
THE CITY OF ROCHELLE
Ogle County, Illinois

ORDINANCE
NO. _____

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A POLE
ATTACHMENT AGREEMENT WITH DIGITAL NETWORK ACCESS
COMMUNICATIONS, INC.**

JOHN BEARROWS, Mayor
ROSE HUERAMO, City Clerk

TOM MCDERMOTT
BIL HAYES
DAN MCDERMOTT
KATE SHAW-DICKEY
JOHN GRUBEN
ROSAELIA ARTEAGE
City Council

Published in pamphlet form by authority of the Mayor and City Council of the City of Rochelle
Law Offices of Peterson, Johnson, & Murray—Chicago, City Attorneys
200 W. Adams, Ste. 2125, Chicago, IL 60606

ORDINANCE NO: _____
Date Passed: March 13, 2023

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A POLE
ATTACHMENT AGREEMENT WITH DIGITAL NETWORK ACCESS
COMMUNICATIONS, INC.**

WHEREAS, the City of Rochelle is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 511-1, et seq.; and

WHEREAS, the Illinois General Assembly granted non-home rule municipalities broad authority to “pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities.” 65 ILCS 5/1-2-1; and

WHEREAS, the City provides utility services including electric, water, sewer, wastewater treatment, and advanced communications to the greater Rochelle community through the Utility Department, which is commonly referred to as Rochelle Municipal Utilities (“RMU”); and

WHEREAS, the RMU currently has distribution assets and poles for its electrical distribution system.; and

WHEREAS, Digital Network Access Communications, Inc. desires to enter into a Pole Attachment Agreement to place its communications infrastructure on RMU distribution poles; and

WHEREAS, the Mayor and City Council finds that it is in the best interest of the City, the RMU, its residents and businesses to execute a Pole Attachment Agreement with Digital Network Access Communications, Inc.; and

NOW, THEREFORE BE IT ORDAINED by the Mayor and Council of the City of Rochelle as follows:

SECTION ONE: That the City hereby incorporates all of the recitals above into this Ordinance as if fully set forth herein.

SECTION TWO: The Mayor and City Council authorize the City Manager to execute the attached Pole Attachment Agreement with Digital Network Access Communications, Inc. (attached hereto as Exhibit 1), in a form to be reviewed by the City Attorney.

SECTION THREE: If any provision of this Ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

SECTION FOUR: Where the conditions imposed by any provisions of this Ordinance are more restrictive than comparable provisions imposed elsewhere in any other local law, ordinance, resolution, rule or regulation, the regulations of this Ordinance will govern.

SECTION FIVE: The City Clerk shall publish this Ordinance in pamphlet form.

SECTION SIX: This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED this 13th day of March, 2023.

ATTEST:

City Clerk

Mayor

EXHIBIT 1
(not the execution copy)

POLE ATTACHMENT LICENSING AGREEMENT
BETWEEN
THE CITY OF ROCHELLE d/b/a Rochelle Municipal Utilities
AND
DIGITAL NETWORK ACCESS COMMUNICATIONS, INC.

TABLE OF CONTENTS

ARTICLE	<u>DESCRIPTION</u>	<u>PAGE#</u>
I	DEFINITIONS	2
II	SCOPE OF AGREEMENT	6
III	FEEES AND CHARGES	8
IV	SPECIFICATIONS	10
V	PRIVATE AND REGULATORY COMPLIANCE	11
VI	PERMIT APPLICATION PROCEDURES	12
VII	MAKE-READY WORK/INSTALLATION	14
VIII	TRANSFERS	15
IX	POLE MODIFICATIONS AND/OR REPLACEMENTS	15
X	ABANDONMENT OR REMOVAL OF RMU FACILITIES	17
XI	REMOVAL OF LICENSEE'S FACILITIES	17
XII	TERMINATION OF PERMIT	18
XIII	INSPECTION OF LICENSEE'S FACILITIES	18
XIV	UNAUTHORIZED OCCUPANCY OR ACCESS	19
XV	ADVANCE PAYMENT	19
XVI	LIABILITY AND INDEMNIFICATION	19
XVII	DUTIES, RESPONSIBILITIES AND EXCULPATION	22
XVIII	INSURANCE	23
XIX	AUTHORIZATION NOT EXCLUSIVE	25
XX	ASSIGNMENT	25
XXI	FAILURE TO ENFORCE	26
XXII	TERMINATION OF AGREEMENT	26
XXIII	TERM OF AGREEMENT	27
XXIV	AMENDING AGREEMENT	27
XXV	NOTICES	27
XXVI	ENTIRE AGREEMENT	29
XXVII	SEVERABILITY	29
XXVIII	GOVERNING LAW	29
XXIX	INCORPORATION OF RECITALS AND APPENDICES	29
XXX	PERFORMANCE BONDS	29
XXXI	LOCATION OF APPROVED ATTACHMENTS	29

APPENDICES

A	ATTACHMENT FEES AND CHARGES
B	POLE ATTACHMENT PERMIT APPLICATION PROCESS
C	PERMIT APPLICATION/REMOVAL NOTICE
D	SPECIFICATIONS FOR JOINT-USE POLE AGREEMENT
E	LOCATION OF APPROVED ATTACHMENTS

POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment Licensing Agreement (the “Agreement”) dated this ____ day of _____, 2023 (“Effective Date”) is made by and between the City of Rochelle, an Illinois municipal corporation d/b/a Rochelle Municipal Utilities (hereinafter referred to as “RMU”), and Digital Network Access Communications, Inc., incorporated in the State of Illinois and authorized to do business in the State of Illinois, (hereinafter referred to as “Licensee”).

RECITALS

- A. Whereas, Licensee proposes to install and maintain Communications Facilities and associated communications equipment on RMU's Poles to provide Communications Services; and
- B. Whereas, RMU is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee's Attachments on RMU 's Poles, provided that RMU may refuse, on a non-discriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally applicable engineering purposes, and/or any other Applicable Standard; and
- C. Whereas, the parties intend that this Agreement replace all previous pole attachment Agreements on their termination;

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

AGREEMENT

I. DEFINITIONS

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

- A. Affiliate: when used in relation to an Attaching Entity, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with such Attaching Entity.
- B. Applicable Standards: means all applicable engineering and safety rules and regulations governing the installation, maintenance, and operation of broadband communications facilities and the performance of all work in or around electric RMU Facilities and includes the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), and the regulations of the

Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of RMU or other federal, state or local authority with jurisdiction over RMU Facilities.

