

AGREEMENT REGARDING JOINT USE OF POLES

BETWEEN

**BELLSOUTH TELECOMMUNICATIONS, LLC,
D/B/A AT&T FLORIDA
AND**

CITY OF LAKE WORTH BEACH, FLORIDA

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AGREEMENT REGARDING JOINT USE OF POLES

THIS AGREEMENT, effective this ___ day of _____, 2020, is made by and between CITY OF LAKE WORTH BEACH, FLORIDA, which owns and operates a municipal electric utility (hereinafter referred to as the "CITY") and BellSouth Telecommunications, LLC, d/b/a AT&T Florida (hereinafter referred to as "AT&T").

WITNESSETH

WHEREAS, the CITY and AT&T desire to promote the Joint Use of their respective poles when and where such Joint Use shall be mutually advantageous.

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

1 SCOPE OF AGREEMENT

- 1.01 This Agreement shall be in effect in such areas of the State of Florida in which the CITY and AT&T now or hereafter jointly operate and shall cover all poles of each of the parties now existing or hereafter erected or acquired in such areas when said poles are brought hereunder in accordance with this Agreement.
- 1.02 This Agreement sets forth the terms and conditions under which each party, as Owner, shall grant to the other party, as Joint Partner, a nonexclusive license to make Attachments to Owner's poles. Owner shall grant such nonexclusive license and such Joint Partner shall undertake Attachments in accordance with the terms and conditions of this Agreement.
- 1.03 Nothing herein contained shall be construed as prohibiting the Owner (to the extent such other attachments do not infringe upon the rights granted to Joint Partner hereunder) from permitting the attachment of facilities by third parties to Owner's poles covered by this Agreement. Nor shall anything herein contained be construed as giving the Joint Partner the authority to permit the attachment of facilities by third parties to the poles covered by this Agreement that they do not own.
- 1.04 Contractors engaged by either party to perform any work in connection with the terms of this Agreement shall be considered as agents of the party engaging them, and not the agent of the other party.
- 1.05 All poles covered by this Agreement shall be and remain the property of Owner regardless of any payment by Joint Partner toward their cost. No use, however extended, of Owner's poles or payment of any fee or charge required hereunder shall create or vest in Joint Partner any claim of right, possession, title, interest or ownership in such poles.
- 1.06 Except as otherwise provided, nothing in this Agreement shall be construed to compel Owner to construct, reconstruct, retain, extend, repair, place, replace or maintain any pole which, in Owner's sole discretion, is not needed for its own purposes. Owner and its successors and assigns shall have the right to operate, relocate and maintain its poles and attendant facilities in such a manner as will best enable it, in its sole discretion, to fulfill its service requirements. If after all attempts have been exhausted to include both Parties in Joint Use of the pole then the poles can be, in the Owner's

judgment, deemed necessary for its sole use where there is insufficient capacity or for reasons of safety, reliability or generally applicable engineering purposes.

1.07 All references to “days” shall mean calendar days, unless specified otherwise.

2 EXPLANATION OF TERMS

For the purpose of this Agreement, certain terms shall have the meanings given in this Section.

- 2.01 AFFILIATE – Another entity who owns or controls, is owned or controlled by, or is under common ownership or control with such Attaching Entity.
- 2.02 ANCHOR – A metal plate or screw placed in the ground to provide a counter load to the stringing tensions. Anchors shall be of sufficient size to hold the load placed on them.
- 2.03 ATTACHMENT – Any facility now or hereafter fastened to a Joint Use pole by the parties hereto except that pedestals, overlashing, risers and bonding or grounding connections shall be exempt from both the Proposal process and rental payment obligation.
- 2.04 BILL OF SALE – A legal document, in a mutually agreed upon format, for the conveyance or transfer of assets or property regardless of the sale price, condition of the pole to be determined by prospective Owner, attached hereto as Exhibit D.
- 2.05 DESIGN REQUIREMENTS – All applicable regulations or codes promulgated by any federal, state, local or other governmental authority having jurisdiction, including, but not limited to, the National Electrical Safety Code and Owner’s design or attachment requirements, and Owner’s written storm hardening plans.
- 2.06 ELECTRONIC COMMUNICATION OR "ELECTRONICALLY TRANSMITTED" – Communication sent via email.
- 2.07 EMERGENCY - Conditions where there is a substantial potential for damage to property, injury or death to persons, or interruption of utility service.
- 2.08 JOINT POLE INVENTORY – Mutually agreed upon process to collect information about Attachments to Joint Use poles covered under this Agreement.
- 2.09 JOINT PARTNER – The party having the right under this Agreement to make Attachments to Owner's poles.
- 2.10 JOINT USE – The simultaneous use of a pole for the attachment by both parties.
- 2.11 OWNER – The party owning the pole.
- 2.12 OVERLASH – To lash an additional wire or other facility to an existing facility attached to a Pole.
- 2.13 PROPOSAL – A standardized form, either on paper or electronically transmitted, used by the parties to communicate their intentions, requirements or costs regarding Attachments. **See Exhibit A.**

- 2.14 SET AND SELL – A process under which poles are replaced by the Joint Partner for the Owner and billed to the Owner according to Article 9.06. Ownership of replaced pole remains with the original Owner.
- 2.15 SIMPLE TRANSFER – Transfer work that may include any combination of tangent transfer, a dead-end attachment, down guys or anchor attachment, bonds, rearrangement or lateral, or buried dips which do not require cable splicing to complete the transfer's permanent attachment.
- 2.16 STANDARD JOINT USE POLE – Such poles for this Agreement shall be:
- (a) when owned by the CITY, a 40-foot, class-2 wood pole for single-phase circuits and a 45-foot, class-2 wood pole for three-phase circuits; and
- (b) when owned by the AT&T, a 40-foot, class-2 wood pole for rear and non-street facing side easements and a 45-foot, class-2 wood pole for front and street facing side easements.
- The foregoing definition of a Standard Joint Use Pole is not intended to preclude the use of Joint Use Poles shorter or taller or of greater or lesser strength than the Standard Joint Use Pole in locations as needed to meet the requirements of the parties and of specifications in Section 3. Notwithstanding the foregoing, poles in place at the time of execution of this Agreement shall be considered a Standard Joint Use Pole regardless of their height or class.
- 2.17 THIRD PARTY – Any entity not a party to this Agreement with an attachment on a pole which is either in Joint Use or a candidate for Joint Use under this Agreement.
- 2.18 TOTAL COST – Total cost shall be the reasonable cost actually incurred for labor (based on fully loaded rates) and materials for the project. Cost shall include overhead to the extent such overhead is reasonably allocated to tasks of a similar nature in the ordinary course of the party's business.
- 2.19 TRANSFER NOTICE – A standardized form, either on paper or electronically transmitted, used by the parties to communicate that new pole placement has been completed and that transfers may commence.

3 SPECIFICATIONS

- 3.01 The joint use of utility poles covered by this Agreement shall at all times conform to the requirements of the version of the National Electric Code (NEC), National Electric Safety Code (NESC) and the Occupational Safety and Health Act of 1970 (OSHA) in effect at the time work done hereunder is performed, except where the lawful requirements of the state or other governmental authorities contain a more stringent requirement, in which case the more stringent requirement will govern. Notwithstanding the foregoing, the use of vertical runs and the mounting of such equipment as terminals or meters on the lower portions of the pole, including below the communications space, is permitted when done so in accordance with the current version of the NESC.
- 3.02 It is the intent of this Agreement that poles having Attachments prior to this Agreement, providing that their installation conformed to the specifications in effect at the time the original attachment was made, will not be replaced or Attachments rearranged or

modified solely to comply with any new Design Requirements, unless compliance with such new Design Requirements is required by law or the pole poses a safety risk. This provision applies until such time as substantial modification to the Attachments takes place. The foregoing does not prohibit the replacement of a pole by mutual agreement if compensation is made in accordance with Section 8.0.

