

**IN THE CHANCERY COURT OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY**

NASHVILLE ELECTRIC SERVICE,)
)
Plaintiff,)

v.)

Case No. _____

Chancellor _____

ACCESS FIBER GROUP, INC.; AMERICAN)
FIBER SYSTEMS, INC.; BELLSOUTH)
TELECOMMUNICATIONS, LCC;)
COMCAST OF NASHVILLE I, LLC;)
CROWN CASTLE NG CENTRAL, LLC;)
DUKENET COMMUNICATIONS, LLC;)
EXTENET SYSTEMS, INC.; GOOGLE)
FIBER TENNESSEE, LLC; LEVEL 3)
TELECOM OF TENNESSEE, LLC;)
METROPOLITAN GOVERNMENT OF)
NASHVILLE AND DAVIDSON COUNTY,)
TENNESSEE; TENNESSEE TELEPHONE)
COMPANY; WINDSTREAM KDL,)
LLC; and ZAYO GROUP, LLC,)
)
Defendants / Parties-In-Interest.)

REQUEST FOR DECLARATORY RELIEF

Plaintiff Nashville Electric Service states as follows for its request for declaratory relief involving Access Fiber Group, Inc., American Fiber Systems, Inc., Bellsouth Telecommunications, LLC, Comcast of Nashville I, LLC, Crown Castle NG Central, LLC, DukeNet Communications, LLC, ExteNet Systems, Inc., Google Fiber Tennessee, LLC, Level 3 Telecom of Tennessee, LLC, Metropolitan Government of Nashville and Davidson County, Tennessee, Tennessee Telephone Company, Windstream KDL, Inc., and Zayo Group, LLC:

INTRODUCTION

1. This action is the result of the direct conflict between prior agreements entered into by NES (the “Agreements”) and the recently-enacted One Touch Make Ready Ordinance (the “OTMR Ordinance”). NES is asking this Court to declare its rights and obligations in light of that conflict in an effort to avoid a potential breach and piecemeal, protracted, and expensive litigation.

2. Due to regulations related to the attachment of equipment on poles and engineering requirements for the maintenance of those poles, when a new entity wishes to attach its equipment to a pole, prior attachments often must be moved to make room for the new attachments (“Make Ready Work”).

3. From 1958 through 2016, NES signed the Agreements with attachers (the “Operators”) that laid out the following process for Make Ready Work on NES poles: 1) the new attacher notifies NES of the Make Ready Work that needs to be performed; 2) the Operator is then notified of the need for Make Ready Work; and 3) the Operator then performs the Make Ready Work itself (or has the work performed by its agent) in a set period of time.

4. For illustration, in instances in which there are five Operators on a given pole that needs Make Ready Work, the contractual process requires that each of the five Operators be notified, and each of the five Operators perform the Make Ready Work, one at a time.

5. On September 20, 2016, the Metro Council passed the OTMR Ordinance, which is attached hereto as Exhibit A. The OTMR Ordinance sets out a new process for Make Ready Work on NES poles, in which: 1) the new attacher notifies NES of the need for

Make Ready Work; 2) NES then notifies each Operator whose equipment will be moved of the impending Make Ready Work; and 3) the new attacher then contracts with an NES-approved contractor to perform all of the necessary Make Ready Work at once.

6. For illustration, pursuant to the OTMR Ordinance, in instances in which there are five prior Operators on a given pole that needs Make Ready Work, after notification to each of the five Operators, one work crew performs all of the Make Ready Work at once.

7. The OTMR Ordinance and the Agreements conflict with each other as to which entity performs Make Ready Work and the timeline for that work. In the former, the Make Ready Work is performed by an NES-approved contractor. In the latter, the Make Ready Work is performed by the Operators or their agents. There is no practical way to comply with both the OTMR Ordinance and the Agreements.

8. One Operator, Bellsouth Telecommunications, LLC, recently sent NES a letter that amounts to a threat to sue NES for complying with the OTMR Ordinance. That letter is attached hereto as Exhibit B.

9. NES is now in the unenviable position of choosing between compliance with the OTMR Ordinance or the Agreements. As a result, NES is asking this Court to declare NES's relative rights and obligations in light of the OTMR Ordinance and its Agreements.

10. NES has joined the counter-parties to the Agreements as parties-in-interest to this action as required by Rule 19 of the Tennessee Rules of Civil Procedure and § 29-14-107(a) of the Tennessee Code governing proper parties to a declaratory judgment

action. As each party-in-interest takes a position in this litigation, each can be made a Plaintiff, Defendant, or dropped pursuant to Rule 21.

11. The Metropolitan Government of Nashville and Davidson County, Tennessee, (the "Metro Government") is made a party to this litigation both pursuant to Rule 19 of the Tennessee Rules of Civil Procedure and § 29-14-107(b) of the Tennessee Code which requires its participation in any action seeking declaratory judgment on the validity or enforceability of one of its ordinances.

PARTIES

12. NES is the service name of the Electric Power Board of the Metropolitan Government of Nashville and Davidson County, Tennessee. The Board was established in 1939 as a separate administrative agency of the City of Nashville pursuant to Chapter 262 of the Private Acts of the Legislature of Tennessee for 1939 (amended by chapter 246 of the Private Acts of 1947 and is now Appendix III of the Charter of the Metropolitan Government) to exercise control and jurisdiction over the Electric System. In 1963, the Metropolitan Government was created, consolidating the governments of the City of Nashville and Davidson County. The provisions of the Charter of the City of Nashville relating to the Board were incorporated into the Metropolitan Charter, which took effect on April 1, 1963. In conducting the operations of the Electric System, the Board does business as Nashville Electric Service ("NES"). The principal objective of the Board is to deliver electric power to the homes, businesses, and industries of the service area at the lowest possible cost while maintaining an efficient electrical distribution system with a strong financial base. Its principal address is 1214 Church Street / Nashville, TN 37246. Its agent of process is General Counsel Laura Smith.

13. Party-in-interest Access Fiber Group, Inc., is a corporation organized pursuant to the laws of the State of Delaware. Its registered agent in Delaware is The Corporation Trust Company / Corporation Trust Center / 1209 Orange Street / Wilmington, Delaware 19801. Its registered agent in Tennessee is CT Corporation System / 800 Gay Street, Suite 2021 / Knoxville, TN 37929-9710.

14. Party-in-interest American Fiber Systems, Inc., is a corporation organized pursuant to the laws of the State of Delaware. Its registered agent in Delaware is The Corporation Trust Company / Corporation Trust Center / 1209 Orange Street / Wilmington, Delaware 19801. According to the records of the Tennessee Secretary of State, it does not have a registered agent in Tennessee.

15. Party-in-interest Bellsouth Telecommunications, LLC, is a limited liability company organized pursuant to the laws of the State of Georgia. Its registered agent in Tennessee is CT Corporation System / 800 S. Gay Street, Suite 2021 / Knoxville, TN 37929-9710.

16. Party-in-interest Comcast of Nashville I, LLC, is a limited liability company organized pursuant to the laws of the State of Delaware. Its registered agent in Delaware is Comcast Capital Corporation / 1201 N Market Street, Suite 1000 / Wilmington, Delaware 19801. Its registered agent in Tennessee is CT Corporation System / 800 S. Gay Street, Suite 2021 / Knoxville, TN 37929-9710.

17. Party-in-interest Crown Castle NG Central, LLC, is a limited liability company organized pursuant to the laws of the State of Delaware. Its registered agent in Delaware is The Corporation Trust Company / Corporation Trust Center / 1209 Orange

Street / Wilmington, Delaware 19801. Its registered agent in Tennessee is CT Corporation System / 800 S. Gay Street, Suite 2021 / Knoxville, TN 37929-9710.

18. Party-in-interest DukeNet Communications, LLC, is a limited liability company organized pursuant to the laws of the State of Delaware. Its registered agent in Delaware is The Corporation Trust Company / Corporation Trust Center / 1209 Orange Street / Wilmington, Delaware 19801. Its registered agent in Tennessee is CT Corporation System / 800 S. Gay Street, Suite 2021 / Knoxville, TN 37929-9710.

19. Party-in-interest ExteNet Systems, Inc., is a corporation organized pursuant to the laws of the State of Delaware. Its registered agent in Delaware is Corporation Service Company / 2711 Centerville Road, Suite 400 / Wilmington, DE 19808. Its registered agent in Tennessee is Corporation Service Company / 2908 Poston Avenue / Nashville, TN 37203-1312.

20. Party-in-interest Google Fiber Tennessee, LLC, is a limited liability company organized pursuant to the laws of the State of Tennessee. According to the records of the Tennessee Secretary of State, it has been administratively dissolved. Its registered agent is Corporation Service Company / 2908 Poston Avenue / Nashville, Tennessee 37203-1312.

21. Party-in-interest Level 3 Telecom of Tennessee, LLC, is a limited liability company organized pursuant to the laws of the State of Delaware. Its registered agent in Delaware is The Corporation Trust Company / Corporation Trust Center / 1209 Orange Street / Wilmington, DE 19801. Its registered agent in Tennessee is CT Corporation System / 800 S. Gay Street, Suite 2021 / Knoxville, TN 37929-9710.

22. Defendant Metro Government of Nashville and Davidson County, Tennessee, (“Metro Government”) is a consolidated city-county government organized pursuant to the provisions of Title 7 of the Tennessee Code, with the capacity to sue and be sued. Its agent of process is Director of Law Jon Cooper / Metropolitan Government of Nashville / Department of Law / P.O. Box 196300 / Nashville, TN 37219-6300.

23. Party-in-interest Tennessee Telephone Company is a corporation organized pursuant to the laws of the State of Tennessee. Its registered agent is Corporation Service Company / 2908 Poston Avenue / Nashville, TN 37203-1312.

24. Party-in-interest Windstream KDL, LLC., is a corporation organized pursuant to the laws of the Commonwealth of Kentucky. Its registered agent in Kentucky is CT Corporation System / 306 W. Main Street, Suite 512 / Frankfort, KY 40601. Its registered agent in Tennessee is CT Corporation System / 800 S. Gay Street, Suite 2021 / Knoxville, TN 37929-9710.

25. Party-in-interest Zayo Group, LLC, is a limited liability company organized pursuant to the laws of the State of Delaware. Its registered agent is The Corporation Trust Company / Corporation Trust Center / 1209 Orange Street / Wilmington, Delaware 19801. Its registered agent in Tennessee is CT Corporation System / 800 S. Gay Street, Suite 2021 / Knoxville, TN 37929-9710.

JURISDICTION AND VENUE

26. This Court has jurisdiction over the subject matter of this action pursuant to § 16-11-101, *et seq.*, of the Tennessee Code.

27. This Court has the authority to grant declaratory relief pursuant to § 29-14-103 of the Tennessee Code, as NES’s rights and legal relations have been affected by both

the OTMR and the Agreements, which are in direct conflict with each other. As a result, NES is seeking to have questions of validity and construction of both the OTMR Ordinance and the Agreements determined. NES is seeking to have these questions decided prior to any potential breach of the Agreements pursuant to § 29-14-104.

28. Venue is proper in this Court pursuant to § 16-11-114 of the Tennessee Code, as the Agreements were executed in Davidson County, the poles / equipment are located in Davidson County, and Metro Government is a party.

FACTUAL ALLEGATIONS

The Agreements

ExteNet Systems, Inc., Windstream KDL, LLC, and Zayo Group, LLC

29. On March 1, 2016, NES and ExteNet Systems, Inc., entered into an agreement. That agreement is substantially similar in form to Exhibit C.

30. On March 1, 2016, NES and Zayo Group, LLC, entered into an agreement. That agreement is substantially similar in form to Exhibit C.

31. On September 22, 2016, NES and Windstream KDL, LLC, entered into an agreement. That agreement is substantially similar in form to Exhibit C.¹

32. In relevant part, that agreement states that if an Operator's attachments must be moved, including as part of Make Ready Work to accommodate an attachment of another Operator, the Operator will move its attachments within thirty days after receiving notice from NES. Ex. C, Art. 12.1.

¹ While each contract referred to in Paragraphs 29-31 have slight differences, those differences are not relevant to this action. Attaching each would result in an unnecessarily long pleading. That said, should any party object, NES can produce each.

33. In addition, that agreement contains a *force majeure* clause that states, “neither party shall be liable to the other party...for any delay or failure of performance hereunder if such failure is due to any causes or causes beyond its reasonable control and without its fault or negligence[.]...Such causes shall include without limitation, acts of God, governmental regulations, national emergencies, insurrections, riots or wars.” There is no exception for Metro Government regulations. Ex. C, Art. 30.

34. That agreement also states, “[i]f any provision of this Agreement...shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement[.]” Ex. C, Art. 43.7.

35. Finally, that agreement states, “[i]f any legal action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to its costs, including reasonable attorney’s fees[.]” Ex. C, Art. 43.9.

Access Fiber Group, Inc., Comcast of Nashville I, LLC, Crown Castle NG Central, LLC, and Google Fiber Tennessee, LLC

36. On December 19, 2014, NES and Google Fiber Tennessee, LLC, entered into an agreement. That agreement is substantially similar in form to Exhibit D.

37. On June 24, 2015, NES and Comcast of Nashville I, LLC, entered into an agreement. That agreement is substantially similar in form to Exhibit D.

38. On December 10, 2015, NES and Crown Castle NG Central, LLC, entered into an agreement. That agreement is substantially similar in form to Exhibit D.

39. On January 1, 2016, NES and Access Fiber Group, Inc., entered into an agreement. That agreement is substantially similar in form to Exhibit D.²

40. In relevant part, these agreements state that if an Operator's attachments must be moved, including as part of Make Ready Work to accommodate an attachment of another Operator, the Operator will move its attachments within thirty days after receiving notice from NES. Ex. D, Art. 12.1.

41. In addition, these agreements contain a *force majeure* clause that specifically excepts government regulations enacted by Metro Government. Ex. D, Art. 30.

42. These agreements go on to state, "[i]f any provision of this Agreement...shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement[.]" Ex. D, Art. 43.7.

43. Finally, these agreements state, "[i]f any legal action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to its costs, including reasonable attorney's fees[.]" Ex. D, Art. 43.9.

American Fiber Systems, Inc., DukeNet Communications, LLC, and Level 3 Telecom of Tennessee, LLC,

44. On March 28, 2001, NES and American Fiber Systems, Inc., entered into an agreement. That agreement is substantially similar in form to Exhibit E.

45. On November 1, 2010, NES and TW Telecom of Tennessee, LLC, entered into an agreement. That agreement is substantially similar in form to Exhibit E.

² While each contract referred to in Paragraphs 36-39 have slight differences, those differences are not relevant to this action. Attaching each would result in an unnecessarily long pleading. That said, should any party object, NES can produce each.

46. On June 1, 2012, NES and DukeNet Communications, LLC, entered into an agreement. That agreement is substantially similar in form to Exhibit E.

47. On August 1, 2012, NES and MuniNet Fiber Agency entered into an agreement. That agreement is substantially similar in form to Exhibit E.³

48. In relevant part, these agreements state, "Operator shall, at its own expense make and maintain said attachments in safe conditions and in good repair, or relocate or replace its facilities placed on said poles or in conduit or perform other work that may be required by NES[.]" Ex. E, Art. 31.

49. These agreements also state, "[i]f any part of any provision of this agreement...shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this agreement[.]" Ex. E, Art. 46(G).

50. Finally, these agreements state, "[i]f any legal action is necessary to enforce the terms of this agreement, the prevailing party shall be entitled to reasonable attorney's fees[.]" Ex. E, Art. 46(I).

Bellsouth Telecommunications, LLC, and Tennessee Telephone Company

51. On October 15, 1958, NES and Southern Bell Telephone and Telegraph Company, now Bellsouth Telecommunications, LLC, entered into an agreement. That agreement is attached hereto as Exhibit F.

³ While each contract referred to in Paragraphs 44-47 have slight differences, those differences are not relevant to this action. Attaching each would result in an unnecessarily long pleading. That said, should any party object, NES can produce each.

52. On July 9, 1968, NES and Tennessee Telephone Company entered into an agreement. That agreement is attached hereto as Exhibit G.

53. In relevant part, the Bellsouth Telecommunications agreement states, “each party shall place, maintain, rearrange, transfer and remove its own attachments[.]” Ex. F, Art. VI(B).

54. In relevant part, the Tennessee Telephone Company agreement states, “each party shall place, maintain, rearrange, transfer and remove its own attachments[.]” Ex. G. Art. VI(B).

The OTMR Ordinance

55. On September 20, 2016, the Metropolitan Council of the Metro Government enacted the OTMR Ordinance.

56. As stated in the “whereas” clauses of the OTMR Ordinance, it was enacted pursuant to Metro Government’s police powers and in furtherance of public safety, public convenience, and for the more efficient deployment of broadband and cable services. Ex. A, p. 1.

57. The OTMR Ordinance sets up a new process for Make Ready Work.

58. In relevant part, pursuant to the OTMR Ordinance, the process is as follows: 1) a new attacher notifies a pole owner of the need for Make Ready Work; 2) the pole owner then notifies each Operator whose equipment will be moved of the impending Make Ready Work; and 3) the new attacher then contracts with a pole-owner-approved contractor to perform all of the necessary Make Ready Work at once. Ex. A, pp. 1-2.

59. NES owns approximately 103,000 poles that are subject to the OTMR Ordinance. As a pole owner, NES is an intended subject of the OTMR Ordinance.

The Conflict Between the Agreements and the OTMR Ordinance

60. For NES, the conflict between the OTMR Ordinance and the Agreements is related to Make Ready Work for new attachers.

61. Pursuant to the OTMR Ordinance, an NES-approved contractor is tasked with moving each Operator's equipment on NES-owned poles, all at once; pursuant to the Agreements, each Operator retains the right to move its own equipment, one Operator at a time.

62. There is no practical way for NES to comply with both the OTMR Ordinance and the Agreements.

PRAYER FOR RELIEF

Wherefore, NES prays for the following relief from this Court:

1. A declaration of whether the enactment of the OTMR Ordinance excuses NES's compliance with the Agreements' provisions relating to Make Ready Work for new attachers;
2. An expedited trial of this matter so that the parties may proceed legally and in compliance with their respective legal obligations; and
3. That this Court sever all permissive counter-claims for separate trials in order to facilitate the expedited trial of this matter (this excludes any compulsory counter-claims that may relate to the validity of the OTMR Ordinance itself).

Respectfully submitted,



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Exhibit A

ORDINANCE NO. BL2016-343

An ordinance to amend Title 13 of the Metropolitan Code of Laws by adding a new chapter to facilitate efficient access to and enhance the public safety and convenience for accessing the public rights-of-way to manage communications facilities.

WHEREAS, communications networks providing advanced broadband, cable, and information services in Nashville and Davidson County provide residents, businesses, and institutions with better telecommunications, cable, and information services at more competitive prices; and

WHEREAS, communications networks providing advanced broadband, cable, and information services in Nashville and Davidson County spur economic growth and business development, citizen engagement, and social interaction; and

WHEREAS, in many cases it is desirable for operational, efficiency, aesthetic, and public safety reasons to place facilities for communications networks providing advanced broadband, cable, or information services in Nashville and Davidson County on existing utility poles that already are located in the public rights-of-way; and

WHEREAS, pursuant to Sections 2.01(23), 2.01(40), and 2.02 of the Metropolitan Charter and Tennessee Code Annotated Sections 7-59-102(k), 7-59-302, and 65-21-103, the Metropolitan Government of Nashville and Davidson County has the right and obligation to manage the public rights-of-way within its boundaries in the public interest and for the public safety and may exercise its police powers to further a public purpose; and

WHEREAS, The Metropolitan Government of Nashville and Davidson County desires to facilitate the efficient construction or upgrade of communications networks on utility poles located in the public rights-of-way while promoting and protecting public safety and reducing inconvenience to Nashville and Davidson County residents and businesses from the construction; and

WHEREAS, The Metropolitan Government of Nashville and Davidson County seeks to act consistent with Communications Act of 1934, as amended (47 U.S.C. §§ 151 et seq.).

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Title 13 of the Metropolitan Code is hereby amended by adding the following new Chapter 13.18 – Management of Public Rights-of-Way for Make Ready Work:

Chapter 13.18 Management of Public Rights-of-Way for Make Ready Work

13.18.010 Definitions. As used in this chapter, the following terms shall have the meanings ascribed to them in this section:

As-Built Report: means a report indicating any changes to an Attachment caused by Make Ready, including a unique field label identifier, the pole number if available, and the address or coordinates of the Attachment.

Attacher: means any person, corporation, or other entity or its agents or contractors seeking to fasten or affix any Attachment in the public rights-of-way.

Attachment: means communications equipment, antenna, line, or facility of any kind fastened or affixed to a utility pole or similar structure, or its guys and anchors used to support communications attachments.

Attachment Application: means the application made by an Attacher to an Owner for consent to attach such Attacher's Attachments to the Owner's utility pole or similar structure, or its guys and anchors used to support communications Attachments.

Complex Make Ready: means Make Ready that will cause or would reasonably be expected to cause a customer outage.

Make Ready: means the transfer, relocation, rearrangement, or alteration of a Pre-Existing Third Party User's communications equipment, antenna, line or facility of any kind necessary to provide space for Attacher to install an Attachment.

Owner: means a person, corporation, or other entity owning a utility pole or similar structure in the public rights-of-way on which facilities for the transmission of electricity or communications are or may be located.

Pre-Existing Third Party User: means the owner of any pre-existing Attachment located in the public rights-of-way.

13.18.020 Make Ready Process.

A. Upon approval of an Attachment Application by an Owner, Pre-Existing Third Party Users shall allow an Attacher, using contractors approved by the Owner if required by the Owner, to perform Make Ready by transferring, relocating, rearranging, or altering the Attachments of any Pre-Existing Third Party User to the extent necessary or appropriate to accommodate the Attacher's Attachment; provided, however:

1. The Attacher will not perform Complex Make Ready without first providing thirty (30) days' prior written notice, which includes electronic communication, to the applicable Pre-Existing Third Party User;
2. Nothing in this Chapter authorizes an Attacher to perform any act requiring an electric supply outage; and
3. Nothing in this Chapter authorizes an Attacher to perform any act with respect to Attachments located above the Communication Worker Safety Zone, as such term is defined in the then-current National Electrical Safety Code, or any electric supply facilities wherever located.

B. In the event a Pre-Existing Third Party User fails to transfer, relocate, rearrange or alter any of its Attachments within thirty (30) days of giving the notice required in section 13.18.020(A)(1), the Attacher, using contractors approved by the Owner if required by the Owner, may undertake Make Ready with respect to such Attachments by transferring, relocating, rearranging, or altering the Attachments.

C. Within thirty (30) days of the Attacher's completion of Make Ready that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner. Upon receipt of the As-Built Reports, the Pre-Existing Third Party User and Owner may conduct a field inspection within thirty (30) days. The Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and Owner for performing such field inspection.

D. If a transfer, relocation, rearrangement, or alteration results in an Attachment of a Pre-Existing Third Party User failing to conform with the applicable Owner's clearance, separation, or other standards applicable to utility poles or structures of the type in question, the Pre-Existing Third Party User or Owner shall notify the Attacher in writing, which includes electronic communication, within the thirty (30) day inspection window. In the written notice, the Pre-Existing Third Party User will elect to either (i) perform the correction itself and bill the Attacher for the actual, reasonable, and documented expenses of the correction incurred by the Pre-Existing Third Party User, or (ii) instruct the Attacher to perform the correction at the Attacher's expense using a contractor approved by the Owner if required by the Owner. Any post-inspection corrections performed by the Attacher must be completed within thirty (30) days of written notice to the Attacher from the Pre-Existing Third Party User or Owner. Within thirty (30) days of the Attacher's completion of any post-inspection corrections that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner.

E. To the extent permitted by applicable law, an Attacher that exercises the right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's facilities pursuant to this Chapter shall indemnify, defend and hold harmless the Owner of the affected utility pole or similar structure from and against any action, suit, or proceeding by an affected Pre-Existing Third Party User arising from such transfer, relocation, rearrangement or alteration.

Section 2. This Ordinance shall take effect from and after its final passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Sponsored by: Anthony Davis, Jeremy Elrod, Bill Pridemore, Russ Pulley, Mina Johnson, Colby Sledge, Angie Henderson, Robert Swope, Holly Huevo, Mike Freeman, Brenda Haywood, DeCosta Hastings, Burkley Allen, Mary Carolyn Roberts, Karen Johnson, Jason Potts, Nancy VanReece

**AMENDMENT NO. 1
TO
ORDINANCE NO. BL2016-343**

Mr. President –

I move to amend Ordinance No. BL2016-343 as follows:

I. By amending the first three recitals clauses by adding the word “telecommunications,” after the word “broadband,” as it appears after each “WHEREAS” as set forth below:

WHEREAS, communications networks providing advanced broadband, telecommunications, cable, and information services in Nashville and Davidson County provide residents, businesses, and institutions with better telecommunications, cable, and information services at more competitive prices;

WHEREAS, communications networks providing advanced broadband, telecommunications, cable, and information services in Nashville and Davidson County spur economic growth and business development, citizen engagement, and social interaction;

WHEREAS, in many cases it is desirable for operational, efficiency, aesthetic, and public safety reasons to place facilities for communications networks providing advanced broadband, telecommunications, cable, or information services in Nashville and Davidson County on existing utility poles that already are located in the public rights-of-way;

II. By further amending the recitals clauses by adding the following additional “Whereas” paragraphs:

“WHEREAS, the Federal Communications Commission (FCC) has not addressed one touch make ready in its Pole Attachment Orders, therefore The Metropolitan Government of Nashville and Davidson County has the right to address one touch make ready within its boundaries;”

“WHEREAS, the Ordinance is not intended to preempt the FCC Pole Attachment Orders to the extent those are applicable to pole attachments within the jurisdiction of The Metropolitan Government of Nashville and Davidson County;”

III. By amending Section 1 by adding the following term and definition to proposed section 13.18.010 Definitions:

“Preapproved Contractor – means a contractor approved by the Owner to perform Make Ready.”

IV. By further amending Section 1 by deleting subsection 13.18.020 in its entirety and submitting in lieu thereof the following:

13.18.020 Make Ready Process.

A. Upon approval of an Attachment Application by an Owner, Pre-Existing Third Party Users shall allow an Attacher, using Preapproved Contractors and at the Attacher’s expense, to perform Make Ready by transferring, relocating, rearranging, or altering the Attachments of any Pre-Existing Third Party User to the extent necessary or appropriate to accommodate the Attacher’s Attachment; provided, however:

1. The Attacher will not perform Complex Make Ready without first providing thirty (30) days’ prior written notice, which includes electronic communication, to the applicable Pre-Existing Third Party User so that a field meeting can be scheduled within that time frame with technicians from the Pre-Existing Third Party and the Attacher. The technicians will decide what steps need to be taken to complete the Complex Make Ready;

2. Nothing in this Chapter authorizes an Attacher to perform any act requiring an electric supply outage; and

3. Nothing in this Chapter authorizes an Attacher to perform any act with respect to Attachments located above the Communication Worker Safety Zone, as such term is defined in the then-current National Electrical Safety Code, or any electric supply facilities wherever located.

4. The Attacher will not perform Make Ready without first providing fifteen (15) days’ prior written notice, which includes electronic communication, to the applicable Pre-Existing Third Party User.

B. In the event a Pre-Existing Third Party User fails to transfer, relocate, rearrange or alter any of its Attachments within thirty (30) days of giving the written notice required in section 13.18.020(A)(1), the Attacher, using Pre-Approved Contractors, may undertake Complex Make Ready with respect to such Attachments by transferring, relocating, rearranging, or altering the Attachments at the Attacher's expense; provided, however, that the Pre-Existing Third Party User will have sixty (60) days from the date of notice to perform Complex Make Ready if the technicians mutually agree to such extension in the field meeting required in section 13.18.020(A)(1).

C. The Attacher will place its Attachment where instructed by the Owner.

D. At its own expense, Attacher shall ensure that any Make Ready Attachments that are transferred, relocated, rearranged or altered are done in accordance with all applicable federal, state and local laws and regulations; and all applicable engineering and safety standards.

E. Within thirty (30) days of the Attacher's completion of Make Ready that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner. Upon receipt of the As-Built Reports, the Pre-Existing Third Party User and Owner may conduct a field inspection within sixty (60) days without waiving any rights. The Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and Owner for performing such field inspection.

F. If a transfer, relocation, rearrangement, or alteration results in an Attachment of a Pre-Existing Third Party User failing to conform with the applicable Owner's clearance, separation, the standards in 13.18.020 (D), or other standards applicable to utility poles or structures of the type in question, the Pre-Existing Third Party User or Owner shall notify the Attacher in writing, which includes electronic communication, within the sixty (60) day inspection window without waiving any rights. In the written notice, the Pre-Existing Third Party User will elect to either (i) perform the correction itself and bill the Attacher for the actual, reasonable, and documented expenses of the correction incurred by the Pre-Existing Third Party User, or (ii) instruct the Attacher to perform the correction at the Attacher's expense using a Pre-Approved Contractor. Any post-inspection corrections performed by the Attacher must be completed within thirty (30) days of written notice to the Attacher from the Pre-Existing Third Party User or Owner. Within thirty (30) days of the Attacher's completion of any post-inspection corrections that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner.

