

POLE ATTACHMENT LICENSE AGREEMENT

By and Between

MEDINA ELECTRIC COOPERATIVE, INC.

And

[ATTACHER]

Effective: **[DATE]**

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POLE ATTACHMENT LICENSE AGREEMENT

This Agreement, effective as of _____ (“Effective Date”), is by and between MEDINA ELECTRIC COOPERATIVE, INC., a Texas electric cooperative organized under the Electric Cooperative Act of the State of Texas (hereinafter “Owner” or the “Cooperative” or “MEC”), with its principal place of business in Hondo, Texas, and [Attacher] (hereinafter “Licensee”), organized under the laws of the State of _____, with its principal place of business in _____.

PREAMBLE

Whereas, Owner owns, operates, and maintains lines of utility Poles, and associated equipment; and

Whereas, Licensee desires to obtain a license to place certain lines, Attachments, and apparatus on certain Poles of Owner, for the purpose of providing communications Services, in the areas where Owner owns said Poles; and

Whereas, Licensee warrants that such lines, Attachments, and apparatus will not interfere with the corporate purposes of Owner or interfere with Owner’s furnishing of electrical service to its customers;

Whereas, Owner is willing to permit, to the extent it may lawfully do so, nondiscriminatory access for the attachment of Licensee’s facilities to its Poles on a non-exclusive basis, where in Owner’s sole judgment, safety will not be adversely affected and such use will not interfere with Cooperative’s own service requirements and with the rights and privileges of other parties using the Owner’s Poles;

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

ARTICLE 1 - SCOPE OF AGREEMENT

- A. **FACILITIES ALLOWED.** Subject to the terms and conditions of this Agreement, Owner hereby agrees to permit Licensee to attach aerial cables, wires and associated appliances used for the provision of providing communications Services, to such Poles owned by Owner that are designated as provided herein. This Agreement does not authorize the attachment of wireless facilities, including antennae or equipment, installed on or supported by Owner’s Poles.
- B. **POLES PREVIOUSLY OWNED BY OTHERS.** Attachments of Licensee to Poles previously owned by others, or deemed to be owned by others, which come to be owned by Owner, shall automatically become subject to this Agreement upon Owner’s ownership of such Poles, and Owner shall provide Licensee with written notice of any such change in ownership within thirty (30) days of any such change in ownership.
- C. **PERMISSION REQUIRED.** As more specifically described in the Pole Attachment Permitting Procedures, Licensee may request permission to make Attachments to Poles of Owner exclusively by means of submission of an Application through National Joint Utilities Notification System (“NJUNS”). If Owner approves the Application, Licensee shall pay all Make-Ready Costs incurred by Owner to prepare said Poles for Licensee’s Attachments, pay Owner an annual Pole

Attachment Rental as provided herein, and otherwise comply with all terms of this Agreement. No Application shall be approved unless it is properly executed by Owner and Licensee through NJUNS.

- D. **RIGHT TO EXCLUDE.** Owner, in its sole judgment, reserves the right to reject Licensee's Application in whole or in part at any time and for any reason related to safety, reliability, insufficient capacity, generally applicable engineering standards, Owner's reserved space in accordance with Article 6.A.1., or Licensee's uncured Default, as defined in Article 17 of this Agreement. Owner may also exclude from use any of its facilities that occupy rights-of-way or easements for which Licensee is unable to obtain its own easements, rights of way, or other necessary privileges. If Owner denies an Application in whole or in part, it shall specifically identify the reason(s) that the Application was denied.

ARTICLE 2 – EXPLANATION OF KEY TERMS

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

1. "Agreement" means this Pole Attachment License Agreement, together with all addenda, appendices, the Pole Attachment Permitting Procedures, and Pole Attachment Standards.
2. "Application" shall mean the electronic application submitted by the applicant through NJUNS requesting permission to install an Attachment on a Pole.
3. "Attachment" is any Licensee's wire, line or apparatus attached to a Pole owned by Owner, including, but not limited to, cables, Service Drops, power supplies, amplifiers, pedestals, terminals, bonding wires, Over-Lashings (defined below), guy wires and anchors required to support unbalanced loads. A single Attachment includes the vertical space on the Pole six inches (6") above and six inches (6") below the point of contact; provided, however, that:
 - (a) every through-bolt where the Pole is drilled and bolted to support cable and messenger qualifies as a separate Attachment without regard to separation;
 - (b) J-hooks and bonding wires located within a space consisting of six inches (6") either above or below a through-bolt, shall not constitute separate billable Attachments;
 - (c) a Pole mounted power supply will count as one additional billable Attachment;
 - (d) Service Drops shall not count as additional billable Attachments so long as all such Attachments are contained within the one foot (1') of space six inches (6") above or below a through-bolt. Multiple Service Drops where no through bolt exists, contained within one foot (1') of space shall count as one billable Attachment;
 - (e) Over-Lashing, risers, vertical ground wires, and strand mounted facilities shall not be counted as additional billable Attachments; and
 - (f) guy wires, unless a sole Attachment or drilled and bolted separately from its associated cabling, shall not constitute an additional billable Attachment.

Any other apparatus or facilities located fully or partly outside the one foot (1') vertical space shall constitute an additional Attachment or Attachments.

4. "Licensee's Designated Service Territory" means the area in which Licensee does or plans to provide its Services within, or immediately adjacent to, Owner's service territory.

5. "Make-Ready" or "Make-Ready Work" is defined in the Pole Attachment Permitting Procedures.
6. "Make-Ready Costs" is defined in the Pole Attachment Permitting Procedures.
7. "Non-Compliant Attachment" is an Attachment that does not comply with the specifications in the Pole Attachment Standards as required by this Agreement.
8. "Nonfunctional Attachment" is an Attachment, or any part thereof, that becomes no longer fit for service, becomes inoperable, or is in any way abandoned by the Licensee.
9. "Owner Agent" means any agent or contractor acting, at Owner's discretion, for or on behalf of Owner or in furtherance of Owner's rights or obligations, pursuant to or in connection with this Agreement.
10. "Over-Lashing" is defined in the Pole Attachment Permitting Procedures.
11. "Party" means Owner or Licensee; collectively Owner and Licensee shall be referred to as "Parties".
12. "Pole" means any MEC pole supporting electrical conductors of less than 69 KV; this does not include streetlight poles, guy poles, non-wood poles, and all other such special purpose poles or pole lines of non-standard design that do not support MEC's electrical distribution system. Use of non-wood poles and special purpose poles shall be at MEC's discretion.
13. "Pole Attachment Permitting Procedures" means MEC's Pole Attachment Permitting Procedures, as they may be amended from time to time.
14. "Pole Attachment Standards" or "Standards" means MEC's Pole Attachment Standards, as they may be amended from time to time.
15. "Required Authorizations" means approved Applications and all legally required authorizations that Licensee must obtain from state, county, or municipal authorities, public or private landowners, or other third parties to erect, operate and maintain its Attachments and to provide the Services offered by Licensee, including all franchise, consents, easements, and certificates of convenience and necessity.
16. "Security Instrument" means a performance bond or its equivalent to be used by Licensee to guarantee Licensee's payment in full of all sums which may become due pursuant to this Agreement and as further described in this Agreement.
17. "Service Drop" is defined in the Pole Attachment Permitting Procedures.
18. "Services" means any cable television, telecommunications, Internet, data transmission, or other similar services or combination of services that Licensee has Required Authorizations to provide within Licensee's Designated Service Territory.
19. "Transfer" is the removal of Attachments from one Pole and the placement of them or substantially identical Attachments upon another Pole in the same general area.
20. "Tree Trimming" means any clearing or re-clearing of existing rights-of-way or easements and any tree or brush trimming necessary for the establishment and maintenance of Attachments, as determined by Owner in its sole judgment.

21. “Unauthorized Attachment” means any affixation of any Licensee Attachment of any nature to any property of Owner, including distribution Poles, which has not been authorized by Owner as required by this Agreement.

ARTICLE 3 - SPECIFICATIONS

- A. **SPECIFICATION STANDARDS.** The requirements for overhead and underground joint use construction and installation are set forth in the Pole Attachment Standards, which may be found on Cooperative's website. The Standards are periodically updated at Owner's sole discretion. Prior to any updates, Cooperative shall provide at least forty-five (45) days written notice to Licensee before the effective date of any such amendment. The provisions in effect at the time of the construction, installation or other work or maintenance control.
- B. Owner may, in its sole discretion, by written notification to Licensee, impose more or less restrictive conditions when the particular location warrants such changes and such changes may be required for good practice for the given local conditions and are permitted by applicable law. In the event Owner imposes more or less restrictive conditions, existing compliant Attachments shall be grandfathered unless required by an authority having jurisdiction or otherwise agreed to by the Parties.
- C. **APPLICABLE LAW.** All work performed under this Agreement shall be performed in compliance with all applicable laws and regulations.
- D. **LICENSEE'S PERSONNEL.** It shall be the responsibility of Licensee to instruct its personnel working on Owner's Poles of the dangers involved in being and working in the proximity of Owner's electric wires and equipment, including without limitation bonding wires to Owner's vertical ground wire and the associated dangers thereof, and to furnish adequate protective equipment so as to protect Licensee's personnel from bodily harm. Licensee and its personnel shall take all steps necessary to protect persons and property against injury or damage that may result from the presence, installation, use, maintenance, or operation of Licensee's Attachments, and to avoid interference to Owner's safe and efficient operation of its electric system. Should any such injury, damage, or interference occur despite such steps, Licensee shall promptly notify Owner of such injury, damage, or interference. At Owner's option, Licensee shall promptly either (i) repair such damage and/or resolve such interference, or (ii) compensate Owner for the cost of repairing any such damage and/or resolving such interference and shall indemnify Owner as provided for in Article 16.

ARTICLE 4 - ESTABLISHING LICENSEE'S ATTACHMENTS

- A. **APPLICATION REQUIREMENTS.** Permit Application and procedure requirements are set forth in the Pole Attachments Permitting Procedures, which may be found on Cooperative's website. This document is periodically updated at Owner's sole discretion. The provisions in effect at the time of application control. Nothing in the Pole Attachment Permitting Procedures shall be construed to require Licensee to submit an Application for (i) Attachments of Licensee existing on Poles owned by Owner as of the Effective Date or (ii) Attachments to Poles existing as of the date such Poles come to be owned by Owner.

ARTICLE 5 - UNAUTHORIZED ATTACHMENTS

- A. **UNAUTHORIZED ATTACHMENT.** In the event Licensee makes Attachment(s) to any Pole owned by Owner without the express written consent of Owner as set forth in this Agreement or otherwise not in compliance with the applicable terms of the Standards and the Pole Attachment

Permitting Procedures, such Attachment(s) shall be an Unauthorized Attachment(s). Except in the event the Unauthorized Attachment is identified from the results of an inventory performed in relation to this Agreement, Owner shall give Licensee notice of the location with Pole data of the Unauthorized Attachment(s). Licensee shall within ten (10) days of notification from Owner (i) verify it is Licensee's Attachment and (ii) verify it is an Unauthorized Attachment(s).