- 3.03 Any new joint use construction of either party, occurring after the execution of this Agreement, which does not conform to the specifications set forth in Section 3, as they existed at the time of construction, shall be brought into conformity within ninety (90) days or other negotiated time frame of written notification by the party identifying such nonconformance. Once the construction has been brought into conformity with said specifications, it shall at all times be maintained in compliance with said specifications in effect at the time of construction. It is the intent of this Agreement that Attachments made pursuant to this Agreement, providing that their installation conformed to the specifications in effect at the time the original Attachment was made, will not be rearranged or modified solely to comply with any new Design Requirements, unless compliance with such new Design Requirements is required by law or the Attachment poses a safety risk.
- 3.04 Proposals for pole or Attachment construction, maintenance or removal, and the associated invoicing will be exchanged between the local representatives of both parties in an agreed-upon electronic format.
- 3.05 If AT&T desires to overlash over its own cables, it shall not require a Proposal; instead, AT&T shall notify City at least 30 days prior and provide load calculations with such prior notice showing that the AT&T overlash Attachments shall not overload the pole. Under no circumstances shall AT&T allow a Third Party to overlash on its cables under this Agreement. Third Party overlash shall require a separate Pole Attachment Agreement with the Owner and Joint Partner (if overlash Joint Partner's facilities) and shall be issued separate permits.

4 EASEMENTS/RIGHTS OF WAY

- 4.01 When one party owns existing poles on a right-of-way or easement, and no rights under such right-of-way or easement were obtained for the other party at the time the poles were erected, the party desiring to place Attachments on such existing poles will be required to obtain its own necessary rights. In the event the party owning such existing poles has not obtained its own right-of-way or easement, the procedure to be followed in obtaining such shall be determined by mutual agreement.
- 4.02 To the extent allowed by law, each party, as Joint Partner, hereby agrees to indemnify, defend and save Owner harmless from any and all claims, resulting from or arising out of the failure of Joint Partner to secure such right, license, permit or easement for the construction or maintenance of said Attachments on Owner's poles, the loss of right-of-way or property owner consent, of the costs of relocating any of Owner's facilities or other attachments on Owner's poles. This shall not be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes. As applicable, all of the terms of the indemnity set forth in Section 18 of this Agreement are incorporated herein and shall apply with equal force to the indemnity set forth in this Section.
- 4.03 RIGHT OF WAY. The Owner does not warrant or assure to the Joint Partner any right-of-way privileges on, over or across streets, alleys, public thoroughfares, or publicly

owned property. If the Joint Partner shall not have secured proper authorization for placing its Attachments on the Owner's pole(s), no liability on account thereof shall attach to the Owner.

- 4.04 EASEMENT. If Joint Partner makes Attachment without authorized Easement and any person who owns property on which such Joint Use Poles are located objects to the presence of Joint Partner's Attachments, Joint Partner shall attempt to secure easement or remove Attachments from such poles at its sole expense.
- 4.05 NEITHER PARTY REPRESENTS NOR WARRANTS THAT ANY OF ITS OWN PRIVATE RIGHTS-OF-WAY OR EASEMENTS ENTITLE JOINT PARTNER TO ACCESS THE PROPERTY UNDERLYING OWNER'S UTILITY POLES.

5 ESTABLISHING JOINT USE OF EXISTING POLES

- 5.01 Owner reserves the right to exclude a pole from Joint Use as provided for in Section 1.06.
- 5.02 Notwithstanding any other provision of this Agreement, the Joint Partner may place, replace or modify a service drop on any pole without submitting a Proposal to Owner.
- 5.03 Except as provided for by Section 5.01, whenever either party desires to utilize space on any pole owned by the other party, either as initial space or additional space on said pole, Joint Use will be requested via Proposal, including a sketch and digital picture of said pole, prior to installing or modifying any Attachment(s) on Owner's pole. Such request will specify the pole involved, the amount of space desired and the number and character of cables, wires and/or conductors to be placed thereon. Requesting party is responsible for design, strength and loading characteristics of its Attachment(s). Within thirty (30) days after the receipt of such Proposal, Owner shall notify requesting party via Proposal whether said pole is approved or excluded from Joint Use on the basis of insufficient capacity or for reasons of safety, reliability or generally applicable engineering purposes, and, if so, shall detail the reason for exclusion. Upon receipt of notice from Owner that said pole is not excluded, requesting party will have the right to use said pole as a Joint Partner. If for any reason Owner does not respond within such period or the extension thereof, then Owner shall be deemed to have granted permission to attach. In no event, however, shall Owner be deemed to have given consent to any Attachments that cannot be installed in accordance with the Design Requirements.
- 5.04 Whenever any Joint Use pole or any existing pole about to be so used under the provisions of this Agreement is insufficient in height or strength for the existing Attachments and for the proposed immediate additional Attachments thereon, Owner shall replace such pole with a new pole of the necessary height and strength and shall make such other changes in the existing pole line in which such pole is included as the conditions may then require, and billing shall be rendered in accordance with Section 8 (Division of Cost).
- 5.05 Except as herein otherwise expressly provided, on Joint Use poles each party shall, at its own expense, perform tree trimming necessary for the party's Attachments, place, maintain, transfer, rearrange and remove its own Attachments, and place guys to sustain unbalanced loads due to its Attachments, and shall perform such work promptly and in such manner as not to interfere with the service of the other party.

6 ESTABLISHING JOINT USE OF NEW POLES

- 6.01 Whenever either party hereto intends to place new poles within the territory covered by this Agreement, either as an additional pole line, as an extension of an existing pole line, or in connection with the reconstruction of an existing pole line, and such pole facilities are not to be excluded from Joint Use under the provisions of Section 1, it shall promptly offer Joint Use to the other party by submitting a Proposal (verbal notice subsequently confirmed in writing may be given in cases of Emergency) stating the proposed location, character, nature of the Attachments and size of the new poles.
- 6.02 Within thirty (30) days after the receipt of such notice, the Joint Partner shall reply via Proposal, stating whether it does or does not desire space on said new poles and, if space is desired thereon, shall respond and identify the nature of the Attachments it desires to place. The Proposal, accepted by the Owner, shall constitute authorization to jointly use such poles. Attachments shall not be made prior to such authorization. Failure of the Joint Partner to respond within thirty (30) days shall create a presumption that no Joint Use is desired, and the proposing party may proceed accordingly.

7 MAINTENANCE OF POLES AND ATTACHMENTS

- 7.01 Owner shall maintain its Joint Use poles in a safe and serviceable condition in accordance with the Design Requirements, and shall replace, reinforce or repair poles as they become defective or cause unsafe conditions.
- 7.02 Each party shall maintain its Attachments on Joint Use poles in accordance with the specifications referred to in Section 3 and the terms of this Agreement and shall keep them in safe condition and in thorough repair in accordance with the Design Requirements. Notwithstanding the foregoing, in the event the Joint Use pole is replaced, or the party substantially modifies its Attachments to such pole for other reasons, the party's Attachments shall at such time be brought into compliance with the then applicable Design Requirements.
- 7.03 Owner reserves the right, without liability to Joint Partner, to discontinue the use of, remove, replace or change the location of any or all of its poles regardless of any occupancy of Owner's poles by Joint Partner. As applicable, the provisions of Sections 9 and 11 shall apply in the event of the proposed removal or relocation of any pole subject to Joint Use.

8 DIVISION OF COSTS

- 8.01 The costs of erecting Joint Use poles, either as new pole lines, individual poles, or as extensions or replacements of existing pole lines not previously in Joint Use, will be borne by the parties as follows:
- 8.01.1 For a new Standard Joint Use Pole, or a Joint Use pole shorter or smaller than the Standard Joint Use Pole, the pole will be erected at the sole expense of Owner, except as provided herein, and in cases where an existing Joint Use pole is being replaced, each party shall be responsible for the expenses incurred to transfer its own Attachment(s) to the new pole.
- 8.01.2 For a pole taller or stronger than the Standard Joint Use Pole, the extra height or strength of which is due wholly to Owner's requirements, the pole will be erected at the sole expense of Owner, and in cases where an existing Joint Use

pole is being replaced, Owner shall be responsible for the expenses incurred by Joint Partner to transfer its Attachment(s) to the new pole. Notwithstanding the foregoing, in the case of the replacement by City poles done as part of a written storm hardening plan, AT&T shall be responsible for the expenses to transfer its Attachment(s) to the new pole. To the extent AT&T owns poles in a route subject to a written storm hardening plan (a mixed ownership line), City shall notify AT&T in writing ninety (90) days prior to the date (the "replacement date") City seeks to transfer City's facilities from an AT&T pole to a new pole consistent with the City's storm hardening plan. AT&T shall have forty five (45) days to respond to such notification from City and inform City which of three options it elects: (i) install the new pole consistent with the City's storm hardening plans at AT&T's cost, with AT&T owning the new pole, (ii) have City install the new pole consistent with the City's storm hardening plans, with AT&T paying the cost of the installation as set out in **Exhibit G** and AT&T owning the new pole, or (iii) have City install the new pole consistent with the City's storm hardening plans at City's cost and the City owning the new pole. If AT&T does not respond within forty five (45) days, or such longer time as the parties may mutually agree, then AT&T will be deemed to have selected option (iii). Each party shall be responsible for performing its own transfers at its cost.