G. To the extent permitted by applicable law, an Attacher that exercises the right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's facilities pursuant to this Chapter shall indemnify, defend and hold harmless the Owner of the affected utility pole or similar structure from and against any action, suit, or proceeding by an affected Pre-Existing Third Party User arising from such transfer, relocation, rearrangement or alteration.

H. In the event of a dispute arising out of this Chapter, the parties may exercise any of their legal rights, including the ability to negotiate a resolution in good faith.

Sponsored by: Anthony Davis, Jeremy Elrod, Bill Pridemore

**Amendment No. 2
To
Ordinance No. BL2016-343**

Mr. President:

I move to amend Ordinance No. BL2016-343 by renumbering the existing Section 2 as Section 3, and by adding the following new Section 2:

"Section 2. The provisions of this ordinance shall not apply to the Metropolitan Government's Attachments on utility poles or other similar structures that consist of cameras, radios, or any equipment used for emergency communications, and facilities used for traffic signalization, including the following: cameras, detection devices, traffic control boxes, traffic signals, and pedestrian traffic control related appurtenances, such as buttons and wires. The relocation by Attachments of the Metropolitan Government's Attachments

consisting of cameras, radios, equipment used for emergency communications or facilities used for traffic signalization shall only be done in accordance with a written agreement negotiated between and executed by the Metropolitan Government and the Attacher(s)."

Sponsored by: Anthony Davis, Jeremy Elrod, Mina Johnson

**AMENDMENT NO. 3
TO
ORDINANCE NO. BL2016-343**


Mr. President –

I move to amend Ordinance No. BL2016-343 as follows:

I. By amending Section 1 by deleting subsection 13.18.020(E) it in its entirety and substituting therefore the following:

E. An Attacher that exercises the right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's facilities pursuant to this Chapter shall obtain and maintain, at its sole cost and expense, and file with the metropolitan clerk, a corporate surety bond with a surety company authorized to do business in the State of Tennessee and found acceptable by the metropolitan attorney, in the amount of one million dollars, both to safeguard the public right of way and to guarantee the timely performance of Make Ready construction and implementation of the telecommunications system. Additionally, such Attachers, to the extent permitted by applicable law, shall indemnify, defend and hold harmless the Owner of the affected utility pole or similar structure from and against any action, suit, or proceeding by an affected Pre-Existing Third Party User arising from such transfer, relocation, rearrangement or alteration.

Sponsored by: Tanaka Vercher

LEGISLATIVE HISTORY	
Introduced:	August 2, 2016
Passed First Reading:	August 2, 2016
Referred to:	Budget & Finance Committee Public Works Committee
Deferred:	August 16, 2016
Amended:	September 6, 2016
Passed Second Reading:	September 6, 2016 - Roll Call Vote
Passed Third Reading:	September 20, 2016
Approved:	September 21, 2016
By:	

Requests for ADA accommodation should be directed to the Metropolitan Clerk at 615/862-6770.

Exhibit B



SHERRARD
ROE
VOIGT
HARBISON

William L. Harbison

Writer's Direct Dial (615) 742-4524
bharbison@srvhlaw.com

September 27, 2016

BY EMAIL AND FIRST CLASS MAIL

Ms. Laura Smith
Nashville Electric Service
1214 Church Street
Nashville, TN 37246
LSTidwell@nespower.com

Dear Laura:

Thank you for calling me back last week concerning the One Touch Make Ready Ordinance (No. BL2016-343) and the lawsuit we filed on behalf of AT&T Tennessee. I was glad to send you a courtesy copy of the complaint. As you know, AT&T Tennessee believes that the courts will overturn the Ordinance. To follow up with you, I am writing to you, as general counsel of NES, on behalf of AT&T Tennessee concerning matters that may arise while the lawsuit is pending.

If, before the lawsuit has concluded and the Ordinance has been overturned, Nashville Electric Service, in its capacity as a pole owner, intends to identify and approve contractors to perform "Make Ready" as that term is used in the Ordinance, AT&T Tennessee's expectation is that the City and NES will continue to honor their October 15, 1958, joint pole use agreement with AT&T Tennessee. That agreement, which was entered between the City, acting through the Power Board and NES, and Southern Bell Telephone and Telegraph Company, AT&T Tennessee's predecessor, mandates that "...each party shall place, maintain, rearrange, transfer and move its own attachments." Article VI, paragraph B. It also provides that, when new poles are placed, AT&T Tennessee shall "transfer its attachment to the pole at the new location." Article VII, paragraph B.

AT&T Tennessee takes no position here as to whether NES can or should designate a contractor to perform Make Ready, as that term is used in the Ordinance, on the facilities of other attachers, but as to AT&T Tennessee facilities on NES poles, the City and NES remain bound to allow AT&T Tennessee personnel to move AT&T Tennessee facilities. AT&T Tennessee will complete such work promptly once it has been notified, by either the Attacher or NES, that such work needs to be done and AT&T Tennessee has been paid for completing it.

Nashville Electric Service
September 27, 2016
Page 2

Thank you for allowing me to communicate this information to NES on behalf of AT&T Tennessee.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

William L. Harbison

WLH/slb

Exhibit C

**NASHVILLE ELECTRIC SERVICE
INFRASTRUCTURE USE AGREEMENT**

Contract No. 16-31-

THIS AGREEMENT (hereinafter “Agreement”) is made and entered into on _____, 20____ (“Effective Date”), by and between The Metropolitan Government of Nashville and Davidson County, Tennessee, a municipal corporation duly created, organized, and existing under and by virtue of the laws of the State of Tennessee, acting by and through the Electric Power Board of said Government, operating under the service name of Nashville Electric Service (hereinafter, “NES”), and _____, a _____ duly created, organized, and existing under and by virtue of the laws of the State of _____ (hereinafter, “Operator”).

RECITALS

WHEREAS, NES is an agency of the Metropolitan Government of Nashville and Davidson County, Tennessee, performing the essential public service of distributing electric power and as a necessary part of its operating as an electric distributor; and

WHEREAS, Operator proposes to furnish communications services in various areas within which NES distributes electric power, and desires to place and maintain facilities and equipment on or in NES’s infrastructure and in the rights of way of NES throughout NES’s service area; and

WHEREAS, NES’s infrastructure has limited capacity for access and use by others for attachments to provide communications services; and

WHEREAS, NES’s electric customers have first priority over all other competing uses of NES’s infrastructure; and

WHEREAS, NES is responsible for safeguarding the integrity of the electric system, obtaining fair compensation for the use of NES’s infrastructure through collection of fees and other charges, ensuring the compliance with all applicable federal, state and local laws, rules and regulations, ordinances and standards and policies, and permitting fair and reasonable access to available capacity on NES’s infrastructure; and

WHEREAS, Operator wishes to utilize NES’s infrastructure to operate its communications system pursuant to the applicable franchise authority; and

WHEREAS, NES is willing to permit the placement of said Operator’s facilities and equipment on or in NES’s infrastructure where such use will not interfere with NES’s service requirements, or the lawful use of NES’s facilities by others, and only under the terms and restrictions imposed herein, and upon payment by Operator of the consideration hereinafter set out; and

WHEREAS, the parties intend that this Agreement shall replace and supersede all previous pole attachment and or infrastructure use agreements between the parties upon the Effective Date of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set out below, the parties agree as follows:

AGREEMENT

Article 1. Definitions.

For the purpose of this Agreement, the following terms, phrases, words, and their derivations shall have the meanings given below. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 Anchor: means an anchor owned by NES which is a device to reinforce the Pole to which it is attached by a guy wire.
- 1.2 Applicable Standards: means all applicable engineering and safety standards governing the installation, maintenance, and operation of facilities and the performance of all work in or around electric Infrastructure and includes the then-current versions of the National Electrical Safety Code (“NESC”), as adopted by the State of Tennessee, the National Electrical Code (“NEC”), and the regulations of the Occupational Safety and Health Administration (“OSHA”), each as may be amended from time to time, and/or other reasonable construction, safety and engineering requirements of NES (provided such requirements of NES are applied on a non-discriminatory basis to NES, Joint Users, and all other Users and provided further that such requirements of NES are not inconsistent with this Agreement) or other federal, state, or local authority with jurisdiction over NES’s Infrastructure.
- 1.3 Applicant: means any person who applies to access and make attachment to or otherwise occupy NES Infrastructure.
- 1.4 Application: means an application by Operator to install an Attachment as described in Article 7 and Article 8.
- 1.5 Assignee: shall have the meaning ascribed thereto in Article 31.4.
- 1.6 Attachment: means with respect to Operator, wireline facilities affixed to or placed within NES Infrastructure to provide communications services, and as further designated in the Application and/or this Agreement, and with respect to other Users, any communications or electric facilities or equipment affixed to or placed within NES Infrastructure.
- 1.7 Cable: means any communications cable, wire, or strand, including fiber optic cable, coaxial cable, and twisted pair copper cable.
- 1.8 Claims: shall have the meaning ascribed thereto in Article 25.1.
- 1.9 Communications System or System: means Operator’s wireline facilities, including but not limited to Cables and electronics, as well as any and all associated equipment and facilities

owned or controlled by Operator to provide any communications services, and attached to NES Infrastructure.

- 1.10 Conduit Attachment: means an Attachment consisting of a single communications Cable or other object occupying one linear foot of a single conduit, duct, Innerduct, or other enclosed structure in NES's underground Conduit System.
- 1.11 Conduit System: means all the underground conduits owned by NES.
- 1.12 Correct: means to perform work to bring an Attachment into compliance with Applicable Standards.
- 1.13 Defective Pole: shall have the meaning ascribed thereto in Article 13.2.
- 1.14 Effective Date: shall have the meaning ascribed thereto in the Preamble to this Agreement.
- 1.15 Electronic Record: means a record created, stored, generated, received, or communicated by electronic means, including but not limited to the use of a computer program, electronic data interchange, electronic mail, facsimile, or scanner.
- 1.16 Emergency: means a situation exists which, in the reasonable discretion of Operator or NES, if not remedied immediately, will result in a threat to public safety, a hazardous condition, damage to property or a service outage.
- 1.17 Equipment Attachment: means each power supply, amplifier, pedestal, appliance or other single device or piece of equipment but excluding wireless attachments affixed to or contained in any unit of NES's Infrastructure.
- 1.18 Event of Default: shall have the meaning ascribed thereto in Article 29.1.
- 1.19 Franchise: shall have the meaning ascribed thereto in Article 31.4.1.
- 1.20 Indemnitees: shall have the meaning ascribed thereto in Article 25.1.
- 1.21 Infrastructure: means NES distribution Poles, transmission Poles with distribution underbuild, ducts, conduit, vaults, Anchors, fiber optic cable capacity and active communications capacity, facilities and all other utility infrastructure and associated materials and equipment on or connected to these structures which are owned by, or under the control of, NES.
- 1.22 Innerduct: means a flexible conduit installed by NES inside a larger conduit for the placement of fiber optic cable.
- 1.23 Joint-Use Agreement: means an agreement whereby each party to an agreement owns poles and has agreed that the other party has the right to attach to and occupy space upon the poles owned by it.
- 1.24 Joint User: means a joint user which may attach to a Pole or Anchor, or occupy conduit, either solely or partially owned by NES, in return for granting NES equivalent rights of

attachment to poles and anchors and/or occupancy of conduit which it owns, either solely or partially.

- 1.25 License: means the written consent of NES for Operator to make its Attachment.
- 1.26 Make Ready: means all work that NES reasonably determines to be required to accommodate Operator's Attachments or those of another User, including the rearrangement or transfer of NES electric facilities, and/or to comply with all Applicable Standards. Such work includes, but is not limited to, administrative work, engineering work, rearrangement and/or transfer of NES facilities or existing Attachments, inspections, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), Pole replacement and construction, or Conduit System clearing, but does not include Operator's routine maintenance.
- 1.27 NJUNS: means the National Joint Utility Notification System, an organization that facilitates efficient utility communications through an electronic online system built to communicate and track information regarding joint utility ventures.
- 1.28 Nonfunctional Attachment: shall have the meaning ascribed thereto in Article 11.
- 1.29 Overlash Attachment: means each additional Cable owned and operated by Operator placed onto an existing licensed Cable owned and operated by Operator already attached to a Pole. Overlash Attachments shall not be counted as an additional Pole Attachment for Pole Fee purposes. Operator shall not allow third-party overlash or overlash to Unauthorized Attachments without NES's prior approval.
- 1.30 Overloaded Pole: shall have the meaning ascribed thereto in Article 13.2.
- 1.31 Pole: means a utility pole owned by NES.
- 1.32 Pole Attachment: means each communications wire or line attached to a Pole, including, but not limited to, Cables and Service Drops. A span wire required to support an unbalanced load shall be considered a Pole Attachment if the Operator does not have a Licensed Communications Attachment on that same Pole or the span wire attachment point is outside the space designated for the Licensed Communications Attachment.
- 1.33 Pole Attachment Fee or Conduit Attachment Fee: shall have the meaning ascribed thereto in Article 5.4.
- 1.34 Pre-Construction Survey: means all work or operations required by Applicable Standards and/or NES to determine the Make Ready work necessary to accommodate Operator's Attachments on a Pole or within a span of conduit. Such work includes, but is not limited to, a pole loading analysis by a licensed professional engineer (with respect to Poles), field inspections and administrative processing.
- 1.35 Rearrangement of Attachment or Rearrange: means the moving of Attachments from one position to another on the same Pole or in the same conduit.

- 1.36 **Reserved Capacity:** means capacity or space on a Pole or within a portion of conduit that NES has identified and reserved for its own future electric utility requirements pursuant to a *bona fide* development plan existing at the time of the License grant, including the installation of communications circuits for operation of NES's electric system.
- 1.37 **Riser Attachment:** means each metallic or plastic encasement material placed vertically on NES's Infrastructure to guide and protect wires and cables when transitioning from underground to overhead or overhead to underground. Riser Attachments shall not be counted as an additional Pole Attachment for rental fee purposes on Poles where Operator has an existing licensed Pole Attachment.
- 1.38 **Safety Inspection:** shall have the meaning ascribed thereto in Article 23.2.
- 1.39 **Service Drop:** means (i) a Cable used to connect directly to a customer's location from one Pole, and attached to no more than one additional Pole where the additional Pole does not support voltage greater than 600V; or (ii) a Cable used to connect a customer's location through the use of multiple Licensed Poles where Service Drop Make Ready has been performed pursuant to Article 7.1.2.4. Service Drops shall not be counted as an additional Pole Attachment for Pole Fee purposes as long as such Service Drop is within the attachment space of a Licensed Attachment subject to the Pole Fee.
- 1.40 **Tag:** means the placement of permanent identifying markers on Attachments to make the nature of the Attachments and their ownership readily identifiable to NES and other Users.
- 1.41 **Transfer of Attachments or Transfer:** means the removing of Attachments from one Pole and placing these onto another Pole or moving of Attachments from one location in NES's Conduit System to another location in NES's Conduit System.
- 1.42 **Unauthorized Attachment:** means the placement of any Attachment on an NES Pole or on or within any other NES Infrastructure without proper authorization as required by this Agreement. An Unauthorized Attachment shall not include any Attachment that Operator is permitted to affix to a Pole pursuant to the terms and conditions hereof, even if the installation of such Attachment does not meet Applicable Standards or differs from the design described in the applicable Application; the foregoing notwithstanding, the deliberate installation of an Attachment or Overlash in knowing violation of Applicable Standards constitutes an Unauthorized Attachment.
- 1.43 **User:** means any entity that has received approval from NES to place facilities on or within NES Infrastructure.

Article 2. Scope of Agreement.

- 2.1 Subject to the provisions of this Agreement, NES will issue to Operator, for any lawful purpose, a revocable (solely pursuant to the terms and conditions hereof), nonexclusive license authorizing the attachment of Operator's Cables, equipment, and facilities to NES's Infrastructure within NES's service area to operate its Communications System.

- 2.2 This Agreement does not contemplate or authorize the attachment of Wireless Attachments to NES Infrastructure, and such use will only be allowed pursuant to a separately negotiated Wireless Pole Attachment Agreement.
- 2.3 No use, however extended, of NES's Infrastructure or payment of any fees or charges required under this Agreement shall create or vest in Operator any ownership or property rights in said Poles, Anchors, conduit or duct facilities, but Operator's rights therein shall be and remain a mere license. NES is not compelled to construct, retain, extend, place or maintain any Infrastructure not needed for its own service requirements, except as otherwise expressly provided herein.
- 2.4 Operator recognizes that NES has entered into, or may in the future enter into, agreements and arrangements with others not parties to this Agreement regarding the Infrastructure covered by this Agreement. Nothing herein contained shall be construed as a limitation, restriction, or prohibition against NES with respect to such other agreements and arrangements.
- 2.5 The rights of Operator shall at all times be subject to any present or future Joint-Use Agreement between NES and any other party regarding use of the Infrastructure covered herein; provided, however, that nothing in any such present or future Joint-Use Agreement shall restrict, modify, or abridge the rights of Operator set forth in this Agreement.
- 2.6 No license granted under this Agreement shall extend to any Pole(s) where the attachment or placement of Operator's facilities would result in a forfeiture of rights of NES to occupy the property on which such Pole(s) are located. If the existence of Operator's facilities on a Pole(s) or within a portion of conduit would cause a forfeiture of the right of NES to occupy such property, Operator agrees to remove Operator's facilities from the applicable Pole(s) or conduit forthwith upon receipt of written notification by NES in accordance with Article 32. If said facilities are not so removed, NES may perform and/or have performed such removal after the expiration of sixty (60) days from receipt of written notification without liability on the part of NES, and Operator agrees to pay all actual and documented costs associated with such removal. Without limiting Operator's obligations under this Article 2.6, NES agrees to reasonably cooperate, at Operator's cost and assumed liability, with any effort by Operator to cause the existence of Operator's facilities on a Pole or portion of conduit to no longer result in the forfeiture of the right of NES to occupy such property.

Article 3. Reservation and Restrictions.

- 3.1 NES may retain for its own use transmission structures (other than those with distribution underbuild), the electric supply area on Poles, and conduit that is co-resident with electric service or terminates in electric service vaults or manholes.
- 3.2 Specific units of NES Infrastructure may be reasonably determined by NES to be necessary for NES's exclusive use due to legal, mechanical, structural, safety, environmental, service or other requirements, and therefore, will be unavailable for use by others; provided, however, that the foregoing clause will not be applicable to Poles, for which NES's right to deny access to Operator is set forth in Article 7.

- 3.3 Within the electric service area, other entities own some portions of distribution poles, transmission structures, and underground duct and conduit. This Agreement does not address the use of non-NES infrastructure.
- 3.4 Access to space on NES Poles will be made available to Operator with the understanding that certain Poles may be subject to Reserved Capacity for future electric service use. At the time of License issuance, NES shall notify Operator if capacity on particular Poles is being reserved for reasonably foreseeable future electric use pursuant to a *bona fide* development plan. For Attachments made with notice of such a reservation of capacity, on giving Operator at least sixty (60) calendar days prior notice, NES may reclaim such Reserved Capacity at any time following the installation of Operator's Attachment if then-required for NES's core electric utility service. If reclaimed for NES's core electric utility service use, NES may at such time also install associated facilities, including the attachment of communications lines for internal NES operational or governmental communications requirements. NES shall give Operator the option to remove its Attachment(s) from the affected Pole(s) or to pay for the actual and documented cost of any Make Ready needed to expand capacity for core electric utility service requirements, so that Operator can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make Ready (including the transfer, rearrangement, or relocation of other User's Attachments) shall be determined in accordance with Article 12.2. Operator shall not be required to bear any of the costs of rearranging or replacing its Attachment(s), if such rearrangement or replacement is required as a result of an additional Attachment or the modification of an existing Attachment by any other User.
- 3.5 NES reserves to itself, its successors and assigns the right to maintain its Poles, manholes and conduit and to operate its facilities thereon in such manner as will best enable it to fulfill its own core electric service requirements, subject in all respects to NES's obligations set forth in this Agreement.
- 3.6 NES makes no representation or warranty of any nature that its existing or future rights-of-way, easements or other property rights, private or public, were, are or will be sufficient to permit the attachment, maintenance, replacement, relocation, repair, modification or removal of Attachments on or between any NES Infrastructure.
- 3.7 NES's service restoration requirements shall take precedence over any and all work operations of Operator on NES's Infrastructure.
- 3.8 To the extent Operator requires electric service for its facilities, it shall obtain such power pursuant to the standard application for metered service.

Article 4. Specifications and Standards.

- 4.1 Operator's facilities, in each and every location, shall be erected and maintained in accordance with the requirements and specifications of Applicable Standards. Notwithstanding the foregoing, with respect to an Operator Attachment that was in compliance with the NESC or NES construction standards at the time such Attachment was made but has become noncompliant because of revisions to the NESC or NES construction standards, Operator shall be required to bring such Attachment into compliance with then-current standards only in connection with relocation or rebuild affecting such Attachment

or the regular maintenance plan of Operator or NES. Operator's Attachments shall be made in accordance with Operator's customary standards and specifications, which Operator shall furnish to NES as part of the Standard Pole Attachment Application and Licensing Process. The location of any Attachment may be reasonably redesignated from time to time to accommodate other Users or for reasons of electrical service safety or reliability, with costs allocated in accordance with Article 12.2.

- 4.2 Operator shall be responsible for the installation and maintenance of its Attachments and associated facilities. Operator shall, at its own cost, make and maintain its Attachment(s) in safe condition and good repair, in accordance with all Applicable Standards.
- 4.3 NJUNS. Operator shall become a participating member of the NJUNS or other similar notification system(s) identified and utilized by NES to facilitate required notices, including, but not limited to, any need to Rearrange or Transfer Operator's Attachments. NES will determine the extent to which notifications via NJUNS or other similar notification system will be utilized for Pole Attachments, Transfers, Rearrangements, Pole Attachment abandonment and removal, and substantially similar matters in respect to the Conduit System, as well as the extent to which such use will satisfy the notification requirements of this Agreement, and provide notice thereof to Operator; provided, however, that NES's determinations in respect thereto shall be made applicable to all Other Communications Attachers placing or affixing facilities within or on Infrastructure, and provided further that NES will provide Operator with contact information for any other User which is not an Other Communications Attacher and is not using NJUNS or other similar notification system. To the extent that NES determines to use NJUNS, Operator and NES agree to perform their respective tasks set forth in NJUNS tickets in a commercially reasonable and timely fashion, and in accordance with the timeframes specified in this Agreement.
- 4.4 Tagging. Operator shall Tag all its Attachments to NES Infrastructure that will allow for ready identification of the type of Attachment and its owner. Operator shall be responsible for periodically inspecting its Attachments to ensure they are tagged with approved permanent identification markers. Should NES encounter any of Operator's Attachments without approved permanent identification markers, NES may notify Operator, provided that NES can identify the Attachments as belonging to Operator. Subject to the provisions of Article 24, NES will provide written notice to Operator and Operator will have one hundred twenty (120) days from receipt of notice to place such markers.
- 4.4.1 Notwithstanding the foregoing, Operator shall have six (6) months from the Effective Date of this Agreement to Tag Attachments that were authorized prior to the Effective Date of the Agreement, to the extent Operator has any such Attachments attached to NES's Infrastructure.
- 4.5 Interference. Operator shall not allow its Attachments to impair the ability of NES or any third party to use NES Infrastructure, nor shall Operator allow its Attachments to interfere with the operation of any NES facilities or facilities of other Users.
- 4.6 Protective Equipment. Operator and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people, property and facilities.

Operator shall, at its own cost, install protective devices designed to handle the electric voltage and current carried by NES's facilities in the event of a contact with such facilities.

- 4.7 Violation of Specifications. If Operator's Attachments, or any part of them, are installed, used, or maintained in violation of this Agreement, and Operator has not Corrected the violation(s) within thirty (30) days from receipt of written notice of the violation(s) from NES, the provisions of Article 24 shall apply. When NES believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of NES's service obligations, or present an immediate threat to the physical integrity of NES Infrastructure or facilities, NES may perform such work and/or take such action as it deems necessary without first giving written notice to Operator. As soon as practicable afterward, NES will advise Operator of the work performed or the action taken. Operator shall be responsible for all actual and documented costs incurred by NES in taking action pursuant to this Article.
- 4.8 At all times while performing work in the field on NES Infrastructure, Operator and its authorized contractors shall maintain a copy of all required permits and licenses for inspection by NES and all applicable State and local jurisdictions.
- 4.9 It is Operator's obligation to ensure that all Make Ready work, including any necessary rearrangement and/or modification of NES electric facilities, is performed in accordance with all Applicable Standards.

Article 5. Payment of Fees, Charges and Expenses.

- 5.1 Operator shall pay to NES the fees and charges and costs specified herein and/or in Exhibit A and shall comply with the terms and conditions specified in this Agreement.
- 5.2 Payment Period. Unless otherwise expressly provided, Operator shall pay any invoice it receives from NES pursuant to this Agreement within forty-five (45) days of receipt of invoice.
- 5.3 Application Fee. Operator shall be charged an Application Fee for each unit of NES Infrastructure (Pole, section of conduit, etc.) on which new Attachments are proposed under this Agreement. There shall be no Application Fee for Service Drops, Riser Attachments, and Overlashing qualifying for exclusion under Article 7.1.1. The current Application Fee is sixty-five dollars (\$65) for each unit of NES Infrastructure. NES reserves the right to adjust the Application Fee from time to time. Failure to pay the Application Fees will cause the Application(s) to be deemed incomplete, and NES will not process such Application(s) until the Application Fees are paid. NES will make timely and reasonable efforts to contact Operator should its Application Fee not be received.
- 5.4 Attachment Fees. Operator shall be charged an annual Pole Attachment Fee or Conduit Attachment Fee per wireline Pole Attachment or per linear foot of conduit occupied by Conduit Attachments, per year.
- 5.4.1 The Pole Attachment Fee shall be calculated annually, on a per Attachment basis, and set out in Exhibit A.

- 5.4.2 The Conduit Attachment Fee shall be calculated annually and set out in Exhibit A.
- 5.4.3 Lease of Infrastructure not defined above will be negotiated at NES's discretion.
- 5.4.4 Operator shall be billed semi-annually for Attachment Fees (one-half of the annual attachment fee at each billing period), and Operator shall have one hundred eighty (180) days from receipt of invoice to contest the number of Attachments. Failure to contest or otherwise dispute the invoice within one hundred eighty (180) days of receipt shall be deemed to be acceptance by the Operator.
- 5.4.5 Refunds. No fees and charges specified in Exhibit A shall be refunded on account of any surrender of a License granted under this Agreement.
- 5.5 Charges and Expenses. Operator shall reimburse NES and any other Users for those actual and documented costs in this Agreement for which Operator is responsible.
- 5.5.1 Such costs and reimbursements shall include, but not necessarily be limited to, all design, engineering, administration, supervision, payments, labor, overhead, materials, equipment and applicable transportation used for work on, or in relation to, the Operator's Attachments as set out in this Agreement or as requested by Operator in writing.
- 5.5.2 NES shall provide Operator with invoices for such work (in progress or upon completion, as determined by NES), and payment shall be due and payable upon receipt, but shall not draw interest at NES's prevailing rate until forty-five (45) days after its receipt by Operator. Interest shall not exceed the State of Tennessee statutory interest rate as set out in Tenn. Code Ann. § 47-14-103.
- 5.6 Advance Payment. The parties will mutually agree on the extent to which Operator will be required to pay in advance estimated costs, including, but not limited to, administrative, construction, inspections, and Make Ready work costs, in connection with the initial installation or Rearrangement of Operator's Attachments pursuant to the procedures set forth in Articles 7 and 8 below. The above notwithstanding, NES may require the payment of estimated Make Ready work in advance if there are repeated instances of Operator making late payments for such work.
- 5.7 True-Up. Whenever the parties have agreed, or this Agreement otherwise provides, for an advance payment of estimated costs prior to undertaking an activity on behalf of Operator and the actual and reasonable cost of the activity exceeds the advance payment of estimated costs, Operator agrees to pay NES for the difference in cost, provided that NES documents such costs with sufficient detail to enable Operator to verify the charges. To the extent that NES's actual and documented cost of the activity is less than the estimated cost, NES shall refund to Operator the difference.
- 5.8 Determination of Charges. Wherever this Agreement requires Operator to pay for work done or contracted by NES, the charge for such work shall include all actual and documented material, labor, engineering, administrative, and applicable overhead costs. NES shall bill its services based upon actual and documented costs, and such costs will be determined in accordance with NES's cost accounting systems used for recording capital

and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed, and costs of materials used. Labor costs shall be actual costs based upon NES employee rates. Consistent with Article 24, if Operator was required to perform work and fails to perform such work within the specified timeframe, and NES performs such work, NES may charge Operator an additional twenty-five percent (25%) of its actual and documented costs for completing such work.