- C. Assigned Space: means space on RMU 's Poles that are usable, as defined by the Applicable Standards, for the attachment of Communications Facilities for the provision of Communications Service.
- D. Attaching Entity: means any public or private entity, including Licensee that places an Attachment on RMU's Pole, in accordance with a License Agreement, to provide Communications Service.
- E. Attachment(s): means Communications Facilities that are utilized to provide Communications Service and that are placed directly on RMU's Poles or over lashed onto an existing Attachment, but does not include a service drop attached to a single Pole where the Licensee has an existing Attachment on such Pole. Multiple attachments within 12 inches of a through bolt shall be deemed a single Attachment.
- F. Capacity: means the ability of a Pole to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.
- G. Climbing Space: means that portion of a Pole's surface and surrounding space that is free from encumbrances to enable RMU employees and contractors to safely climb, access and work on RMU Facilities and equipment.
- H. Common Space: means space on RMU's Poles not used for the placement of wires or cables, but which jointly benefits all users of the Poles by supporting the underlying structure and/or providing safety clearance between attaching entities and RMU Facilities.
- I. Communications Facilities: means wire or cable facilities including but not limited to fiber optic, copper and/or coaxial cables or wires utilized to provide Communications Service including all associated equipment.
- J. Communications Service: means the transmission or receipt of broadband signals or other forms of digital or analog signals over Communications Facilities. Communications Services includes without limitation, broadband communications and all other services Licensee is authorized to provide.
- K. Make-Ready Work: means all work, as reasonably determined by RMU, required to accommodate the attachment of Licensee's Communications Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement and/or transfer of RMU Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), pole replacement and construction, but does not include Licensee's routine maintenance.

- L. Occupancy: means the use or specific reservation of Assigned Space for Attachments on the same RMU Pole.
- M. Overlash: means to place an additional wire or cable Communications Facility onto an existing Attachment.
- N. Pedestals/Vaults/Enclosures: means above- or below-ground housings that are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices and/or provide a service connection point and that shall not be attached to RMU Poles (see Appendix D-Specifications).
- O. Permit: means written or electronic authorization (see Appendix C) of RMU for Licensee to make or maintain Attachments to specific RMU Poles pursuant to the requirements of this Agreement. Licensee's attachments made prior to the Effective Date and authorized by RMU ("Existing Attachments") shall be deemed Permitted Attachments hereunder.
- P. Permitted Attachments: means Attachments that have been authorized by Permit
- Q. Pole: means a pole owned by RMU used for the distribution of electricity and/or Communications Service that is capable of supporting Attachments for Communications Facilities.
- R. Pre-Permit Survey: means all work or operations required by Applicable Standards and/or RMU to determine the potential Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole. Such work includes, but is not limited to, field inspection and administrative processing. Pre-Permit Survey shall be arranged with RMU and include the Licensee's professional engineer.
- S. Post-Installation Survey: means all work and inspections required by RMU to determine and verify that Licensee has made attachments in accordance with Applicable Standards and the Permit.
- T. Riser: means metallic, fiberglass, or plastic encasement materials placed vertically to guide and protect communications or RMU wires and cables.
- U. Service Drop: means the cable or wire that runs from the serving terminal located on a pole to the network interface device located at a customer's premises.
- V. Substantial Construction or Modification: means construction activity on a pole that will have an appreciable impact on loading and/or tension and does not include routine maintenance activities.
- W. Tag: means to place distinct markers on wires and cables, coded by color or other means specified by RMU and/or applicable federal, state, or local regulations that will readily identify the owner of the Attachment (e.g., cable TV, telephone, high-speed broadband data, or public safety).

- X. RMU Facilities; means all personal property and real property owned or controlled by RMU, including Poles.

II. SCOPE OF AGREEMENT

- A. Grant of License. Subject to the provisions of this Agreement, RMU hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Permitted Attachments to RMU 's Poles.
- B. Parties Bound by Agreement. Licensee and RMU hereby bind themselves by all provisions of this Agreement and the provisions of any Permit(s) issued pursuant to and consistent with the terms of this Agreement.
- C. Permit Issuance Conditions. RMU will issue a Permit(s) to Licensee when RMU reasonably determines, on a non-discriminatory basis, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards. Permits will be returned in a timely manner not to exceed thirty (30) days, provided that in no instance shall Licensee make Attachments absent the grant of a permit required hereunder.
- D. Reserved Capacity. RMU will grant access to Assigned Space on RMU Poles to Licensee with the understanding that certain RMU Poles may be subject to reserve Capacity for future electric service use. At the time of Permit issuance RMU shall notify Licensee if capacity on particular poles is being reserved for future electric use within the next five years pursuant to a bona fide development plan. For Attachments made with notice of such a bona fide plan, on giving Licensee at least sixty (60) calendar days prior notice, RMU may reclaim such reserved Capacity at any time during the five-year period following the installation of Licensee's Attachment if required for RMU's future electric service use. If reclaimed for RMU's electric service use, RMU may at such time also install associated facilities, including the attachment of communications lines for internal RMU operational or governmental communications requirements. RMU shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity for core electric service requirements, so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article IX. In all other cases, Licensee shall not be required to bear any of the costs or rearranging or replacing its Attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including RMU).
- E. No Interest in Property. No use, however lengthy, of any RMU Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any

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

- F. Licensee's Right to Attach. Nothing in this Agreement, other than a Permit issued pursuant to Article VI, shall grant Licensee any right to attach Licensee's Communications Facilities to any specific Pole or to compel RMU to grant Licensee the right to make an Attachment to any specific Pole.
- G. Necessity of Authorizations. Licensee is obligated to obtain all necessary certification, permitting, and franchising from federal, state, and local authorities prior to making any Attachments.
- H. RMU's Rights over Poles. The parties agree that this Agreement does not limit RMU's right to locate, operate, and maintain its Poles in the manner that will best enable it to fulfill its service requirements.
- I. Expansion of Capacity. RMU will take reasonable steps to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall require RMU to install, retain, extend or maintain any Pole for use when RMU does not need such Pole for its service requirements.
- J. Other Agreements. Except as provided expressly herein, nothing in this Agreement shall limit, restrict or prohibit RMU from fulfilling any agreement or arrangement regarding Poles into which RMU has previously entered, or may enter in the future, with others not party to this Agreement.
- K. Permitted Uses. This Agreement is limited to the uses specifically stated in the Recitals and Licensee shall not have any other use without RMU's express written consent to such use. Nothing in this Agreement requires RMU to allow Licensee to use RMU's Poles after the termination of this Agreement.
- L. Overlashing. The following provisions will apply to Overlashing:
 - 1. Overlashing after the Effective Date, other than for maintenance is subject to the permitting requirements of Article VI.
 - 2. Overlashing performed pursuant to this Article II, Paragraph L.2 shall not increase the Annual Attachment Fee paid by Licensee pursuant to Appendix A, Item I. Licensee or Licensee's Affiliate, however, shall be responsible for all Make-Ready Work and other charges associated with the Overlashing. Licensee shall not have to pay a separate Annual Attachment Fee for such Overlashed Attachment.
 - 3. If Overlashing is required to accommodate facilities of a third party, not affiliated with Licensee, such third party must enter into a License

Agreement with RMU, obtain Permits and pay a separate Attachment Fee (Appendix A, Item I) as well as the costs of all necessary Make-Ready Work required to accommodate the Overlashing. RMU shall not grant such Permits to third parties allowing Overlashing of Licensee's Communications Facilities without Licensee's consent. Overlashing performed under this Article II, Paragraph L.3 shall not increase the fees and charges paid by Licensee pursuant to Appendix A, Item I. Nothing in this Agreement shall prevent Licensee from seeking a contribution from an Overlashing third party to defray fees and charges paid by Licensee.

4. Make-Ready Work procedures set forth in Article VII shall apply, as necessary, to all Overlashing.

M. Enclosures. Licensee agrees to take reasonable steps as identified by both parties to not place any above-ground pedestals, enclosures or cabinets at the base of any Pole associated with such ground mounted facilities. The parties agree to cooperate in resolving climbing safety issues identified by RMU related to the placement of ground mounted facilities at the base of specific Poles. All such installations shall be per the Specifications in Appendix D of this Agreement. Further, Licensee agrees to move any such above- ground enclosures in order to provide sufficient space for RMU to set a replacement Pole.