- 8.01.3 For a pole taller or stronger than the Standard Joint Use Pole, the extra height or strength of which is due wholly to Joint Partner's requirements, the pole will be erected at the sole expense of the Joint Partner, and in cases where an existing Joint Use pole is being replaced, Joint Partner shall be responsible for the expenses incurred by Owner to transfer its Attachment(s) to the new pole.
- 8.01.4 For a pole taller or stronger than the Standard Joint Use Pole, the extra height or strength of which is due to the requirements of both parties, the parties will share equally the cost to place the new pole and each party shall Transfer at its own expense, and in cases where an existing Joint Use pole is being replaced, each party shall be responsible for the expenses incurred to transfer its own Attachment(s) to the new pole.
- 8.01.5 For a pole taller or stronger than the Standard Joint Use Pole, where height or strength is necessary in order to meet the requirements of public authority, such as legal mandate work, the cost of erecting such pole shall be borne by Owner unless billable to the requesting authority. In cases hereunder where an existing Joint Use pole is being replaced, each party shall be responsible for the expenses incurred to transfer its own Attachment(s) to the new pole, which may include billing the requesting authority under applicable law. Owner shall provide contact information for requesting authority with the original notification to Joint Partner concerning the need for transfer.
- 8.01.6 For a pole taller or stronger than the Standard Joint Use Pole, where height or strength is necessary in order to meet the requirements of a third party, including but not limited to a Third Party attacher or the owner of the property on which the pole is located, the cost of erecting such pole shall be borne by Owner unless billable to a third party. In cases hereunder where an existing Joint Use pole is being replaced, each party shall be responsible for negotiating with the third party payment by such third party of the expenses incurred to transfer its own Attachment(s) to the new pole. Owner shall provide contact information for third party with the original notification to Joint Partner concerning the need for transfer.

- 8.02 When an existing Joint Use pole, which is not defective, is prematurely replaced, solely for the requirement of the Joint Partner, in addition to the costs in Section 8.01, the Joint Partner shall also pay the Owner the depreciated value per **Exhibit E**, plus the cost of removal of the old pole.
- 8.03 For rearrangements of Attachments on existing Joint Use poles, the provisions in Section 8.01 for pole replacements shall apply to the cost allocation of such rearrangements.
- 8.04 For an intermediate pole erected in an existing Joint Use pole line for the sole requirement of Joint Partner, Joint Partner shall set and own such pole unless the parties agree otherwise. Set and Sell may apply if Joint Partner cannot set its own intermediate pole.

9 REPLACEMENT/RELOCATION OF POLES

- 9.01 Whenever it is necessary for Owner to replace or relocate a Joint Use pole, Owner shall, before making such change, provide thirty (30) days' notice thereof to Joint Partner, by use of a Proposal, specifying the date of the proposed replacement or relocation.
- 9.02 Upon completion of all prerequisite work, such as removals or transfers, Joint Partner has up to sixty (60) days to complete routine transfers and up to one hundred twenty (120) days in the case of complex transfers. Bulk upload of transfers from a pole audit, or increased volume of transfers due to other causes the parties may mutually agree to extend this deadline.
- 9.03 If, at the expiration of the transfer period pursuant to Section 9.02, including any agreed extensions, all other parties' Attachments are removed on such pole but Joint Partner shall not have removed all of its Attachments therefrom, such pole shall become the property of Joint Partner upon completion of a title transfer for said pole via Bill of Sale, and Joint Partner shall accept title to said pole. Bills of Sale may only be processed on poles in good condition as confirmed by receiving party. Joint Partner shall pay to the Owner the value of each pole as set out in Exhibit E.
 - 9.03.1 If Joint Partner is unable to remove its Attachments due to circumstances beyond its control, such as acts or omissions of Owner and/or a Third Party user of the pole, Joint Partner shall remove its Attachments when Owner's and/or the Third Party's acts or omissions have been corrected. Under such conditions, Joint Partner shall not be required to assume ownership of said pole as described in Section 9.03.
- 9.04 When replacing a Joint Use pole, including those carrying terminals or equipment, the new pole will be set in the same hole or as close as practical to the existing pole to minimize the amount of work required when transferring facilities from the old pole to the new pole. Poles replaced other than in the same hole shall be shown on the proposal sketch indicating the direction and distance to the new pole location. In locations where the Owner deems it necessary to set the replacement pole in a different location, the Owner shall notify the Joint Partner. If said notification is not provided before constructed or Proposal does not match the actual as-built construction, resulting in additional cost to the Joint Partner, the pole Owner shall bear the additional costs incurred by the Joint Partner.

- 9.05 Where an existing pole must be replaced solely to adequately provide for Joint Partner's proposed new or modified Attachment and the parties have jointly determined replacement is the only method to accommodate the proposed Attachment, the provisions of Section 8.01.3 shall apply.
- 9.06 SET AND SELL. Except as provided in Section 9.07, a Joint Partner may only replace poles for the Owner with the Owner's written approval. Costs associated with such replacement shall be paid by the Owner of the pole being replaced. Title to the new pole will remain with the original Owner.
- 9.07 EMERGENCY REPLACEMENT OF AT&T POLE BY CITY. In case of Emergency, CITY, without advanced permission from AT&T, may replace AT&T's Joint Use pole, anchors and guys as may be considered necessary for public safety or for the restoration of CITY's service. CITY shall submit a confirming Proposal within thirty (30) days of such work, and AT&T shall pay CITY a sum equal to the Total Cost incurred in replacing the pole (excluding CITY's transfer cost), and if CITY removes the old pole, the cost of removal. Title to the new pole will remain with AT&T. CITY will transfer its own facilities at no cost to AT&T.
- 9.08 GOVERNMENTAL REQUIREMENT. Whenever Owner receives notice from any state, municipal (including the City of Lake Worth Beach) or other governmental authority, that it is necessary to change the location, adjust the height, or remove a Joint Use pole ("Government Requirement"), Owner shall advise Joint Partner within fourteen (14) days of receiving notice, including providing any contact information furnished by the governmental authority, so the parties may cooperate in the rearrangement, transfer or removal of facilities. Within thirty (30) days after learning of the Government Requirement, Owner will provide notice to Joint Partner via Proposal of the intended work. Within twenty one (21) days of receipt of Proposal, Joint Partner will provide a response to Owner. The parties will cooperate to meet the timeframe requested by the governmental authority. If no response is received from Joint Partner, Owner may assume its Proposal is accepted. If the Government Requirement is pursuant to section 337.403, Florida Statutes (as amended from time to time), the parties will allocate costs consistent with that section.
- 9.09 PROPERTY OWNER REQUIREMENT. Whenever it is necessary to change the location or remove a Joint Use pole or rearrange facilities on a Joint Use pole, by reasons of the requirement of a property owner, before performing the work, Owner will provide Proposal to Joint Partner detailing the work. Each party shall determine whether such work is billable to the property owner. If such work is billable to property owner, work will not proceed until payment is received by the billing party.
- 9.10 ANCHORS AND GUYS. All anchors and guys shall be placed by and at the expense of the party whose Attachments make such work necessary, unless otherwise stated in this Agreement.