- B. **UNAUTHORIZED ATTACHMENT FEES.** Licensee shall pay to Owner the sum of One Hundred Dollars (\$100.00) per year for each Unauthorized Attachment, from date of discovery until the Unauthorized Attachment is brought into compliance with the terms of this Agreement, in addition to the Pole Attachment Rental due, as referenced in Section E of this Article. Unauthorized Attachment fees shall continue to be assessed until the Unauthorized Attachment is brought into compliance with the terms and conditions of this Agreement, including but not limited to Section C of this Article.
- C. **APPLICATION REQUIRED.** Owner may, without prejudice to its other rights or remedies under this Agreement, require the Licensee to submit within fifteen (15) business days of written notice from the Owner of the discovery of one or more Unauthorized Attachments an Application along with information required by the Pole Attachment Permitting Procedures for each such Unauthorized Attachment, and upon review of such information, Owner may require the Licensee to make or pay for such modifications as to comply with applicable safety codes and the terms of this Agreement. Nothing herein shall relieve the Licensee of its obligation to maintain Attachments at all times in conformity with the Pole Attachment Standards.
- D. **OWNER'S RIGHT TO REMOVE.** If Licensee fails to submit a timely Application for each Unauthorized Attachment, Owner may, in its sole discretion, require Licensee to remove any or all such Unauthorized Attachments within thirty (30) days of written notice or, where removal in such time period is not reasonably feasible, a longer period (not to exceed a total of forty-five (45) days) as agreed to by the Parties. In the event Licensee fails to remove such Unauthorized Attachments within such time period, Owner may remove any or all such Unauthorized Attachments at the sole expense of Licensee. Owner shall not incur any liability arising from removal of Licensee's Attachment(s), including liability for damage to plant or loss of revenue, other than for Owner's gross negligence or willful misconduct.
- E. **RENTALS DUE.** In addition to the Unauthorized Attachment Fee(s), Licensee will pay the Pole Attachment Rental that would have been payable from and after the date the Attachment was first placed on the Owner's Pole. If the date on which the Attachment was made cannot be determined, then the Licensee will pay a sum equal to the Pole Attachment Rental that would have been payable from and after the more recent of (i) the date the last inventory was conducted or (ii) the date that is five (5) years prior to the date the applicable Unauthorized Attachment(s) was discovered.
- F. **BASELINE INVENTORY.** The first inventory after the Effective Date will be utilized to establish the baseline for Licensee's Attachments. Unauthorized Attachment fees will not apply to any difference in the number of Poles or Attachments determined by this first inventory, and the latest invoiced count, unless (i) it can be determined that Licensee placed those Attachments after the Effective Date in violation of the procedures established in the Pole Attachment Permitting Procedures; or (ii) the Attachment is discovered outside Licensee's Designated Service Territory.
- G. **NO WAIVER IMPLIED.** Except as provided herein, no act or failure to act by Owner with regard to any Unauthorized Attachment shall be deemed to ratify or license any Unauthorized Attachment. If an Application for an Unauthorized Attachment is subsequently approved, such approval shall not operate retroactively to constitute a waiver by Owner of any of its rights under this Agreement regarding the Unauthorized Attachment, and Licensee shall be subject to all

liabilities, obligations, and responsibilities of this Agreement from its inception with regard to any such Unauthorized Attachment.

ARTICLE 6 – REPLACEMENT OF EXISTING POLES

A. REPLACEMENT OF EXISTING POLES WHICH HAVE LICENSEE ATTACHMENTS. Where an existing Pole with Licensee Attachments is replaced or relocated for reasons other than maintenance, the cost shall be divided as specified below. The replaced Pole shall be removed and retained by Owner.

1. For purposes of maintaining sufficient capacity and reliability, it is MEC's practice to install Poles of sufficient height to allow future installation of transformers and other equipment on its Poles. Therefore, there is reserved space on each Pole to accommodate future electrical equipment when the need arises. To avoid the expense of replacing these Poles (with reserved future electrical capacity) with taller Poles in all cases, it is MEC's policy to allow interim use of the reserved space by communication cables. In the event the reserved space is required in the future by MEC for the installation of electrical facilities, the Licensee shall relocate or remove its facilities from the reserved space. The Licensee may, at its option, pay MEC to provide additional space by installing a taller Pole.
2. If it is necessary to replace an existing Pole with a larger Pole due wholly to the Licensee's requirements (including Licensee's requirements as to keeping the Licensee's wires clear of trees or other obstructions), the Licensee may either (a) remove its facilities from the Pole or (b) pay to the Owner the Make-Ready Cost of the new Pole. If the Licensee places one or more Attachments on a Pole and thereby creates a violation of the Standards, or interferes with other attaching entities or causes their installations to be in violation of the Standards, then the Licensee must either (a) remove its facilities from the Pole or (b) pay the full cost of removing and replacing the Pole with a Pole of sufficient size to remedy the violation or render the Pole suitable for all attaching entities, plus the cost of all Transfers and other work incident thereto.
3. If it is necessary to replace an existing Pole with a larger Pole due to the requirements of multiple licensees or potential licensees for additional space or proper ground clearance (including the requirements of public authorities or property owners for such clearance), the difference in costs for the larger Pole shall be shared equally by the parties requiring the additional Pole height or strength. Each party shall replace or Transfer its own Attachments at its own expense. Licensee will not be responsible for the costs associated with the correction of violations caused by others.
4. Neither Owner nor Licensee shall be responsible for the cost of a larger Pole installed to replace an existing Pole due wholly to a third-party licensee's requirements, including costs for the replacement or Transfer of all Owner's facilities or the replacement or Transfer of all Licensee's Attachments.

B. NEW POLE TO PROVIDE CLEARANCE FOR SERVICE DROPS. Where an existing Pole is replaced by a taller one to provide the necessary clearance for the Licensee's Service Drop, the Licensee shall pay to the Owner the installed cost of the new Pole, the labor costs of the replacement or Transfer of Owner's facilities on the existing Pole, and the cost to remove the existing Pole. Licensee shall also pay the cost of Transferring or relocating third-parties' Attachments on or supported by the existing Pole.

- C. MAKE-READY WHEN PRIOR PERMISSION IS NOT REQUIRED. Where prior permission or approval is not required, Licensee shall be responsible for all Make-Ready Costs necessary to accommodate any initial or additional Licensee Attachment.
- D. PAYMENT BASIS. Payments made under the provisions of this Article for nonrecurring charges will be based on the actual cost (including standard overhead) or as otherwise mutually agreed upon.
- E. COOPERATION BETWEEN PARTIES. Licensee shall coordinate with Owner for any replacement and/or relocation work required under the terms of this Agreement, including, without limitation, Pole repairs or replacements necessitated by damage to Poles from the actions of third parties.
- F. REPLACEMENTS AND TRANSFERS TO ACCOMMODATE ATTACHMENT. Notwithstanding anything to the contrary herein, but only to the extent applicable to the Parties, the Parties shall comply with applicable law relating to Pole replacements and transfers, including Tex. Util. Code §§ 253.0103, 253.0401, and 252.006, as the same may be amended.

ARTICLE 7 - EASEMENTS AND RIGHTS-OF-WAY

- A. RESPONSIBILITY. Subject to applicable law, Licensee shall be solely responsible for acquiring in its own name and at its own expense any and all easements or other rights in land that may be required to permit the presence of Licensee's Attachments on or supported by Owner's Poles. Owner does not warrant or assure Licensee any right-of-way or easement privilege and, if Licensee shall at any time be prevented from placing or maintaining its Attachments on Owner's Poles, no liability shall attach to Owner. **LICENSEE SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER GROUP (AS SUCH TERM IS DEFINED IN ARTICLE 16) IN ACCORDANCE WITH ARTICLE 16, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, LIABILITY, AND EXPENSES THAT MIGHT BE ASSERTED AGAINST OR INCURRED BY OWNER GROUP IN CONNECTION WITH ANY EASEMENTS, RIGHTS-OF-WAY, OR OTHER RIGHTS IN LAND, CLAIMED, OBTAINED OR NOT OBTAINED BY OR ON BEHALF OF LICENSEE.**
- B. MAINTENANCE. Owner shall provide its normal initial right-of-way clearance, for new Pole installations, on each side of the center line to the extent practicable, all right-of-way in excess of the normal swath to be borne by the party requiring the additional width. On existing Poles, each party, including Owner, will perform any Tree Trimming or cutting necessary for its initial or additional Attachments, at its own expense. Should Licensee fail to remove any obstacle which is placing stress on Owner's Pole line from its Attachments within ten (10) days of written notice from Owner, then Owner at Licensee's sole cost and risk may remove said obstacle.

ARTICLE 8 - MAINTENANCE OF POLES AND ATTACHMENTS

- A. OWNER'S RESPONSIBILITY FOR POLES. Owner shall, at its sole expense, maintain its Poles (but not Licensee's Attachments) in accordance with the Standards referenced herein and shall maintain (including replacing, reinforcing, or repairing) such Poles as are determined to be defective, in Owner's sole judgment. Whenever Owner replaces or relocates a defective Pole or Poles containing a Licensee Attachment, such relocation of Poles shall be made by Owner at its sole expense, except that each Party shall bear the costs of Transferring its own Attachments. Licensee shall reimburse Owner for the cost of any increase of Pole height or strength provided specifically for Licensee's sole requirements over and above the Pole height and strength required

by Owner.

- B. **LICENSEE RESPONSIBILITY TO MAINTAIN ATTACHMENTS.** Licensee shall at all times place, maintain, manage, Transfer and remove its Attachments so as to keep such Attachments in safe condition and in thorough repair, and in compliance with the specifications set forth in Article 3 and so as not to (i) interfere with the use of said Poles by Owner or by other persons or entities using Owner's Poles; (ii) interfere with the use and maintenance of facilities thereon or which from time to time may be placed thereon, or (iii) endanger any person or the property of any person or entity. Any anchors or guys required to accommodate the Attachments of Licensee shall be installed by and at the expense of Licensee, unless otherwise agreed to by the Parties. In addition, any necessary locates, all permits, easements, or other rights in land required and attributable to Licensee's Attachments shall be the responsibility of the Licensee in accordance with Article 7.
1. No Interference. Licensee shall operate Licensee's Attachments in a manner that will not cause or create interference with the equipment or operations of (a) Owner's existing or proposed electric systems and associated facilities, or (b) any communications facilities or third-party user sharing the Pole prior to Licensee's use of the Pole or modification of its equipment. During the term of this Agreement, Licensee agrees to cooperate in any investigation and resolution of any interference caused by or occurring between equipment of any parties operating on or by means of the Poles.
 2. Damage to Facilities. Licensee and Owner shall exercise all appropriate precautions to avoid damage to facilities of each other and of other entities attached to or supported by said Poles and shall make an immediate report to the other of the occurrence of any damage. Licensee shall, prior to working on a Pole that contains non-compliant or unsafe conditions, promptly notify Owner of any existing physical, mechanical, or electrical condition that does not comply with Standards or endangers either the general public or worker safety.
 3. Emergency Conditions. In cases of emergency affecting the facilities of either Party, as determined in the reasonable judgment of either Party, the Party observing the emergency shall notify the other Party as soon as feasible under the circumstances. Owner shall notify all other affected licensees within a reasonable time of the emergency condition. The Parties shall work cooperatively to correct the condition(s) that caused the emergency. If Licensee does not have personnel present when corrective action is undertaken by Owner, or if Licensee is otherwise unable to act, Owner may remove, relocate, replace or renew Licensee's Attachments or facilities on the existing Poles, Transfer Licensee's Attachment to substitute Poles, or perform such other work as may be required in connection with said Attachments to correct the condition(s) caused by the emergency or for the service needs of Owner. Licensee shall reimburse Owner for the reasonable expenses thereby incurred.
 4. Nonfunctional Facilities. Licensee shall remove any of its Attachments or any part thereof that becomes a Nonfunctional Attachment and submit to Owner a notice of removal in NJUNS as called for in the Pole Attachment Permitting Procedures. A Nonfunctional Attachment will be deemed a Non-Compliant Attachment if Licensee fails to remove the Nonfunctional Attachment within sixty (60) days after receipt of Owner's written notice (subject to any mutually agreed extension). Owner may remove, use, sell, or dispose of any Non-Compliant Attachment at Licensee's expense for all actual costs, which may include costs for the time and expenses associated with tracking and inspecting Non-Compliant Attachments and any related notifications. Licensee shall remove Nonfunctional Attachments prior to any Attachment Over-Lashing. Licensee will not exceed the NESC allowable cable bearing strength in the course of any Over-Lashing. **LICENSEE SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER GROUP, IN ACCORDANCE WITH ARTICLE 16,**

FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, LIABILITY, AND EXPENSES IN CONNECTION WITH THE REMOVAL, USE, SALE, OR DISPOSAL OF ABANDONED OR NON-COMPLIANT ATTACHMENTS.