III. FEES AND CHARGES

- A. Payment of Fees and Charges. Licensee shall pay to RMU the fees and charges specified in Appendix A and shall comply with the terms and conditions specified herein.
- B. Payment Period. Any Attachment that Licensee makes prior to June 30 of a given year shall be calculated at the full yearly attachment rate. Any Attachment made on or after July 1 shall be calculated at half of the yearly attachment rate.
- C. Billing. RMU shall invoice Licensee for the payments annually. RMU will submit to the Licensee an invoice for the annual rental period no later than December 1st of each year. The annual rental period shall commence as of January 1, 2023 and conclude on December 31, 2028. The invoice shall set forth the total number of RMU's Poles for which RMU issued the license and/or Licensee holds a Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits. Licensee shall pay the undisputed portion of each such invoice within thirty (30) calendar days after RMU's issuance thereof.
- D. Refunds. RMU will not owe or refund any fees and charges specified in Appendix A because of any surrender of a Permit granted hereunder. Notwithstanding the forgoing, however, RMU shall not continue to charge rent going forward for any permit surrendered in the previous calendar year, and Licensee shall be entitled to a refund upon discovery of such a billing error.

Commented [DL1]: This can change depending upon approval of the agreement.

- E. Inventory. A joint inventory of all Attachments may be made once every two (2) years by RMU and Licensee, unless both parties agree to a new inventory schedule. The cost of the inventory shall be paid in accordance with Article XIII, Paragraph A.2. At the expiration of three (3) years from the completion of any inventory, Licensee or RMU may request an inventory of attachments, in writing, at least six months prior to the end of the calendar year preceding the year the inventory is to commence. Licensee shall be afforded the opportunity to participate in any such inventories.
- F. Late Charge. If RMU does not receive payment for any fee or other amount owed within thirty (30) calendar days after it becomes due, Licensee, upon receipt of thirty (30) calendar days written notice, shall pay interest to RMU, at the rate of one and a half (1.5%) per month, on the amount due. The above provision notwithstanding, no such interest shall accrue if Licensee provides written notice within thirty (30) calendar days of RMU's notice of late payment, indicating that Licensee is making a good faith dispute of the fee or amount owed. In such event, Licensee shall pay all fees that are not in dispute.
- G. Payment for Make-Ready Work. Except as otherwise provided herein. Licensee will be responsible for payment to RMU for all Make-Ready Work required to accommodate Licensee's attachment of Communications Facilities except as provided in Article II, Paragraph L above regarding Overlapping.
- H. Advance Payment. At the discretion of RMU, Licensee may be required to pay in advance all reasonable costs, including but not limited to administrative, construction, inspections, and Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Communications Facilities pursuant to the procedures set forth in Articles VI and VII below, that are not otherwise recovered in annual attachment fees.
- I. Determination of Charges. Wherever this Agreement requires Licensee to pay for work done or contracted by RMU, the charge for such work shall include all actual and reasonable material, labor, and engineering, and administrative costs and applicable overhead costs that are not otherwise recovered in the annual attachment fee. RMU shall bill its services based upon actual costs, and such costs will be determined in accordance with RMU's cost accounting systems used for recording capital and expense activities. RMU's invoice shall contain sufficient detail for Licensee to verify the charges.
- J. Work Performed by RMU. Wherever this Agreement requires RMU to perform any work, Licensee acknowledges and agrees that RMU, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work.
- K. True Up. Wherever RMU, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of the Licensee or Licensee's

Affiliate and the actual cost of activity exceeds the advance payment of estimated expenses, Licensee agrees to pay RMU for the difference in cost provided that such cost is documented with sufficient detail to enable Licensee to verify the charges and provided that such costs do not exceed 110% of the estimated costs, unless first approved in writing by Licensee. To the extent that the actual cost of the activity is less than the estimated cost, RMU agrees to refund the savings.

- L. Default for Nonpayment. Nonpayment of any undisputed amount due under this Agreement beyond ninety (90) days written notice of nonpayment, shall constitute a default of this Agreement.

IV. SPECIFICATIONS

- A. Installation/Maintenance of Communications Facilities. When RMU issues a Permit pursuant to this Agreement, Licensee shall install and maintain its Communications Facilities in accordance with the requirements and specifications of Appendix D. All of Licensee's Communications Facilities must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards.
- B. Tagging. Licensee shall Tag all of its new Communications Facilities in accordance with applicable law in a manner to allow RMU, or its contractors, to readily identify Licensee's ownership of such Facilities.
- C. Interference. Licensee shall not allow its Communications Facilities to impair the ability of RMU or any third party to use RMU's Poles, nor shall Licensee allow its Communications Facilities to interfere with the operation of any RMU Facilities.
- D. Protective Equipment. Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee shall install protective devices designed to handle the voltage and current impressed on its Communications Facilities in the event of a contact with the supply conductor at its own expense.
- E. Violation of Specifications. If Licensee installs, uses, or maintains Communications Facilities, or any part thereof, in violation of this Agreement, and Licensee has not corrected the violation(s) within thirty (30) calendar days from receipt of written notice of the violation(s) from RMU, RMU at its option, may correct said conditions. RMU will attempt to notify Licensee in writing prior to performing such work whenever practicable. When RMU believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of RMU's service obligations, or pose an immediate threat to the physical integrity of RMU Facilities, RMU may perform such work and/or take such action, as it deems necessary without first giving written notice to Licensee.

As soon as practicable thereafter, RMU will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and reasonable costs incurred by the RMU in taking action pursuant to this subsection.

- F. Restoration of RMU Service. RMU's service restoration requirements shall take precedence over all work operations of Licensee on RMU's Poles.
- G. Effect of Failure to Exercise Access Rights. If licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days of the effective date of such right and any extension thereof, which shall not be unreasonably denied, RMU may use the space scheduled for Licensee's Attachment(s), for its own needs and/or other Attaching Entities. In such instances, RMU shall endeavor to make other space available to Licensee, upon written application per Article VI, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions. For purposes of this paragraph, any right shall not be deemed effective until any necessary make ready work is performed.

V. PRIVATE AND REGULATORY COMPLIANCE

- A. Necessary Authorizations. RMU grants Licensee nondiscriminatory access to Poles and associated public and private rights of way where RMU has the right to authorize the occupancy of Licensee's facilities. Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate, and/or maintain its Communications Facilities on public and/or private property before it occupies any portion of RMU's Poles. RMU retains the right to require evidence that Licensee has obtained such authorizations before RMU issues any Permit to Licensee. Licensee's obligations under this Article V include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith. Licensee shall defend, indemnify and reimburse RMU for all loss and expense, including reasonable attorneys' fees, that RMU may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Communications Facilities on RMU's Poles. Where RMU does not have the right to authorize the occupancy of Licensee's facilities, RMU shall reasonably cooperate with Licensee to permit Licensee to obtain a right of occupancy for Licensee's Facilities. Upon reasonable request by Licensee, RMU will provide any documentation that is not confidential or privileged in its possession supporting a claim that it owns or has authority to grant access to a given Pole, or right of way. For purposes of this subparagraph V.A, RMU shall indemnify Licensee with respect to any claim to the extent arising from RMU's failure to obtain any required permit or authorization to locate a pole where situated.