- 5.9 Work Performed by NES. Wherever this Agreement requires NES to perform any work, NES, at its sole discretion, may utilize its employees or contractors, or any combination of the two, to perform such work.
- 5.10 Charges for Incomplete Work. In the event that an Application is submitted by Operator and then steps are taken by NES to carry out review of the Application by performing necessary engineering and administrative work and the Application is subsequently canceled, Operator shall reimburse NES for all of the actual and documented costs incurred by NES through the date of cancellation, including engineering, clerical and administrative and Make Ready construction costs.
- 5.11 Default for Nonpayment. Nonpayment of any amount due under this Agreement beyond ninety (90) days shall constitute an Event of Default of this Agreement.

Article 6. Private and Regulatory Compliance.

- 6.1 In order to construct, place and maintain the Operator's System on NES's Infrastructure, Operator must obtain from the various federal, state, county and local authorities any required permits, licenses, and Franchise required to be obtained to make an Attachment before making such Attachment. The cost of such permits, licenses, and Franchise shall be borne by Operator.
- 6.2 Operator shall be solely responsible for obtaining all necessary rights-of-way and easements or approvals, either public or private, which may be necessary prior to the beginning of construction, and Operator's right to make an Attachment shall be contingent upon acquisition, under terms acceptable solely to Operator, of all such permits, consents or approvals as are required to make such Attachment.
- 6.3 Lawful Purpose and Use. Operator's Attachments and associated facilities must at all times serve a lawful purpose, and the use of such Attachments and facilities must comply with all applicable federal, state and local laws.

Article 7. License Application Process.

7.1 Application Required. Before making any Attachments (excluding Overlapping qualifying for exclusion under Article 7.1.1, Service Drops, and Riser Attachments where there is an existing licensed Pole Attachment) to any Poles or in the Conduit System, Operator shall first make an Application and must have received a License therefor, with respect to each Pole or conduit.

- 7.1.1 Overlapping. Overlapping shall be allowed without separate Application up to the design capacity of the strand (all Attachments to be guyed for the capacity of the

strand) and if the final diameter of the Attachment bundle (to include strand and all attached Cables) does not exceed two inches (2") in diameter. A new Application shall be required if the underlying strand must be replaced or if the final diameter of the Attachment bundle (to include strand and all attached Cables) exceeds two inches (2") in diameter.

7.1.1.1 It is Operator's responsibility to verify that the Pole and strand to which it proposes to overlash meets all Applicable Standards before overlashing. If Operator identifies pre-existing violations of Applicable Standards it is the responsibility of the Operator to notify NES of the violations. Operator shall not be allowed to overlash until the pre-existing violations of Applicable Standards are resolved. If it is determined by NES that Operator has overlash on a Pole with a pre-existing violation of Applicable Standards, Operator shall be required to bring the Overlashed Attachment into compliance with Applicable Standards to the extent that it is Operator's underlying Attachment that is non-compliant. Subject to the provisions of Article 24, NES will provide written notice to Operator and Operator shall have thirty (30) days from receipt of notice to Correct the existing standards issue(s) and notify NES that the work has been completed.

7.1.1.2 Except in instances of Overlashing requiring a separate Application pursuant to Article 7.1.1, Operator shall send written notification to NES of an Overlash Attachment within thirty (30) days of installation. NES may require the notification be submitted electronically utilizing a system specified by NES.

7.1.1.3 Any Overlash Attachment that was deliberately installed in knowing violation of Applicable Standards will be considered an Unauthorized Attachment subject to the provisions of Article 20.

7.1.1.4 In the case of Emergency, Operator may make an Overlash Attachment to a Nonfunctional Attachment; provided, however, that Operator's overlashing of such Nonfunctional Attachment does not modify or alter Operator's obligation to timely remove the overlash Nonfunctional Attachment as set forth in Article 11.

7.1.2 Service Drops. Operator may attach a Service Drop, without Application, from one Pole with an existing licensed Operator Attachment to connect directly to Operator's customer's building, premise, or location, and attached to no more than one additional Pole where the additional Pole does not support voltage greater than 600V.

7.1.2.1 It is Operator's responsibility to verify that the Pole on which it proposes to make a Service Drop meets all Applicable Standards before attaching the Service Drop. If existing standards issues are identified, it is the responsibility of the Operator to notify NES of the issue. Operator shall not be allowed to attach the Service Drop until the standards issue is resolved.

- 7.1.2.2 If it is determined by NES that Operator has attached a Service Drop on a Pole with a pre-existing violation of Applicable Standards, Operator shall be required to bring the Service Drop into compliance with Applicable Standards to the extent that it is Operator's existing Attachment that is non-compliant. Subject to the provisions of Article 24, NES will provide written notice to Operator and Operator will have thirty (30) days from receipt of such notice to Correct the existing standards issue, otherwise the provisions of Article 24 shall apply. If the Attachment that is non-compliant belongs to another User, then Operator shall coordinate with NES and the other User concerning any necessary rearrangement of Operator's Service Drop in conjunction with the Correction of the non-compliant Attachment.
- 7.1.2.3 Operator shall send written notification to NES of a Service Drop within thirty (30) days of installation. NES may require the notification be submitted electronically utilizing a system specified by NES.
- 7.1.2.4 Any Service Drop that NES discovers more than thirty (30) days after installation will be considered an Unauthorized Attachment subject to the provisions of Article 20.
- 7.1.2.5 On any Pole where Operator has applied for an Attachment License, Operator may, in its discretion, perform or have performed such Make Ready, subject to the terms and conditions hereof governing the Application process and Make Ready, as is necessary or advisable for future installation of a Service Drop ("Service Drop Make Ready") on (i) any Pole at the time Operator performs other Make Ready on such Pole in connection with installation of Operator's Communications System (a "Mainline Pole") and (ii) any other Pole that Operator contemplates using for purposes of connecting a Cable directly to a customer's premises from a Mainline Pole (a "Service/Lift Pole"). Operator shall clearly tag and identify the space on the Mainline Pole or Service/Lift Pole that Operator intends to use for a Service Drop, by placing a bolt in the Pole in the contemplated Attachment space or utilizing another mutually agreed upon means to tag and identify such space. NES may inspect related Service Drop Make Ready at Operator's cost and expense at the time NES inspects Operator's Make Ready on such Pole.
- 7.1.2.6 Operator shall not be required to use a messenger strand in connection with connecting any communications cable or wire as part of a Service Drop; provided, however, multiple cables sharing common attachment points on a Pole, including Service Drops, shall be lashed, bound or bundled and satisfy all Applicable Standards.
- 7.1.2.7 Where Operator desires to connect Cable directly to a customer's premises from a Mainline Pole, and such connection to a customer's premises requires the use of more than one Service/Lift Pole, Operator's placement of an Attachment on such Service/Lift Pole(s) for connecting Cable to a customer's premises shall be treated like any other Attachment under this

Agreement. For any Pole where Operator has already performed authorized Service Drop Make Ready pursuant to Article 7.1.2.5, Operator shall only be required to provide notice that it has connected Service Drops to such Poles.

7.1.2.8 Operator may attach its Service Drop in its Attachment space, or in a space tagged and identified for use by Operator as a Service Drop (by placing a bolt in the Pole in the contemplated Service Drop Attachment space or utilizing another mutually agreed upon means to tag and identify such space as described in Article 7.1.2.5), more than one hundred twenty (120) days after completing the Service Drop Make Ready for such Service Drop.

7.1.3 Riser Attachments. The installation of a Riser Attachment shall be allowed without separate Application on a Pole with an existing licensed Operator Attachment.

7.1.3.1 It is Operator's responsibility to verify that the Pole and Riser Attachment meets all Applicable Standards before installation. If Operator identifies pre-existing violations of Applicable Standards it is the responsibility of the Operator to notify NES of the violations. Operator shall not be allowed to install the Riser Attachment until the pre-existing violations of Applicable Standards are resolved. If it is determined by NES that Operator has installed a Riser Attachment on a Pole with a pre-existing violation of Applicable Standards, Operator shall be required to bring the Riser Attachment into compliance with Applicable Standards to the extent that it is Operator's Riser Attachment that is non-compliant. Subject to the provisions of Article 24, NES will provide written notice to Operator and Operator shall have thirty (30) days from receipt of notice to Correct the existing standards issue(s) and notify NES that the work has been completed.

7.1.3.2 Operator shall send written notification to NES of any Riser Attachment within thirty (30) days of installation. NES may require the notification be submitted electronically utilizing a system specified by NES.

7.1.3.3 Any Riser Attachment that NES discovers more than thirty (30) days after installation will be considered an Unauthorized Attachment subject to provisions of Article 20.

7.1.4 If the Pole or conduit is located on public rights-of-way, Operator shall obtain all necessary permits from the city of Nashville, Davidson County, or surrounding counties NES serves, or the state of Tennessee, as applicable, and present evidence thereof to NES at the time the request is made to attach to said Poles or in conduit (unless such evidence is already on file with NES).

7.2 Standard Pole Attachment Application and Licensing Process.

The Standard Pole Attachment Application and Licensing Process set forth in this Article 7.2 shall be followed.

7.2.1 Submission and Review of License Application. Operator shall submit a properly executed Pole Attachment License Application, which may, at Operators' option, include a Pre-Construction Survey and detailed plans for the proposed Attachments, including a description of any necessary Make Ready to accommodate the Attachments, certified by a professional engineer licensed in the state of Tennessee. Operator shall use the NES Pole Attachment License Application form, which form shall be provided to Operator (NES may require that the Application be submitted electronically utilizing a system specified by NES). NES may amend the Pole Attachment License Application form and/or process from time to time, provided that any such changes are not inconsistent with the terms of this Agreement, state and/or federal law, and are applied on a non-discriminatory basis. NES's acceptance of the submitted design documents does not relieve Operator of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed, in performing loading, Pre-Construction Survey and other engineering calculations submitted to NES, Operator shall utilize engineering software specified by NES, and in all instances such software shall be compatible with NES's systems. Unless otherwise agreed, under normal circumstances, the License Application process shall be as follows:

7.2.1.1 If Operator's Application includes a Pre-Construction Survey and detailed plans for the proposed Attachments, including a description of any necessary Make Ready to accommodate the Attachments, certified by a professional engineer licensed in the state of Tennessee, NES shall review and respond to such properly executed and complete License Application for routine installations as promptly as is reasonable, with a goal of providing a response during normal circumstances within fourteen (14) days of receipt. NES's response will either: (i) grant permission to undertake such Make Ready as described in Operator's Application and engineering survey; (ii) grant permission to undertake such Make Ready as NES reasonably determines is required; or (iii) provide a written explanation as to why the Application is being denied, in whole or in part, for reasons of safety, reliability or insufficient capacity that cannot be resolved consistent with Applicable Standards, including City and County zoning and construction ordinances.

7.2.1.2 If Operator's Application does not include a Pre-Construction Survey (including a description of necessary Make Ready), NES shall review the Application and perform a Pre-Construction Survey, and, if the Attachment can be accommodated consistent with Applicable Standards, prepare a description of any necessary Make Ready to accommodate the proposed Pole Attachment. Under normal circumstances, NES will respond to such properly executed and complete Permit Application for routine installations as promptly as is reasonable, with a goal of providing a response within forty-five (45) days of receipt. NES's response will either: (i) provide a description of Make Ready identified by NES and a cost estimate for the NES portion of that Make Ready; or (ii) provide a written explanation as to why the Application is being denied, in whole or in part, for reasons of safety, reliability or insufficient capacity that cannot be resolved consistent

with Applicable Standards. Upon receipt of NES's Make Ready cost estimate, Operator shall have fourteen (14) days to approve the estimate, and provide payment, if required under the terms of the Make Ready estimate, if NES is going to perform the Make Ready.

7.2.1.3 For License Applications seeking Attachments to one hundred (100) or more Poles, NES may require additional time to review. For the purposes of this Article 7.2 only, all License Applications made by Operator in a thirty (30) day period will be considered as one Application.

7.2.1.4 In order to be considered as part of the same License Application, all of the Poles listed must be consecutive or in close proximity to one another.

7.2.2 Make Ready Work.

7.2.2.1 Make Ready work in the electric supply space may be performed only by NES and/or a qualified contractor authorized by NES to perform such work. Under normal circumstances, NES will give Operator the option of either having NES perform any necessary Make Ready work, at Operator's cost, or allowing Operator to complete Make Ready work through the use of qualified contractors authorized by NES.

7.2.2.2 If NES is performing Make Ready work, it will use good faith efforts to complete routine Make Ready work within sixty (60) days of receipt of Operator's approval of the Make Ready estimate. If there are extenuating circumstances that make the necessary Make Ready more complicated or time-consuming, including, but not limited to, an Application requesting attachment to more than one hundred (100) Poles, or seasonal weather conditions, NES shall identify those factors in the Make Ready description and cost estimate and the parties shall agree upon a reasonable timeframe for completion. If NES does not complete agreed upon Make Ready work within sixty (60) days or the agreed-upon timeframe, it will allow Operator to use an NES approved qualified contractor to complete such Make Ready work and refund any amounts paid by Operator to NES for performing such Make Ready work that is not completed.

7.2.2.2.1 The above notwithstanding, if NES has substantially completed the Make Ready, the parties will reasonably determine whether it makes more sense from an operational efficiency perspective to have NES complete the work rather than have Operator's authorized qualified contractors do the work.

7.2.2.3 Payment for Make Ready Work. Upon completion of the Make Ready work performed by NES, NES shall invoice Operator for NES's actual and documented cost of such Make Ready work. The costs of the work shall be itemized in accordance with Article 5.8, and if NES received advance payment, the costs shall be trued up in accordance with Article 5.7. Operator shall be responsible for entering into an agreement with existing

other Users to reimburse them for any costs that they incur in Rearranging or Transferring their facilities to accommodate Operator's Attachments.

7.2.2.4 Scheduling of Make Ready Work. In performing all Make Ready work to accommodate Operator's Attachments, NES will endeavor to include such work in its normal work schedule. If Operator requests, and NES agrees, to perform Make Ready work on a priority basis or outside of NES's normal work hours, Operator will pay any resulting increased actual and documented costs. Nothing in this Agreement shall be construed to require NES to perform Operator's work before other scheduled work or service restoration.

7.2.2.5 Notification of Make Ready Work. Before starting Make Ready work, NES shall notify all existing Users of the date and location of the scheduled work and notify them of the need to Rearrange and/or Transfer their facilities at Operator's cost within the specified time period. To the extent that NES has the legal authority, it shall Rearrange and/or Transfer existing facilities of such other Users that have not been moved in a timely manner. Operator shall pay for any such Rearrangement or Transfer.

7.2.2.6 In instances where Operator is performing Make Ready, where an existing User has not relocated or otherwise undertaken work required to complete Make Ready (such as repairing existing Attachments not in compliance with Applicable Standards) within thirty (30) days of notice by NES or Operator to such other User, Operator is authorized, to the extent that NES has such authority, and the legal ability to delegate such authority, to relocate or repair the other User's Attachments on behalf of NES. If NES determines that it does not have the legal ability to delegate authority to Operator to relocate or repair the other User's Attachments on behalf of NES, NES shall diligently enforce all contractual or legal rights of NES to require such other User to relocate or repair its Attachments. Operator shall pay the costs to relocate the other User's Attachments as part of Operator's Make Ready. NES shall provide reasonable assistance to Operator in obtaining reimbursement from any such other User for Operator's costs to repair such other User's Attachments that are not in compliance with Applicable Standards.

7.2.3 Operator's Installation/Removal/Maintenance Work.

7.2.3.1 License as Authorization to Attach. Upon satisfactory completion and inspection of any necessary Make Ready work, NES will issue a License to Operator which shall serve as authorization for Operator to make its Attachment(s).

7.2.3.2 All of Operator's installation, removal, and maintenance work, by either Operator's employees or authorized contractors, shall be performed at Operator's sole cost, in a good and workmanlike manner, and must not adversely affect the structural integrity of NES Infrastructure or other facilities or other Users' facilities or equipment.

7.2.3.3 All of Operator's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all Applicable Standards. Operator shall assure that any person installing, maintaining, or removing its facilities is fully qualified and familiar with all Applicable Standards, including standards for working in the supply space.

Article 8. Conduit Attachment License Application and Use Requirements.

In addition to the general provisions of this Agreement, the following procedures and requirements shall apply to the use of the Conduit System.

- 8.1 Route Investigation/Survey. If Operator seeks to utilize a portion of NES conduit for placement of its Cables, Operator shall first request a Route Investigation/Survey to be completed by NES. The Route Investigation/Survey shall be performed at Operator's cost, such cost to be actual and documented. Upon receipt and review of a Route Investigation/Survey, Operator may apply for installation of its Cable within the Conduit System.
- 8.2 Conduit Usage License Application. Operator shall submit a properly executed Conduit Usage License Application, which shall include detailed plans for the proposed Attachments, including a construction drawing indicating the location of and specifying the type of Cable to be installed. Operator shall use the NES Conduit Usage License Application form, which form has been provided to Operator. NES may amend the Conduit Usage License Application form from time to time, provided that any such changes are not inconsistent with the terms of this Agreement, state and/or federal law and are applied to all Other Communications Attachers on a non-discriminatory basis.
- 8.3 NES will review the Application and discuss any issues with Operator, including engineering or Make Ready work requirements associated with the Application.
- 8.4 NES shall review and respond to properly executed and complete Applications for routine installations as promptly as is reasonable. NES's response will either provide a written explanation as to why the Application is being denied, in whole or in part, or provide an estimate of the costs of all necessary Make Ready work.
- 8.5 Upon receipt of NES's Make Ready estimate, Operator shall have fourteen (14) days to approve the estimate and provide payment in accordance with this Agreement and the specifications of the estimate.
- 8.6 Upon receipt of payment of estimated Make Ready, NES will use best efforts to complete routine Make Ready work within the conduit in a reasonable time frame, and shall advise Operator of any extenuating circumstances that make the necessary Make Ready more complicated or time-consuming.
- 8.7 NES reserves the right to determine routes and conduit to be used where there is insufficient capacity or operational limitations to accommodate Operator's proposed Conduit Attachments, including, consistent with Article 3, the ability to exclude the use of Conduit and tunnels containing electric transmission facilities.

- 8.8 Work Rules. While some of the standards and technical requirements for Operator's Cable and use in NES's Conduit System are set forth herein, NES reserves the right to specify the type of construction required with respect to the Conduit System in situations not otherwise covered, provided that such construction requirements are not inconsistent with this Agreement and are imposed by NES on all Users on a non-discriminatory basis. In such cases, NES will furnish to Operator written materials which will specify and explain the required construction. NES and Operator shall negotiate in good faith with respect to any Conduit System construction requirement to which Operator reasonably objects.
- 8.8.1 NES's manholes or transformer vaults shall not be opened or tampered with by an employee, agent or contractor of Operator.
- 8.8.2 No employee, agent or contractor of Operator shall enter or work in any of NES's manholes or transformer vaults without an authorized representative of NES present.
- 8.8.3 NES shall place, remove, change, and maintain all Cable in the Conduit System with materials supplied by Operator, approved by NES and delivered in a timely manner to the location designated by NES.
- 8.8.4 Operator's Cable shall be permanently identified by tags at each manhole or other access opening in the Conduit System. Tags shall be of a type and wording reasonably satisfactory to NES, and consistent with NES guidelines. All cost of this identification shall be at the cost of Operator.
- 8.8.5 Where manholes or transformer vaults must be pumped in order to allow work operations to proceed, pumping shall be done by NES at Operator's cost, such cost to be actual and documented.
- 8.8.6 Any leak detection liquid or device used by Operator or Operator's agents, employees or contractors shall be of a type approved in writing by NES.
- 8.8.7 No equipment or facilities other than cables are permitted within NES underground structures. Slack loop and coils are not allowed within NES underground structures.
- 8.8.8 When Operator, its agents, employees, or contractors are working around any part of NES's Conduit System located in the streets, alleys, highways, or other public rights-of-way or easements granted to NES or the Metropolitan Government of Nashville and Davidson County, the protection of persons and property shall be provided by Operator in an adequate and satisfactory manner. Operator shall be solely responsible for providing adequate barricades, warning lights, traffic cones, danger signs, and other similar devices to protect all traffic, persons, and property around the work area from danger. In areas of the City of Nashville where NES is required to have uniformed police during construction or installation required by Operator, this cost will also be borne by Operator.
- 8.8.9 NES's authorized representative shall have the authority to terminate Operator's work operations around NES's manholes or transformer vaults if, in the reasonable

discretion of NES's authorized representative, any hazardous condition arises or any unsafe practice is being followed by Operator's agents, employees or contractors. Said discretion shall not be unreasonably executed.

8.8.10 Operator further agrees to comply with all safety laws, regulations, ordinances, and statutes pertaining to the work to be performed hereunder and the tools and equipment used to accomplish such work, and to be and remain solely responsible for the compliance therewith by its employees, agents, servants and/or contractors.

8.9 Conduit Attachment Procedures.

8.9.1 All installations in conduits must be approved and performed by NES. Operator shall reimburse NES for all actual and documented costs incurred.

8.9.2 Operator's representative shall be present during all NES installation of underground Cable, Innerduct and accessories on behalf of Operator. Operator's representative shall be knowledgeable and experienced in underground Cable, Innerduct and accessory installation and shall be authorized by Operator to answer questions and make decisions on Operator's behalf regarding problems and questions that occur during NES installation of underground Cable, Innerduct and accessories. Operator's representative shall be furnished at Operator's cost.

8.9.3 NES may exclude conduit and ducts for its core electric service. NES may pull a cable into any of NES's conduits either occupied by or scheduled to be occupied by Operator's facilities. Should it become necessary for NES to use a conduit occupied by Operator, Operator's Cable may upon notice be removed by NES. In lieu thereof, Operator may request NES to expand conduit or duct capacity, at the cost of Operator.

8.9.4 Operator shall compensate NES for the actual and documented cost, including engineering and administrative cost, for the connection of Operator's conduit which connects to NES's manhole or transformer vault. The section of connecting conduit shall not be longer than five (5) feet and shall be maintained by NES at Operator's cost.

8.9.5 Operator shall compensate NES for the actual and documented cost, including engineering and administrative cost, for any work required to make a conduit usable for the initial placing of Operator's Cable and/or Innerduct.

8.9.6 NES may rearrange Operator's Cable at the cost of Operator when necessary to make maximum use of its Conduit System, such cost to be actual and documented.

8.10 In Cases of Emergency.

8.10.1 NES's work shall take precedence over any and all operations of Operator.

8.10.2 Operator is responsible for supplying to NES a point(s) of contact for non-Emergency and Emergency twenty-four (24) hour service and for informing NES of any change in point(s) of contact.

8.10.3 In the event Operator experiences an Emergency with its Attachments located in NES's Conduit System, it is necessary that a NES representative be at the site before Operator enters a manhole and/or works on the Cable in NES's Conduit System for any reason. NES will respond to an Emergency as arranged between Operator and a NES representative. An Emergency call associated with Operator or NES's customers out of service will be treated on a "priority" basis. NES's response time will be based on the situation existing at the time of the Emergency. All NES labor and material associated with an Operator Emergency that does not arise from faults in the Conduit System or the acts or omissions of any other User of the Conduit System will be billed to Operator.

Article 9. Post Installation Inspections.

- 9.1 Within thirty (30) days of notice to NES that the Operator has completed installation of an Attachment (including Overlashing, Riser Attachments, Equipment Attachments, and/or Service Drops), NES or its contractors may perform a post-installation inspection for each Attachment made to NES Infrastructure. If such post-installation inspections are performed, Operator shall pay the actual and documented costs for the post-installation inspection, including the administrative costs to NES of the notification and inspection.
- 9.2 If NES elects to not perform any post-installation inspection, such non-inspection shall not be grounds for any liability being imposed on NES or a waiver of any liability of Operator.
- 9.3 If the post-installation inspection reveals that Operator's facilities have been installed in violation of Applicable Standards or the approved design described in the Application, NES will notify Operator in writing and Operator shall have thirty (30) days from the date of receipt of such notice to correct such violation(s), or such other period as the parties may agree upon in writing, unless such violation creates an Emergency in which case Operator shall make all reasonable efforts to correct such violation immediately. NES may perform subsequent post-installation inspections within thirty (30) days of receiving notice that the correction has been made as necessary to ensure Operator's Attachments have been brought into compliance.
- 9.4 If Operator's Attachments remain out of compliance with Applicable Standards or approved design after any subsequent inspection, consistent with Article 24, NES will provide notice of the continuing violation and Operator will have thirty (30) days from receipt of such notice to Correct the violation, otherwise the provisions of Article 24 shall apply.

Article 10. Effect of Failure to Exercise Access Rights.

If Operator does not exercise any access right granted pursuant to an applicable License(s) within one hundred twenty (120) calendar days from the issuance of a License to make Attachments (unless such time period is extended), NES may, but shall have no obligation to, use the space scheduled for Operator's Attachment(s) for its own needs or make the space available to other Users. In such instances, NES shall endeavor to make other space available to Operator, upon submission of a new Application under Article 7 or Article 8, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make Ready work provisions.

Article 11. Removal of Nonfunctional Attachments.

At its sole cost, Operator shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service (“Nonfunctional Attachment”). Except as otherwise provided in this Agreement, Operator shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming Nonfunctional unless Operator receives written notice from NES that removal is necessary to accommodate NES’s or another User’s use of the affected Pole(s) or portion of the Conduit System, in which case Operator shall remove the Nonfunctional Attachment within thirty (30) days of receiving the notice. Operator shall give NES notice of any removed Attachments, otherwise the provisions of Article 24 shall apply. If NES discovers Nonfunctional Attachments that have not been reported, consistent with Article 24, NES shall notify Operator, who shall have one year from the date of discovery to remove such Attachments, after which the provisions of Article 24 shall apply.

Article 12. Rearrangements and Transfers.

12.1 Required Transfers of Operator’s Attachments. If NES reasonably determines that a Rearrangement or Transfer of Operator’s Attachments is necessary, including as part of Make Ready to accommodate another User’s Attachment, NES will require Operator to perform such Rearrangement or Transfer within thirty (30) days after receiving notice from NES, including notice via NJUNS or other agreed upon notification system. If Operator fails to Rearrange or Transfer its Attachment within thirty (30) days after receiving such notice from NES, the provisions of Article 24 shall apply, including NES’s right to Rearrange or Transfer Operator’s Attachments sixty (60) days after Operator’s receipt of original notification of the need to Rearrange or Transfer its facilities. The actual and documented costs of such Rearrangements or Transfers shall be apportioned as specified under Article 12.2. NES shall not be liable for damage to Operator’s facilities except to the extent provided in Article 26. In Emergency situations, NES may Rearrange or Transfer Operator’s Attachments as it determines to be necessary in its reasonable judgment. In Emergency situations NES shall provide such advance notice as is practical, given the urgency of the particular situation. NES shall then provide written notice of any such actions taken within ten (10) days following the occurrence.

12.1.1 If Operator fails to Rearrange and/or Transfer its facilities within the prescribed time period, NES may delegate its authority to Rearrange and/or Transfer Operator’s facilities to another User that is authorized by NES to Rearrange and/or Transfer Attachments or its authorized contractors. In such case, such other User may Rearrange or Transfer Operator’s Attachments sixty (60) days after Operator’s receipt of original notification of the need to Rearrange or Transfer its facilities.

12.2 Allocation of Costs. The costs for any Rearrangement or Transfer of Operator’s Attachment or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location) shall be allocated to NES and/or Operator and/or other User on the following basis:

12.2.1 If NES intends to modify or replace Infrastructure solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Infrastructure. Operator shall be responsible for costs associated with the Rearrangement or Transfer of Operator’s Attachments.

- 12.2.2 If the modification or replacement of Infrastructure is necessitated by the requirements of Operator, Operator shall be responsible for all costs caused by the modification or replacement of the Infrastructure as well as the costs associated with the Transfer or Rearrangement of NES's facilities and any other User's facilities. NES shall not be obligated in any way to enforce or administer Operator's responsibility for the costs associated with the Transfer or Rearrangement of another User's facilities pursuant to this Article 12.2.
- 12.2.3 If the modification or the replacement of Infrastructure is the result of an additional Attachment or the modification of an existing Attachment sought by a User other than NES or Operator, the User requesting the additional or modified Attachment shall bear the entire cost of the modification or replacement, as well as the costs for Rearranging or Transferring Operator's Attachments. Operator shall cooperate with such third-party User to determine the costs of moving Operator's facilities.
- 12.2.4 If the Infrastructure must be modified or replaced for reasons unrelated to the use of the Infrastructure by Users or NES (*e.g.*, storm, accident, deterioration), NES shall pay the costs of such modification or replacement and Operator shall pay the costs of replacing, Rearranging, or Transferring its Attachments.

Article 13. Pole Replacements.