10 INTENTIONALLY DELETED

11 ABANDONMENT OF POLES OR ATTACHMENTS

- 11.01 Joint Partner may at any time and in its sole discretion remove any of its Attachments from Owner's poles but shall provide thirty (30) days' prior notice via Proposal of such removal to Owner. Such notice shall fully identify, by pole number and location, the poles from which such Attachments are being removed.

11.02 If the Owner desires at any time to abandon any Joint Use pole, it shall give the Joint Partner notice in writing at least sixty (60) days prior to the date on which it intends to abandon such pole. If at the expiration of said period, Owner shall have no Attachments thereon, and all prerequisite transfers or removals of Third Parties have been completed, but Joint Partner shall not have removed all its Attachments, such pole may be sold to and become the property of Joint Partner. If Joint Partner inspects and agrees to purchase such pole, Owner shall provide Joint Partner with a properly authorized Bill of Sale. The asset transfer will take place upon acceptance of such Bill of Sale. Invoicing for such pole sales shall occur upon execution of the Bill of Sale, and the value of the pole shall be in accordance with the Depreciation Chart attached hereto as **Exhibit E**. Any associated easement or private right-of-way shall be conveyed to the new Owner by the former pole owner. The new Owner shall be responsible for re-tagging the acquired pole. If Joint Partner does not respond to within ninety (90) days of Owner's notice to abandon the pole, ownership of the pole will automatically transfer to Joint Partner via Bill of Sale as set forth above, with the non-responding Joint Partner being deemed by operation of this section to have executed the Bill of Sale.

12 TRANSFERS OF TITLE

- 12.01 In the case of transfers of ownership pursuant to the provisions of this Agreement, or any other agreement between the parties for sale/purchase of poles, a formal Bill of Sale transferring title to the purchasing party will be required. **Exhibit D** provides the Bill of Sale for the parties to use to transfer title. Prior to such Bill of Sale being rendered, the purchasing party shall, at its sole expense, inspect the poles to be transferred to ensure that such poles meet the criteria set by the parties for the sale/purchase and shall forthwith tag such poles to reflect the new ownership. The Owner of the poles shall provide the purchaser with information regarding the assignability of Third Party attachments.
- 12.02 Each party shall obtain, at its own expense, any necessary approvals of any governmental agency having jurisdiction over such party's part of the transaction.
- 12.03 In the case of transfer of ownership of a pole pursuant to the abandonment provisions of Section 11, once the conditions for the transfer of title from the Owner to the Joint Partner have been met, the party abandoning the pole shall provide the party acquiring title to the pole with an executed Bill of Sale.
- 12.04 Payments for such poles by the Joint Partner will be made at the time of purchase. The price of such poles shall be the depreciated value as reflected in **Exhibit E**.
- 12.05 Owner agrees to pay its pro rata share of any personal property taxes applicable to the property hereto conveyed, which accrue prior to the date of this Bill of Sale, and Buyer agrees to pay its pro rata share of any personal property taxes applicable to the property hereto conveyed, which accrue on and after the date of the Bill of Sale.
- 12.06 Whenever any transfer of ownership or title of a pole occurs as provided according to this Agreement, the former Owner shall remove its identification of ownership as soon as practicable.

13 RENTALS

- 13.01 For purposes of this Agreement, a rental year shall be a calendar year from January 1 to the succeeding December 31. The first rental year under the terms of this Agreement shall be 2020, except as provided for in Section 13.04 with respect to applicability of the rate and Section 15.01 with respect to the pole count and the baseline Inventory.
- 13.02 Joint Partner shall compensate Owner annually, in arrears, for those poles on which space is occupied by Joint Partner as of December 31 of the prior Rental Year in an amount per pole as provided in **Exhibit B**.
- 13.03 Each party shall submit to the other, on or before each March 31 of each year for the preceding rental year, a determination of the number of all Joint Use poles subject to this Agreement on which space was occupied by such other party as of the preceding December 31. If the parties are not able to resolve any such exceptions by the next billing date, the number that was in effect prior to the dispute shall be used until such resolution is accomplished, at which time a retroactive adjustment shall be made if necessary.
- 13.04 The net rental due between the parties shall be set forth in a bill issued by the party to whom net rental is due and rendered no later than May 1 of each year for the preceding rental year. The rental rates due for rental years 2020 through 2024 of this Agreement are set forth in **Exhibit B**. The parties also agree that the rates in Exhibit B shall apply retroactively to rental year 2018 and 2019. All such bills shall be paid within ninety (90) days of receipt.
- 13.05 At any time after five (5) years from the date of this Agreement, and at successive intervals of not less than five years, the rental rates applicable under this Agreement shall be subject to joint review and adjustment upon the written request of either party. In such instances, the following conditions shall apply:
- 13.05.1 Request for rental rate readjustment shall be submitted at least sixty (60) days prior to the end of such five-year period. If such request is not submitted within said timeframe, existing rental rates shall continue.
- 13.05.2 Any adjustment in rates shall apply starting with the annual bill next rendered and remain in place until again readjusted in accordance with this Section.

14 JOINT POLE INVENTORY

- 14.01 In order to transition to this Agreement from the prior agreement, the parties have agreed as to the results of an initial Inventory to establish the baseline total of Joint Use poles, as set forth in Section 15.01. T
- 14.02 The parties shall conduct subsequent Inventories 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. The cost of such Inventory shall be allocated proportionately based on number of poles to which each party is attached. To the extent the inventory encompasses third party attachments, the parties will negotiate the cost allocation with such third parties.

Subsequent physical inventories shall be allowed at not less than five (5) year intervals.

- 14.03 Prior to such an undertaking, the party desiring such Inventory shall notify the other party at least one hundred eighty (180) days in advance of the proposed start date.
- 14.04 Should one party elect not to participate, upon being presented the results, that non-participating party has one hundred eighty (180) days in which to dispute the findings. If the nonparticipating party does not provide evidence demonstrating an error in such finding during such period, then such finding shall be conclusive and final.

15 UNACCOUNTED FOR ATTACHMENTS

- 15.01 Neither party shall make Attachments to any pole owned by the other party, except as authorized under the terms of this Agreement. The City of Lake Worth Beach conducted a pole audit in 2018 followed by negotiations with AT&T, and have agreed to the pole counts set forth in **Exhibit F**. The pole counts for 2020 shall serve as the baseline (initial) Inventory from January 1, 2020 going forward. The Owner will have the right to require the Joint Partner to (1) pay for all poles with unaccounted for Attachments which have been added since the later of (a) the prior audit or (b) five years, with the differential prorated as if the unaccounted for Attachments were placed in equal numbers each year since the last audit and billed at the then appropriate rental rate in effect, and (2) submit a Proposal within thirty (30) days of discovering the unaccounted for Attachment. Nothing in this Agreement is intended to have any effect on the current settlement negotiations ongoing between the parties with respect to any pole rent due for Attachments for periods of time prior to the effective date of this Agreement, and by entering into this Agreement neither party is waiving anything with respect to those negotiations.
- 15.02 If the only Attachment on a pole is unused hardware it shall not be considered an Attachment subject to annual rental payment. Such unused hardware will be promptly removed by the Joint Partner.
- 15.03 For purposes of this provision, Attachments in place at the time of the execution of this Agreement shall be considered "approved Attachments." Such Attachments shall be identified as to pole location during the baseline Inventory, unless the parties hereto agree that a recent Inventory shall obviate the need for a baseline Inventory.

16 INTERFERENCE

- 16.01 Owner shall notify the other party in writing or verbally with written notice that, in Owner's reasonable judgment and based upon the Design Requirements, the Attachments of Joint Partner interfere with the use of such poles, the operation of equipment, or constitute a "conflict" (due to a violation of Design Requirements) to the service rendered, by Owner or any other persons licensed by Owner to use such poles, or constitute a hazard to employees of Owner, other licensed persons or the public. Joint Partner shall, remove, rearrange or change its Attachments in compliance with such Design Requirements.
- 16.02 In the case any such interference or conflicts exist, Joint Partner shall resolve such issue regarding its Attachments within thirty (30) days from receipt of the first such notice, except that the parties may mutually agree to an extension as each situation warrants.

