abandon, remove or underground any Pole(s) to which Licensee's Facilities are attached, it shall give Licensee notice in writing to that effect at least ninety (90) calendar days prior to the date on which it intends to abandon or remove such Pole(s). Notice may be limited to thirty (30) calendar days if the Utility is required to remove or abandon its Pole(s) as the result of the action of a third party or other cause and the greater notice period is not practical. Such notice shall indicate whether the Utility is offering Licensee an option to purchase the Pole(s). If, following the expiration of the notice period,

Licensee has not yet removed and/or transferred all of its Facilities therefrom and has not entered into an agreement to purchase the Owner's Pole(s) pursuant to Paragraph 10.2, the Owner shall have the right, but not the obligation, subject to the limitations of Paragraph 4.5.1 and any applicable laws and regulations, to have Licensee's Facilities removed and/or transferred from the Pole(s) without liability and the Licensee shall be subject to the Imposition Cost of moving such Facilities. The Owner shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities. Licensee's failure to remove its Facilities as required under this Paragraph 10.1 shall subject Licensee to the failure to timely transfer, abandon or remove Facilities fee provisions of APPENDIX A—Fees and Charges.

10.2 Option to Purchase Abandoned Poles. Should the Owner desire to abandon any Pole, the Owner, in its sole discretion, may grant Licensee the option of purchasing such Pole at a rate, which is the value in place, at that time, of such abandoned Pole. Licensee must notify the Owner in writing within thirty (30) calendar days of the date of the Owner's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should the Owner and Licensee fail to enter into an agreement for Licensee to purchase the Pole prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 10.1. The Owner is under no obligation to sell Licensee Poles that it intends to remove or abandon.

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

Article 11—Removal of Licensee's Facilities

11.1 Removal on Expiration/Termination. At the expiration or other termination of this License Agreement or individual Permit(s), Licensee shall remove its Facilities from the affected Owner's Poles at its own expense. If Licensee fails to remove such Facilities within sixty (60) calendar days of expiration or termination or some greater period as allowed by the Owner, the Owner Utility shall have the right, subject to the limitations of Paragraph 4.4.1 to have such Facilities removed at Licensee's expense without liability.

- 11.2 Licensee Abandonment of Attachments.** Licensee shall remove any Abandoned Attachment and submit to Owner a “Notification of Attachment Removal” no later than sixty (60) calendar days after such removal. If Owner notifies Licensee of any suspected Abandoned Attachment, then within thirty (30) calendar days of such notice, Licensee must either remove the Abandoned Attachment or provide to Owner evidence that the Attachment is not an Abandoned Attachment. Prior to the thirty (30) calendar day deadline, Licensee may request in writing, and Owner may grant, a reasonable extension of that deadline. If Licensee fails to remove such Facilities within the thirty (30) calendar day period (or any extension) the Owner shall have the right, subject to the limitations of Paragraph 4.5.1, to have such Facilities removed without liability and subject to Licensee paying the Imposition Costs.

Article 12—Termination of Permit

- 12.1 Automatic Termination of Permit.** Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Facilities on public or private property at the location of the particular Pole(s) covered by the Permit. Notwithstanding the foregoing, to the extent Licensee is pursuing a challenge of the revocation of any such permission; Licensee may remain on the particular Pole(s) until such time as all appeals and remedies are exhausted.
- 12.2 Surrender of Permitted Attachment(s).** Licensee may at any time surrender any Permitted Attachment(s) and remove its Facilities from the affected Pole(s). Before commencing any such removal Licensee must submit to the Owner a Permit Application indicating the name of the party performing such work, the number of attachments being removed, a sketch or other depiction showing the location of the removal(s) and the proposed date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18—Insurance. No refund of any fees or costs will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from the Owner’s Facilities within the time frame set forth in the approved plan above, the Owner shall have the right, subject to the limitations of Paragraph 4.5.1, to remove Licensee’s Attachments without liability and require Licensee to pay the Imposition Costs of such removal.

Article 13—Inspection and Audits of Licensee’s Facilities

- 13.1 General Inspections.** Owner reserves the right to make periodic inspections, as conditions may warrant, of some or all of Licensee’s Attachments on Owner’s Poles.
- 13.2 Periodic Safety Inspections and Inventory.** Upon sixty (60) calendar days’ advance written notice from Owner, and not more frequently than every five (5) years, Owner may, at its option, perform a safety inspection and Attachment inventory in all or in part

of the territory covered by this Agreement to identify any safety violations of Attachments and inventory the installation of Facilities on Owner Poles (“Safety Inspection and Inventory”). Such notice shall describe the scope of the inspection and inventory and provide Licensee and all Attaching Entities an opportunity to participate in the field inspection and inventory. Licensee, Owner and other Attaching Entities shall share proportionately in the Safety Inspection and Inventory costs (based on the proportion of Attachments of Owner, Licensee and each other Attaching Entity). Any Unauthorized Attachments found through the Safety Inspection and Inventory shall be subject to the requirements of Article 14—Unauthorized Occupancy or Attachment.

13.2.1 The above notwithstanding, Owner may at its own cost undertake an inventory of its Poles and existing Attachments more frequently than once every five years. Any of Licensee’s Attachments found to be Unauthorized shall be subject to the requirements of Article 14—Unauthorized Occupancy or Attachment, governing Unauthorized Attachments. If such an inventory finds that five percent (5%) or more of Licensee’s Attachments are either in non-compliance or Unauthorized, Licensee shall pay its pro-rata share of the costs of the entire inspection. The pro-rata share cost shall be determined by taking the total cost of the entire inspection times the number of Licensee’s attachments, divided by the total number structures inspected.

13.3 Corrections. If any of Licensee’s Facilities are found to be in violation of the Applicable Standards and such violations do not pose potential Emergency conditions, Owner shall give Licensee notice, whereupon Licensee shall have sixty (60) calendar days from receipt of notice to Correct any such violation, or such longer time frame if mutually agreeable, but not to exceed an additional sixty (60) calendar days. If Licensee fails to Correct a non-Emergency violation within the specified time period, Owner may Correct the violation at Licensee’s Imposition Cost expense and without incurring any liability to Licensee.

13.4 The above notwithstanding, if Poles are identified in the Initial Inventory as being out of compliance with Applicable Standards, and the Attaching Entity responsible for such non-compliance is not ascertainable, Owner shall undertake at its own cost to repair, strengthen, or replace such Pole, and Licensee shall be responsible for the costs of rearranging or transferring its Attachments within the timeframe specified by Owner, which shall not be less than thirty (30) calendar days except in the case of an Emergency. If Licensee fails to perform the Transfer within the specified time period, Owner may Transfer Licensee’s Attachments at Licensee’s Imposition Cost expense and without incurring any liability to Licensee.

13.5 No Liability. Inspections performed under this Article 13—Inspection and Audits of Licensee’s Facilities, or the failure to do so, shall not operate to impose upon the Owner any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.

Article 14—Unauthorized Occupancy or Attachment

- 14.1 Unauthorized Occupancy or Access Fee.** If any of Licensee's Attachments are found occupying any Pole for which no Permit has been issued, the Owner, without prejudice to its other rights or remedies under this Agreement, will provide written notice to Licensee of the Unauthorized Attachment(s) and allow Licensee thirty (30) calendar days to contest such determination with evidence that the Attachment(s) are authorized. Failure of the Licensee to reasonably demonstrate that the Attachment(s) at issue are authorized shall subject such Licensee to the payment of the Unauthorized Attachment Fee as specified in APPENDIX A—Fees and Charges, Item 3 and require the submittal of an Application for Permit as set forth under Article 6—Permit Application Procedures, for all such Unauthorized Attachments. Submittal of the Application for Permit does not guarantee the approval of the attachment. In the event Licensee fails to pay such Fee and submit the Application for Permit within thirty (30) calendar days of the billing date of the invoice, the Owner has the right, subject to the limitations of Paragraph 4.5.1, to remove such Facilities at Licensee's Imposition Cost expense.
- 14.2 No Ratification of Unlicensed Use.** No act or failure to act by the with regard to any unlicensed use shall be deemed as ratification of the unlicensed use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by the Owner of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to the unauthorized use from its inception.

Article 15—Reporting Requirements

Notwithstanding the above inspection and inventory provisions of Article 13—Inspection and Audits of Licensee's Facilities, Licensee is obligated to furnish the Owner on an annual basis no later than December 31 of each year, an up-to-date map and spread sheet depicting the locations and number of its Attachments in an electronic format specified by the Owner.

Article 16—Liability and Indemnification

- 16.1 Owner Liability.** The Owner reserves to itself the right to maintain and operate its Poles and other Owner Facilities in such manner as will best enable it to fulfill its statutory service requirements. Licensee agrees to use the Owner's Poles at Licensee's sole risk. Notwithstanding the foregoing, the Owner shall exercise reasonable precaution to avoid damaging Licensee's Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to Paragraph 16.5, the Owner agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of such Facilities to the extent damaged by the negligence or willful

misconduct of the Owner, provided, however, that the aggregate liability of the Owner, to Licensee, in any fiscal year, shall not exceed the amount of the total Annual Attachment Fees paid by Licensee to the Owner for that year as calculated based on the number of Attachments under Permit at the time of the damage per APPENDIX A—Fees and Charges, Item 1.

16.2 Indemnification. Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless the Owner and its officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by the Owner under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of the Owner and all other costs and expenses of litigation) ("Covered Claims" or "Claims") arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents or contractors, of Licensee's Facilities, except to the extent of the Owner's negligence or willful misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

16.2.1 Intellectual property infringement, libel and slander, trespass, unauthorized use of copyright protected and other program material, and infringement of patents;

16.2.2 Cost of work performed by the Owner that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents or contractors, to install, maintain, use, transfer or remove Licensee's Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes the Owner to perform on Licensee's behalf;

16.2.3 Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents or contractors, pursuant to this Agreement or claims arising out of the presence or use of a Pole no longer used by the Owner;

16.2.4 Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents or contractors, of any law, rule, or regulation of the United States, State of North Carolina or any other governmental entity or administrative agency.

16.3 Procedure for Indemnification.

16.3.1 The Owner shall give prompt notice to Licensee of any Covered Claim or threatened Claim, specifying the factual basis for such Claim and the amount of the Claim. If the Claim relates to an action, suit or proceeding filed by a third party against the Owner, the Owner shall give the notice to Licensee no later than fourteen (14) calendar days after the Owner receives written notice of the action, suit or proceeding.

16.3.2 The Owner's failure to give the required notice will not relieve Licensee from its obligation to indemnify the Owner unless and only to the extent Licensee is materially prejudiced by such failure.

16.3.3 Licensee will have the right at any time, by notice to the Owner, to participate in or assume control of the defense of the Claim with counsel of its choice. The Owner agrees to cooperate fully with Licensee. If Licensee so assumes control of the defense of any third-party Claim, the Owner shall have the right to participate in the defense at its own expense. If Licensee does not so assume control or otherwise participate in the defense of any third-party Claim, Licensee shall be bound by the results obtained by the Owner with respect to the Claim.

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

16.4 Environmental Hazards. Licensee represents and warrants that its use of Owner's Poles will not generate any Hazardous Substances, that it will not store or dispose on or about Owner's Poles or transport to Owner's Poles any hazardous substances and that Licensee's Facilities will not constitute or contain and will not generate any hazardous substance in violation of federal, state or local law now or hereafter in effect including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments. Licensee further represents and

warrants that in the event of breakage, leakage, incineration or other disaster, its Facilities would not release any Hazardous Substances. Licensee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless the Owner and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage or discovery of any Hazardous Substances on, under or adjacent to the Owner's Poles attributable to Licensee's use of the Owner's Poles.

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

16.5 Municipal Liability Limits. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the Utility of any applicable State limits on municipal liability including any limitation on indemnification by Utility allowed by North Carolina law. No indemnification provision contained in this Agreement under which Licensee indemnifies the Utility shall be construed in any way to limit any other indemnification provision contained in this Agreement.

