

**STANDARD POLE ATTACHMENT
AND WIRELESS INSTALLATION LICENSE AGREEMENT**

BETWEEN

BRYAN TEXAS UTILITIES

AND

[_____]

BTU AGREEMENT NO. _____

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STANDARD POLE ATTACHMENT AND WIRELESS INSTALLATION LICENSE AGREEMENT

This Standard Pole Attachment and Wireless Installation License Agreement (the “Agreement”) is made and entered into on the ____ day of _____ 20____ (the “Effective Date”), by and between the City of Bryan, Texas (the “City”), d/b/a Bryan Texas Utilities and acting by and through Bryan Texas Utilities Board, a municipal board of the City of Bryan (“BTU”) and [_____] (“Licensee”) (collectively, the “Parties”).

RECITALS

- A. As set forth below, Licensee is: (1) the holder of either a Public Utility Commission of Texas (“PUC”)-issued certificate of authority (“COA”) or service provider certificate of authority (“SPCOA”); (2) the holder of a PUC-issued certificate of franchise authority; (3) a Network Provider, as defined in Chapter 284, Local Government Code; or (4) a Private Network owner.
- B. Licensee agrees to install and maintain Attachments and associated Communications Facilities or Network Nodes on BTU’s Eligible Poles for the provision of Communications Services to the public or for the purposes of a permitted Private Network.
- C. Pursuant to the terms of the Contractual Authorities, BTU may issue one or more Permits authorizing the placement, installation, operation, or use of Licensee’s Attachments or Network Nodes in specified locations, including, depending on the nature of the installation: (1) on Utility Poles within the Communications Space or pole-top space, where permissible; and (2) on Non-Decorative Streetlight Poles.
- D. All of Licensee’s Attachments or Network Nodes shall be installed and maintained pursuant to the procedures and regulations set out in BTU’s Pole Attachment and Wireless Installation Standards, as amended from time to time, which are incorporated herein by reference as if fully set forth in this Agreement.
- E. BTU supports the rapid deployment of competitive broadband and wireless networks within its service area pursuant to prudent pole attachment terms and conditions that will not (1) compromise the safety and reliability of BTU’s electric distribution system; (2) detrimentally affect BTU’s ability to deliver exceptional customer service; or (3) unreasonably interfere with the functionality of third-party communications networks that share BTU’s Eligible Poles. This Agreement shall be interpreted consistently with these principles.
- F. With this Agreement, BTU departs from the traditional Make-Ready Work process by authorizing Licensee to prepare Make-Ready Engineering design documents and to manage Make-Ready Electrical Construction in the electrical space of BTU Eligible Poles at Licensee’s option, subject to BTU’s review and approval of engineering design documents and field inspections of construction operations.
- G. BTU is willing, when it lawfully may do so, to issue one or more Permits authorizing the placement or installation of Licensee’s Attachments or Network Nodes on BTU’s Eligible Poles, provided that BTU may refuse, on a non-discriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally

applicable engineering purposes, or any other Applicable Engineering Standards in accordance with the terms and conditions of the Standards and consistent with the duties outlined in this Agreement, except to the extent applicable federal, state, or local law imposes additional or different requirements.

- H. This Agreement has an initial term of five (5) years and will automatically renew for successive one-year terms unless or until it is terminated by either Party pursuant to the terms hereof. Upon the expiration or termination of this Agreement, Licensee is obligated to remove its Attachments or Network Nodes. Any Attachments or Network Nodes, whether previously authorized or not, are subject to the terms and conditions of the Standards, and those that are not timely removed may be removed by BTU at Licensee's expense.

In consideration of the foregoing recitals and of the mutual covenants, terms and conditions, and remunerations herein provided, and the rights and obligations created hereunder, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

- 1.1. For the purposes of this Agreement, capitalized terms not listed in this Section shall have the meaning given them in the Standards.
- 1.2. The following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within a section of this Agreement or in the BTU Standards.
 - 1.2.1. Affiliate means, when used in relation to Licensee, another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
 - 1.2.2. Attachment Rate means the annual rate for one foot of Utility Pole space as determined by BTU consistent with Section 54.204(c), Texas Utilities Code.
 - 1.2.3. Contractual Authorities means the terms and conditions of this Agreement, together with the Standards, which are incorporated herein by reference as if fully set forth, as they may be amended from time to time.
 - 1.2.4. Eligible Pole means a Utility Pole or a Non-Decorative Streetlight Pole.
 - 1.2.5. Licensee means [] and its authorized successors and assignees.
 - 1.2.6. Licensee's Facilities means the Attachments, Communications Facilities, or Network Nodes installed, owned, leased, licensed, used, or operated by Licensee.
 - 1.2.7. Micro Network Node means a Network Node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

- 1.2.8. Network Node, also known as Wireless Installation for purposes of these Standards, means equipment at a fixed location that enables the provision of wireless communications between user equipment and a communications network. The term:
- (a) includes:
- (i) equipment associated with wireless communications;
 - (ii) a radio transceiver, an Antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
 - (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and
- (b) does not include:
- (i) an electric generator;
 - (ii) a Pole; or
 - (iii) a Macro Tower.
- 1.2.9. Network Node Fee means the total annual rental payment assessed by BTU to each Licensee that owns Network Nodes installed on BTU's Eligible Poles determined by multiplying the [Attachment Rate] x [total number of pole-feet occupied by the Network Provider's Network Nodes].
- 1.2.10. Non-decorative Streetlight Pole shall mean a BTU-owned Streetlight Pole that is not a Decorative Streetlight Pole.
- 1.2.11. Other Licensee means any entity, other than Licensee, to which BTU has extended, or in the future extends, a license agreement to attach facilities to BTU's Eligible Poles subject to the Standards, or an entity the license agreement of which has been terminated or expires, and the existing Attachments or Network Nodes of which at the time of contract termination or expiration become subject to the Standards.
- 1.2.12. Pole Attachment Fee means the total annual rental payment assessed by BTU to each Licensee determined by multiplying [Attachment Rate] x [total number of Utility Pole feet occupied or required by permitted Attachments for the Licensee].
- 1.2.13. Private Network means a network constructed by a private or public entity, such as a school, a university, or a unit of local government, used solely for non-commercial communications purposes.
- 1.2.14. Standards means BTU's Pole Attachment and Wireless Installation Standards with an effective date on or about _____, and as amended from time to time.
- 1.2.15. Unauthorized Attachment means any Attachment or Overlapping of Licensee (a) that was installed before execution of an Agreement or other valid pole attachment license agreement; (b) that was installed after

termination or expiration of an Agreement or other valid pole attachment license agreement; (c) for which Licensee failed to obtain a Permit; or (d) that is not in compliance with the requirements of the Permit issued for said Attachment or Overlashing.

1.2.16. Unauthorized Network Node means any Network Node of Licensee (a) that was installed before execution of an Agreement or other valid wireless installation license agreement; (b) that was installed after termination or expiration of an Agreement or other valid wireless installation license agreement; (c) for which Licensee failed to obtain a Permit; or (d) that is not in compliance with the requirements of the Permit issued for said Network Node.

1.2.17. Utility Pole means a BTU electric distribution system utility pole owned by BTU carrying primary or secondary voltages with phase-to-phase voltages up to and including 34.5 kilovolts (kV).

1.2.18. Wireless Installation means a Network Node or Micro Network Node.

1.2.19. Wireless Installation Space means the space on an Eligible Pole where the following components of a pole-mounted Network Node may be located pursuant to a Permit: (a) Antenna Area; (b) Wireless Equipment Cabinet; and (c) Backhaul Network Interface Device. For a Network Node utilizing the Pole Top Space, the Wireless Equipment Area will not include the Antenna Area.

