

Attachment A



STANDARD LICENSING AGREEMENT FOR ATTACHMENTS TO  
UTILITY FACILITIES AND  
TECHNICAL DESIGN MANUAL

PREPARED BY  
 **SCHNEIDER  
ENGINEERING**  
ENERGY. FOCUS. COMMITMENT.  
TX REG. # F-1594

UPDATED  
NOVEMBER 2022

## INTRODUCTION / Q&A

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### ***What is the purpose of the City of Bastrop's Standard Licensing Agreement for Attachments to Utility Facilities and Technical Design Manual?***

*The City of Bastrop developed the Pole Attachment Agreement and Technical Design Manual to govern the primary relationship between the attaching entity and the City. It will serve as the primary guide and "rulebook" regarding how an attaching entity may attach to the City's facilities and delineates how the City will facilitate the attachment process.*

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### ***What is the process for working with the City on a pole attachment application?***

*A party with an active agreement with the City of Bastrop must apply for a permit by submitting all required documents prior to any construction or attachment activities involving Bastrop Power & Light facilities through the City's website [www.cityofbastrop.org](http://www.cityofbastrop.org) under the Planning and Development page.*

*For most applications the attaching entity will be notified within fifteen (15) business days after the receipt of a completed application whether the application is approved or rejected. Please see Section IV of the Pole Attachment Agreement for detailed scenarios and timeframes.*

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### ***Where can I get a Request to Attach to Poles Form (Appendix A) or the Request to Modify Attachments on Existing Poles Form (Appendix B)?***

*These forms are attached to the Pole Attachment Agreement document (part of this document set). This document can be downloaded from the City of Bastrop's website [www.CityofBastrop.org](http://www.CityofBastrop.org)*

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### ***Who is the contact person(s) for applications for the City of Bastrop?***

*The Director of Bastrop Power & Light is the primary contact for pole attachments for the City of Bastrop. Contact information:*

*Email: [cervin@cityofbastrop.org](mailto:cervin@cityofbastrop.org)*

*Phone: 512-332-8900*

*Mailing Address: 1311 Chestnut Street, Bastrop, TX 78602*

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

**BETWEEN**

**CITY OF BASTROP, TX**

**AND**

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**DATED:**  
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TABLE OF CONTENTS

ARTICLE I - SCOPE OF AGREEMENT ..... 6

ARTICLE II - EXPLANATION OF TERMS ..... 6

ARTICLE III - SPECIFICATIONS..... 8

ARTICLE IV – JOINT POLE INVENTORY ..... 9

ARTICLE V - ESTABLISHING ATTACHMENT TO POLES ..... 9

ARTICLE VI - PLACEMENT OF NEW POLES ..... 11

ARTICLE VII - RIGHT OF WAY FOR ATTACHER'S ATTACHMENTS..... 12

ARTICLE VIII - MAINTENANCE OF POLES AND ATTACHMENTS..... 12

ARTICLE IX - SAFETY INSPECTIONS..... 14

ARTICLE X - DIVISION OF COSTS ..... 15

ARTICLE XI - UNAUTHORIZED ATTACHMENTS ..... 19

ARTICLE XII - ABANDONMENT OF JOINT USE POLES ..... 20

ARTICLE XIII – ADJUSTMENT PAYMENTS ..... 21

ARTICLE XIV – FEES AND CHARGES ..... 21

ARTICLE XV – DEFAULTS ..... 23

ARTICLE XVI - RIGHTS OF OTHER PARTIES ..... 23

ARTICLE XVII - ASSIGNMENTS OF RIGHTS..... 24

ARTICLE XVIII - WAIVER OF TERMS OR CONDITIONS..... 24

ARTICLE XIX - PAYMENT OF TAXES ..... 25

ARTICLE XX - BILLS AND PAYMENT FOR WORK ..... 25

ARTICLE XXI – NOTICES ..... 25

ARTICLE XXII - TERM OF AGREEMENT ..... 26

ARTICLE XXIII - EXISTING CONTRACTS ..... 27

ARTICLE XXIV – LIABILITY ..... 28

ARTICLE XXV – CONSTRUCTION..... 29

ARTICLE XXVI - REMEDIES CUMULATIVE ..... 29

ARTICLE XXVII – INSURANCE..... 29

ARTICLE XXVIII – GOVERNING LAW AND VENUE ..... 31

ARTICLE XXIX - SEVERABILITY..... 31

**APPENDIX A – REQUEST TO ATTACH TO POLE(S)..... 33**

**APPENDIX B – REQUEST TO MODIFY ATTACHMENTS ON EXISTING POLE..... 35**

**APPENDIX C – SPECIFICATION FOR ATTACHER’S ATTACHMENTS TO UTILITY POLES ..... 36**

**APPENDIX D – REFERENCE CONSTRUCTION DRAWINGS..... 40**

Section 2. Definitions..... 3

**STANDARD POLE ATTACHMENT LICENSE AGREEMENT**

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Section 3. Prohibited and Preferred Locations of Micro Network Node, Network Node, Node Support Pole and related ground equipment..... 8

Section 4. Guidelines on Placement. .... 11

Section 5. General Aesthetic Requirements..... 17

Section 6. Electrical Supply ..... 19

Section 7. Insurance, Indemnity, Bonding and Security Deposits. .... 20

Section 8. Requirements in Regard to Removal, Replacement, Replacement, Maintenance and Repair ..... 21

Section 9. Installation and Inspections ..... 24

Section 10. Requirements Upon Abandonment OF OBSOLETE MICRO Network Node, Network Node, Node Support Pole and related ground equipment. .... 25

Section 11. General Provisions. .... 26

Section 12. Administrative Hearing – Request for Exemption ..... 29

Section 13-19 Reserved ..... 30

Section 20. Design Manual - Updates..... 31

**APPENDIX E – TECHNICAL DESIGN MANUAL** (Standalone document – new page numbers)

## PREAMBLE

The City of Bastrop, (hereinafter called the "Utility"), and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ (hereinafter called the "Attacher"), desiring to enter into this Pole Attachment License Agreement ("Agreement") for the use of Utility's poles, erected or to be erected within the areas in which both parties render service in the State of Texas, whenever and wherever such use shall, in the estimation of both parties, be compatible with their respective needs and consistent with the terms of this Agreement, do hereby, in consideration of the promises and the mutual covenants herein contained, covenant and agree for themselves and their respective successors and assigns as follows, effective \_\_\_\_\_, 2022 ("Effective Date"):

## WITNESSETH

WHEREAS, the Utility and the Attacher desire to continue joint use of steel or other types of poles and in the future to establish further joint use of their respective poles when and where joint use shall be of mutual advantage; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

## ARTICLE I - SCOPE OF AGREEMENT

- A. This Agreement shall be in effect in the area in which both of the Parties render service in the State of Texas, and shall cover all poles now existing or hereafter erected in the above territory when said poles are brought under this Agreement in accordance with the procedure hereinafter provided.
- B. The Utility reserves the right for good cause to exclude from use any of its facilities for objective reasons of safety, reliability, capacity, and generally applicable engineering standards.

## ARTICLE II - EXPLANATION OF TERMS

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

- A. **Attacher** is any entity other than the Utility who either attaches to Utility facilities or installs equipment within the public right of way.
- A. **Attachment** is any Attacher cable, wire, strand, circuit, service drop, over-lashing, appurtenance, equipment, pedestal or apparatus of any type attached to the pole.
- B. **Bonded-Ground** is a pedestal or other ground mounted equipment bonded to the vertical ground on a pole but not attached to the Pole.
- C. **Cost in Place** is the cost of the bare pole, labor to install the pole and associated overheads, including engineering.

- D. **Initial Safety Inspection** is a safety inspection of Utility poles to identify and remediate non-conforming Attachments (e.g. NESC violations) and other safety conditions on Utility poles, performed after the Effective Date as explained in ARTICLE IX hereof.
- E. **Joint Pole** is a pole for which joint use is established or continued pursuant to the terms of this Agreement.
- F. **Attacher** is the party having the right under this Agreement to make and maintain Attachments on a Joint Pole that the other party owns.
- G. **Make-ready** is all work necessary or appropriate to make space for or otherwise accommodate new or changed Attachments, including, if necessary or appropriate, Rearrangements, removal and replacement of the pole, Transfers and other work incident thereto.
- H. **NESC** is the National Electrical Safety Code.
- I. **Non-guyed Service Drop** is a Service Drop that requires no guys under the Attacher's design standards or the applicable specifications of ARTICLE III - SPECIFICATIONS. (If, atypically, a wire used to connect to a customer's location were to require guying under the Attacher's design standards or the applicable specifications of ARTICLE III, then it would not be treated as a Non-guyed Service Drop under this Agreement but would be treated as a cable.)
- J. **Normal Pole** is a pole which is just tall enough to provide Normal Space, as Normal Space is hereinafter defined, for the respective parties and just strong enough to meet the requirements of the specifications mentioned in ARTICLE III - SPECIFICATIONS for the Attachments ordinarily placed by the parties in their respective Normal Spaces. Such pole for the purpose of this Agreement shall be a forty (40)-foot class 3 wood pole as classified by the pole classification tables of the American National Standards Institute. The foregoing definition of Normal Pole is not intended to preclude the use of Joint Poles shorter or of less strength than the Normal Pole in locations where such poles will meet the requirements of the parties hereto.
- K. **Normal Space** is the following described space:
1. For the Utility, the uppermost six and a half (6 ½) feet measured from top of pole on thirty-five (35)-foot poles and the uppermost nine (9) feet measured from top of pole on forty (40)-foot poles.
  2. For the Attacher a space of one (1) foot on both thirty-five (35)-foot and forty (40)-foot poles at a sufficient distance below the space of the Utility to provide at all times the minimum clearance required by the specifications mentioned in ARTICLE III - SPECIFICATIONS and at a sufficient height above ground to provide the proper vertical clearance above ground or track rails for the lowest horizontally run line wires or cables attached in such space. When practicable, the Attacher will, after the Effective Date, make its initial Attachments one foot above the lowest possible point that provides such ground clearance, which is the midpoint of its Normal Space.

3. In the event the Utility installs a pole larger than the Normal Pole solely in anticipation of its future requirements or additions, the Normal Space for the Utility, as defined above, for that pole shall be increased to include the additional above ground space provided by the Utility.
- L. **Outside Party** is any person or entity which is not a party to this Agreement and which has a right to use the pole of either party.
- M. **Permit** means authorization from the Utility to the Attacher to attach an Attachment pursuant to this Agreement.
- N. **Rearrangement** is the moving of Attachments from one position to another on a pole.
- O. **Service Drop** means a wire used to connect to a customer's location. A Service Drop may run directly from a pole used to service many customers to a specific customer's location, without the use of any other poles, or a Service Drop may itself be supported by more than one pole to carry the Service Drop to the customer's location.
- P. **Space** is the linear portion of a joint pole parallel to its axis reserved for the exclusive use of one of the parties (subject only to the exceptions provided for in this Article and the specifications mentioned in ARTICLE III - SPECIFICATIONS which in certain instances permit the making of certain Attachments by one party in the space reserved for the other party).
- Q. **Technical Design Manual** is the binding policy governing non-utility pole attachments and nodal attachments as found in Appendix E. If, in any circumstance, the Technical Design Manual and this Agreement are in conflict, this Agreement shall take precedence.
- R. **Transfer** is the removal of Attachments from one pole and the placement of them or substantially identical Attachments upon another.
- S. **Utility** means the Bastrop Power & Light Department of the City of Bastrop or any other departments designated by the Director of Bastrop Power & Light to review, approve, and manage any attachment to City facilities or installations within the public right of way.

### ARTICLE III - SPECIFICATIONS

Except as otherwise provided in ARTICLE VIII - MAINTENANCE OF POLES AND ATTACHMENTS F., referring to construction that has not yet been brought into conformity with the specifications mentioned herein, the joint use of the poles covered by this Agreement shall at all times be in conformity with all applicable: (1) accepted published modern methods; (2) requirements of the National Electrical Safety Code and subsequent revisions thereof ("NESC"); (3) lawful requirements of public authorities; and (4) the requirements of APPENDIX C. It is understood by both parties that the requirements of the NESC are minimum requirements and that reasonable, additional requirements for height and strength may be required for good practice for the given local conditions.



Modifications of, additions to, or construction practices supplementing wholly or in part the requirements of the NESC, shall, when accepted in writing by both parties hereto through their agents authorized to approve such changes, likewise govern the joint use of poles, which acceptance shall not be unreasonably withheld.

## **ARTICLE IV – JOINT POLE INVENTORY**

A. In order to transition to this Agreement from the prior Agreement, an initial Inventory may be necessary to establish the baseline total of Joint Use poles. The scope and timeframe of the initial Inventory will be mutually agreed upon in writing. The Parties shall conduct each Inventory, initial or subsequent, jointly to verify the pole ownership and number of poles with at least one Attachment belonging to the other. Such inventory may be performed by a mutually agreed upon vendor or jointly by the Parties. In lieu of a physical Inventory, the Parties may agree to a joint review of records. At each Party's own expense, the scope and proportional division of cost of such Inventory shall be identified in a separate Inventory agreement. Prior to such an undertaking, the Party desiring such Inventory shall notify the other Party at least one hundred twenty (120) days in advance of the proposed start date.

## **ARTICLE V - ESTABLISHING ATTACHMENT TO POLES**

A. Before Attacher shall make use of Utility's Poles under this Agreement, it shall comply with the requirements set forth herein. APPENDIX A or B shall be submitted along with all required documents through the City's website [www.cityofbastrop.org](http://www.cityofbastrop.org) under the Planning and Development page.