- 16.03 If the use of a different pole is thereby made necessary, application for its use shall be promptly made, and if in Owner's reasonable judgment a new or replacement pole is required, payment for such pole shall be made as provided in this Agreement.

17 ATTACHMENTS OF OTHER PARTIES

- 17.01 Nothing herein contained shall be construed as prohibiting the granting by Owner to others, not parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by this Agreement, provided that Owner shall not authorize a subsequent Third Party to use a pole in a manner that Owner knows will interfere with Joint Partner's preexisting use of the pole. The attachments of any Third Party shall be treated for all purposes as Attachments belonging to the Owner, who shall have the right to any payments from such Third Party.
- 17.02 Owner shall provide notice to Joint Partner whenever a Third Party has requested making attachment to Joint Use pole(s), and the Joint Partner is required to perform any transfers or rearrangements of its Attachment(s) as a result. Any such attachments by a Third Party must comply with the Design Requirements as established in the Third Party's agreement with Owner. Any agreement made by Owner with a Third Party for attachments shall require the Third Party to compensate the Owner for pole rental and any other applicable expenses and costs associated with the attachment by the Third Party. The Third Party shall reimburse Joint Partner and any other third parties with prior attachments on such poles for all applicable costs incurred by each in making space available for Third Party, including transfer costs. Furthermore, any such agreement shall obligate the Third Party to promptly transfer or remove its attachments whenever a pole is replaced or removed.
- 17.03 Owner shall require each Third Party, by contract, to maintain its attachments at all times in conformity with the provisions detailed in the agreement between the Third Party and Owner.
- 17.04 Each Owner shall manage Third Parties on its own poles, including permitting, rental and cost recovery. The Joint Partner shall have no responsibility to manage Third Parties' attachments on Owner's poles.
- 17.05 The Joint Partner shall not be responsible for securing all necessary easements, licenses, consents, franchises and permits from any governmental authorities and/or property owners for Third Party attachments.
- 17.06 The Joint Partner shall not be responsible for any Third Party make ready costs or any penalties assessed to a Third Party.

18 INDEMNITY

- 18.01 To the extent permitted by law, and except to the extent caused by the negligence or willful misconduct of the Indemnitees, each party (the "Indemnitor") hereby releases the other party, its affiliates, and their respective directors, officers, administrators, and employees (collectively, "Indemnitees"), from any and all liability for loss of or damage to the property of the Indemnitor and for any interruption to, or failure of, the service rendered by Indemnitor or others in which such Attachments are used. Indemnitor further hereby agrees to indemnify, hold harmless, and defend Indemnitees from and against any and all losses, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including, without limitation, all

judgments rendered against, and all fines and penalties imposed upon Indemnitees, and any reasonable attorneys' fees and any other costs of litigation (hereinafter collectively referred to as "Liabilities") arising out the acts or omissions of the Indemnitor pursuant to this Agreement, except that Indemnitor's obligation to indemnify Indemnitees shall not apply to any Liabilities to the extent arising from Indemnitees' negligence or willful misconduct. The foregoing shall not be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes.

- 18.02 It is further agreed between the parties hereto, that to the extent any of the provisions of this Section are determined to be contrary to law or held to be invalid by any court of competent jurisdiction, this Section shall be construed and applied as if such invalid provisions were not contained herein, attempting at all times to conform, to the extent possible, to the intent of the parties as herein stated, and provide the maximum indemnity allowed by law. With respect to claims against one party by the other party's employees, the latter party agrees to expressly waive its immunity, if any, as a complying employer under the workers' compensation law but only to the extent that such immunity would bar or affect recovery under or enforcement of the indemnification obligations set forth in this Section.
- 18.03 The terms of this indemnity and any other indemnities set forth in this Agreement shall survive the termination of this Agreement. In the event that Owner becomes aware of a claim affecting Joint Partner under the terms of this indemnification clause, Owner shall put Joint Partner on timely notice of such claim.
- 18.04 Each party (the "first party") shall endeavor to require that all contractors, subcontractors and/or any other person acting on the first party's behalf pursuant to this Agreement agree to indemnify, hold harmless, and defend the other party (the "second party") from and against any and all losses, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including, without limitation, all judgments rendered against, and all fines and penalties imposed upon Indemnitees, and any reasonable attorneys' fees and any other costs of litigation (hereinafter collectively referred to as "liabilities") arising out the acts or omission of the first party's contractors, subcontractors and/or any other person acting on first party's behalf pursuant to this Agreement, except that this provision shall not apply to any liabilities to the extent arising from the second party's negligence or willful misconduct. To the extent a contractor, subcontractor or any other person acting on the first party's behalf pursuant to this Agreement will not agree to indemnify, hold harmless, and defend the second party as set forth in the preceding sentence, then the first party shall indemnify, hold harmless, and defend the second party Indemnitees for Liabilities arising out the acts or omissions of the contractor, subcontractor or other person acting on the first party's behalf pursuant to this Agreement, except that first party's obligation to indemnify Indemnitees shall not apply to any Liabilities to the extent arising from the second party Indemnitees' negligence or willful misconduct.

19 INSURANCE

- 19.01 At all times in which the Joint Partner has facilities on Owner's poles, each party as Joint Partner shall keep and maintain in force, at its own expense, the insurance coverage and limits set forth below. The City acknowledges that it is either self-insured for commercial general liability and automobile liability in the amounts specified in Florida Statutes Section 768.28, as may be amended from time to time, or it maintains third-party commercial general liability or business automobile liability insurance in lieu

of exclusive reliance on self-insurance with coverage of \$1 Million. The City agrees to maintain or to be self-insured for worker's compensation and employer's liability insurance in accordance with Chapter 440, Florida Statutes, as may be amended from time to time. The City agrees to provide the AT&T with an affidavit or certificate of insurance evidencing insurance, self-insurance and/or sovereign immunity status, which the parties agree to recognize as acceptable for the below-referenced coverages. Compliance with the requirements of this paragraph shall not relieve the City of its liability and obligations under this Agreement. AT&T shall keep and maintain in force, at its own expense, the insurance coverage and limits set forth below. AT&T may self-insure any required coverage as long as it or its affiliated parents maintains a net worth of at least \$100 million as evidenced in annual certified financials and agrees to provide the City with an affidavit or certificate of insurance evidencing insurance, self-insurance which the parties agree to recognize as acceptable for the below-referenced coverages. Compliance with the requirements of this paragraph shall not relieve Joint Partner of its liability and obligations under this Agreement. Joint Partner shall require that all contractors, subcontractors and/or any other person acting on Joint Partner's behalf maintain coverage while working hereunder, requirements and limits that are reasonable and prudent and, with respect to any maintained on a "claims made" basis, for two years thereafter. Joint Partner must procure the required insurance from an insurance company eligible to do business in the State(s) where the work will be performed and having and maintaining a minimum rating of "A- :VII" from A.M. Best Key Rating Guide.

- 19.01.1 Workers' Compensation insurance with benefits afforded under the laws of each State covered by this Agreement and Employers Liability insurance with limits of \$1,000,000 for Bodily Injury-each accident, \$1,000,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee. To the fullest extent allowable by law, the policy must include a waiver of subrogation with respect to Owner, its affiliates, and their directors, officers and employees.
- 19.01.2 Commercial General Liability insurance with limits of: \$2,000,000 General Aggregate limit; \$1,000,000 each occurrence limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence limit for Personal Injury and Advertising; \$2,000,000 Products/Completed Operations Aggregate limit; and Fire Legal Liability/Damage to Premises Rented sub-limits of \$1,000,000 is also required. Owner, its affiliates, officers, and employees shall be included as additional insured by endorsement as respects this Agreement on the Commercial General Liability policy. A waiver of subrogation shall be with respect to Owner. The required liability policies shall be primary and non-contributory from any insurance that is maintained by Owner.
- 19.01.3 Umbrella/Excess Liability insurance with limits of at \$5,000,000 each occurrence and in the aggregate with terms and conditions at least as broad as the underlying Commercial General Liability, Business Automobile Liability and Employers Liability policies. Umbrella/Excess Liability limits will be primary and non-contributory with respect to any insurance or self-insurance that is maintained by Owner.
- 19.01.4 Automobile Liability insurance with limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, with coverage extending to all owned, hired and non-owned vehicles. Liability limits will be primary and non-

contributory with respect to any insurance or self-insurance that is maintained by Owner.