1.3. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory, and the word “may” is permissive. Words not defined shall be given their common and ordinary meaning.

2. SCOPE OF AGREEMENT

2.1. Grant of License. Subject to the provisions of the Standards, the duties outlined in this Agreement, and to the extent allowed by law, BTU hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install, own, lease, license, use, or operate (a) permitted Attachments on BTU Utility Poles; and (b) permitted Network Nodes on BTU’s Eligible Poles in permitted Wireless Installation Space. The grant of this license is contingent on Licensee following the procedures and regulations in the Contractual Authorities at all times.

2.2. Applicability and Amendment of Standards.

2.2.1. The Standards are applicable to Licensee’s activities in installing, owning, leasing, licensing, using, or operating Attachments or Network Nodes.

2.2.2. Licensee agrees that BTU has the right to amend the Standards from time to time in response to changing conditions in the local market, technological advances, business requirements, policy initiatives, or changes in federal, state, or local law, and that the amended Standards will be incorporated in this Agreement as of their effective date.

- 2.3. Licensee's Privilege to Attach or Install, Own, Use, or Operate Attachments or Network Nodes. Licensee must apply for and obtain a Permit pursuant to the procedures and requirements of the Standards for each Attachment or Network Node that Licensee desires to install. The issuance of such Permit or Permits is subject at all times to BTU's right to provide core electric utility services, including any and all internal communications service essential to the proper operations of such core electric utility services, using its Eligible Poles. Nothing in this Agreement, other than a Permit properly issued under the Standards, shall be construed as granting Licensee any authorization to install an Attachment or Network Node to any specific Eligible Pole.
- 2.4. No Interest in Property. No use, however lengthy, of any BTU Facilities, and no payment of any fees or charges required under the Contractual Authorities, shall create or vest in Licensee any easement or other ownership interest or property right of any nature in any portion of such BTU Facilities. Neither the Contractual Authorities nor any Permit granted under the Standards, shall constitute an assignment of any of BTU's rights to BTU Facilities. Notwithstanding anything in the Contractual Authorities to the contrary, Licensee shall at all times be and remain a licensee only.
- 2.5. Licensee's Warranties Regarding Franchise or Other Authority to Use Public Rights-of-Way and Other Permits.
- 2.5.1. Licensee warrants and agrees that BTU does not have the power to grant Licensee the right to conduct business within the City of Bryan or other cities or jurisdictions within the BTU service area.
- 2.5.2. Licensee warrants and agrees that this Agreement does not constitute a franchise or license to use Public Rights-of-Way within the City of Bryan or any other jurisdiction within the BTU service area.
- 2.5.3. Licensee warrants and agrees that it is the obligation of Licensee to obtain (a) proper easements from all landowners or others having jurisdiction for the installation of facilities on BTU's Eligible Poles when they are outside of Public Rights-of-Way; (b) a franchise or other authority by ordinance, regulation, or state law authorizing Licensee to install, own, use, erect, maintain, lease, license, or operate one or more Communications Facilities or Network Nodes in the Public Rights-of-Way from the applicable governing authority or authorities; and (c) other necessary permits, authority, or consents from federal, state, municipal, or other public authorities to conduct such activities.
- 2.6. Permitted Uses. Licensee shall only use Attachments and Network Nodes to provide Communications Services or permitted Private Networks and shall not engage in any illegal practices, anticompetitive behavior, or collusion with regard to construction activities related to the installation, operation, maintenance, transfer, relocation, use, lease, license, or removal of its Attachments or Network Nodes.

- 2.6.1. Licensee shall fully and timely cooperate with BTU, Other Licensees, and governmental authorities, as prescribed in Contractual Authorities, with regard to the transfer and relocation of Attachments and Network Nodes.
- 2.6.2. Licensee warrants and agrees that preventing or unreasonably delaying any Other Licensee from installing, transferring, or relocating an Attachment or Network Node on an Eligible Pole or interfering with any Other Licensee's Attachment or Network Node installation privileges will constitute a material breach of this Agreement.
- 2.6.3. Notwithstanding any other provision of this Agreement, Streetlight Poles (whether Decorative or Non-decorative) may not be used for Attachments, but only for Network Nodes where consistent with the Contractual Authorities.
- 2.7. No Rights after Termination. Nothing in this Agreement shall be construed to require BTU to allow Licensee to use any Eligible Pole after the termination or expiration of this Agreement.
- 2.8. Parties Bound by Agreement. Licensee and BTU are bound by the duties outlined in this Agreement.

3. FEES AND CHARGES

- 3.1. Pole Attachment and Wireless Installation Fees. Pursuant to this Agreement and the Standards, BTU shall assess and Licensee shall pay, in addition to any other fees or charges authorized under the Contractual Authorities, fees and charges for the privilege of installing, maintaining, owning, leasing, licensing, using, or operating Attachments or Network Nodes on BTU's Eligible Poles.
 - 3.1.1. BTU shall assess fees for Attachments and Network Nodes on a per-pole-foot-required basis at the highest rate permitted under applicable law (the "Attachment Rate," defined above). BTU will provide Licensee notice of the applicable Attachment Rate for the next calendar year by November 30 of each year.
 - 3.1.2. Licensee's initial payment of the Pole Attachment Fees or Network Node Fees for any Attachment or Network Node, as applicable, shall be made on the date Licensee completes installation of the Attachment or Network Node to which a fee or fees are applicable.
 - 3.1.3. After installation of an Attachment or a Network Node, for each year Licensee operates under this Agreement:
 - 3.1.3.1. Licensee shall, on or before October 31 of each year, provide BTU with a summary statement showing (a) the locations of and (b) the number of pole-feet occupied by or required for support of each Attachment or Network Node it owns, leases, licenses, uses, or operates as of that date ("Summary Statement"); and
 - 3.1.3.2. After delivery of the Summary Statement to BTU, Licensee shall, on or before December 31 of each year, pay to BTU in advance for the following calendar year: (a) the Attachment Rate multiplied by

the number of pole-feet occupied by or required for Licensee's Attachments installed on or supported by a Utility Pole for all or any part of the preceding calendar year (the "Pole Attachment Fees"); and (b) the Attachment Rate multiplied by the number of pole-feet occupied by or required for Licensee's Network Nodes installed on or supported by an Eligible Pole for all or any part of the preceding calendar year (the "Wireless Installation Fees").

- 3.2. Application Fees. Licensee shall pay all required Application Fees in accordance with the Standards at the time it submits any Application for permission to install, own, lease, license, use, or operate an Attachment on a Utility Pole or a Network Node on an Eligible Pole. An Application shall not be considered complete until the Application Fees are paid in full.
 - 3.3. Make-Ready and Other Charges. Upon approval of an Application, Licensee shall pay all Make-Ready Charges in full directly to BTU or its contractors, as BTU directs in accordance with the Standards. Make-Ready Electrical Construction will not commence until payment of Make-Ready Charges is made in full.
 - 3.4. Penalties for Unauthorized Attachments or Unauthorized Network Nodes. In the event that Licensee, its agents, its contractors, or its customers installs, owns, leases, licenses, uses, or operates one or more Unauthorized Attachments or Unauthorized Network Nodes, Licensee shall, within thirty (30) calendar days of notice or demand: (a) pay BTU the Unauthorized Attachment Charge or Unauthorized Network Node Charge prescribed in the Standards for each Unauthorized Attachment or Unauthorized Network Node; (b) apply for the applicable Permit for the Unauthorized Attachment or Unauthorized Network Node as provided in the Standards; and (c) pay any costs or expenses required of Licensee under the Contractual Authorities to apply for and obtain a Permit for the Attachment or Network Node.
 - 3.5. Failure to Correct Unauthorized Attachment or Unauthorized Network Node. If Licensee does not apply for a Permit for the Attachment or Network Node and pay the required fees and charges within thirty (30) calendar days of notice that it has installed an Unauthorized Attachment or Unauthorized Network Node, the Attachment or Network Node may be removed in accordance with the Standards at Licensee's expense.
 - 3.5.1. If Licensee fails to pay the cost and expense BTU incurs in removing an Unauthorized Attachment or Unauthorized Network Node within thirty (30) calendar days of notice or demand, BTU may reimburse itself the expense by drawing from the Licensee's Security Instrument.
 - 3.5.2. If the amount of the Security Instrument is insufficient to reimburse BTU all the costs of removal it incurs, BTU may draw the full amount of the Security Instrument and pursue any and all remedies for default available under this Agreement, at law or in equity.
4. PRIVATE AND REGULATORY COMPLIANCE
- 4.1. Necessary Authorizations.