5. Markers. Licensee shall clearly mark and tag all of its facilities according to the Pole Attachment Standards. Licensee is responsible for the periodic inspection of its Attachments to the extent required by the NESC including the necessary identification as described above. Should Owner encounter any of Licensee's Attachments without any of the permanent identification markers required by this paragraph, Owner may notify Licensee, provided that Owner can identify the Attachments as belonging to Licensee. If the markers are not placed within sixty (60) days of such notice, then Licensee shall pay Owner \$5 per unmarked Attachment per month until tagged.
 6. Rearrangement, Modification, Transfer, Removal. Except as otherwise provided in this Agreement, Licensee shall perform or arrange for the placement, maintenance, rearrangement, modification, Transfer, or removal of its Attachments at no risk or cost to Owner. In any case where the placement, maintenance, rearrangement, modification, Transfer, or removal of Licensee's Attachments necessitates the performance of work related to facilities of other licensees or of Owner, Licensee shall also be responsible for the performance of such work related to such other licensees' facilities at no risk or expense to Owner. Licensee shall treat all abandoned holes with an industry acceptable wood preservative and repair such facilities as reasonable and appropriate. All holes in wood Poles shall be plugged with treated wood doweling with a diameter of one-sixteenth (1/16th) inch greater than the diameter of the hole.
- C. COMPLIANCE MODIFICATIONS. Upon notice from Owner, Licensee shall remove, relocate, replace, renew, modify, rearrange, or Transfer its Attachments, or perform any other work in connection with its Attachments, that (i) is necessary to comply with the terms of this Agreement, including, but not limited to, the Pole Attachment Standards; (ii) may be required by Owner in connection with Owner's legitimate business requirements; or (iii) is necessary for the legitimate business requirements of other licensees or third parties affixed to Poles (collectively herein the "Compliance Modifications"). Nothing herein shall be construed to require Licensee to perform any such work in order to accommodate the requirements of any other licensee without reimbursement by such other licensee. Licensee shall complete the work required in this subsection within a commercially reasonable timeframe set forth in the notice from Owner. Licensee may request additional time to complete this work in unusual cases, and such request will not be unreasonably denied unless customer service is jeopardized.
1. Notification for the above-described Compliance Modifications of Licensee's Attachments as required by the appropriate sections of this Agreement shall be in accordance with Article 12 - Notices.
 2. To obtain operational efficiency, Owner may perform Compliance Modifications of Licensee's Attachments with Licensee's permission, as determined in Licensee's sole discretion, as part of Owner's work on said Poles where Owner can do so safely and without damage to Licensee's facilities at Licensee's cost. In cases where Owner proposes to perform Compliance Modifications of Licensee's Attachments, Owner will give Licensee fifteen (15) days' advance notice of the Poles on which the Owner proposes to perform Compliance Modifications of Licensee's Attachments; provided that, in case of an emergency threatening life or property, verbal notice may be given and subsequently confirmed in writing. In all cases, Licensee shall have the right to perform Compliance Modifications of its facilities.

Notice of Owner's intention to perform Compliance Modifications of Licensee's Attachments may be given concurrently with notice of the Pole relocation or replacement. If Owner elects not to perform Compliance Modifications of Licensee's Attachments, Owner shall give a commercially reasonable notice to Licensee. Licensee shall, on or before the date specified by Owner, unless otherwise agreed, perform Compliance Modifications of its Attachments to the new or relocated Pole or Poles.

3. After giving notice of its intent to perform Compliance Modifications of Licensee's Attachments, Owner may perform Compliance Modifications of Licensee's Attachments located on Owner's Poles unless (a) Licensee, within seven (7) days of such written notice or by return telephone call within 24 hours if verbal notice is given in case of emergency, instructs Owner not to perform Compliance Modifications, or (b) Licensee is present at the time specified for the Pole replacement or relocation and is prepared to make Compliance Modifications itself.
4. Licensee shall pay Owner \$75.00 for each Attachment that Owner Transfers and the actual costs incurred for the performance of all other Compliance Modifications of Licensee's Attachments.
5. In the event Licensee notifies Owner that the Compliance Modification(s) of its Attachments has been accomplished, and Owner returns to the job site and discovers that the Compliance Modification(s) has not been made, then the Licensee will pay Owner's cost of the trip to and from the job site. The intent of this paragraph is to ensure compliance, timely placement, maintenance, rearrangement, Transfer, and removal of Licensee's Attachments and to minimize situations of two or more Poles needlessly remaining at the same location for extended periods of time.
6. If Licensee fails to complete a requested Transfer on the date specified, and Owner must make a return trip to the jobsite to remove the old Pole, Licensee shall pay Owner's costs resulting from the return trip to remove the old Pole.
7. Should the Owner elect not to perform Compliance Modifications of Licensee's facilities under the above terms, and should the Licensee fail to perform Compliance Modifications within thirty (30) days after the date specified for such modifications and after all third party and Owner responsible work has been accomplished, whichever is later ("Licensee Modification Date"), the Owner will have the following rights, in addition to any other rights and remedies available under this Agreement:
 - a. The Licensee shall pay the Owner the following amounts until the Licensee has performed the Compliance Modifications of its Attachments and notified the Owner in accordance with Article 12 that the modifications have been accomplished:
 - i. Five and 00/100 (\$5.00) dollars per Attachment per day beginning with the 31st day after the Licensee Modification Date and through and including the 180th day after the Licensee Modification Date;
 - ii. Ten and 00/100 (\$10.00) dollars per Attachment per day (instead of \$5.00) beginning with the 181st day after the Licensee Modification Date.
 - b. In the event the Licensee notifies the Owner that a Transfer has been accomplished and the Owner returns to the job site to remove the old Pole and discovers that the Transfer has not been made, then the Licensee will pay the Owner's cost of the trip to and from the job site.
 - c. Notwithstanding the above, Licensee shall not be subject to the above fees where Owner

has not used the correct NJUNS member code, as provided by the Licensee. In cases of Compliance Modifications requests with incorrect NJUNS member codes, the Licensee shall make reasonable efforts to route the subject request to the appropriate party.

- d. Owner may, at its option, make the Compliance Modifications of Licensee's facilities at Licensee's expense for any actual costs incurred.

D. REMOVAL OF LICENSEE ATTACHMENTS. Licensee may at any time and in its sole discretion remove any of its Attachments from Owner's Poles, but shall provide seven (7) business days' notice of such removal to Owner via NJUNS as shown in the Pole Attachment Permitting Procedures. Such notice shall fully identify, by Pole location and GPS coordinates, the Poles from which such Attachments are being removed. Licensee's obligations to make Pole Attachment Rental payments shall continue until (i) Owner receives such notice, and (ii) Licensee actually removes all of its Attachments. Licensee shall pay full Pole Attachment Rental for the year in which such removal occurs, and no refund of any Pole Attachment Rental will be due on account of such removal.

E. MANDATORY RELOCATION. Where Owner determines that an existing Pole to which Licensee has placed Attachments cannot remain in place, must be removed, and is not suitable or eligible for abandonment to Licensee as described in Article 9, Owner shall provide Licensee with reasonable notice of the revocation of Licensee's permission to use the Pole for Attachment or support of Attachments in NJUNS. Promptly upon receipt of a removal notice, Licensee shall undertake efforts to remove or relocate its Attachments in accordance with the terms of the removal notice, and Licensee shall complete removal of its facilities within no more than sixty (60) days of receipt of the removal notice or within such longer time to which Owner may agree in its sole discretion upon Licensee's request. Should Licensee fail to remove any and all Attachments subject to the removal notice by the date specified in such notice or such longer time to which Owner has agreed: (i) any Attachment subject to the removal notice shall be deemed an Unauthorized Attachment and immediately subject to the fees provided herein; and (ii) Owner may Transfer the Attachment to the new Pole at Licensee's expense for all actual costs, including any costs for Owner to return to the site. **LICENSEE SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER GROUP, IN ACCORDANCE WITH ARTICLE 16, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, LIABILITY, AND EXPENSES IN CONNECTION WITH THE REMOVAL OR TRANSFER OF AN ATTACHMENT, EXCEPT FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF OWNER DURING THE REMOVAL AND TRANSFER PROCESS.**

ARTICLE 9 - ABANDONMENT OF POLES

A. NOTICE OF OWNER'S INTENT TO ABANDON. If Owner desires at any time, at Owner's sole discretion, to abandon to the Licensee any Pole or Poles on which Licensee has any Attachments, Owner shall give Licensee written notice at least sixty (60) days prior to the date on which Owner intends to abandon said Pole or Poles and offer Licensee the option to become owner. Licensee shall reply in writing within fifteen (15) days of Owner's notice and either (i) accept ownership of the Pole or Poles; or (ii) remove its Attachments from said Pole or Poles before the expiration of the sixty (60) day period (the "Abandonment Period").

B. ABANDONMENT PROCESS. If, at the expiration of the Abandonment Period, the Owner has no Attachments thereon, and Licensee has not removed its Attachments, such Pole shall then become the property of the Licensee, as is, and the Licensee shall indemnify, defend, and hold harmless the Owner Group, in accordance with Article 16, from all obligations, liability, damages,

costs, expenses or charges incurred, arising out of, or because of the presence or condition of such Pole or of any Attachments thereon and shall pay the Owner the average net book value of the height and class of said Pole. Owner shall further evidence such transfer of title to the Pole by the Bill of Sale in Appendix B, or by other appropriate means.

- C. **LICENSEE'S RESPONSIBILITY FOR ABANDONED POLES.** Licensee acknowledges that Poles and related items may contain various hazardous chemicals or properties. Licensee shall become familiar with the terms of the appropriate material safety data sheet, which Owner shall provide at no additional expense, and comply with such terms and all directions contained therein or otherwise required by state and federal law regarding the maintenance, replacement, and/or disposal of the Pole. Owner does not warrant, guarantee, or imply that such Pole abandoned by Owner possesses sufficient mechanical strength as required by or for any use of Licensee. Additionally, Licensee agrees and understands Owner makes no representations or guarantees concerning any right to occupy the premises where the Pole is currently located upon the removal of Owner's facilities.