- 13.1 At Operator's request, NES shall change out an existing Pole for a taller or stronger Pole in order to accommodate an Attachment request by Operator, unless such replacement Pole would be reasonably likely to adversely affect safety or electric reliability, or is otherwise inconsistent with applicable local, state or federal law. Subject to Article 14, Operator shall pay the actual and documented cost of changing out the existing Pole.
- 13.2 Where Operator is unable to place an Attachment on a Pole because such Pole is a Defective Pole or Overloaded Pole, provided that the communications space on such Pole could otherwise have been arranged with sufficient spacing to accommodate the Operator's proposed Attachment(s), NES will replace, at NES's sole cost, such Defective Pole or Overloaded Pole. A "Defective Pole" means a Pole that is no longer serviceable due to decay, damage, or deterioration. An "Overloaded Pole" is a Pole that (without consideration of Operator's proposed Attachment) exceeds the applicable loading requirements set forth in the Applicable Standards.
- 13.2.1 In the event that an existing Pole is a Defective Pole or Overloaded Pole but does not pose an imminent threat or danger to safety or the safe functioning or operation of existing Attachments or facilities, NES shall replace said Pole at its sole cost consistent with its routine maintenance schedule.
- 13.2.2 If Operator seeks to expedite the replacement of a Defective Pole or Overloaded Pole, NES will provide Operator with the materials and Operator will pay the labor cost of using approved contractors to replace the Pole.
- 13.2.3 In all instances, the replaced Pole will remain the property of NES.

Article 14. Treatment of Multiple Requests for Same Pole.

If NES receives License applications for the same Pole or conduit from two (2) or more prospective Users within one hundred twenty (120) calendar days of the initial request, and has not yet completed the licensing of the initial applicant, and accommodating their respective requests would require modification of the Pole or replacement of the Pole, NES will make reasonable and good faith efforts to allocate among such Users the applicable costs associated with such modification or replacement.

Article 15. Equipment Attachments.

15.1 Operator shall compensate NES for the actual and documented cost, including engineering and administrative cost, for rearranging, transferring, and/or relocating NES Infrastructure to accommodate Operator's Equipment Attachments. There shall be no additional Pole Attachment Fee for Equipment Attachments on a Pole where Operator has a Licensed Attachment, provided that the Equipment Attachment is located below the designated communications space under Applicable Standards. Equipment Attachments within the communications space shall be subject to a separate Pole Attachment Fee to the extent they extend beyond the one foot of space allocated to the Licensed Attachment.

15.2 Operator shall reimburse the owner or owners of other facilities attached to NES Infrastructure for any actual and documented cost incurred by them for rearranging or transferring such facilities to accommodate Operator's Equipment Attachments.

Article 16. Authorized Contractors.

Operator shall only use authorized, qualified contractors approved by NES to conduct Make Ready work (or any other work) in or around the electric supply space on a Pole. NES shall not unreasonably withhold, delay, or condition its approval of any contractor proposed by Operator to be authorized by NES to perform Make Ready in the electric supply space on NES's Poles, provided such contractors meet NES's qualified contractor specifications.

Article 17. Guys and Anchor Attachments.

Operator shall at its own cost and to the satisfaction of NES place guys and anchors to sustain any unbalanced loads caused by Operator's Attachments. When, in unusual circumstances, Operator determines that it is necessary or desirable for Operator to attach its guys to Anchors owned by NES, it may make application to do so in a manner similar to that outlined in Article 7 above for application to make Pole Attachments. In such circumstances, all the provisions of this Agreement that are applicable to Poles shall also be separately applicable to Anchors. Operator will be subject to a one time Anchor Fee as set out in Exhibit A, but shall not be subject to an annual Attachment fee for Operator's use of Anchors owned by NES. In the event that any Anchor or guy to which Operator desires to make Attachments is inadequate to support the additional facilities in accordance with the aforesaid specifications, NES will notify Operator of the changes necessary to provide an adequate Anchor or guy, together with the estimated cost thereof to Operator. Operator will compensate NES for the actual and documented cost, including engineering and administrative cost, for changing the guy and Anchor, if such change is performed by NES.

Article 18. Installation of Grounds.

When NES is requested by Operator to install grounds or make connections to NES's system neutral, Operator shall within forty-five (45) days of demand reimburse NES for the total actual and documented costs, including engineering, clerical and administrative cost thereby incurred on initial installation only. All grounds installed by Operator shall be in accordance with NES's standard grounding practices.

Article 19. Actual Inventory.

NES will at intervals of not more often than once every five (5) years perform an actual inventory of the Attachments of Poles in all or in part of the territory covered by this Agreement, for the purpose of checking and verifying the number of Poles on which Operator has Attachments. Such field check shall be made jointly by both parties and shall be at the cost of Operator, such costs to be actual and documented, unless NES is also performing an inventory of any other User with Attachments on such Poles, and then the actual and documented cost shall be shared proportionately among all such Users based upon the number of Attachments.

Article 20. Unauthorized Attachments.

If, during the term of this Agreement, NES discovers Unauthorized Attachments placed on or within its Infrastructure (including Overlashing, Riser Attachments or Service Drops for which timely notification was not provided or that were deliberately installed in knowing violation of Applicable Standards) attributable to Operator, the following fees may be assessed, and procedures will be followed:

- 20.1 NES shall provide specific written notice, including electronic notification via NJUNS, SPIDAMin or other similar service, of each violation within thirty (30) days of discovering such violation and Operator shall be given thirty (30) days from receipt of notice to contest an allegation that an Attachment is unauthorized (or that Operator failed to timely provide notice).
- 20.2 Operator shall pay back rent for all Unauthorized Attachments (except Overlash Attachments and/or Riser Attachments where an existing licensed Pole Attachment exists) for a period of five (5) years, or since the date of the last inventory of Operator's Attachments (whichever period is shortest), at the rental rates in effect during such periods.
- 20.3 In addition to the back rent, where post-installation notification was required but not provided, or where Operator deliberately installed Overlash Attachments in knowing violation of Applicable Standards, Operator shall be subject to the Unauthorized Attachment Penalty as specified in Exhibit A for each Unauthorized Attachment, including Service Drops, Riser Attachments and Overlash Attachments, where an existing licensed Pole Attachment exists.
 - 20.3.1 If Operator is found to have (i) repeated instances of Unauthorized Attachments demonstrating a deliberate or consistent pattern of making Unauthorized Attachments; or (ii) a significant number of poles (comprising 5% or more of Operator's total Attachments), Operator shall be considered to be in material breach and such Unauthorized Attachments shall constitute an Event of Default.

- 20.4 Operator shall submit a License Application in accordance with Article 7 of this Agreement within thirty (30) days of receipt of notice from NES of any Unauthorized Attachment, or such longer time as mutually agreed to by the parties after an inventory.
- 20.4.1 No additional notification is required for Service Drops.
- 20.4.2 In the case of Overlapping requiring a separate License application under Article 7.1.1, Operator shall be required to submit an application within thirty (30) days of receipt of notice of Unauthorized Attachment.
- 20.5 In the event Operator fails to submit a License Application within thirty (30) days, or such longer time as mutually agreed to by the parties after an inventory, the provisions of Article 24 shall apply.
- 20.6 No Ratification of Unauthorized Use. No act or failure to act by NES with regard to any Unauthorized Attachments shall be deemed as ratification of the unauthorized use. Unless the parties agree otherwise, a License for a previously Unauthorized Attachment shall not operate retroactively or constitute a waiver by NES of any of its rights or privileges under this Agreement or otherwise, and Operator shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

Article 21. Abandonment of Jointly Used Poles.

- 21.1 If NES desires at any time to abandon or sell any Poles on which Operator has an Attachment, it shall give Operator notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon or sell such Pole. NES will in its sole discretion determine whether to sell the Pole to Operator, Joint User or other User. If NES sells a Pole the Operator will continue to be able to maintain its existing Attachments on such Poles under the same terms and conditions as it has under this Agreement. If NES sells Operator the Pole, Operator shall pay NES an amount equal to the depreciated value of such abandoned Pole(s) at the time of transfer, or such other reasonable amount as may be agreed upon between the parties.
- 21.2 If Operator shall become owner of said Pole, Operator shall save harmless NES from all obligation, liability, damages, costs, expenses, or charges incurred after transfer of such ownership, because of, or arising out of, the presence or condition of such Pole or any Attachments thereon. To the extent permitted by applicable law, NES shall be responsible for all obligations, liabilities, damages, costs, expenses, or charges that arise from any acts or omissions that occurred prior to transfer of ownership.

Article 22. Removal of Attachments for Overhead to Underground Conversion.

Upon notice from NES to Operator that the NES facilities are to be converted from overhead to underground in a specified area and the Poles will be removed, the permit covering the use of said Poles shall immediately terminate and the Attachments of Operator shall be removed from the affected Pole within sixty (60) days of Operator receiving notice from NES. In connection with undergrounding electric service as contemplated by this Article 22, NES shall provide Operator with the reasonable opportunity for Operator to install its own conduit at the time NES digs

trenches. NES conduit installed in connection with undergrounding electric service shall be subject to the terms and conditions of this Agreement.

Article 23. Inspection.

- 23.1 General Inspections. NES reserves the right to make periodic inspections, as conditions may warrant, of the entire system of Operator. Such inspections, or the failure to make such inspections, shall not operate to relieve Operator of any responsibility or obligation or liability assumed under this Agreement.
- 23.2 Periodic Safety Inspections. Upon twelve (12) months' advance written notice from NES, and not more frequently than every five (5) years, NES may at its option jointly perform a safety inspection in all or in part of the territory covered by this Agreement with all Users to identify any safety violations of all Attachments and facilities on or within NES Infrastructure ("Safety Inspection"). Such notice shall describe the scope of the inspection and provide Operator and all Users an opportunity to participate. Operator, NES and other Users shall share proportionately in the actual and documented Safety Inspection costs (based on the proportion of Attachments of NES and each other User) irrespective of whether NES elects to perform the Safety Inspection itself or have it performed by a contractor.
- 23.3 Corrections. In the event any of Operator's facilities are found to be in violation of the Applicable Standards and such violation poses a potential Emergency situation, Operator shall use all reasonable efforts to correct such violation immediately. Should Operator fail or be unable to correct such Emergency situation immediately, NES may correct the Emergency and bill Operator for one hundred twenty-five percent (125%) of the actual and documented costs incurred. If any of Operator's facilities are found to be in violation of the Applicable Standards and such violations do not pose potential Emergency conditions, NES shall, consistent with Article 24, give Operator notice, whereupon Operator shall have thirty (30) days from receipt of notice to correct any such violation, or within a longer, mutually agreed-to time frame if correction of the violation is not possible within thirty (30) days, such extended time to be not more than an additional sixty (60) days. Notwithstanding the foregoing grace periods, in the event NES or another User prevents Operator from correcting a Non-Emergency violation, the timeframe for correcting such violation shall be extended to account for the time during which Operator was unable to correct the violation due to action (or failure to act) by NES or other User. Operator will not be responsible for the costs associated with violations caused by others that are not affiliated or acting under the direction of Operator. In all circumstances, all of the Users on the Pole and NES will work together to maximize safety while minimizing the cost of correcting any such deficiencies, but the Operator shall be responsible for the actual and documented cost of any necessary or appropriate corrective measures associated with violations caused by Operator, including removal and replacement of the Pole and all Transfers or other work incident thereto. If Operator fails to Correct a non-Emergency violation within the specified timely period, including any agreed upon extensions, the provisions of Article 24 shall apply.

- 23.3.1 If any facilities of NES are found to be in violation of the Applicable Standards and specifications and NES has caused the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, but NES shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the Pole; provided, however, that NES shall not be responsible for Operator's own costs.
- 23.3.2 If one or more other Users' Attachment caused the violation, then such User(s) shall pay the corrective costs incurred by all who have Attachments on the Pole, including the Operator, and NES will make reasonable effort to cause the User to make such payment.
- 23.3.3 If there exists a violation of Applicable Standards and it cannot be determined which User on the Pole, including Joint User, caused such violation or there is a mixture of the Users causing the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, and all Users who may have caused such violation will share equally in such costs to the extent provided for under existing agreements with said Users; provided that Operator shall not be required to pay more than its proportionate share of such costs.

Article 24. Failure to Rearrange, Transfer or Correct.

- 24.1 Unless otherwise agreed, as part of NES's written notice of a need for Operator to Rearrange, Transfer, Remove or Correct violations (including Tagging), NES will indicate whether or not NES is willing to perform the required work.
- 24.2 If NES indicates in the notice that it is willing to perform the work, Operator shall have fifteen (15) days to notify NES in writing of its election to either have NES perform the work or that the Operator will perform the work itself.
- 24.2.1 If Operator requests that NES perform the work, Operator shall reimburse NES for the actual and documented cost of such work.
- 24.2.2 If Operator either fails to respond or indicates that it will perform the work itself, then until such work is complete and NES receives written notice of the completion of such work, Operator shall be subject to a daily penalty as specified in Exhibit A, per Attachment, per day commencing on the day after expiration of the time period for completion of the work specified in the Agreement and original notification that Operator needs to Rearrange, Transfer, Remove or Correct violations. Beginning with the ninetieth (90th) calendar day after expiration of the time period for completion of the work specified in the Agreement and original notification, the daily penalty shall escalate as specified in Exhibit A.
- 24.2.3 Notwithstanding Operator's election under Article 24.2.2 to perform the required work itself, commencing on the thirtieth (30th) day after expiration of the time period for completion of the work specified in the Agreement and original notification, NES may perform the required work at Operator's expense, or may delegate such authority to another User utilizing a qualified contractor.

- 24.2.4 If Operator was required to perform work under this Article 24 and fails to perform such work within the specified timeframe, and NES performs such work, NES may charge Operator an additional twenty-five percent (25%) of its actual and documented costs for completing such work.
- 24.3 If NES indicates in the notice that it is unwilling or unable to perform the work, then until such work is completed and NES receives written notice of the completion of such work, Operator shall be subject to a daily penalty as specified in Exhibit A, per Attachment, per day commencing on the day after expiration of the time period for completion of the work specified in the Agreement and original notification that Operator needs to Rearrange, Transfer, Remove or Correct violations. Beginning with the ninetieth (90th) calendar day after expiration of the time period for completion of the work specified in the Agreement and original notification, the daily penalty shall escalate as specified in Exhibit A.
- 24.3.1 If Operator fails to submit a License Application in accordance with Article 7 of this Agreement within thirty (30) days of receipt of notice from NES of any Unauthorized Attachment, or such longer time as mutually agreed to by the parties after an inventory, the daily penalties specified in Exhibit A shall apply.
- 24.4 Operator shall provide written notification to NES upon completion of any of the required work; daily penalty fees will continue to accrue until NES's receipt of such notice of completion. Notice of completion shall be given by the same means as it was received from NES.

Article 25. Indemnification and Insurance.

- 25.1 Operator shall indemnify and save harmless the Metropolitan Government of Nashville and Davidson County, the Electric Power Board, and officers and employees of Nashville Electric Service ("Indemnitees") against all claims, suits or actions, of every kind and description, of all persons whomsoever, including, without limitation, claims of employees, agents or servants of Operator and its contractors ("Claims"), for all losses and damages for personal injury, property damage and/or loss of life or property and use thereof, resulting from or in any way connected with Operator's obligations under this Agreement, except to the extent any such losses and damages are caused by the negligence or intentional misconduct of NES or its employees, agents, servants, or contractors. Subject to the limitations contained in this Article 25.1, Operator's duty to indemnify and hold harmless shall include claims arising from (i) the performance of Make Ready on existing Attachments by NES, the Operator or their respective contractors; (ii) the alleged deliberate and/or intentional misconduct or negligence of Operator; (iii) NES performing a Rearrangement of Attachment and/or Transfer of Attachment of Operator's or another User's Attachment that have not been moved in a timely manner pursuant to Articles 7.2.2.5 or 24; (iv) Operator's installation, removal, and maintenance work not being performed in a good and workmanlike manner, adversely affecting the structural integrity of NES Infrastructure, or adversely affecting other Users' facilities or equipment, pursuant to Article 7.2.3.2; and (v) Operator's interruption or deenergization of NES's electric system without NES's consent.
- 25.2 In the event any person or persons that are not a party to this Agreement shall make a claim or file any lawsuit against NES for any reason whatsoever arising out of or in any way

based upon this Agreement and/or work performed under it by Operator and for which Operator is obligated to indemnify NES, NES will forthwith notify Operator in writing, and Operator shall within a reasonable time advise NES if it intends to take over management of the claim and, without limitations, to investigate the claim, negotiate a settlement or defend any such legal action, or otherwise assume responsibility for protecting the interest of NES. If after ten (10) days from the date such notice is delivered or deemed delivered to Operator, NES has not received a response from Operator that it will assume responsibility, NES is then authorized to take such action as it considers in its best interest. NES shall then have sole and exclusive control of the actions to be taken and decisions to be made with respect to such claim including the decision to compromise and settle any such claim or legal action and Operator will be conclusively presumed to consent thereto and concur therein. In the event legal action is not settled, NES will defend by staff or private counsel and hold Operator responsible for all damages, interest, judgments, cost of court and reasonable cost of investigating and settling or attempting to settle such claims and actions, including reasonable attorneys' fees.

- 25.3 Operator shall take out and maintain throughout the agreement period, insurance in the minimum requirements:
- 25.3.1 Workers' compensation insurance covering all employees in statutory limits who perform any of the obligations assumed by Operator under this Agreement.
- 25.3.2 Commercial general liability insurance covering all operations under this Agreement; combined single limit of liability of \$1,000,000 per occurrence for claims of bodily injury, death, property damage and \$2,000,000 aggregate for accidents during the policy period. The Metropolitan Government of Nashville and Davidson County acting by and through the Electric Power Board of the said Metropolitan Government and the Metropolitan Government of Nashville and Davidson County in its regular corporate capacity shall be named as additional insureds in this policy or policies.
- 25.3.3 Automobile liability insurance on all self-propelled vehicles used in connection with the Agreement, whether owned, non-owned, hired, or otherwise. This policy shall be comprehensive automobile liability policy as approved by the National Bureau of Casualty Underwriters and the Insurance Department of the State of Tennessee per accident liability limits of not less than \$1,000,000 combined single limit of liability for claims of bodily injury, death and property damage. The Metropolitan Government of Nashville and Davidson County acting by and through the Electric Power Board of the said Metropolitan Government and the Metropolitan Government of Nashville and Davidson County in its regular corporate capacity shall be named as an additional insured in this policy or policies.
- 25.4 Operator shall obtain and maintain an umbrella liability policy certificate in addition to the certificates listed above with minimum acceptable limits of liability to be five million dollars (\$5,000,000) per occurrence.
- 25.5 NES and its officers, employees and agents shall all be named as additional insureds in all policies required under this Article 25 of this Agreement.

- 25.6 Operator shall provide NES with a current certificate of insurance evidencing all of the insurance required above in this Article 25 prior to commencing installation of its system on NES's Infrastructure. Each policy of insurance shall be endorsed to provide at least thirty (30) days' prior notice of cancellation by the insurer for any reason except non-payment of premium. Operator shall make all reasonable efforts to furnish replacement certificates to NES at least thirty (30) days before the expiration of the then-current insurance policies.
- 25.7 All insurance required by Article 25 to be maintained by Operator shall be pursuant to valid and enforceable policies issued by insurers authorized to conduct business in Tennessee.
- 25.8 Failure of Operator to maintain the proper insurance required under this Article 25 shall result in termination of this Agreement if the breach is not cured in accordance with Article 29.

Article 26. Duties, Responsibilities and Exculpation.

- 26.1 NES makes no representation as to the condition of the premises or equipment at or near which Operator will work, the existing Poles, equipment or installations, and has and assumes no responsibility to Operator, its employees, agents, servants, and subcontractors, except to inform Operator of any hidden defects or dangerous conditions known to NES and not known to or ascertainable by Operator by reasonable inspection.
- 26.2 By executing this Agreement, Operator warrants that it has or will fully acquaint itself with the conditions relating to the work it will undertake under this Agreement, and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.
- 26.3 It is further understood by and between the parties that in the performance of the work performed under this Agreement, Operator, its agents, servants, employees, and contractors will necessarily be required to work near, about, adjacent to and in the vicinity of energized (hot) lines, transformers, or other equipment of NES, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except (i) in an Emergency, (ii) as deenergized by NES at Operator's request, or (iii) as deenergized by Operator with NES's consent. Operator is fully and solely responsible for seeing that its employees, servants, agents or subcontractors shall have the necessary skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of NES, and the general public, from harm or injury while performing under this Agreement, and furnishing them with competent supervision and sufficient and adequate tools and equipment, for their work to be performed in a safe manner while the existing equipment of NES is energized. Except in an Emergency, Operator shall not deenergize any of NES's system without first obtaining permission from NES.
- 26.4 In the event any transformer or line is deenergized at Operator's request and for its purposes, benefit and convenience in performing a particular segment of any work, Operator shall be responsible for seeing that all clearances and arrangements for such cutoff of electric service shall conform with all applicable safety rules and regulations and Operator shall complete the work with all reasonable speed so that service may be restored without unnecessary delay. In the event that Operator shall unintentionally or accidentally

cause an interruption of service by damaging or interfering with any equipment or facilities of NES, Operator shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify NES immediately. Operator shall be solely responsible for any injuries or damages or claims for losses growing out of such interruption or deenergization of NES's electric system (except to the extent such interruption or deenergization was performed by NES or with NES's consent), to all persons whomsoever.

- 26.5 Operator further warrants that it is apprised of, conscious of, and understands the imminent dangers inherent in the work necessary to make installations on NES's Poles by its personnel, employees, servants, agents and subcontractors, and accepts it as its duty and sole responsibility to notify and inform its personnel, employees, and subcontractors of such dangers, and to keep them informed.

Article 27. Damages to Facilities.

- 27.1 NES shall exercise reasonable caution to prevent damage to, or interference with the operation of the equipment of Operator, but NES shall not be liable for any such damage or interference which may arise out of the use of NES's Poles, manholes or conduit hereunder, except to the extent caused by the negligence or intentional misconduct of NES or its employees, agents, or contractors.
- 27.2 Operator shall exercise reasonable caution to avoid damage to facilities of NES or of other authorized Users of said Poles or conduit; and Operator hereby assumes all responsibility for any and all damage to facilities of said NES or other authorized Users arising out of or caused by the erection, maintenance, installation, presence, use or removal of Operator's facilities, except to the extent such damage is caused by the negligent or intentional misconduct of NES or its employees, agents or contractors.
- 27.3 Operator shall make an immediate report to the particular owner of the facilities affected by the occurrence of any damage caused by Operator or its agents, and hereby agrees to reimburse such owner for the actual and documented costs incurred in making the necessary repairs and replacement if damage is caused by Operator or its agents.

Article 28. Dispute Resolution Process.

- 28.1 Dispute Resolution. Except for an action seeking a temporary restraining order, an injunction, or an order to compel compliance with this dispute resolution procedure, either party can invoke the dispute resolution procedures in this Article 28 at any time to resolve a controversy, claim, or breach arising under this Agreement. Each party will bear its own costs for dispute resolution activity.
- 28.2 Initial Meeting. At either party's written request, each party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The parties will conduct any meeting in-person or via conference call, as reasonably appropriate.

- 28.3 Executive Meeting. If, thirty (30) days after the first in-person meeting of the senior representatives, the parties have not resolved the dispute to their mutual satisfaction, each party will designate executive representatives at the director level or above to meet and negotiate in good faith to resolve the dispute. To facilitate the negotiations, the parties may agree in writing to use mediation.
- 28.4 Unresolved Dispute. If, after thirty (30) days from the first executive-level, in-person meeting, the parties have not resolved the dispute to their mutual satisfaction, either party may invoke any legal means available to resolve the dispute, including enforcement of the default and termination procedures set out in Article 29.
- 28.5 Confidential Settlement. Unless the parties otherwise agree in writing, communication between the parties under this Article 28 will be treated as Confidential Information developed for settlement purposes, exempt from discovery and inadmissible in litigation.
- 28.6 Business as Usual. During any dispute resolution procedure or lawsuit, the parties will continue providing services to each other and performing their obligations under this Agreement.
- 28.7 All fees and penalties will continue to accrue pending dispute resolution procedures unless the dispute specifically involves a dispute over the application of the fee or penalty.

Article 29. Default.

- 29.1 An Event of Default (each of the following being an “Event of Default”) shall be deemed to have occurred hereunder by either Party if:
- 29.1.1 Either Party shall breach any material term or condition of this Agreement; or
- 29.1.2 Either Party shall fail to perform, observe or meet any material covenant or condition made in this Agreement; or
- 29.1.3 At any time, any representation, warranty or statement made by either Party herein shall be incorrect or misleading in any material respect.
- 29.2 Upon the occurrence of any one or more of the Events of Default set forth in Article 29.1 hereof, either Party, at its option, in addition to and not in lieu of any other remedies provided for herein, shall be entitled to proceed to exercise any and all actions it may have at law or in equity, including drawing down upon the bond for any fees, costs, expenses or penalties that either Party has not paid, and, in addition, at its option, may terminate this Agreement upon providing notice to the other Party. provided, however, that such Party may only take such action or actions after first giving the other Party written notice of the Event of Default and a reasonable time in which other Party may cure or commence diligent efforts to cure such Event of Default, which period of time shall be not less than thirty (30) calendar days.

- 29.2.1 The above notwithstanding, Operator's sole remedy if NES is unable to perform a survey or complete Make Ready work within the prescribed timeframes under Article 7 is the authority to perform such survey or Make Ready itself at Operator's expense.
- 29.2.2 Under no circumstances will a failure of NES to meet the survey or Make Ready time periods set out in Article 7 subject NES to damages.
- 29.3 Without limiting the rights granted to NES pursuant to the foregoing Article 29.2, the parties hereto agree to conduct themselves reasonably and in good faith and to use a good faith effort to meet and to resolve outstanding issues, including but not limited to the Dispute Resolution Process of Article 28.
- 29.4 Upon termination for Default Operator shall remove its Attachments from all NES Poles and conduits within six (6) months of receiving notice, or at a rate of ten percent (10%) of its Attachments per month, whichever period results in the greatest length of time for completing removal. If not so removed within that time period, NES shall have the right to remove Operator's Attachments, and Operator agrees to pay the actual and documented cost thereof within forty-five (45) days after it has received an invoice from NES.

Article 30. Force Majeure.

Notwithstanding any other term or provision in this Agreement, neither party shall be liable to the other party or any other person, firm, or entity for any delay or failure of performance hereunder if such failure is due to any cause or causes beyond its reasonable control and without its fault or negligence, other than the acts or omissions of a party's own contractors, suppliers, representatives, or agents. Such causes shall include without limitation: acts of God or any civil or military authority, governmental regulations, national emergencies, insurrections, riots or wars.

Article 31. Assignment.

- 31.1 Except as otherwise provided herein, Operator shall not assign or transfer any of its rights or obligations under this Agreement, in whole or in part, by merger, consolidation, reorganization, or change in the ownership or control of Operator's business, or by any other means, without the prior written consent of NES, which consent shall not be unreasonably withheld, conditioned or delayed.
- 31.2 Any assignment or transfer by Operator prohibited by Article 31.1 above, without prior written consent, shall constitute a Default.
- 31.3 Prior to any assignment or transfer, any new owner or operator shall be required to be bound by and to continue under the same terms and conditions as this Agreement and to execute all necessary acknowledgments to this effect.
- 31.4 Notwithstanding Article 31.1 above, Operator may, during the term of this Agreement, assign or transfer this Agreement to (i) any affiliate of Operator or to a partnership of which at least fifty percent (50%) of the units are owned directly or indirectly by Operator or its parent company; or (ii) any successor to Operator's business, or a substantial part thereof, whether through merger, amalgamation, consolidation or sale of assets (each, an

“Assignee”), without the prior consent of NES; provided, however, such assignment or transfer shall be subject to the following conditions:

- 31.4.1 In the case of a sale of assets, (i) the Operator has assigned its state-issued certificate of franchise authority or other authorization issued by a franchising authority (the “Franchise”) to such Assignee, and such assignment has been approved (if applicable law requires approval), or the Assignee otherwise holds an applicable and effective Franchise; and (ii) the Assignee has received and accepted an assignment or transfer of the assets comprising the Operator’s business, or a substantial part thereof.
- 31.4.2 Notice of the assignment or transfer has been provided to NES, in writing, at the earlier of (a) within sixty (60) days of the date an application for transfer or assignment of the Franchise is filed with the Tennessee Regulatory Authority or other applicable franchising authority, if such application for transfer or assignment is required by applicable law under the circumstances, or (b) in the case of a sale of assets, within seven (7) business days after the assignment or transfer.
- 31.4.3 Assignee has executed documents, reasonably satisfactory to NES, committing Assignee to fulfill and honor all of the terms and conditions of this Agreement, including, but not limited to, all of the representations and warranties of Operator.
- 31.5 Any assignment or transfer of this Agreement by NES shall require the new owner to be bound by and to continue under the same terms and conditions as this Agreement and to execute all necessary acknowledgments to this effect.

Article 32. Notice.