- 19.02 Joint Partner agrees to provide Owner's third party administrator certificates of insurance stating the types of insurance and policy limits.
- 19.03 All insurance required in accordance with this section must be in effect before Owner will issue Pole attachment or Conduit Occupancy Permits under this Agreement. Joint Partner will provide renewal Certificates of Insurance prior to expiration of any policy.
- 19.04 Joint Partner agrees to provide Owner with at least thirty (30) calendar days' advance written notice of cancellation or non-renewal of any of the insurance policies required herein that are not replaced.
- 19.05 The Parties agree that:
 - 19.05.1 the failure of Owner to demand certificates of insurance or failure of Owner to identify a deficiency will not be construed as a waiver of Joint Partner's obligation to maintain the insurance required;
 - 19.05.2 the insurance required does not represent that coverage and limits will necessarily be adequate to protect the Joint Partner, nor shall it be deemed as a limitation on Joint Partner's liability to Owner;
 - 19.05.3 Joint Partner may meet the required insurance coverage and limits with any combination of primary and umbrella/excess liability insurance; and
 - 19.05.4 Joint Partner is responsible for payment of any deductible or self-insured retention.

20 DEFAULTS

- 20.01 If either party shall be in material breach of any of its obligations under this Agreement and such party fails to cure such breach within thirty (30) days, or such longer period as may be necessary if the breach is not reasonably capable of being cured within thirty (30) days, after receiving written notice thereof by the other party, the party not in default may, without releasing any other legal remedies available to it, may suspend the rights of the defaulting party to further joint use of non-joint use poles. Termination of the right to make additional Attachments, shall, however, not abrogate or terminate the right of either party to maintain the Attachments currently existing on the poles of the other, and all such prior Attachments shall continue thereafter to be maintained in accordance with the terms of this Agreement which shall remain in full force and effect.
- 20.02 If either party shall default in the performance of any work which it is obligated to perform under this Agreement, the other party may, with thirty (30) days' advance written notice to the defaulting party, elect to do such work and the party in default shall reimburse the other party for the Total Cost thereof. Failure on the part of the defaulting party to make such payment within ninety (90) days after presentation of bills therefore shall, at the election of the other party, constitute a material breach of this Agreement and the non-defaulting party may suspend the rights of the defaulting party to further joint use of non-joint use poles.

21 WAIVER OF TERMS OR CONDITIONS

21.01 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, and the same shall be and remain at all times in full force and effect.

22 PAYMENT OF TAXES

22.01 Each party shall pay all taxes and assessments levied on its own property upon Joint Use poles, and the taxes and the assessments that are levied on Joint Use poles shall be paid by the Owner. Any *payments in lieu of taxes* (PILOT) made by Owner shall not be assessed in addition to the rental rate. Rather, the PILOT must be a consideration in the calculation of the rate itself, to the extent permitted under applicable law.

23 TIME OF PAYMENT

23.01 Payments of amounts due hereunder are due ninety (90) days from the receipt of the invoice. On all amounts not so paid, and not in dispute, an additional charge for interest of 1.5% or the maximum interest rate permitted by law, whichever is the lesser amount, per month, will be assessed.

24 EXISTING AGREEMENTS

24.01 All previously existing agreements, written or verbal, between the parties hereto for the Joint Use of poles within the territory covered by this Agreement are by mutual consent hereby terminated, and poles covered by such agreements are brought under this Agreement as of the effective date hereof.

25 TERM OF AGREEMENT

25.01 Except as provided in the Default Section 20, this Agreement shall continue from the date hereof, and shall remain in effect for ten (10) years ("Initial Term"). The Agreement will automatically renew for four (4) successive five (5) year renewal terms, unless one party gives the other party at least one (1) year written notice of termination insofar as the granting of future joint use on non-joint use poles is concerned prior to the expiration of the Initial Term or the then applicable renewal term, as the case may be. Termination of the right to make additional Attachments shall not, however, abrogate or terminate the right of either party to maintain the Attachments currently existing on the poles of the other, and all such prior Attachments shall continue thereafter to be maintained in accordance with the Section 25.02 of this Agreement.

25.02 In the event of termination, the parties agree to promptly begin negotiations toward reaching a successor Joint Use Agreement. If the parties are unable to agree on a replacement Joint Use Agreement, all such prior Attachments shall continue thereafter to be maintained in accordance with the terms of this Agreement, which shall remain in full force and effect solely for the purpose of governing and controlling the rights and obligations of the parties with respect to said Attachments.

26 SERVICE OF NOTICE

- 26.01 Until changed by written notice to the other party, whenever in this Agreement notice is required to be given or is given by either party hereto to the other, such notice shall be in writing and given by certified United States mail, return receipt requested, by overnight courier, or by personal delivery, to the appropriate office/individuals identified in **Exhibit C**. Both parties shall keep this list of contacts current and provide updated information if such information changes.
- 26.02 Notice shall be deemed received five (5) days after deposit into the United States mail, one (1) day after delivery by an overnight courier, on the day of personal delivery, or on the day an Electronic Communication is transmitted, as applicable.

27 ASSIGNMENT OF RIGHTS

- 27.01 Except as otherwise provided in this Agreement, neither party shall assign or otherwise dispose of this Agreement or any of its rights or interests to any firm, corporation, individual, except to a parent, affiliate or successor corporation without the written consent of the other party. However, such consent shall not be unreasonably withheld, delayed or conditioned. Either party may assign or transfer its rights under this Agreement to a parent, affiliate or successor corporation by providing thirty (30) days written notice after the assignment or transfer.
- 27.02 Nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges or franchises, or to 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 consolidations; and in case of the foreclosure of such mortgage, or in case of such lease, transfer, merger or consolidation, such party's rights and obligations hereunder shall pass to and be acquired and assumed by the purchaser on foreclosure, or the transferee, lessee, assignee, merging company, or consolidating company.

28 MISCELLANEOUS

- 28.01 **FORCE MAJEURE.** Except for payment required to be made, neither party shall be considered in default in the performance of its obligations herein, or any of them, to the extent that performance is delayed or prevented due to the following causes but not limited to situations which are beyond the control of said party: Acts of God or the public enemy, war, revolution, terrorism, civil commotion, strike or labor dispute or stoppage, blockade or embargo, fires, explosions, cyclones, floods, unavoidable casualties, quarantines, and epidemics ("Force Majeure Event"). Written notice of a Force Majeure Event must be provided within fifteen (15) days of the Force Majeure Event causing performance to be delayed or prevented in order for the party's delay in performance to not be considered a default. The delay in the performance of the party providing the notice of a Force Majeure Event shall not be considered in default for that period of time as the Force Majeure Event continues to reasonably exist.
- 28.02 **MODIFICATIONS OF AGREEMENT.** No amendments or modifications to this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the parties.
- 28.03 **INVALIDITY.** If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable under any laws, rules or regulations of any

governmental body or agency having jurisdiction there over, any such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been incorporated herein.

- 28.04 **APPLICABLE LAW AND VENUE.** This Agreement shall be governed by and interpreted under the laws of the state of Florida, with venue in state or federal court for Palm Beach County.
- 28.05 **THIRD PARTY BENEFIT.** This Agreement is intended to benefit only the parties herein and their affiliates. Neither party intends to confer any benefit to any other person, including but not limited to a Third Party.
- 28.06 **PRESERVATION OF REMEDIES.** No delay or omission in the exercise of any power or remedy herein provided or otherwise available to a party shall impair or affect that party's right thereafter to exercise the same.
- 28.07 **HEADINGS.** Headings used in this Agreement are inserted only for the convenience of the parties and shall not affect the interpretation or construction of this Agreement.
- 28.08 **SURVIVAL OF OBLIGATIONS.** All payment, performance and indemnity obligations of either party, under this Agreement, shall survive the termination of this Agreement, until said obligations are satisfied.
- 28.09 **INSPECTOR GENERAL.** In accordance with Palm Beach County ordinance number 2011-009, this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. AT&T should review such ordinance in order to be aware of its rights and/or obligations under such ordinance and as applicable.
- 28.10 **PUBLIC ENTITY CRIMES.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not be awarded or perform Work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.
- 28.11 **WAIVER OF JURY TRIAL.** EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF THIS AGREEMENT.
- 28.12 **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which together shall constitute one and the same instrument. This Agreement may also be executed by electronic signature of either party.
- 28.13 **CONTINUING OBLIGATIONS.** Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination (as applicable).
- 28.14 **PREPARATION.** This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

28.15 SCRUTINIZED COMPANIES. To the extent AT&T is subject to section 287.135, Florida Statutes, AT&T (as the "Contractor" for purposes of this provision), AT&T (as the "Contractor" for purposes of this provision) shall acknowledge and agree that:

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

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

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

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

28.15.5 The Contractor agrees that if its status changes in regards to any certification herein, the Contractor shall immediately notify the City of the same.