ARTICLE 10 - INSPECTION AND INVENTORY OF LICENSEE ATTACHMENTS

- A. **INSPECTIONS.** Owner may inspect all or any portion of Licensee's Attachments on Owner Poles and anchors located in the vicinity of Owner's facilities based upon the following:
1. Pre-Construction Inspection. Owner shall perform a pre-construction inspection of the Poles on which Licensee desires to place Attachments in accordance with the Pole Attachment Permitting Procedures. Owner may also perform an inspection of Licensee's work being performed during construction in accordance with an authorized Application to ensure Attachments are being made in accordance with the Pole Attachment Standards and any other standards and procedures set forth in this Agreement. Should such in progress inspection be the result of (a) a request from the Licensee, or (b) discovery of Non-Compliant Attachments of the Licensee, the Licensee shall reimburse Owner for all costs associated with such inspection.
 2. Post Inspection. Inspection of each new Attachment or modification made by Licensee to Owner Poles shall be in accordance with the Pole Attachment Permitting Procedures.
 3. Safety and/or Compliance Inspection of Attachments. Not more than once every five (5) years, Owner may perform a periodic system-wide safety inspection of Licensee Attachments to determine whether Licensee's facilities comply with the Standards and this Agreement. Owner shall provide ninety (90) days' advance written notice. Such notice shall describe the scope of the inspection and provide Licensee with an opportunity to participate. Licensee will pay a pro-rata share of the inspection costs and will incur its own costs to participate in such periodic safety inspections. The Licensee's pro-rata share will be equal to the percentage of the total violations related to Licensee's Attachments as identified during the safety inspection unless Licensee can clearly demonstrate that Licensee did not cause the violation. Failure of Licensee to provide a representative to accompany Owner shall not relieve Licensee from any other responsibilities provided for in this section. Owner shall provide a description of Licensee violations, including the location of the Pole and the Pole number (if the Pole number is available), and provide Licensee an opportunity to review the violation. Licensee shall perform work to resolve Non-Compliant Attachments identified during safety inspections within sixty (60) days of notification from Owner. Should the parties agree more time is needed for completion of work, a plan will be provided by Licensee to Owner within thirty (30) days of receipt of data outlining a schedule to resolve the Non-Compliant Attachments. Licensee shall

begin work within thirty (30) days of presentation of schedule should one be needed. Violations found which endanger the public will be resolved immediately.

- B. **INVENTORY.** The Owner will conduct a baseline inventory and subsequent inventories of all of Owner's Poles within Licensee's Designated Service Territory to determine the number and location of Licensee's Attachments to Owner's Poles at intervals of not less than five (5) years. Owner shall provide Licensee with at least ninety (90) days' prior written notice of such inventory, and Licensee shall have the right, but not the obligation, to accompany Owner on any and all inventories. The format of the inventory results shall be coordinated with the Licensee, and the estimated cost of any such inventory shall be provided to the Licensee in advance. Licensee shall be responsible for all costs of any such inventory of all Poles necessary to verify Licensee's Attachments to Owner's Poles within Licensee's Designated Service Territory. Licensee shall provide maps indicating the extent of Licensee's Designated Service Territory. If the inventory is made for the benefit of more than one licensee, then each licensee shall pay its proportionate share of the Owner's total cost, allocated based on the number of Attachments identified in the inventory.
1. Licensee Verification. Licensee shall be allowed forty-five (45) days from the date Owner provides Licensee with the results of the inventory to perform any necessary verifications. If Licensee can provide Owner with proof of Owner's approval of any Attachments that are indicated as Unauthorized Attachments, the Unauthorized Attachment Fee will not be assessed.
 2. Billing Resulting from Inventory. If the results of the inventory indicate the number of Licensee's Attachments to be greater than the number reported in the Annual Tabulation as defined in Article 11, the difference will be prorated based on the assumption that such Licensee Attachments were added evenly over the intervening years from the date of the prior inventory. If the number of Attachments determined by the inventory is greater than the Annual Tabulation, Licensee shall pay the difference in Pole Attachment Rental, in addition to Unauthorized Attachment fees as outlined in Article 5 of this Agreement, to Owner. If the number of Attachments determined by the inventory is less than the Annual Tabulation, Owner will adjust Licensee's total number of Attachments on the next Pole Attachment Rental invoice issued after submittal of a notice through NJUNS to remove Attachments pursuant to the Pole Attachment Permitting Procedures and as provided for in Article 8.D. of this Agreement.
- C. **CORRECTIVE ACTIONS.** Licensee shall be responsible for all necessary corrective actions as described in Article 8. Failure by Owner to inspect Licensee's compliance with the requirements in Article 3 or to take action on its own to bring such Attachments into compliance shall not cause Owner to be liable for any loss or injury resulting from such failure of compliance and shall not relieve Licensee of its obligations hereunder, including without limitation its obligations of indemnification.

ARTICLE 11 - RENTAL PAYMENT

- A. **POLE ATTACHMENT RENTAL RATE.** The Pole Attachment Rental rates shall be determined by using the Pole Attachment Rental rate formula as presented in Appendix C and calculated for one (1) and two (2) feet of occupied space. Each year, MEC will calculate the Pole Attachment Rental rates using its most current financial data.
- B. **ANNUAL TABULATION.** On or about December 31st of each year, MEC shall separately tabulate the total number of Poles with one (1) Licensee Attachment, as well as the total number of Poles with two (2) or more Licensee Attachments or Attachments utilizing in excess of one (1) foot of space. Each tabulation will use, as a base, the prior year's invoiced quantity ("Base"). The

current year tabulation (the “Annual Tabulation”) will be the Base, plus any authorized Attachments since the previous year’s tabulation, less Licensee’s total number of Attachments for which MEC received notice of removal since the previous year’s tabulation. Licensee shall at all times keep an accurate and updated inventory of the total and location of Licensee’s Attachments on Owner’s Poles and shall certify the same to the Owner as true, correct, and complete by December 31st of each year. Failure to provide certification shall not be a reason for non-payment of Pole Attachment Rental invoiced by Owner.

- C. RENTAL PAYMENT. Licensee’s annual charge for rental (“Pole Attachment Rental”) shall be equal to the Pole Attachment Rental rate specified in Section A of this Article, multiplied by the Annual Tabulation of MEC Poles with single and multiple Attachments which are affixed on January 1 of the calendar year for which the Pole Attachment Rental payment is being paid. The advance Pole Attachment Rental invoice shall also include back-rental fees at the prior year’s Pole Attachment Rental rate for all Attachments made during the prior year.
- D. ADJUSTMENTS TO POLE ATTACHMENT RENTAL RATE. For the year 2025 and beyond: For any year in which the Appendix C calculation is not performed, the Pole Attachment Rental rate shall be the previous year’s rate adjusted by the most recent change in the July edition of the Handy Whitman Index for Utility Construction, Account 364, for the South-Central Region.

ARTICLE 12 - NOTICES

- A. Except as otherwise provided in this Agreement, all notices and writings shall be sent to the contacts listed in form Appendix D, Notices-Licensee Contact Information Form. Appendix D shall be completed by Licensee initially upon execution of the Agreement and shall be updated promptly and as necessary, but in any event no less frequently than annually, in order to properly reflect any changes in contact information pursuant to the provisions of this Article 12.
- B. Any notice required to be given or invoice to be provided pursuant to this Agreement shall be in writing and treated as duly delivered: (i) when personally delivered to the Party receiving such notice; (ii) three (3) days after being deposited in the United States mail properly addressed to the Party to be given such notice, sent certified mail, return receipt requested; (iii) the next business day after being sent via overnight courier; (iv) when delivered electronically via NJUNS; (v) when sent via email to the electronic mailbox address Licensee provides via Appendix D; or (vi) when sent via another notification process established or adopted by Owner. If expressly required herein, the Parties shall utilize NJUNS to communicate or provide notices.

C. Pole Owner Information:

Name: Medina Electric Cooperative, Inc.

Address: P.O. Box 370
Hondo, TX 78861

Contact: Business Development Manager

Email: JointUse@MedinaEC.org

Phone: (866) 632-3532

ARTICLE 13 - ASSIGNMENT AND TRANSFER

Licensee shall not assign or otherwise transfer this Agreement or any of its rights or interests to any firm, corporation or individual without the prior written consent of Owner, which consent shall not be

unreasonably conditioned, withheld or delayed; provided, however, that Licensee may transfer this Agreement or any of its rights and interests to any parent or wholly-owned subsidiary upon ten (10) days' prior notice. Owner may condition any required consent upon the assignee's or transferee's agreement to additional or modified terms or conditions. If there is a change of control of Licensee, then Owner shall have the right, in its reasonable discretion, to immediately terminate this Agreement in its entirety without further liability. Owner may assign or otherwise transfer this Agreement along with any of its rights and interests to any firm, corporation or individual, without the prior consent of Licensee.

ARTICLE 14 - RIGHTS OF OTHER PARTIES

Nothing herein shall be construed as affecting the rights or privileges previously conferred by Owner, by contract or otherwise, to others not parties to this Agreement to use any Poles covered by this Agreement, and Owner shall have the right to continue and extend such rights and privileges. The privileges herein granted shall at all times be subject to such existing contracts and arrangements, including extensions thereof. The privileges herein granted are non-exclusive and Owner shall have the right in its sole discretion to grant privileges of any sort to any person, firm or corporation subject to the rights granted herein. Nothing herein contained shall be construed to compel Owner to reconcile disputes among licensees or third parties as to who has a superior claim.

ARTICLE 15 - NO PROPERTY RIGHT

Subject to the provisions of this Agreement, Owner agrees to grant to Licensee a license for the nonexclusive right to attach its facilities to certain designated Owner Poles.

No use, however extended, of Owner's Poles or payment of fees, rentals, or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in Owner's Poles, but Licensee's rights herein shall be and remain a mere license. Nothing herein contained shall be construed to compel Owner to maintain any of said Poles for a period longer than it chooses to do so in its sole discretion.

ARTICLE 16 - INDEMNIFICATION, INSURANCE, AND SECURITY INSTRUMENT

A. INDEMNIFICATION.

- 1. EXCEPT AS SET FORTH BELOW, LICENSEE ASSUMES SOLE RESPONSIBILITY FOR ALL INJURIES AND DAMAGES, TO THE EXTENT ARISING, OR CLAIMED TO HAVE ARISEN, BY, THROUGH OR AS A RESULT OF ANY OF ITS CABLES, WIRES, APPLIANCES, EQUIPMENT OR FACILITIES (OR THOSE OF A THIRD-PARTY OVER-LASHER TO LICENSEE'S CABLES, WIRES, APPLIANCES, EQUIPMENT OR FACILITIES, OR THOSE OF ANY ASSIGNEE OF LICENSEE'S RIGHTS) ATTACHED TO THE OWNER'S POLES, EQUIPMENT, OR FACILITIES, IT BEING UNDERSTOOD, HOWEVER, THAT LICENSEE SHALL HAVE NO LIABILITY TO THE OWNER FOR INJURIES AND DAMAGES TO THE LIMITED EXTENT OF PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF OWNER.**
- 2. ACCORDINGLY, WITHOUT LIMITING THE EFFECT OF THE PROVISION OF THE IMMEDIATELY PRECEDING PARAGRAPH, AND EXCEPT AS SET FORTH BELOW, LICENSEE EXPRESSLY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, TOGETHER WITH THE OWNER'S OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AND AGENTS, AS**