Article 17—Duties, Responsibilities, And Exculpation

17.1 Duty to Inspect. Licensee acknowledges and agrees that the Owner does not warrant the condition or safety of the Owner's Poles or Facilities, or the premises surrounding the Poles, and Licensee further acknowledges and agrees that it has an obligation to inspect Owner's Poles and/or premises surrounding the Poles, prior to commencing any work on Owner's Poles or entering the premises surrounding such Poles. Licensee's responsibility is limited only to the extent necessary to perform Licensee's work.

17.2 Knowledge of Work Conditions. By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the Facilities, difficulties and restrictions attending the execution of such work.

- 17.3 **DISCLAIMER.** THE OWNER MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO OWNER'S POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND THE OWNER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. THE OWNER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 17.4 **Duty of Competent Supervision and Performance.** The Parties further understand and agree that in the performance of work under this Agreement, Carrier and its agents, employees, contractors and subcontractors will work near electrically energized lines, transformers or other Utility Electric Facilities, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except in an emergency endangering life, grave personal injury or property. Carrier shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of the Utility and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Carrier shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Carrier agrees that in emergency situations in which it may be necessary to de-energize any part of the Utility's Electric Facilities, Carrier shall ensure that work is suspended until the Facilities have been de-energized and that no such work is conducted unless and until the Facilities and all associated equipment are made safe.
- 17.5 **Requests to De-energize.** In the event the Utility de-energizes any Facilities or line at Carrier's request and for its benefit and convenience in performing a particular segment of any work, Carrier shall reimburse the Utility in full for all costs and expenses incurred, in accordance with Paragraph 3.9, in order to comply with Carrier's request. Before the Utility de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Carrier's request. Notwithstanding the foregoing de-energization shall be at the Utility's sole discretion and the Utility shall determine the schedule for de-energization.
- 17.6 **Interruption of Service.** In the event that Licensee causes an interruption of the owner's service by damaging or interfering with any Facilities of the other Owner, the Licensee at its expense shall immediately do all things reasonable to avoid injury or further damages, direct and incidental, resulting therefrom and shall notify the Owner immediately, and shall save, defend, indemnify and hold the Owner harmless from claims arising from such damage and shall compensate the Owner in full for its damages.
- 17.7 **Duty to Inform.** Carrier further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on the Utility's Poles by Carrier's

employees, agents, contractors or subcontractors, and accepts as its duty and sole responsibility to notify and inform Licensee's employees, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

Article 18—Insurance

18.1 Policies Required. At all times during the term of this Agreement, each Party as Licensee shall keep in force and effect all insurance policies as described below:

18.1.1 Workers' Compensation and Employers' Liability Insurance. Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by North Carolina State law at the time of the application of this provision for each accident. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

18.1.2 Employer's Liability Insurance. Employer's liability insurance with a limit of not less than \$500,000.

18.1.3 Commercial General Liability Insurance. Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$1,000,000 each occurrence.

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

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

18.1.6 Property Insurance. Each party will be responsible for maintaining property insurance on its own Facilities, buildings and other improvements, including all equipment, fixtures, and structures, fencing or support systems that may be placed on, within or around Owner's Poles to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies

of insurance commonly referred to and known as “extended coverage” insurance or self-insure such exposures.

18.1.7 Requirement to provide this agreement to Insurance Carrier. The Parties to this Agreement shall provide a copy of this Agreement to the insurance carrier for each Party and as a condition of this Agreement obtain a letter indicating that said carrier will provide the appropriate commercial, automobile, umbrella and property insurance as further set forth in Article 18—Insurance, of this agreement. Further, the Licensee shall provide the Owner with a certificate of additional insured with coverage thresholds meeting the provisions of 18.1.2 through 18.1.5.

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

18.3 Certificate of Insurance; Other Requirements. Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish the Owner with a certificate of insurance (“Certificate”) and, upon request, copies of the required insurance policies. The Certificate shall reference this Agreement and workers’ compensation and property insurance waivers of subrogation required by this Agreement. The Owner shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. The Owner, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, “Additional Insureds”) shall be named as Additional Insureds under all of the policies, except workers’ compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers’ compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed \$100,000, or such greater amount as expressly allowed in writing by the Owner. Licensee shall defend, indemnify and hold harmless the Owner and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to the Owner upon request.

- 18.4 Limits.** The limits of liability set out in this Article 18—Insurance, may be increased or decreased by mutual consent of the Parties, which consent will not be unreasonably withheld by either Party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Licensee’s exposure to risk.
- 18.5 Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Agreement with the Owner except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to Owner employees or agents directly caused by the negligence of Licensee, or (4) that exclude coverage of liability for injuries or damages caused by Licensee’s contractors or the contractors’ employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.
- 18.6 Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

Article 19—Authorization Not Exclusive

The Owner 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 Owner’s Poles covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

Article 20—Assignment

- 20.1 Limitations on Assignment.** Neither Party shall assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. A Party shall furnish the other Party with written notice of the transfer or assignment, together with the name and address of the transferee or assignee. It shall be unreasonable for the Utility to withhold consent without cause to an assignment of all of Carrier’s interests in this Agreement to its Affiliate.
- 20.2 Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 20—Assignment, shall be allowed until the assignee or transferee becomes a

signatory to this Agreement and assumes all obligations of the assigning/transferring Party arising under this Agreement.

- 20.3 Sub-licensing.** Assignment, transfer or sub-licensing of any right under this Agreement is void and not merely voidable, unless approved in writing by the other 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) that involves no additional Attachment or Overlapping is not subject to this Paragraph 20.3.

Article 21—Failure to Enforce

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

Article 22— Dispute Resolution

- 22.1 Dispute Resolution.** Except for an action seeking a temporary restraining order or an injunction or to compel compliance with this dispute resolution procedure, the Parties can invoke the dispute resolution procedures in this Article at any time to resolve a controversy, claim, or breach arising under this Agreement. Each Party will bear its own costs for dispute resolution activity.
- 22.2 Initial Meeting.** At either Party's written request, each Party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The Parties will conduct any meeting in-person or via conference call, as reasonably appropriate.
- 22.3 Executive Meeting.** If sixty (60) calendar days after the first in-person meeting of the senior representatives, the parties have not resolved the dispute to their mutual satisfaction, each Party will designate executive representatives at the director level or above to meet and negotiate in good faith to resolve the dispute.
- 22.4 Joint Field Review.** In the event of a dispute regarding any compliance or non-compliance with all Applicable Standards, including which entity is responsible for any non-compliance and what corrective action, if any, is necessary or appropriate to remedy any such non-compliance, then the Parties shall each arrange for a representative to make

a joint field visit to the Pole location(s) to investigate whether a violation exists and if so, any corrective action needed and the entity or entities responsible. The Parties will make a diligent and good faith effort to resolve such disputes at the local level by the Parties' respective local engineers and local managers.

- 22.5 Unresolved Dispute. If after sixty (60) calendar days from the first executive-level, in-person meeting, the Parties have not resolved the dispute to their mutual satisfaction; either may invoke any legal means available to resolve the dispute, including enforcement of the default procedures set out in Article 23—Termination of Agreement.
- 22.6 Confidential Settlement. To the extent consistent with Applicable Law including the North Carolina Public Records Law, unless the Parties otherwise agree in writing, communication between the Parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery and inadmissible in litigation.
- 22.7 Business as Usual. During any dispute resolution procedure or lawsuit, the Parties will continue providing services to each other and performing their obligations under this Agreement.
- 22.8 Penalties and Remedies. Penalties and remedies for failures to act, including default remedies, will apply as specified in this Agreement during the dispute resolution process.

Article 23—Termination of Agreement

23.1 Notwithstanding the provisions of Article 12—Termination of Permit, either Party shall have the right, pursuant to the procedure set out in Paragraph 23.2, to terminate this entire Agreement, or any Permit issued hereunder, whenever the other Party is in material uncured default of any term or condition of this Agreement, including but not limited to the following circumstances:

- 23.1.1** Construction, operation or maintenance of Licensee's Facilities in violation of law or in aid of any unlawful act or undertaking; or
- 23.1.2** Construction, operation or maintenance of Licensee's Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority, subject to Paragraph 12.1; or violation of any other agreement with the Pole Owner; or
- 23.1.3** Construction, operation or maintenance of Licensee's Facilities without the insurance coverage required under Article 18—Insurance, or
- 23.1.4** Bankruptcy declared by either Party, or its parent company or direct Affiliate having operational influence over the Party.

23.2 The non-defaulting Party shall notify the defaulting Party in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition(s) applicable to Paragraph 0 above. The defaulting Party shall take immediate corrective action to eliminate or cure any such condition(s) within thirty (30) calendar days, or if such default by its nature cannot be readily cured within the thirty (30) calendar day period, this period will be extended if the defaulting Party commences to cure such default within such thirty (30) calendar day period and proceeds diligently thereafter, to the satisfaction of the non-defaulting Party to effect such cure. Upon correction or cure the defaulting Party shall confirm in writing to the non-defaulting Party that the cited condition(s) has (have) ceased or been cured. If the defaulting Party fails to discontinue or cure such condition(s) or commence a cure within the above time frames, the non-defaulting Party may immediately terminate this Agreement or any Permit(s). In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, the Owner may seek removal of Licensee's Facilities pursuant to the terms of Article 11—Removal of Licensee's Facilities, provided that Licensee shall be liable for and pay all fees and charges pursuant to terms of this Agreement to the Pole Owner until Licensee's Facilities are actually removed.

Article 24—Term of Agreement

24.1 This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years. Either Party may terminate this Agreement at the end of the initial five (5) year term by giving to the other Party written notice of an intention to terminate this Agreement at least one hundred eighty (180) calendar days prior to the end of the term. Upon failure to give such notice, this Agreement shall automatically continue in force on a year to year basis until terminated by either Party after one hundred eighty (180) calendar day's written notice.

24.2 Even after the termination of this Agreement, each Party's responsibility and indemnity obligations shall continue with respect to any claims or demands related to this Agreement.

Article 25—Amending Agreement

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

Article 26—Notices

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

If to the Utility, at: **City of Monroe**

Monroe, North Carolina

If to Carrier, at:

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

- 26.2 Each Party must notify the other in writing within thirty (30) calendar days of any change to the contact information provided under 0 Notices. Failure to comply with this notification process will result in a \$250.00 fine.
- 26.3 The above notwithstanding, the Parties agree that the Pole Owner may direct Licensee to utilize electronic communications through an electronic portal, as well as verified email for notifications related to the Permits applications, Make-Ready Work, rearrangements, transfer and/or Pole modifications. Licensee shall provide an email contact for all such communications on its Permit Applications.
- 26.4 Each Party shall maintain a staffed twenty-four (24)-hour emergency telephone number where the Pole Owning Party can contact the Licensee Party to report damage to Licensee's Facilities or other situations requiring immediate communications between the Parties. Such contact person shall be qualified and able to respond to the Pole Owner's concerns and requests. Failure to maintain an emergency contact shall subject Licensee to a fee of \$100 per incident, and shall eliminate the Pole Owner's liability to Licensee for any actions that the Pole Owner deems reasonably necessary given the specific circumstances.

Article 27—Entire Agreement

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

Article 28—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.

Article 29—Governing Law

29.1 The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of North Carolina or any regulatory agency of competent jurisdiction. The sole and exclusive venue of any legal action in regard to this Agreement should be in the Circuit or Superior Courts of Union County, North Carolina.

Article 30—Incorporation of Recitals and Appendices

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

Article 31—Performance Bond

On execution of this Agreement, the Owner may require the Licensee to provide a performance bond in an amount that is equal to two (2) times the annual Pole attachment fee set forth in APPENDIX A—Fees and Charges, Item 1 per Licensee Pole Attachment or Ten Thousand Dollars (\$10,000.00), whichever is greater. The required bond amount may be adjusted periodically to account for additions or reductions in the total number of Licensee's Pole Attachments. The bond shall be with an entity and in a form acceptable to the Pole Owner. The purpose of the bond is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties and fees due to the Pole Owner which arise by reason of the construction, operation, maintenance or removal of Licensee's Facilities on or about Owner's Poles. The Pole Owner, at its sole discretion, may waive the requirement of a performance bond.