B. APPENDIX A PROCEDURE. Except in connection with (i) the placement of Non-Guyed Service Drops; (ii) the placement of distribution terminals; (iii) the placement of power secondary wires; (iv) the placement of street lighting fixtures; (v) making safety corrections; (vi) Rearrangements or Transfers required by the Utility, whenever either party desires to place an Attachment on any pole of the other that is not then in joint use (including road improvement projects and reconstruction of pole lines) or where existing joint use consists solely of one or more Non-guyed Service Drops, it shall submit a completed written application therefor on the form attached hereto and identified as APPENDIX A or such other form as may be mutually agreed upon, specifying fully, to the extent applicable, the information shown on APPENDIX A. In the case of overlashing, Attacher may submit after-the-fact notification, so long as Appendix A information, including engineering calculations and a pole loading study, are submitted. Within fifteen (15) business days after the receipt of such completed application the Utility shall notify the applicant whether the application is approved or rejected. If so approved or if not rejected within the fifteen (15) day period, the pole will become a Joint Pole, and the Attacher shall have the right to place Attachments on such pole as provided in this Agreement. If the Utility rejects the application in whole or in part, the Utility will specify the reason(s). The application shall be rejected only for good cause. Upon receipt of notice from the Utility that the application has been approved or in

the absence of rejection of the application within fifteen (15) business days from the receipt of the completed application, and after the completion of any transferring or rearranging which is required to permit the attaching of the applicant's Attachments on such poles, including any necessary pole replacements, the applicant shall have the right as Attacher hereunder to place such Attachments on such poles in accordance with the terms of the application and of this Agreement (including ARTICLE III).

C. APPENDIX B PROCEDURE. Except in connection with (1) the placement of Non-guyed Service Drops; (ii) the placement of distribution terminals; (iii) the placement of power secondary wires; (iv) the placement of street lighting fixtures; (v) the vertical use of the unused space on a pole as provided in ARTICLE IV.E. below; (vi) Rearrangements; (vii) Transfers required by the Utility and (viii) overlashing, whenever the Attacher desires to modify its existing Attachments or place one or more additional Attachments on a Joint Pole, the Attacher shall submit a completed written application therefor on the form attached hereto and identified as APPENDIX B or such other form as may be mutually agreed upon, specifying fully, to the extent applicable, the information shown on APPENDIX B. Unless the Utility rejects the completed form within fifteen (15) business days from the date of receipt, the Attacher may proceed with making such Attachments or changes as are identified in the form in accordance with the terms of the application and this Agreement (including ARTICLE III - SPECIFICATIONS). If the Utility rejects the application in whole or in part, the Utility will specify the reason(s). The application shall be rejected only for good cause. If the Utility determines that any such Attachments do not comply with the terms of this Agreement (including the provisions of ARTICLE III), then the parties will work together to minimize the cost of correcting any such deficiencies, but the Attacher shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto.

D. Any Non-guyed Service Drop that is placed by Attacher on Utility's pole shall be subject to all the terms and provisions of this Agreement, except as expressly provided in this Agreement. The placement of one or more Non-guyed Service Drops shall not, alone and without more, create Normal Space.

E. Either party, without following the APPENDIX A or APPENDIX B procedure, may utilize vertical unused space below its Normal Space as defined in ARTICLE II - EXPLANATION OF TERMS for street lighting, terminals, risers or other vertical Attachments if the existing joint use of such pole is authorized, such use does not interfere with the other party's operations, and such use complies with the terms of this Agreement (including the provisions of ARTICLE III - SPECIFICATIONS).

F. Each party shall place, Transfer and rearrange its own Attachments, and shall place guys and anchors to sustain any unbalanced loads caused by its Attachments. On existing poles, each party will perform any tree trimming or cutting necessary for their initial or additional Attachments. Anchors and guys shall be in place and in effect prior to the installation of Attachments and cables.

Each party shall, with due diligence, attempt at all times to execute such work promptly and in such manner as not to interfere with the service of the other party.

G. The cost of establishing the joint use of existing poles as provided herein, including the making of any necessary pole replacements, shall be borne by the parties hereto in the manner provided in ARTICLE X - DIVISION OF COSTS.

H. Joint use of a pole shall automatically be continued under the terms of this Agreement if either of the following circumstances applies:

1. The pole was a Joint Pole under the Old Joint Use Agreement as of the Effective Date.
2. Both parties had Attachments on the pole - the pole was actually in joint use – as of the Effective Date.

I. Both before and after any termination of the right to place Attachments on additional poles, the Attacher shall have the right to Transfer its Attachments from an existing pole to a new pole installed as part of a road widening project and to continue joint use on such pole. If the Attacher is materially breaching this Agreement or acting in bad faith or failing to cooperate or communicate as provided in this Agreement, the Utility may terminate the Attacher's rights under this ARTICLE V.I.

J. To facilitate the implementation of this Agreement, each party will share with the other party information about its future pole line projects, as appropriate, to facilitate the other party's planning and budgeting.

K. To facilitate any preparation of APPENDIX A or APPENDIX B, the parties' representatives will, as reasonably necessary and appropriate and if requested by a party, discuss with one another the matters that are the subject of APPENDIX A or APPENDIX B.

## **ARTICLE VI - PLACEMENT OF NEW POLES**

A. Whenever either party hereto requires new pole facilities for any reason, including an additional pole line, an extension of an existing pole line, or in connection with the reconstruction of an existing pole line, it may promptly notify the other party to that effect in writing (verbal notice subsequently confirmed in writing may be given in cases of emergency) stating the proposed location and character of the new poles and the character of circuits it intends to use thereon and indicating whether or not such pole facilities will be, in the estimation of the party proposing to construct the new pole facilities, suitable for joint use. In case of emergency verbal notice, the other party will preliminarily respond verbally on an expedited basis that it does or does not want to seek initial joint use of the new poles and will generally describe its planned initial Attachments. Within a reasonable period (not to exceed thirty (30) business days after the receipt of such written notice, the other party will submit an APPENDIX A if required by ARTICLE V above, and the provisions of ARTICLE V will govern.

B. Each party shall place its own Attachments on the new Joint Poles and place guys and anchors to sustain any unbalanced loads caused by its Attachments except as otherwise provided under ARTICLE V - ESTABLISHING ATTACHMENT TO POLES. Each party shall, with due diligence, attempt to execute its work promptly and in such manner as not to interfere with the service of the other party.

C. Any new poles that are placed within the public right of way by any entity that are not subject to Utility use must not interfere with the safe use, operations, and maintenance of Utility facilities.

## **ARTICLE VII - RIGHT OF WAY FOR ATTACHER'S ATTACHMENTS**

While the Utility and Attacher will cooperate as far as may be practicable in obtaining rights-of-way for both parties on Joint Poles, the Utility does not warrant or assure to the Attacher any right-of-way privileges or easements on, over or across streets, alleys and public thoroughfares, and private or publicly owned property, and if the Attacher shall at any time be prevented from placing or maintaining its Attachments on the Utility's poles, no liability on account thereof shall attach to the Utility of the poles.

## **ARTICLE VIII - MAINTENANCE OF POLES AND ATTACHMENTS**

A. The Utility shall maintain all Joint Poles in a safe and serviceable condition and in accordance with the specifications mentioned in ARTICLE III - SPECIFICATIONS and shall replace, reinforce or repair should a pole become defective.

B. When replacing a Joint Pole carrying terminals of aerial cable, underground connection, or transformer equipment, the new pole shall be set in the same hole which the replaced pole occupied, or immediately adjacent, and in a manner to facilitate Transfer of Attachments, unless special conditions make it desirable to set it in a different location. Replacement poles where risers (dips) are installed should be set as close as possible to the existing pole. The Utility will make reasonable efforts to conduct a joint field review or otherwise coordinate with Attacher to determine the location of the proposed pole. Reasonable efforts will be made to coordinate locations of risers and Non-guyed Service Drops with the locations of the power facilities serving the customer.

C. Whenever it is necessary to replace or relocate a Joint Pole, the Utility shall, before making such replacement or relocation give reasonable notice thereof by electronic mail or NJUNS (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing) to the Attacher, specifying in such notice the time of such proposed replacement or relocation and the Attacher shall at the time so specified Transfer its Attachments to the new or relocated Joint Pole.

1. Should the Attacher fail to Transfer its Attachments to the new Joint Pole on the date specified for such Transfer of Attachments (after all Utility Transfers have been accomplished), the

Utility may elect to relinquish the ownership of the old pole from which it has removed its Attachments, with the giving of verbal notice to be subsequently followed in writing. If the Utility so elects, such old pole shall thereupon, at no cost to the Attacher, become the property of the Attacher, as is, and the Attacher shall save harmless the former Utility of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring because of, or arising out of, the presence or condition of such pole or of any Attachments thereon. The unused portion of the pole above the Attacher's Attachments shall be cut off and removed by the Utility before relinquishing ownership, if the pole remains in structural conflict with the power route.

2. Should the Attacher fail to Transfer its Attachments to the new Joint Pole within five (5) business days or forty-eight (48) hours in cases of emergency, after the date specified for such Transfer of Attachments and after all third party and Utility responsible Transfers have been accomplished, whichever is later ("Attacher Transfer Date"), and if the Utility does not elect to relinquish the ownership of the old pole from which it has removed its Attachments, the Utility may use its own personnel or hire a third-party contractor to make the transfer. Attacher agrees to pay the actual costs of such transfer, plus a 15% administrative fee. The intent of this paragraph is to ensure timely Transfers and minimize situation of two or more poles needlessly remaining at the same location for extended periods of time. The aforementioned provisions of this paragraph will only apply when poles are installed in a manner consistent with ARTICLE VIII.B.

D. Each party shall at all times maintain all of its Attachments in accordance with the specifications mentioned in ARTICLE III and shall keep them in safe condition and in thorough repair.

E. Each party shall be responsible for right-of-way maintenance for its own circuits at its own expense.

F. Any existing joint use construction of the parties hereto which does not conform to the specifications mentioned in ARTICLE III - SPECIFICATIONS shall be brought into conformity therewith as soon as practicable. To the extent such construction is compliant with the specifications in effective at the time of installation, neither party will be required to retrofit such existing, compliant attachments and at all times NESC grandfathering rules will apply. When such existing construction shall have been brought into conformity with said specification, it shall at all times thereafter be maintained as provided in Sections A and D of this ARTICLE VIII.

G. The cost of maintaining poles and Attachments and of bringing existing joint use construction into conformity with said specifications shall be borne by the parties hereto in the manner provided in this Agreement.

H. Where a pole currently exists, and different, new or replacement poles are needed in substantially the same place to accommodate the Attacher's desired additional Attachments or desired new joint use, then, if joint use is established or to be established as provided in this Agreement, the Utility will construct and own the new poles, and the costs will be paid as provided

in ARTICLE X - DIVISION OF COSTS. If the Utility does not commit to build the poles within the time reasonably needed by the Attacher, then the Attacher may build the poles and the costs will be paid as provided in ARTICLE X - DIVISION OF COSTS, with the party owning the existing poles owning the new poles. (This section addresses overbuilding of existing poles by the Attacher.)

I. The Utility shall have the right to require the Attacher, within ninety (90) days after the Attacher Transfer Date (as defined in ARTICLE VIII - MAINTENANCE OF POLES AND ATTACHMENTS), either (a) to Transfer its Attachments from an existing pole to a new pole that is erected to carry the same or a similar service or Attachments as those on the existing pole, or (b) to remove its Attachments from the existing pole and terminate joint use as to the existing pole. The choice of option (a) or (b) will be the Utility's. Or, if neither the Utility nor the Attacher desires a Transfer, the Utility may elect to abandon the existing pole to the Attacher as provided in ARTICLE VIII - MAINTENANCE OF POLES AND ATTACHMENTS C. I. In the case of any such Transfer, the costs of transferring the Attacher's Attachments will be paid by the Attacher, unless such Transfer is required due to the requirements of an Outside Party, in which case the Outside Party shall reimburse the Attacher upon demand. Should the Attacher fail to either abandon the existing pole, or transfer its Attachments, within the 90-day timeframe, then the Attacher shall be deemed to have agreed to Utility's transferring said Attachments at Utilities actual cost plus a 15% administrative fee.

## **ARTICLE IX - SAFETY INSPECTIONS**

A. INSPECTION PERFORMANCE. If, at any point, the Utility has reasonable cause to believe Code Violations or unsafe conditions (or other violations of ARTICLE III) involving the Attacher exist on its system, it will provide documentation of this belief to the Attacher and may pursue additional inspections of the condition to any of the Attacher's Attachments, not precluding the annual inspection. Not more than once every year, the Utility may perform a periodic safety inspection of Utility's Poles, including Attachments under this Agreement. The scope of the safety inspection may include the entire system or may be limited to a smaller portion of the system, such as one circuit or the circuits fed by one substation, at the discretion of the Utility. At least three (3) months prior to any such safety inspection, Utility shall provide notice of the safety inspection to the Attacher, which shall describe the scope of the inspection and provide Attacher with notice of the anticipated date of the inspection. Utility and Attacher shall share equally in the cost of the Initial Safety Inspection and any subsequent safety inspection, whether performed directly by Utility or a third party contractor engaged by Utility, provided that to the extent that any person or entity which is not a party to this Agreement is also bound by contract or otherwise to share in the cost of any safety inspection, then the cost of any such safety inspection shall also be shared with any such person or entity not a party to this Agreement in accordance with its contractual or other obligations.