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

28.16 PUBLIC RECORDS LAW. The parties do not believe that AT&T is or will be acting on behalf of City pursuant to this Agreement, nor intend for AT&T to act on behalf of the City pursuant to this Agreement. Without waiver of the foregoing, to the extent AT&T is a "contractor" as defined in section 119.0701 and 119.011(2), Florida Statutes, AT&T (as the "Contractor" for purposes of this provision) shall:

28.16.1 Keep and maintain public records required by the City to perform the service.

28.16.2 Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

- 28.16.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
- 28.16.4 Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION DEBBIE ANDREA, (561) 586-1660 OR DANDREA@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused this Agreement Regarding Joint Use of Poles to be effective as of the day and year first above written.

**BELLSOUTH TELECOMMUNICATIONS, LLC
D/B/A AT&T FLORIDA**

By: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, who was physically present, as _____ (title), of Bellsouth Telecommunications, LLC D/B/A AT&T Florida, which is authorized to do business in the State of Florida, and who is personally known to me or who has produced the following _____ as identification.

Notary Public

Print Name: _____

My commission expires: _____

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Deborah M. Andrea, City Clerk

By: _____
Pam Triolo, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

EXHIBIT A

SAMPLE PROPOSAL FORM FOR ATTACHMENTS

PROPOSAL FOR ATTACHMENT(S)

PROPOSAL NO. _____

THIS PROPOSAL is made on the ____ day of _____, 2020, by _____ [AT&T or City of Lake Worth Beach] regarding the following described pole(s):

1.0 Pole(s) Description:

The Pole(s) that are subject of this proposal is generally located at: _____ and as further depicted on the attached sketch and digital picture.

2.0 Scope

Under this Proposal, _____ seeks to perform / have performed the following tasks: _____.

3.0 Schedule

The following schedule is proposed for the above Scope: _____.

4.0 Project Manager

The Project Manager for this Proposal is _____, phone: _____; email: _____.

THIS PROPOSAL HAS BEEN SENT TO _____ ON _____, 202__ VIA CERTIFIED MAIL (RRR) / HAND DELIVERY / NATIONALLY RECOGNIZED OVERNIGHT COURIER.

BY: _____

PRINT NAME: _____

TITLE: _____

THIS PROPOSAL IS ACCEPTED BY _____ ON _____, 202__.

BY: _____

PRINT NAME: _____

TITLE: _____

EXHIBIT B

Annual Pole Rental

\$16.50 per Lake Worth Beach pole to which AT&T is attached

\$20.68 per AT&T pole to which Lake Worth Beach is attached

EXHIBIT C

NOTIFICATIONS

CITY

Contract & Billing Issues

**City of Lake Worth Beach
Financial Services Department
7 N. Dixie Highway
Lake Worth Beach, FL 33460**

**With Copy to:
Engineering**

**City of Lake Worth Beach
Electric Utility Director
1900 2nd Avenue North
Lake Worth Beach, FL 33461**

**With Copy to:
Legal**

**City Attorney
7 N. Dixie Highway
Lake Worth Beach, FL 33460**

AT&T

Contract Issues

**Phillip R. Simmons
11760 US Highway 1
Rm 305c, N. Palm Beach, FL. 33408
516-606-2076
g13922@att.com**

Billing/Invoices

(Same as above)

Engineering

**Jonathan Ellzey
9101 SW. 24th St.
Rm 1, Miami, FL., 33165
305-222-8219
jonathan.ellzey@att.com**

Legal

**Bellsouth Telecommunications, LLC d/b/a
AT&T Florida
Attn: AT&T Legal Department – Network
Counsel
208 S. Akard Street
Dallas, Texas 75202-4206**

EXHIBIT D

Bill of Sale

This Agreement is made this ___ day of _____, 20__ (“Effective Date”), by and between _____, a _____ company/corporation with a principal office at _____, hereinafter called Buyer, and _____, a _____ company/corporation, with a principal office in _____, _____, hereinafter called Seller.

For and in consideration of the sum of \$_____ to it in hand paid and other valuable considerations, payable to Seller in immediately available funds, the receipt of all of which is hereby acknowledged, Seller by these presents does hereby bargain, sell, demise, release and forever quitclaim to Buyer, its successors and assigns, all of the rights, title, interest and claim the Seller now has or may have had in the following “Pole(s)” located in , _____ County, _____ (State):

Quantity	Description	Location (address, lat/long, etc.)

_____ Additional locations on attached

This sale is subject to the following terms and conditions:

1. Buyer is purchasing the Poles described above in reliance upon its personal inspection and in an “as is” and “where is” condition, with all faults.
2. Seller makes no warranties, express or implied, of any kind or nature except that (a) Buyer will acquire by the terms of this bill of sale good title to the Poles; (b) Seller has the right to sell the Poles. Without limiting the generality of the foregoing, SELLER MAKES NO WARRANTIES WITH RESPECT TO THE QUALITY, CONTENT, CONDITION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE POLES OR ANY FACILITIES ATTACHED THERETO.
3. BUYER UNDERSTANDS THAT THE SELLER’S POLES OR THE FACILITIES ATTACHED THERETO MAY CONTAIN PRESERVATIVES OR OTHER HAZARDOUS MATERIALS. BUYER REPRESENTS AND WARRANTS THAT IT WILL HANDLE AND TREAT SUCH POLES OR THE FACILITIES ATTACHED THERETO, INCLUDING BUT NOT LIMITED TO, THE POLES OR FACILITIES CONTAINING LEAD, IN COMPLIANCE WITH ALL ENVIRONMENTAL LAWS, INCLUDING, BUT NOT LIMITED TO, PROCURING ALL REQUIRED PERMITS AND CERTIFICATES.
4. As used herein, “Environmental Laws” shall mean all Federal, State or local laws, regulations or ordinances having to do with the protection of health, welfare, the environment or workers, including, without limitation, the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Emergency Planning and Community Right-To-Know Act, the Hazardous Materials Transportation Act, the Occupational Safety and Health Act, and any similar state or local laws, regulations or ordinances.
5. On the Effective Date, Buyer releases Seller of all liability for, and Buyer assumes all liability for, and will defend, indemnify and hold harmless Seller from and against all losses, damages, expenses (including attorneys’ fees and costs), claims, suits and liabilities, whether based in contract or tort (including strict liability), to the extent arising out of, resulting from, or in connection with (a) Buyer’s negligent acts or omissions or wrongful acts or omissions, (b) the failure of Buyer or its agents to fully comply with the terms and conditions of this Agreement, including those concerning compliance with Environmental Laws or (c) assertions under Worker’s Compensation or similar laws made by persons utilized by Buyer. Seller shall promptly notify Buyer of any written claim, loss or demand for which Buyer is responsible under this Clause. Notwithstanding the foregoing, the Seller shall remain liable for, will defend, indemnify and hold harmless Buyer from and against all losses, damages, expenses (including attorneys’ fees and costs), claims, suits and liabilities, whether based in contract or tort (including strict liability), to the extent arising out of, resulting from or in connection with the Poles prior to the Effective Date. Nothing in this Agreement shall be construed as a waiver of a party’s right to sovereign immunity as set forth in section 768.28, Florida Statutes, or other applicable law.