WELL AS EACH OF THE OWNER'S AFFILIATES AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AND AGENTS (COLLECTIVELY, THE "OWNER GROUP") FROM AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, JUDGMENTS, LOSS, COSTS AND EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES (COLLECTIVELY, "CLAIMS") TO THE EXTENT ARISING OR CLAIMED TO HAVE ARISEN BY, THROUGH OR AS A RESULT OF LICENSEE'S CABLES, WIRES, APPLIANCES, EQUIPMENT OR FACILITIES (OR THOSE OF A THIRD-PARTY OVER-LASHER TO LICENSEE'S CABLES, WIRES, APPLIANCES, EQUIPMENT OR FACILITIES, OR THOSE OF ANY ASSIGNEE OF LICENSEE'S RIGHTS) ATTACHED TO THE OWNER'S POLES, EQUIPMENT, OR FACILITIES. SUCH OBLIGATIONS TO INDEMNIFY, DEFEND AND HOLD HARMLESS SHALL, WITHOUT LIMITATION, EXTEND TO AND INCLUDE CLAIMS ARISING FROM THE MISCONDUCT OF LICENSEE, OR OF ANY OF LICENSEE'S CONTRACTORS, AGENTS, OVER-LASHERS OR ASSIGNEES, IN RESPECT TO (A) DAMAGE TO OR LOSS OF PROPERTY (INCLUDING BUT NOT LIMITED TO PROPERTY OF THE OWNER OR LICENSEE); (B) INJURIES OR DEATH TO PERSONS (INCLUDING BUT NOT LIMITED TO INJURY TO OR DEATH OF ANY LICENSEE EMPLOYEES, CONTRACTORS OR AGENTS, OR MEMBERS OF THE PUBLIC); (C) ANY INTERFERENCE WITH THE TELEVISION OR RADIO RECEPTION OF, OR WITH THE TRANSMISSION OR RECEIPT OF TELECOMMUNICATIONS BY, ANY PERSON, WHICH MAY BE OCCASIONED BY THE INSTALLATION OR OPERATION OF LICENSEE'S CABLES, WIRES, APPLIANCES, EQUIPMENT OR FACILITIES; (D) THE PROXIMITY OF LICENSEE'S CABLES, WIRES, APPLIANCES, EQUIPMENT OR FACILITIES TO THE WIRES AND OTHER FACILITIES OF THE OWNER; (E) ANY CLAIMS UPON THE OWNER FOR ADDITIONAL COMPENSATION FOR USE OF ITS DISTRIBUTION RIGHTS-OF-WAY FOR AN ADDITIONAL USE OF LICENSEE; AND (F) ANY INJURIES SUSTAINED AND/OR OCCUPATIONAL DISEASES CONTRACTED BY ANY OF LICENSEE'S EMPLOYEES, CONTRACTORS OR AGENTS, WITH SUCH INJURIES OR DISEASES BEING OF SUCH NATURE, AND ARISING UNDER SUCH CIRCUMSTANCES, AS TO CREATE LIABILITY THEREFORE BY LICENSEE OR THE OWNER UNDER ANY APPLICABLE WORKER'S COMPENSATION LAW, INCLUDING ALSO ALL CLAIMS AND CAUSES OF ACTIONS OF ANY CHARACTER WHICH ANY SUCH CONTRACTORS, EMPLOYEES, THE EMPLOYERS OF SUCH EMPLOYEES OR CONTRACTORS, AND ALL PERSONS OR CONCERNS CLAIMING BY, UNDER OR THROUGH THEM, OR ANY OF THEM, MAY HAVE OR CLAIM TO HAVE AGAINST THE OWNER RESULTING FROM OR IN ANY MANNER GROWING OUT OF ANY SUCH INJURIES SUSTAINED OR OCCUPATIONAL DISEASES CONTRACTED. **IT IS THE EXPRESS INTENT OF THE PARTIES THAT LICENSEE'S OBLIGATIONS TO INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER GROUP WILL INCLUDE, BUT NOT BE LIMITED TO, CLAIMS ARISING OUT OF OR RESULTING FROM OWNER GROUP'S SOLE OR CONCURRENT: (A) NEGLIGENCE, (B) STRICT LIABILITY, OR (C) OTHER FAULT OF ANY NATURE, EXCLUDING ONLY CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE TO THE LIMITED EXTENT ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF OWNER GROUP.**

- B. **INSURANCE.** Licensee shall contract for and maintain in effect throughout the period during which Licensee maintains Attachments on any Poles owned by Owner insurance which meets or exceeds the amounts set forth in Appendix A. Failure to provide and maintain the required

insurance coverage shall constitute a Default under this Agreement, in which event Owner shall have the right to pursue any and all of the remedies set forth in this Agreement. Licensee shall provide certificates or make available proof of insurance evidencing the required insurance policies to the Owner upon execution and annually thereafter. Licensee shall ensure that all of its subcontractors used in connection with this Agreement procure and maintain policies of insurance that are appropriate for the type and level of service being provided.

- C. **SECURITY INSTRUMENT.** Licensee shall furnish and maintain throughout the term of this Agreement, and thereafter until all of the obligations of Licensee have been fully performed, a bond, or other Security Instrument, such as an Irrevocable Standby Letter of Credit, satisfactory in form and content to Owner, to guarantee the payment of any sums which may become due to Owner or an Owner Agent under this Agreement. The initial amount of said Security Instrument shall be an amount equal to Thirty-Five and 00/100 dollars (\$35) per Pole Attachment on Owner's Poles, rounded to the next highest Ten Thousand and 00/100 dollars (\$10,000). The initial amount of the Security Instrument shall be adjusted annually in conjunction with the annual billing. The Security Instrument requirement may be increased annually in an amount to be determined by Owner in its sole discretion. Failure to provide and maintain the aforementioned Security Instrument shall be deemed a Default under this Agreement, in which event Owner shall have the right to pursue any and all remedies set forth in this Agreement. The furnishing of such Security Instrument shall not affect, limit, diminish or otherwise reduce any obligations of Licensee under this Agreement.
- D. **INDEMNIFICATION ENHANCEMENT.** Nothing in the provisions of any insurance or Security Instrument required by this Article 16 shall affect, limit, diminish or otherwise reduce the indemnity provisions set forth in Article 16.A.

ARTICLE 17 - DEFAULTS

- A. **DEFAULT OCCURRENCE.** A "Default" shall occur if:
1. Licensee fails to comply with any term, condition, or covenant of this Agreement, including without limitation the payment of any fees or other amounts due hereunder, and does not cure such failure within thirty (30) days following Licensee's receipt of written notice describing the nature of the failure; or if such failure cannot reasonably be cured within thirty (30) days, Licensee shall not have commenced to cure such failure within thirty (30) days and shall not thereafter with reasonable diligence and good faith proceed to cure such failure, provided that in no event shall Licensee have longer than a total of sixty (60) days following such notice to complete such cure;
 2. Licensee becomes insolvent, makes a transfer in fraud of creditors, or makes an assignment for benefit of creditors;
 3. Licensee files a petition under any section or chapter of the Bankruptcy Code of the United States, as amended, or under any similar law or statute of the United States of America or any State thereof or if Licensee is adjudged bankrupt or insolvent; or
 4. A receiver or trustee is appointed for all or substantially all of the assets of Licensee.
- B. **DEFAULT REMEDIES.** Upon the occurrence of any of such events of Default, Owner shall have the option to pursue any one or more of the following remedies:
1. With thirty (30) days' notice, terminate this Agreement in its entirety;

2. Revoke the permit covering the Pole or Poles involved in such Default or noncompliance;
 3. Decline to authorize additional Attachments under this Agreement until such Defaults are cured;
 4. Suspend Licensee's access to or work on any or all of Owner's Poles;
 5. Correct such Default and charge Licensee, in which case Licensee shall reimburse Owner immediately upon demand for such charges;
 6. Satisfy the obligations of the Licensee from the Security Instrument; or
 7. Institute suit or other judicial proceeding to enforce specific performance of the covenants, terms, and conditions of this Agreement or to pursue remedies at law or in equity.
- C. **DEFAULT RESPONSIBILITIES.** Licensee shall pay all of the costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by Owner by reason of any Default, including costs and expenses incurred in seeking any remedy or relief with respect to such Default. Pursuit of any of the respective remedies available in this Article 17 shall not preclude Owner from pursuing any other remedies provided in this Agreement or otherwise provided at law or in equity, nor shall Owner's pursuit of any remedy provided in this Agreement constitute a forfeiture or waiver of any payment of monies due to Owner or of any damages accruing to Owner caused by Licensee's failure to comply with any terms or conditions of this Agreement.

ARTICLE 18 - DISPUTE RESOLUTION

- A. **GOOD FAITH EFFORT.** The Parties shall in good faith attempt to settle any dispute arising out of or relating to this Agreement through the step negotiation and non-binding mediation set forth herein. All negotiations pursuant to this Article shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any state's rules of evidence.
- B. **JOINT FIELD REVIEW.** In the event of a dispute regarding any compliance or non-compliance with the provisions of Article 3 - Specifications, of this Agreement, including which Party is responsible for any non-compliance and what corrective action, if any, is necessary or appropriate to remedy any such non-compliance, the Parties shall each arrange for a representative to make a joint field visit to the Pole location to investigate whether a violation exists and if so, any corrective action needed and the party or parties responsible. The Parties will make a diligent and good faith effort to resolve such disputes at the local level by the Parties' respective local engineers and local managers.
- C. **INFORMAL DISPUTE RESOLUTION AND LITIGATION.** Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. Representatives of both Parties with authority to settle the dispute shall meet at a mutually acceptable time and place within twenty-one (21) calendar days after delivery of such notice, and thereafter as often as reasonably deemed necessary, to exchange relevant information and attempt to resolve the dispute. If the matter has not been resolved by these persons within thirty (30) calendar days of the disputing Party's notice, or if the Parties fail to meet within twenty-one (21) calendar days, either Party may initiate litigation.
- D. **RIGHT TO LITIGATE.** Nothing herein shall preclude the Parties from entering into any other mutually agreeable dispute resolution procedure or from changing by mutual written agreement any aspect of the foregoing procedure. Except for circumstances in which irreparable harm may

arise from delays inherent in the alternative dispute resolution procedures provided in this Article, either Party may seek specific enforcement of such dispute resolution obligations in the courts having jurisdiction hereunder.

- E. DISPUTE DUE TO ARTICLE 19 OR ARTICLE 20. Should a good faith dispute over a payment arise under Article 19, the procedures provided under Article 19 shall govern the dispute. Should this Agreement be terminated as described in Article 20, the procedures provided under Article 20 shall govern the negotiations in reaching a new Agreement between the Parties.

ARTICLE 19 - PAYMENTS AND INTEREST

- A. FEE ADJUSTMENTS. All fees specified in this Agreement (with the exception of Pole Attachment Rental rates) shall be subject, at Owner's discretion, to an annual adjustment at the start of each calendar year based on the most recent twelve- (12) month change in the Handy Whitman Index (July 1 edition) for the South-Central Region, Account 364, Poles, Towers, and Fixtures. Adjustments shall be applied cumulatively since the date of the last fee adjustment.
- B. PAYMENT TERMS. All amounts to be paid by either Party under this Agreement shall be due and payable within forty-five (45) days of the invoice date. Except as provided in Article 19.C below, any late payment shall bear interest at the lower of the rate of 1.5% per month until paid or the maximum rate allowed by law.
- C. DISPUTED AMOUNTS. A Party receiving a bill may, in good faith and for good cause, dispute the amount or adequacy of substantiation for the bill, provided said dispute is raised prior to the deadline for payment. In the event that a Party disputes only a portion of a bill, then such Party shall promptly pay the undisputed amount. In the event of such dispute, the Parties shall meet, by telephone or in person, within ten (10) business days of a dispute being raised to discuss the disputed item and establish a procedure for addressing the disputed amount in accordance with this Agreement. Upon resolution of the dispute, if the amount and substantiation were correct and sufficient, interest will be paid on the unpaid balance from the due date of the initial bill at the lower of the rate of 1.5% per month until paid or the maximum rate allowed by law; but, if the amount was not correct or substantiation was not sufficient, no interest will be payable unless the amount determined to be correct is not paid within forty-five (45) days of receipt of substantiation and determination of the correct amount. If any such dispute remains unresolved, the procedures provided under Article 18 shall govern the dispute.

ARTICLE 20 - TERM OF AGREEMENT

- A. INITIAL TERM. The initial term of this Agreement shall commence on the Effective Date and continue through and including December 31, 20____. This Agreement shall thereafter continue in effect on a year-to-year basis until terminated.
- B. TERMINATION. This Agreement may be terminated (i) at the end of the initial term or any subsequent term by either Party giving not less than ninety (90) days' prior written notice to the other Party or (ii) as otherwise provided herein.
 - 1. Upon termination of this Agreement in accordance with any of its terms, Licensee shall cease to make any additional Attachments, subject to Article 20.B.2. Termination of the right to make additional Attachments shall not relieve the Licensee of its obligations to maintain its Attachments currently on the Poles of the Owner, and such existing Attachments shall continue to be maintained in accordance with the terms of this Agreement which shall remain in full force and effect.