B. CORRECTIONS. In the event Attacher's facilities are in violation of the specifications set forth in ARTICLE III, and such violation poses an imminent danger to persons or property ("Imminent

Danger Violation”), such party shall correct such violation immediately, but at least within twenty-four (24) hours, unless otherwise agreed to by the parties. Should Attacher fail to correct such violation after notice, the Utility may correct the violation and bill the Attacher for the Actual Costs incurred plus a 15% administrative fee. Attacher shall not be subject to any safety violation penalties pursuant to a system-wide Safety Inspection provided that Attacher corrects any safety violation that is not an Imminent Danger Violation (a “Non-Imminent Danger Violation”) discovered during the Safety Inspection within eighteen (18) months of the documentation and reporting of the violation or unsafe conditions. For Safety Inspections involving a smaller scope of work (such as one circuit or the circuits fed by one substation), if any facilities of the Attacher are found to be a Non-Imminent Danger Violation, and Attacher has caused the violation, Attacher shall have sixty (60) days to correct any such violation upon written notice from Utility, or within a longer, mutually agreed-to time frame. If correction of the violation is not possible within sixty (60) days, such extended time to be not more than an additional sixty (60) days. Notwithstanding the foregoing grace periods, in the event Utility or any other third party prevents Attacher from properly correcting a Non-Imminent Danger Violation, the timeframe for correcting such violation shall be extended to account for the time during which Attacher was unable to correct the violation due to such actions of the Utility or the third party. Attacher will not be responsible for the costs associated with violations caused by others. In all circumstances, all of the parties on the Pole will work together to maximize safety while minimizing the cost of correcting any such deficiencies, but the Attacher shall be responsible for the full cost of any necessary or appropriate corrective measures associated with violations caused by Attacher, including removal and replacement of the pole and all Transfers or other work incident thereto. Attacher shall insure that its employees, agents, or contractors, which Attacher causes to work on Utility Poles, will be notified of pending, unresolved Poles requiring corrective actions, prior to activities on such Poles, and Attacher shall not allow unqualified, or improperly equipped personnel to work on such poles.

C. PENALTIES. Utility may impose a penalty in the amount of one hundred (\$100) dollars for any violation caused by Attacher that is not corrected in accordance with the terms of this Agreement.

D. OBSERVED SAFETY VIOLATIONS. For avoidance of doubt, Attacher shall be required to correct any safety violations as provided herein whether or not such are observed or noticed.

## **ARTICLE X - DIVISION OF COSTS**

A. NEW POLES INSTALLED WHERE NONE CURRENTLY EXIST. Whenever Utility requires new pole facilities within the Attacher’s service territory for any reason, including an additional Pole line, an extension of an existing pole line, or in connection with the reconstruction of an existing Pole line, it shall make a best effort to notify Attacher to that effect in writing (verbal notice subsequently confirmed in writing may be given in cases of emergency) stating the proposed location of the new pole. In the case of emergency, the Attacher will preliminarily respond verbally on an expedited basis that it does or does not want to attach its Attachments and will generally describe its planned Attachments. Within a reasonable period (not to exceed fifteen (15) business days) after



the receipt of such written notice, the Attacher shall submit the notice required under ARTICLE V - ESTABLISHING JOINT USE OF POLES AND PERMISSION FOR JOINT USE. If Attacher chooses to attach to a newly installed pole(s) and requires more than the 12" of space on such pole, then the Attacher shall pay the incremental cost of the required new pole. If in connection with the construction of a pole(s) the Attacher makes the payment required by this paragraph, then the Attacher shall in the future be entitled to attach on such pole(s) even if the pole(s) does not at that time become a Joint Pole. If joint use is established pursuant to ARTICLE VI – PLACEMENT OF NEW POLES A. above, the cost to erect new Joint Poles coming under this Agreement, to construct new pole lines, or to make extensions to existing pole lines shall be borne by the parties as set forth in this ARTICLE X – DIVISION OF COSTS A. If joint use is not established pursuant to ARTICLE VI - PLACEMENT OF NEW POLES A. above, the provisions of ARTICLE X – DIVISION OF COSTS below will control.

1. A Normal Pole, or if adequate a Joint Pole smaller than the Normal Pole, shall be erected at the sole expense of the Utility.
2. A pole larger than the Normal Pole, the extra height or strength of which is due wholly to the Utility's requirements including owner's requirements for pole space in excess of Normal Space set forth in ARTICLE II - EXPLANATION OF TERMS and requirements as to keeping the Utility's wires clear of trees shall be erected at the sole expense of the Utility.
3. In the case of a pole larger than the Normal Pole, the extra height or strength of which is due wholly to the Attacher's requirements including Attacher requirement for pole space in excess of Normal Space set forth in ARTICLE II - EXPLANATION OF TERMS and requirements as to keeping the Attacher's wires clear of trees, the Utility shall pay all costs associated with the construction of a Normal Pole and the Attacher shall pay to the owner the remaining costs of erecting the larger than Normal Pole. If in connection with the construction of a pole the Attacher makes the payment required by this paragraph, then the Attacher shall in the future be entitled to its Space on such pole even if the pole does not at that time become a Joint Pole; provided, however, if the Attacher does not attach to the pole within three years from the date the pole was set, then the Attacher shall no longer be entitled to its Space on such pole.
4. In the case of a pole larger than the Normal Pole, the extra height or strength of which is due to the requirements of both parties for greater than Normal Space or the requirements for proper ground clearance or of public authorities or of property owners, (other than requirements with regard to keeping the wires of one party only clear of trees), the difference between the Cost in Place of such pole and the Cost in Place of a Normal Pole shall be shared equally by the Attacher and the Utility, with the rest of the cost of erecting such pole to be borne by the Utility.
5. A pole, including all appurtenances or fixtures, erected between existing poles to provide sufficient clearance and furnish adequate strength to support the circuits of both the owner and the Attacher, which it would have been unnecessary except solely due to Attacher's use had not been undertaken, shall be erected at the sole expense of the Attacher.



B. PAYMENTS DO NOT AFFECT OWNERSHIP. Any payments for poles made by the Attacher under any provisions of this Article shall not entitle the Attacher to the ownership of any part of the poles for which it has contributed in whole or in part.

C. REPLACEMENT OF EXISTING POLES. Where an existing pole is replaced for maintenance purposes, Utility shall erect a pole adequate for the existing Attachments and additional Attachments for which Applications have been delivered, unless such Application is denied in accordance herewith, and the Utility will pay all the costs of installing the replacement pole. Attacher will pay to replace its existing Attachments. The replaced pole shall be removed and retained by Utility.

1. A pole larger than the existing pole, which is installed to replace an existing pole, the extra height or strength of which is due wholly to the Utility's requirements, such as providing service, normal maintenance, or keeping the Utility's wires clear of trees, shall be erected at the sole expense of the Utility. The Utility shall bear the full expense of replacing or transferring all the Utility's Attachments and the Attacher shall bear the full expense of replacing or transferring all the Attacher's Attachments within 90 days from date Utility notifies Attacher that the new pole is ready for transfer.

2. A pole larger than the existing pole, which is installed to replace an existing pole, the extra height or strength of which is due wholly to the Attacher's requirements, including Attacher's requirements as to keeping the Attacher's wires clear of trees, the Attacher shall pay to the Utility the Make-ready cost of the new pole.

3. A pole larger than the existing pole, which is installed to replace an existing pole, the extra height or strength of which is due wholly to Attacher's requirements such as providing service, correcting a safety violation or keeping Attacher's wires clear of trees, Attacher shall pay all of the Make-ready cost of the new pole, including any costs associated with replacing or Transferring Attacher's Attachments.

4. In the case of a pole larger than the existing pole, which is installed to replace an existing pole, the extra height or strength which is due to the requirements of all parties on the pole, such as when the parties share responsibility for correcting a safety violation, the difference between the Cost in Place of such pole and the Cost in Place of the existing pole shall be shared equally by the Attacher and the Utility, and other third parties, if applicable, the rest of the cost of erecting such pole to be borne by the Utility. The Utility and Attacher shall replace or Transfer all Attachments at their own expense.

5. In the case of a pole larger than the existing pole, which is installed to replace an existing pole, the extra height or strength which is due wholly to the requirements of an Outside Party, the Outside Party shall pay all of the Make-Ready cost of the new pole, including any costs associated with replacing or Transferring Attacher's Attachments.

D. RESPONSIBILITY FOR OWN ATTACHMENTS. Each party shall place, maintain, rearrange, Transfer and remove its own Attachments at its own expense except as otherwise expressly provided herein.

E. SERVICE DROPS. Where an existing pole is replaced by a taller one to provide the necessary clearance for the Attacher's Service Drop, the Attacher shall pay to the Utility the installed cost of the new pole plus the labor costs of replacing or Transferring of the Attachments on the existing pole and the cost to remove the existing pole, minus any salvage value to the Utility.

F. PAYMENT BASIS. Payments made under the provisions of this Article may be based on the estimated or Actual Cost, as mutually agreed upon (including overhead), of making such changes but in no event, however, shall either Party be required to pay for such changes more than 120% of the estimated cost supplied by the other if such cost estimate shall have been requested and furnished before the changes were made.

G. UTILITIES INSTALLING LARGER POLES FOR UTILITY'S FUTURE USE. In the event the Utility installs a utility pole larger than is initially required for Utility's and Attacher's use in anticipation of Utility's future requirements or additions, the additional space provided by Utility shall be reserved for Utility's sole use. Attacher may request documentation to validate the need for future space.

H. CORRECTIVE MEASURES.

1. If any Attachment of the Attacher is found to be in violation of the terms of this Agreement, then the parties will work together to minimize the cost of correcting any such deficiencies, but the Attacher shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto.

2. If any Attachment of the Utility is found to be in violation of the terms of this Agreement, then the parties will work together to minimize the cost of correcting any such deficiencies, but the Utility shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto.

3. If there exists a violation of the terms of this Agreement (including the provisions of ARTICLE II - EXPLANATION OF TERMS and ARTICLE III - SPECIFICATIONS), and it cannot be determined whose Attachment has caused such violation or there is a mixture of the parties causing the violation, then the parties will work together to minimize the cost of correcting any such deficiencies; provided, however, that if a party can modify its Attachments so that they no longer may be a cause of the violation or deficiency, then such party may elect to make such modification instead of otherwise sharing in any costs. Such a modification shall not relieve a party from sharing in such costs if the party making the modification could still have been a cause of any deficiency that remains.

4. If one or more Outside Party Attacher(s) caused the violation, then such Outside Party Attacher(s) will pay the corrective costs incurred by all who have Attachments on the pole, including for the Attacher, Utility and any other Attachers; and the Utility will make reasonable effort to cause the Outside Party to make such payment.

I. WHEN EXISTING POLES NOT IN JOINT USE BECOME JOINT POLES.

1. If an existing pole not in joint use was constructed before the Effective Date and becomes a Joint Pole, the Attacher shall pay all necessary Make-ready costs associated with the Attacher attaching to the pole.

2. If an existing pole not in joint use was constructed after the Effective Date and becomes a Joint Pole, then:

a. The Attacher shall pay all Make-ready costs associated with the Attacher attaching to the pole if (i) the Utility gave notice pursuant to ARTICLE VI.A. but (a) the Attacher did not, if required, submit an APPENDIX A as provided in ARTICLE V - ESTABLISHING JOINT USE OF POLES AND PERMISSION FOR JOINT USE and, if applicable, ARTICLE VI.A.; or (ii) both (a) the pole is a Normal Pole or larger and (b) was constructed in connection with a project involving three (3) or fewer poles.

b. If (i) the Utility did not give notice pursuant to ARTICLE VI.A. with respect to the pole, and (ii) either (a) the pole is smaller than a Normal Pole or (b) the pole was constructed in connection with a project involving four (4) or more poles, then the Utility shall pay all Make-ready costs associated with the Attacher attaching to the pole.

J. BUILDING DOWN. If one party installs Attachments that encroach or needs to install Attachments that would encroach upon the other party's use of its own Normal Space (sometimes known as "building down"), the party installing or needing to install such Attachments must pay the Make-ready costs necessary to permit the other party to use its own Normal Space.

K. MAKE-READY WHEN APPENDIX A OR APPENDIX B NOT REQUIRED. Except as provided in ARTICLE X.I. above, the Utility shall not be obligated to pay Make-Ready costs for any initial or additional Attacher Attachment for which an APPENDIX A or APPENDIX B is not required.

## **ARTICLE XI - UNAUTHORIZED ATTACHMENTS**

If any Attachment made after the Effective Date of this Agreement is identified for which the APPENDIX A or APPENDIX B requirements (as set forth herein) have not been satisfied ("Unauthorized Attachment"), then the Attacher shall pay to the Utility a one-time fee of fifty dollars (\$50) per pole plus a sum equal to the adjustment payments that would have been payable from and after the date the Attachment was first placed on the Utility's pole as determined from Attacher's records or other evidence; provided, however, that if the date on which the Attachment was made cannot be determined, then the Attacher will pay a sum equal to the adjustment payments that would have been payable from and after the date the last Actual Inventory of Joint

Poles was conducted, subject to any applicable laws regarding statutes of limitations. In addition, the Utility may, without prejudice to its other rights or remedies under this Agreement, require the Attacher to submit within fifteen (15) business days of verification by Attacher that an Attachment is an Unauthorized Attachment (provided that Attacher has 30 days to verify or deny that an Unauthorized Attachment exists upon receiving written notice from Utility), an APPENDIX A or APPENDIX B, as appropriate, along with supporting engineering design data for each such Attachment, and upon review of such information, the Utility may require the Attacher to make or pay for such modifications as may be specified by mutual consent of the parties or if non-approval of APPENDIX A or APPENDIX B is justified, remove the Unauthorized Attachment at Attacher's expense within 90 days or by mutual agreement after Attacher has verified that the Attachment is an Unauthorized Attachment. If Attacher has failed to submit an APPENDIX A or APPENDIX B, as appropriate, or has not removed such Unauthorized Attachments within the 90 days or by mutual agreement if such non-approval is justified, then the Utility may remove such Attachments at the Attacher's expense and with no liability to Utility, in which event the Attacher shall reimburse the Utility upon demand for the cost the Utility incurred in making such removal and shall indemnify and save the Utility harmless from and against all loss, liability, or expense (including but not limited to claim of third parties) resulting from the removal of such Unauthorized Attachment, except in cases of negligence, gross negligence or intentional misconduct. Nothing herein shall relieve the Attacher of its obligation to maintain Attachments at all times in conformity with ARTICLE III - SPECIFICATIONS.