Wherever in this Agreement notice is required 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 or in the form of an Electronic Record. All such notice shall be directed to the addresses specified below:

If to the Operator:

Telephone No.:

Attention:

RUSH: FORMAL NOTICE OF CONTRACT ACTION

With a copy to Operator at:

Telephone No.:
Attention:
RUSH: FORMAL NOTICE OF CONTRACT ACTION

If to NES:

Nashville Electric Service
1214 Church Street
Nashville, TN 37246
Fax No.: 615-747-3854
Confirmation No.: 615-747-3895
Attention: President and CEO
RUSH: FORMAL NOTICE OF CONTRACT ACTION

With a copy to NES at:

Nashville Electric Service
1214 Church Street
Nashville, TN 37246
Fax No.: 615-747-3667
Confirmation No.: 615-747-3701
Attention: General Counsel
RUSH: FORMAL NOTICE OF CONTRACT ACTION

or to such other address as the parties shall designate in writing or in the form of an Electronic Record; provided, however, that notices of interruption and communications may be provided orally, effective immediately and, upon request, confirmed in writing or in the form of an Electronic Record. A notice sent by facsimile transmission shall be deemed received on the day sent (unless such day is not a business day, in which case it shall be deemed received on the next business day), and notice by overnight mail or courier shall be deemed to have been received based upon the mode of delivery, unless it confirms a prior verbal communication in which case any such notice shall be deemed received on the day sent.

Article 33. Term.

This Agreement shall become effective on the Effective Date and, if not terminated in accordance with the provisions hereof, shall continue in effect for a term of ten (10) years. This Agreement shall automatically renew thereafter for two (2) additional, five (5) year periods, unless notice is given in writing by either party to terminate this Agreement, which notice must be given no less than six (6) months before the end of the initial ten (10) year period, or given no less than six (6) months before the end of any such renewal term. Such termination in no way exempts payment for pole and conduit attachment rental fees and continued compliance with all obligations and Applicable Standards hereunder pending the actual removal of all facilities. Upon termination of

this Agreement in accordance with the provisions hereof and in Article 29, Operator shall remove its Attachments from all NES Poles and conduits within six (6) months of receiving notice, or at a rate of ten percent (10%) of its Attachments per month, whichever period results in the greatest length of time for completing removal. If not so removed within that time period, NES shall have the right to remove Operator's Attachments, and Operator agrees to pay the actual and documented cost thereof within forty-five (45) days after it has received an invoice from NES.

Article 34. Receivership, Foreclosure or Act of Bankruptcy.

- 34.1 The Pole and conduit use granted hereunder to Operator shall, at the option of NES, cease and terminate one hundred twenty (120) days after the filing of bankruptcy or the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of Operator whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all Defaults under this Agreement.
- 34.2 In the case of foreclosure or other judicial sale of the plant, property and equipment of Operator, or any part thereof, including or excluding this Agreement, NES may serve notice of termination upon Operator and the successful bidder at such sale, in which event this Agreement herein granted and all rights and privileges of this Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:
- 34.2.1 NES shall have approved the transfer of this Agreement to the successful bidder, as and in the manner in this Agreement provided; and
- 34.2.2 Such successful bidder shall have covenanted and agreed with NES to assume and be bound by all the terms and conditions to this Agreement.

Article 35. Transfer Rights of Attachments.

Operator shall not assign, transfer, sublease or resell the rights of Attachments hereby granted to it, or the rights to use facilities so attached to NES's Poles, without prior consent in writing of NES, except as otherwise set forth herein.

Article 36. Removal of Attachments.

Operator may at any time remove its Attachments from any facility of NES, but shall promptly give NES written notice of such removals as specified in NES's License Application. No refund of any rental fee will be due on account of such removal.

Article 37. Performance Bond.

Operator shall furnish a performance bond executed by a surety company reasonably acceptable to NES which is duly authorized to do business in the state of Tennessee in the amount of Fifty Thousand Dollars (\$50,000.00) for the duration of this Agreement as security for the faithful

performance of this Agreement and for the payment of all persons performing labor and furnishing materials in connection with this Agreement.

Article 38. Termination.

In the event of termination not the fault of NES, Operator shall compensate NES as described in this Agreement for all actual and documented costs incurred under this Agreement, including costs incurred after date of termination.

Article 39. Jurisdiction.

Any and all disputes arising out of this Agreement shall be governed, construed and enforced according to the laws of the State of Tennessee. All actions relating to the validity, construction, interpretation, and enforcement of this Agreement shall be instituted and litigated in the courts of Tennessee; in accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of Tennessee, located in Davidson County, Tennessee.

Article 40. Nondiscriminatory Employment Practice/Absence of Conflict of Interest.

- 40.1 Operator makes oath, in a form similar to that set forth in Exhibit B, that its employment standards meet all local, state, and federal laws prohibiting discriminatory employment practices, and that neither the mayor, city council members, members of the Electric Power Board, nor any other Metropolitan Government official has direct or indirect interest in this contract as set forth in the Contractor/Vendor Affidavit.
- 40.2 Operator assures that it will comply with pertinent statutes, and such rules as are promulgated, to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap, be excluded from participating in any activity conducted with or benefited from NES or the Metropolitan Government.

Article 41. Authorizations.

NES and Operator each represents that it has the respective necessary corporate and/or legal authority and has obtained any and all regulatory approvals to enter into and perform this Agreement, and that this Agreement, when executed by such party, represents a valid, binding and enforceable legal obligation of that party.

Article 42. Sovereign Immunity.

NES represents and warrants to Operator that the State of Tennessee does not afford to NES as a governmental entity the defense of sovereign immunity for breach of contract.

Article 43. Miscellaneous.

- 43.1 The failure of either party to give notice of default or to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or conditions of this Agreement or the granting of an extension of time for performance shall not constitute the permanent waiver of any term or condition of this Agreement and this Agreement and each of its provisions shall remain at all times in full force and effect until modified by authorized representatives of the parties in writing.

- 43.2 The provision of services by NES or Operator under this Agreement will not create a partnership or joint venture between the parties nor result in a joint communications service offering to the customers of either Operator or NES.
- 43.3 Operator shall not, without the prior written consent of NES, use any of its facilities attached to NES's Poles, or installed in NES's conduit, for any purpose other than that provided in this Agreement. Whenever, in the reasonable judgment of NES, Operator has used its facilities for any purpose not authorized herein, NES shall forthwith notify Operator. Upon receipt of such notice, Operator shall as promptly as practicable cease such use complained of in the notice. Failure to do so shall constitute an Event of Default under this Agreement.
- 43.4 No subsequent amendment or agreement between NES and Operator regarding this Agreement shall be effective or binding unless it is in writing and made by authorized representatives of the parties hereto.
- 43.5 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns. Except as otherwise expressly provided in this Agreement, this Agreement shall not inure to the benefit of, or be enforceable by, or create any right or cause of action to, any person or entity other than the parties hereto.
- 43.6 This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements, whether written or oral, arrangements or understandings relating to its subject matter. No representation, promise, inducement or statement of intention has been made by either party which is not embodied herein. All existing licenses outstanding shall be subject to this Agreement.
- 43.7 If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement, and the parties hereby agree to negotiate with respect to any such invalid or unenforceable part to the extent necessary to render such part valid and enforceable.
- 43.8 Descriptive headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.
- 43.9 If any legal action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to its costs, including reasonable attorney's fees, in addition to any other relief to which that party may be entitled.
- 43.10 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, LIQUIDATED, OR SPECIAL DAMAGES OR LOST REVENUE OR LOST PROFITS TO ANY PERSON ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF ANY PROVISION OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

43.11 The provisions of this Article 43 shall survive the termination of any other portions of this Agreement.

Executed in duplicate at Nashville, Tennessee, on the day and date written below, each executed instrument to be considered as the original for all purposes.

**METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY,
ACTING BY AND THROUGH THE ELECTRIC
POWER BOARD OF SAID GOVERNMENT**

ATTEST:

Secretary

By: _____
President & CEO

Date: _____

Approved as to Form & Legality

By: _____
Vice President & General Counsel

Date: _____

OPERATOR

By: _____
Signature

Print Name

Title: _____

Date: _____



**EXHIBIT A
FEES AND CHARGES**

Effective Date: _____

Attachment Fees and Charges¹

The Pole Attachment Fee: Thirty-two dollars and sixty-one cents (\$32.61) per Attachment per year.

Each Attachment shall only occupy twelve (12) inches of vertical space on a Pole, as measured either above or below (but not both) the point of attachment, and any Attachment outside of the twelve inches shall be deemed to constitute a separate Attachment for Pole Attachment Fee calculation purposes.

One-half (1/2) of the Pole Attachment Fee shall be billed and paid on a semi-annual basis (billing periods: January–June and July–December), applied to the total number of licensed Attachments. Changes to the Pole Attachment Fee shall be applied beginning with the July–December billing (typically billed the following January).

Annual Conduit Rental Fee: Three dollars and eighty-eight cents (\$3.88) per linear foot per year (one-half (1/2) paid semi-annually) (NES reserves the right to recalculate the Conduit Rental Fee from time to time to cover actual costs).

Non-Recurring Fees

1. License Application Fee \$ 65 per Unit of NES Infrastructure
2. Make Ready Work and Other Charges See Article 5 of Agreement
3. Work performed by NES where Operator failed to perform in a timely manner may be subject to a twenty-five (25%) percent additional charge pursuant to Article 24 of Agreement.

Anchor Use Fee: Ninety-eight dollars and forty-six cents (\$98.46) per NES Anchor (NES reserves the right to adjust the Anchor Fee from time to time to cover actual costs, provided any such adjustment is applied on a nondiscriminatory basis to other Users Penalties

¹ Consistent with Article 5 of the Agreement, the Pole Attachment Fee shall be recalculated on an annual basis utilizing the NES Shared-Cost Rate Formula, and the non-recurring fees may be recalculated from time-to-time.

1. Unauthorized Attachment Penalty Fee:

One hundred dollars (\$100) per Unauthorized Attachment (including Service Drops, Riser Attachments and Overlashing that were not reported or which were deliberately installed in knowing violation of Applicable Standards).

2. Non-Transfer/Removal Penalty:

If, consistent with Article 24 of the Agreement, Operator fails to Rearrange, Transfer, Remove or Correct Violations in a timely manner, Operator shall be subject to a daily penalty of five dollars (\$5) per Attachment, per day beginning on the day after expiration of the original time period for completion of the work specified in the Agreement and the original notification that Operator needs to Rearrange, Transfer, Remove or Correct Violations. Beginning with the 90th calendar day after expiration of the time period for completion of the work specified in the Agreement and original notification, the daily penalty shall escalate to ten dollars (\$10) per Attachment per day.



**EXHIBIT B
CONTRACTOR/VENDOR AFFIDAVIT**

STATE OF _____)
COUNTY OF _____)

I, _____ (affiant), the _____ (company)
(title/office) of _____
("Contractor/Vendor"), do hereby swear, affirm and make oath as follows:

1. I am above the age of 18 and am duly authorized to make this affidavit on behalf of Contractor/Vendor.

2. Contractor/Vendor's employment practices do not subscribe to any policy that permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, religion, age, sex or handicap; further, Contractor/Vendor will not discriminate against any individual due to race, creed, color, national origin, religion, age, sex or handicap.

3. As of the date of this affidavit, neither the Mayor, any councilperson, member of the Electric Power Board, employee of the Electric Power Board, nor any other Metropolitan Government official is directly or indirectly interested in any contract with Contractor/Vendor for which compensation will be sought during the period of time covered by this affidavit.

If Contractor/Vendor for whom I sign is a widely-held, publicly-traded Fortune 1000 company whose securities are listed on NASDAQ, Contractor/Vendor may be unable to determine whether any government official owns its common stock. However, based on available securities filings, no individual owns greater than six percent (6%) of Contractor's common stock.

Contractor/Vendor pledges that it will notify immediately the Procurement & Services Manager of the Electric Power Board in writing should any information come to Contractor/Vendor's attention indicating that any Metropolitan Government official has become either directly or indirectly interested in any contract for which compensation will be sought during the aforesaid period. For purposes of this affidavit, "direct" and "indirect" are defined by Tenn. Code Ann. § 12-4-101.

4. As of the date of this affidavit, Contractor/Vendor has not given or donated, or promised to give or donate, directly or indirectly, to any official or employee of the Metropolitan Government or the Electric Power Board, or to anyone else for its benefit, any sum of money or other thing of value for aid or assistance in obtaining any contract under which compensation will be sought during the period covered by this affidavit. Contractor/Vendor pledges that neither it nor any other officer or employee will give or donate, or promise to give or donate, directly or indirectly, to any official or employee of the Metropolitan Government or the Electric Power Board, or anyone else for its benefit, any sum of money or other thing of value for aid or assistance in obtaining any contract for which compensation will be claimed during the aforesaid period.

5. Contractor/Vendor has not colluded and shall not collude with any other person, firm, corporation or association in arriving at any prices or amounts listed in any bid or response to Request for Proposal, Request for Bid or any other solicitation for work.

AFFIANT

Date: _____

Sworn to and subscribed before me this _____ day of _____, 20__.

NOTARY PUBLIC

My Commission Expires: _____

Exhibit D

**NASHVILLE ELECTRIC SERVICE
INFRASTRUCTURE USE AGREEMENT**

Contract No. 15-31-138

THIS AGREEMENT (hereinafter, "Agreement") made and entered into on _____, 20__ ("Effective Date"), by and between The Metropolitan Government of Nashville and Davidson County, Tennessee, a municipal corporation duly created, organized, and existing under and by virtue of the laws of the State of Tennessee, acting by and through the Electric Power Board of said Government, operating under the service name of Nashville Electric Service (hereinafter, "NES"), and (INSERT), a (INSERT) duly created, organized, and existing under and by virtue of the laws of the State of (INSERT) (hereinafter, "Operator").

RECITALS

WHEREAS, NES is an agency of the Metropolitan Government of Nashville and Davidson County, Tennessee, performing the essential public service of distributing electric power and as a necessary part of its operating as an electric distributor; and

WHEREAS, Operator proposes to furnish communications services in various areas within which NES distributes electric power, and desires to place and maintain facilities and equipment on or in NES's infrastructure and in the rights of way of NES throughout NES's service area; and

WHEREAS, NES's infrastructure has limited capacity for access and use by others for attachments to provide communications services; and

WHEREAS, NES's electric customers have first priority over all other competing uses of NES's infrastructure; and

WHEREAS, NES is responsible for safeguarding the integrity of the electric system, obtaining fair compensation for the use of NES's infrastructure through collection of fees and other charges, insuring the compliance with all applicable federal, state and local laws, rules and regulations, ordinances and standards and policies, and permitting fair and reasonable access to available capacity on NES's infrastructure; and

WHEREAS, Operator wishes to utilize NES's infrastructure to operate its communications system pursuant to the applicable franchise authority; and

WHEREAS, NES is willing to permit the placement of said Operator's facilities and equipment on or in NES's infrastructure where such use will not interfere with NES's service requirements, or the lawful use of NES's facilities by others, and only under the terms and restrictions imposed herein, and upon payment by Operator of the consideration hereinafter set out; and

WHEREAS, the parties intend that this Agreement shall replace and supersede all previous pole attachment and or infrastructure use agreements between the parties upon the Effective Date of this Agreement;

THEREFORE, in consideration of the mutual covenants, terms and conditions set out below, the parties agree as follows:

AGREEMENT

Article 1. Definitions.

For the purpose of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given below. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 “Anchor” means an anchor owned by NES which is a device to reinforce the Pole to which it is attached by a guy wire.
- 1.2 “Applicable Standards” means all applicable engineering and safety standards governing the installation, maintenance, and operation of facilities and the performance of all work in or around electric Infrastructure and includes the then-current versions of the National Electrical Safety Code (“NESC”), as adopted by the State of Tennessee, the National Electrical Code (“NEC”), and the regulations of the Occupational Safety and Health Administration (“OSHA”), each as may be amended from time to time, and/or other reasonable construction, safety and engineering requirements of NES (provided such requirements of NES are applied on a non-discriminatory basis to NES, Joint Users, and all other Users and provided further that such requirements of NES are not inconsistent with this Agreement) or other federal, state, or local authority with jurisdiction over NES’s Infrastructure.
- 1.3 “Applicant” means any person who applies to access and make attachment to or otherwise occupy NES Infrastructure.
- 1.4 “Application” means an application by Operator to install an Attachment as described in Article 7 and Article 8.
- 1.5 “Assignee” shall have the meaning ascribed thereto in Article 31.4.
- 1.6 “Attachment” means with respect to Operator, wireline facilities affixed to or placed within NES Infrastructure to provide communications services, and as further designated in the Application and/or this Agreement, and with respect to other Users, any communications or electric facilities or equipment affixed to or placed within NES Infrastructure. An Attachment includes Service Drops and any space clearly tagged and identified pursuant to Article 7.1.2.4.
- 1.7 “Cable” means any communications cable, wire, or strand, including without limitation fiber optic cable, coaxial cable, and twisted pair copper cable.
- 1.8 “Claims” shall have the meaning ascribed thereto in Article 25.1.

- 1.9 “Communications System” or “System” means Operator’s wireline facilities, including but not limited to Cables and electronics, as well as any and all associated equipment and facilities owned or controlled by Operator to provide any communications services, and attached to NES Infrastructure.
- 1.10 “Conduit Attachment” means an Attachment consisting of a single communications Cable or other object occupying one linear foot of a single conduit, duct, Innerduct, or other enclosed structure in NES’s underground Conduit System.
- 1.11 “Conduit System” means all the underground conduits owned by NES.
- 1.12 “Correct” means to perform work to bring an Attachment into compliance with Applicable Standards.
- 1.13 “Defective Pole” shall have the meaning ascribed thereto in Article 13.2.
- 1.14 “Effective Date” shall have the meaning ascribed thereto in the Preamble to this Agreement.
- 1.15 “Electronic Record” means a record created, stored, generated, received, or communicated by electronic means, including but not limited to the use of a computer program, electronic data interchange, electronic mail, facsimile, or scanner.
- 1.16 “Emergency” means a situation exists which, in the reasonable discretion of Operator or NES, if not remedied immediately, will result in a threat to public safety, a hazardous condition, damage to property or a service outage.
- 1.17 “Equipment Attachment” means each power supply, amplifier, pedestal, appliance or other single device or piece of equipment but excluding wireless attachments affixed to or contained in any unit of NES’s Infrastructure.
- 1.18 “Event of Default” shall have the meaning ascribed thereto in Article 29.1.
- 1.19 “Franchise” shall have the meaning ascribed thereto in Article 31.4.1.
- 1.20 “Indemnitees” shall have the meaning ascribed thereto in Article 25.1.
- 1.21 “Infrastructure” means NES distribution Poles, transmission Poles with distribution underbuild, ducts, conduit, vaults, Anchors, fiber optic cable capacity and active communications capacity, facilities and all other utility infrastructure and associated materials and equipment on or connected to these structures which are owned by, or under the control of, NES.
- 1.22 “Innerduct” means a flexible conduit installed inside a larger conduit for the placement of fiber optic cable.
- 1.23 “Joint-Use Agreement” means an agreement whereby each party to an agreement owns poles and has agreed that the other party has the right to attach to and occupy space upon the poles owned by it.

- 1.24 “Joint User” means a joint user which may attach to a Pole or Anchor, or occupy conduit, either solely or partially owned by NES, in return for granting NES equivalent rights of attachment to poles and anchors and/or occupancy of conduit which it owns, either solely or partially.
- 1.25 “License” means the written consent of NES for Operator to make its Attachment.
- 1.26 “Make Ready” means all work that NES reasonably determines to be required to accommodate Operator’s Attachments or those of another User, and/or to comply with all Applicable Standards. Such work includes, but is not limited to, administrative work, engineering work, rearrangement and/or transfer of NES facilities or existing Attachments, inspections, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), Pole replacement and construction, or Conduit System clearing, but does not include Operator’s routine maintenance.
- 1.27 “NJUNS” means the National Joint Utility Notification System, an organization that facilitates efficient utility communications through an electronic online system built to communicate and track information regarding joint utility ventures.
- 1.28 “Nonfunctional Attachment” shall have the meaning ascribed thereto in Article 11.
- 1.29 “Other Communications Attacher” shall have the meaning ascribed thereto in Article 5.4.3.
- 1.30 “Overlash Attachment” means each additional Cable owned and operated by Operator placed onto an existing licensed Cable owned and operated by Operator already attached to a Pole. Overlash Attachments shall not be counted as an additional Pole Attachment for Pole Fee purposes. Operator shall not allow third-party overlash or overlash to Unauthorized Attachments without NES’s prior approval.
- 1.31 “Overloaded Pole” shall have the meaning ascribed thereto in Article 13.2.
- 1.32 “Pole” means a utility pole owned by NES.
- 1.33 “Pole Attachment” means each communications wire or line attached to a Pole, including, but not limited to, Cables and Service Drops. A span wire required to support an unbalanced load shall be considered a Pole Attachment if the Operator does not have a Licensed Attachment on that same Pole.
- 1.34 “Pole Attachment Fee” or “Conduit Attachment Fee” shall have the meaning ascribed thereto in Article 5.4.
- 1.35 “Pre-Construction Survey” means all work or operations required by Applicable Standards and/or NES to determine the Make Ready work necessary to accommodate Operator’s Attachments on a Pole or within a span of conduit. Such work includes, but is not limited to, a pole loading analysis by a licensed professional engineer (with respect to Poles), field inspections and administrative processing.

- 1.36 “Rearrangement of Attachment” or “Rearrange” means the moving of Attachments from one position to another on the same Pole or in the same conduit.
- 1.37 “Reserved Capacity” means capacity or space on a Pole or within a portion of conduit that NES has identified and reserved for its own future electric utility requirements pursuant to a *bona fide* development plan existing at the time of the License grant, including the installation of communications circuits for operation of NES’s electric system.
- 1.38 “Riser Attachment” means each metallic or plastic encasement material placed vertically on NES’s Infrastructure to guide and protect wires and cables when transitioning from underground to overhead or overhead to underground. Riser Attachments shall not be counted as an additional Pole Attachment for Rental Fee purposes on Poles where Operator has an existing licensed Pole Attachment.
- 1.39 “Safety Inspection” shall have the meaning ascribed thereto in Article 23.2.
- 1.40 “Service Drop” means (i) a Cable used to connect directly to a customer’s location from one Pole, and attached to no more than one additional Pole where the additional Pole does not support voltage greater than 600V; or (ii) a Cable used to connect a customer’s location through the use of multiple Licensed Poles where Service Drop Make Ready has been performed pursuant to Article 7.1.2.4. Service Drops shall not be counted as an additional Pole Attachment for Pole Fee purposes as long as such Service Drop is within the attachment space of a Licensed Attachment subject to the Pole Fee.
- 1.41 “Tag” means the placement of permanent identifying markers on Attachments to make the nature of the Attachments and their ownership readily identifiable to NES and other Users.
- 1.42 “Transfer of Attachments” or “Transfer” means the removing of Attachments from one Pole and placing these onto another Pole or moving of Attachments from one location in NES’s Conduit System to another location in NES’s Conduit System.
- 1.43 “Triggering Event” shall have the meaning ascribed thereto in Article 5.4.6.
- 1.44 “True-Up Credit” shall have the meaning ascribed thereto in Article 5.4.5.
- 1.45 “Unauthorized Attachment” means any Attachment placed on or within NES Infrastructure without such authorization as is required by this Agreement, provided the Operator’s previously authorized Attachments made pursuant to a prior agreement between the parties shall not be considered Unauthorized Attachments. An Unauthorized Attachment shall not include any Attachment that Operator is permitted to affix to a Pole pursuant to the terms and conditions hereof, even if the installation of such Attachment does not meet Applicable Standards or differs from the design described in the applicable Application.
- 1.46 “User” means any entity that has received approval from NES to place facilities on or within NES Infrastructure.

Article 2. Scope of Agreement.

- 2.1 Subject to the provisions of this Agreement, NES will issue to Operator, for any lawful purpose, a revocable (solely pursuant to the terms and conditions hereof), nonexclusive License authorizing the attachment of Operator's Cables, equipment, and facilities to NES's Infrastructure within NES's service area to operate its Communications System.
- 2.2 This Agreement does not contemplate or authorize the attachment of wireless attachments to NES Infrastructure, and such use will only be allowed pursuant to a separately negotiated wireless pole attachment agreement.
- 2.3 No use, however extended, of NES's Infrastructure or payment of any fees or charges required under this Agreement shall create or vest in Operator any ownership or property rights in said Poles, Anchors, conduit or duct facilities, but Operator's rights therein shall be and remain a mere license. NES is not compelled to construct, retain, extend, place or maintain any Infrastructure not needed for its own service requirements, except as otherwise expressly provided herein.
- 2.4 Operator recognizes that NES has entered into, or may in the future enter into, agreements and arrangements with others not parties to this Agreement regarding the Infrastructure covered by this Agreement. Nothing herein contained shall be construed as a limitation, restriction, or prohibition against NES with respect to such other agreements and arrangements.
- 2.5 The rights of Operator shall at all times be subject to any present or future Joint-Use Agreement between NES and any other party regarding use of the Infrastructure covered herein; provided, however, that nothing in any such present or future Joint-Use Agreement shall restrict, modify, or abridge the rights of Operator set forth in this Agreement.
- 2.6 No license granted under this Agreement shall extend to any Pole(s) where the attachment or placement of Operator's facilities would result in a forfeiture of rights of NES to occupy the property on which such Pole(s) are located. If the existence of Operator's facilities on a Pole(s) or within a portion of conduit would cause a forfeiture of the right of NES to occupy such property, Operator agrees to remove Operator's facilities from the applicable Pole(s) or conduit forthwith upon receipt of written notification by NES in accordance with Article 32. If said facilities are not so removed, NES may perform and/or have performed such removal after the expiration of sixty (60) days from receipt of written notification without liability on the part of NES, and Operator agrees to pay all actual and documented costs associated with such removal. Without limiting Operator's obligations under this Article 2.7, NES agrees to reasonably cooperate, at Operator's cost and assumed liability, with any effort by Operator to cause the existence of Operator's facilities on a Pole or portion of conduit to no longer result in the forfeiture of the right of NES to occupy such property.

Article 3. Reservation and Restrictions.

- 3.1 NES may retain for its own use transmission structures (other than those with distribution underbuild), the electric supply area on Poles, and conduit that is co-resident with electric service or terminates in electric service vaults or manholes.

- 3.2 Specific units of NES Infrastructure may be reasonably determined by NES to be necessary for NES's exclusive use due to legal, mechanical, structural, safety, environmental, service or other requirements, and therefore, will be unavailable for use by others; provided, however, that the foregoing clause will not be applicable to Poles, for which NES's right to deny access to Operator is set forth in Article 7.
- 3.3 Within the electric service area, other entities own some portions of distribution poles, transmission structures, and underground duct and conduit. This Agreement does not address the use of non-NES infrastructure.
- 3.4 Access to space on NES Poles will be made available to Operator with the understanding that certain Poles may be subject to Reserved Capacity for future electric service use. At the time of License issuance, NES shall notify Operator if capacity on particular Poles is being reserved for reasonably foreseeable future electric use pursuant to a *bona fide* development plan. For Attachments made with notice of such a reservation of capacity, on giving Operator at least sixty (60) calendar days prior notice, NES may reclaim such Reserved Capacity at any time following the installation of Operator's Attachment if then-required for NES's core electric utility service. If reclaimed for NES's core electric utility service use, NES may at such time also install associated facilities, including the attachment of communications lines for internal NES operational or governmental communications requirements. NES shall give Operator the option to remove its Attachment(s) from the affected Pole(s) or to pay for the actual and documented cost of any Make Ready needed to expand capacity for core electric utility service requirements, so that Operator can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make Ready (including the transfer, rearrangement, or relocation of other User's Attachments) shall be determined in accordance with Article 12.2. Operator shall not be required to bear any of the costs of rearranging or replacing its Attachment(s), if such rearrangement or replacement is required as a result of an additional Attachment or the modification of an existing Attachment by any other User.
- 3.5 NES reserves to itself, its successors and assigns the right to maintain its Poles, manholes and conduit and to operate its facilities thereon in such manner as will best enable it to fulfill its own core electric service requirements, subject in all respects to NES's obligations set forth in this Agreement.
- 3.6 NES makes no representation or warranty of any nature that its existing or future rights-of-way, easements or other property rights, private or public, were, are or will be sufficient to permit the attachment, maintenance, replacement, relocation, repair, modification or removal of Attachments on or between any NES Infrastructure.
- 3.7 NES's service restoration requirements shall take precedence over any and all work operations of Operator on NES's Infrastructure.
- 3.8 To the extent Operator requires electric service for its facilities it shall obtain such power pursuant to the standard application for metered service.

Article 4. Specifications and Standards.