6. If, for any reason, Buyer removes, modifies or disposes of the Poles, then it will do so safely and in accordance with all Environmental Laws and standards, and will do no damage to other property owned by Seller or third parties.

BUYER EXPRESSLY ASSUMES ALL LIABILITIES THAT MAY ARISE FROM THE HANDLING, PROCESSING, REMOVAL OR OTHER USE OF THE POLES OR FACILITIES ATTACHED THERETO, INCLUDING THOSE ARISING UNDER THE ENVIRONMENTAL LAWS.

7. This Agreement does not transfer any rights, licenses or other interests in any easement, right of way, license or other property right or interest associated with the Poles or facilities attached thereto and Seller expressly retains all such rights, licenses and interests.

Effective Date: _____

(Seller's company name)

(Buyer's company name)

Signature

Signature

Printed Name

Printed Name

Title

Title

Address:

Address:

EXHIBIT E

Depreciation Table

Age in Years	35'1	35'2	35'3	40'1	40'2	40'3	45'1	45'2	45'3	50'1	50'2	50'3
0	\$248.50	\$219.00	\$ 214.04	\$299.00	\$ 288.04	\$234.50	\$364.50	\$326.50	\$ 278.00	\$440.00	\$378.50	\$ 322.50
1	\$239.30	\$210.89	\$ 206.11	\$287.93	\$ 277.37	\$225.81	\$351.00	\$314.41	\$ 267.70	\$423.70	\$364.48	\$ 310.56
2	\$230.10	\$202.78	\$ 198.18	\$276.86	\$ 266.70	\$217.12	\$337.50	\$302.32	\$ 257.40	\$407.40	\$350.46	\$ 298.62
3	\$220.90	\$194.67	\$ 190.25	\$265.79	\$ 256.03	\$208.43	\$324.00	\$290.23	\$ 247.10	\$391.10	\$336.44	\$ 286.68
4	\$211.70	\$186.56	\$ 182.32	\$254.72	\$ 245.36	\$199.74	\$310.50	\$278.14	\$ 236.80	\$374.80	\$322.42	\$ 274.74
5	\$202.50	\$178.45	\$ 174.39	\$243.65	\$ 234.69	\$191.05	\$297.00	\$266.05	\$ 226.50	\$358.50	\$308.40	\$ 262.80
6	\$193.30	\$170.34	\$ 166.46	\$232.58	\$ 224.02	\$182.36	\$283.50	\$253.96	\$ 216.20	\$342.20	\$294.38	\$ 250.86
7	\$184.10	\$162.23	\$ 158.53	\$221.51	\$ 213.35	\$173.67	\$270.00	\$241.87	\$ 205.90	\$325.90	\$280.36	\$ 238.92
8	\$174.90	\$154.12	\$ 150.60	\$210.44	\$ 202.68	\$164.98	\$256.50	\$229.78	\$ 195.60	\$309.60	\$266.34	\$ 226.98
9	\$165.70	\$146.01	\$ 142.67	\$199.37	\$ 192.01	\$156.29	\$243.00	\$217.69	\$ 185.30	\$293.30	\$252.32	\$ 215.04
10	\$156.50	\$137.90	\$ 134.74	\$188.30	\$ 181.34	\$147.60	\$229.50	\$205.60	\$ 175.00	\$277.00	\$238.30	\$ 203.10
11	\$147.30	\$129.79	\$ 126.81	\$177.23	\$ 170.67	\$138.91	\$216.00	\$193.51	\$ 164.70	\$260.70	\$224.28	\$ 191.16
12	\$138.10	\$121.68	\$ 118.88	\$166.16	\$ 160.00	\$130.22	\$202.50	\$181.42	\$ 154.40	\$244.40	\$210.26	\$ 179.22
13	\$128.90	\$113.57	\$ 110.95	\$155.09	\$ 149.33	\$121.53	\$189.00	\$169.33	\$ 144.10	\$228.10	\$196.24	\$ 167.28
14	\$119.70	\$105.46	\$ 103.02	\$144.02	\$ 138.66	\$112.84	\$175.50	\$157.24	\$ 133.80	\$211.80	\$182.22	\$ 155.34
15	\$110.50	\$97.35	\$ 95.09	\$132.95	\$ 127.99	\$104.15	\$162.00	\$145.15	\$ 123.50	\$195.50	\$168.20	\$ 143.40
16	\$101.30	\$89.24	\$ 87.16	\$121.88	\$ 117.32	\$95.46	\$148.50	\$133.06	\$ 113.20	\$179.20	\$154.18	\$ 131.46
17	\$92.10	\$81.13	\$ 79.23	\$110.81	\$ 106.65	\$86.77	\$135.00	\$120.97	\$ 102.90	\$162.90	\$140.16	\$ 119.52
18	\$82.90	\$73.02	\$ 71.30	\$99.74	\$ 95.98	\$78.08	\$121.50	\$108.88	\$ 92.60	\$146.60	\$126.14	\$ 107.58
19	\$73.70	\$64.91	\$ 63.37	\$88.67	\$ 85.31	\$69.39	\$108.00	\$96.79	\$ 82.30	\$130.30	\$112.12	\$ 95.64
20	\$64.50	\$56.80	\$ 55.44	\$77.60	\$ 74.64	\$60.70	\$94.50	\$84.70	\$ 72.00	\$114.00	\$98.10	\$ 83.70
21	\$55.30	\$48.69	\$ 47.51	\$66.53	\$ 63.97	\$52.01	\$81.00	\$72.61	\$ 61.70	\$97.70	\$84.08	\$ 71.76
22	\$46.10	\$40.58	\$ 39.58	\$55.46	\$ 53.30	\$43.32	\$67.50	\$60.52	\$ 51.40	\$81.40	\$70.06	\$ 59.82
23	\$36.90	\$32.47	\$ 31.65	\$44.39	\$ 42.63	\$34.63	\$54.00	\$48.43	\$ 41.10	\$65.10	\$56.04	\$ 47.88
24	\$27.70	\$24.36	\$ 23.72	\$33.32	\$ 31.96	\$25.94	\$40.50	\$36.34	\$ 30.80	\$48.80	\$42.02	\$ 35.94
25	\$18.50	\$16.25	\$ 15.79	\$22.25	\$ 21.29	\$17.25	\$27.00	\$24.25	\$ 20.50	\$32.50	\$28.00	\$ 24.00
26	\$9.30	\$8.14	\$ 7.86	\$11.18	\$ 10.62	\$8.56	\$13.50	\$12.16	\$ 10.20	\$16.20	\$13.98	\$ 12.06
27	\$0.10	\$0.03	\$ (0.07)	\$0.11	(\$0.05)	(\$0.13)	\$0.00	\$0.07	\$ (0.10)	(\$0.10)	(\$0.04)	\$ 0.12

EXHIBIT F

Pole Counts

	2018	2019	2020*
CITY Poles to which AT&T is attached	5,955	5,817	5,535
AT&T Poles to which CITY is attached	1,224	1,362	1,644

* The 2020 pole counts are based on the planned transfer from CITY to AT&T of ownership of 420 poles (to be mutually selected by the parties) from a larger group of poles that were previously owned by AT&T and were replaced by CITY with poles of which CITY retained ownership. To arrive at the 2020 counts, 420 was added to the 2018 count of AT&T poles and 420 was deducted from the 2018 count of CITY poles. If the parties transfer a different number of poles than 420, the 2020 pole counts will be adjusted accordingly. With respect to the poles transferred to AT&T, AT&T shall reimburse the City for the depreciated value of the transferred pole (based on labor costs and bare pole costs to install such poles.) Notwithstanding the foregoing, if a pole to be transferred pursuant to this paragraph is scheduled to be replaced as a part of the City's written storm hardening plan, AT&T shall not owe City any amount for that pole. If a pole that is transferred to AT&T pursuant to this paragraph subsequently becomes scheduled to be replaced as part of the City's written storm hardening plan, the City will refund or credit the amount paid by AT&T at such time as the pole is replaced. The final quantity of poles to be transferred and all costs shall be mutually agreed upon by both parties.

EXHIBIT G

CITY Pole Replacement Costs