## **ARTICLE XII - ABANDONMENT OF JOINT USE POLES**

A. If the Utility desires at any time to abandon any Joint Pole, it shall, except as provided in ARTICLE VIII - MAINTENANCE OF POLES AND ATTACHMENTS C., give the Attacher notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. If at the expiration of said period the Utility shall have no Attachments thereon, but Attacher has not removed its Attachments, such pole shall thereupon become the property of the Attacher, as is, and the Attacher shall save harmless Utility from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring because of or arising out of the presence or condition of such pole or of any Attachments thereon; and shall pay the Utility the then depreciated value in place of the pole to the Utility. The Utility shall further evidence transfer of title to the pole by appropriate means. Credit shall be allowed for any payments which the Attacher may have made under the provisions of ARTICLE X - DIVISION OF COSTS, when the pole was originally set, provided the Attacher furnishes proof of such payment.

B. The Attacher may at any time abandon the use of a Joint Pole by removing therefrom any and all Attachments it may have thereon and by giving written notice thereof.

## **ARTICLE XIII – ADJUSTMENT PAYMENTS**

A. At intervals of five (5) years, unless otherwise mutually agreed by the parties, an actual inventory of Joint Poles shall be made by representatives of the parties (the "Actual Inventory"). At the request of either party, an Actual Inventory shall be initiated within a year of the Effective Date and be promptly completed as the parties may more particularly agree. For the purpose of such Actual Inventory, any pole used by the Attacher for the sole purpose of attaching wires or cables thereto shall be considered a Joint Pole. Each Outside Party shall pay a prorated share of the cost of performing the Actual Inventory, based on the number of poles to which each Attacher has Attachments on Utility's poles.

B. For a year in which there is no Actual Inventory, the number of Joint Poles used in calculating the adjustment payments provided for herein shall be based on the number of applications submitted by the Attacher.

C. For a year for which there is an Actual Inventory, the adjustment payments provided for herein shall be based on the Actual Inventory; but there shall also be the adjustment provided for in ARTICLE XIII.D. below.

D. For a year for which there is an Actual Inventory, the following adjustment shall be made:

1. The difference between the number of Joint Poles found by the Actual Inventory for the year in question and the number of Joint Poles found by the previous Actual Inventory, whenever conducted, including any Actual Inventory conducted prior to the Effective Date of this Agreement, shall be prorated evenly based on the assumption that such poles were added evenly over the years between the Actual Inventories in order to calculate, on the basis of such proration, a prorated number of poles for each year between the year of the previous Actual Inventory and the year of the present Actual Inventory.

2. If the adjustment payment so calculated pursuant to this section is greater than the adjustment payment that was actually made, the difference shall constitute an additional amount owed by the Attacher to the Utility; if less, the difference shall constitute an amount owed by the Utility or a credit to the Attacher.

## **ARTICLE XIV – FEES AND CHARGES**

A. Payment of Fees and Charges. Attacher shall pay to Utility fees and charges and shall comply with the terms and conditions specified in the Agreement.

B. Payment Period. Unless otherwise expressly provided, Attacher shall pay any invoice it receives from Utility pursuant to this Agreement within thirty (30) calendar days after Attacher receives the invoice.

C. The applicable computation of payments and calculations as above provided shall be made on or about December 1st of the calendar year prior to the Attachment rental year, each party

acting in cooperation with the other. For example, on or about December 1st, 2022, Utility will issue the rental invoice for the rental period covering January 1, 2023 through December 31, 2023.

D. Annual Pole Attachment Fee per pole per year shall be as follows:

Duration: Jan.1, 2022 - Dec. 31, 2022

Rate: \$15.20

For years 2024 and after, the annual adjustment payment shall be determined by applying the most recent twelve (12) months' percentage change in the Handy Whitman Index (HWI) July index numbers for the North Central Region Account 364, Poles Towers and Fixtures, to the previous year's rate. In the event the HWI is no longer usable for this purpose, the parties shall use the Consumer Price Index-All Urban Consumers-Not Seasonally Adjusted for the Midwest Urban area, or such other index as is the closest equivalent thereof. The rate for each such year shall be calculated as in the following example:

For 2022, the adjusted rate would be the Percentage of Change (PC) in the HWI 2021 and the HWI 2020 multiplied by the Amount Payable by Attacher (in 2021).

OR:  $AC = AP + IC$  where

AC = Adjusted Rate Current Year (for 2022)

AP = Adjusted Rate Previous Year for the Attacher and Utility

IC = Incremental Change =  $PC \times AP$

$PC = (HWI\ 2021 - HWI\ 2020) / HWI\ 2021$

The adjusted rates for subsequent years would be calculated in like manner.

F. Notwithstanding any other provision hereof, a pedestal or other ground mounted equipment with a Bonded-Ground will have a one-time attachment fee of fifty dollars (\$50) rather than an annual pole charge. The fee is tabulated at the time of the Actual Inventory. During the Actual Inventory, there shall be a count of the total number of pedestals or mounted equipment with a Bonded-Ground. Subtracted from this count will be the prior Actual Inventory count of the total number of pedestals or mounted equipment with a Bonded-Ground. The increase will be billed at a rate of fifty dollars (\$50).

G. Non-Recurring Fees:

a. Permit Application Fee:

Number of Poles Affected	Application Fee (Per Application)
1-10	\$50
11-20	\$150

21-25	\$250
26+	Cost Estimate Will Be Provided

- b. Make Ready Charges: See Article X
- c. Miscellaneous Charges: See Article X
- d. Unauthorized Attachment Fee: See Article XI
- e. Safety Inspection Fees: See Article IX
- f. Inventory Inspection Fees: See Article XIII
- g. Timely Transfer Fees: See Article VIII

**ARTICLE XV – DEFAULTS**

A. If either party shall default in any of its obligations under this Agreement and such default continues thirty (30) days after due notice thereof in writing by the other party, the party not in default may suspend the rights of the party in default insofar as concerns the granting of future joint use and if such default shall continue for a period of ninety (90) days after such suspension, the party not in default may forthwith terminate this Agreement.

B. If after reasonable notice either party shall make default in the performance of any work it is obligated to do under this Agreement at its sole expense, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof. Failure on the part of the defaulting party to make such a payment within thirty (30) days upon presentation of bills therefor shall, at the election of the other party, constitute a default under this ARTICLE XV.

**ARTICLE XVI - RIGHTS OF OTHER PARTIES**

A. If either of the parties hereto has, prior to the execution of this Agreement, conferred upon Outside Parties, by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, nothing herein contained shall be construed as affecting said rights or privileges with respect to existing Attachments of such Outside Parties, which Attachments shall continue in accordance with the present practice; all future Attachments of such Outside Parties shall be in accordance with the requirements of ARTICLE XVI.B. below, except where such Outside Parties have by agreements entered into prior to the execution of this Agreement acquired enforceable rights or privileges to make Attachments which do not meet such space allocations. The Utility shall derive all of the revenue accruing from such Outside Parties. Any contractual rights or privileges of Outside Parties recognized in this paragraph shall include renewals of or extensions of the term (period) of such contracts.

B. If either party hereto desires to confer upon Outside Parties, by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, it shall have the right to do so, provided all such Attachments of such Outside Parties are made in accordance with the



following: (1) such Attachments shall be maintained in conformity with the requirements of ARTICLE III - SPECIFICATIONS, and (2) such Attachments shall not be located within the space allocation of Attacher. The Utility shall derive all of the revenue accruing from such Outside Parties.

C. With respect to any rights and privileges granted by pole owner under this Article to others not parties hereto, owner shall reimburse Attacher's cost for transferring and rearranging Attacher's Attachments to provide space for Attachments for such Outside Parties.

D. Outside Parties shall be responsible for their pro rata share of any costs mentioned in ARTICLE X-DIVISION OF COSTS.

## **ARTICLE XVII - ASSIGNMENTS OF RIGHTS**

Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the Joint Poles, or the Attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the other party, except to the United States of America or any agency thereof; provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges, and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage or in case of lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser at foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be; and provided further that, subject to all of the terms and conditions of this Agreement, either party may permit any corporation conducting a business of the same general character as that of such party, and owned, operated, leased and controlled by it or associated or affiliated with it, the use of all or any part of the space reserved hereunder on any pole covered by this Agreement for the Attachments used by such party in the conduct of its said business; and for the purpose of this Agreement, all such Attachments maintained on any such pole by the permission as aforesaid of either party herein shall be considered as the Attachments of the party granting such permission, and the rights, obligations and liabilities of such party under this Agreement, with respect to such Attachments, shall be the same as if it were the actual owner thereof.

## **ARTICLE XVIII - WAIVER OF TERMS OR CONDITIONS**

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.



**ARTICLE XIX - PAYMENT OF TAXES**

Each party shall pay all taxes and assessments lawfully levied on its own property upon Joint Poles, and the taxes and the assessments which are levied on Joint Poles shall be paid by the pole owner Utility, but any tax, fee, or charge levied on Utility's poles solely because of their use by the Attacher shall be paid by the Attacher.

**ARTICLE XX - BILLS AND PAYMENT FOR WORK**

A. Upon the completion of work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other party, the party performing the work shall present to the other party within ninety (90) days after the completion of such work an itemized statement of the costs and such other party shall within thirty (30) days after such statement is presented pay to the party doing the work such other party's proportion of the cost of said work.

B. All amounts to be paid by either party under this Agreement shall be due and payable within thirty (30) days after the invoice is received. Except as provided in ARTICLE XX.C. below, any payment not made within thirty (30) days from the due date shall bear interest at the rate of a half percent (.5%) per month until paid, or if a half percent (.5%) exceeds the maximum rate allowed by law, then at the maximum rate allowed by law. If party bills the interest provided for in this paragraph but then receives a payment showing that the payment was timely made, the billing party will write off and cancel the interest.

C. A party receiving a bill may, in good faith and for good cause, dispute the amount or adequacy of substantiation for the bill. In the event that a party so disputes only a portion of a bill, then such party shall promptly pay the undisputed amount. Upon resolution of the dispute, if the amount and substantiation were correct and sufficient, interest will be paid on the unpaid balance from the date of the initial bill at the rate of a half percent (.5%) per month until paid, or if a half percent (.5%) exceeds the maximum rate allowed by law, then at the maximum rate allowed by law; but, if the amount was not correct or substantiation was not sufficient, no interest will be payable unless the amount determined to be correct is not paid within thirty (30) days of receipt of substantiation and determination of the correct amount.

**ARTICLE XXI – NOTICES**

A. Except as otherwise provided in this Agreement, all notices and writings shall be made to the following people, who from time to time may be changed by written notice:

Attacher:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Utility

Title: Bastrop City Manager

Email: scarrillo@cityofbastrop.org Phone: 512-332-8800

Mailing Address: 1311 Chestnut Street, Bastrop, TX 78602

B. By written notice pursuant hereto a party may from time to time specify a person in lieu of the person designated in ARTICLE XXI.A. above to receive notices or writings with respect to specified matter(s) and/or geographic area(s), in which case such notices or writings shall be sent to that person as to such matter(s) and area(s).

C. Response to any notice or APPENDIX A or APPENDIX B shall be made to the sender rather than to the person designated in ARTICLE XXI.A. or ARTICLE XXI.B. above.

D. Unless otherwise provided in this Agreement, any notice shall be in writing, which may, when mutually agreeable, include preservable electronic means, such as email or facsimile.

E. A second copy of any notice given under ARTICLE XV – DEFAULTS shall be given to the following persons, who may from time to time be changed by written notice:

Attacher:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Utility

Title: Director of Bastrop Power & Light

Email: cervin@cityofbastrop.org

Phone: 512-332-8900

Mailing Address: 1311 Chestnut Street, Bastrop, TX 78602

F. The parties will develop and maintain a joint form designating the people to whom notices shall be given pursuant to the foregoing.

**ARTICLE XXII - TERM OF AGREEMENT**

A. The Attacher shall have 180 days from the date the Utility has issued a Permit to complete attachment of Attacher’s Attachment. If the Attachment has not been completed within the 180-day period, the Permit shall terminate without further notice to Attacher as to any pole or poles covered by the Permit to which Attacher has not attached its Attachment.

B. If at any time after Attacher has attached its Attachment to the Utility’s poles, the Utility is informed or has reason to believe that such Attachment is not authorized by any governmental

authority or private property owner, then Attacher shall remove its Attachment from any of the Utility's poles immediately after receiving notice from the Utility of such circumstance and the Permit covering such poles shall automatically terminate, provided, however, if Attacher is in the process of disputing such lack of authority, and has received permission to remain on the pole pending the outcome of the dispute, Attacher may maintain its Attachment without any liability to Utility thereto.

C. The Utility may, in addition to seeking any other remedy available to it, terminate this Agreement or any Permit issued under this Agreement if Attacher fails to comply with any of the provisions of this Agreement and fails within 30 days (or such longer reasonable period if a 30 day cure period is not possible) after written notice from the Utility to correct such neglect, refusal, or default.

D. In the event a governmental entity at any time requires the Utility to remove 1 or more of its poles, any Permit issued to Attacher for such poles shall automatically terminate as to such poles, in which event the Utility shall refund to Attacher any unearned payments made pursuant to this Agreement.

E. Attacher may at any time terminate any right to attach an Attachment to any pole by removing its Attachment from such pole and notifying Utility of such removal. The Permit covering such pole shall terminate upon receipt of such notice by the Utility. Attacher may at any time terminate this Agreement by removing all of its Attachments from all of the Utility's poles and notifying the Utility of such removal.

F. Except as otherwise provided in this Agreement, the Attacher shall have 60 days within which to remove its Attachments from the Utility's pole or poles upon termination of this Agreement or of a Permit issued under this Agreement. If the Attacher fails to remove its Attachments from the Utility's pole or poles within such 60-day period, the Utility shall have the right to remove the Attacher's Attachments from said pole or poles, without notice or liability of any kind to the Attacher, in which event the Attacher shall reimburse the Utility upon demand for the cost the Utility incurred in making such removal. The Attacher shall indemnify and save the Utility harmless from and against all loss, liability, or expense resulting such removal, including but not limited to claims of third parties.