- 4.1 Operator's facilities, in each and every location, shall be erected and maintained in accordance with the requirements and specifications of Applicable Standards. Notwithstanding the foregoing, with respect to an Operator Attachment that was in compliance with the NESC or NES construction standards at the time such Attachment was made but has become noncompliant because of revisions to the NESC or NES construction standards, Operator shall be required to bring such Attachment into compliance with then-current standards only in connection with relocation or rebuild affecting such Attachment or the regular maintenance plan of NES or Operator. Operator's Attachments shall be made in accordance with Operator's customary standards and specifications, which Operator shall furnish to NES. The location of any Attachment may be reasonably redesignated from time to time to accommodate other Users or for reasons of electrical service safety or reliability, with costs allocated in accordance with Article 12.2.
- 4.2 Operator shall be responsible for the installation and maintenance of its Attachments and associated facilities. Operator shall, at its own cost, make and maintain its Attachment(s) in safe condition and good repair, in accordance with all Applicable Standards.
- 4.3 NJUNS. Operator shall become a participating member of the NJUNS or other similar notification system(s) identified and utilized by NES to facilitate required notices, including, but not limited to, any need to Rearrange or Transfer Operator's Attachments. NES will determine the extent to which notifications via NJUNS or other similar notification system will be utilized for Pole Attachments, Transfers, Rearrangements, Pole Attachment abandonment and removal, and substantially similar matters in respect of the Conduit System, as well as the extent to which such use will satisfy the notification requirements of this Agreement, and provide notice thereof to Operator; provided, however, that NES's determinations in respect thereto shall be made applicable to all Other Communications Attachers placing or affixing facilities within or on Infrastructure, and provided further that NES will provide Operator with contact information for any other User which is not an Other Communications Attacher and is not using NJUNS or other similar notification system. To the extent that NES determines to use NJUNS, Operator and NES agree to perform their respective tasks set forth in NJUNS tickets in a commercially reasonable and timely manner, and in accordance with the timeframes specified in this Agreement.
- 4.4 Tagging. Operator shall Tag all its Attachments to NES Infrastructure that will allow for ready identification of the type of Attachment and its owner. Operator shall be responsible for periodically inspecting its Attachments to ensure they are tagged with approved permanent identification markers. Should NES encounter any of Operator's Attachments without approved permanent identification markers, NES may notify Operator, provided that NES can identify the Attachments as belonging to Operator. Subject to the provisions of Article 24, NES will provide written notice to Operator and Operator will have one hundred twenty (120) days from receipt of notice to place such markers.
- 4.4.1 Notwithstanding the foregoing, Operator shall have six months from the Effective Date of this Agreement to Tag Attachments that were authorized prior to the Effective Date of the Agreement.

- 4.5 Interference. Operator shall not allow its Attachments to impair the ability of NES or any third party to use NES Infrastructure, nor shall Operator allow its Attachments to interfere with the operation of any NES facilities or facilities of other Users.
- 4.6 Protective Equipment. Operator and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people, property and facilities. Operator shall, at its own cost, install protective devices designed to handle the electric voltage and current carried by NES's facilities in the event of a contact with such facilities.
- 4.7 Violation of Specifications. If Operator's Attachments, or any part of them, are installed, used, or maintained in violation of this Agreement, and Operator has not Corrected the violation(s) within thirty (30) days from receipt of written notice of the violation(s) from NES, the provisions of Article 24 shall apply. When NES believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of NES's service obligations, or present an immediate threat to the physical integrity of NES Infrastructure or facilities, NES may perform such work and/or take such action as it deems necessary without first giving written notice to Operator. As soon as practicable afterward, NES will advise Operator of the work performed or the action taken. Operator shall be responsible for all actual and documented costs incurred by NES in taking action pursuant to this Article 4.7.
- 4.8 At all times while performing work in the field on NES Infrastructure Operator and its authorized contractors shall maintain a copy of all required permits and licenses for inspection by NES and all applicable State and local jurisdictions.

Article 5. Payment of Fees, Charges and Expenses.

- 5.1 Operator shall pay to NES the fees and charges and costs specified herein and/or in Exhibit A and shall comply with the terms and conditions specified in this Agreement.
- 5.2 Payment Period. Unless otherwise expressly provided, Operator shall pay any invoice it receives from NES pursuant to this Agreement within forty-five (45) days of receipt of invoice. Notwithstanding the foregoing, Operator may withhold payment of any invoiced amount that Operator disputes in good faith until resolution of the dispute pursuant to the dispute resolution procedures of this Agreement.
- 5.3 Application Fee. Operator shall be charged an Application Fee for each unit of NES Infrastructure (Pole, section of conduit, etc.) on which new Attachments are proposed under this Agreement. There shall be no Application Fee for Service Drops, Riser Attachments, and Overlashing qualifying for exclusion under article 7.1.1. The current Application Fee is sixty-five dollars (\$65) for each unit of NES Infrastructure. NES reserves the right to adjust the Application Fee from time to time. Failure to pay the Application Fees will cause the Application(s) to be deemed incomplete, and NES will not process such Application(s) until the Application Fees are paid. NES will make timely and reasonable efforts to contact Operator should its Application Fee not be received.
- 5.4 Attachment Fees. Operator shall be charged an annual Pole Attachment Fee or Conduit Attachment Fee per wireline Attachment or per linear foot of conduit, per year.

- 5.4.1 The Pole Attachment Fee shall be calculated annually, on a per Attachment basis, which shall initially be phased-in as set forth in Exhibit A.
- 5.4.2 The Conduit Attachment Fee shall be calculated annually and set out in Exhibit A.
- 5.4.3 Pole and Conduit Fee Rate Equality. Operator's Pole Attachment Fee and Conduit Attachment Fee rates shall be equal to the lowest Pole Attachment or Conduit Attachment rates that NES charges, inclusive of all discounts and rebates except as otherwise provided in this Article 5.4.3 (the "Lowest Charged Rate"), to any other for-profit communications attacher having Attachments on at least one hundred (100) NES Poles (an "Other Communications Attacher"); provided, however, that Operator's Pole Attachment Fee and Conduit Attachment Fee payments shall be subject to Articles 5.4.5 and 5.4.6 whenever NES collects a Pole Attachment Fee or Conduit Attachment Fee from any Other Communications Attacher that is lower than the Lowest Charged Rate; and provided further, however, that (x) fees paid to NES pursuant to a Joint Use Agreement by any Joint User which was a Joint User as of the Effective Date of this Agreement (or their successor in interest) are excluded from this rate equality mandate and (y) Operator shall not be entitled to a lower "phase-in" rate offered to any Other Communications Attacher if Operator received an offer for or receives a substantially similar phase-in of its initial Pole Attachment Fee and Conduit Attachment Fee, as applicable for approximately the same period of time provided that the commencement dates of such phase-in need not be the same. NES represents and warrants to Operator that: (i) as of the Effective Date, the following entities are the only Joint Users: AT&T, Inc.; TDS Telecom; and United Communications; and (ii) each Joint User grants reciprocal rights of access for NES to such Joint User's poles at the same attachment rate that, or a higher attachment rate than, NES collects from such Joint User for placing an attachment on NES Poles.
- 5.4.4 Initial Operator Attachment Fee Payments. NES shall invoice, and Operator shall initially pay, the Pole Attachment Fee per Attachment phased-in as set forth in Exhibit A, provided that the Pole Attachment Fee per Attachment set forth in Exhibit A shall be deemed adjusted to the Lowest Charged Rate (phase-in does not apply to Lowest Charged Rate).
- 5.4.5 True-Ups. NES agrees to credit the account of Operator (or refund to Operator following termination of this Agreement), subject to Article 5.4.6 hereof, for any amount paid by Operator as a Pole Attachment Fee at an attachment rate higher than the lowest Pole attachment rate collected, on or after the Effective Date, from any Other Communications Attacher for the applicable time period during which NES collected a lower rate (each such credit or refund, a "True-Up Credit"). For purposes of the preceding sentence, the Pole Attachment rate collected from any Other Communications Attacher then-subject to bankruptcy or receivership proceedings shall not be considered.
- 5.4.6 True-Up Credit Triggering Events. NES shall provide the True-Up Credit for an applicable time period within forty-five (45) days of the occurrence of any of the following events or circumstances (each, a "Triggering Event"):

- 5.4.6.1 NES (a) collects Pole Attachment Fees from any Other Communications Attacher based on a Pole attachment rate that is lower than the rate paid by Operator during such time period and (b) within two (2) years of collecting such payment from such Other Communications Attacher, NES does not seek (or fails thereafter to continuously diligently pursue), through a suit, claim, petition, or other action in or before a court, administrative agency, or other governmental authority of competent jurisdiction, to collect attachment fees from such Other Communications Attacher based upon the Pole attachment rate paid by Operator for such time period.
- 5.4.6.2 A court or administrative agency enters an order or decision setting the Pole attachment rate for any Other Communications Attacher lower than the rate paid by Operator during such time period and such order or decision is not stayed or enjoined within thirty (30) days. If such order or decision is subsequently vacated, reversed, amended, modified, or overruled, resulting in a different attachment rate for any Other Communications Attacher during such time period, NES and Operator will true-up the True-Up Credit for such time period to account for and incorporate such different Pole attachment rate.
- 5.4.6.3 NES enters into a binding agreement with any Other Communications Attacher establishing a Pole attachment rate for such time period lower than the rate paid by Operator during such time period (not including a phase-in rate that is comparable to what was offered or provided to Operator). If a subsequent binding agreement between NES and any Other Communications Attacher sets forth a different attachment rate for such time period, NES and Operator will true-up the True-Up Credit for such time period to account for and incorporate such lower Pole attachment rate.
- 5.4.6.4 Operator may offset any amounts owed to NES under this Agreement against any True-Up Credit that NES fails to provide within forty-five (45) days of a Triggering Event.
- 5.4.7 Lease of Infrastructure not defined above will be negotiated at NES's discretion.
- 5.4.8 Operator shall be billed semi-annually for Attachment Fees (one-half of the annual attachment fee at each billing period). Operator shall have one hundred eighty (180) days from receipt of invoice to contest the number of Attachments. Failure to contest or otherwise dispute the invoice within one hundred eighty (180) days of receipt shall be deemed to be acceptance by the Operator.
- 5.4.9 Refunds. No fees and charges specified in Exhibit A shall be refunded on account of any surrender of a License granted under this Agreement.
- 5.5 Charges and Expenses. Operator shall reimburse NES and any other Users for those actual, and documented costs in this Agreement for which Operator is responsible.
- 5.5.1 Such costs and reimbursements shall include, but not necessarily be limited to, all design, engineering, administration, supervision, payments, labor, overhead,

materials, equipment and applicable transportation used for work on, or in relation to Operator's Attachments as set out in this Agreement or as requested by Operator in writing.

- 5.5.2 NES shall provide Operator with invoices for such work (in progress or upon completion, as determined by NES) and payment shall be due and payable upon receipt, but shall not draw interest at NES's prevailing rate until forty-five (45) days after its receipt by Operator. Interest shall not exceed the State of Tennessee statutory interest rate as set out in Tenn. Code Ann. § 47-14-103.
- 5.6 Advance Payment. The parties will mutually agree on the extent to which Operator will be required to pay in advance estimated costs, including, but not limited to, administrative, construction, inspections, and Make Ready work costs, in connection with the initial installation or Rearrangement of Operator's Attachments pursuant to the procedures set forth in Articles 7 and 8 below. The above notwithstanding, NES may require the payment of estimated Make Ready work in advance if there are repeated instances of Operator making late payments for such work.
- 5.7 True-Up. Whenever the parties have agreed, or this Agreement otherwise provides, for an advance payment of estimated costs prior to undertaking an activity on behalf of Operator and the actual and documented cost of the activity exceeds the advance payment of estimated costs, Operator agrees to pay NES for the difference in cost, provided that NES documents such costs with sufficient detail to enable Operator to verify the charges. To the extent that NES's actual and documented cost of the activity is less than the estimated cost, NES shall refund to Operator the difference.
- 5.8 Determination of Charges. Wherever this Agreement requires Operator to pay for work done or contracted by NES, the charge for such work shall include all actual and documented material, labor, engineering, administrative, and applicable overhead costs. NES shall bill its services based upon actual and documented costs, and such costs will be determined in accordance with NES's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed, and costs of materials used. Labor costs shall be actual costs based upon NES employee rates. Consistent with Article 24, if Operator was required to perform work and fails to perform such work within the specified timeframe, and NES performs such work, NES may charge Operator an additional twenty-five percent (25%) of its actual and documented costs for completing such work.
- 5.9 Work Performed by NES. Wherever this Agreement requires NES to perform any work, NES, at its sole discretion, may utilize its employees or contractors, or any combination of the two, to perform such work.
- 5.10 Charges for Incomplete Work. In the event that an Application is submitted by Operator and then steps are taken by NES to carry out the review of the Application by performing necessary engineering and administrative work and the Application is subsequently canceled, Operator shall reimburse NES for all of the actual and documented costs incurred

by NES through the date of cancellation, including engineering, clerical and administrative and Make Ready construction costs.

- 5.11 Default for Nonpayment. Nonpayment of any amount due under this Agreement beyond ninety (90) days shall constitute an Event of Default of this Agreement.

Article 6. Private and Regulatory Compliance.

- 6.1 In order to construct, place and maintain the Operator's System on NES's Infrastructure, Operator must obtain from the various federal, state, county and local authorities any required permits, license, and Franchise required to be obtained to make an Attachment before making such Attachment. The cost of such permits, licenses, and Franchise shall be borne by Operator.
- 6.2 Operator shall be solely responsible for obtaining all necessary rights-of-way and easements or approvals, either public or private, which may be necessary prior to the beginning of construction, and Operator's right to make an Attachment shall be contingent upon acquisition, under terms acceptable solely to Operator, of all such permits, consents or approvals as are required to make such Attachment.
- 6.3 Lawful Purpose and Use. Operator's Attachments and associated facilities must at all times serve a lawful purpose, and the use of such Attachments and facilities must comply with all applicable federal, state and local laws.

Article 7. License Application Process.

- 7.1 Application Required. Before making any Attachments (excluding Overlashing qualifying for exclusion under Article 7.1.1, Service Drops, and Riser Attachments where there is an existing licensed Pole Attachment) to any Poles or in the Conduit System, Operator shall first make an Application and must have received a License therefor, with respect to each Pole or conduit.
- 7.1.1 Overlashing. Overlashing shall be allowed without separate Application up to the design capacity of the strand (all Attachments to be guyed for the capacity of the strand) and if the final diameter of the Attachment bundle (to include strand and all attached Cables) does not exceed two inches (2") in diameter. A new Application shall be required if the underlying strand must be replaced or if the final diameter of the Attachment bundle (to include strand and all attached Cables) exceeds two inches (2") in diameter.
- 7.1.1.1 It is Operator's responsibility to verify that the Pole and strand to which it proposes to overlash meets all Applicable Standards before overlashes. If Operator identifies pre-existing violations of Applicable Standards it is the responsibility of the Operator to notify NES of the violations. Operator shall not be allowed to overlash until the pre-existing violations of Applicable Standards are resolved. If it is determined by NES that Operator has overlashes on a Pole with a pre-existing violation of Applicable Standards, Operator shall be required to bring the Overlashed Attachment into

compliance with Applicable Standards to the extent that it is Operator's underlying Attachment that is non-compliant. Subject to the provisions of Article 24, NES will provide written notice to Operator and Operator shall have thirty (30) days from receipt of notice to Correct the existing standards issue(s) and notify NES that the work has been completed.

7.1.1.2 Except in instances of Overlash requiring a separate Application pursuant to Article 7.1.1, Operator shall notify NES of an Overlash Attachment within thirty (30) days of installation. NES shall specify the method of notification and may require the notification be submitted electronically utilizing a system specified by NES.

7.1.1.3 Any Overlash Attachment that NES discovers more than thirty (30) days after installation will be considered an Unauthorized Attachment subject to provisions of Article 20.

7.1.1.4 In the case of Emergency, Operator may make an Overlash Attachment to a Nonfunctional Attachment; provided, however, that Operator's overlashing of such Nonfunctional Attachment does not modify or alter Operator's obligation to timely remove the overlashed Nonfunctional Attachment as set forth in Article 11.

7.1.2 Service Drops. Operator may attach a Service Drop, without Application, from one Pole with an existing licensed Operator Attachment to connect directly to Operator's customer's building, premise, or location, and attached to no more than one additional Pole where the additional Pole does not support voltage greater than 600V.

7.1.2.1 It is Operator's responsibility to verify that the Pole on which it proposes to make a Service Drop meets all Applicable Standards before attaching the Service Drop. If existing standards issues are identified it is the responsibility of the Operator to notify NES of the issue. Operator shall not be allowed to attach the Service Drop until the standards issue is resolved.

7.1.2.2 If it is determined by NES that Operator has attached a Service Drop on a Pole with a pre-existing violation of Applicable Standards, Operator shall be required to bring the Service Drop into compliance with Applicable Standards to the extent that it is Operator's existing Attachment that is non-compliant. Subject to the provisions of Article 24, NES will provide written notice to Operator and Operator will have thirty (30) days from receipt of such notice to Correct the existing standards issue, otherwise the provisions of Article 24 shall apply. If the Attachment that is non-compliant belongs to another User, then Operator shall coordinate with NES and the other User concerning any necessary rearrangement of Operator's Service Drop in conjunction with the Correction of the non-compliant Attachment.

- 7.1.2.3 Operator shall notify NES of a Service Drop within thirty (30) days of installation. NES shall specify the method of notification and may require the notification be submitted electronically utilizing a system specified by NES.
- 7.1.2.4 Any Service Drop that NES discovers more than thirty (30) days after installation will be considered an Unauthorized Attachment subject to the provisions of Article 20.
- 7.1.2.5 On any Pole where Operator has applied for an Attachment License, Operator may, in its discretion, perform or have performed such Make Ready, subject to the terms and conditions hereof governing the Application process and Make Ready, as is necessary or advisable for future installation of a Service Drop (“Service Drop Make Ready”) on (i) any Pole at the time Operator performs other Make Ready on such Pole in connection with installation of Operator’s Communications System (a “Mainline Pole”) and (ii) any other Pole that Operator contemplates using for purposes of connecting a Cable directly to a customer’s premises from a Mainline Pole (a “Service/Lift Pole”). Operator shall clearly tag and identify the space on the Mainline Pole or Service/Lift Pole that Operator intends to use for a Service Drop, by placing a bolt in the Pole in the contemplated Attachment space or utilizing another mutually agreed upon means to tag and identify such space. NES may inspect related Service Drop Make Ready at Operator’s cost and expense at the time NES inspects Operator’s Make Ready on such Pole.
- 7.1.2.6 Operator shall not be required to use a messenger strand in connection with connecting any communications cable or wire as part of a Service Drop, provided, however, multiple cables sharing common attachment points on a Pole, including Service Drops, shall be lashed, bound or bundled and satisfy all Applicable Standards.
- 7.1.2.7 Where Operator desires to connect Cable directly to a customer’s premises from a Mainline Pole, and such connection to a customer’s premises requires the use of more than one Service/Lift Pole, Operator’s placement of an Attachment on such Service/Lift Pole(s) for connecting Cable to a customer’s premises shall be treated like any other Attachment under this Agreement. For any Pole where Operator has already performed authorized Service Drop Make Ready pursuant to Article 7.1.2.4, Operator shall only be required to provide notice that it has connected Service Drops to such Poles.
- 7.1.2.8 Operator may attach its Service Drop in its Attachment space, or in a space tagged and identified for use by Operator as a Service Drop (by placing a bolt in the Pole in the contemplated Service Drop Attachment space or utilizing another mutually agreed upon means to tag and identify such space as described in Article 7.1.2.4), more than one hundred twenty (120) days after completing the Service Drop Make Ready for such Service Drop.

7.1.3 Riser Attachments. The installation of a Riser Attachment shall be allowed without separate Application on a Pole with an existing licensed Operator Attachment.

7.1.3.1 It is Operator's responsibility to verify that the Pole and Riser Attachment meets all Applicable Standards before installation. If Operator identifies pre-existing violations of Applicable Standards it is the responsibility of the Operator to notify NES of the violations. Operator shall not be allowed to install the Riser Attachment until the pre-existing violations of Applicable Standards are resolved. If it is determined by NES that Operator has installed a Riser Attachment on a Pole with a pre-existing violation of Applicable Standards, Operator shall be required to bring the Riser Attachment into compliance with Applicable Standards to the extent that it is Operator's Riser Attachment that is non-compliant. Subject to the provisions of Article 24, NES will provide written notice to Operator and Operator shall have thirty (30) days from receipt of notice to Correct the existing standards issue(s) and notify NES that the work has been completed.

7.1.3.2 Operator shall notify NES of an Riser Attachment within thirty (30) days of installation. NES shall specify the method of notification and may require the notification be submitted electronically utilizing a system specified by NES.

7.1.3.3 Any Riser Attachment that NES discovers more than thirty (30) days after installation will be considered an Unauthorized Attachment subject to provisions of Article 20.

7.1.4 If the Pole or conduit is located on public rights-of-way, Operator shall obtain all necessary permits from the city of Nashville, Davidson County, or surrounding counties NES serves, or the State of Tennessee, as applicable, and present evidence thereof to NES at the time the request is made to attach to said Poles or in said conduit (unless such evidence is already on file with NES).

7.2 Standard Pole Attachment Application and Licensing Process.

7.2.1 Submission and Review of License Application. Operator shall submit a properly executed Pole Attachment License Application, which may, at Operator's option, include a Pre-Construction Survey and detailed plans for the proposed Attachments, including a description of any necessary Make Ready to accommodate the Attachments, certified by a professional engineer licensed in the state of Tennessee. Operator shall use the NES Pole Attachment License Application form, which form has been provided to Operator (NES may require that the Application be submitted electronically utilizing a system specified by NES). NES may amend the Pole Attachment License Application form and/or process from time to time, provided that any such changes are not inconsistent with the terms of this Agreement and are applied to all Other Communications Attachers on a non-discriminatory basis. NES's acceptance of the submitted design documents does not relieve Operator of full responsibility for any errors and/or omissions in the engineering analysis. Unless

otherwise agreed, in performing loading, Pre-Construction Survey and other engineering calculations submitted to NES, Licensee shall utilize engineering software specified by NES, and in all instances such software shall be compatible with NES's systems. Unless otherwise agreed, under normal circumstances, the License Application process shall be as follows:

- 7.2.1.1 If Operator's Application includes a Pre-Construction Survey and detailed plans for the proposed Attachments, including a description of any necessary Make Ready to accommodate the Attachments, certified by a professional engineer licensed in the state of Tennessee, NES shall review and respond to such properly executed and complete License Application for routine installations as promptly as is reasonable, with a goal of providing a response during normal circumstances within fourteen (14) days of receipt. NES's response will either: (i) grant permission to undertake such Make Ready as described in Operator's Application and engineering survey (ii) grant permission to undertake such Make Ready as NES reasonably determines is required; or (iii) provide a written explanation as to why the Application is being denied, in whole or in part, for reasons of safety, reliability or insufficient capacity that cannot be resolved consistent with Applicable Standards, including City and County zoning and construction ordinances.
- 7.2.1.2 If Operator's Application does not include a Pre-Construction Survey (including a description of necessary Make Ready), NES shall review the Application and perform a Pre-Construction Survey, and, if the Attachment can be accommodated consistent with Applicable Standards, prepare a description of any necessary Make Ready to accommodate the proposed Pole Attachment. Under normal circumstances, NES will respond to such properly executed and complete Permit Application for routine installations as promptly as is reasonable, with a goal of providing a response within forty-five (45) days of receipt. NES's response will either: (i) provide a description of Make Ready identified by NES and a cost estimate for the NES portion of that Make Ready; or (ii) provide a written explanation as to why the Application is being denied, in whole or in part, for reasons of safety, reliability or insufficient capacity that cannot be resolved consistent with Applicable Standards, including City and County zoning and construction ordinances. Upon receipt of NES's Make Ready cost estimate, Operator shall have fourteen (14) days to approve the estimate, and provide payment, if required under the terms of the Make Ready estimate, if NES is going to perform the Make Ready.
- 7.2.1.3 For License Applications seeking Attachments to one hundred (100) or more Poles NES may require additional time to review. For the purposes of this Article 7.2.1.3 only, all License Applications made by Operator in a thirty (30) day period will be considered as one Application.
- 7.2.1.4 In order to be considered as part of the same License Application, all of the Poles listed must be consecutive or in close proximity to one another.

7.2.2 Make Ready Work.

7.2.2.1 Make Ready work in the electric supply space may be performed only by NES and/or a qualified contractor authorized by NES to perform such work. Under normal circumstances, NES will give Operator the option of either having NES perform any necessary Make Ready work, at Operator's cost, or allowing Operator to complete Make Ready work through the use of qualified contractors authorized by NES.

7.2.2.2 If NES is performing Make Ready work it will use good faith efforts to complete routine Make Ready work within sixty (60) days of receipt of Operator's approval of the Make Ready estimate. If there are extenuating circumstances that make the necessary Make Ready more complicated or time-consuming, including, but not limited to, the Application requesting attachment to more than one hundred (100) Poles, or seasonal weather conditions, NES shall identify those factors in the Make Ready description and cost estimate and the parties shall agree upon a reasonable timeframe for completion. If NES does not complete agreed upon Make Ready work within sixty (60) days or the agreed-upon timeframe it will allow Operator to use an NES approved qualified contractor to complete such Make Ready work and refund any amounts paid by Operator to NES for performing such Make Ready work that is not completed.

7.2.2.2.1 The above notwithstanding, if NES has substantially completed the Make Ready the parties will reasonably determine whether it makes more sense from an operational efficiency perspective to have NES complete the work rather than have Operator's authorized qualified contractors do the work.

7.2.2.3 Payment for Make Ready Work. Upon completion of the Make Ready work performed by NES, NES shall invoice Operator for NES's actual and documented cost of such Make Ready work. The costs of the work shall be itemized in accordance with Article 5.8, and if NES received advance payment, the costs shall be trued up in accordance with Article 5.7. Operator shall be responsible for entering into an agreement with existing other Users to reimburse them for any costs that they incur in Rearranging or Transferring their facilities to accommodate Operator's Attachments.

7.2.2.4 Scheduling of Make Ready Work. In performing all Make Ready work to accommodate Operator's Attachments, NES will endeavor to include such work in its normal work schedule. If Operator requests, and NES agrees, to perform Make Ready work on a priority basis or outside of NES's normal work hours, Operator will pay any resulting increased actual and documented costs. Nothing in this Agreement shall be construed to require NES to perform Operator's work before other scheduled work or service restoration.

7.2.2.5 Notification of Make Ready Work. Before starting Make Ready work, NES shall notify all existing Users of the date and location of the scheduled work and notify them of the need to Rearrange and/or Transfer their facilities at Operator's cost within the specified time period. To the extent that NES has the legal authority, it shall Rearrange and/or Transfer existing facilities of such other Users that have not been moved in a timely manner. Operator shall pay for any such Rearrangement or Transfer.

7.2.2.6 In instances where Operator is performing Make Ready, where an existing User has not relocated or otherwise undertaken work required to complete Make Ready (such as repairing existing Attachments not in compliance with Applicable Standards) within thirty (30) days of notice by NES or Operator to such other User, Operator is authorized, to the extent that NES has such authority, and the legal ability to delegate such authority, to relocate or repair the other User's Attachments on behalf of NES. If NES determines that it does not have the legal ability to delegate authority to Operator to relocate or repair the other User's Attachments on behalf of NES, NES shall diligently enforce all contractual or legal rights of NES to require such other User to relocate or repair its Attachments. Operator shall pay the costs to relocate the other User's Attachments as part of Operator's Make Ready. NES shall provide reasonable assistance to Operator in obtaining reimbursement from any such other User for Operator's costs to repair such other User's Attachments that are not in compliance with Applicable Standards.

7.2.3 Operator's Installation/Removal/Maintenance Work.

7.2.3.1 License as Authorization to Attach. Upon satisfactory completion and inspection of any necessary Make Ready work, NES will issue a License to Operator which shall serve as authorization for Operator to make its Attachment(s).

7.2.3.2 All of Operator's installation, removal, and maintenance work, by either Operator's employees or authorized contractors, shall be performed at Operator's sole cost, in a good and workmanlike manner, and must not adversely affect the structural integrity of NES Infrastructure or other facilities or other Users' facilities or equipment.

7.2.3.3 All of Operator's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all Applicable Standards. Operator shall assure that any person installing, maintaining, or removing its facilities is fully qualified and familiar with all Applicable Standards, including standards for working in the supply space.

Article 8. Conduit Application and Use Requirements.

In addition to the general provisions of this Agreement the following procedures and requirements shall apply to the use of the Conduit System.

- 8.1 Route Investigation/Survey. If Operator seeks to utilize a portion of NES conduit for placement of its Cables, Operator shall first request a Route Investigation/Survey to be completed by NES. The Route Investigation/Survey shall be performed at Operator's cost, such cost to be actual and documented. Upon receipt and review of a Route Investigation/Survey Operator may apply for installation of its Cable within the Conduit System.
- 8.2 Conduit Usage License Application. Operator shall submit a properly executed Conduit Usage License Application, which shall include detailed plans for the proposed Attachments, including a construction drawing indicating the location of and specifying the type of Cable to be installed. Operator shall use the NES Conduit Usage License Application form, which form has been provided to Operator. NES may amend the Conduit Usage License Application form from time to time, provided that any such changes are not inconsistent with the terms of this Agreement, and are applied to all Other Communications Attachments on a non-discriminatory basis.
- 8.3 NES will review the Application and discuss any issues with Operator, including engineering or Make Ready work requirements associated with the Application.
- 8.4 NES shall review and respond to properly executed and complete Applications for routine installations as promptly as is reasonable. NES's response will either provide a written explanation as to why the Application is being denied, in whole or in part, or provide an estimate of the costs of all necessary Make Ready work.
- 8.5 Upon receipt of NES's Make Ready estimate, Operator shall have fourteen (14) days to approve the estimate and provide payment in accordance with this Agreement and the specifications of the estimate.
- 8.6 Upon receipt of payment of estimated Make Ready NES will use best efforts to complete routine Make Ready work within the conduit in a reasonable time frame, and shall advise Operator of any extenuating circumstances that make the necessary Make Ready more complicated or time-consuming.
- 8.7 NES reserves the right to determine routes and conduit to be used where there is insufficient capacity or operational limitations to accommodate Operator's proposed Conduit Attachments, including consistent with Article 3 the ability to exclude the use of Conduit and tunnels containing electric transmission facilities.
- 8.8 Work Rules. While some of the standards and technical requirements for Operator's Cable and use in NES's Conduit System are set forth herein, NES reserves the right to specify the type of construction required with respect to the Conduit System in situations not otherwise covered, provided that such construction requirements are not inconsistent with this Agreement and are imposed by NES on all Users on a non-discriminatory basis. In such cases, NES will furnish to Operator written materials which will specify and explain the required construction. NES and Operator shall negotiate in good faith with respect to any Conduit System construction requirement to which Operator reasonably objects.