2. Only to the extent negotiation requirements under Tex. Util. Code §§ 252.005 (relating to cable operators) or 253.0202-.0203 (relating to broadband providers) apply to the Parties, the Parties agree to comply with such statutory requirements, as the same may be amended from time to time, in the event of termination pursuant to Article 20.B.(i). Licensee's obligations to maintain its Attachments shall continue in full force and effect for all existing Attachments in accordance with the terms of this Agreement during any such negotiations of the Parties for a subsequent agreement. This right to maintain existing Attachments shall apply to Licensee's Transfers to Poles replaced at the same location.
3. Subject to any applicable statutory requirements in Article 20.B.2, upon termination of this Agreement in accordance with any of its terms, Owner may require Licensee upon written notice to remove all its Attachments owned by Licensee from all Poles of Owner within one hundred and eighty (180) days. If not so removed, Owner shall have the right to remove and dispose of all of Licensee's Attachments without any liability or accounting therefore.
4. Licensee shall reimburse Owner for any and all costs incurred by Owner in the removal of Licensee's Attachments as detailed above.
5. In the event that Licensee has not reimbursed Owner within forty-five (45) days of invoicing following Owner's removal of said Attachments, then Owner may pursue, without notice or demand to Licensee, one or more of the remedies contained in Article 17, including without limitation making demand on the Security Instrument described in Article 16.C.

C. CONTINUED OBLIGATIONS. Termination of this Agreement shall not relieve either Party from fulfilling any and all of its obligations that accrued while the Agreement was in effect.

ARTICLE 21 - PAYMENT OF TAXES

Licensee shall pay all taxes and assessments lawfully levied on its property that may be attached to Owner's Poles. Licensee agrees if any tax, fee, or charge is levied against Owner solely due to Licensee's equipment or facilities being on Owner's Poles, Licensee will reimburse Owner the full amount of said tax, fee, or charge.

ARTICLE 22 - CONTRACTUAL FOUNDATIONS

- A. APPLICABLE LAW. The provisions of the Agreement shall be construed under, and in accordance with, the laws of the state of Texas.
- B. CONSTRUCTION OF AGREEMENT. This Agreement shall not in any way be construed against either Party on the basis of having drafted all or any part of this document. Neither the negotiations of the language of this Agreement nor any prior drafts of this Agreement or the inclusion or exclusion of any language from prior drafts shall be admissible or probative as to the meaning of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "including" or "includes" do not limit the preceding words or terms.
- C. PRIOR AGREEMENTS SUPERSEDED. All existing joint use or pole attachment agreements between Owner and Licensee, authorized predecessors or assignees, written or unwritten, and all amendments thereto (collectively, the "Old Attachment Agreements") are by mutual consent hereby replaced and superseded by this Agreement; provided, however, that the execution of this Agreement shall not relieve either the Owner or Licensee from fulfilling any and all of its obligations, or incurring any and all of its liabilities, that accrued under the terms of and while the Old Attachment Agreements were in effect, or otherwise serve to waive or release any such

obligations or liabilities. All of the Licensee's Attachments existing as of the Effective Date of this Agreement (including, without limitation, Attachments made pursuant to the terms of the Old Attachment Agreements), and all future Attachments made by the Licensee, are and shall be governed as Attachments under the terms of this Agreement, except that Licensee is not required to obtain a new Attachment permit for Attachments authorized prior to the Effective Date of this Agreement under permits or other authorizations obtained under the Old Attachment Agreements.

- D. **WAIVER OF TERMS AND CONDITIONS.** The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.
- E. **MODIFICATIONS.** Except as otherwise specified in this Agreement, this Agreement may be amended or supplemented at any time only upon written agreement by the Parties hereto. Notwithstanding the foregoing, Appendix A may be modified by Owner upon forty-five (45) days' notice to Licensee. The names and addresses, facsimile numbers and electronic mail addresses to which notices must be sent may be modified by either Party upon notice to the other.

ARTICLE 23 - LIMITATIONS ON DAMAGES

UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, OWNER SHALL NOT BE LIABLE TO LICENSEE OR ANY OTHER LICENSEE PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY LICENSEE OR BY ANY SUBSCRIBER, CUSTOMER OR PURCHASER OF LICENSEE FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY PROVISION OF INDEMNITY, OR OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY UPON WHICH ANY SUCH CLAIM MAY BE BASED.

ARTICLE 24 - REPRESENTATIONS, WARRANTIES, AND COVENANTS

- A. **DISCLAIMER.** Owner disclaims any warranty or representation regarding the condition and safety of Owner's Poles. Licensee expressly assumes responsibility for determining the condition of all Poles to be used by its employees, agents, contractors, or subcontractors. Licensee assumes all risks related to the construction, operation, and maintenance of its Attachments, except as to those that may be caused by the gross negligence or willful misconduct of Owner.
- B. **COMMON REPRESENTATIONS.** Each Party represents and warrants that (i) it has full authority to enter into and perform this Agreement, (ii) this Agreement does not conflict with any other document or agreement to which it is a party or is bound, and this Agreement is fully enforceable against it in accordance with its terms, (iii) it is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was formed, (iv) the execution and delivery of this Agreement and performance hereunder will not conflict with or violate or constitute a breach or default under its formation documents and will not violate any law, rule or regulation applicable to it, and (v) no consents need be obtained from any governmental agency or regulatory authority to allow it to execute, deliver and perform its obligations under this Agreement.
- C. **REQUIRED AUTHORIZATIONS.** Licensee represents and warrants that it has obtained all Required Authorizations and covenants that it will maintain and comply with the Required Authorizations throughout the time that this Agreement remains in effect.

D. LIMITATIONS ON WARRANTIES. There are no warranties under this Agreement except to the extent expressly and unambiguously set forth herein. The Parties specifically disclaim and exclude all implied warranties, including the implied warranties of merchantability and fitness for a particular purpose.

ARTICLE 25 - SEVERABILITY

Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any law, such law shall prevail. In such event, or if any part of this Agreement is held indefinite, invalid, or otherwise unenforceable, then, subject to the Parties' obligation to renegotiate pursuant to Article 28, the provisions of this Agreement so affected shall be limited or amended only to the extent necessary, and no other provisions of this Agreement shall be affected thereby, and all such other provisions shall continue in full force and effect.

ARTICLE 26 - SURVIVAL; LIMITATIONS ON ACTIONS

The expiration or termination of Licensee's privileges under this Agreement shall not relieve Licensee of any obligation, whether indemnity or otherwise, which has accrued prior to such expiration or termination of this Agreement or removal of Licensee's Attachments. Notwithstanding any provisions to the contrary, all rights, remedies, or obligations which arose or accrued prior to the termination or expiration of this Agreement shall survive and be fully enforceable.

ARTICLE 27 - REMEDIES CUMULATIVE

All remedies set forth in this Agreement are cumulative and in addition to any other remedies that may be available at law or in equity.

ARTICLE 28 – CHANGE OF LAW

If any legislative, regulatory, judicial, or other governmental decision, order, determination, or action, or any change in applicable law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required; provided, however, that if the Parties are unable to agree upon mutually acceptable revisions within thirty (30) days of commencement of such negotiations, then either Party shall have the right, at its sole discretion, to terminate this Agreement upon thirty (30) days' prior written notice to the other Party.

[Signature Page Follows]

[Signature Page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in two counterparts, each of which shall be deemed an original, to be effective as of the Effective Date. Signatures in a pdf or similar copy of the original shall be treated as original signatures for the purpose of enforcing this Agreement.

MEDINA ELECTRIC COOPERATIVE, INC.

Signed: _____

Name: _____

Title: _____

Date: _____

[ATTACHER]

Signed: _____

Name: _____

Title: _____

Date: _____

APPENDIX A - STANDARD INSURANCE REQUIREMENTS

AS ADDITIONAL SECURITY FOR COOPERATIVE AND AS SEPARATE OBLIGATION OF LICENSEE NOT IN CONJUNCTION WITH ANY OTHER PROVISIONS OF THIS AGREEMENT, LICENSEE AGREES TO CARRY AND MAINTAIN DURING THE TERM OF THIS AGREEMENT (INCLUDING ALL WARRANTY PERIODS) WITH COVERAGES AND LIMITS OF LIABILITY NOT LESS THAN THOSE SHOWN HEREIN. ALL COVERAGES SHALL APPLY ON AN OCCURRENCE BASIS, WITH THE EXCEPTION OF PROFESSIONAL LIABILITY COVERAGE, WHICH SHALL APPLY ON A CLAIMS-MADE BASIS. THE INSURANCE COVERAGE REQUIREMENTS IN THIS AGREEMENT WILL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF INDEMNIFICATION HEREIN. EACH OF LICENSEE'S SUBCONTRACTORS, IF ANY, SHALL ALSO PROVIDE AND MAINTAIN DURING THE TERM OF THEIR RESPECTIVE AGREEMENTS THE INSURANCE COVERAGES SPECIFIED AS FOLLOWS, WITH LIMITS OF LIABILITY DETERMINED APPROPRIATE BY LICENSEE. IN THE EVENT WORK IS PERFORMED BY A SUBCONTRACTOR IN RELATION TO THIS AGREEMENT, LICENSEE SHALL BE PRIMARILY RESPONSIBLE FOR ANY LIABILITY ARISING DIRECTLY OR INDIRECTLY OUT OF SUCH WORK PERFORMED THAT IS NOT OTHERWISE COVERED BY ANY SUBCONTRACTOR'S INSURANCE. ALL SUCH INSURANCE SHALL BE PRIMARY WITH RESPECT TO ANY OTHER INSURANCE OR SELF-INSURANCE PROGRAMS AFFORDED TO OR MAINTAINED BY OR FOR THE BENEFIT OF COOPERATIVE, AND SHALL NOT REQUIRE THE EXHAUSTION OF ANY OTHER COVERAGE AT ALL LAYERS. LICENSEE SHALL PROMPTLY NOTIFY COOPERATIVE WHEN ANY INSURANCE POLICY REQUIRED IS NOT REASONABLY AVAILABLE AND SHALL STATE THE REASONS THEREFORE.