- 4.1.1. Licensee warrants that it is: (a) the holder of either a PUC-issued COA or SPCOA; (b) the holder of a PUC-issued certificate of franchise authority; (c) a Network Provider, as defined in Chapter 284, Local Government Code; or (d) a Private Network owner.
- 4.1.2. Licensee shall obtain from the appropriate public or private authority or other appropriate persons any required authorization to construct, operate, or maintain its Attachments, Communications Facilities, or Network Nodes on public or private property before it occupies any portion of BTU's Eligible Poles. Licensee must provide BTU, as required by the Standards, a copy of a license, franchise, certificate of authority, or other authorization or proof of authority suitable to BTU in its sole discretion that grants Licensee access to municipal or other rights-of-way for the purpose of installing Attachments, Communications Facilities, or Network Nodes.
- 4.1.3. Licensee shall provide BTU with evidence that appropriate authorization has been obtained for any required access to public or private property, other than municipal Public Rights-of-Way, at the time an Application for Permit is submitted. Licensee's obligations under this Section include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith, and to maintain such approval for the term of a Permit.
- 4.2. Forfeiture of BTU's Rights. Any Permit that covers Attachments, Communications Facilities, or Network Nodes that would result in forfeiture or diminution of BTU's rights (as determined by any order, decision, action, or ruling by a court or other governmental authority of competent jurisdiction), shall be deemed invalid as to such Attachments, Communications Facilities, or Network Nodes as of the date of the order, decision, action, or ruling.
 - 4.2.1. If any of Licensee's existing Attachments, Communications Facilities, or Network Nodes, whether installed pursuant to a valid Permit or not, would cause such forfeiture or diminution (as determined by any order, decision, action, or ruling by a court or other governmental authority of competent jurisdiction), Licensee shall promptly remove its Attachments, Communications Facilities, or Network Nodes upon receipt of written notice from BTU of such order, decision, action, or ruling.
 - 4.2.1.1. If Licensee does not remove its Attachments, Communications Facilities, or Network Nodes within forty-five (45) calendar days of the written notice from BTU, BTU may perform such removal at Licensee's sole cost and expense. If Licensee fails to pay the cost of removal within thirty (30) calendar days of demand from BTU, BTU may reimburse itself the expense by drawing from Licensee's Security Instrument.
 - 4.2.1.2. If the amount of the Security Instrument is insufficient to reimburse all the costs of removal BTU incurs, BTU may draw the full amount of the Security Instrument and may pursue any and all other

remedies for default available under this Agreement, at law or in equity.

- 4.2.2. If the rights of BTU or Other Attaching Entities to occupy the real property on which BTU's Eligible Poles are located are terminated solely as a result of the installation, maintenance, or repair of Licensee's Unauthorized Attachment, Unauthorized Network Node, or the failure to remove Licensee's Facilities within the 45-calendar-day period set forth in this Section, Licensee shall use best efforts to restore BTU or Other Attaching Entities to their status before such Unauthorized Attachment or Unauthorized Network Node was installed, maintained, or repaired.

5. LIABILITY AND INDEMNIFICATION

- 5.1. Liability. BTU reserves to itself the right to maintain and operate its Utility Pole and Streetlight Pole systems in such manner as will best enable it to fulfill its service requirements. AS A MATERIAL PART OF THE CONSIDERATION OF THIS AGREEMENT, LICENSEE TAKES AND ACCEPTS BTU'S ELIGIBLE POLES "AS IS" AND IN THE CONDITION IN WHICH LICENSEE FINDS BTU'S ELIGIBLE POLES, WITH ANY AND ALL LATENT AND PATENT DEFECTS AND WITH NO EXPRESS OR IMPLIED WARRANTIES BY BTU OF MERCHANTABILITY, FITNESS, SUITABILITY, OR THAT THE ELIGIBLE POLES ARE FIT FOR ANY PARTICULAR PURPOSE. LICENSEE ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY REPRESENTATION, STATEMENT, OR OTHER ASSERTION WITH RESPECT TO THE CONDITION OF BTU'S ELIGIBLE POLES, BUT IS RELYING UPON ITS OWN EXAMINATION OF BTU'S ELIGIBLE POLES. BTU shall NOT be liable to Licensee, its customers, or anyone else for any interruption to service of Licensee or any interference with the operation of Licensee's Facilities, except where caused by BTU's negligence or willful misconduct. With the exception of third-party claims subject to Section 5.2, neither Party shall be liable to the other for any indirect, special, incidental, or consequential damages suffered by the other Party such as, but not limited to, loss of any anticipated profits, claims of customers, loss of revenue, loss of use of Licensee's Facilities or system, cost of capital, increased expenses or operation of other facilities, or cost of replacement equipment, facilities or power.

5.2. Indemnification.

- 5.2.1. Licensee shall defend, indemnify, and hold harmless BTU, the City, and their respective officials, officers, board members, council members, representatives, employees, agents, and contractors (each an "Indemnitee," and collectively, the "Indemnitees") against any and all liability, costs, damages (including indirect or consequential damages), fines, taxes, special charges by others, penalties, payments (including payments made by Indemnitees under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorneys' fees of Indemnitees and all other costs and expenses of litigation) of every kind or character arising from the performance of this

Agreement, including any act, omission, failure, negligence, or willful misconduct in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal, or operation by Licensee or Licensee's officers, directors, employees, agents, or contractors of Licensee's Attachments, Communications Facilities, or Network Nodes; the Attachments, Communications Facilities, or Network Nodes of any Other Licensee; or BTU Facilities ("Covered Claims").

5.2.2. Licensee's indemnification obligations for Covered Claims shall apply irrespective of any negligence or alleged negligence of Indemnitees, except to the extent that Indemnitees' negligence or willful misconduct gives rise to such Covered Claims, in which case it is expressly agreed that Licensee's obligations of indemnity under Section 5.2 shall be effective only to the extent of its pro rata share of liability. Covered Claims include, but are not limited to, the following:

5.2.2.1. Claims related to intellectual property infringement, libel and slander, and claims or ransom demands resulting from malicious cybersecurity breaches or cyber-attacks perpetrated against BTU's internal computer networks, systems, gateways, or software applications arising from, resulting from, or related to Licensee's online access to BTU's electronic systems, databases, applications, or software utilized by Licensee in the Make-Ready Engineering design process, the installation of Attachments, Communications Facilities, Network Nodes, or the construction of Licensee's Facilities;

5.2.2.2. Claims associated with cost of work performed by BTU that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents, or contractors, to install, maintain, use, transfer, or remove Attachments, Communications Facilities, Network Nodes, or BTU Facilities in accordance with the requirements and specifications of the Standards;