- 8.8.1 NES's manholes or transformer vaults shall not be opened or tampered with by an employee, agent or contractor of Operator.
- 8.8.2 No employee, agent or contractor of Operator shall enter or work in any of NES's manholes or transformer vaults without an authorized representative of NES present.
- 8.8.3 NES shall place, remove, change, and maintain all Cable in the Conduit System with materials supplied by Operator, approved by NES and delivered in a timely manner to the location designated by NES.
- 8.8.4 Operator's Cable shall be permanently identified by tags at each manhole or other access opening in the Conduit System. Tags shall be of a type and wording reasonably satisfactory to NES, and consistent with NES guidelines. All cost of this identification shall be at the cost of Operator.
- 8.8.5 Where manholes or transformer vaults must be pumped in order to allow work operations to proceed, pumping shall be done by NES at Operator's cost, such cost to be actual and documented.
- 8.8.6 Any leak detection liquid or device used by Operator or Operator's agents, employees or contractors shall be of a type approved in writing by NES.
- 8.8.7 No equipment or facilities other than cables are permitted within NES underground structures. Slack loop and coils are not allowed within NES underground structures.
- 8.8.8 When Operator, its agents, employees, or contractors are working around any part of NES's Conduit System located in the streets, alleys, highways, or other public rights-of-way or easements granted to NES or the Metropolitan Government of Nashville and Davidson County, the protection of persons and property shall be provided by Operator in an adequate and satisfactory manner. Operator shall be solely responsible for providing adequate barricades, warning lights, traffic cones, danger signs, and other similar devices to protect all traffic, persons, and property around the work area from danger. In areas of the City of Nashville where NES is required to have uniformed police during construction or installation required by Operator, this cost will also be borne by Operator.
- 8.8.9 NES's authorized representative shall have the authority to terminate Operator's work operations around NES's manholes or transformer vaults if, in the reasonable discretion of NES's authorized representative, any hazardous condition arises or any unsafe practice is being followed by Operator's agents, employees or contractors. Said discretion shall not be unreasonably executed.
- 8.8.10 Operator further agrees to comply with all safety laws, regulations, ordinances, and statutes pertaining to the work to be performed hereunder and the tools and equipment used to accomplish such work, and to be and remain solely responsible for the compliance therewith by its employees, agents, servants and/or contractors.

8.9 Conduit Attachment Procedures.

- 8.9.1 All installations in conduits must be approved and performed by NES. Operator shall reimburse NES for all actual and documented costs incurred.
- 8.9.2 Operator's representative shall be present during all NES installation of underground Cable, Innerduct, and accessories on behalf of Operator. Operator's representative shall be knowledgeable and experienced in underground Cable, Innerduct, and accessory installation and shall be authorized by Operator to answer questions and make decisions on Operator's behalf regarding problems and questions that occur during NES installation of underground Cable, Innerduct, and accessories. Operator's representative shall be furnished at Operator's cost.
- 8.9.3 NES may exclude conduit and ducts for its core electric service. NES may pull a cable into any of NES's conduits either occupied by or scheduled to be occupied by Operator's facilities. Should it become necessary for NES to use a conduit occupied by Operator, Operator's Cable may upon notice be removed by NES. In lieu thereof, Operator may request NES to expand conduit or duct capacity, at the cost of Operator.
- 8.9.4 Operator shall compensate NES for the actual and documented cost, including engineering and administrative cost, for the connection of Operator's conduit which connects to NES's manhole or transformer vault. The section of connecting conduit shall not be longer than five (5) feet and shall be maintained by NES at Operator's cost.
- 8.9.5 Operator shall compensate NES for the actual and documented cost, including engineering and administrative cost, for any work required to make a conduit usable for the initial placing of Operator's Cable and/or Innerduct.
- 8.9.6 NES may rearrange Operator's Cable at the cost of Operator when necessary to make maximum use of its Conduit System, such cost to be actual and documented.

8.10 In Cases of Emergency.

- 8.10.1 NES's work shall take precedence over any and all operations of Operator.
- 8.10.2 Operator is responsible for supplying to NES a point(s) of contact for non-Emergency and Emergency twenty-four (24) hour service and for informing NES of any change in point(s) of contact.
- 8.10.3 In the event Operator experiences an Emergency with its Attachments located in NES's Conduit System, it is necessary that a NES representative be at the site before Operator enters a manhole and/or works on the Cable in NES's Conduit System for any reason. NES will respond to an Emergency as arranged between Operator and a NES representative. An Emergency call associated with Operator or NES's customers out of service will be treated on a "priority" basis. NES's response time will be based on the situation existing at the time of the Emergency. All NES labor and material associated with an Operator Emergency that does not arise from faults

in the Conduit System or the acts or omissions of any other User of the Conduit System will be billed to Operator.

Article 9. Post Installation Inspections.

- 9.1 Within thirty (30) days of written notice to NES that the Operator has completed installation of an Attachment (including Overlash, Riser Attachments, and/or Service Drops), NES or its contractors may perform a post-installation inspection for each Attachment made to NES Infrastructure. If such post-installation inspections are performed, Operator shall pay the actual and documented costs for the post-installation inspection.
- 9.2 If NES elects to not perform any post-installation inspection, such non-inspection shall not be grounds for any liability being imposed on NES or a waiver of any liability of Operator.
- 9.3 If the post-installation inspection reveals that Operator's facilities have been installed in violation of Applicable Standards or the approved design described in the Application, NES will notify Operator in writing and Operator shall have thirty (30) days from the date of receipt of such notice to correct such violation(s), or such other period as the parties may agree upon in writing, unless such violation creates an Emergency in which case Operator shall make all reasonable efforts to correct such violation immediately. NES may perform subsequent post-installation inspections within thirty (30) days of receiving notice that the correction has been made as necessary to ensure Operator's Attachments have been brought into compliance.
- 9.4 If Operator's Attachments remain out of compliance with Applicable Standards or approved design after any subsequent inspection, consistent with Article 24, NES will provide notice of the continuing violation and Operator will have thirty (30) days from receipt of such notice to Correct the violation, otherwise the provisions of Article 24 shall apply.

Article 10. Effect of Failure to Exercise Access Rights.

If Operator does not exercise any access right granted pursuant to an applicable License(s) within one hundred twenty (120) calendar days of the grant of a License to make Attachments (unless such time period is extended), NES may, but shall have no obligation to, use the space scheduled for Operator's Attachment(s) for its own needs or make the space available to other Users. In such instances, NES shall endeavor to make other space available to Operator, upon submission of a new Application under Article 7 or Article 8, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make Ready work provisions.

Article 11. Removal of Nonfunctional Attachments.

At its sole cost, Operator shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service ("Nonfunctional Attachment"). Except as otherwise provided in this Agreement, Operator shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming Nonfunctional unless Operator receives written notice from NES that removal is necessary to accommodate NES's or another User's use of the affected Pole(s) or portion of the Conduit System, in which case Operator shall remove the Nonfunctional Attachment within thirty (30) days of receiving the notice. Operator shall give NES notice of any removed Attachments, otherwise the provisions of Article 24 shall apply. If NES discovers Nonfunctional Attachments that

have not been reported, consistent with Article 24, NES shall notify Operator, who shall have one year from the date of discovery to remove such Attachments, after which the provisions of Article 24 shall apply.

Article 12. Rearrangements and Transfers.

12.1 Required Transfers of Operator's Attachments. If NES reasonably determines that a Rearrangement or Transfer of Operator's Attachments is necessary, including as part of Make Ready to accommodate another User's Attachment, NES will require Operator to perform such Rearrangement or Transfer within thirty (30) days after receiving notice from NES, including notice via NJUNS or other agreed upon notification system. If Operator fails to Rearrange or Transfer its Attachment within thirty (30) days after receiving such notice from NES, the provisions of Article 24 shall apply, including NES's right to Rearrange or Transfer Operator's Attachments sixty (60) days after Operator's receipt of original notification of the need to Rearrange or Transfer its facilities. The actual and documented costs of such Rearrangements or Transfers shall be apportioned as specified under Article 12.2. NES shall not be liable for damage to Operator's facilities except to the extent provided in Article 26. In Emergency situations, NES may Rearrange or Transfer Operator's Attachments as it determines to be necessary in its reasonable judgment. In Emergency situations NES shall provide such advance notice as is practical, given the urgency of the particular situation. NES shall then provide written notice of any such actions taken within ten (10) days following the occurrence.

12.1.1 If Operator fails to Rearrange and/or Transfer its facilities within the prescribed time period, NES may delegate its authority to Rearrange and/or Transfer Operator's facilities to another User that is authorized by NES to Rearrange and/or Transfer Attachments User or its authorized contractors. In such case such other User may Rearrange or Transfer Operator's Attachments sixty (60) days after Operator's receipt of original notification of the need to Rearrange or Transfer its facilities.

12.2 Allocation of Costs. The costs for any Rearrangement or Transfer of Operator's Attachment or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location) shall be allocated to NES and/or Operator and/or other User on the following basis:

12.2.1 If NES intends to modify or replace Infrastructure solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Infrastructure. Operator shall be responsible for costs associated with the Rearrangement or Transfer of Operator's Attachments.

12.2.2 If the modification or replacement of Infrastructure is necessitated by the requirements of Operator, Operator shall be responsible for all costs caused by the modification or replacement of the Infrastructure as well as the costs associated with the Transfer or Rearrangement of NES's facilities and any other User's facilities. NES shall not be obligated in any way to enforce or administer Operator's responsibility for the costs associated with the Transfer or Rearrangement of another User's facilities pursuant to this Article 12.2.

12.2.3 If the modification or the replacement of Infrastructure is the result of an additional Attachment or the modification of an existing Attachment sought by a User other than NES or Operator, the User requesting the additional or modified Attachment shall bear the entire cost of the modification or replacement, as well as the costs for Rearranging or Transferring Operator's Attachments. Operator shall cooperate with such third-party User to determine the costs of moving Operator's facilities.

12.2.4 If the Infrastructure must be modified or replaced for reasons unrelated to the use of the Infrastructure by Users or NES (e.g., storm, accident, deterioration), NES shall pay the costs of such modification or replacement and Operator shall pay the costs of replacing, Rearranging, or Transferring its Attachments.

Article 13. Pole Replacements.

13.1 At Operator's request, NES shall change out an existing Pole for a taller or stronger Pole in order to accommodate an Attachment request by Operator, unless such replacement Pole would be reasonably likely to adversely affect safety or electric reliability, or is otherwise inconsistent with applicable State or local zoning or land use requirements. Subject to Article 14, Operator shall pay the actual and documented cost of changing out the existing Pole.

13.2 Where Operator is unable to place an Attachment on a Pole because such Pole is a Defective Pole or Overloaded Pole, provided that the communications space on such Pole could otherwise have been arranged with sufficient spacing to accommodate the Operator's proposed Attachment(s), NES will replace, at NES's sole cost, such Defective Pole or Overloaded Pole. A "Defective Pole" means a Pole that is no longer serviceable due to decay, damage, or deterioration. An "Overloaded Pole" is a Pole that (without consideration of Operator's proposed Attachment) exceeds the applicable loading requirements set forth in the Applicable Standards.

13.2.1 In the event that an existing Pole is a Defective Pole or Overloaded Pole but does not pose an imminent threat or danger to safety or the safe functioning or operation of existing Attachments or facilities, NES shall replace said Pole at its sole cost consistent with its routine maintenance schedule.

13.2.2 If Operator seeks to expedite the replacement of a Defective Pole or Overloaded Pole, NES will provide Operator with the materials and Operator will pay the labor cost of using approved contractors to replace the Pole.

13.2.3 In all instances the replaced Pole will remain the property of NES.

Article 14. Treatment of Multiple Requests for Same Pole.

If NES receives License Applications for the same Pole or conduit from two (2) or more prospective Users within one hundred twenty (120) calendar days of the initial request, and has not yet completed the licensing of the initial applicant, and accommodating their respective requests would require modification of the Pole or replacement of the Pole, NES will make reasonable and good faith efforts to allocate among such Users the applicable costs associated with such modification or replacement.

Article 15. Equipment Attachments.

- 15.1 Operator shall compensate NES for the actual and documented cost, including engineering and administrative cost, for rearranging, transferring, and/or relocating NES Infrastructure to accommodate Operator's Equipment Attachments. There shall be no additional Pole Attachment Fee for Equipment Attachments on a Pole where Operator has a Licensed Attachment, provided that the Equipment Attachment is located below the designated communications space under Applicable Standards. Equipment Attachments within the communications space shall be subject to a separate Pole Attachment Fee to the extent they extend beyond the one foot of space allocated to the Licensed Attachment.
- 15.2 Operator shall reimburse the owner or owners of other facilities attached to NES Infrastructure for any actual and documented cost incurred by them for rearranging or transferring such facilities to accommodate Operator's Equipment Attachments.

Article 16. Authorized Contractors.

Operator shall only use authorized, qualified contractors approved by NES to conduct Make Ready work (or any other work) in or around the electric supply space on a Pole. NES shall not unreasonably withhold, delay, or condition its approval of any contractor proposed by Operator to be authorized by NES to perform Make Ready in the electric supply space on NES's Poles, provided such contractors meet NES's qualified contractor specifications.

Article 17. Guys and Anchor Attachments.

Operator shall at its own cost and to the satisfaction of NES place guys and anchors to sustain any unbalanced loads caused by Operator's Attachments. When, in unusual circumstances, Operator determines that it is necessary or desirable for Operator to attach its guys to Anchors owned by NES, it may make application to do so in a manner similar to that outlined in Article 7 above for application to make Pole Attachments. In such circumstances, all the provisions of this Agreement that are applicable to Poles shall also be separately applicable to Anchors. Operator will be subject to a one-time Anchor Fee as set out in Exhibit A, but shall not be subject to an annual Attachment fee for Operator's use of Anchors owned by NES. In the event that any Anchor or guy to which Operator desires to make Attachments is inadequate to support the additional facilities in accordance with the aforesaid specifications, NES will notify Operator of the changes necessary to provide an adequate Anchor or guy, together with the estimated cost thereof to Operator. Operator will compensate NES for the actual and documented cost including engineering and administrative cost for changing the guy and Anchor, if such change is performed by NES.

Article 18. Installation of Grounds.

When NES is requested by Operator to install grounds or make connections to NES's system neutral, Operator shall within forty-five (45) days of demand reimburse NES for the total actual and documented costs including engineering, clerical and administrative cost thereby incurred on initial installation only. All grounds installed by Operator shall be in accordance with NES's standard grounding practices.

Article 19. Actual Inventory.

NES will at intervals of not more often than once every five (5) years perform an actual inventory of the Attachments of Poles in all or in part of the territory covered by this Agreement, for the purpose of checking and verifying the number of Poles on which Operator has Attachments. Such field check shall be made jointly by both parties and shall be at the cost of Operator, such costs to be actual and documented, unless NES is also performing an inventory of any other User with Attachments on such Poles, and then the actual and documented cost shall be shared proportionately among all such Users based upon the number of Attachments.

Article 20. Unauthorized Attachments.

If during the term of this Agreement, NES discovers Unauthorized Attachments (including Overlashing, Riser Attachments or Service Drops for which timely notification was not provided) attributable to Operator, the following fees may be assessed, and procedures will be followed:

- 20.1 NES shall provide specific written notice, including electronic notification via NJUNS, SPIDAMin or other similar service, of each violation within thirty (30) days of discovering such violation and Operator shall be given thirty (30) days from receipt of notice to contest an allegation that an Attachment is unauthorized (or that Operator failed to timely provide notice).
- 20.2 Operator shall pay back rent for all Unauthorized Attachments (except Overlash Attachments and/or Riser Attachments where an existing licensed Pole Attachment exists) for a period of five (5) years, or since the date of the last inventory of Operator's Attachments (whichever period is shortest), at the rental rates in effect during such periods.
- 20.3 In addition to the back rent, Operator shall be subject to the Unauthorized Attachment Penalty as specified in Exhibit A for each Unauthorized Attachment, including Service Drops, Riser Attachments where an existing licensed Pole Attachment exists and Overlash Attachments, where required post-installation notification was not provided.
 - 20.3.1 If Operator is found to have (i) repeated instances of Unauthorized Attachments demonstrating a deliberate or consistent pattern of making Unauthorized Attachments; or (ii) has a significant number of Unauthorized Attachments (comprising 5% or more of Operator's total Attachments), Operator shall be considered to be in material breach and such Unauthorized Attachments shall constitute an Event of Default.
- 20.4 Operator shall submit a License Application in accordance with Article 7 of this Agreement within thirty (30) days of receipt of notice from NES of any Unauthorized Attachment, or such longer time as mutually agreed to by the parties after an inventory.
 - 20.4.1 No additional notification is required for Service Drops or Riser Attachments where an existing licensed Pole Attachment exists.

- 20.4.2 In the case of Overlash requiring a separate License application under Article 7.1.1 Operator shall be required to submit an application within thirty (30) days of receipt of notice of Unauthorized Attachment.
- 20.5 In the event Operator fails to submit a License Application within thirty (30) days, or such longer time as mutually agreed to by the parties after an inventory, the provisions of Article 24 shall apply.
- 20.6 No Ratification of Unauthorized Use. No act or failure to act by NES with regard to any Unauthorized Attachments shall be deemed as ratification of the unauthorized use. Unless the parties agree otherwise, a License for a previously Unauthorized Attachment shall not operate retroactively or constitute a waiver by NES of any of its rights or privileges under this Agreement or otherwise, and Operator shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

Article 21. Abandonment of Jointly Used Poles.

- 21.1 If NES desires at any time to abandon or sell any Poles on which Operator has an Attachment, it shall give Operator notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon or sell such Pole. NES will in its sole discretion determine whether to sell the Pole to Operator, Joint User or other User. If NES sells a Pole the Operator will continue to be able to maintain its existing Attachments on such Poles under the same terms and conditions as it has under this Agreement. If NES sells Operator the Pole, Operator shall pay NES an amount equal to the depreciated value of such abandoned Pole(s) at the time of transfer, or such other reasonable amount as may be agreed upon between the parties.
- 21.2 If Operator shall become owner of said Pole, Operator shall save harmless NES from all obligation, liability, damages, costs, expenses, or charges incurred after transfer of such ownership, because of, or arising out of, the presence or condition of such Pole or any Attachments thereon. To the extent permitted by applicable law, NES shall be responsible for all obligations, liabilities, damages, costs, expenses, or charges that arise from any acts or omissions that occurred prior to transfer of ownership.

Article 22. Removal of Attachments for Overhead to Underground Conversion.

Upon notice from NES to Operator that the NES facilities are to be converted from overhead to underground in a specified area and the Poles will be removed, the License covering the use of said Poles shall immediately terminate and the Attachments of Operator shall be removed from the affected Pole within sixty (60) days of Operator receiving notice from NES. In connection with undergrounding electric service as contemplated by this Article 22, NES shall provide Operator with the reasonable opportunity for Operator to install its own conduit at the time NES digs trenches. NES conduit installed in connection with undergrounding electric service shall be subject to the terms and conditions of this Agreement.

Article 23. Inspection.

- 23.1 General Inspections. NES reserves the right to make periodic inspections, as conditions may warrant, of the entire System of Operator. Such inspections, or the failure to make such inspections, shall not operate to relieve Operator of any responsibility or obligation or liability assumed under this Agreement.
- 23.2 Periodic Safety Inspections. Upon twelve (12) months' advance written notice from NES, and not more frequently than every five (5) years, NES may at its option jointly perform a safety inspection in all or in part of the territory covered by this Agreement with all Users to identify any safety violations of all Attachments and facilities on or within NES Infrastructure ("Safety Inspection"). Such notice shall describe the scope of the inspection and provide Operator and all Users an opportunity to participate. Operator, NES and other Users shall share proportionately in the actual and documented Safety Inspection costs (based on the proportion of Attachments of NES and each other User) irrespective of whether NES elects to perform the Safety Inspection itself or have it performed by a contractor.
- 23.3 Corrections. In the event any of Operator's facilities are found to be in violation of the Applicable Standards and such violation poses a potential Emergency situation, Operator shall use all reasonable efforts to Correct such violation immediately. Should Operator fail or be unable to Correct such Emergency situation immediately, NES may Correct the Emergency and bill Operator for one hundred twenty-five percent (125%) of the actual and documented costs incurred. If any of Operator's facilities are found to be in violation of the Applicable Standards and such violations do not pose potential Emergency conditions, NES shall, consistent with Article 24, give Operator notice, whereupon Operator shall have thirty (30) days from receipt of notice to Correct any such violation, or within a longer, mutually agreed-to time frame if correction of the violation is not possible within thirty (30) days, such extended time to be not more than an additional sixty (60) days. Notwithstanding the foregoing grace periods, in the event NES or another User prevents Operator from correcting a Non-Emergency violation, the timeframe for correcting such violation shall be extended to account for the time during which Operator was unable to Correct the violation due to action (or failure to act) by NES or other User. Operator will not be responsible for the costs associated with violations caused by others that are not affiliated or acting under the direction of Operator. In all circumstances, all of the Users on the Pole and NES will work together to maximize safety while minimizing the cost of correcting any such deficiencies, but the Operator shall be responsible for the actual and documented cost of any necessary or appropriate corrective measures associated with violations caused by Operator, including removal and replacement of the Pole and all Transfers or other work incident thereto. If Operator fails to Correct a non-Emergency violation within the specified timely period, including any agreed upon extensions, the provisions of Article 24 shall apply.
- 23.3.1 If any facilities of NES are found to be in violation of the Applicable Standards and specifications and NES has caused the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, but NES shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the Pole, provided, however, that NES shall not be responsible for Operator's own costs.

- 23.3.2 If one or more other Users' Attachment(s) caused the violation, then such User(s) shall pay the Corrective costs incurred by all who have Attachments on the Pole, including the Operator, and NES will make reasonable effort to cause the User to make such payment.
- 23.3.3 If there exists a violation of Applicable Standards and it cannot be determined which User on the Pole, including Joint User, caused such violation or there is a mixture of Users causing the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, and all Users who may have caused such violation will share equally in such costs to the extent provided for under existing agreements with said Users; provided that Operator shall not be required to pay more than its proportionate share of such costs.

Article 24. Failure to Rearrange, Transfer or Correct.

- 24.1 Unless otherwise agreed, as part of NES's written notice of a need for Operator to Rearrange, Transfer, Remove or Correct Violations (including Tagging), NES will indicate whether or not NES is willing to perform the required work.
- 24.2 If NES indicates in the notice that it is willing to perform the work, Operator shall have fifteen (15) days to notify NES in writing of its election to either have NES perform the work or that the Operator will perform the work itself.
- 24.2.1 If Operator requests that NES perform the work, Operator shall reimburse NES for the actual and documented cost of such work.
- 24.2.2 If Operator either fails to respond or indicates that it will perform the work itself, then until such work is complete and NES receives written notice of the completion of such work, Operator shall be subject to a daily penalty as specified in Exhibit A, per Attachment, per day commencing on the day after expiration of the time period for completion of the work specified in the Agreement and original notification that Operator needs to Rearrange, Transfer, Remove or Correct Violations. Beginning with the ninetieth (90th) calendar day after expiration of the time period for completion of the work specified in the Agreement and original notification, the daily penalty shall escalate as specified in Exhibit A.
- 24.2.3 Notwithstanding Operator's election under Article 24.2.2 to perform the required work itself, commencing on the thirtieth (30th) day after expiration of the time period for completion of the work specified in the Agreement and original notification, NES may perform the required work at Operator's expense, or may delegate such authority to another User utilizing a qualified contractor.
- 24.2.4 If Operator was required to perform work under this Article 24 and fails to perform such work within the specified timeframe, and NES performs such work, NES may charge Operator an additional twenty-five percent (25%) of its actual and documented costs for completing such work.

24.3 If NES indicates in the notice that it is unwilling or unable to perform the work, then until such work is completed and NES receives written notice of the completion of such work, Operator shall be subject to a daily penalty as specified in Exhibit A, per Attachment, per day commencing on the day after expiration of the time period for completion of the work specified in the Agreement and original notification that Operator needs to Rearrange, Transfer, Remove or Correct Violations. Beginning with the ninetieth (90th) calendar day after expiration of the time period for completion of the work specified in the Agreement and original notification, the daily penalty shall escalate as specified in Exhibit A.

24.3.1 If Operator fails to submit a License Application in accordance with Article 7 of this Agreement within thirty (30) days of receipt of notice from NES of any Unauthorized Attachment, or such longer time as mutually agreed to by the parties after an inventory, the daily penalties specified in Exhibit A shall apply.

24.4 Operator shall provide written notification to NES upon completion of any of the required work, daily penalty fees will continue to accrue until NES's receipt of such notice of completion. Notice of completion shall be given by the same means as it was received from NES.

Article 25. Indemnification and Insurance.

25.1 Operator shall indemnify and save harmless the Metropolitan Government of Nashville and Davidson County, the Electric Power Board, and officers and employees of Nashville Electric Service ("Indemnitees"), against all claims, suits or actions, of every kind and description, of all persons whomsoever, including without limitation, claims of employees, agents or servants of Operator and its contractors ("Claims"), for all losses and damages for personal injury, property damage and/or loss of life or property and use thereof, resulting from or in any way connected with Operator's obligations under this Agreement, except to the extent any such losses and damages are caused by the negligence or intentional misconduct of NES or its employees, agents, servants, or contractors. Operator's duty to indemnify and hold harmless shall include, but not be limited to, Claims arising from (i) the performance of Make Ready on existing Attachments by NES, the Operator or their respective contractors; (ii) the alleged deliberate and/or intentional misconduct or negligence of Operator; (iii) NES performing a Rearrangement of Attachment and/or Transfer of Attachment of Operator's or another User's Attachment that have not been moved in a timely manner pursuant to Articles 7.2.2.5 or 24; (iv) Operator's installation, removal, and maintenance work not being performed in a good and workmanlike manner, adversely affecting the structural integrity of NES Infrastructure, or adversely affecting other Users' facilities or equipment, pursuant to Article 7.2.3.2; and (v) Operator's interruption or deenergization of NES's electric system without NES's consent.

25.2 In the event any person or persons that are not a party to this Agreement shall make a claim or file any lawsuit against NES for any reason whatsoever arising out of or in any way based upon this Agreement and/or work performed under it by Operator and for which Operator is obligated to indemnify NES, NES will forthwith notify Operator, and Operator shall within a reasonable time advise NES if it intends to take over management of the claim and, without limitations, to investigate the claim, negotiate a settlement or defend any such legal action,

or otherwise assume responsibility for protecting the interest of NES. If after ten (10) days from the date such notice is delivered or deemed delivered to Operator, NES has not received a response from Operator that it will assume responsibility, NES is then authorized to take such action as it considers in its best interest. NES shall then have sole and exclusive control of the actions to be taken and decisions to be made with respect to such claim including the decision to compromise and settle any such claim or legal action and Operator will be conclusively presumed to consent thereto and concur therein. In the event legal action is not settled, NES will defend by staff or private counsel and hold Operator responsible for all damages, interest, judgments, cost of court and reasonable cost of investigating and settling or attempting to settle such claims and actions, including reasonable attorneys' fees.