G. All Permits issued under this Agreement shall automatically terminate upon termination of this Agreement.

## **ARTICLE XXIII - EXISTING CONTRACTS**

All existing agreements for Pole attachment license between the parties, and all amendments thereto (hereinafter "Old Joint Use Agreement") are by mutual consent hereby abrogated and superseded by this Agreement.

Nothing in the foregoing shall preclude the parties to this Agreement from entering such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

## **ARTICLE XXIV – LIABILITY**

Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or to the property of either party, or for injuries to other persons or their property arising out of the joint use of poles under this Agreement, or due to the proximity of the parties' Attachments to such Joint Poles, the liability for such damages as between the parties hereto shall be as follows:

A. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE ATTACHER SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY, INCLUDING REIMBURSEMENT OF REASONABLE ATTORNEY'S FEES AND COST IN PROPORTION OF CONTRACTOR'S LIABILITY, FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO ANY PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENT ACT, ERROR, OR WILLFUL MISCONDUCT OF THE ATTACHER, ITS AGENTS, REPRESENTATIVES, EMPLOYEES, OR ANYONE WHOM THE ATTACHER IS LEGALLY LIABLE FOR UNDER THIS CONTRACT.

B. Should either party to this Contract bring suit against the other party for any matter relating to this Contract, the prevailing Party shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

C. Services must be performed with the professional skill and care ordinarily provided by competent licensed engineers or registered architects practicing in the same or similar locality and under the same or similar circumstances and professional license.

D. THE ATTACHER ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED BY ATTACHER HEREUNDER AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM CLAIMS, DEMANDS, AND CAUSES OF ACTION, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON, AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY TO THE EXTENT ARISING OUT OF THE NEGLIGENCE, RECKLESSNESS, OR WILLFUL MISCONDUCT OF ATTACHER, ITS AGENTS, REPRESENTATIVES, EMPLOYEES, OR SUBCONTRACTORS.

E. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY SUCH PARTY OR BY ANY SUBSCRIBER, CUSTOMER OR PURCHASER OF SUCH PARTY FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY PROVISION OF INDEMNITY, OR OTHERWISE, REGARDLESS OF THE THEORY OF

LIABILITY UPON WHICH ANY SUCH CLAIM MAY BE BASED OR WHETHER IT (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

## **ARTICLE XXV – CONSTRUCTION**

This Agreement was drafted by all parties to it and is not to be construed against any party. Neither the negotiations of the language of this Agreement, nor prior drafts of this Agreement, nor the inclusion or exclusion of any language from prior drafts shall be admissible or probative as to the meaning of this Agreement.

## **ARTICLE XXVI - REMEDIES CUMULATIVE**

Unless otherwise provided in this Agreement, all remedies set forth in this Agreement are cumulative and in addition to any other remedies that may be available herein or at law or in equity, if any.

In witness whereof the parties hereto, have caused these presents to be executed in two (2) counterparts, each of which shall be deemed an original and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, as of the Effective Date.

## **ARTICLE XXVII – INSURANCE**

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

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 Texas law at the time of the application of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation in favor of Utility. Attacher shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

2. Insurance Policy. All insurance policies shall be in strict accordance with the City's rights-of-way management ordinance (Ord. No. 2017-31), and other applicable ordinances and policies, except to the extent not consistent with Chapter 284.

3. 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 protect fully 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 for such exposures.

B. Qualification; Priority; Contractors' Coverage. The insurer must be authorized to do business under the laws of the state of Texas and have an "A" or better rating in Best's Guide. Such

insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of License shall carry in full force and effect, workers' compensation and employers' liability, comprehensive general liability, and automobile liability insurance coverages of the type that Attacher is required to obtain under this ARTICLE XXVII with the same limits.

C. 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, the Attacher will furnish the Utility with a certificate of insurance ("Certificate") and, upon request, certified 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. 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. Attacher 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. Attacher shall obtain Certificates from its agents, contractors, and their subcontractors and provide a copy of such Certificates to the Utility upon request.

D. Limits. The limits of liability set out in this Article XXVII 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 that would materially increase or decrease Attacher's exposure to risk.

E. Prohibited Exclusions. No policies of insurance required to be obtained by Attacher or its contractors or subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this Agreement with Utility except as to infringement of patents or copyrights or for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage for injuries to Utility's employees or agents, or (4) exclude coverage of liability for injuries or damages caused by Attacher's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

F. Deductible/Self-insurance Retention Amounts. Attacher 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.

G. Additional Insurance. The Utility shall have the right at any time to require public liability insurance and property damage liability insurance in greater amounts than those required in this ARTICLE XXVII. In any such event, the additional premium or premiums payable solely as the result of such additional insurance coverage shall be payable by Utility within thirty (30) days of the Attacher providing proof of such additional premium to the Utility and requesting payment therefor.

**ARTICLE XXVIII – GOVERNING LAW AND VENUE**

This Agreement shall be construed in accordance with the laws of the State of Texas without regard to its rules regarding choice of law. Any action or claim arising from, under or pursuant to this Agreement shall be brought in the State Courts within Bastrop County in the State of Texas, and the parties expressly waive the right to bring any legal action or claims in any other courts.

**ARTICLE XXIX - SEVERABILITY**

The provisions (or parts thereof) of this Agreement shall be severable. In the event that any provision (or part thereof) of this Agreement is determined to be illegal, invalid, or otherwise enforceable, then such illegality, invalidity or unenforceability shall not affect or impair the remainder of this Agreement.

In witness whereof the parties hereto, have caused these presents to be executed in two (2) counterparts, each of which shall be deemed an original and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, as of the Effective Date.

Utility

By:

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Title

\_\_\_\_\_

Date

\_\_\_\_\_

Attacher

By:

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Title

\_\_\_\_\_  
Date  
\_\_\_\_\_



**APPENDIX A – REQUEST TO ATTACH TO POLE(S)**

Attacher Job Number \_\_\_\_\_ (to be completed by Attacher)

Pole Owner Job Number \_\_\_\_\_ (to be completed by Pole Owner)

REQUEST FOR POLE OWNER'S APPROVAL TO PLACE ATTACHMENTS ON A POLE: *(To be completed by the Attacher)*

Make-ready work required: Yes \_\_\_\_ No \_\_\_\_                      Number of poles affected:

\_\_\_\_\_

To: \_\_\_\_\_

\_\_\_\_\_

POLE OWNER

DATE OF REQUEST

ADDRESS

*This is to request permission for this Company to use jointly certain of your poles under the terms and conditions of our agreement for Pole Attachment License Agreement ("Agreement"). Our present plan is to start this work about \_\_\_\_\_, 20\_\_ and complete the work about, \_\_\_\_\_, 20\_\_.*

*Attached are copies, which contain the above job number, of detailed construction plans and drawings, together with necessary maps, to indicate specifically your poles that we wish to use jointly, the point of attachment on each pole, the number and character of the attachments to be placed on such poles (including messenger type, cable type, guy type, anchor type, and anchor distance from poles), any rearrangements of fixtures and equipment necessary, as well as any relocations or replacements of existing poles, and any additional poles that may be required, in accordance with the procedure provided in Articles IV and V of the Agreement.*

*The included technical information represents our proposed facilities, and any changes in cables, messengers, guys, anchors, or points of attachment above ground will be submitted to the Pole Owner for approval prior to construction. Should additional information be required by the Pole Owner for verification of compliance with the NESC or other applicable standards, the Attacher will provide such information.*

*The Attacher will obtain all authorizations, permits, and approvals from all Municipal, State, and Federal authorities to the extent required by law for the Attacher's proposed service and all easements, licenses, rights-of-way and permits necessary for the proposed use of these poles.*

*Number of poles affected: \_\_\_\_\_*

*If the joint use proposed is agreeable, please signify your approval of this request in the spaces provided and return a copy to the Applicant.*

\_\_\_\_\_  
ATTACHER (COMPANY NAME)

\_\_\_\_\_  
CONTACT NUMBER

\_\_\_\_\_  
NAME OF APPLICANT

\_\_\_\_\_  
SIGNATURE OF APPLICANT

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
TITLE

APPROVAL TO PROCEED WITH ATTACHMENTS: *(To be completed by the Pole Owner and sent to the Applicant)*

\_\_\_\_\_

**STANDARD POLE ATTACHMENT LICENSE AGREEMENT**

---

DATE

*This is to advise you that the above request to use jointly certain poles of this system is approved. You may proceed with such joint use of poles on the terms and conditions of the Agreement referred to above, under the conditions outlined in your request, and subject to the changes and rearrangements at a cost to you of \$\_\_\_\_\_.*

---

TITLE OF POLE OWNER'S REPRESENTATIVE

---

SIGNATURE OF POLE OWNER'S REPRESENTATIVE

---

CONTACT NUMBER

---

**APPENDIX B – REQUEST TO MODIFY ATTACHMENTS ON EXISTING POLE**

Attacher Job Number \_\_\_\_\_ (to be completed by Attacher)

Pole Owner Job Number \_\_\_\_\_ (to be completed by Pole Owner)

APPLICATION TO ADD OR MODIFY ATTACHMENTS ON AN EXISTING JOINT USE POLE: *(To be completed by the Attacher)*

Make-ready work required: Yes \_\_\_\_ No \_\_\_\_                      Number of poles affected:

To: \_\_\_\_\_  
POLE OWNER

\_\_\_\_\_  
DATE OF REQUEST

ADDRESS

*This is to apply to add or modify attachments on existing joint use poles under the terms and conditions of our agreement for Pole Attachment License Agreement ("Agreement"). Our present plan is to start this work about \_\_\_\_\_, 20\_\_ and complete the work about, \_\_\_\_\_, 20 \_\_.*

*Attached are copies, which contain the above job number, of detailed construction plans and drawings, together with necessary maps, to indicate specifically the attachments we intend to add or modify, the point of attachment on each pole, the number and character of the attachments currently installed and those to be placed, replaced, or removed on such poles (including messenger type, cable type, guy type, anchor type, and anchor distance from poles), any rearrangements of fixtures and equipment necessary, as well as any relocations or replacements of existing poles, and any additional poles that may be required, in accordance with the procedure provided in Articles IV and V of the Agreement.*

*The included technical information represents our existing and proposed facilities, and any changes in cables, messengers, guys, anchors, or points of attachment above ground other than those listed will be submitted to the Pole Owner for verification of compliance prior to construction. Should additional information be required by the Pole Owner for verification of compliance with the NESC or other applicable standards, the Attacher will provide such information. The Attacher will obtain all authorizations, permits, and approvals from all Municipal, State, and Federal authorities to the extent required by law for the Attacher's proposed service and all easements, licenses, rights-of way and permits necessary for the proposed use of these poles. If the additions or modifications proposed are agreeable, please signify your approval of this request in the spaces provided and return a copy to the Applicant.*

\_\_\_\_\_  
ATTACHER (COMPANY NAME)

\_\_\_\_\_  
CONTACT NUMBER

\_\_\_\_\_  
NAME OF APPLICANT

\_\_\_\_\_  
SIGNATURE OF APPLICANT

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
TITLE

**APPROVAL TO PROCEED WITH ATTACHMENTS:** *(To be completed by the Pole Owner and sent to the Applicant)*

DATE

*This is to advise you that the above request to use jointly certain poles of this system is approved. You may proceed with such joint use of poles on the terms and conditions of the Agreement referred to above, under the conditions outlined in your request, and subject to the changes and rearrangements at a cost to you of \$\_\_\_\_\_.*

\_\_\_\_\_  
TITLE OF POLE OWNER'S REPRESENTATIVE

\_\_\_\_\_  
SIGNATURE OF POLE OWNER'S REPRESENTATIVE

\_\_\_\_\_  
CONTACT NUMBER

## APPENDIX C – SPECIFICATION FOR ATTACHER’S ATTACHMENTS TO UTILITY POLES

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

A. All Attachments shall be made in accordance with ARTICLE III – SPECIFICATIONS.

B. Clearances

1. Attachment and Cable Clearances: Attacher's Attachments on Utility Poles, including metal attachment clamps and bolts, metal cross-arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the National Electrical Safety Code ("NESC") and in drawings and specifications Utility may from time to time furnish Attacher. (See Drawings A-01 to A-11.)

2. Service Drop Clearance: From the pole to the home/building the parallel minimum separation between Utility's service drops and communications service drops shall be twelve (12) inches, per NESC 235Clb (exception 3). (see drawing A-5)

3. Other Drop Clearances: All other drop clearances at the mid-span must conform to NESC table 235-6 (or its successor).

a. Sag and Mid-Span Clearances: Attacher 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 all telecommunication cables that meet NESC rule 230E 1 (includes common phone, CATV, and fiber optic cables lashed to an effectively grounded messenger strand, or self-supporting cables).

NESC table 235-6 requires:

- 12" from neutral (by exception #16)
- 30" from supply lines carrying 0 to 8.7 kV (secondary)
- 30" plus 0.4" per kV in excess of 8.7 (primary)

4. Vertical Risers: All risers, including those providing 120/240 volt power for Attacher's equipment enclosure, shall be placed on the quarter faces of the pole and must be installed in conduit with weatherhead (if possible), 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 Drawings A-02 and A-04.)

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 face of the Utility pole. Attacher'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 quarter faces. (See Drawing A-09.)

6. Pedestals and Enclosures: Every effort should be made to install pedestals, vaults and/or enclosures at a minimum of four (4) feet from poles or other Utility facilities, or the distance specified by the Utility, whichever is greater.

1. License shall be responsible for procuring and installing all anchors and guy wires to support the additional stress placed on the Utility's poles by Attacher's Attachments. Anchors must be guyed adequately.

2. Anchors and guy wires must be installed on each Utility pole where an angle or a dead-end occurs. Attacher 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 Utility.