5.2.2.3. Claims for damage to or destruction of Attachments, Communication Facilities, or Network Nodes of any Other Licensee, BTU Facilities, private property of any third-party, or injury to or death of any person or persons that arise out of or are caused by the erection, installation, maintenance, presence, operation, use, rearrangement, or removal of or from BTU Poles of Licensee's Attachments, Communications Facilities, or Network Nodes or the proximity of Licensee's Attachments, Communications Facilities, or Network Nodes to BTU Facilities, or by any act, omission, or negligence of Licensee or its contractors, agents and employees on or in the vicinity of BTU Facilities;

5.2.2.4. Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents, or

contractors, of any law, rule, or regulation of the United States, the State of Texas, or any other governmental entity or administrative agency;

- 5.2.2.5. Claims of governmental bodies, property owners, or others alleging that Licensee does not have sufficient right or authority for placing and maintaining Licensee's Attachments, Communications Facilities, or Network Nodes at the locations of BTU's Eligible Poles;
- 5.2.2.6. Claims for taxes or special charges by others that arise directly or indirectly from the construction, maintenance, or operation of Licensee's Attachments, Communications Facilities, or Network Nodes and are payable by Licensee pursuant to federal, state, or local regulation, statute, or other requirement;
- 5.2.2.7. Claims caused by or relating in any manner to a breach of this Agreement by Licensee or its agents and employees or by Licensee's contractors; and
- 5.2.2.8. Claims arising from or due to environmental conditions arising from Licensee's use, storage, maintenance, disposal, or release of any Hazardous Substances on, under, adjacent, or proximate to BTU Facilities.

5.3. Procedure for Indemnification.

- 5.3.1. Indemnatee shall give reasonably prompt notice to Licensee of any Covered Claim or threatened Covered Claim wherein Indemnatee is seeking indemnification pursuant to Section 5.2, specifying the alleged factual basis for such claim and the estimated amount of the claim.
- 5.3.2. Indemnatee's failure to give the required notice of a Covered Claim will not relieve Licensee of its obligation to indemnify Indemnatee unless and to the extent Licensee is materially prejudiced by such failure.

- 5.4. Environmental Hazards. Licensee represents and warrants that its use of BTU's Eligible Poles will not generate Hazardous Substances, that it will not store or dispose of Hazardous Substances on or about BTU's Eligible Poles, that it will not transport to BTU's Eligible Poles any Hazardous Substances, and that Licensee's Attachments, Communications Facilities, or Network Nodes do not constitute or contain and will not generate any Hazardous Substances, including any such activities in violation of federal, state, or local law now or hereafter in effect, including any amendments. The term "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local laws, regulations, or rules now or hereafter in effect, including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration, or other disaster, Licensee's Attachments, Communications Facilities, or Network Nodes will not release such Hazardous Substances.

- 5.5. Municipal Liability Limits. No provision of this Agreement is intended or shall be construed to be a waiver on the part of BTU for any purpose of any applicable limits on municipal liability.
- 5.6. No Limitation. No indemnification provision contained in this Agreement under which Licensee indemnifies BTU shall be construed in any way to limit any other indemnification provision contained in the Contractual Authorities or under applicable law.

6. DUTIES, RESPONSIBILITIES, AND EXCULPATION

- 6.1. Duty to Inspect. Licensee acknowledges and agrees that BTU does not warrant the condition or safety of the BTU Facilities or the premises surrounding the BTU Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect Eligible Poles or premises surrounding the Eligible Poles prior to commencing any work on Eligible Poles or entering the premises surrounding the Eligible Poles.
- 6.2. Knowledge of Work Conditions. By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees, contractors, subcontractors, or agents with the conditions relating to the work that Licensee will undertake under the Standards and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.
- 6.3. Duty to Inform and Protect. Licensee further warrants that it understands the imminent dangers, INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION, inherent in the work necessary to make installations on Eligible Poles by Licensee's employees, servants, agents, contractors, or subcontractors, and Licensee accepts as its duty and sole responsibility the obligation to notify and inform Licensee's employees, servants, agents, contractors, or subcontractors of such dangers, and to keep them informed regarding same. Licensee also warrants that it will implement all precautions, procedures, and measures in the Standards to protect public safety and the safety of personnel working close to electrified lines.
- 6.4. Protection of Utility Data. During the term of this Agreement, Licensee may have access to BTU's geodatabase electronic records of Eligible Pole locations, strand and underground routes, substation locations, and other pertinent information related to BTU's electric system. Such electronic records consist of proprietary and confidential BTU information related to critical infrastructure and shall be treated as confidential by Licensee and protected from public disclosure. Licensee shall implement physical and cybersecurity measures to protect the geodatabase information from public disclosure, theft, and widespread internal distribution, such as the best practices outlined in the Federal Trade Commission's "Start with Security" cybersecurity guidelines.
- 6.5. Licensee's Confidential Information. To the extent that Licensee considers any document or information submitted to BTU under the terms of the Contractual Authorities to be trade secret, proprietary, or otherwise confidential under law, it

shall label or mark the document or information conspicuously with the words “Confidential Information.” If any person requests access to Licensee’s information submitted to BTU under the terms of the Contractual Authorities, BTU will treat such information as required under the Texas Public Information Act, Chapter 552, Texas Government Code.

7. INSURANCE

- 7.1. Insurance Coverage. As detailed in Appendix A hereto, Licensee agrees at all times to carry and maintain in full force insurance sufficient to fully protect BTU, the City, and their respective officials, officers, board members, council members, representatives, employees, and agents (“Covered Persons”) from and against any and all claims or demands for damages, and to include all Covered Persons as “additional insureds.”
 - 7.1.1. Licensee shall provide for an endorsement that the “other insurance” clause shall not apply to Covered Persons where they are additional insureds on the policy.
 - 7.1.2. Licensee’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by a Covered Person for liability arising out of this Agreement.
 - 7.1.3. BTU may in its reasonable discretion increase required insurance coverage limits or modify coverages where it determines such changes are reasonably necessary to provide adequate insurance coverages.
- 7.2. On an annual basis, on or before October 31 of each year of this Agreement, Licensee shall furnish appropriate documentation acceptable to BTU demonstrating its insurance coverage and that it fully complies with this Section and the Standards.
- 7.3. Failure to maintain the appropriate insurance coverage at any time during the term of this Agreement or to annually furnish documentation of coverage shall constitute a breach of this Agreement.

8. AUTHORIZATION NOT EXCLUSIVE

BTU shall have the right to grant, renew, and extend nondiscriminatory rights and privileges to others not party to this Agreement, by contract or otherwise, to use BTU Facilities. Such rights shall not interfere with the privileges granted to Licensee by the specific Permits issued pursuant to the Standards. Licensee’s privileges under a Permit issued pursuant to the Standards shall not interfere with the privileges of any Other Licensee that has been issued a Permit. In the event of a conflict between the privileges of Licensee and any Other Licensee that cannot be resolved by reference to the Standards, BTU shall resolve the conflict as the Eligible Pole owner in a non-discriminatory manner.

9. ASSIGNMENT

- 9.1. Limitations on Assignment. Licensee shall not assign its privileges or obligations under this Agreement, nor any part of such privileges or obligations, without the prior written consent of BTU, which consent shall not be unreasonably withheld, conditioned, or delayed.