Article 32—Force Majeure

- 31.1** In the event that either Party is prevented or delayed from fulfilling any term or provision of this Agreement by reason of a Force Majeure Event, then performance of such acts shall be excused for the period of the unavoidable delay, and any such party shall endeavor to remove or overcome such inability as soon as reasonably possible. Licensee shall not be responsible for any charges associated with Owner's Poles for any periods that such Facilities are unusable.
- 31.2** With the exception of Emergency work done to Licensees Facilities to correct for a violation in Licensees Attachments (including emergency transfers), the Pole Owner shall not impose any charges on Licensee stemming solely from Licensee's inability to perform required acts during a period of a Force Majeure Event , provided that Licensee presents the Pole Owner with a written description of such Force Majeure Event within a reasonable time after occurrence of the event or cause relied on, and further provided that this provision shall not operate to excuse Licensee from the timely payment of any fees or charges due the Pole Owner under this Agreement, except to the extent allowed under Paragraph 31.1.

Article 33— Counterparts

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

[Remainder of page intentionally left blank – signature page follows]

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

THE UTILITY

CITY OF MONROE

By: _____
Mark Watson, City Manager

[CITY SEAL]

Attest:

Bridgette H. Robinson, City Clerk

CARRIER

Name _____

BY: _____

Title: _____

STATE OF _____

: ss

County of _____

I, the undersigned, a Notary Public in and for the State of _____, hereby certify that on the ____ day of _____, 202____, personally appeared before me [NAME] _____, [TITLE] _____ to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he/she signed and sealed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

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

Notary Public in and for the
State of _____, residing at
_____, _____

APPENDIX A—FEES AND CHARGES

Pole Attachment Fees and Charges

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

Effective July 1, 2025: \$14.49 per attachment per year for all attachments to distribution structures (35kV and below) other than small wireless Facilities, Overlash, and Micro Wireless Facilities.

Effective July 1, 2025: \$28.98 per attachment per year for all attachments to sub-transmission and transmission structures (greater than 35kV) other than small wireless Facilities.

Effective July 1, 2025: \$100.00 per attachment per year for small wireless facilities attached to poles having a branded height of not more than forty-five feet (45'). Fee is inclusive of any applicable ROW access fee and fee for attachment to municipally owned structures in the ROW.

Effective July 1, 2025: \$250.00 per attachment per year for small wireless facilities attached to poles having a branded height of more than forty-five feet (45') and not more than eighty feet (80'). Fee is inclusive of any applicable ROW access fee and fee for attachment to municipally owned structures in the ROW.

Adjustment of Annual Pole Attachment Fee:

Annual Rental shall be automatically adjusted each year on July 1 by two and one half percent (2.5%) rounded down to the nearest whole penny. If such changed rate is not acceptable to the Licensee, Licensee may terminate this agreement subject to terms provided for in Article 23—Termination of Agreement, of this agreement.

2. Non-Recurring Fees:

- Permit Application Fee\$100.00 per Permit Application
(up to 30 Poles or each Micro Wireless Facility)
- Permit Application Fee\$250.00 per Permit Application
(31 to 300 Poles)
- Permit Application Fee (removals only)No charge
- Make Ready Work ChargesSee Article 7 of Agreement
- Miscellaneous ChargesSee Article 3 of Agreement
- Inspection Fees.....See Article 13 of Agreement
- Anchor Attachment Fee.....\$25.00
- Pole Removal Fee.....\$150.00

NOTE: Permit Application fees may be adjusted periodically, but not more often than annually, to reflect increases in operating costs. The Owner reserves the right to waive permit application costs for assets already in place under a previous agreement.

3. Unauthorized Attachment Fee:

- 3.1 For each Unauthorized Attachment discovered Licensee shall be subject to an Unauthorized Attachment Fee penalty that is equal to five (5) times the Annual Attachment Fee, per occurrence, for each year from the date of contract execution or the period since the date of the last Inventory, whichever is less.
- 3.2 The above notwithstanding, to the extent consistent with applicable law, Pole Owner reserves the right to impose an additional Unauthorized Attachment Fee that is equal to ten (10) times the Annual Attachment Fee, per occurrence, for each year from the date of contract execution or the period since the date of the last Inventory, whichever is less, in instances where Licensee demonstrates a repeated and persistent pattern of making a large number of Unauthorized Attachments. For purposes of this additional Unauthorized Attachment penalty a large number of Unauthorized Attachments is an instance where fifteen percent (15%) or more of Licensee's Attachments are found to continue to be Unauthorized after the assessment of initial Unauthorized Attachment Fees following an Inventory.

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

Owner may transfer, rearrange, remove, or correct Licensee's Facilities without liability for any damages, unless caused by Owner's negligence, and Licensee shall pay Owner the Imposition Costs of such work, provided that Carrier shall not perform any work on Utility's Electric Facilities other than through qualified contractors approved by Utility. Owner may also invoke any legal rights including find Licensee to be in breach of the Agreement.

5. After Hours Call Out

- If Licensee requires assistance from the Owner outside of normal working hours, Licensee agrees to pay for all Owner personnel hours worked at rates that are 1.5x their published standard hourly rates. The minimum billable hours for each Owner person shall be four (4) per incident.

APPENDIX B1—POLE ATTACHMENT PERMIT APPLICATION PROCESS – CITY OF MONROE, NC

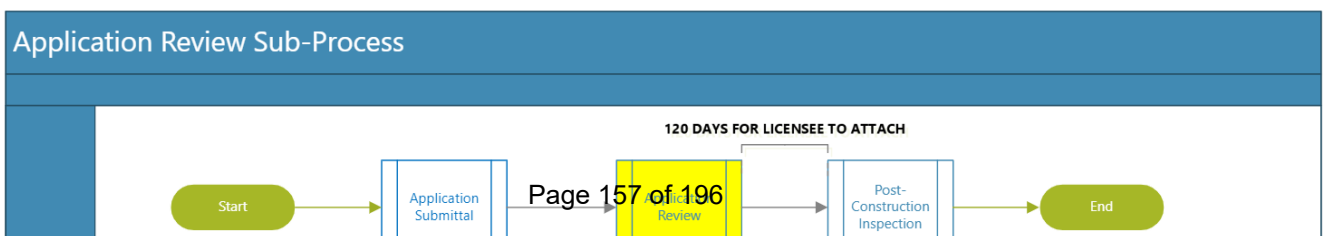
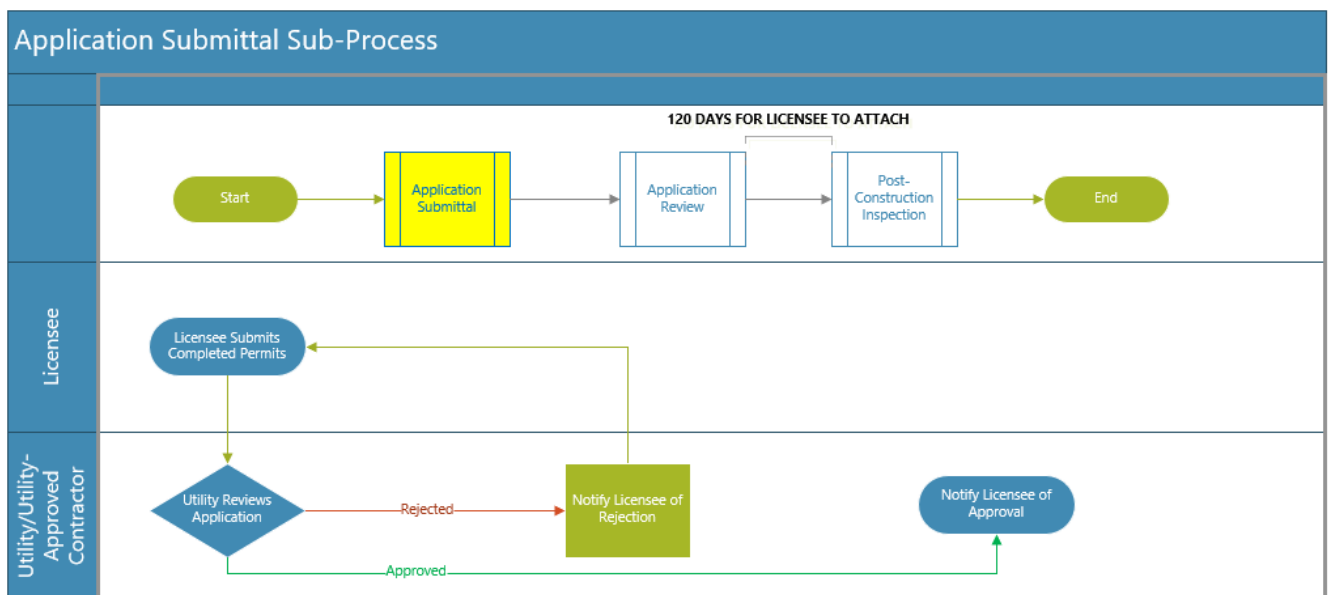
The following procedure is to be followed by each Licensee seeking to make new Attachments on Utility Poles. Note that no entity may make any Attachments to Utility Poles without having first entered into a binding Pole Attachment Licensing Agreement.

LICENSEE SHALL SUBMIT A COMPLETED PERMIT APPLICATION (APPENDIX B2—POLE ATTACHMENT PERMIT APPLICATION PROCESS – TELECOM

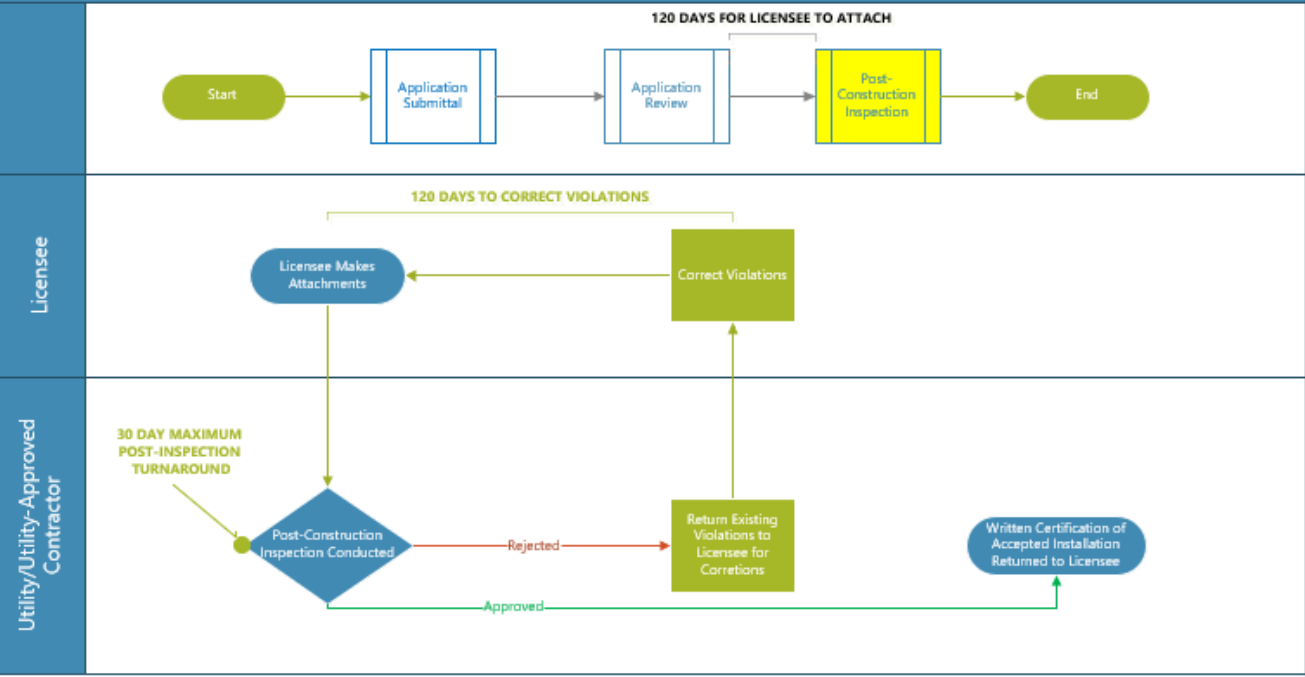
**APPENDIX C1—APPLICATION FOR PERMIT) THAT INCLUDES:
ROUTE MAP, INFORMATION REQUIRED IN APPENDIX E2—
DISTRIBUTION LINE MINIMUM DESIGN REVIEW INFORMATION
AND WORKSHEET – TELECOM**