- B. Lawful Purpose and Use. Licensee's Communications Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state, and local laws.
- C. Forfeiture of RMU's Rights. No Permit granted under this Agreement shall extend to any Pole on which the Attachment of Licensee's Communications Facilities would result in a forfeiture of RMU's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of RMU's rights, is invalid. Further, if any of Licensee's existing Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Facilities upon receipt of written notice from RMU. Notwithstanding the forgoing, Licensee shall have the right to contest any such forfeiture before any of its rights are terminated under the Agreement provided that Licensee shall indemnify RMU for any actual damages that may result during Licensee's challenge. RMU will perform such removal at Licensee's expense no sooner than the expiration of thirty (30) calendar days from RMU's issuance of the written notice.
- D. Effect of Consent to Construction/Maintenance. Consent by RMU to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

VI. PERMIT APPLICATION PROCEDURES

- A. Permit Required. Licensee shall not install any new Attachments, Overlash existing Attachments or perform Substantial Construction or Modification on any Pole without first applying for and obtaining a Permit pursuant to the applicable requirements of Appendix B. No Permit shall be required for prior existing authorized Attachments, Overlashing or Service Drops. No Permit shall be required for routine maintenance or installing Service Drops from Poles with existing authorized Attachments. Attachments to or rights to occupy Utility Facilities not covered by this Agreement, including ducts or conduits must be separately negotiated.
- B. Permits for Overlashing. As set out in Article II, Paragraph L, Permits are required for any Overlashing other than for maintenance allowed under this Agreement and Licensee, Licensee's Affiliate or third party, as applicable, shall pay any necessary Make-Ready Work costs to accommodate such Overlashing.
- C. RMU Review of Permit Application. Upon receipt of a properly executed Application for Permit (Appendix C), RMU will review the Permit Application and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. RMU acceptance of the

submitted design documents does not relieve the certifying professional engineer and Licensee of full responsibility for any errors and/or omissions in the engineering analysis.

- D. Review Period. RMU shall review and respond to “Minor” Permit Applications-less than ten (10) Attachments/Poles-within thirty (30) days of receipt. RMU shall review and respond to “Major” Permit Applications-ten (10) or more Attachments/Poles-within sixty (60) days of receipt.
- E. Expedited Review.
 - 1. In instances where Licensee notifies RMU of an immediate need to make new Attachments, Overlash existing Attachments or perform Substantial Construction or Modification, and provides information as to the need for an expedited review process, RMU will review and either authorize the activity or indicate the Make-Ready work necessary for such activity within fifteen (15) calendar days of RMU’s receipt. RMU reserves the rights to charge Licensee for any overtime or other applicable costs that it incurs in meeting a request for an expedited review.
 - 2. In the event that RMU does not respond within fifteen (15) calendar days of receipt of the request for expedited review with respect to Overlapping existing Attachments, the Licensee shall be allowed to perform Overlapping activity at its sole risk, and by doing so agrees to indemnify RMU for any and all liability stemming from such Overlapping activity. The above notwithstanding, any such Overlapping activity shall be subject to subsequent review by RMU.
 - 3. Provided, however, that all such requests for expedited review shall apply to no more than fifty (50) Poles, and only one request for an expedited review may be pending at any particular time. If Licensee has a near term need to work on more than fifty (50) Poles both parties agree to work in good faith to process those portions of the application that can, and need to be immediately addressed, while mutually agreeing to a reasonable extension of the review process for other portions of the proposed project.
- F. Performance of Make-Ready Work. If Make-Ready Work is required to accommodate Licensee’s Attachments, RMU or its contractors shall perform such work pursuant to Article VII.
- G. Permit as Authorization to Attach. After receipt of payment for any necessary Make-Ready Work, RMU will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s).

VII. MAKE-READY WORK/INSTALLATION

- A. Estimate for Make-Ready Work. In the event RMU determines that it can accommodate Licensee's request for Attachment(s), including Overlashing of an existing Attachment, it will advise, upon request, Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment.
- B. Payment of Make-Ready Work. RMU, at its discretion, may require payment in advance for Make-Ready Work based upon the estimated cost of such work. Upon completion, Licensee shall pay RMU 's actual cost of Make-Ready Work. The cost of Make-Ready Work shall not include the cost to RMU of correcting any existing safety or clearance issues that are detected in the process of performing Make-Ready Work for Licensee's Attachments to the extent such issues are not directly related to Licensee's Communication's Facilities.
- C. Who May Perform Make-Ready Work. Make-Ready Work shall be performed only by RMU and/or a contractor authorized by RMU to perform such work. If RMU cannot perform the Make-Ready Work to accommodate Licensee's Communications Facilities within thirty (30) calendar days of Licensee's request for Attachments, Licensee may notify RMU in writing of its intent to employ a qualified contractor to perform such work, and shall specify when such work shall be performed. In all instances all "qualified contractors" must be pre-approved by RMU for such work on an annual basis.
- D. Scheduling of Make-Ready Work. In performing all Make-Ready Work to accommodate Licensee's Communications Facilities, RMU will endeavor to include such work in its normal work schedule. In the event Licensee requests that RMU perform the Make-Ready Work on a priority basis or outside of RMU's normal work hours, Licensee agrees to pay any resulting increased costs. RMU is not hereby required to perform Licensee's work before other scheduled work or RMU service restoration.
- E. Submission of Installation Plans Required. Before commencing any installation of its Communications Facilities on RMU's Poles, including Overlashing of existing Attachments, Licensee shall provide a copy of Licensee's plans for installation, which shall accompany the Permit application, including the name of the party (Licensee and/or contractor) performing such work and the approximate date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article XVIII.
- F. Licensee's Installation/Removal/Maintenance Work.
 - 1. Licensee shall perform all installation, removal, and maintenance work at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of RMU's Poles or

Facilities or any other Attaching Entity's facilities or equipment attached thereto.

2. All of Licensee's installation, removal, and maintenance work performed on RMU's Poles or near or in other RMU Facilities, either by its employees or contractors, shall comply with all applicable regulations specified in Article IV, Paragraph A. Licensee shall assure that any person installing, maintaining, or removing its Communications Facilities is fully qualified and familiar with all Applicable Standards, the provisions of Article XVII, and the Minimum Design Specifications contained in Appendix D.

VIII. TRANSFERS

- A. Required Transfers of Licensee's Communications Facilities. If RMU reasonably determines that a transfer of Licensee's Communications Facilities is necessary, subject to the terms of this Agreement, Licensee agrees to allow such transfer. In such instances, RMU will, at its option, either perform the transfer using its personnel, and/or contractors and/or require Licensee to perform such transfer within thirty (30) calendar days after receiving notice from RMU; provided that such 30 day period shall be extended as necessary, if under then existing circumstances (e.g., multiple requests pending at the same time), transfer cannot be reasonably accomplished within said 30 day period. The costs of such transfers shall be apportioned as specified under Article IX. If Licensee fails to transfer its Facilities within thirty (30) calendar days (or extended period, as applicable) after receiving such notice from RMU, RMU shall have the right to transfer Licensee's Facilities using its personnel and/or contractors at Licensee's expense. RMU shall not be liable for damage to Licensee's Facilities except to the extent provided in Article XVI, Paragraph A.