3. Attacher may not attach guy wires to the anchors of 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. Attacher's down guys, if needed, shall be bonded, to the vertical ground wires of Utility's pole, in accordance to NESC rule 92C. If there is no vertical ground present at the pole, the connections to the system neutral are to be made by the Utility as an item of Make-ready work. Utility will determine if guys should be grounded or insulated.

#### D. Certification of Attacher's Design

1. Attacher's Attachment Permit application must be signed and sealed by a professional engineer, registered in the State of Texas, certifying that Attacher's aerial cable design fully complies with the NESC and 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's facilities and other Attaching Entities' facilities that exist on the poles without regard to the condition of the existing facilities.

#### E. Miscellaneous Requirements

1. Attachments: All Attachments will be made on the street side of the pole unless otherwise approved by Utility

2. Cable Bonding: Attacher's messenger cable shall be bonded according to NESC rule 92C 1 as a minimum, or at every pole with a vertical ground, as determined by the Utility. If no ground exists

on a pole to be bonded, Attacher shall install a pole ground in accordance with the attached detail drawing. (See Drawings A-03 to A-04.)

3. Customer Premises: Attacher's service drop into customer premises shall be protected as required by the most current edition of the NEC.

4. Communication Cables: All communications cables/wires not owned by Utility shall be attached within the communications space that is located 40 inches below the lowest Utility conductors. (See Drawings A-01 through A-11.)

5. Riser Installations: All Attacher's riser installations shall be in utility-approved conduit materials and placed on stand-off brackets. Ground wires may be attached directly to pole. (See Drawings A-02 to A-04.)

6. Tagging: On every other pole, Attacher's mainline cables shall be identified with a band-type communications cable tag or other identification acceptable to Utility within twelve (12) inches of the pole. The communications tag shall be consistent with communication industry standards and shall include at least the following: Attacher name and emergency contact number.

F. Distributed Antenna System

1. The applicant is responsible for responding to any and all community concerns or complaints related to the antenna, including aesthetic appearance, health concerns due to radio frequency emissions, etc.

2. Applicants seeking to attach pole-top antennas must provide the utility with the following:

a. Spec sheets (including typical attachment drawings) and design information for the equipment proposed for attachment;

b. Maps detailing locations for proposed attachment.

3. The Utility must approve the design and mounting requirements for all pole-top, and other type antennas.

4. The Utility must approve all pole locations selected for antenna placement.

5. Proposed pole-top antenna locations must have adequate pole space and not exceed the pole's maximum loading. The applicant is solely responsible for all associated Make-ready costs needed to bring the pole into compliance.

a. Only one antenna will be allowed on a pole.

6. Poles selected for pole-top antennas must meet the following criteria

a. Must be a tangent pole;

b. Poles selected must not have existing equipment (regulators, gang switches, capacitors, etc.);

c. Pole must be readily accessible by bucket truck;

d. Minimum of a class 3 pole.

7. Antennas must be a minimum of 5 feet above the highest electric attachment.
  - a. Pole extensions are not permitted.
  - b. In most cases, the pole must be changed out.
  - c. The Applicant will be responsible for the cost of the pole-loading analysis (if required by the Utility).
  - d. In the event the total height of the pole with the antenna attachment exceeds 60 feet, NESC rule 250D shall apply to the pole-loading analysis.
8. All pole-top antennas will be installed by the Utility or a contractor approved by the Utility.
9. A new ground rod is required at all pole-top antenna locations.
10. Antenna riser cables and grounds must be installed in a minimum of Schedule 40 conduit not larger than 2 inches.
11. All antenna power sources must have a lockable disconnect installed, to allow for the antenna power source and any back-up power sources to be disconnected. The Attacher must provide the Utility with access to the disconnect by providing keys or combination to the lock. Disconnect and meter boxes must be installed according to Utility's standards.
12. Where required, two RF warning signs must be installed. One RF warning sign must be placed at eye level, and a second sign must be placed at the pole top, just beyond where the safe approach distance ends. The sign must include the Utility's name, contact number, and the approach distance of the antenna
  - a. The applicant must provide the Utility with documentation that confirms all RF emissions comply with applicable laws governing RF exposure levels
13. Applicants seeking to attach antennas to streetlight arms must provide Utility with the following:
  - a. Spec sheets and design information for the equipment proposed for attachment;
  - b. Maps detailing locations for proposed attachment.
14. The Utility must review and approve the design and mounting requirements for antennas prior to the commencement of any installation.
15. All antennas must clamp to the streetlight arm. Holes drilled in the arm or bracket will not be permitted.

**APPENDIX D – REFERENCE CONSTRUCTION DRAWINGS**





# Appendix E

## Technical Design Manual

### Installation of Network Nodes and Node Support Poles

Pursuant to Tex. Loc. Gov. Code, Chapter 284

Prepared for: City of Bastrop

Updated: September 2022

## Table of Contents

SECTION 1. ....	PURPOSE AND APPLICABILITY.	3
SECTION 2. ....	DEFINITIONS.	3
SECTION 3.	PROHIBITED AND PREFERRED LOCATIONS OF MICRO NETWORK NODE, NETWORK NODE, NODE SUP	
SECTION 4.	GUIDELINES ON PLACEMENT.....	11
SECTION 5. ....	GENERAL AESTHETIC REQUIREMENTS	17
SECTION 6.	ELECTRICAL SUPPLY.....	19
SECTION 7.	INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS.....	20
SECTION 8.	REQUIREMENTS IN REGARD TO REMOVAL, REPLACEMENT, REPLACEMENT, MAINTENANCE AND REPAIR.....	21
SECTION 9.	INSTALLATION AND INSPECTIONS.....	24
SECTION 10.	REQUIREMENTS UPON ABANDONMENT OF OBSOLETE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.....	19
SECTION 11.	GENERAL PROVISIONS.....	26
SECTION 12.	ADMINISTRATIVE HEARING – REQUEST FOR EXEMPTION .....	29
SECTION 13-19	RESERVED .....	23
SECTION 20.	DESIGN MANUAL - UPDATES.....	23

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## SECTION 1. PURPOSE AND APPLICABILITY.

The City of Bastrop, Texas (“City”) recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities.

*Purpose:* Loc. Gov. Code, Chapter 284 allows certain wireless Network Providers to install in the public rights-of-way their wireless facilities, described and defined in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 as “Micro Network Nodes”, “Network Nodes”, and “Node Support Poles”.

As expressly allowed by Tex. Loc. Gov. Code, Chapter 284, Section 284.108, and pursuant to its police power authority reserved in Sec. 284.301<sup>i</sup>, the City enacts these Design Guidelines in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment.

*Applicability:* This Design Manual is for siting and criteria for the installation Wireless Facilities, including Micro Network Nodes, Network Nodes, Node Support Poles and related ground equipment being installed pursuant to Loc. Gov. Code, Chapter 284

This Design Manual shall apply to any sitings, installations, collocations in, on, over or under the public rights-of-way of Network nodes, Node support poles, Micro network nodes, Distributed Antenna Systems, microwave communications or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Chapter 284, or installed pursuant to an agreement as agreed to and consented to by the City in its discretion, or installed as may otherwise be allowed by state law.

*City Rights-of-Way Management Ordinance:* A Network Provider shall comply with the City’s Rights-of-Way Management Ordinance except where in conflict with this Design Manual or Chapter 284, Subchapter C.

## SECTION 2. DEFINITIONS.

The definitions as used in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual, unless otherwise noted in this Section 2, below.<sup>ii</sup>

**Abandon** and its derivatives means the facilities installed in the right-of-way (including by way of example but not limited to: poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof) that have been left by Provider in an unused or non-functioning condition for more than 120 consecutive calendar days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, is still in active use.

**Antenna** means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

**Applicable codes** means:

(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and

(B) local amendments to those codes to the extent not inconsistent with Chapter 284.

**City** means the City of Bastrop, Texas or its lawful successor.

**City Council** means the municipal governing body of the City of Bastrop, Texas.

**Chapter 284** means Tex. Loc. Gov. Code, Chapter 284.

**Collocate and collocation** mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

**Concealment or Camouflaged** means any Wireless Facility or Pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive as allowed as a condition for City advance approval under Chapter 284, Sec. 284.105 in Historic or Design Districts. A Concealed or Camouflaged Wireless Facility or Pole also includes any Wireless Facility or Pole conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to hidden beneath a façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.

**Decorative pole** means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

**Design District** means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

**Disaster emergency or disaster or emergency** means an imminent, impending, or actual natural or humanly induced situation wherein the health, safety, or welfare of the residents of the city is threatened, and includes, but is not limited to any declaration of emergency by city state or federal governmental authorities.

**Distributed Antenna System or DAS** shall be included as a type of "Network Node."

**Easement** means and shall include any public easement or other compatible use created by dedication, or by other means, to the city for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.

**Federal Communications Commission or FCC** means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

**Highway right-of-way** means right-of-way adjacent to a state or federal highway.

**Historic district** means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

**Law** means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

**Local** means within the geographical boundaries of the City.

**Location** means the City approved and lawfully permitted location for the Network Node.

**Macro tower** means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284, Section 284.103 and that supports or is capable of supporting antennas.

**Administrator** means the Director of Bastrop Power & Light for the City of Bastrop, Texas, or designee.

**Micro network node** means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

**Municipal park** means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

**Municipally owned utility pole** means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

**MUTCD** means Manual of Uniform Traffic Control Devices.

**Network node** means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a macro tower

**Network provider** means:

(A) a wireless service provider; or

(B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:

- (i) network nodes; or
- (ii) node support poles or any other structure that supports or is capable of

supporting a network node.

**Node support pole** means a pole installed by a network provider for the primary purpose of supporting a network node.

**Permit** means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

**Pole** means a service pole, municipally owned utility pole, node support pole, or utility pole.

**Private easement** means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

**Provider** has the same meaning as “Network Provider.”

**Public right-of-way** means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, in which the municipality has an interest. The term does not include:

- (A) a private easement; or
- (B) the airwaves above a public right-of-way with regard to wireless telecommunications.

**Public right-of-way management ordinance** means an ordinance that complies with Chapter 284, Subchapter C.

**SCADA or Supervisory Control and Data Acquisition systems** means a category of software application programs and hardware used by the City for process control and gathering of data in real time from remote locations in order to monitor equipment and conditions of the City public water and wastewater utility facilities. These systems may utilize both cable and wireless communications.

**Service pole** means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a pole that supports lighting, other than a decorative pole; and
- (D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

**Small cell** shall be included as a type of “Network Node.”

**Street** means only the paved portion of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A “Street” is generally part of, but smaller in width than the width of the entire right-of-way, while a right-

of-way may include sidewalks, a “Street” does not. A “street” does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

**SWPPP** shall mean Storm Water Pollution Prevention Plan.

**TAS** means Texas Accessibility Standards.

**Traffic Signal** means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

**Transport facility** means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

**Underground Requirement Area** shall mean means an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way.

**User** means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

**Utility pole** means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

**Wireless service** means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

**Wireless service provider** means a person that provides wireless service to the public.

**Wireless facilities** mean “Micro Network Nodes,” “Network Nodes,” and “Node Support Poles” as defined in Texas Local Government Code Chapter 284.

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### SECTION 3. PROHIBITED AND PREFERRED LOCATIONS OF MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.

#### A. Prohibited or Restricted Areas for Certain Wireless facilities, except with Separate City Agreement or Subject to Concealment Conditions.

1. **Municipal Parks and Residential Areas.** In accordance with Chapter 284, Sec. 284.104 (a), a Network Provider may not install a Node Support Pole in a public right-of-way without the City's discretionary, nondiscriminatory, and written consent if the public right-of-way is in a Municipal park or is adjacent to a street or thoroughfare that is:

a. not more than 50 feet wide of paved street surface, being the area measured as the shortest distance between the inside of the curb to the inside of the opposite curb, or the area measured as the shortest distance between the two parallel edges of the paved roadway for vehicular travel where there is no curb; and

b. adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1 In accordance with Chapter 284, Sec. 284.104 (b), a Network Provider installing a Network Node or Node Support Pole in a public right-of-way described above shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

1.2 Each permit application shall disclose if it is within a Municipal Park and Residential Areas as described above.

2. **Historic District and Design Districts.** In accordance with Chapter 284, Sec. 284.105, a Network Provider must obtain advance written approval from the City before collocating Network Nodes or installing Node Support Poles in a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

2.1. As a condition for approval of Network Nodes or Node Support Poles in Design Districts with Decorative Poles or in a Historic District, the City shall require reasonable design or Concealment measures for the Network Nodes or Node Support Poles. Therefore, any request for installations in a Design District with Decorative Poles or in a Historic District, must be accompanied with proposed Concealment measures in the permit applications.

2.2. The City request that a Network Provider explore the feasibility of using Camouflage measures to improve the aesthetics of the Network Nodes, Node Support Poles, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics in Design Districts or in an Historic District.

2.3. A Network Provider shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.

2.4. Each permit application shall disclose if it is within a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.



3. **Historic Landmarks.** A Network Provider is discouraged from installing a Network Node or Node Support Pole within 300 feet of a historic site or structure or Historic Landmark recognized by the City, state or federal government (*see, for example, and not limited to* §442.001(3) of the Texas Government Code, and 16 U.S.C. §470), as of the date of the submission of the permit. It is recommended that each permit application disclose if it is with 300 feet of such a structure.

4. **Compliance with Undergrounding Requirements.** In accordance with Chapter 284, Sec. 284.107, a Network Provider shall comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

4.1 Areas may be designated from time to time by the City as Underground Requirement Areas in accordance with filed plats, and or conversions of overhead to underground areas, as may be allowed by law.