**APPENDIX F1—FIELD DATA
SUMMARY SHEET INSTRUCTIONS, INSTALLATION PLANS AND
RECOMMENDATIONS ON MAKE-READY WORK. LICENSEE
SHALL PREPARE THE PERMIT APPLICATION IN ADHERENCE
WITH THE APPLICABLE STANDARDS (PARAGRAPH 1.2 OF
AGREEMENT) AND SPECIFICATIONS (APPENDIX C2—
APPLICATION FOR PERMIT – TELECOM**

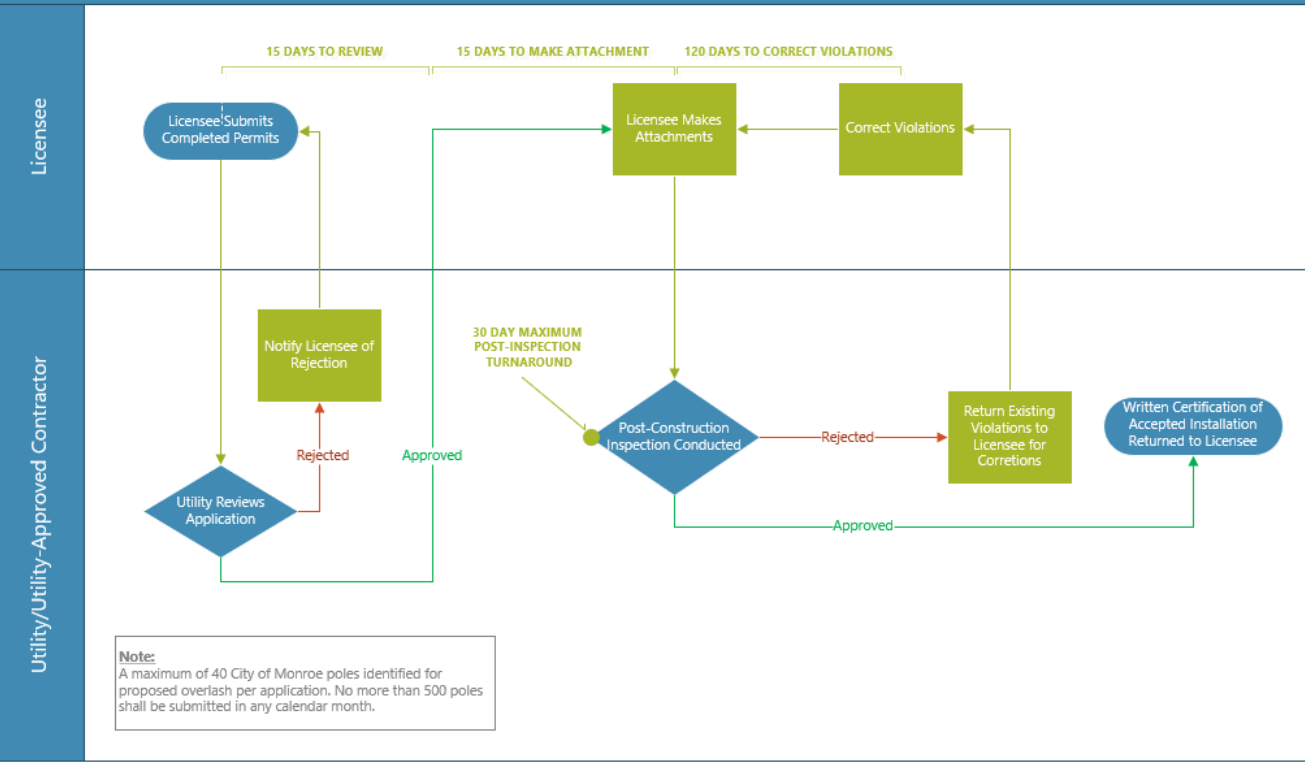
1. APPENDIX D—Specifications for Licensee's Attachments to The Utility Poles). A maximum of 40 utility owned poles identified for proposed application per application. No more than 500 poles shall be submitted in any calendar month.
2. The Utility will review the completed permit application and discuss any issues with the Licensee. Said review may involve an onsite inspection of proposed attachment(s) with Licensee's professional engineer or Utility approved Licensee employee or contractor.
3. Upon receipt of written authorization, the Utility will proceed with Utility Make-Ready Work according to the specific agreed-upon installation plans and the terms of the Agreement, including payment for the utility Make-Ready Work charges as set out by the Utility and agreed to by the Licensee. At the same time, Utility shall provide notice to all other Attaching Entities with existing Attachments on the impacted Poles of the need to perform Communications Make-Ready Work, the location of the Pole and timeframe for the work, as well as providing such other Attaching Entities with contact information for Licensee.
4. Upon completion of the Utility Make-Ready Work, the Utility will sign and return the Application for Permit authorizing the Licensee to make its Attachment(s) in accordance with agreed-upon installation plans.
5. The Licensee's professional engineer, the Utility-approved employee or contractor shall submit written certification that he/she has completed the Post-Construction Inspection and that the installation was done in accordance with the provisions of the Permit. The Post-Construction Inspection shall be submitted within thirty (30) calendar days after installation is complete.



Post-Construction Inspection Sub-Process



City of Monroe JUA Overlash Process



APPENDIX B2—POLE ATTACHMENT PERMIT APPLICATION PROCESS – TELECOM

APPENDIX C1—APPLICATION FOR PERMIT – CITY OF MONROE, NC

APPLICATION FOR ATTACHMENT or REMOVAL

City of Monroe, NC
Attn: Electric Superintendent
(xxx) xxx-xxxx FAX (xxx) xxx-xxxx

Date * _____

UTILITY INFORMATION (Licensee)

Utility Name: _____ *

Address: _____ *

Contact
Person: _____ *

Phone: _____ * Fax No. _____ *

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

GENERAL APPLICATION INFORMATION

Location (road name(s), general project description) _____ *

Section, Township, Range _____ *

Legal Authority (Provide information on documents applicable to project)

State Franchise/Permit # _____ *

City/County Franchise/Permit # _____ *

Private Property Easements A.F.# _____ *

Utility Project Name, Work Order Number _____ *

Project Schedule (planned date of construction) _____ *

Name of Construction Company _____ *

Address _____ *

Phone _____ * Fax No. _____ *

Contact Person _____ *

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

Number of New poles contacted * _____ Number of Utility anchors * _____

Number of existing contacts to have added Facilities * _____

Terminate * _____ pole contacts.

TO BE COMPLETED BY UTILITY PERSONNEL

Date Application received _____ Field review _____ Final review _____

Application review by: _____

☐ Permit Application accepted Date _____

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

☐ Permit Application denied. Date Letter of explanation sent _____

APPENDIX C2—APPLICATION FOR PERMIT – TELECOM

APPENDIX D—SPECIFICATIONS FOR LICENSEE’S ATTACHMENTS TO THE UTILITY POLES – CITY OF MONROE, NC

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

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

B. Clearances

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

general, all other Attachments and Risers should be placed on Pole field face quarter section. (See Drawing A-07.)

6. **Pedestals/Vaults/Enclosures:** Every effort should be made to install Pedestals, Vaults and/or Enclosures a minimum of five (5) feet from Poles or other Utility Facilities. If placement of Pedestals, Vaults and/or Enclosures a minimum of four (4) feet from Poles or other Utility Facilities is not practical, Licensee shall contact the Utility to obtain written approval of the proposed placement. Every effort should be made to install or relocate the Utility Facilities a minimum of four (4) feet from Licensee's existing Pedestals, vaults and/or enclosures.
7. **Cable Storage:** Cable storage must be centered at the attachment pole and no less than five (5) feet and no more than fifty (50) feet away from pole center. The Utility reserves the right to work with the Licensee regarding any practice that deviates from the cable storage described above.

C. Down Guys and Anchors

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

D. Certification of Licensee's Design

1. Licensee's Attachment Permit application must be signed and sealed by a professional engineer, registered in the State of North Carolina, or utility approved employee or contractor certifying that Licensee's aerial cable design fully complies with the NESC, the Utility's Construction Standards and any other applicable federal, state or local codes and/or requirements.

2. This certification shall include the confirmation that the design is in accordance with Pole strength requirements of the NESC, taking into account the effects of Utility Facilities and other Attaching Entities' Facilities that exist on the Poles without regard to the condition of the existing Facilities.

E. Miscellaneous Requirements

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

F. Utility Construction Drawings and Specifications

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

APPENDIX E1—DISTRIBUTION LINE MINIMUM DESIGN REVIEW INFORMATION AND WORKSHEET – CITY OF MONROE, NC

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

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

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

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

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

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

- **Confirm that you have:**

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

_____ (y/n) Complied with North Carolina State Underground Facility
Location requirements.

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

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

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

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

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

General:*

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

Proposed:

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

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

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

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

1. Vertical weight, bare = _____ [#ft]

B. Tension data (final tensions on messenger)

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

2. 60° F, NO wind: _____ [lbs]

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

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

APPENDIX E2—DISTRIBUTION LINE MINIMUM DESIGN REVIEW INFORMATION AND WORKSHEET – TELECOM

APPENDIX F1—FIELD DATA SUMMARY SHEET INSTRUCTIONS – CITY OF MONROE, NC

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

FIELD DATA SHEET FOR ATTACHMENTS TO CITY OF MONROE. NC

Attaching Company Name:

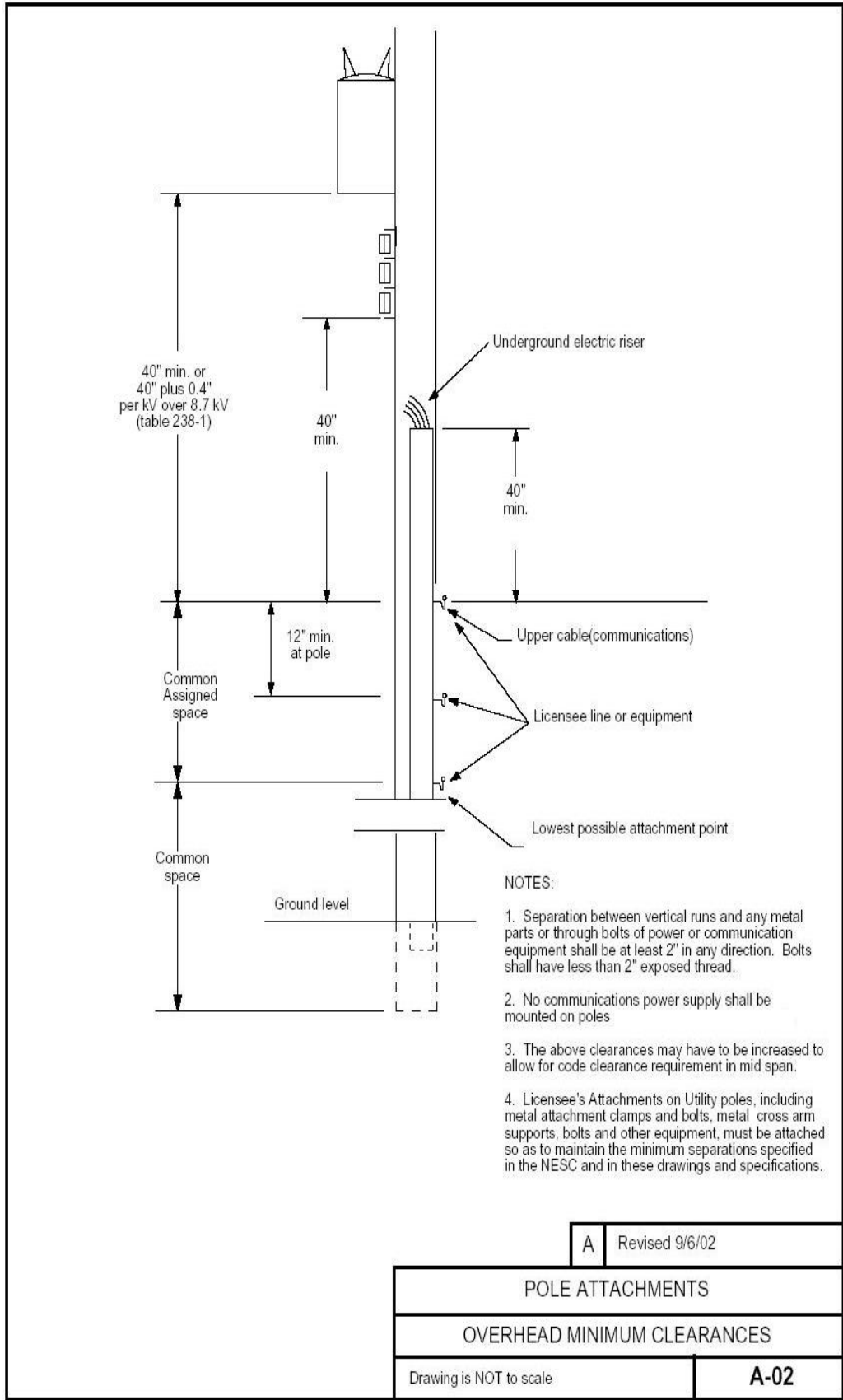
Type of Facility:

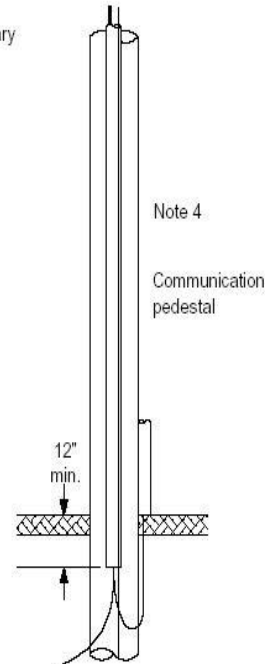
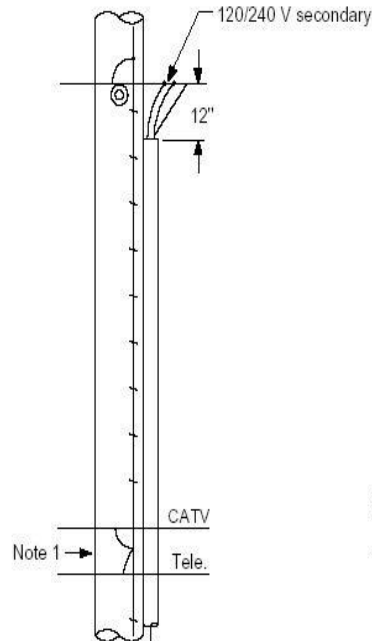
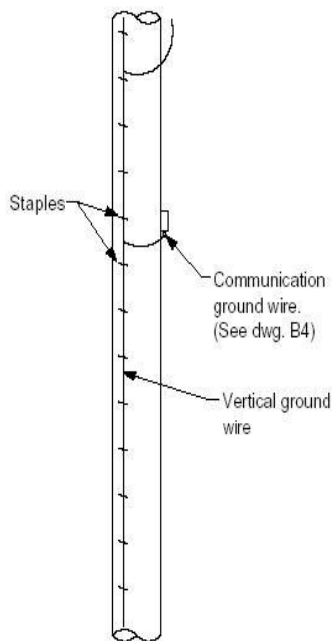
Project Name and/or Number:

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

SAMPLE

Excel spreadsheet available





NOTES:

No communications power supply shall be mounted on Poles

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

See Drawing #5

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

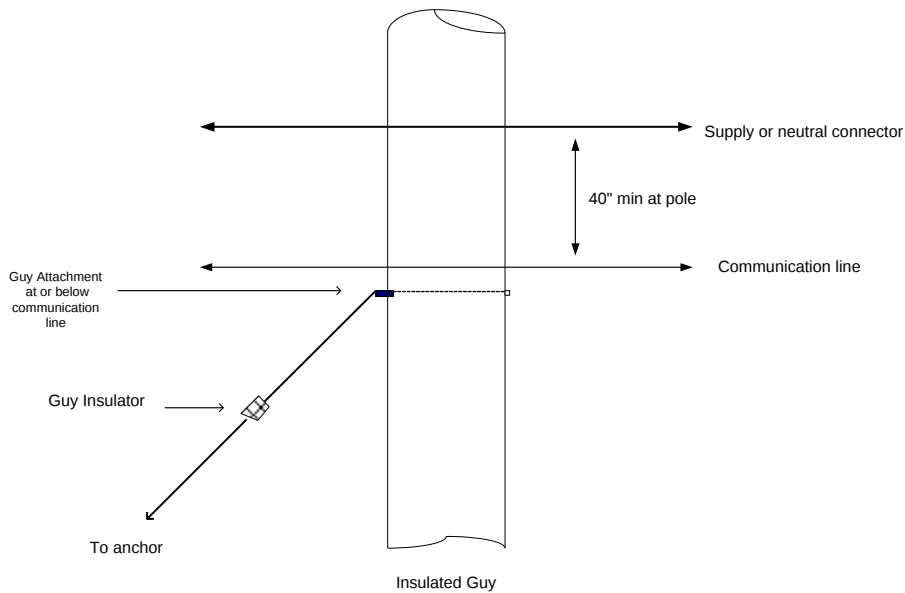
A Revised 9/6/02

POLE ATTACHMENTS

GROUNDING CONNECTIONS

Drawing is NOT to scale

A-03



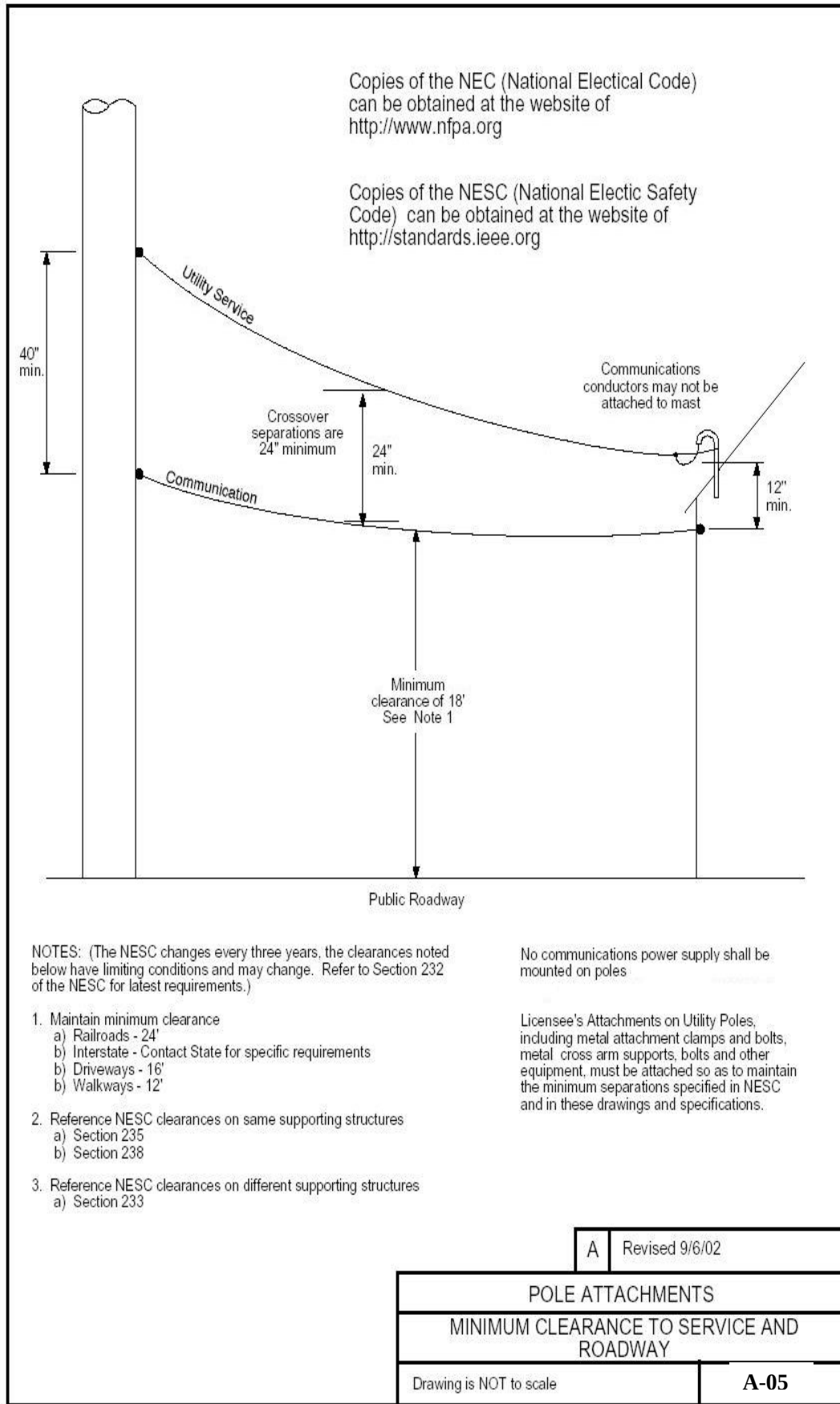
NOTES:

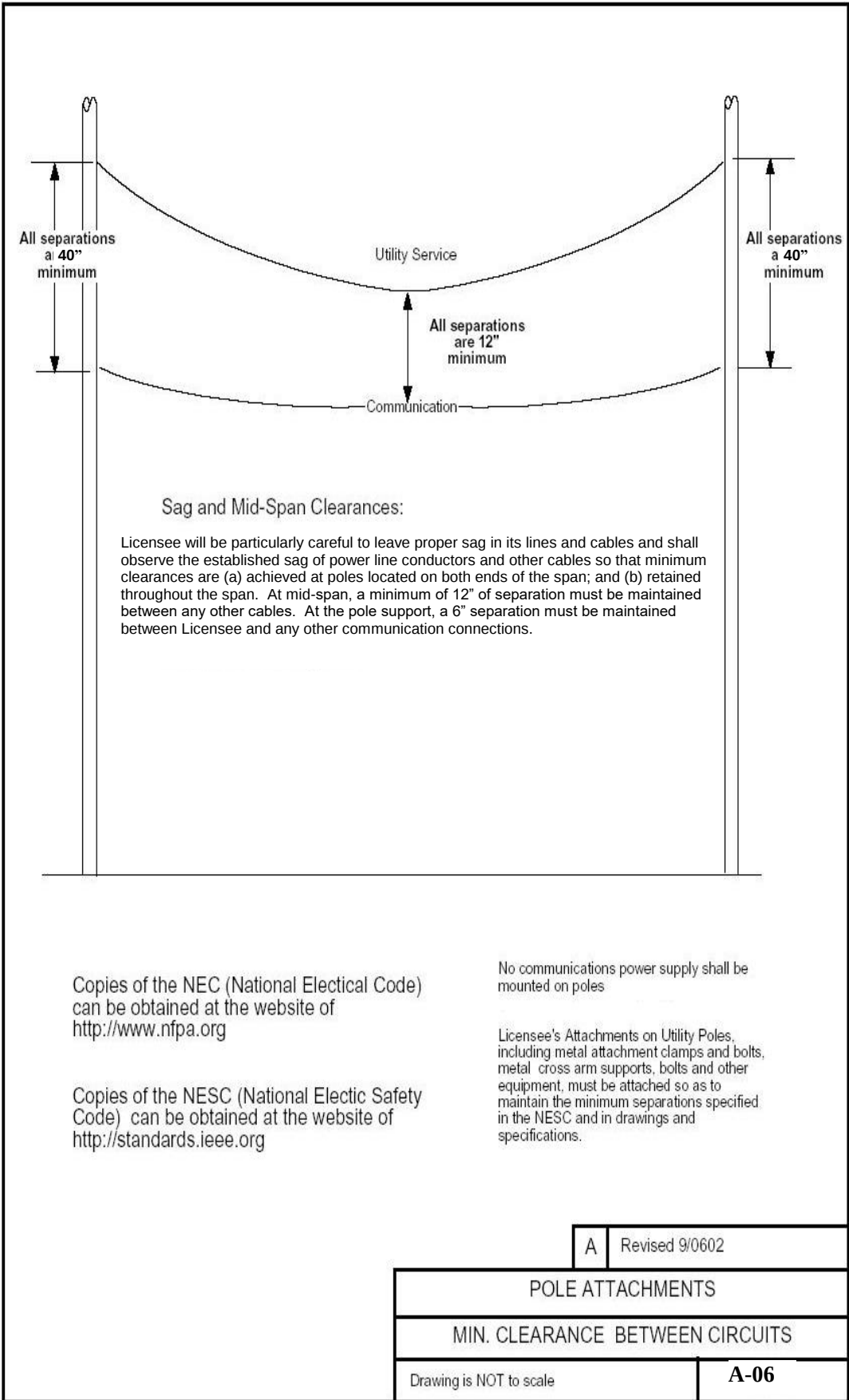
1. Licensee shall be responsible for procuring and installing all anchors and guy wires to support the additional stress placed on Licensor's poles by Licensee's Attachments.
2. Anchors and guy wires must be set on each Utility pole where there is a turn or angle and on all dead-end Utility poles.
3.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

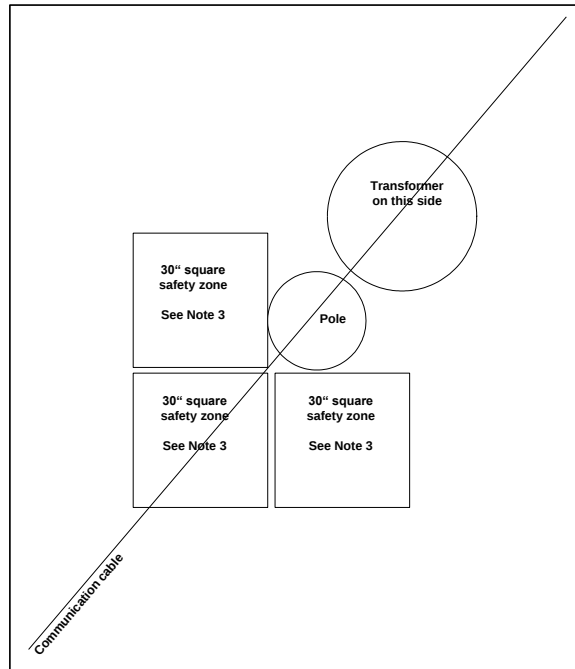
No communications power supply shall be mounted on poles.

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

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







NOTES:

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

No communications power supply shall be mounted on poles

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

A	Revised 9/6/02
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POLE ATTACHMENTS	
CLIMBING SPACE REQUIREMENTS	
Drawing is NOT to scale	A-07

APPENDIX F2—FIELD DATA SUMMARY SHEET INSTRUCTIONS – TELECOM



STAFF REPORT

TO: Public Enterprise Committee

VIA: Mark Watson, City Manager

DATE: January 7, 2025

FROM: Sarah McAllister, P.E., Engineering Director

PREPARED BY: Sarah McAllister, P.E. – Engineering Director

SUBJECT: US 74 and Secrest Shortcut Rd Improvement Project

SUMMARY STATEMENT

The Public Enterprise Committee is requested to consider adopting a resolution in support of a North Carolina Department of Transportation (NCDOT) project to make intersection improvements to US 74 and Secrest Shortcut Rd.

REVIEW

NCDOT Staff recently reached out regarding needed improvements to the east bound left turn lane on US 74 at Secrest Shortcut Road. This left turn lane currently queues up outside of the existing storage available creating a safety issue and impacting the US 74 operations. There is an existing project that will address this issue, U-5931, but construction is more than four years away from beginning. Therefore, NCDOT would like to create a project to address this issue in the 2025 calendar year. The project would more than triple the amount of the current storage length and would involve widening of US 74 in the median area. Impacts would be minor but would include the removal of at least six crepe myrtles and associated landscaping, possibly more. Please see the attached conceptual sketch of the project scope and limits.

The creation of this construction project for NCDOT requires a resolution of support from the local municipality per North Carolina General Statute 136.11.1, “Local Consultation on Transportation Projects”. Therefore, a resolution of support is attached for your consideration. There is no requirement for a local funding match associated with this project.

RECOMMENDATION

Staff recommends approval of the Resolution (R-2025-04) supporting NCDOT's project to improve the east bound left turn lane on US Highway 74 at Secrest Shortcut Rd. If the Public Enterprise Committee is in agreement, the Resolution (R-2025-04) will be placed on the January 14th consent agenda for approval.

Attachments:
Resolution (R-2025-04) Supporting
NCDOT's Project at US 74 and Secrest
Shortcut Road
Concept Drawing

**RESOLUTION IN SUPPORT OF
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
PROJECT FOR INTERSECTION IMPROVEMENTS AT
US 74 AND SECREST SHORTCUT ROAD
R-2025-04**

WHEREAS, the North Carolina Department of Transportation (hereinafter "N.C.D.O.T.") is proposing to improve the intersection of US Highway 74 and Secrest Shortcut Road by increasing the length of the east bound left turn lane on US 74 at Secrest Shortcut Road (hereinafter referred to as the "Project"); and

WHEREAS, the estimated cost for the Project funding exceeds \$250,000.00; and

WHEREAS, North Carolina General Statute 136-11.1, "Local Consultation on Transportation Projects," requires N.C.D.O.T. to notify all municipalities and counties affected by a planned transportation project and to request that they submit a written resolution expressing their views on the same within 45 days; and

WHEREAS, N.C.D.O.T. has notified the City of Monroe (hereinafter the "City") of the Project under date of December 16, 2024, and has requested that the City submit a resolution expressing its views on the same; and

WHEREAS, the City, acting through its City Council in regular session assembled on the 14th day of January 2025, has expressed its support of the Project and has voted unanimously to adopt this Resolution evidencing the same, all in compliance with the requirements of N.C.G.S. 136-11.1;

NOW, THEREFORE, BE IT RESOLVED, that the City of Monroe, City Council does hereby express its support of the Project as set forth hereinabove.

BE IT FURTHER RESOLVED that the City of Monroe, City Council authorizes its Mayor and the Clerk to the Council to sign this Resolution and attach the City seal thereto, and to forward a copy of the same to N.C.D.O.T.

Adopted this 14th day of January 2025, by the City of Monroe, City Council.

Robert A. Burns, Mayor

Attest:

Bridgette H. Robinson, City Clerk





STAFF REPORT

TO: Public Enterprise Committee

VIA: Mark Watson, City Manager

DATE: January 7, 2025

FROM: Lisa Stiwinter, Planning and Development Director

PREPARED BY: Bryson Hester, Transportation Planner

SUBJECT: Monroe's Proposed Candidate Project List for the 2055 Metropolitan Transportation Plan (MTP) for the Charlotte Regional Transportation Planning Organization (CRTPO).

SUMMARY STATEMENT

Public Enterprise Committee is requested to consider the list of candidate project for the 2055 Metropolitan Transportation Plan (MTP) for the Charlotte Regional Transportation Planning Organization (CRTPO). The candidate projects have been identified from the review of the 2050 MTP and projects which were committed or deferred.

REVIEW

The Metropolitan Transportation Plan (MTP) defines the policies, programs and projects to be implemented through 2055 in order to manage congestion, improve safety, support land use plans and provide mobility choices in the CRTPO planning area. It also addresses the goals and objectives of the CRTPO, the various components of the transportation planning process, socio-economic and financial assumptions, and transportation-related environmental and health issues.

The MTP works in coordination with the Comprehensive Transportation Plan (CTP) and the Transportation Improvement Program (TIP). The CTP serves as a long-term, unconstrained vision for the region's transportation needs for the next 50+ years.

The Metropolitan Transportation Plan (MTP) is a federally mandated, long-term planning document that outlines the region's transportation goals and priorities over a 20+-year horizon that are prioritized and financially constrained.

Updated every four years by the Charlotte Regional Transportation Planning Organization (CRTPO), the MTP serves as the guiding framework for transportation investment across highways, transit, bicycle and pedestrian systems within the jurisdiction.

Projects selected in the MTP are then considered for funding and implementation through the TIP, a 10-year regional capital improvement program.

The timeline for submitting MTP projects is a four-step process outlined as follows:

1. Local Submission Period: Where governments identify and submit projects for consideration based on regional needs.
2. CRTPO Review and Scoring: Projects are evaluated for alignments with CRTPO goals, safety, congestion relief and multimodal benefits.
3. Public Engagement: Draft plans are shared for public comment.
4. Adoption and Funding Eligibility: CRTPO finalizes the MTP incorporating prioritized projects into future funding programs such as the previously mentioned, Transportation Improvement Program (TIP). This critical step ensures these projects are eligible for state and federal funding advancing them toward future design, construction and implementation phases.

For the 2050 MTP, the City submitted several projects, some of which were funded (committed) while others were deferred. The following is a summary of the previous submissions, their outcomes and the recommended projects moving forward for the 2055 MTP update:

- **Rocky River Rd**– US 74 to Monroe Connector (1.8 miles) - Widen from 2 lanes to 4 lanes, with median, multi-use path
- **Secrest Short Cut Rd** – Rocky River Rd to Roanoke Church Rd (1.8 miles) - Widen from 2 lanes to 4 lanes, with median, multi-use path
- **Rocky River Rd** – Old Charlotte Hwy to US 74 (0.7 miles)-Widen from 2 lanes to 4 lanes, with median, multi-use path
- **Secrest Short Cut Rd** – Roanoke Church Rd to US 74 (2.7 miles) - Widen from 2 lanes to 4 lanes, with median, multi-use path
- **Old Charlotte Hwy**- Dickerson Blvd (NC 200) to Airport Rd (3.5 miles) - Widen from 2 lanes to 4 lanes, with median, multi-use path
- **Airport Rd** - Goldmine Rd to Monroe-Weddington Rd (NC 84) (0.8 miles)- Widen from 2 lanes to 4 lanes, including realignment, with median, multi-use path
- **Skyway Dr**-Roosevelt Blvd (US 74) to Monroe Northern Loop (1 mile) -Widen from 2 lanes to 4 lanes, with median, bike lanes and sidewalks
- **Monroe Northern Loop** - Roosevelt Blvd (US 74) to Bivens Rd at Walkup Ave (4.8 miles) - New 2-lane roadway on 4 lanes of right-of-way, with median, multi-use path
- **Secrest Ave**- Walkup Ave to Olive Branch Rd (1.7 miles) - New 4 lane roadway, with median, multi-use path