- 9.2. Obligations of Assignee/Transferee and Licensee. Notwithstanding any provision in this Agreement to the contrary, Licensee shall have the privilege to assign this Agreement to any parent, subsidiary, Affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with Licensee, or to any entity into which Licensee may be merged or consolidated or that purchases all or substantially all of the assets of Licensee that are subject to this Agreement. No assignment or transfer under this Section shall be allowed, however, until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish BTU with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement for claims that arose during the time period Licensee operated pursuant to the Agreement, and Licensee shall not be released from those claims, including the obligation to indemnify BTU for Covered Claims.
- 9.3. Sub-Licensing Prohibited.
- 9.3.1. Licensee Remains Responsible. Licensee shall not sublicense space on or use of a BTU Eligible Pole to any third party. The Parties acknowledge and agree, however, that certain Network Nodes that Licensee may deploy, construct, install, repair, or maintain under the terms of this Agreement may be licensed, leased, owned, or operated by one or more Wireless Service Provider customers of Licensee (“Licensee’s Customers”) pursuant to license, lease, or sales agreements between Licensee and Licensee’s Customers. Such Network Nodes shall be treated as Licensee’s Network Nodes under this Agreement, and Licensee shall be responsible for performance of all of Licensee’s obligations under this Agreement with respect to all Network Nodes Licensee deploys, constructs, installs, repairs, or maintains on a BTU Eligible Pole.
- 9.3.2. Notice to Third-Party Required. Licensee shall not deploy, construct, install, repair, or maintain a Network Node licensed to, owned by, leased to, or for the benefit of any third-party, including an Affiliate or Licensee’s Customer (the “Third-Party Facility”), without providing the third-party notice of BTU’s requirements under the Contractual Authorities pertaining to a Network Node on a BTU Eligible Pole (collectively, the “BTU Requirements”). Licensee may satisfy this notice requirement by providing each of Licensee’s Customers with an electronic link to BTU’s website where the BTU Requirements may be found.
- 9.3.3. Notice of Arrangement. If Licensee constructs or intends to construct a Third-Party Facility owned, leased, or licensed for use in whole or in part by one or more of Licensee’s Customers, including without limitation a Wireless Service Provider, Licensee shall provide notice to BTU of such arrangement at the time it submits an Application for use of an Eligible Pole for installation of a Network Node. Licensee’s notice of Third-Party Facility shall include: (a) the name, address, email address, and contact telephone number of Licensee’s Customer; (b) the model number of and

the technical specifications for the Third-party Facility; and (c) a description of the nature of the interest Licensee's Customer holds or will hold in the Third-Party Facility (*e.g.*, whether Licensee's Customer will own the Third-Party Facility or will lease or license the Third-Party Facility from Licensee). The information required by this Subsection may be provided as part of the Application.

10. TERM OF AGREEMENT

- 10.1. Initial Term and Renewal. This Agreement shall become effective on the Effective Date and shall have an initial term of five (5) years. Following the expiration of the initial term, the Agreement shall automatically renew for successive one-year terms until such time that the Agreement is terminated by either Party upon giving the other Party six (6) months' written notice of termination or pursuant to the other terms of this Agreement.
- 10.2. Survival of Obligations. 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, Communications Facilities, or Network Nodes.

11. DEFAULT; TERMINATION OF AGREEMENT

- 11.1. Default; Right to Terminate and Pursue Remedies. BTU shall have the right, pursuant to the procedure set out in this Section 11, to terminate this entire Agreement or any Permit issued pursuant to the Standards and to pursue any and all remedies provided in this Agreement, at law or in equity, whenever Licensee is in default of any term or condition of this Agreement or the Standards, including, but not limited to:
- 11.1.1. Construction, operation, maintenance, use, lease, or licensure of Licensee's Attachments, Communications Facilities, or Network Nodes in violation of law or in aid of any unlawful act or undertaking;
 - 11.1.2. Construction, operation, maintenance, use, lease, or licensure of Licensee's Attachments, Communications Facilities, or Network Nodes after any authorization required of Licensee has lawfully been denied or revoked by final action of any governmental or private authority;
 - 11.1.3. Construction, operation, maintenance, use, lease, or licensure of Licensee's Attachments, Communications Facilities, or Network Nodes without the insurance or Security Instrument coverage required under Sections 7 and 17;
 - 11.1.4. Failure to pay in full an invoice for any charge, fee, penalty, or interest as provided in the Contractual Authorities; or
 - 11.1.5. Failure to promptly and fully perform any other covenant, condition, provision, or agreement contained in the Contractual Authorities.
- 11.2. Notice of Default and Opportunity to Cure. BTU will notify Licensee in writing as soon as reasonably practicable of any condition of default under Section 11.1,

above. Licensee shall take immediate corrective action to cure such default within fifteen (15) calendar days, or such longer time period mutually agreed in writing by the Parties, not to exceed sixty (60) calendar days.

11.2.1. BTU may in its sole discretion agree to extend the time for cure upon a written showing of good cause on the part of Licensee.

11.2.2. Upon correcting the default, but no later than the expiration of the applicable cure period, Licensee shall confirm in writing to BTU that the cited condition of default has ceased or been corrected.

11.3. Failure to Cure. If Licensee fails to cure a default, BTU may immediately terminate this Agreement or any Permit and provide written notice of termination to Licensee.

11.3.1. In the event of termination of this Agreement or any of Licensee's privileges or authorizations hereunder, Licensee shall remove its Attachments, Communications Facilities, or Network Nodes at Licensee's expense pursuant to the procedures set forth in the Standards.

11.3.2. If Licensee fails to remove its Attachments, Communications Facilities, or Network Nodes as provided in the Standards, the Attachments, Communications Facilities, or Network Nodes shall be deemed abandoned, and BTU may remove the Attachments, Communications Facilities, or Network Nodes at Licensee's expense.

11.3.2.1. Licensee shall reimburse BTU all costs or expenses incurred in removing Licensee's Attachments, Communications Facilities, or Network Nodes within ten (10) business days of demand.

11.3.2.2. If Licensee fails to pay BTU the cost of removal within ten (10) business days of demand from BTU, BTU may reimburse itself the expense by drawing from the Licensee's Security Instrument.

11.3.2.3. If the amount of the Security Instrument is insufficient to reimburse all the costs of removal BTU incurs, BTU may draw the full amount of the Security Instrument and may pursue any and all other remedies for default available under this Agreement, at law, or in equity.

12. RELOCATION AND REMOVAL OF ATTACHMENTS, COMMUNICATIONS FACILITIES, AND WIRELESS INSTALLATIONS

12.1. Relocation and Removal at Licensee's Expense. The Parties agree that BTU may require a Licensee to relocate or remove its Attachments, Communications Facilities, or Network Nodes when BTU determines it reasonably necessary for the safe, reliable, or economical operation of BTU Facilities.

12.1.1. Licensee shall remove and relocate Attachments, Communications Facilities, and Network Nodes at its own expense not later than one hundred twenty (120) calendar days after receiving written notice that removal,

relocation, or alteration of the Attachments, Communications Facilities, or Network Node (including poles) is necessary due to:

- 12.1.1.1. Construction, expansion, repair, relocation, or maintenance of a BTU project intended to improve service;
- 12.1.1.2. Maintenance, upgrade, expansion, replacement, or relocation of BTU Facilities;
- 12.1.1.3. Closure of any Public Right of Way;
- 12.1.1.4. Sale of property owned by the City or other governmental entity having jurisdiction;
- 12.1.1.5. A street, public works, or other public improvement project requiring the construction, expansion, repair, relocation, or maintenance of BTU Facilities;
- 12.1.1.6. Projects and programs undertaken to protect or preserve the public health or safety;
- 12.1.1.7. Activities undertaken to eliminate a public nuisance; or
- 12.1.1.8. Duty otherwise arising from applicable law.

12.1.2. Licensee's duty to remove and relocate its Attachments, Communications Facilities, or Network Nodes at its expense under this Section is not contingent on the availability of an alternative location acceptable for relocation.

12.1.3. BTU will make reasonable efforts to provide an alternative location on an Eligible Pole for relocation upon Licensee's submission of an Application in the ordinary course. Licensee shall comply with the notice to remove its Attachments, Communications Facilities, or Network Nodes as instructed, regardless of the disposition of its Application.