LICENSEE SHALL PROCURE AT ITS EXPENSE, AND MAINTAIN, AND SHALL REQUIRE ALL OF ITS SUBCONTRACTORS, IF ANY, TO PROCURE AND MAINTAIN IN FULL FORCE DURING THE FULL TERM OF THIS AGREEMENT, INSURANCE POLICIES, FROM AN INSURER, OR INSURERS, LICENSED (ADMITTED) TO DO BUSINESS IN THE STATE OF TEXAS (WITH AN AM BEST RATING OF A VII OR BETTER) WHERE THE WORK HEREUNDER IS TO BE PERFORMED, AND EACH OF WHICH INSURERS SHALL BE SATISFACTORY TO COOPERATIVE; AND THE SAID POLICIES SHALL PROVIDE INSURANCE OF THE TYPE AND IN THE AMOUNTS BELOW INDICATED:

- a) COMMERCIAL GENERAL LIABILITY AND UMBRELLA/EXCESS LIABILITY INSURANCE POLICY/POLICIES MUST HAVE A COMBINED LIMIT OF NOT LESS THAN \$6,000,000 PER OCCURRENCE AND IN AGGREGATE AND WILL BE PRIMARY AND NON-CONTRIBUTORY WITH ANY OTHER COVERAGE ELSEWHERE AFFORDED OR AVAILABLE TO THE COOPERATIVE, AS WELL AS PROVIDE PRIMARY COVERAGE FOR ALL LOSSES AND DAMAGES RELATED TO OR ARISING OUT OF THE AGREEMENT, AND SHALL NOT REQUIRE THE EXHAUSTION OF ANY OTHER COVERAGES AFFORDED OR AVAILABLE TO COOPERATIVE. THE POLICY/POLICIES MUST BE UNDER AN OCCURRENCE POLICY FORM (UNMODIFIED ISO OCCURRENCE FORM CG 0001 04/13, OR A SUBSTITUTE FORM PROVIDING EQUIVALENT COVERAGE). COVERAGE SHALL INCLUDE BUT NOT BE LIMITED TO LIABILITY ASSUMED BY LICENSEE UNDER THE AGREEMENT, INCLUDING THE TORT LIABILITY OF ANOTHER ASSUMED IN A BUSINESS CONTRACT, AND SHALL INCLUDE UNMODIFIED SEPARATIONS OF INSURED'S COVERAGE FOR PREMISES/OPERATIONS, PERSONAL INJURY LIABILITY, PRODUCTS/COMPLETED OPERATIONS, (WITH RESPECT TO THE WORK PERFORMED UNDER THE AGREEMENT IN IDENTICAL COVERAGE, FORM AND AMOUNT, INCLUDING REQUIRED ENDORSEMENTS FOR THE MINIMUM OF FOUR (4) YEARS PAST THE TERMINATION OR EXPIRATION OF THE AGREEMENT). THE POLICY/POLICIES MUST BE ENDORSED TO PROVIDE A DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT (ISO CG 25 03 05/09, OR A SUBSTITUTE FORM PROVIDING EQUIVALENT COVERAGE) AND A DESIGNATED PROJECT(S) PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT (ISO CG 25 45, OR A SUBSTITUTE FORM PROVIDING EQUIVALENT COVERAGE).

IF ANY WORK BY LICENSEE RELATING TO THE AGREEMENT INVOLVES THE FOLLOWING, THE POLICY/POLICIES SHALL BE ENDORSED TO INCLUDE COVERAGE FOR AND STATED ON THE CERTIFICATE OF INSURANCE:

- i. ANY CONSTRUCTION OR WORK ON OR WITHIN FIFTY (50) FEET OF A RAILROAD;**
- ii. THE APPLICATION OF HERBICIDE OR PESTICIDE; AND/OR**
- iii. THE USE OF AN UNMANNED AIRCRAFT.**

THE POLICY/POLICIES MAY NOT CONTAIN ANY OF THE FOLLOWING EXCLUSIONS:

- i. ACTION OVER: NO POLICY REQUIRED HEREUNDER SHALL EXCLUDE OR LIMIT LIABILITY WITHIN THE POLICY LIMITS FOR PERSONAL OR BODILY INJURY OR DAMAGES OR DEATH OF AN EMPLOYEE OF LICENSEE OR COOPERATIVE OR ANY OTHER ENDORSEMENT MODIFYING THE EMPLOYER'S LIABILITY EXCLUSION;**
- ii. WILDFIRE OR LOSS CAUSED BY WILDFIRE;**
- iii. "ANY INSURED VS. ANY INSURED" EXCEPT NAMED INSURED VS. NAMED INSURED;**
- iv. AMENDMENT OF INSURED CONTRACT DEFINITION (ISO CG 24 26);**
- v. CLASSIFICATION OF BUSINESS DESCRIPTION;**
- vi. FORESTRY SERVICES;**
- vii. CONTRACTUAL LIABILITY LIMITATION (ISO CG 21 39);**
- viii. EXPLOSION, COLLAPSE AND UNDERGROUND PROPERTY DAMAGE HAZARD (ISO CG 21 42 OR CG 21 43);**
- ix. LIMITATION OF COVERAGE TO DESIGNATED PREMISES, PROJECT OR OPERATION (ISO CG 21 44);**
- x. PUNITIVE, EXEMPLARY OR MULTIPLIED DAMAGES (WHERE PERMITTED BY LAW IS ACCEPTABLE);**
- xi. WORK HEIGHT; OR**
- xii. ANY OTHER EXCLUSION OR LIMITATION REASONABLY UNACCEPTABLE TO COOPERATIVE.**

- b) BUSINESS AUTOMOBILE LIABILITY AND UMBRELLA/EXCESS LIABILITY INSURANCE POLICY/POLICIES MUST HAVE A COMBINED LIMIT OF NOT LESS THAN \$6,000,000 PER OCCURRENCE COVERING LIABILITY ARISING OUT OF ANY AUTO (OWNED, HIRED AND NON-OWNED) AND WILL BE PRIMARY AND NON-CONTRIBUTORY WITH ANY OTHER COVERAGE ELSEWHERE AFFORDED OR AVAILABLE TO THE COOPERATIVE, AS WELL AS PROVIDE PRIMARY COVERAGE FOR ALL LOSSES AND DAMAGES RELATED TO OR ARISING OUT OF THE AGREEMENT, AND SHALL NOT REQUIRE THE EXHAUSTION OF ANY OTHER COVERAGES AFFORDED OR**

AVAILABLE TO COOPERATIVE. THE POLICY MUST BE ENDORSED TO PROVIDE BROADENED POLLUTION COVERAGE FOR COVERED AUTOS USING ISO FORM CA 99 48 03/06 (OR A SUBSTITUTE FORM PROVIDING EQUIVALENT COVERAGE).

- c) **STATUTORY COVERAGE WORKERS' COMPENSATION INSURANCE** (INCLUDING OCCUPATIONAL DISEASE COVERAGE) IN ACCORDANCE WITH THE LAWS OF THE STATES WHERE THE SERVICES ARE TO BE PERFORMED. COVERAGE SHALL INCLUDE ALTERNATE EMPLOYER ENDORSEMENT WITH COOPERATIVE SHOWN AS THE ALTERNATE EMPLOYER ON THE ENDORSEMENT.
- d) **EMPLOYER'S LIABILITY AND UMBRELLA/EXCESS LIABILITY INSURANCE POLICY/POLICIES** MUST HAVE A COMBINED LIMIT OF NOT LESS THAN \$6,000,000 BODILY INJURY BY ACCIDENT; \$6,000,000 BY DISEASE EACH EMPLOYEE; AND \$6,000,000 BODILY INJURY BY DISEASE POLICY LIMIT.
- e) **PROFESSIONAL LIABILITY (ENGINEER'S ERRORS AND OMISSIONS) INSURANCE**, IN THE EVENT LICENSEE IS PERFORMING DESIGN, ENGINEERING OR OTHER PROFESSIONAL WORK IN RELATION TO THE AGREEMENT, WITH LIMITS OF AT LEAST \$5,000,000 EACH CLAIM AND \$5,000,000 IN THE AGGREGATE. A PROFESSIONAL LIABILITY ENDORSEMENT TO A GENERAL LIABILITY POLICY IS NOT ACCEPTABLE. THE POLICY MAY NOT CONTAIN ANY EXCLUSION FOR PROPERTY DAMAGE OR BODILY INJURY. ANY RETROACTIVE DATE MUST BE EFFECTIVE PRIOR TO BEGINNING OF ANY APPLICABLE WORK AND COVERAGE MUST BE CONTINUED FOR THE MINIMUM OF FOUR (4) YEARS PAST TERMINATION OR EXPIRATION OF THE AGREEMENT.

ANY UMBRELLA/EXCESS LIABILITY INSURANCE POLICY/POLICIES MUST CONTAIN THE RIGHT AND DUTY TO DEFEND WHEN THE UNDERLYING INSURANCE DOES NOT PROVIDE COVERAGE OR WHEN THE UNDERLYING INSURANCE LIMITS HAVE BEEN EXHAUSTED.

IF THE LICENSEE MAINTAINS BROADER COVERAGE AND/OR HIGHER LIMITS THAN THE MINIMUMS SHOWN ABOVE, COOPERATIVE REQUIRES AND SHALL BE ENTITLED TO THE BROADER COVERAGE AND/OR HIGHER LIMITS MAINTAINED BY THE LICENSEE. ANY AVAILABLE INSURANCE PROCEEDS IN EXCESS OF THE SPECIFIED MINIMUM LIMITS OF INSURANCE AND COVERAGE SHALL BE AVAILABLE TO COOPERATIVE.

WAIVER OF SUBROGATION: LICENSEE HEREBY WAIVES ALL RIGHTS OF SUBROGATION AGAINST COOPERATIVE AND ITS DIRECTORS, OFFICERS, MEMBERS, EMPLOYEES, AGENTS AND INSURERS, AND ALL POLICIES OF INSURANCE PROVIDED FOR ABOVE SHALL CONTAIN A PROVISION AND/OR ENDORSEMENT STATING THAT THE INSURANCE CARRIERS AND UNDERWRITERS WAIVE ALL RIGHTS OF SUBROGATION IN FAVOR OF COOPERATIVE AND ITS DIRECTORS, OFFICERS, MEMBERS, EMPLOYEES, AGENTS AND INSURERS.

ADDITIONAL INSURED: ALL POLICIES (EXCEPT FOR WORKERS' COMPENSATION/EMPLOYERS LIABILITY AND PROFESSIONAL LIABILITY) WILL NAME, BY POLICY ENDORSEMENT, COOPERATIVE AS ADDITIONAL INSURED AND MUST PROVIDE COVERAGE TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE GENERAL LIABILITY POLICY WILL BE ENDORSED USING ISO FORM CG 20 10 10/01 AND CG 20 37 10/01 (OR A SUBSTITUTE FORM PROVIDING EQUIVALENT COVERAGE).

PRIMARY & NON-CONTRIBUTORY: COOPERATIVE AND LICENSEE INTEND THAT THE LICENSEE SHALL ENSURE THAT ALL POLICIES PURCHASED IN ACCORDANCE WITH THIS SECTION WILL PROTECT COOPERATIVE AND LICENSEE, AND WILL BE PRIMARY AND NON-CONTRIBUTORY WITH ANY OTHER COVERAGE ELSEWHERE AFFORDED OR AVAILABLE TO COOPERATIVE, AS WELL AS PROVIDE PRIMARY COVERAGE FOR ALL LOSSES AND DAMAGES CAUSED BY THE PERILS COVERED

THEREBY RELATED TO OR ARISING OUT OF THE AGREEMENT, AND SHALL NOT REQUIRE THE EXHAUSTION OF ANY OTHER COVERAGES AFFORDED OR AVAILABLE TO COOPERATIVE.

- i. GENERAL LIABILITY INSURANCE POLICY SHALL BE ENDORSED USING ISO FORM CG 20 01 04/13 (OR A SUBSTITUTE FORM PROVIDING EQUIVALENT COVERAGE).
- ii. BUSINESS AUTOMOBILE LIABILITY INSURANCE POLICY SHALL BE ENDORSED USING ISO FORM CA 04 49 11/16.
- iii. UMBRELLA/EXCESS LIABILITY INSURANCE POLICY/POLICIES “OTHER INSURANCE” CONDITION MUST READ OR BE EQUIVALENT AS FOLLOWS:

“IF YOU SPECIFICALLY AGREE IN A WRITTEN CONTRACT OR AGREEMENT THAT THE INSURANCE PROVIDED TO ANY PERSON OR ORGANIZATION THAT QUALIFIES AS AN ADDITIONAL INSURED UNDER THIS INSURANCE MUST APPLY ON A PRIMARY BASIS, OR A PRIMARY AND NON-CONTRIBUTORY BASIS, THEN INSURANCE PROVIDED UNDER COVERAGE A IS SUBJECT TO THE FOLLOWING PROVISIONS:

THIS INSURANCE WILL APPLY BEFORE ANY “OTHER INSURANCE” THAT IS AVAILABLE TO SUCH ADDITIONAL INSURED WHICH COVERS THAT PERSON OR ORGANIZATION AS A NAMED INSURED, AND WE WILL NOT SHARE WITH THAT “OTHER INSURANCE”, PROVIDED THAT THE INJURY OR DAMAGE FOR WHICH COVERAGE IS SOUGHT IS CAUSED BY AN “EVENT” THAT TAKES PLACE OR IS COMMITTED SUBSEQUENT TO THE SIGNING OF THAT CONTRACT OR AGREEMENT BY YOU.”