- **Charlotte Ave-** Seymour St to Dickerson Blvd/ N MLK Jr Blvd (NC 200)-Widen from 2 lanes to 4 lanes, with median, bike lanes and sidewalks
- **Morgan Mill Rd** - Monroe Connector to Roosevelt Blvd (US 74) (1.2 miles) - Widen from 2 lanes to 4 lanes, with median, multi-use path
- **Charlotte Ave-** Concord Ave to Seymour St (0.8 miles)- Widen from 2 lanes to 4 lanes, with median, multi-use path
- **MLK Jr Blvd** - Lancaster Avenue to Charlotte Ave (3.3 miles)-Widen from 2 lanes to 4 lanes, with median, multi-use path
- **Roosevelt Blvd at Rocky River Rd** – Improve Existing Interchange/Intersection
- **Roosevelt Blvd** – New Hanover Drive to Rocky River-Widen from 4 lanes to 6 lanes, with median, bike lanes and sidewalks
- **Roosevelt Blvd at Secrest Shortcut Rd** - Construct intersection improvements
- **Roosevelt Blvd at US 601-** Construct intersection improvements
- **NC 84 at Rocky River Rd** – Construct intersection improvements

The following projects were prioritized and committed for funding in the 2050 MTP (previous) cycle:

- **Skyway Dr.** - Roosevelt Blvd (US 74) to Monroe Expressway (2.1 miles) -Widen from 2 lanes to 4 lanes, with median, bike lanes and sidewalks
- **Charlotte Ave** - Seymour St to Dickerson Blvd/ N MLK Jr Blvd (NC 200) (0.4 miles) - Widen from 2 lanes to 4 lanes, with median, bike lanes and sidewalks
- **Roosevelt Blvd at US 601** - Construct intersection improvements-construct roundabouts and replace bridge
- **Roosevelt Blvd at Secrest Shortcut Rd** - Construct intersection improvements
- **Roosevelt Blvd- Hanover Dr. to Rocky River Rd** (3.1 miles) - Widen from 4 lanes to 6 lanes, with median, bike lanes and sidewalks
- **Roosevelt Blvd at Rocky River Rd** – Implement Super Street
- **NC 84 at Rocky River Rd**– Construct intersection improvements

Staff recommends that the following projects **not** be submitted for the (current) 2055 MTP cycle:

- **Monroe Northern Loop** - New 2-lane roadway on 4 lanes of right-of-way, with median, multi-use path- The alignment needs to be reviewed to assess whether it should be amended or removed taking into account factors such as the Union County DSS building, approved subdivisions, and the Monroe Expressway. These factors contribute to our decision not to recommend the Monroe Northern Loop for the 2055 MTP cycle.

Staff recommends that the following projects are submitted for the (current) 2055 MTP cycle:

- **Rocky River Rd** – US 74 to Monroe Connector (1.8 miles) - Widen from 2 lanes to 4 lanes, with median, multi-use path

- **Secrest Short Cut Rd** – Rocky River Rd to Roanoke Church Rd (1.8 miles) - Widen from 2 lanes to 4 lanes, with median, multi-use path
- **Rocky River Rd** - Old Charlotte Hwy to US 74 (0.70 miles) - Widen from 2 lanes to 4 lanes, with median, multi-use path
- **Secrest Short Cut Rd** – Roanoke Church Rd to US 74 (2.7 miles) - Widen from 2 lanes to 4 lanes, with median, multi-use path
- **Old Charlotte Hwy** - Dickerson Blvd (NC 200) to Airport Rd (3.5 miles) - Widen from 2 lanes to 4 lanes, with median, multi-use path
- **Old Charlotte Hwy**-Airport Road to Wesley Chapel Stouts Road (2.00 miles)-Widen from 2 lanes to 4 lanes, with median, multi-use path
- **Airport Rd** - Goldmine Rd to Monroe-Weddington Rd (NC 84) (0.80 miles) - Widen from 2 lanes to 4 lanes, including realignment, with median, multi-use path
- **Morgan Mill Rd** - Monroe Expressway to Roosevelt Blvd (US 74) (1.90 miles) -Widen from 2 lanes to 4 lanes, with median, multi-use path
- **Charlotte Ave** - Concord Ave to Seymour St (0.80 miles)-Widen from 2 lanes to 4 lanes, with median, multi-use path
- **MLK Jr Blvd** - Lancaster Ave to Charlotte Ave (3.30 miles) - Widen from 2 lanes to 4 lanes, with median, multi-use path

Planning staff believes that the proposed candidate project list for the Charlotte Regional Transportation Planning Organization (CRTPO) 2055 MTP aligns with the City’s transportation priorities and regional goals set forth in the Comprehensive Transportation Plan (CTP) as well as Forward Monroe- Land Use and Transportation Plan. By resubmitting “tier-one” high-priority projects like **Old Charlotte Hwy** - Dickerson Blvd (NC 200) to Airport Rd (3.5 miles) and **Charlotte Ave** - Concord Ave to Seymour St (0.80 miles), staff aims to address key safety, connectivity and mobility challenges. Additionally, lower tiered recommendations such as **MLK Jr Blvd** - Lancaster Ave to Charlotte Ave (3.30 miles) and **Airport Rd** - Goldmine Rd to Monroe-Weddington Rd (NC 84) (0.80 miles) reflect a community with wide-spanning, varied, evolving needs.

Staff will coordinate with CRTPO during the submission and review process, ensuring the City’s priorities are strongly represented for funding consideration in the 2055 MTP.

RECOMMENDATION

The Public Enterprise Committee is requested to consider Monroe’s proposed candidate project list for the 2055 Metropolitan Transportation Plan (MTP) for the Charlotte Regional Transportation Planning Organization (CRTPO). The Public Enterprise Committee’s recommendation will be forwarded to City Council for approval.



STAFF REPORT

TO: Public Enterprise Committee

VIA: Mark Watson, City Manager

DATE: January 7, 2025

FROM: Lisa Stiwinter, Planning and Development Director

PREPARED BY: Bryson Hester, Transportation Planner

SUBJECT: MSE Wall Enhancements-Concord Avenue Bridge Replacement (BR-0049)

SUMMARY STATEMENT

The Public Enterprise Committee is requested to consider inclusion of Mechanically Stabilized Earth (MSE) Wall Enhancements as part of the Concord Avenue Bridge Replacement (BR-0049) Project. Currently, NC Department of Transportation (NCDOT) plans to LET this project for construction in January 2026.

REVIEW

The NC Department of Transportation (NCDOT) is advancing plans for the replacement of the Concord Avenue Bridge over US Highway 74. This is a significant infrastructure project designed to improve connectivity and safety. As part of the bridge replacement project, the inclusion of MSE wall enhancements has been proposed that will serve to aesthetically enhance the bridge walls and implement the gateway enhancement action item from the Concord Avenue Area Master Plan.

MSE walls are composite structures that are used to create bridge abutments due to strength, durability, cost-effectiveness, and design flexibility, making them ideal for infrastructure projects. The enhancements proposed for this project include textured finishes, colors, naming and medallions.

Designed to improve aesthetic and functional elements of the project, these enhancements are intended to align with the City's long-term goals for infrastructure improvement and visual appeal along critical transportation corridors.

The proposed MSE Wall enhancements are not include in the original bridge scope and therefore are an independent cost to the City. Costs for wall enhancements were provided in coordination with the NC DOT and project consultants. While NC DOT is responsible for base construction, the City of Monroe will be held 100% responsible for the full cost of any wall enhancements deemed necessary for the project.

Key features of the enhancements include over 6000 square feet of textured finishes to enhance the visual appeal of the structure, as well as four decorative medallions to provide additional design interest. MSE walls are recognized for their durability as well as their ability to integrate aesthetic improvements. This ensures long term structural integrity while enhancing the overall appearance.

The estimated costs for these enhancements, included 96,000 for the 6,000 square feet of textured wall application, \$10,000 for four medallions, and 16,960 in administrative costs (engineering inspection and system charges). The total estimated cost of \$122,960 will be fully funded by the City of Monroe.

The proposed MSE wall enhancements are vital to ensuring the long-term durability functionality, and visual appeal of the Concord Avenue Bridge. By aligning with the broader Concord Avenue revitalization efforts in the area, these enhancements will help to create a cohesive, signature, and aesthetically pleasing gateway for the community. Additionally the enhancements will serve as an investment in the City's urban infrastructure, ideally improving connectivity and fostering community pride. The Concord Revitalization Project funds are sufficient to cover the MSE Wall Enhancement cost.

RECOMMENDATION

The Public Enterprise Committee recommends the inclusion of MSE Wall Enhancements for the Concord Avenue Bridge Replacement Project at an estimated cost of \$122, 960.

Staff will bring the recommendation forward to City Council at their January meeting.

Attachment(s):

Cost Estimate for Wall Aesthetics
Example MSE Wall Enhancements
Incomplete Plans for Bridge No. 34
on Concord Ave

EXHIBIT C
ESTIMATE FOR ASTHETICS (Monroe)
Concord Avenue Bridge
Project Number: BR-0049

100% Betterment

DESCRIPTION	SF	EA	Unit Price	Cost
Application of Concrete Coating (MSE Wall) (Color Stain, 2 colors)	6000		\$ 16.00	\$ 96,000.00
Medallions		4	\$ 2,500.00	\$ 10,000.00
				\$ -
				\$ -
				\$ -
				\$ -
TOTAL				\$ 106,000.00

	Estimated Cost of Items	\$106,000.00
	16% Admin Cost (Eng, Inspection, system charges)	\$16,960.00
	Total Cost to the City	\$122,960.00

The City of Monroe is responsible for 100% of the aesthetic treatments on the MSE wall. Preliminary Estimate only. Quantities and Unit Prices are subject to change.

I-5719 Gastonia Bridge Aesthetics – Preliminary Costs

The purpose of this file is to provide the Aesthetics Committee an example cost for a typical bridge with NCDOT standard aesthetic elements. The unit costs are preliminary and based on historical cost data. The assumed areas of application have been calculated using the assumed bridge lengths and wall dimensions for a typical bridge site crossing the I-85 corridor. Both the costs and areas are subject to change based on the market costs and the final bridge designs.

For this exercise, the bridge at Cox Road over I-85 has been used. This represents a typical bridge crossing at I-85 over the proposed typical section currently in preliminary design.

Bridge Geometry:

Total Bridge Length = 180'

Span Layout = 2 spans @ 90'

Girders = 54" AASHTO Prestressed Concrete Girders

Railing = 2-bar metal rail; 2'-6" parapet height

End Treatments = Mechanically Stabilized Earth (MSE) Wall Abutments

Aesthetic Elements:

1. **Architectural Surface Treatment** (Form Liner) – to be applied to the exterior face of the parapet, the exterior face of the overhang (deck thickness), MSE Walls, and Bent Caps. Form liner pattern will be "Old Brick" pattern. (Pattern type does not affect the unit cost).
Unit Cost = **\$25/sf** on railing and bridge elements
= **\$15/sf** on walls
2. **Application of Concrete Coating** (Color Stain) – to be applied to all locations with the form liner "Old Brick" pattern. 3-colors will be used to achieve the "natural" brick appearance. Also a solid color stain will be applied to the following elements: Exterior face and bottom flanges of exterior girders, underside of the overhang, columns, earwalls at end bents, all coping and reveal edges of walls and parapets with form liner treatment.
Unit Cost = **\$8/sf** per color (**\$24/sf** for 3-color brick)
3. **Medallions** – Applied to the ends of the interior bent caps (both sides of the bridge), and the MSE wall abutments (4-sides). Total of six (6). Cost of medallion is dependent on level of art work and any colors required.
Unit Cost = **\$2500/ea**
4. **Street Name** – Engraving of the road name being carried by the bridge. Typically applied to the coping of the MSE Wall at the end of the bridge railing. Optional location on the bridge rail parapet above the travel lane. Cost is preliminary as no historical cost data is available.
Unit Cost = **\$1000/ea**

Area of Form Liner:

Rails Parapet– 2'-6" Overhang – 1'-0" Bent Cap – 4'-6" x 80' length Length = 180' (2)	2,020 sf
Unit Cost	\$25/sf
SubTotal	\$50,500
MSE Walls End Bent 1 = 3,600 sf End Bent 2 = 3,600 sf	7,200 sf
Unit Cost	\$15/sf
SubTotal	\$108,000

Total Cost Form Liner = **\$158,500****Area of Color Staining:**

"Old Brick" – 3 Colors	
Parapet– 2'-6"	1,260 sf
MSE Walls	7,200 sf
Bent Cap	760 sf
Unit Cost	\$24/sf
SubTotal	\$221,280

Solid Color (TBD)	
Girders	2,580 sf
Overhang	540 sf
Ear Walls	192 sf
Columns	653 sf
Unit Cost	\$8/sf
SubTotal	\$31,720

Total Cost Color Stain = **\$253,000****Medallions:** Assumed 6 Total @ \$2500/eaTotal Cost Medallions = **\$15,000****Street Name:** Assumed 1 ea side (2 total) @Total Cost Street Name = **\$2,000****Total Cost (per Typical Bridge) = \$378,000**

Additional Comments:

Using the information above, if the color stain for the Old Brick pattern is reduced to 1 single color, the cost provided above could be reduced by \$147,520.