4.2 Each permit application shall disclose if it is within an area that has undergrounding requirements.

#### **B. Least preferable locations.**

1. **Residential Areas and Parks.** A Network Provider is discouraged from installing a Network Node on an existing pole in a public right-of-way without written consent from the City Council if the public right-of-way is located in or adjacent to a street or thoroughfare that is adjacent to a municipal park or single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

2. In accordance with Chapter 284, Sec. 284.104 (b) a Network Provider installing a Network Node or a Node Support Pole in a public right-of-way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

3. **Historic Districts and Design Districts.** A Network Provider is discouraged from installing a Network Node or a Node Support Pole in the public right-of-way in any area designated by the City as a Design Districts or in an area of the City zoned or otherwise designated as a Historic District unless such a Network Node or a new Node Support Pole is camouflaged.

#### **C. Most preferable locations**

1. *Industrial areas* if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

2. *Highway Rights-of-Way* areas if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

3. *Retail and Commercial areas* if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

#### **D. Designated Areas.**

1. The City Council may designate an area as a Historic District or a Design District under Chapter 284.105 at any time.

2. The failure to designate an area in this Chapter shall not mean that such an area is not within a defined district, if so designated by the City Council. Future areas may be designated as one of these Districts at any time. Such a designation does not require a zoning case.

3. While not required under Chapter 284 to designate Underground Compliance Areas to prohibit above ground Wireless facilities, the City may also, from time to time, also designate Underground Compliance Areas.

#### **E. Exceptions**

The City by its discretionary consent and agreement may grant exceptions to the above prohibited locations and sizes, but only in a non-exclusive, and non-discriminatory manner, as allowed or required by Chapter 284, Sec. 284.109 and Sec. 284.110.

#### **F. Order of Preference regarding Network Node attachment to existing facilities and New Node Support Poles.**

1. *Existing telephone or electrical lines between existing utility poles.* Micro Network Nodes shall only be lashed on existing telephone or electrical lines between existing utility poles (electric poles or telephones poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on Utility Poles, Node Support Poles or Service Poles.

2. *Existing Utility Poles* (electric poles or telephones poles), shall be the preferred support facility for Network Nodes and related ground equipment.

##### *3. Municipal Service Poles:*

a. *Non-decorative street lights* with a height of more than 20 feet.

b. *Traffic signal structures* when such installation will not interfere with the integrity of the facility and will not interfere with the safety of public and in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

c. *Street signage* shall be a low priority use for attachment of a Network Node.

d. *Other municipal Service pole* use is discouraged.

4. *New node support poles* shall be the least preferred type of allowed facility for attachment of Network Nodes.

5. *Ground Equipment.* Ground equipment should be minimal and the least intrusive.

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## SECTION 4. GUIDELINES ON PLACEMENT.

### A. Generally.

In accordance with Chapter 284.102, a Network Provider shall construct and maintain Network Nodes and Node Support Poles in a manner that does not:

1. obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
2. obstruct the legal use of a public right-of-way by other utility providers;
3. violate nondiscriminatory applicable codes;
4. violate or conflict with the City's publicly disclosed public right-of-way management ordinance or this Design Manual.
5. violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

### B. General Requirements and Information:

1. *Size Limits.* Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in Chapter 284, in accordance with, but not limited to Chapter 284, Sec. 284.002, size of a Micro Network Node, Sec. 284.003, Size of Network Nodes, and Sec. 284.103, Max. pole height, with each application and with each request for a permit for each location.<sup>iii</sup>

2. *State and Federal Rights-of-way permit.* If the project lies within a Highway Right-of-Way, the applicant must provide evidence of a permit from the State or Federal Government.

3. *Confirmation of non-interference with City Safety Communication or SCADA Networks.*

a. The Network Provider needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, SCADA system, or other city safety communications components in accordance with Chapter 284, Sec. 284.304.

b. It shall be the responsibility of the Network Provider to evaluate, prior to making application for permit, the compatibility between the existing City infrastructure and Provider's proposed Network Node. A Network Node shall not be installed in a location that causes any interference. Network Nodes shall not be allowed on City's public safety radio infrastructure.

4. *Improperly Located Network Node facilities, Node Support Poles and related ground equipment:*

a. Improperly Located Network Node facilities, Node Support Poles and related ground equipment shall not impede pedestrian or vehicular traffic in the

Right-of-Way. If any Network Node facilities, Node Support Poles or ground equipment is installed in a location that is not in accordance with the plans approved by the Director of Bastrop Power & Light and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Network Provider shall promptly remove the Network Node facilities, Node Support Poles or ground equipment.

b. Notice to Remove unauthorized facilities and relocate and penalty: After 30 days' notice to remove of Network Node facilities, Node Support Poles or ground equipment that is located in the incorrect permitted location, if not relocated the Network Provider shall be subject to a penalty of \$500.00 per day penalty until the Network Node facilities, Node Support Poles or ground equipment is relocated to the correct area within the permitted Location, regardless of whether or not the Network Provider's contractor, subcontractor, or vendor installed the Network Node facilities, Node Support Poles or ground equipment in strict conformity with the City Rights-of-way management ord., and other applicable ordinances concerning improperly located facilities in the rights-of-way.

#### **B. Underground Requirement Areas.**

1. In accordance with Chapter 284.107, a Network Provider shall, in relation to installation for which the City approved a permit application, comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

2. If a location is designated by the City to transits to be an Underground Requirement Area, then a Network Provider's permit for the location of the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location will be revoked 90 days after the designation, with removal of said the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location within 90 days of such designation, or as otherwise reasonably allowed by the City for the transition of other overhead facilities.

3. Before commencing underground installation, 811 Dig Tess must be called so that the area can be flagged for underground utilities.

#### **C. Network Node facilities placement:**

1. *Right-of-Way:* Network Node facilities, Node Support Poles and related ground equipment shall be placed, as much as possible, six feet from the street curb and within six inches of the adjoining property line.

2. *Height above ground.* Network Node attachments to a pole shall be installed at least eight (8) feet above the ground in accordance with Chapter 284, Sec. 284.108, and if a Network Node attachment is projecting toward the street, for the safety and

protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

3. *Protrusions.* In accordance with Chapter 284, Sec. 284.003 (a) (1) (C), Sec. 284.003 (a) (2) (C) and Sec. 284.003 (a) (3) (B) no protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

4. *Limit on number of Network Nodes per Site.* There shall be no more than one Network Node on any one Pole.

#### **D. New Node Support Poles.**

1. *New Node Support Poles Spacing.* New node support poles shall be spaced apart from existing utility poles or Node Support poles at the same as the spacing between utility poles in the immediate proximity, but no less than at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

2. *Height of Node Support Poles or modified Utility Pole.* In accordance with Chapter 284, Sec. 284.103 a Node support pole or modified Utility Pole may not exceed the lesser of:

- a. 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or
- b. 55 feet above ground level.

3. *Type of Pole.* To be consistent with the City's current practices, all new Network Support Poles shall be constructed of metal.

4. *Placement.* All Network Support Poles shall be placed at the greater of:

- a. Six Feet from the curb or, when no curb is present, end of the pavement;
- b. Six inches from the adjoining property line;
- c. If the right-of-way is less than 6 feet, then the Network Support Pole shall be placed six inches from the adjoining property line.

**5. *Location with respect to underground utilities.* All network support poles shall be installed at least nine (9) feet from the centerline of any existing underground utility.**

#### **E. Ground Equipment.**

1. *Ground Equipment near street corners and intersections:* Ground equipment should be minimal and the least intrusive. In accordance with Chapter 284.102 (1), to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way the maximum line of sight required to add to safe travel of vehicular and pedestrian traffic and in order to maximize that line of sight at street

corners and intersections and to minimize hazards at those locations, ground equipment may not be installed within 250 feet of a street corner or a street intersection.

2. *Ground Equipment near Municipal Parks.* For the safety of Municipal park patrons, particularly small children, and to allow full line of sights near Municipal park property, the Network Provider shall not install Ground Equipment in a Right-of-Way that is within a Park or within 250 feet of the boundary line of a Park, unless approved by the Director of Bastrop Power & Light in writing.

3. *Minimize Ground equipment density:*

In accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the Director of Bastrop Power & Light, or designee, may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more.

4. *Water, Sewer and Storm Drainage Lines:*

Special precautions must be taken where underground fiber optic cable is installed in public street right-of-ways commonly used for utility corridors.

- a. Underground utilities and service connections must be identified prior to excavation. "Dig Alert," "One Call," or similar underground utility contractor must be contacted to identify the locations of subsurface utilities.
- b. If temporary disruption of service is required, the installation contractor must notify the City, the service provider, and customers at least 24 hours in advance. No service on such lines may be disrupted until prior approval from the City and the service provider.
- c. At locations where the fiber optic cable will cross other subsurface utilities or structures, the cable must be installed to provide a minimum of 12 inches of vertical clearance between it and the other subsurface utilities or structures, while still maintaining the other applicable minimum depth requirement. To maintain the minimum depth requirement, the cable must be installed under the existing utility. If the minimum 12-inch clearance cannot be obtained between the proposed cable facility and the existing utility, the fiber optic cable must be encased in steel pipe of avoid future damage.
- d. *Existing Water Lines:* No communication lines shall be placed on top of a water line but may be placed to the side of a water line at least 4 feet from the center line of the water line. When crossing a water line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a water line.

- e. *Existing Sewer Lines:* No communication lines shall be placed on top of a sewer line but may be placed to the side of a sewer line at least 4 feet from the center line of the sewer line. When crossing a sewer line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a sewer line.
- f. *Existing Storm Drainage Lines:* No communication lines shall be placed on top of a storm drainage line but may be placed to the side of a storm drainage line at least 4 feet from the center line of the storm drainage line. When crossing a storm drainage line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a storm drainage line.

5. *Blocking streets, roads, alleys or lanes:*

Texas Department of Transportation (TxDOT) standards must be followed for work zone areas that will block streets, roads, alleys or lanes. A traffic plan must be submitted to the City prior to construction. Arrangements must be made with the City and the Police Dispatch at least 48 hours prior to any construction that would block a street.

**F. Municipal Service Poles:**

1. *In accordance with Agreement:* Installations on all Service Poles shall be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

2. *Required industry standard pole load analysis:* Installations on all Service Poles shall have an industry standard pole load analysis completed and submitted to the municipality with each permit application indicating that the Service Pole to which the Network Node is to be attached will safely support the load, in accordance with Chapter 284.108.

3. *Height of attachments:* All attachments on all Service Poles shall be at least 8 feet above grade, in accordance with Chapter 284, Sec. 285.108 (a) (1) - (2) and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

4. *Installations on Traffic Signals:* Installations on all Traffic signal structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b). Installation of Network Node facilities on any traffic signal structures shall:

- a. Be encased in a separate conduit than the traffic light electronics;

b. Have a separate electric power connection than the traffic signal structure; and

c. Have a separate access point than the traffic signal structure; and

5. *Installations on Street signage:* Installations on all street signage structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public. Installation of Network Node facilities on any street signage structures that has electrics shall:

a. Be encased in a separate conduit than any City signage electronics;

b. Have a separate electric power connection than the signage structure;

c. Have a separate access point than the signage structure; and

6. *Restoration of City facilities and private property:* The Network Provider shall be responsible for repairing any damage to any street, street right-of-way, ditch or any structure to its original condition immediately upon completing the installation. Any change to the slope of the land must be remedied, and there must be replacement of top soil and grass to its original condition.



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## SECTION 5. GENERAL AESTHETIC REQUIREMENTS

### A. Concealment.

1. Concealment of Network Nodes and Node support poles shall be required by the City in Design Districts with Decorative Poles and in Historic Districts pursuant to Chapter 284.105.

2. It is also the City's preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial area. Companies shall submit their proposal for camouflage with the permit application.

3. The Network Node facilities shall be concealed or enclosed as much as reasonably possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284.

4. The Network Node facilities shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible, except to the extent not consistent with Chapter 284.

### B. New Node Support Pole Spacing.

New node support poles shall be at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

### C. Minimize Ground Equipment Concentration.

In order to minimize negative visual impact to the surrounding area, and in accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City's designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more to minimize effect on property values and aesthetics on the area.

### D. Allowed Colors.

1. Colors in Historic Districts and Design Districts must be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284

2. Colors in Historic Districts and Design Districts must be approved by the Director of Bastrop Power & Light from a palette of approved colors. Unless otherwise provided, all colors shall be earth tones or shall match the background of any structure the facilities are located

upon and all efforts shall be made for the colors to be inconspicuous. Colors in areas other than in Historic Districts and Design Districts shall conform to colors of other installations of telecommunication providers in the immediately adjacent areas.

**SECTION 6. ELECTRICAL SUPPLY**

A. Network Provider shall be responsible for obtaining any required electrical power service to the Micro Network Node, Network Node facilities, Node Support Poles and ground equipment. The City shall not be liable to the Network Provider for any stoppages or shortages of electrical power furnished to the Micro Network Node, Network Node facilities, Node Support Poles or ground equipment, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or Network Provider of the structure, or for any other cause beyond the control of the City.

**B. NETWORK PROVIDER SHALL NOT ALLOW OR INSTALL GENERATORS OR BACK-UP GENERATORS IN THE PUBLIC RIGHT-OF-WAY IN ACCORDANCE WITH CHAPTER 284, SEC. 284.002 (12) (B) (1).**

**SECTION 7. INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS.**

A. Insurance, bonding and security deposits shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284.

B. Indemnity shall be in accordance with Chapter 284, Sec. 284.302, as provided for in Chapter 283, Sec. 283.057 (a) and (b) of the Texas Loc. Gov't Code.

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**SECTION 8. REQUIREMENTS IN REGARD TO REMOVAL, REPLACEMENT, REPLACEMENT, MAINTENANCE AND REPAIR****A. REMOVAL OR RELOCATION BY NETWORK PROVIDER.**

1. Removal and relocation by the Network provider of its Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284

2. If the Network Provider removes or relocates a Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, it shall notify the Director of Bastrop Power & Light in writing not less than 10 business days prior to removal or relocation. Network Provider shall obtain all Permits required for relocation or removal of its Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment prior to relocation or removal.