IX. POLE MODIFICATIONS AND/OR REPLACEMENTS

- A. Licensee's Action Requiring Modification/Replacement. If any Pole to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional facilities in accordance with all Applicable Specifications, RMU will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including but not limited to replacement of the Pole and rearrangement or transfer of RMU's Facilities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities' existing Attachments. If Licensee elects to go forward with the necessary changes, Licensee shall pay to RMU the actual cost of the Make-Ready Work, performed by RMU, per Article III, Paragraph I. RMU, at its discretion, may require advance payment.
- B. Treatment of Multiple Requests for Same Pole. If RMU receives Permit Applications for the same Pole from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodating their respective

requests would require modification or replacement of the Pole, RMU will allocate among such licensees the applicable costs associated with such modification or replacement. Such allocation applies only to those Attachments involving cable/wire and not Risers and/or Other Equipment.

- C. Guying. If use of guying to accommodate Licensee's Attachments is required, Licensee shall provide the same, at the expense of Licensee, and to the satisfaction of RMU as specified in Appendix D. Licensee shall not make new attachments of its guy wires to RMU's anchors without prior written permission of the RMU.
- D. Allocation of Costs. RMU shall allocate the costs for any rearrangement or transfer of Licensee's Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of RMU's cables or wires) to RMU and/or Licensee and/or other Attaching Entity on the following basis:
 - 1. If RMU intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Licensee, shall not be responsible for costs associated with the rearrangement or transfer of Licensee's Communications Facilities, except and to the extent necessary in connection with RMU's core electric service requirements. Prior to any such modification or replacement, RMU shall provide Licensee written notification of its intent in order to allow Licensee a reasonable opportunity to elect to modify or add to its existing Attachment. Should Licensee so elect, it must seek RMU's written permission per the Agreement. The notification requirement of this Paragraph D. I shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Communications Facilities, Licensee shall bear the incremental costs incurred by RMU in making the space on the Poles accessible to Licensee.
 - 2. If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than RMU or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring Licensee's Communications Facilities. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's facilities.
 - 3. If RMU must modify or replace the pole for other reasons unrelated to the use of the Pole by Attaching Entities (e.g., storm, accident, deterioration), RMU shall pay the costs of such modification or replacement, provided however, that Licensee shall be responsible for the costs of rearranging or transferring its Communications Facilities. In the event such pole

modification or replacement is necessitated by a road widening or similar project and RMU receives compensation therefor, RMU shall reimburse Licensee its pro-rata costs of rearranging its facilities from said amount.

- E. No provision of this Agreement shall be construed to require RMU to relocate its Attachments or modify/replace its Poles for the benefit of Licensee, provided, however, any denial by RMU for modification of the pole is based on nondiscriminatory standards of general applicability.

X. ABANDONMENT OR REMOVAL OF RMU FACILITIES

- A. Notice of Abandonment or Removal of RMU Facilities. If RMU desires at any time to abandon or remove any RMU Facilities to which Licensee's Communications Facilities are attached, it shall give Licensee notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such RMU Facilities. Notice may be limited to thirty (30) calendar days if RMU is required to remove or abandon its RMU Facilities as the result of the action of a third party and the greater notice period is not practical. Such notice shall indicate whether RMU is offering Licensee an option to purchase the Pole(s). If, following the expiration of said period, Licensee has not yet removed and/or transferred all of its Communications Facilities therefrom or, if applicable, has not entered into an agreement to purchase the RMU Facilities pursuant to Paragraph B of this Article, RMU shall have the right, subject to any applicable laws and regulations, to have Licensee's Communications Facilities removed and/or transferred from the Pole at Licensee's expense. RMU shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities.
- B. Option to Purchase Abandoned Poles. Should RMU desire to abandon any Pole, RMU, in its sole discretion, may grant Licensee the option of purchasing such Pole at a reasonable rate, taking into consideration the depreciated value of the pole, negotiated with RMU. Licensee must notify RMU in writing within thirty (30) calendar days of the date of RMU's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should RMU and Licensee fail to enter into an agreement for Licensee to purchase the Pole prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph A of this Article X.

XI. REMOVAL OF LICENSEE'S FACILITIES

Removal on Expiration/Termination. At the expiration or other termination of this License Agreement or individual Permit(s), Licensee shall remove its Communications Facilities from the affected Poles at its own expense within 120 calendar days of written notice of termination. If Licensee fails to remove such facilities within one hundred twenty (120) calendar days of

expiration or termination or some greater period as allowed by RMU, RMU shall have the right to have such facilities removed at Licensee's expense.

XII. TERMINATION OF PERMIT

- A. Automatic Termination of Permit. Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Communications Facilities on public or private property at the location of the particular Pole(s) covered by the Permit. Notwithstanding the forgoing, Licensee shall have the right to contest any such expiration or denial of authority before any of its rights are terminated under the Agreement provided that Licensee shall indemnify RMU for any actual damages that may result during Licensee's challenge.
- B. Surrender of Permit. Licensee may at any time surrender any Permit for Attachment and remove its Communications Facilities from the affected Pole(s), provided, however, that before commencing any such removal Licensee must notify RMU in writing of Licensee's plans for removal, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article XVIII. No refund of any fees or costs will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from RMU's Poles within thirty (30) calendar days thereafter, RMU shall have the right to remove Licensee's Attachments at Licensee's expense. Following removal of its facilities, Licensee shall not thereafter owe any further amounts for such attachments, except for amounts accruing up to the date of removal.

XIII. INSPECTION OF LICENSEE'S FACILITIES

- A. Inspection.
 - 1. Initial Inspection. Within the first year of this Agreement, RMU reserves the right to inspect all of Licensee's existing Attachments, utilizing RMU's employees, or contractors at RMU's expense.
 - 2. Subsequent Inspections. Thereafter, RMU shall have the right at any time (but no more often than one time every five (5) years) to make periodic inspections of Licensee's Communications Facilities, utilizing its employees and/or contractors. In the event such inspection shows 5% or greater deviation between authorized attachments and actual attachments, Licensee shall reimburse RMU its reasonable costs of the audit (equitably apportioned among all attachers).
- B. Notice. RMU will give Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until Licensee has received written notice. RMU shall afford Licensee the opportunity to participate in such audits and

shall develop a detailed report of the findings uncovered in such inspections and shall share such report with Licensee.

- C. Duty of Full Compliance. Licensee agrees to bring its Attachments into full compliance with this Agreement promptly after receipt of notice in the event that any inspection determines that Licensee does not comply with this Agreement.
- D. No Liability. The making of any inspections under this Article XIII, or the failure to do so, shall not operate to impose upon RMU any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations, or liability, whether Licensee assumes under this Agreement, or otherwise existing.

XIV. UNAUTHORIZED OCCUPANCY OR ACCESS

- A. Penalty Fee. If any of Licensee's Attachments are found occupying any Pole for which no Permit has been issued and for which an Annual Attachment fee is owed and not paid hereunder, RMU, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Access Penalty Fee as specified in Appendix A, Item 3.
- B. No Ratification of Unlicensed Use. No act or failure to act by RMU with regard to said unlicensed use shall ratify the unlicensed use. If any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by RMU of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations, and responsibilities of this Agreement in regards to said unauthorized use from its inception.