SEVERABILITY & CROSS LIABILITY: THE POLICIES SHALL ALSO INCLUDE STANDARD SEVERABILITY PROVISIONS THAT STATE EACH INSURED IS PROVIDED COVERAGE AS THOUGH A SEPARATE POLICY HAD BEEN ISSUED TO EACH, EXCEPT WITH RESPECTS TO LIMITS OF INSURANCE. THE POLICIES SHALL NOT CONTAIN A CROSS LIABILITY OR A CROSS-SUIT EXCLUSION THAT PREVENT COOPERATIVE FROM ASSERTING CLAIMS AGAINST THE LICENSEE OR ANY OTHER INSURED UNDER THE POLICIES.

NOTICE OF CANCELLATION, MATERIAL CHANGE AND NON-RENEWAL: ALL INSURANCE REQUIRED HEREIN SHALL BE ENDORSED TO PROVIDE A THIRTY (30) DAY NOTICE OF CANCELLATION, MATERIAL CHANGE AND NON-RENEWAL TO LICENSEE TO THE EXTENT COMMERCIALY AVAILABLE. IF THIS ENDORSEMENT CANNOT BE PROVIDED, LICENSEE WILL IMMEDIATELY PROVIDE WRITTEN NOTICE TO COOPERATIVE SHOULD ANY OF THE INSURANCE POLICIES REQUIRED HEREIN BE CANCELLED, LIMITED IN SCOPE, OR NOT RENEWED UPON EXPIRATION. SAID NOTICE MUST BE PROVIDED NO LATER THAN THIRTY (30) DAYS PRIOR (EXCEPT TEN (10) DAYS FOR NONPAYMENT OF PREMIUM) TO ANY SUCH ACTION BEING TAKEN.

PROOF OF INSURANCE: PRIOR TO COMMENCEMENT OF ANY WORK UNDER OR IN RELATION TO THIS AGREEMENT BY LICENSEE, LICENSEE SHALL FURNISH COOPERATIVE INSURANCE CERTIFICATE(S) ON A FORM SATISFACTORY TO COOPERATIVE EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF THE INSURER, AND IF REQUESTED BY COOPERATIVE, FOR EACH POLICY, A COPY OF THE DECLARATION PAGE; IF NOT ON THE DECLARATIONS PAGE, A COPY OF ANY SCHEDULE SHOWING THE LIMITS OF INSURANCE AND A LIST OF ALL ENDORSEMENTS TO THE POLICY, TOGETHER WITH A

COPY OF EACH ENDORSEMENT HEREIN REQUESTED AND CERTIFIED COPIES OF INSURANCE POLICIES, WITH ENDORSEMENTS, EVIDENCING THE APPLICABLE POLICIES, COVERAGES AND LIMITS, INCLUDING THOSE OF ITS SUBCONTRACTORS. COOPERATIVE'S RECEIPT OF OR FAILURE TO OBJECT TO ANY INSURANCE CERTIFICATES OR POLICIES SUBMITTED BY LICENSEE OR ITS SUBCONTRACTORS DOES NOT RELEASE OR DIMINISH IN ANY MANNER THE LIABILITY OR OBLIGATIONS OF LICENSEE OR ITS SUBCONTRACTORS OR CONSTITUTE A WAIVER OF ANY OF THE INSURANCE REQUIREMENTS UNDER THIS AGREEMENT. REPLACEMENT CERTIFICATES OF INSURANCE EVIDENCING CONTINUATION OF SUCH COVERAGE SHALL BE FURNISHED TO COOPERATIVE PRIOR TO THE EXPIRATION OF THE CURRENT POLICIES. SHOULD LICENSEE OR ANY SUBCONTRACTOR AT ANY TIME NEGLECT, REFUSE TO PROVIDE OR CANCEL THE INSURANCE REQUIRED HEREIN, COOPERATIVE SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT OR PURSUE ANY REMEDY AVAILABLE AT LAW.

LICENSEE ACKNOWLEDGEMENT: _____

DATE: _____

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APPENDIX B - BILL OF SALE

This Bill of Sale is entered into as of _____ by and between _____, a _____ corporation ("Seller") and _____, a _____ corporation ("Purchaser").

BACKGROUND:

- A. Seller and Purchaser entered into that certain Pole Attachment License Agreement dated _____ ("Agreement") whereby Purchaser could purchase Seller's abandoned Poles.
- B. Purchaser desires to purchase from Seller the Poles listed and described in Exhibit A attached to this Bill of Sale and incorporated by reference into this Bill of Sale (collectively, "Abandoned Poles") for the price of \$ _____ ("Purchase Price").
- C. It is the desire of Seller to assign, transfer, sell and otherwise convey to Purchaser all of the Abandoned Poles in exchange for the Purchase Price.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller and Purchaser, the parties hereby agree as follows:

1. Seller acknowledges receipt of the Purchase Price from Purchaser.
2. Seller does hereby assign, sell, transfer, set over and deliver to Purchaser the Abandoned Poles, and Purchaser hereby accepts the same
3. PURCHASER ACKNOWLEDGES THAT SELLER (AS WELL AS ANYONE ON SELLER'S BEHALF) HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF, AS, TO, CONCERNING OR WITH RESPECT TO:
 - (a) THE VALUE, NATURE, QUALITY, PHYSICAL OR ANY OTHER CONDITION OF THE ABANDONED POLES;
 - (b) THE SUITABILITY OF THE ABANDONED POLES FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY OR PLANS TO CONDUCT THEREON;
 - (c) THE COMPLIANCE OF OR BY THE ABANDONED POLES OR THEIR OPERATION WITH ANY LAWS, RULES, ORDINANCES, ORDERS, DECISIONS OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY;
 - (d) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE ABANDONED POLES;
 - (e) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO THE ABANDONED POLES;
 - (f) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE ABANDONED POLES; OR
 - (g) ANY OTHER MATTER WITH RESPECT TO THE ABANDONED POLES AND, SPECIFICALLY, THAT SELLER HAS NOT MADE, DOES NOT MAKE AND

SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL LAW OR PROTECTION, POLLUTION OR LAND USE, ZONING OR DEVELOPMENT OR REGIONAL IMPACT LAWS, RULES, REGULATIONS, ORDERS, DECISIONS OR REQUIREMENTS.

4. PURCHASER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, WAIVES, RELEASES, ACQUITS AND FOREVER DISCHARGES SELLER, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, ATTORNEYS, REPRESENTATIVES AND ANY OTHER PERSONS ACTING ON BEHALF OF SELLER AND THE SUCCESSORS AND ASSIGNS OF ANY OF THE PRECEDING, OF AND FROM ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, WHICH PURCHASER OR ITS SUCCESSORS OR ASSIGNS NOW HAS OR WHICH MAY ARISE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY RELATED TO OR IN CONNECTION WITH ANY PAST, PRESENT OR FUTURE PHYSICAL CHARACTERISTIC OR CONDITION OF THE ABANDONED POLES. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS BILL OF SALE, THIS RELEASE WILL SURVIVE THE EXPIRATION OR TERMINATION OF THE AGREEMENT.

Seller

Signed: _____

Name: _____

Title: _____

Date: _____

Purchaser

Signed: _____

Name: _____

Title: _____

Date: _____

APPENDIX C – POLE ATTACHMENT RENTAL RATE FORMULA

Pole Attachment Rental Rate Formula			
Line #	Description	Amount	Reference
Attacher Responsibility Percentage			
1	Space Occupied		
2	Safety Space		
3	Unusable Space		
4	Number of Attaching Entities		
5	Pole Height		
6	Attacher Responsibility Percentage		$(Ln\ 1 + (1/(Ln\ 4-1)*Ln\ 2) + (1/(Ln\ 4)*Ln\ 3))/Ln\ 5$
Net Cost of a Bare Pole			
7	Gross Pole Investment (Acct. 364)		
8	Accumulated Depreciation for Poles		
9	Accumulated Deferred Income Taxes		
10	Net Pole Investment		Line 7 - Line 8 - Line 9
11	Bare Pole Factor		
12	Gross Pole Investment Allocable to Attachments		Line 10 x Line 11
13	Total Number of Poles		
14	Net Cost Of A Bare Pole		Line 12 / Line 13
Carrying Charge			
15	Total General and Administrative		
16	Total Utility Plant In Service		
17	Total Utility Accumulated Depreciation		
18	Total Utility Accumulated Deferred Income Taxes		
19	Administrative Carrying Charge		Line 15 / (Line 16 - Line 17 - Line 18)
20	Maint. Expense for Overhead Lines-Current Year		
21	Maint. Expense for Overhead Lines-Current Year Minus 1		
22	Maint. Expense for Overhead Lines-Current Year Minus 2		
23	Maint. Expense for Overhead Lines-3-Year Average		(Line 20 + Line 21 + Line 22) / 3
24	Pole Investment in Accts. 364, 365, & 369		
25	Accumulated Depreciation for Accts. 364, 365, & 369		
26	Accumulated Deferred Income Taxes For 364, 365, & 369		
27	Maintenance Carrying Charge		Line 23 / (Line 24 - Line 25 - Line 26)
28	Gross Pole Investment (Acct. 364)		
29	Net Pole Investment		Line 10
30	Depreciation Rate for Gross Pole Investment		
31	Depreciation Carrying Charge		(Line 28/Line 29) x Line 30
32	Property Tax		
33	Total Utility Plant In Service		
34	Total Utility Accumulated Depreciation		
35	Total Utility Accumulated Deferred Income Taxes		
36	Taxes Carrying Charge		Line 32/(Line 33 - Line 34 - Line 35)
37	Rate Of Return		
38	Return Carrying Charge		
39	Total Carrying Charge		Line 19 + Line 27 + Line 31 + Line 36 + Line 38
Pole Attachment Rental Rate			
40	Attacher Responsibility Percentage		Line 6
41	Net Cost of a Bare Pole		Line 14
42	Total Carrying Charge		Line 39
43	Pole Attachment Rental Rate		Line 40 x Line 41 x Line 42

APPENDIX D -NOTICES - LICENSEE CONTACT INFORMATION FORM

GENERAL CONTACT INFORMATION	
Name	
Corporate Address	
Local Address	
Telephone Number:	
Office	
Cell	
Submitted By	
CONTRACT/LEGAL NOTICES	
Name	
Address	
Telephone Number:	
Office	
Cell	
Email	
Fax	
INSURANCE NOTICES	
Name	
Address	
Telephone Number:	
Office	
Cell	
Email	
Fax	
BILLING / INVOICING / RENTAL PAYMENTS	
Name	
Address	
Telephone Number:	
Office	
Cell	
Email	
Fax	

APPENDIX D–NOTICES-LICENSEE CONTACT INFORMATION FORM (continued):

MAKE-READY INVOICING	
Name	
Address	
Telephone Number:	
Office	
Cell	
Email	
Fax	
ATTACHMENT TRANSFER NOTICES	
Name	
Address	
Telephone Number:	
Office	
Cell	
Email	
Fax	
NJUNS MEMBER CODE	
Code	
Description	
Area (if applicable)	
EMERGENCY / DAMAGED PLANT / NETWORK OPERATIONS CENTER	
Name	
Address	
Telephone Number:	
Office	
Cell	
Email	
Fax	
OTHER	
Name	
Address	
Telephone Number:	
Office	
Cell	
Email	
Fax	