3. The City shall not issue any refunds for any amounts paid by Network Provider for Micro Network Node, Network Node facilities, Node Support Poles or related ground equipment that have been removed.

**B. REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT.**

1. Removal and Relocation of Network Provider's Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof required for a City project shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284, Sec. 284.107, except as provided in existing state and federal law.

2. In accordance with Chapter 284, Sec. 284.107, except as provided in existing state and federal law, a Network Provider shall relocate or adjust Micro Network Node, Network Node, Node Support Pole and related ground equipment in a public right-of-way in a timely manner and without cost to the City managing the public right-of-way

3. Network Provider understands and acknowledges that the City may require Network Provider to remove or relocate its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or any portion thereof from the Right-of-Way for City construction projects as allowed by state and federal law, including the common-law.

4. Network Provider shall, at the Director of Bastrop Power & Light's direction, remove or relocate the same at Network Provider's sole cost and expense, except as otherwise provided in existing state and federal law, whenever the Director of Bastrop Power & Light reasonably determines that the relocation or removal is needed for any of the following purposes: Required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project of a

street or public rights-of-way to enhance the traveling public's use for travel and transportation.

5. If Network Provider fails to remove or relocate the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof as requested by the Director of Bastrop Power & Light within 90 days of Network Provider's receipt of the request, then the City shall be entitled to remove the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof at Network Provider's sole cost and expense, without further notice to Network Provider.

6. Network Provider shall, within 30 days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof.

### **C. REMOVAL REQUIRED BY CITY FOR SAFETY AND IMMINENT DANGER REASONS.**

1. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the Director of Bastrop Power & Light if the Director of Bastrop Power & Light reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284.

2. If the Director of Bastrop Power & Light reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider's sole cost and expense in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284.

3. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the Director of Bastrop Power & Light if the Director of Bastrop Power & Light reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health,

safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law. If the Director of Bastrop Power & Light reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider's sole cost and expense.

4. The Director of Bastrop Power & Light shall provide 90 days written notice to the Network Provider before removing a Micro Network Node, Network Node, Node Support Pole and related ground equipment under this Section, unless there is imminent danger to the public health, safety, and welfare.

5. Network Provider shall reimburse City for the City's actual cost of removal of Micro Network Node, Network Node, Node Support Pole and related ground equipment within 30 days of receiving the invoice from the City.

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## SECTION 9. INSTALLATION AND INSPECTIONS

### A. INSTALLATION.

1. Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and workmanlike manner in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284

2. Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the Director of Bastrop Power & Light, as such may be amended from time to time. Network Provider's work shall be subject to the regulation, control and direction of the Director of Bastrop Power & Light. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment shall be in compliance with all applicable laws, ordinances, codes, rules and regulations of the City, applicable county, the state, and the United States ("Laws").

### B. INSPECTIONS.

1. The Director of Bastrop Power & Light, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way shall be allowed in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284

**2. THE DIRECTOR OF BASTROP POWER & LIGHT, OR DESIGNEE, MAY PERFORM VISUAL INSPECTIONS OF ANY MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE OR RELATED GROUND EQUIPMENT LOCATED IN THE RIGHT-OF-WAY AS THE DIRECTOR OF BASTROP POWER & LIGHT DEEMS APPROPRIATE WITHOUT NOTICE. IF THE INSPECTION REQUIRES PHYSICAL CONTACT WITH THE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLES OR RELATED GROUND EQUIPMENT, THE DIRECTOR OF BASTROP POWER & LIGHT SHALL PROVIDE WRITTEN NOTICE TO THE NETWORK PROVIDER WITHIN FIVE BUSINESS DAYS OF THE PLANNED INSPECTION. NETWORK PROVIDER MAY HAVE A REPRESENTATIVE PRESENT DURING SUCH INSPECTION.**



**SECTION 10. REQUIREMENTS UPON ABANDONMENT OF OBSOLETE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.**

1. Abandoned or obsolete Micro Network Node, Network Node, Node Support Pole and related ground equipment shall be removed in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284.

**2. NETWORK PROVIDER SHALL REMOVE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT WHEN SUCH FACILITIES ARE ABANDONED REGARDLESS OF WHETHER OR NOT IT RECEIVES NOTICE FROM THE CITY. UNLESS THE CITY SENDS NOTICE THAT REMOVAL MUST BE COMPLETED IMMEDIATELY TO ENSURE PUBLIC HEALTH, SAFETY, AND WELFARE, THE REMOVAL MUST BE COMPLETED WITHIN THE EARLIER OF 90 DAYS OF THE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT BEING ABANDONED OR WITHIN 90 DAYS OF RECEIPT OF WRITTEN NOTICE FROM THE CITY. WHEN NETWORK PROVIDER REMOVES, OR ABANDONS PERMANENT STRUCTURES IN THE RIGHT-OF-WAY, THE NETWORK PROVIDER SHALL NOTIFY THE DIRECTOR OF BASTROP POWER & LIGHT IN WRITING OF SUCH REMOVAL OR ABANDONMENT AND SHALL FILE WITH THE DIRECTOR OF BASTROP POWER & LIGHT THE LOCATION AND DESCRIPTION OF EACH MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT REMOVED OR ABANDONED. THE DIRECTOR OF BASTROP POWER & LIGHT MAY REQUIRE THE NETWORK PROVIDER TO COMPLETE ADDITIONAL REMEDIAL MEASURES NECESSARY FOR PUBLIC SAFETY AND THE INTEGRITY OF THE RIGHT-OF-WAY.**

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## SECTION 11. GENERAL PROVISIONS.

**1. As Built Maps and Records.** Network Provider's as built maps and records shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies and policies, except to the extent not consistent with Chapter 284.

1.1 A Network Provider shall maintain accurate maps and other appropriate records of its Network Node facilities, Node Support Poles and related ground equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. Network Provider will provide additional maps to the City upon request.

**2. Courtesy and Proper Performance.** Courtesy and Proper Performance of Network provider's personnel, and contractors shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284.

2.1 A Network Provider shall make citizen satisfaction a priority in using the Right-of-Way. Network Provider shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its Micro Network Node, Network Node, Node Support Pole and related ground equipment in the Right-of-Way. Network Provider's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the Director of Bastrop Power & Light or designee, Network Provider is not interacting in a positive and polite manner with citizens, he or she shall request Network Provider to take all remedial steps to conform to these standards.

**3. DRUG POLICY.** Drug policy of Network provider's personnel, and contractors in the public rights-of-way shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284.

3.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Network Provider's employees, contractors, subcontractors, sub-Network Provider's, or vendors while on City rights-of-way is prohibited.

**4. ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE.** The City Council has currently appropriated no funds to pay for the cost of any removal or storage of Micro Network Node, Network Node, Node Support Pole and related ground equipment, as authorized under the law.

**5. OWNERSHIP.** Ownership of Network Node and related equipment shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable codes and ordinances, except to the extent not consistent with Chapter 284.

5.1 No part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment erected or placed on the Right-of-Way by Network Provider will become, or be considered by the City as being affixed to or a part of, the Right-of-Way. All portions of the

Micro Network Node, Network Node, Node Support Pole and related ground equipment constructed, modified, erected, or placed by Network Provider on the Right-of-Way will be and remain the property of Network Provider and may be removed by Network Provider at any time, provided the Network Provider shall notify the Director of Bastrop Power & Light prior to any work in the Right-of-Way.

**6. Tree Maintenance.** Tree maintenance shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284.

6.1 A Network Provider, its contractors, and agents shall obtain written permission from the Director of Bastrop Power & Light before trimming trees hanging over its Micro Network Node, Network Node, or Node Support Pole, to prevent branches of such trees from contacting attached Micro Network Node, Network Node, or Node Support Pole. When directed by the Director of Bastrop Power & Light, Network Provider shall trim under the supervision and direction of the Director of Bastrop Power & Light. The City shall not be liable for any damages, injuries, or claims arising from Network Provider's actions under this section.

**7. Signage.** Signage shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284.

7.1 Network Provider shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the Network Node facility that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the Director of Bastrop Power & Light.

7.2 Except as required by law or by the Utility Pole owner, a Network Provider shall not post any other signage or advertising on the Micro Network Node, Network Node, Node Support Pole, Service pole or Utility Pole.

**8. Graffiti Abatement.** Graffiti abatement shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284.

8.1 As soon as practical, but not later than fourteen (14) calendar days from the date Network Provider receives notice thereof, Network Provider shall remove all graffiti on any of its Micro Network Node, Network Node, Node Support Pole, and related ground equipment located in the Right of Way. The foregoing shall not relieve the Network Provider from complying with any City graffiti or visual blight ordinance or regulation.

**9. Restoration.**

9.1 A Network Provider shall restore and repair of the public rights-of-way from any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property

of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284.

9.2 A Network Provider shall repair any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) within 10 calendar days following the date of such removal or relocation, at Network Provider's sole cost and expense, including restoration of the Right-of-Way and such property to substantially the same condition as it was immediately before the date Network Provider was granted a Permit for the applicable Location or did the work at such Location (even if Network Provider did not first obtain a Permit), including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the Director of Bastrop Power & Light.

#### **10. Network provider's responsibility.**

10.1 A Network Provider shall be responsible and liable for the acts and omissions of the Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances and policies, except to the extent not consistent with Chapter 284.

10.2 A Network Provider shall be responsible and liable for the acts and omissions of the Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole, Transport Facility and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions.

**SECTION 12. ADMINISTRATIVE HEARING – REQUEST FOR EXEMPTION**

12.1 Should the Network Provider desire to deviate from any of the standards set forth in the Design Manual, the Network Provider may request an Administrative Hearing before a Board of Appeals. The Zoning Board of Adjustment shall act as the Board of Appeals for a Request for Exemption.

12.2 The process for an application, hearing and vote shall follow the process set out for a variance.

**SECTION 13-19 RESERVED**

**SECTION 20. DESIGN MANUAL - UPDATES**

Placement or Modification of Micro Network Node, Network Node, Node Support Pole, Transport Facility, and related ground equipment shall comply with the City's Design Manual at the time the Permit for installation or Modification is approved and as amended from time to time.

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<sup>i</sup> Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS. (a) Subject to this chapter and applicable federal and state law, a municipality may continue to exercise zoning, land use, planning, and permitting authority in the municipality's boundaries, including with respect to utility poles.

(b) A municipality may exercise that authority to impose police-power-based regulations for the management of the public right-of-way that apply to all persons subject to the municipality.

(c) A municipality may impose police-power-based regulations in the management of the activities of network providers in the public right-of-way only to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

<sup>ii</sup> The definitions as used in Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual.

Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002. DEFINITIONS. In this chapter:

(1) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

(2) "Applicable codes" means:

(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and

(B) local amendments to those codes to the extent not inconsistent with this chapter.

(3) "Collocate" and "collocation" mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

(4) "Decorative pole" means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

(5) "Design district" means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

(6) "Historic district" means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

(7) "Law" means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

(8) "Macro tower" means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 284.103 and that supports or is capable of supporting antennas.

(9) "Micro network node" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

(10) "Municipally owned utility pole" means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

(11) "Municipal park" means an area that is zoned or otherwise designated by municipal code as a



public park for the purpose of recreational activity.

(12) "Network node" means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

(i) equipment associated with wireless communications;

(ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and

(iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

(i) an electric generator;

(ii) a pole; or

(iii) a macro tower.

(13) "Network provider" means:

(A) a wireless service provider; or

(B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:

(i) network nodes; or

(ii) node support poles or any other structure that supports or is capable of supporting a network node.

(14) "Node support pole" means a pole installed by a network provider for the primary purpose of supporting a network node.

(15) "Permit" means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

(16) "Pole" means a service pole, municipally owned utility pole, node support pole, or utility pole.

(17) "Private easement" means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

(18) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include:

(A) a private easement; or

(B) the airwaves above a public right-of-way with regard to wireless telecommunications.

(19) "Public right-of-way management ordinance" means an ordinance that complies with Subchapter C.

(20) "Public right-of-way rate" means an annual rental charge paid by a network provider to a municipality related to the construction, maintenance, or operation of network nodes within a public right-

of-way in the municipality.

(21) "Service pole" means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a pole that supports lighting, other than a decorative pole; and
- (D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

(22) "Transport facility" means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

(23) "Utility pole" means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Section 51.002, Utilities Code.

(24) "Wireless service" means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

(25) "Wireless service provider" means a person that provides wireless service to the public.

<sup>iii</sup> Sec. 284.002. DEFINITIONS (8) "Micro network node" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES. (a) Except as provided by Section 284.109, a network node to which this chapter applies must conform to the following conditions:

(1) each antenna that does not have exposed elements and is attached to an existing structure or pole:

- (A) must be located inside an enclosure of not more than six cubic feet in volume;
- (B) may not exceed a height of three feet above the existing structure or pole; and
- (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;

(2) if an antenna has exposed elements and is attached to an existing structure or pole, the antenna and all of the antenna's exposed elements:

- (A) must fit within an imaginary enclosure of not more than six cubic feet;
- (B) may not exceed a height of three feet above the existing structure or pole; and
- (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;

- (3) the cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:
- (A) be more than 28 cubic feet in volume; or
  - (B) protrude from the outer circumference of the existing structure or a node support pole by more than two feet;
- (4) ground-based enclosures, separate from the pole, may not be higher than three feet six inches from grade, wider than three feet six inches, or deeper than three feet six inches; and
- (5) pole-mounted enclosures may not be taller than five feet.
- (b) The following types of associated ancillary equipment are not included in the calculation of equipment volume under Subsection (a):
- (1) electric meters;
  - (2) concealment elements;
  - (3) telecommunications demarcation boxes;
  - (4) grounding equipment;
  - (5) power transfer switches;
  - (6) cut-off switches; and
  - (7) vertical cable runs for the connection of power and other services.
- (c) Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.
- (d) Equipment attached to a utility pole must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and the utility pole owner's construction standards.