XV. ADVANCEPAYMENT

RMU holds the right to require, at its sole discretion, that Licensee furnish Advance Payment for each new Attachment in the amount of the first Annual Attachment Fee as specified in Appendix A, Item 1 plus any estimated Make-Ready Work expenses.

XVI. LIABILITY AND INDEMNIFICATION

- A. Liability. RMU reserves to itself the right to maintain and operate its Poles in such manner as will best enable it to fulfill its service requirements. Licensee agrees to use RMU's Poles at Licensee's sole risk. Notwithstanding the foregoing, RMU shall exercise reasonable precaution to avoid damaging Licensee's Communications Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to Article XVI, Paragraph F, RMU agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of such facilities damaged by the gross negligence or willful misconduct of RMU. However, the aggregate liability of RMU, to Licensee, in any fiscal year, for any other fines, penalties, claims or damages stemming from interruption of Licensee's service or interference with the operation of Licensee's

Communications Facilities shall not exceed the amount of the total Annual Pole Attachment Fees paid by Licensee to RMU for that year as calculated based on the number of Attachments under Permit at the time of the damage per Appendix A, Item 1.

- B. Indemnification. Licensee shall defend, indemnify and hold harmless RMU and its officials, officers, board members, council members, commissioners, representatives, employees, agents, attorneys and contractors, against any and all third party liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by RMU under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney fees of RMU and all other costs and expenses of litigation) ("Covered Claims") arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, and employees, agents and contractors of Licensee's Communications Facilities, except to the extent of RMU's gross negligence or willful misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:
1. Intellectual property infringement, libel, and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;
 2. Cost of work performed by RMU that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents and contractors to install, maintain, use, transfer or remove Licensee's Communications Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes RMU to perform on Licensee's behalf;
 3. Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents, and contractors pursuant to this Agreement;
 4. Liabilities incurred as a result of Licensee's and Licensee's officers, directors, employees, agents, and contractors violation, of any law, rule, or regulation of the United States, the State of Illinois or any other governmental entity or administrative agency.

Notwithstanding anything to the contrary contained in this Agreement, neither party shall be liable to the other party for any special, indirect, punitive, or consequential damages.

- C. Procedure for Indemnification.

1. RMU shall give notice promptly to the Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against RMU, the notice shall be given to Licensee by RMU no later than ten (10) calendar days after written notice of the action, suit or proceeding was received by RMU.
 2. Failure to give timely notice will not relieve the Licensee from its obligation to indemnify RMU, unless the Licensee is materially prejudiced by such failure.
 3. The Licensee will have the right at any time, by notice to the RMU, to participate in or assume control of the defense of the claim with counsel of its choice. The RMU agrees to cooperate fully with the Licensee. If the Licensee assumes control of the defense of any third-party claim, RMU shall have the right to participate in the defense at its own expense. If the Licensee does not so assume control or otherwise participate in the defense of any third-party claim, the results obtained by the RMU with respect to the claim shall bind Licensee.
 4. If the Licensee assumes the defense of a third-party claim as described above, RMU will not admit any liability with respect to, or settle, compromise or discharge, any third-party claim without the Licensee's prior written consent. RMU will agree to any settlement, compromise, or discharge of any third-party claim that the Licensee may recommend which releases the RMU completely from such claim.
- D. Environmental Hazards. Licensee represents and warrants that, except for batteries, its use of RMU's Poles will not generate any hazardous substances and that it will not store or dispose any hazardous substances on or about RMU 's Poles. Licensee will not transport any hazardous material to RMU 's Poles and Licensee warrants that Licensee's Communications Facilities will not constitute or contain and/or generate any hazardous substance in violation of federal, state, or local law now or hereafter in effect including any amendments. "Hazardous substance" means any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous, toxic, or radioactive substance, or other similar term by any federal, state, or local laws, regulations, or rules now or hereafter in effect including any amendments. The meaning of 'hazardous substance' shall be given its broadest possible meaning. Licensee further represents and warrants that in the event of breakage, leakage, incineration or other disaster, its Communications Facilities would not release such hazardous wastes or substances. Licensee, and its agents, contractors and subcontractors, shall defend, indemnify and hold harmless RMU and its respective officials, officers, board members, council members,

commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage or discovery of any such hazardous wastes or hazardous substances on, under or adjacent to RMU 's Poles attributable to Licensee's use of RMU's Poles.

- E. Hazardous Waste. Should RMU's Poles be declared hazardous waste, except to the extent caused by Licensee (for which Licensee shall be responsible), RMU shall be solely responsible for the cost of disposal of said Poles. If the source or presence of the hazardous substance is attributable to particular parties, such costs shall be proportionately borne by said parties.
- F. Municipal Liability Limits. No provision of this Agreement shall be a waiver for any purpose by RMU of any applicable State limits on municipal liability. No indemnification provision contained in this Agreement under which Licensee indemnifies RMU shall limit any other indemnification provision contained in this Agreement.

XVII. DUTIES, RESPONSIBILITIES, AND EXCULPATION

- A. Duty to Inspect. Licensee acknowledges and agrees that RMU does not warrant the condition or safety of RMU's Poles, or the premises surrounding the Poles, and Licensee further acknowledges and agrees that it has an obligation to inspect RMU's Poles and/or premises surrounding the Poles, prior to commencing any work on RMU's Poles or entering the premises surrounding the Poles.
- B. Knowledge of Work Conditions. By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.
- C. **DISCLAIMER. RMU MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO RMU'S POLES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS, ALL OF WHICH RMU DISCLAIMS, AND RMU MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT.**
- D. Duty to Competent Supervision and Performance. The parties agree, that Licensee and its agents, servants, employees, contractors and subcontractors will work, pursuant to this agreement, near electrically energized lines, transformers, or other RMU Facilities. The parties agree that Licensee will not interrupt energy therein during the continuance of this Agreement, except in an emergency endangering life,

grave personal injury, or property. Licensee shall ensure that its employees, servants, agents, contractors, and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of RMU, and the public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees with competent supervision and sufficient and adequate tools and equipment to perform their work in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of RMU's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

- E. Requests to De-energize. In the event RMU de-energizes any equipment or line at Licensee's request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse to RMU for all costs and expenses incurred, in accordance with Article III, Paragraph I. Before RMU de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses RMU will incur in accommodating Licensee's request.
- F. Interruption of Service. In the event that Licensee causes an interruption of service by damaging or interfering with any equipment of RMU, Licensee shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom at its expense and shall notify RMU immediately.
- G. Duty to Inform. Licensee further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on RMU's Poles by Licensee's employees, servants, agents, contractors or subcontractors. Licensee accepts as its duty and sole responsibility to notify and inform Licensee's employees, servants, agents, contractors, or subcontractors of such dangers, and to keep them informed regarding the same.