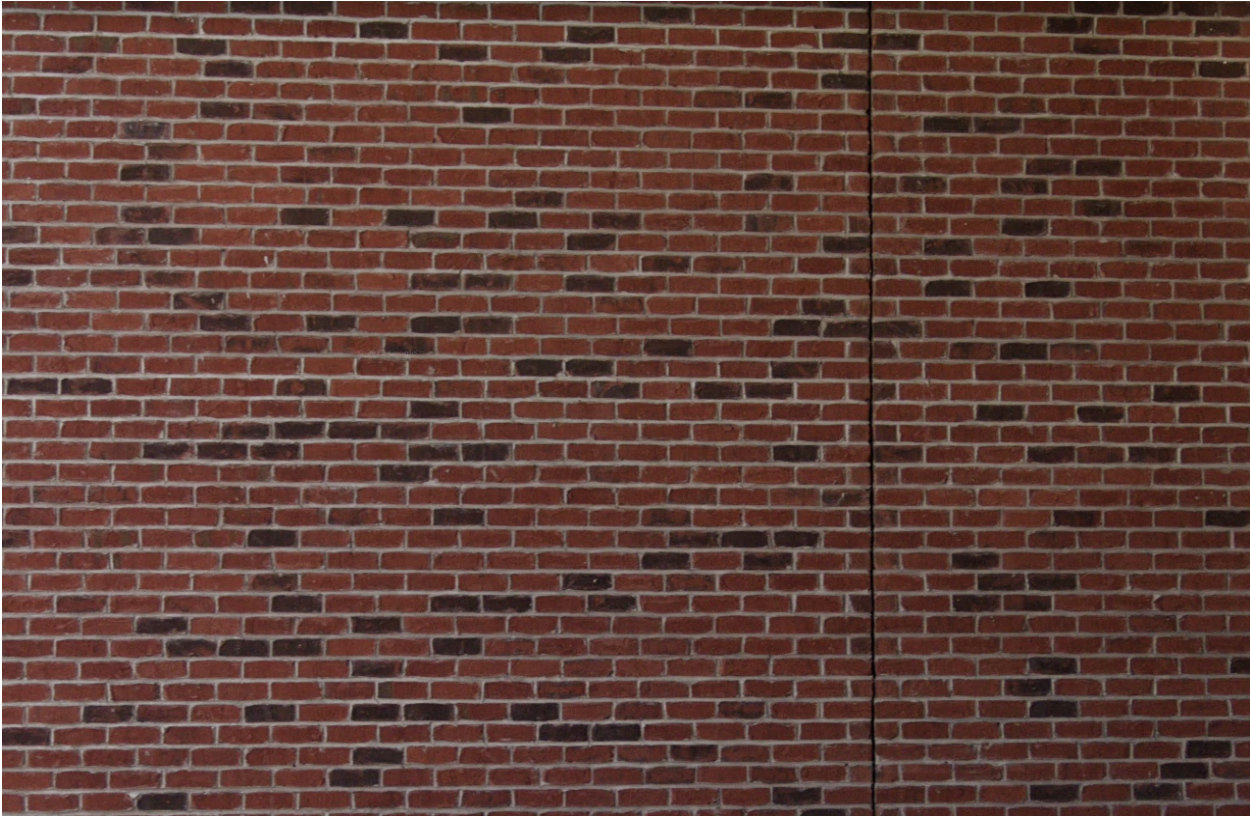
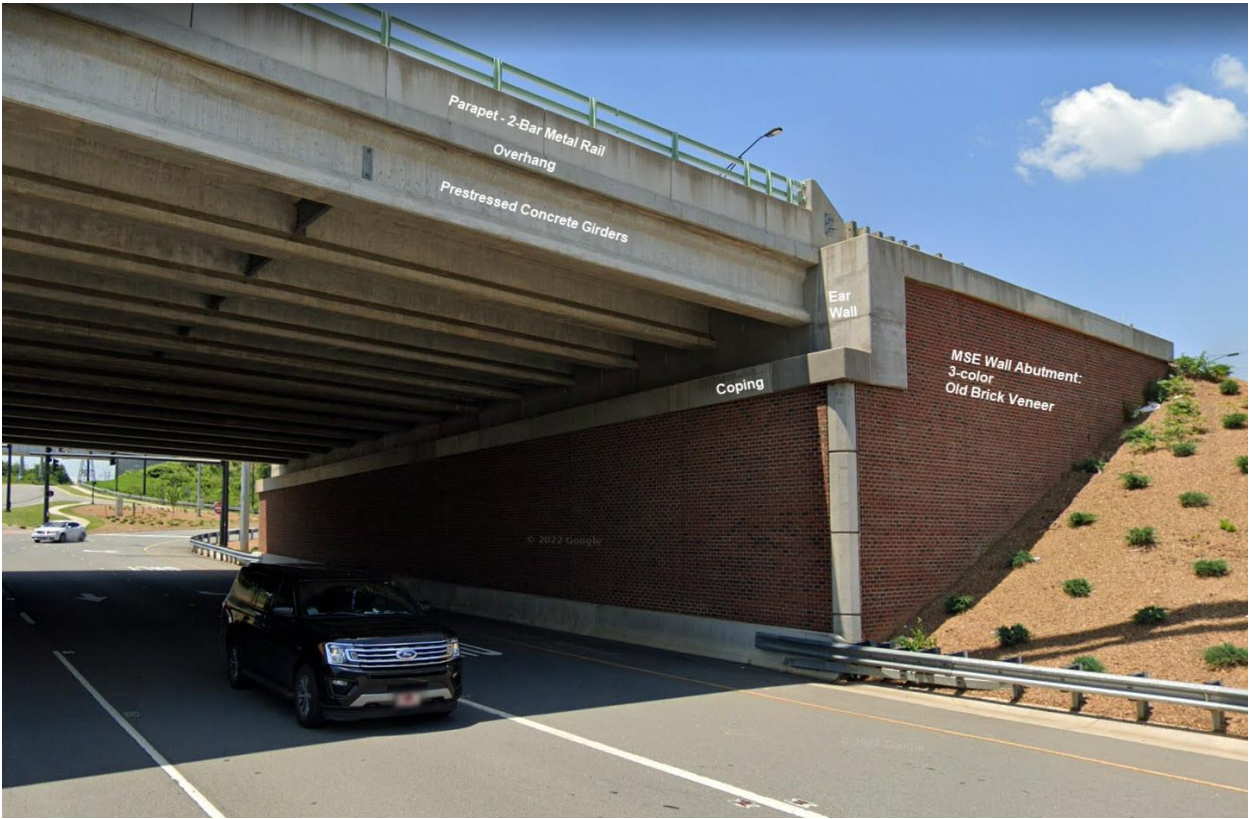
If the bent cap is not required to have the form liner, the cost provided above could be reduced by \$19,000.

See the example photos below for more detail about the aesthetic element locations.

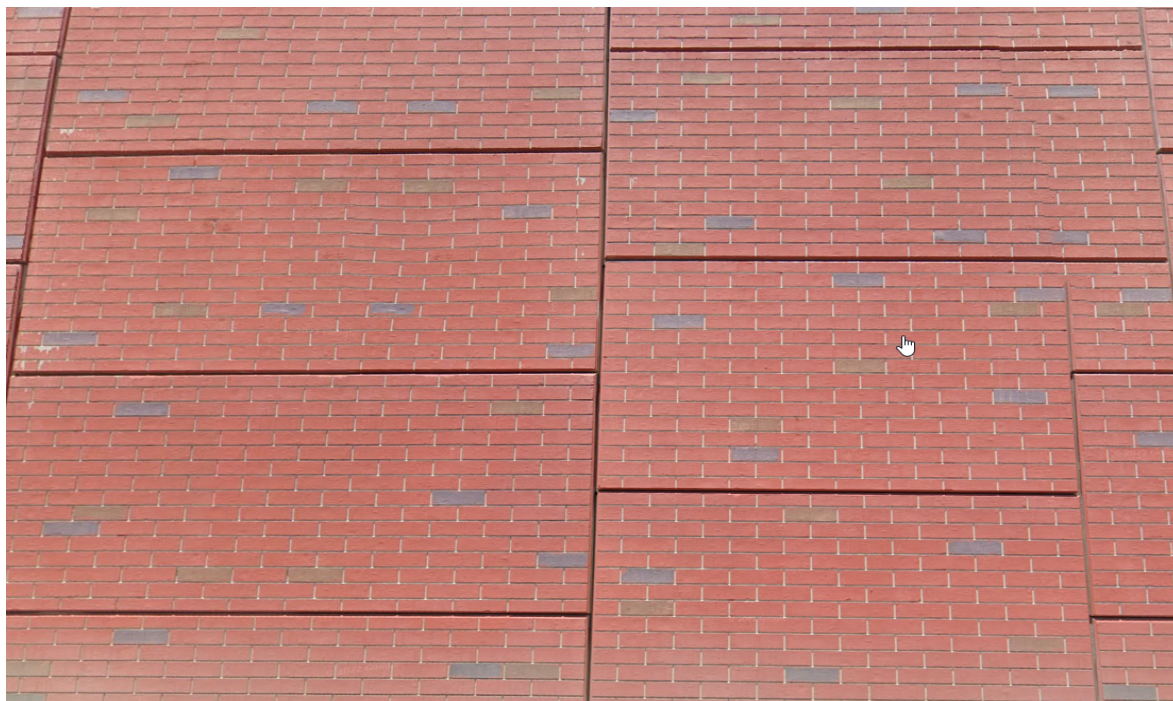
The cost difference for a real brick veneer is approximately \$35/sf. The cost of using a real brick veneer on the MSE Abutment Walls would add \$30,000 to the cost of a typical bridge provided above.

The cost of conduit, junction boxes, and light pedestals on the bridge can be considered incidental. The Department will supply the conduit, junction boxes, and light pedestals on the bridge railing where applicable. The municipality will need to coordinate the least of light fixtures with Duke Energy and determine the type of light fixture that will be used so that the Department can place the correct size pedestal and anchor bolt placement in our bridge plans. Further coordination will be required.

MSE Wall Abutment – Real Brick Veneer

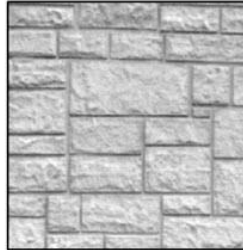


MSE Wall Abutment with 2-Color Form Liner -



Noise Wall Aesthetics

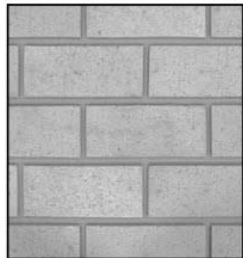
Texture Options:



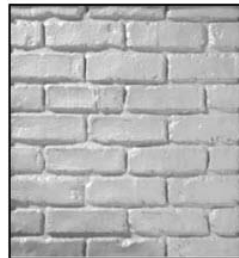
1. Ashlar Stone



2. Dry Stack Stone



3. Standard Brick



4. Old Brick



Transportation