12.2. Voluntary Removal or Relocation. Licensee may remove or relocate one or more Attachments, Communications Facilities, or Network Nodes installed pursuant to the provisions of this Agreement.

12.2.1. If Licensee intends to remove an Attachment, a Communications Facility, a Network Node, or associated equipment, Licensee shall submit, together with applicable fees, an Application and obtain a Permit in accordance with the requirements of this Agreement and the Standards not less than ten (10) days before the date Licensee intends to remove the Attachment, Communications Facility, Network Node, or associated equipment.

12.2.2. Licensee shall complete any removal or relocation within the times allowed in the applicable Permit.

12.2.3. Licensee shall not be entitled to a refund of any fees or charges paid to BTU under the terms of this Agreement for any Attachment, Communications Facility, Network Node, or associated equipment Licensee removes or relocates.

- 12.3. Application Required. An Attachment, Communications Facility, or Network Node for which relocation to an Eligible Pole is contemplated shall be treated as a new Attachment, Communications Facility, or Network Node for all purposes under this Agreement for Application, permitting, installation, and the assessment of Fees and Charges under this Agreement and the Standards.
 - 12.4. Removal of Attachments, Communications Facilities, and Network Nodes Upon Expiration or Termination. Upon expiration or termination of this Agreement, Licensee shall remove all Attachments, Communications Facilities, or Network Nodes installed on BTU's Eligible Poles.
 - 12.5. Plan for Removal. Within thirty (30) calendar days following expiration or termination of this Agreement, Licensee shall provide the BTU with a written plan for removing its Attachments, Communications Facilities, or Network Nodes, and shall provide information regarding the sequence of removal, the timing of removal, and the contractors for removal, all in accordance with the requirements of the Standards.
 - 12.6. Completion of Removal Activities; Termination of License. Licensee shall complete its removal of all Attachments, Communications Facilities, or Network Nodes within one hundred twenty (120) calendar days after expiration or termination of this Agreement. Thereafter, Licensee shall have no access to BTU Eligible Poles for any purpose, including installation, operation, use, maintenance, or repair any Attachments, Communications Facilities, or Network Nodes.
 - 12.7. Failure to Remove All Attachments, Communications Facilities, or Network Nodes. If Licensee fails to remove any Attachments, Communications Facilities, or Network Nodes within the time allowed for removal, BTU may remove the remaining Attachments, Communications Facilities, or Network Nodes at Licensee's sole cost and expense. If Licensee fails to pay the cost of removal within thirty (30) calendar days of receipt of demand from BTU, BTU may reimburse itself the expense by drawing from the Licensee's Security Instrument. If the amount of the Security Instrument is insufficient to reimburse all the costs of removal BTU incurs, BTU may draw the full amount of the Security Instrument and may pursue any and all other remedies for default available under this Agreement, at law or in equity.
13. **AMENDING AGREEMENT AND POLE ATTACHMENT STANDARDS**
 - 13.1. Amendments to Pole Attachment Standards. BTU reserves the right to amend the Standards in accordance with their terms. Any amendment to the Standards shall apply prospectively, except to the extent required by federal, state, or local law.
 - 13.1.1. Acceptance of Amendment. At least forty-five (45) calendar days prior to the effective date of an amendment to the Standards, BTU will provide Licensee with notice of an impending amendment ("Standards Amendment Notice"). The Standards Amendment Notice will state the content and the effective date of the amendment and provide a means for Licensee to acknowledge and accept the amendment by a date certain. Licensee shall

return a writing accepting the amendment before the effective date of the amendment.

13.1.2. Failure to Respond or Rejection of Amendment. If Licensee fails to timely return a writing accepting the Standards amendment or rejects the amendment in writing, BTU will suspend any further processing of Licensee's Applications. Thereafter, BTU will send written notice to Licensee terminating this Agreement. The Parties shall meet in the offices of BTU at a date acceptable to BTU in its reasonable discretion to discuss the terms for the orderly removal or other disposition of Licensee's Attachments, Communications Facilities, or Network Nodes at Licensee's sole cost and expense. Licensee shall remove or otherwise dispose of its Network Nodes within one hundred twenty (120) calendar days after notice of termination.

13.2. Amendments to Agreement. The terms and conditions of this Agreement shall not be amended, changed, or altered except in writing signed by authorized representatives of both Parties or upon BTU's adoption of amendments to the Standards and Licensee's acceptance thereof in accordance with the terms of this Agreement.

14. DISPUTE RESOLUTION

14.1. Invocation of Procedure. Any disputes related to the day-to-day administration of the permitting process shall be governed by the dispute resolution provisions of the Standards. In the event a dispute arises between the Parties related to the legal interpretation of any provision of this Agreement, or any potential conflict between the provisions of this Agreement and the Standards, prior to the filing of any suit or administrative proceeding with respect to such a dispute, the Party believing itself aggrieved (the "Invoking Party") shall give written notice to the other Party. Such a notice will be without prejudice to the Invoking Party's right to any other remedy permitted by this Agreement.

14.2. Conferences. BTU and Licensee will use their best efforts to arrange personal meetings or telephone conferences as needed, at mutually convenient times in Bryan, Texas, between their negotiators at the following successive management levels, each of which will have a period of allotted time as specified below in which to attempt to resolve the dispute:

	BTU	Licensee	Time
First Level	<i>BTU Executive Director – Energy Delivery</i>	[]	15 days
Second Level	<i>BTU General Manager</i>	[]	15 days
Third Level	<i>City Attorney</i>	[]	15 days

14.3. Time for Negotiations. The allotted time for the first level negotiators will begin on the tenth (10th) business day following delivery of the Invoking Party's notice, unless otherwise agreed by the Parties. If resolution of the dispute is not achieved

by the first level negotiators, then the allotted time for the second level negotiators will begin on the tenth (10th) business day following the end of first level negotiations, unless otherwise agreed by the Parties. If resolution of the dispute is not achieved by the second level negotiators, then the allotted time for the third level negotiators will begin on the tenth (10th) business day following the end of second level negotiations, unless otherwise agreed by the Parties.

14.4. Mediation. If a resolution of the dispute is not achieved by negotiators at the second management level, then the Parties shall participate in non-binding mediation at a time mutually agreed by the Parties. Mediation shall take place in Bryan, Texas. The allotted period for completion of the mediation shall be thirty (30) days from commencement of mediation, unless otherwise agreed by the Parties. The Parties agree to share the cost of mediation equally using a mutually agreed professional mediator from JAMS, or similar alternative dispute resolution organization.

14.5. Failure of Negotiations and Mediation. If resolution of the dispute is not achieved by mediation within the allotted time, then either Party may file an action to resolve the dispute with a state regulatory agency or a court of competent jurisdiction over the subject matter of the dispute.

15. NOTICES

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

If to BTU, at:

General Manager
Bryan Texas Utilities
P.O. Box 1000
Bryan, TX 77805

with a copy to:

City Attorney
City of Bryan, Texas
P.O. Box 1000
Bryan, TX 77805

If to Licensee, at:

Attention: []
[]
[]
[]

with a copy to:

[] at the same address

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

15.2 Emergency Contact. Licensee and BTU, respectively, shall maintain staffed 24-hour emergency telephone numbers, not available to the general public, at which either Party can report damage to Attachments, Communications Facilities, Network Nodes, or BTU Facilities or other situations requiring immediate communications between the Parties. The contact person for Licensee shall be qualified and able to respond to the BTU's concerns and requests. Failure of Licensee to maintain an emergency contact shall eliminate BTU's liability to Licensee for any actions that BTU deems reasonably necessary given the specific circumstances of the emergency or other damage to Attachments, Communications Facilities, or Network Nodes requiring notice under this Section.