XVIII. INSURANCE

- A. Policies Required. At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:
 - 1. Worker's Compensation and Employers' Liability Insurance. Statutory worker's compensation benefits and employers' liability insurance with a limit of liability no less than that required by Illinois law at the time of the application of this provision for each accident. This policy shall waive subrogation in favor of RMU. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

2. Commercial General Liability Insurance. Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence.
 3. Automobile Liability Insurance. Business automobile policy shall cover all owned, hired and non-owned private passenger autos and commercial vehicles. Limits of liability shall be not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.
 4. Umbrella Liability Insurance. Coverage is to be in excess of the sum employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability shall be not less than \$4,000,000 each occurrence, \$4,000,000 aggregate.
 5. Property Insurance. Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and RMU structures, fencing, or support systems that may be placed on, within, or around RMU Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.
- B. Qualification: Priority: Contractors' Coverage. All insurers providing coverage pursuant to this agreement must be authorized to do business under the laws of the State of Illinois and have a "B+" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, worker's compensation, and employer's liability, comprehensive general liability and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article with the same limits.
- C. Certificate of Insurance: Other Requirements. Upon request, Licensee will furnish RMU with a copy of a Certificate of Insurance. The Certificate shall reference this Agreement and worker's compensation and property insurance waivers of subrogation required by this Agreement. RMU, its City Council members, officers, officials, employees and representatives of RMU (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except worker's compensation, which shall be so stated on the Certificate of Insurance. All policies, other than worker's compensation, shall insure on an occurrence and not on a claims-made basis. Licensee shall defend, indemnify, and hold harmless RMU and Additional Insureds from and against payment of any deductible and payment

of any premium on any policy required under this Article. Licensee shall obtain Certificates of Insurance and provide a copy to RMU upon request.

- D. Limits. The limits of liability set out in this Article may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party. Said increases or decreases shall occur 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 Licensee's exposure to risk.
- E. Prohibited Exclusions. No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Agreement with RMU except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to RMU's employees or agents, or (4) that exclude coverage of liability for injuries or damages caused by Licensee's contractors or contractor's employees, servants or agents. This list of prohibited provisions shall not be exclusive.
- F. Deductible/Self-insurance Retention Amounts. Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

XIX. AUTHORIZATION NOT EXCLUSIVE

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

XX. ASSIGNMENT

- A. Limitations on Assignment. Licensee shall not assign its rights or obligations or any part of such rights or obligations, under this Agreement, without the prior written consent of RMU, and RMU shall not withhold said consent without good reason. Notwithstanding the foregoing, Licensee may assign or transfer its interest in this Agreement to Licensee's Affiliate or to any person acquiring all or substantially all of Licensee's assets or stock, without RMU's consent, if RMU is given prior written notice of such transfer.
- B. Obligations of Assignee/Transferee and Licensee. No assignment or transfer under this Article XX shall be effective until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish RMU with prior written notice of the transfer or assignment, together with the name and address of the transferee or

assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall be responsible for performing any of the terms, covenants, or conditions of this Agreement, up to the date of assignment, unless RMU gives its express written consent to the release of Licensee.

- C. Sub-licensing. Without RMU's prior written consent, Licensee shall not sub-license to a non-affiliated third party, including but not limited to allowing third parties to place Attachments on RMU's Poles, including Over lashing, or to place Attachments for the benefit of such third parties on RMU 's Poles. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Communications Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlashing is not subject to the provisions of this Article XX, Paragraph C.

XXI. FAILURE TO ENFORCE

Failure of RMU or Licensee to act to enforce compliance with any of the terms or conditions of this Agreement or to give notice that this Agreement or any authorization granted hereunder is terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement. This agreement shall be and remain at all times in full force and effect until terminated, in accordance with the Agreement.

XXII. TERMINATION OF AGREEMENT

- A. Notwithstanding Licensee's rights under Article XII, RMU shall have the right, pursuant to the procedure set out in Article XXII, Paragraph B, to terminate this entire Agreement, or any Permit issued hereunder, whenever Licensee is in default of any term or condition of this Agreement, including but not limited to the following circumstances:
1. Construction, operation or maintenance of Licensee's Communications Facilities in violation of law or in aid of any unlawful act or undertaking; or
 2. Construction, operation or maintenance of Licensee's Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority; or
 3. Construction, operation or maintenance of Licensee's Communications Facilities without the insurance coverage required under Article XVIII.
- B. RMU will notify Licensee in writing within thirty (30) calendar days, or as soon as reasonably practicable, of any condition(s) applicable to Paragraph A. above. Licensee shall take immediate corrective action to eliminate any such condition(s) within sixty (60) calendar days, or such longer period mutually agreed to by the parties, and shall confirm in writing to RMU that the cited condition(s) has (have) ceased or been corrected. If Licensee fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, RMU may immediately

terminate this Agreement or any Permit(s). In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, RMU may remove Licensee's Communications Facilities pursuant to the terms of Article XI. Licensee shall be liable for and pay all fees and charges pursuant to terms of this Agreement to RMU until removal of Licensee's Communications Facilities.

XXIII. TERM OF AGREEMENT

- A. This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years. Either party may terminate this Agreement at the end of the five (5) year term by giving to the other party written notice of an intention to terminate the Agreement at least ninety (90) calendar days prior to the end of the said term. If no such notice
- B. is given the Agreement shall automatically be extended for an additional five (5) year term. Either party may terminate the Agreement at the end of the second five (5) year term by giving to the other party written notice of an intention to terminate the Agreement at least ninety (90) calendar days prior to the end of the said second term. Upon failure to give such notice, this Agreement shall automatically continue in force until terminated by either party after ninety (90) calendar days written notice.
- B. Even after the termination of this Agreement, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's Communications Facilities as provided for in Article XVI.

XXIV. AMENDING AGREEMENT

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

XXV. NOTICES

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

If to RMU, to:

City Manager
Rochelle Municipal Utilities
420 N. 6th Street
Rochelle, IL 61068

With a copy to:

Dominick L. Lanzito
Peterson, Johnson & Murray – Chicago LLC
200 West Adams – Ste. 2125
Chicago, IL 60606
Phone: (312) 782-7150
dlanzito@pjmlaw.com

IF to Licensee, to:

Digital Network Access Communications, Inc.
Attn: Michael C. Hammett
601 First Avenue
Rochelle, Illinois 61068
PH: 815-562-4290
FX: 866-334-9985

Alternatively, notice may be given to such other person and/or address as either party, from time to time, may give the other party in writing.

- B. Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the public, where RMU can contact Licensee to report damage to Licensee's facilities

XXVI. ENTIRE AGREEMENT

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

XXVII. SEVERABILITY

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of the Agreement

to either party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the parties that the Agreement be administered as if not containing the invalid provision.

XXVIII. GOVERNING LAW

The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Illinois.

XXIX. INCORPORATION OF RECITALS AND APPENDICES

The parties hereby incorporate in this Agreement all the Recitals stated above and all appendices to the Agreement and the same constitute a part of this Agreement.

XXX. PERFORMANCE BONDS

On execution of this Agreement, Licensee shall provide to RMU a performance bond for Fifty Thousand Dollars (\$50,000.00). The bond shall be with an entity and in a form acceptable to RMU. The purpose of the bond is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties and fees due to RMU that arise by reason of the construction, operation, maintenance or removal of Licensee's Communications Facilities on or about RMU's Poles.

XXXI. LOCATION OF APPROVED ATTACHMENTS

RMU hereby authorizes Licensee to attach Communications Facilities to RMU Poles in the locations shown on Exhibit E. All such Attachments shall be made in accordance with the specifications on Exhibit D, and shall be deemed Permitted Attachments. All subsequent Attachments shall be made only upon issuance of a Permit in accordance with the provisions of this Agreement.

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

City of Rochelle, by
Rochelle Municipal Utilities,
one of its departments
(ELECTRIC UTILITY)

Digital Network Access Communications,
Communications, Inc.

(COMMUNICATIONS UTILITY)

BY: _____

BY: _____

TITLE: City Manager

TITLE:

APPENDIX A
ATTACHMENT FEES AND CHARGES

Effective Date: March 1, 2023

Commented [DL2]: Effective date dependent upon approval.

1. Annual Pole Rental Fee:

The annual pole rental fee for Attachments by Licensee to RMU-owned poles is \$25.00 per pole. The pole space utilized by Licensee is typically 2 feet or a portion thereof, measured from above the lowest point on the pole on which attachments can be made. The attachment fee is based on the average space, and Licensee will not be subject to additional fees for the isolated occurrences where Licensee attachments exceed the 2 feet of space.

2. Periodic Rental Fee Review/Adjustment

After this Agreement's initial five-year term, and at the end of every subsequent five-year period, the annual rental fee per pole may be adjusted. To request a rental fee adjustment, a party must send notice under Article XXV to the other party 180 days before the end of the applicable five-year period. The new annual rental fee will apply effective the annual billing after the parties mutually agree to the new rental fee amount.

3. Unauthorized Attachment Penalty Fee, per pole:

Three (3) times the annual pole rental fee.

APPENDIX B

POLE ATTACHMENT PERMIT APPLICATION PROCESS

The following procedure is to be followed by Licensee when seeking to make or remove Attachments on or from RMU's Poles. Note that no entity may make any Attachments to RMU's Poles without having first entered into a binding Pole Attachment Licensing Agreement.

1. Licensee shall submit a properly executed Application for Permit (Appendix C), including the Pre-Permit Survey.
2. Following the Pre-Permit Survey, RMU will review the Permit Application and discuss any issues with Licensee including engineering or Make-Ready Work requirements associated with the Permit Application.
3. Upon receipt of written authorization, RMU will proceed with Make-Ready Work according to the specific agreed upon installation plans and the terms of the Agreement, including if necessary, payment for the Make-Ready Work charges as set out by RMU and agreed to by the Licensee.
4. RMU will sign and return the Application for Permit authorizing the Licensee to make its Attachment(s) in accordance with agreed upon installation plans.

APPENDIX C
PERMIT APPLICATION/REMOVAL NOTICE

Application Date: ____/____/____

Sheet 1 of ____

To: [Insert Address of Utility Permitting Department]

Desire to: Attach to Utility Pole(s) Remove Attachment from Utility Pole(s)

Permit No. _____ Superseded Permit No. _____

No. of Poles this permit: _____ Total Poles in Use: _____

Licensee Name: _____

Address: _____

Contact Person: _____ Title: _____ Phone No. _____

RMU Contact Person: _____ Title: _____ Phone No. _____

Narrative Description of proposed activity:

In accordance with the terms and conditions of the Joint-Use Pole Agreement dated _____, application is hereby made for a Permit to attach to Pole(s) in the locations detailed on the attached Route Map(s) and/or Notice is hereby given to vacate Pole(s) in the locations detailed on the attached Route Map(s).

Permission is hereby granted to Attaching Utility to attach to pole(s) listed on the attached Field Data Summary Sheets, subject to payment of the necessary Make-Ready Work charges as set out by Owner Utility and agreed to by the Attaching Utility, and/or acknowledgement is hereby made of the vacating of pole(s) listed on the attached Field Data Summary Sheets.

SUBMITTED:

Attaching Utility _____

By _____

Name: _____

Title _____

Date _____

APPROVED:

Owner Utility _____

By _____

Name: _____

Title _____

Date _____

APPENDIX D

SPECIFICATIONS FOR JOINT-USE POLE AGREEMENT

- A. Applicable Standards. Each party will comply with all applicable engineering and safety standards governing the installation, maintenance and operation of Facilities and the performance of all work in or around Electric Facilities, including the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), The Blue Book Manual of Construction Procedures (Telcordia Technologies SR-1421), and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of Utility or other federal, state or local authority with jurisdiction over Utility Facilities. In all instances of conflict between standards the stricter standard shall be applied unless specifically waived in writing by the RMU.
- B. Pre-Existing Attachments. [Omitted].
- C. Clearances
 - 1. Attachment and Cable Clearances: Attachments on poles, including metal attachment clamps and bolts, metal cross arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the NESC.
 - 2. Service Drop Clearance: The parallel minimum separation between Electric Utility Service Drops and Communications Utility Service Drops shall be twelve (12) inches, and the crossover separation between the drops shall be twenty-four (24) inches.
 - 3. Sag and Mid-Span Clearances: Licensee will 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.
 - 4. Vertical Risers: All Risers, including those for power feed for equipment enclosure, shall be placed on the quarter faces of the pole and must be installed in conduit with weatherhead attached to the pole. A two-inch (2”) clearance in any direction from cable, bolts clamps, metal supports and other equipment shall be maintained.
 - 5. Climbing Space: A clear Climbing Space must be maintained at all times on the quarter face of the pole. All Attachments must be placed so as to allow and maintain a clear and proper Climbing Space on the quarter face of the pole. Attachments shall be placed on the same side of the Pole as those of other licensees. In general, all other Attachments and Risers should be placed on Pole quarter faces.

- D. Tagging Attachments. For an Attachment placed after this Agreement's effective date, a party will place an identification tag on the pole or Attachment. The parties acknowledge that an Attachment placed prior to this Agreement's effective date may not have an identifying pole tag. But if a party performs work on a joint-use pole or Attachment, it will tag the pole or Attachment. If Licensee removes all of its Attachments from a joint-use pole, it also will remove all of its identifying tags.
- E. Tagging Poles. RMU will place an ownership identification tag on its poles placed after this Agreement's effective date. The parties acknowledge that a pole placed prior to this Agreement's effective date may not have an identifying pole tag. If a party performs work on a pole or Attachment, it will tag the pole.
- F. Notice. If either party becomes aware that the other party is not complying with the specifications in this Appendix, that party must send notice under Article XXV to the other party identifying each known noncompliance. The other party must remedy the noncompliance within 90 days of its receipt of the notice or within the time mutually agreed by the parties in writing.
- G. Joint Use Contacts. Within ten days of the effective date of this Agreement, each party will provide the other with a list of persons who will serve as joint use contacts for this Agreement. Each party will endeavor to keep this list of contacts current by sending the other party updated information promptly after a contact changes.

APPENDIX E
LOCATION OF APPROVED ATTACHMENTS
(TO BE INSERTED)

STATE OF ILLINOIS)
)
COUNTY OF OGLE) SS.

CERTIFICATE

I, Rose Hueramo, City Clerk of the City of Rochelle, County of Ogle and State of Illinois,
DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. _____,
“AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A POLE
ATTACHMENT AGREEMENT WITH DIGITAL NETWORK ACCESS
COMMUNICATIONS, INC.” which was adopted by the Mayor and City Council of the City of
Rochelle on March 13, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of
the City of Rochelle this 13th day of March, 2023.

CITY CLERK