15.3 Network Operations Center. Licensee shall provide the following contact information, and maintain such information current at all times, for its Network Operations Center that monitors Network Nodes subject to this Agreement:

Network Operations Center for []

- Telephone Number: []
- Email Address: []
- NOC Operator: []
- Facility Address: []

16. RECEIVERSHIP, FORECLOSURE, OR ACT OF BANKRUPTCY

16.1. Notice. Licensee shall notify BTU in writing not later than thirty (30) days after the filing or imposition of a receivership, reorganization, bankruptcy or other such action or proceeding by or against Licensee.

16.2. Option to Terminate. The privileges granted to Licensee hereunder, at the option of BTU, shall cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers, or trustee or trustees, or debtor-in-possession to take over and conduct the business of Licensee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership, trusteeship, or bankruptcy shall have been vacated or dismissed prior to the expiration of said one hundred twenty (120) days, or unless:

16.2.1. To the extent permitted by law, within one hundred twenty (120) days after their election, appointment, or imposition such receivers, trustees, or debtor-in-possession shall have complied fully with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers, trustees, or debtor-in-possession within said one hundred twenty (120) days shall have remedied all defaults under the Agreement, if any; and

16.2.2. To the extent permitted by law, within said one hundred twenty (120) days, such receivers, trustees, or debtor-in-possession shall execute an agreement

duly approved by BTU, whereby such receivers, trustees, or debtors-in-possession assume and agree to be bound by each and every term, provision and limitation of this Agreement.

- 16.3. Involuntary Sale. In the case of foreclosure or other judicial sale of the plant, property, or equipment of Licensee, or any part thereof, including or excluding this Agreement, BTU may provide notice of termination to Licensee, in which event the Agreement herein and all privileges of the Agreement granted hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

16.3.1. BTU shall have approved the transfer of this Agreement, as and in the manner this Agreement provides; and

16.3.2. The successor shall have agreed with BTU to assume and be bound by all the terms and conditions of this Agreement.

17. **PERFORMANCE BOND OR OTHER SECURITY**

- 17.1. Bond or Other Security to Be Posted. Prior to making any Attachments or installing any Communications Facilities or Network Nodes and within thirty (30) days of the Effective Date of this Agreement, Licensee shall provide to BTU in a form suitable to BTU in its sole discretion: (a) a performance bond; (b) an irrevocable standby letter of credit; or (c) a cash deposit in the amount of one-hundred thousand and 00/100 dollars (\$100,000.00) (the "Security Instrument") corresponding with the requirements of Appendix B.

17.1.1. If Licensee chooses to post a bond, the bond shall be executed with a proper surety through a company licensed and qualified to operate in the State of Texas and listed with the U.S. Department of the Treasury as published in the Federal Register. In addition, the bond shall not be for an amount greater than the surety's approved limit as referenced in the current Federal Register and shall be accompanied by a certified power-of-attorney document, all still subject to the final approval of BTU.

17.1.2. If Licensee chooses to provide an irrevocable standby letter of credit ("LOC"), the LOC shall be satisfactory in form and content in the sole discretion of BTU.

- 17.2. Purpose of the Security Instrument. The purpose of the Security Instrument is to ensure Licensee's performance of all of its obligations under this Agreement and the Standards and for the payment by Licensee of any damages, claims, liens, taxes, liquidated damages, penalties, or fees due to the BTU that arise by reason of the construction, installation, operation, maintenance, transfer, relocation, or removal of Licensee's Attachments, Communications Facilities, or Network Nodes on or about BTU's Eligible Poles, including without limitation, claims for damages to BTU Facilities caused by Licensee, its contractors, or agents, and for any costs BTU incurs relocate Licensee's Attachments, Communications Facilities, Network Nodes, or related facilities. BTU shall have the right to draw funds from the Security Instrument to recover damages to BTU Facilities caused by Licensee, its contractors, or agents or for any costs BTU incurs to relocate Licensee's Attachments, Communications Facilities, Network Nodes, or related

facilities. Provision shall be made to permit BTU to draw against the Security Instrument. Licensee shall not use the Security Instrument for other purposes and shall not assign, pledge, or otherwise use the Security Instrument as security for any other purpose.

17.3. Actions after Draw-Down. Within thirty (30) days after notice to Licensee that BTU has drawn any amount against the Security Instrument, Licensee shall take action to replenish the Security Instrument to its prior amount.

17.4. Cancellation or Replacement. Licensee shall provide BTU with thirty (30) days prior written notice of any cancellation or replacement of the Security Instrument. Licensee shall at all times maintain the Security Instrument or a substitute instrument approved by BTU throughout the term of this Agreement, and any failure to do so shall constitute a breach of this Agreement retroactive to the date of the notice of cancellation of the Security Instrument.

18. ENTIRE AGREEMENT; NON-WAIVER

This Agreement and the incorporated Standards supersede all previous oral and written agreements between BTU and Licensee regarding the approval, placement, transfer, maintenance, and removal of Licensee's Attachments, Communications Facilities, or Network Nodes on BTU's Eligible Poles within the geographical service area covered by the Agreement. All provisions, terms, and conditions to this Agreement are expressed herein. Notwithstanding any contrary provision, term, or condition herein, this Agreement shall neither waive nor be interpreted to waive any claims of any nature, any amounts or credits owed, or any obligations or duties arising under a prior agreement between the Parties or the Parties' performance thereunder. Nor shall this Agreement act as a waiver of any claims for the prior use of BTU Utility Poles or Eligible Poles without valid authorization.

19. SEVERABILITY

The invalidity of one or more clauses, sentences, sections, or articles of this Agreement shall not affect the validity of the remaining portions of the Agreement, provided that the material purposes of this Agreement can be determined and effected.

20. GOVERNING LAW; JURISDICTION AND VENUE

THE PROVISIONS OF THE AGREEMENT SHALL BE CONSTRUED UNDER, AND IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER SHALL BE PERFORMED IN BRAZOS COUNTY, TEXAS. IN THE EVENT ANY COURT ACTION IS BROUGHT DIRECTLY OR INDIRECTLY BY REASON OF THIS AGREEMENT, THE COURTS OF BRAZOS COUNTY SHALL HAVE JURISDICTION OVER THE DISPUTE, AND VENUE SHALL BE IN SUCH COUNTY.

21. INCORPORATION OF RECITALS, APPENDICES, AND POLE ATTACHMENT STANDARDS

The recitals stated above, all appendices to the Contractual Authorities, and the Standards, as they may be amended from time to time, are incorporated into and constitute part of this Agreement.

22. MISCELLANEOUS PROVISIONS

- 22.1. Preexisting Attachments, Communications Facilities, or Network Nodes. Licensee shall not be required to obtain a new Permit for authorized Attachments, Communications Facilities, or Network Nodes in place prior to the effective date of this Agreement, provided that Licensee obtained all required approvals, including any permits, prior to the installation of such facilities.
- 22.2. Compliance with Contractual Authorities. All Attachments made, Communications Facilities installed, or Network Nodes installed on or after the effective date of this Agreement are and shall be authorized by the procedures, requirements, and limitations of this Agreement, subject to Licensee's compliance with all the terms and conditions of the Standards. Licensee's failure to maintain all Attachments, Communications Facilities, and Network Nodes in accordance with the Standards shall be considered a default, and Unauthorized Attachments or Unauthorized Network Nodes shall be subject to removal at Licensee's expense.
- 22.3. Contractors and Agents Bound. Licensee agrees to include in all its contracts and agreements with independent contractors or agents provisions that are consistent with and will fulfill the requirements of this Agreement.
- 22.4. No Third-Party Beneficiaries. The terms and provisions of this Agreement are intended to be for the benefit of BTU and Licensee. Except as otherwise provided herein, nothing in this Agreement, express or implied, is intended to confer upon any other person or entity, other than the Parties, any benefits, rights or remedies under or by reason of this Agreement.
- 22.5. Reciprocity of Terms and Conditions. Unless otherwise agreed in writing, to the extent that Licensee owns poles on which BTU has attached or desires to attach either a Communications Facility or BTU Facilities, BTU shall be entitled to make such Attachments on rates, terms, and conditions equivalent to the rates, terms, and conditions extended to Licensee pursuant to the Contractual Authorities.
- 22.6. Change of Law. If any final and non-appealable regulatory, judicial, or other governmental decision, order, determination, or action, or any change in applicable law, affects any provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any 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 in order to conform the Agreement to applicable law.

23. FAILURE TO ENFORCE; NONWAIVER

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

24. INTEREST ON PAST-DUE AMOUNTS

In the event Licensee fails to pay an amount due within the period of time set forth for payment, interest shall accrue on the unpaid balance at the rate of one and 50/100ths percent (1.50%) per

month (or such lesser rate as may be required by law) for each month starting from the date the payment is due until such time as payment is received.

25. ATTORNEY'S FEES

If BTU or Licensee brings any action at law or in equity to enforce any provision of this Agreement, including the incorporated Standards, the prevailing party will be entitled to recover its reasonable costs and attorney's fees in addition to any other relief to which it may be entitled.

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

BRYAN TEXAS UTILITIES

[]

BY: _____
GARY MILLER
TITLE: GENERAL MANAGER

BY: _____
[]
TITLE: _____

DATE: _____

DATE: _____

Form Approved by Board Resolution No.
BTU-P-240

APPROVED AS TO FORM:

BY: _____
THOMAS A. LEEPER
TITLE: CITY ATTORNEY

Appendix A: Minimum Insurance Requirements

1.01 Licensee shall purchase and maintain in full force and effect, at its own expense, the following minimum insurance coverages and limits:

1.02 Statutory Worker's Compensation and Employer's Liability Insurance with minimum limits of not less than indicated below. The policy must be in the name of the Licensee or contain an endorsement naming BTU and the City as the Alternate Employer.

Required Limits – Statutory limits, with Employer's Liability Coverage as follows:

Bodily Injury by Accident \$1,000,000.00

Bodily Injury by Disease Each Employee \$1,000,000.00

Bodily Injury by Disease Policy Limit \$1,000,000.00

1.03 Commercial General Liability Insurance, on an ISO CGL form 00 01 or equivalent, including the coverages identified below, with minimum limits indicated below.

Each Occurrence \$1,000,000.00

General Aggregate \$2,000,000.00

The Commercial General Liability Policy will include the following coverages where applicable:

1. Bodily injury & Property damage on an "Occurrence" basis
2. Premises & Operations
3. Independent Licensees
4. Products/Completed Operations
5. Personal Injury Liability
6. Contractual Liability
7. Explosion, Collapse, and Underground (XCU)

1.04 Business Automobile Insurance for all owned, non-owned, and hired vehicles.

Combined Single Limit BI & PD \$1,000,000.00

1.05 Excess Liability Coverage, following form, over Employer's Liability, Commercial Liability, Commercial Automobile Liability Policies, with the limits shown below.

Excess Liability Coverage \$4,000,000.00

Licensee may use any combination of primary and excess to meet required total limits.

1.06 Each of Licensee's required liability insurance policies shall be primary to and non-contributing with, any other insurance carried by, or for the benefit of BTU or the City. Insurance may be provided under a single limit policy, or two or more policies with combined limits for the required amount of coverage.

1.07 Licensee's workers' compensation, employers' liability, commercial automobile liability, commercial general liability, and excess liability insurance policies shall waive all rights of subrogation in favor of BTU and the City, and their respective elected officials, employees, officers, directors, and agents.

- 1.08 BTU, the City, and their respective elected officials, officers, board members, council members, representatives, employees, and agents shall be included as additional insureds without limitation on all required policies (except workers' compensation), in accordance with standard ISO endorsement forms. Further, Licensee represents and warrants that:
- (a) Licensee shall provide thirty (30) days' written notice of cancellation to BTU of any required coverage that is not replaced.
 - (b) Upon request by BTU, Licensee shall provide true copies of policy endorsements as required in this Appendix from issuing insurance company(s).
- 1.09 All Licensee's required insurance shall be issued by insurance carriers licensed to do business in Texas at the time the policy is issued and rated by A.M. Best Company as A-VII or better, confirmed by one or more insurance certificates listing BTU's and the City's names and addresses as a Certificate Holder, and list the name of Project as described in this Agreement and the name and phone number of the broker who prepared the certificate. Certificates of insurance shall be prepared on an Acord form 25-S.
- 1.10 With respect to any required coverage maintained on a "claims-made" policy form, Licensee shall maintain such coverage for two (2) years following termination of this Agreement; provided that, if a "claims-made" policy is maintained, the retroactive date must precede the effective date of this Agreement.
- 1.11 Licensee shall not commence the installation of Attachments under this Agreement until Licensee has obtained all required insurance and until such insurance has been received and approved by BTU. BTU's approval of Licensee's insurance shall not relieve or decrease the liability of Licensee hereunder.
- 1.12 If Licensee fails to obtain or renew the above required insurance and furnish to BTU acceptable evidence thereof, BTU shall have the right, but not the obligation, to: (1) procure such insurance and pay the reasonable cost thereof at the expense of Licensee, which Licensee shall reimburse within thirty (30) calendar days of demand; or (2) deem as breach of this Agreement the Licensee's failure to do so.
- 1.13 Nothing herein shall reduce or alter any obligation Licensee has to indemnify, defend or hold harmless the Indemnified Parties identified in the Agreement.
- 1.14 In the event Licensee enters into a subcontract with an Independent contractor to perform work contemplated under this Agreement or the Standards, the Licensee will require the Independent contractor to procure at a minimum all insurance specified to be carried by the Licensee, in the like form specified herein.
- 1.15 Licensee and, as applicable, its Independent contractors shall bear all risks and be responsible for any uninsured loss due to policy deductibles, self-insured retentions, exclusions, limitation inadequacy and/or absence of coverage, whether such policies are purchased by Licensee, Independent contractor, and/or BTU.

Appendix B: Performance Bond

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS:

That, (_____), hereinafter called "Principal" and (_____), a surety company licensed to do business in Texas, hereinafter called "Surety", are held and firmly bound unto BRYAN TEXAS UTILITIES, hereinafter called "Obligee," in the amount of One-Hundred Thousand and no/100 dollars (\$100,000), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20[___] to which contract hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if said Principal shall well and truly perform its obligations, including but not limited the payment by Principal of any claims, liens, taxes, penalties and fees due to Obligee which arise by reason of the construction, installation, operation, maintenance, transfer, relocation or removal of Principal's Wireless Installations on or about Obligee's Service Poles under the aforesaid Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

No extension of time or other waiver or amendment of the terms of the said aforesaid Contract shall relieve the Surety of its obligations hereunder, and the Surety waives notice of any such extension, waiver, amendment, or change. This bond shall be automatically extended in time without formal and separate amendment to cover full and faithful performance of the Contract modifications, regardless of the amount of time involved.

THIS BOND may be cancelled by Surety by giving thirty (30) days written notice to the Obligee by registered mail. Such cancellation shall not affect any liability the Surety may have or incurred under this bond prior to the effective date of termination. Provided that no action, suit or proceeding shall be maintained against the Surety on this bond unless action is brought within twelve (12) months of the cancellation date of this bond.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of __, 20[___].

Executed: (date)

(SEAL)

PRINCIPAL

By:

TITLE

(SEAL) SURETY

By: _____ (Name), Attorney-in-Fact

(Copy of current power of attorney executed by Surety Company showing authority of attorney- in-fact must be attached.)