- 25.3 Operator shall take out and maintain throughout the agreement period, insurance in the minimum requirements:
- 25.3.1 Workers' compensation insurance covering all employees in statutory limits who perform any of the obligations assumed by Operator under this Agreement.
- 25.3.2 Commercial general liability insurance covering all operations under this Agreement; combined single limit of liability of \$1,000,000 per occurrence for claims of bodily injury, death property damage and \$2,000,000 aggregate for accidents during the policy period. The Metropolitan Government of Nashville and Davidson County acting by and through the Electric Power Board of the said Metropolitan Government and the Metropolitan Government of Nashville and Davidson County in its regular corporate capacity shall be named as additional insureds in this policy or policies.
- 25.3.3 Automobile liability insurance on all self-propelled vehicles used in connection with the Agreement, whether owned, non-owned, hired, or otherwise. This policy shall be comprehensive automobile liability policy as approved by the National Bureau of Casualty Underwriters and the Insurance Department of the State of Tennessee. Per accident liability limits of not less than \$1,000,000 combined single limit of liability for claims of bodily injury, death and property damage. The Metropolitan Government of Nashville and Davidson County acting by and through the Electric Power Board of the said Metropolitan Government and the Metropolitan Government of Nashville and Davidson County in its regular corporate capacity shall be named as an additional insured in this policy or policies.
- 25.4 Operator shall obtain and maintain an umbrella liability policy certificate in addition to the certificates listed above with minimum acceptable limits of liability to be five million dollars (\$5,000,000) per occurrence.
- 25.5 NES and its officers, employees and agents shall all be named as additional insureds in all policies required under this Article 25 of this Agreement.
- 25.6 Operator shall provide NES with a current certificate of insurance evidencing all of the insurance required above in this Article 25 prior to commencing installation of its System on NES's Infrastructure. Each insurance certificate shall state that the issuer of the insurance

certificate shall endeavor to give NES thirty (30) days' prior written notice of any cancellation, modification or expiration of any insurance policy referred to in the certificate. Operator shall make all reasonable efforts to furnish replacement certificates to NES at least thirty (30) days before the expiration of the then-current insurance policies.

- 25.7 All insurance required by this Article 25 to be maintained by Operator shall be pursuant to valid and enforceable policies issued by insurers authorized to conduct business in Tennessee.
- 25.8 Failure of Operator to maintain the proper insurance required under this Article 25 shall result in termination of this Agreement if the breach is not cured in accordance with Article 29.

Article 26. Duties, Responsibilities and Exculpation.

- 26.1 NES makes no representation as to the condition of the premises or equipment at or near which Operator will work, the existing Poles, equipment or installations, and has and assumes no responsibility to Operator, its employees, agents, servants, and subcontractors, except to inform Operator of any hidden defects or dangerous conditions known to NES and not known to or ascertainable by Operator by reasonable inspection.
- 26.2 By executing this Agreement, Operator warrants that it has or will fully acquaint itself with the conditions relating to the work it will undertake under this Agreement, and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.
- 26.3 It is further understood by and between the parties that in the performance of the work performed under this Agreement, Operator, its agents, servants, employees, and contractors will necessarily be required to work near, about, adjacent to and in the vicinity of energized (hot) lines, transformers, or other equipment of NES, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except (i) in an Emergency, (ii) as deenergized by NES at Operator's request, or (iii) as deenergized by Operator with NES's consent. Operator is fully and solely responsible for seeing that its employees, servants, agents or subcontractors shall have the necessary skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of NES, and the general public, from harm or injury while performing under this Agreement, and furnishing them with competent supervision and sufficient and adequate tools and equipment, for their work to be performed in a safe manner while the existing equipment of NES is energized. Except in an Emergency, Operator shall not deenergize any of NES's system without first obtaining permission from NES.
- 26.4 In the event any transformer or line is deenergized at Operator's request and for its purposes, benefit and convenience in performing a particular segment of any work, Operator shall be responsible for seeing that all clearances and arrangements for such cutoff of electric service shall conform with all applicable safety rules and regulations and Operator shall complete the work with all reasonable speed so that service may be restored without unnecessary delay. In the event that Operator shall unintentionally or accidentally cause an interruption of service by damaging or interfering with any equipment or facilities of NES, Operator shall

immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify NES immediately. Operator shall be solely responsible for any injuries or damages or claims for losses growing out of such interruption or deenergization of NES's electric system (except to the extent such interruption or deenergization was performed by NES or with NES's consent), to all persons whomsoever.

- 26.5 Operator further warrants that it is apprised of, conscious of, and understands the imminent dangers inherent in the work necessary to make installations on NES's Poles by its personnel, employees, servants, agents and subcontractors, and accepts it as its duty and sole responsibility to notify and inform its personnel, employees, and subcontractors of such dangers, and to keep them informed.

Article 27. Damages to Facilities.

- 27.1 NES shall exercise reasonable caution to prevent damage to, or interference with the operation of the equipment of Operator, but NES shall not be liable for any such damage or interference which may arise out of the use of NES's Poles, manholes or conduit hereunder, except to the extent caused by the negligence or intentional misconduct of NES or its employees, agents, or contractors.
- 27.2 Operator shall exercise reasonable caution to avoid damage to facilities of NES or of other authorized Users of said Poles or conduit; and Operator hereby assumes all responsibility for any and all damage to facilities of said NES or other authorized Users arising out of or caused by the erection, maintenance, installation, presence, use or removal of Operator's facilities.
- 27.3 Operator shall make an immediate report to the particular owner of the facilities affected by the occurrence of any damage caused by Operator or its agents, and hereby agrees to reimburse such owner for the actual and documented costs incurred in making the necessary repairs and replacement if damage is caused by Operator or its agents.

Article 28. Dispute Resolution Process.

- 28.1 Dispute Resolution. Except for an action seeking a temporary restraining order, an injunction, or an order to compel compliance with this dispute resolution procedure, either party can invoke the dispute resolution procedures in this Article 28 at any time to resolve a controversy, claim, or breach arising under this Agreement. Each party will bear its own costs for dispute resolution activity.
- 28.2 Initial Meeting. At either party's written request, each party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The parties will conduct any meeting in-person or via conference call, as reasonably appropriate.
- 28.3 Executive Meeting. If thirty (30) days after the first in-person meeting of the senior representatives, the parties have not resolved the dispute to their mutual satisfaction, each party will designate executive representatives at the director level or above to meet and

negotiate in good faith to resolve the dispute. To facilitate the negotiations, the parties may agree in writing to use mediation.

- 28.4 Unresolved Dispute. If after thirty (30) days from the first executive-level, in-person meeting, the parties have not resolved the dispute to their mutual satisfaction; either party may invoke any legal means available to resolve the dispute, including enforcement of the default and termination procedures set out in Article 29.
- 28.5 Confidential Settlement. Unless the parties otherwise agree in writing, communication between the parties under this Article 28 will be treated as Confidential Information developed for settlement purposes, exempt from discovery and inadmissible in litigation.
- 28.6 Business as Usual. During any dispute resolution procedure or lawsuit, the parties will continue providing services to each other and performing their obligations under this Agreement.
- 28.7 All fees and penalties will continue to accrue pending dispute resolution procedures unless the dispute specifically involves a dispute over the application of the fee or penalty.

Article 29. Default.

- 29.1 An Event of Default (each of the following being an “Event of Default”) shall be deemed to have occurred hereunder by Operator if:
- 29.1.1 Operator shall breach any material term or condition of this Agreement; or
- 29.1.2 Operator shall fail to perform, observe or meet any material covenant or condition made in this Agreement; or
- 29.1.3 At any time, any representation, warranty or statement made by Operator herein shall be incorrect or misleading in any material respect.
- 29.2 Upon the occurrence of any one or more of the Events of Default set forth in Article 29.1 hereof, NES, at its option, in addition to and not in lieu of any other remedies provided for herein, shall be entitled to proceed to exercise any and all actions it may have in law or at equity, including drawing down upon the bond for any fees, costs, expenses or penalties that Operator has not paid, and, in addition, at its option, may terminate this Agreement upon providing notice to Operator, provided, however, NES may take such action or actions only after first giving Operator written notice of the Event of Default and a reasonable time in which Operator may cure or commence diligent efforts to cure such Event of Default, which period of time shall be not less than thirty (30) calendar days, except that the period of time shall not be less than ten (10) calendar days for monies past due and owing by Operator to NES; for failure to maintain adequate insurance, as provided for herein; and for failure to maintain any bonds required pursuant to this Agreement.
- 29.3 Without limiting the rights granted to NES pursuant to the foregoing Article 29.2, the parties hereto agree to conduct themselves reasonably and in good faith and to use a good faith effort

to meet and to resolve outstanding issues, including but not limited to the Dispute Resolution Process of Article 28.

- 29.4 In the event that NES fails to perform, observe or meet any material covenant or condition made in this Agreement or shall breach any material term of condition of this Agreement, or at any time any representation, warranty or statement made by NES shall be incorrect or misleading in any material respect, then NES shall be in default of this Agreement. Upon being provided notice from Operator of said default, NES shall have thirty (30) days to cure same and if such default is not cured, then Operator shall have any and all remedies at law or in equity available to it, including termination of this Agreement without any liability therefor.
- 29.4.1 The above notwithstanding, Operator's sole remedy if NES is unable to perform a survey or complete Make Ready work within the prescribed timeframes under Article 7 is the authority to perform such survey or Make Ready itself at Operator's expense.
- 29.4.2 Under no circumstances will a failure of NES to meet the survey or Make Ready time periods set out in Article 7 subject NES to damages.
- 29.5 Upon Termination for Default, Operator shall remove its Attachments from all NES Poles and conduits within six (6) months of receiving notice, or at a rate of five thousand (5,000) Attachments per month, whichever period results in the greatest length of time for completing removal. If not so removed within that time period, NES shall have the right to remove Operator's Attachments, and Operator agrees to pay the actual and documented cost thereof within forty-five (45) days after it has received an invoice from NES.

Article 30. Force Majeure.

Notwithstanding any other term or provision in this Agreement, neither party shall be liable to the other party or any other person, firm, or entity for any delay or failure of performance hereunder if such failure is due to any cause or causes beyond its reasonable control and without its fault or negligence, other than the acts or omissions of a party's own contractors, suppliers, representatives, or agents. Such causes shall include without limitation: acts of God or any civil or military authority, governmental regulations (provided, however, that NES may not invoke force majeure due to a government regulation of the Metropolitan Government of Nashville and Davidson County), national emergencies, insurrections, riots or wars.

Article 31. Assignment.

- 31.1 Except as otherwise provided herein, Operator shall not assign or transfer any of its rights or obligations under this Agreement, in whole or in part, by merger, consolidation, reorganization, or change in the ownership or control of Operator's business, or by any other means, without the prior written consent of NES, which consent shall not be unreasonably withheld.
- 31.2 Any assignment or transfer by Operator prohibited by Article 31.1 above, without prior written consent, shall constitute a Default.

- 31.3 Prior to any assignment or transfer, any new owner or operator shall be required to be bound by and to continue under the same terms and conditions as this Agreement and to execute all necessary acknowledgments to this effect.
- 31.4 Notwithstanding Article 31.1 above, Operator may, during the term of this Agreement, assign or transfer this Agreement to (i) any affiliate of Operator or to a partnership of which at least fifty percent (50%) of the units are owned directly or indirectly by Operator or its parent company; or (ii) to any successor to Operator's business, or a substantial part thereof, whether through merger, amalgamation, consolidation or sale of assets (each, an "Assignee"), without the prior consent of NES; provided, however, such assignment or transfer shall be subject to the following conditions:
- 31.4.1 In the case of a sale of assets, (i) the Operator has assigned its state-issued certificate of franchise authority or other authorization issued by a franchising authority (the "Franchise") to such Assignee, and such assignment has been approved (if applicable law requires approval), or the Assignee otherwise holds an applicable and effective Franchise; and (ii) the Assignee has received and accepted an assignment or transfer of the assets comprising the Operator's business, or a substantial part thereof.
- 31.4.2 Notice of the assignment or transfer has been provided to NES, in writing, at the earlier of (a) within sixty (60) days of the date an application for transfer or assignment of the Franchise is filed with the Tennessee Regulatory Authority or other applicable franchising authority, if such application for transfer or assignment is required by applicable law under the circumstances, or (b) in the case of a sale of assets, within seven (7) business days after the assignment or transfer.
- 31.4.3 Assignee has executed documents, reasonably satisfactory to NES, committing Assignee to fulfill and honor all of the terms and conditions of this Agreement, including, but not limited to, all of the representations and warranties of Operator.
- 31.5 Any assignment or transfer of this Agreement by NES shall require the new owner to be bound by and to continue under the same terms and conditions as this Agreement and to execute all necessary acknowledgments to this effect.

Article 32. Notice.

Wherever in this Agreement notice is required 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 or in the form of an Electronic Record. All such notices shall be directed to the addresses specified below:

If to the Operator:

With copies to Operator at:

and

If to NES:

Nashville Electric Service
1214 Church Street
Nashville, TN 37246
Fax No. 615-747-3854
Confirmation No. 615-747-3895
Attention: President and CEO

With a copy to NES at:

Nashville Electric Service
1214 Church Street
Nashville, TN 37246
Fax No.: 615-747-3667
Confirmation No.: 615-747-3701
Attention: General Counsel
RUSH: FORMAL NOTICE OF CONTRACT ACTION

or to such other address as the parties shall designate in writing or in the form of an Electronic Record; provided, however, that notices of interruption and communications may be provided orally, effective immediately and, upon request, confirmed in writing or in the form of an Electronic Record. A notice sent by facsimile transmission shall be deemed received on the day sent (unless such day is not a business day, in which case it shall be deemed received on the next business day), and notice by overnight mail or courier shall be deemed to have been received based upon the mode of delivery, unless it confirms a prior verbal communication in which case any such notice shall be deemed received on the day sent.

Article 33. Term.

This Agreement shall become effective on the Effective Date and, if not terminated in accordance with the provisions hereof, shall continue in effect for a term of ten (10) years. This Agreement shall automatically renew thereafter for five (5) additional one (1) year periods, unless notice is given in writing by either party to terminate this Agreement, which notice must be given no less than six (6) months before the end of the initial ten (10) year period, or given no less than six (6) months before the end of any such one year renewal term. Such termination in no way exempts payment for Pole and conduit attachment rental fees and continued compliance with all obligations and Applicable Standards hereunder pending the actual removal of all facilities. Upon termination of this

Agreement in accordance with the provisions here and in Article 29, Operator shall remove its Attachments from all NES Poles and conduits within six (6) months of receiving notice, or at a rate of five thousand (5,000) Attachments per month, whichever period results in the greatest length of time for completing removal. If not so removed within that time period, NES shall have the right to remove Operator's Attachments, and Operator agrees to pay the actual and documented cost thereof within forty-five (45) days after it has received an invoice from NES.

Article 34. Receivership, Foreclosure or Act of Bankruptcy.

34.1 The Pole and conduit use granted hereunder to Operator shall, at the option of NES, cease and terminate one hundred twenty (120) days after the filing of bankruptcy or the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of Operator whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all Defaults under this Agreement.

34.2 In the case of foreclosure or other judicial sale of the plant, property and equipment of Operator, or any part thereof, including or excluding this Agreement, NES may serve notice of termination upon Operator and the successful bidder at such sale, in which event this Agreement herein granted and all rights and privileges of this Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

34.2.1 NES shall have approved the transfer of this Agreement to the successful bidder, as and in the manner in this Agreement provided; and

34.2.2 Such successful bidder shall have covenanted and agreed with NES to assume and be bound by all the terms and conditions to this Agreement.

Article 35. Transfer Rights of Attachments.

Operator shall not assign, transfer, sublease or resell the rights of Attachments hereby granted to it, or the rights to use facilities so attached to NES's Poles, without prior consent in writing of NES, except as otherwise set forth herein.

Article 36. Removal of Attachments.

Operator may at any time remove its Attachments from any facility of NES, but shall promptly give NES written notice of such removals as specified in NES's License Application. No refund of any rental fee will be due on account of such removal.

Article 37. Performance Bond.

Operator shall furnish a performance bond executed by a surety company reasonably acceptable to NES which is duly authorized to do business in the state of Tennessee in the amount of fifty thousand

dollars (\$50,000.00) for the duration of this Agreement construction period as security for the faithful performance of this Agreement and for the payment of all persons performing labor and furnishing materials in connection with this Agreement.

Article 38. Termination.

In the event of termination not the fault of NES, Operator shall compensate NES as described in this Agreement for all actual and documented costs incurred under this Agreement. including costs incurred after termination.

Article 39. Jurisdiction.

Any and all disputes arising out of this Agreement shall be governed, construed and enforced according to the laws of the State of Tennessee. All actions relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of Tennessee, in accordance herewith the parties to this Agreement submit to the jurisdiction of the courts of Tennessee, located in Davidson County, Tennessee.

Article 40. Nondiscriminatory Employment Practice/Absence of Conflict of Interest.

- 40.1 Operator makes oath, in a form similar to that set forth in Exhibit B, that its employment standards meet all local, state, and federal laws prohibiting discriminatory employment practices, and that neither the mayor, city councilmen, members of the Electric Power Board, nor any other Metropolitan Government official has direct or indirect interest in this contract as set forth in the Contractor/Vendor Affidavit.
- 40.2 Operator assures that it will comply with pertinent statutes, and such rules as are promulgated, to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap, be excluded from participating in any activity conducted with or benefited from NES or the Metropolitan Government.

Article 41. Authorizations.

NES and Operator each represents that it has the respective necessary corporate and/or legal authority and has obtained any and all regulatory approvals to enter into and perform this Agreement, and that this Agreement, when executed by such party, represents a valid, binding and enforceable legal obligation of that party.

Article 42. Sovereign Immunity.

NES represents and warrants to Operator that the State of Tennessee does not afford to NES as a governmental entity the defense of sovereign immunity for breach of contract.

Article 43. Miscellaneous.

- 43.1 The failure of either party to give notice of default or to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or conditions of this Agreement or the granting of an extension of time for performance shall not constitute

- the permanent waiver of any term or condition of this Agreement and this Agreement and each of its provisions shall remain at all times in full force and effect until modified by authorized representatives of the parties in writing.
- 43.2 The provision of services by NES or Operator under this Agreement will not create a partnership or joint venture between the parties nor result in a joint communications service offering to the customers of either Operator or NES.
- 43.3 Operator shall not, without the prior written consent of NES, use any of its facilities attached to NES's Poles, or installed in NES's conduit, for any purpose other than that provided in this Agreement. Whenever, in the reasonable judgment of NES, Operator has used its facilities for any purpose not authorized herein, NES shall forthwith notify Operator. Upon receipt of such notice, Operator shall as promptly as practicable cease such use complained of in the notice. Failure to do so shall constitute an Event of Default under this Agreement.
- 43.4 No subsequent amendment or agreement between NES and Operator regarding this Agreement shall be effective or binding unless it is in writing and made by authorized representatives of the parties hereto.
- 43.5 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns. Except as otherwise expressly provided in this Agreement, this Agreement shall not inure to the benefit of, or be enforceable by, or create any right or cause of action to, any person or entity other than the parties hereto.
- 43.6 This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements, whether written or oral, arrangements or understandings relating to its subject matter. No representation, promise, inducement or statement of intention has been made by either party which is not embodied herein. All existing Licenses or prior authorizations shall be subject to this Agreement.
- 43.7 If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement, and the parties hereby agree to negotiate with respect to any such invalid or unenforceable part to the extent necessary to render such part valid and enforceable.
- 43.8 Descriptive headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.
- 43.9 If any legal action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to its costs, including reasonable attorney's fees, in addition to any other relief to which that party may be entitled.
- 43.10 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, LIQUIDATED, OR SPECIAL DAMAGES OR LOST

REVENUE OR LOST PROFITS TO ANY PERSON ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF ANY PROVISION OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

Executed in duplicate at Nashville, Tennessee, on the day and date written below, each executed instrument to be considered as the original for all purposes.

**METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY, ACTING
BY AND THROUGH THE ELECTRIC POWER
BOARD OF SAID GOVERNMENT**

Attest:

Secretary

By: _____

Chairman of the Board

Date: _____

By: _____

President & CEO

Date: _____

Approved as to Form & Legality:

By: _____

Vice President & General Counsel

Date: _____

OPERATOR

By: _____

(Signature)

(Print Name)

Title: _____

Date: _____

EXHIBIT A

FEES AND CHARGES

Attachment Fees and Charges¹

The Pole Attachment Fee: Thirty-two dollars (\$32) per Attachment per year.

Each Attachment shall only occupy twelve (12) inches of vertical space on a Pole, as measured either above or below (but not both) the point of attachment, and any Attachment outside of the twelve inches shall be deemed to constitute a separate Attachment for Pole Attachment Fee calculation purposes.

One-half (1/2) of the Pole Attachment Fee shall be billed and paid on a semi-annual basis (billing periods: January–June and July–December), applied to the total number of licensed Attachments. Changes to the Pole Attachment Fee shall be applied beginning with the July–December billing (typically billed the following January).

The Pole Attachment Fee shall be phased-in over a three (3) year period as follows:

- Year 1 – Rate = sixty-three percent (63%) of the Pole Attachment Fee (for the first two billing periods commencing with the billing period in effect at the time of the Effective Date of this Agreement).
- Year 2 – Rate = eighty-two percent (82%) of the Pole Attachment Fee (for the next two billing periods).
- Year 3 – Rate = one hundred percent (100%) of the Pole Attachment Fee (commencing the fifth billing period from the Effective Date of this Agreement and continuing thereafter).

Annual Conduit Rental Fee: Three dollars and eighty-eight cents (\$3.88) per linear foot per year (one-half (1/2) paid semi-annually) (NES reserves the right to recalculate the Conduit Rental Fee from time to time to cover actual costs).

Non-Recurring Fees

1. License Application Fee: Sixty-five dollars (\$65) per unit of NES Infrastructure.
2. Make Ready Work and Other Charges: See Article 5 of Agreement.
3. Work performed by NES where Operator failed to perform in a timely manner may be subject to a twenty-five percent (25%) additional charge pursuant to Article 24 of Agreement.

¹ Consistent with Article 5 of the Agreement, the Pole Attachment Fee shall be recalculated on an annual basis utilizing the NES Shared-Cost Rate Formula, and the non-recurring fees may be recalculated from time-to-time.

4. Anchor Use Fee: Ninety-eight dollars and forty-six cents (\$98.46) per NES Anchor (NES reserves the right to adjust the Anchor Fee from time to time to cover actual costs, provided any such adjustment is applied on a nondiscriminatory basis to other Users).

Penalties²

1. Unauthorized Attachment Penalty Fee:

One hundred dollars (\$100) per Attachment (including Service Drops, Riser Attachments and Overlash that were not reported).

2. Non-Transfer/Removal Penalty:

If, consistent with Article 24 of the Agreement, Operator fails to Rearrange, Transfer, Remove or Correct Violations in a timely manner, Operator shall be subject to a daily penalty of five dollars (\$5) per Attachment, per day beginning on the day after expiration of the original time period for completion of the work specified in the Agreement and the original notification that Operator needs to Rearrange, Transfer, Remove or Correct Violations. Beginning with the ninetieth (90th) calendar day after expiration of the time period for completion of the work specified in the Agreement and original notification, the daily penalty shall escalate to ten dollars (\$10) per Attachment per day.

² On or about January 1, 2020, the Penalty Fees will be adjusted from their prior amounts up or down in proportion to any change over time in the Handy-Whitman Index for Electric Utility Construction Cost for the South Atlantic Region of the United States for Federal Energy Regulatory Account No. 364, Poles, Towers and Fixtures, using the July 2014 and July 2019 indices. New Penalty Fees shall be effective January 1, 2020. This process shall be repeated on a five (5) year cycle.

EXHIBIT B



NASHVILLE ELECTRIC SERVICE CONTRACTOR/VENDOR AFFIDAVIT

STATE OF _____)

COUNTY OF _____)

I, _____ (*affiant*), the _____
(*title/office*) of _____ (*company*) (“Contractor/Vendor”),
do hereby swear, affirm and make oath as follows:

1. I am above the age of 18 and am duly authorized to make this affidavit on behalf of Contractor/Vendor.

2. Contractor/Vendor’s employment practices meet all local, state, and federal laws prohibiting discriminatory employment practices.

3. As of the date of this affidavit, neither the Mayor, any councilperson, member of the Electric Power Board, employee of the Electric Power Board, nor any other Metropolitan Government official is directly or indirectly interested in any contract with Contractor/Vendor for which compensation will be sought during the period of time covered by this affidavit.

Contractor/Vendor pledges that it will immediately notify NES should any information come to Contractor/Vendor’s attention indicating that any Metropolitan Government official has become either directly or indirectly interested in any contract for which compensation will be sought during the aforesaid period. For purposes of this affidavit, “direct” and “indirect” are defined by Tenn. Code Ann. § 12-4-101.

4. As of the date of this affidavit, Contractor/Vendor has not given or donated, or promised to give or donate, directly or indirectly, to any official or employee of the Metropolitan Government or the Electric Power Board, or to anyone else for its benefit, any sum of money or other thing of value for aid or assistance in obtaining any contract under which compensation will be sought during the period covered by this affidavit. Contractor/Vendor pledges that neither it nor any other officer or employee will give or donate, or promise to give or donate, directly or indirectly, to any official or employee of the Metropolitan Government or the Electric Power Board, or anyone else for its benefit, any sum of money or other thing of value for aid or assistance in obtaining any contract for which compensation will be claimed during the aforesaid period.

AFFIANT

Date: _____

Sworn to and subscribed before me this ____ day of _____, 20__.

NOTARY PUBLIC

My Commission Expires: _____

Exhibit E

**NASHVILLE ELECTRIC SERVICE
INFRASTRUCTURE USE AGREEMENT**

Contract No. _____

THIS AGREEMENT made and entered into by and between The Metropolitan Government of Nashville and Davidson County, Tennessee, a municipal corporation duly created, organized, and existing under and by virtue of the laws of the state of Tennessee, acting by and through the Electric Power Board of said Government, operating under the service name of Nashville Electric Service, hereinafter referred to as "NES" and ***COMPANY NAME***, a partnership duly created, organized, and existing under and by virtue of the laws of the state of Tennessee with its principal place of business being _____, _____, hereinafter referred to as "Operator."

I. PREAMBLE

WHEREAS, NES is an agency of the Metropolitan Government of Nashville and Davidson County, Tennessee, performing the essential public service of distributing electric power and as a necessary part of its operating as an electric distributor, it must have a proficient communications network and it desires to enter into an agreement with Operator for Operator to provide capital replacement for NES' communications requirements and financial support for such replacements in the form of pole attachment and other applicable revenue; and

WHEREAS, Operator proposes to design, install, operate, and maintain a Nashville area communications network to provide cost-effective technological advances to improve network and transmission quality in Nashville as well as to provide increased reliability and protection from network outages; and

WHEREAS, NES' infrastructure has limited capacity for access and use by others for delivery of telecommunications, cable television and information services; and

WHEREAS, NES' customers have first priority over all other competing uses of its infrastructure, NES is therefore, responsible for safeguarding the integrity of the electric system, obtaining fair compensation for the use of NES' infrastructure through collection of fees and other charges, insuring the compliance with all applicable federal, state and local laws, rules and regulations, ordinances and standards and policies, and permitting fair and reasonable access to available capacity on NES' infrastructure; and

WHEREAS, Operator wishes to utilize NES' infrastructure to operate its telecommunications network pursuant to ordinances _____ and _____; and

WHEREAS, NES issued an RFP for the purpose of discovering reasonable rates and attachment provisions; and

WHEREAS, NES is willing to permit the placement of said Operator's fiber optic cables, equipment (in a negotiated location where permitted), and facilities on NES' facilities where reasonably available and where such use will not interfere with NES' service requirements, or the lawful use of NES' facilities by others, and only under the terms and restrictions imposed herein, and upon payment by Operator of the consideration hereinafter set out.

II. CONSIDERATION

NOW, THEREFORE, in consideration of the premises, the sum of money to be paid by Operator to NES, as hereinafter provided, it is agreed between the parties as follows:

1. Definitions

For the purpose of this agreement, the following terms when used herein shall have the following meanings:

A. Anchor - means an anchor owned by NES which is a device to reinforce the pole to which it is attached by a guy wire.

B. Anchor Attachment - shall consist of an Operator guy with shielding, where appropriate.

C. Applicant - an applicant is any person who applies to use Utility Infrastructure.

D. Attachments - an attachment is any one of the following as designated in the application and/or Infrastructure Use Agreement:

- (1) each aerial cable, together with associated messenger cable, guy wire, anchors and other appurtenant and incidental facilities but excluding amplifiers and appliances, as structurally supported by each individual unit of utility infrastructure,
- (2) each linear foot of occupancy of NES conduit, duct or other enclosed structure by each cable or other object,
- (3) each antenna affixed to or contained in each unit of Utility Infrastructure or each other Attachment,
- (4) each transceiver affixed to or contained in each unit of Utility Infrastructure or each other Attachment, or
- (5) each amplifier, repeater, appliance or other single piece of equipment affixed to or contained in any unit of Utility Infrastructure, and
- (6) each other device or equipment of a user which is placed on or in a unit of Utility Infrastructure.

As to description of (1) and (2) above, (I) lashing, overlashing, co-lashing or co-locating constitute a separate attachment and is strictly prohibited without a contract which contains specific authorization to do so; (II) multiple cables are deemed multiple separate attachments unless otherwise approved; and (III) cables of excessive size or weight are determined, on a case by case basis, to be multiple attachments.

E. Cable - Cable refers to any cable, wire, or strand, including fiber optic cable, coaxial cable, and twisted pair copper cable.

F. Cable Communications System - shall mean a facility consisting of antennas, fiber optic cables, transmitters and receivers, coaxial cables and amplifiers, towers, microwave or other wireless transmission links, and any other conductors, converters, equipment or facilities, designed and constructed for the purpose of distributing video programming to subscribers and/or producing, receiving, amplifying, storing, processing, switching, or distributing audio, video, digital or other forms of electronic signals sold or distributed to subscribers.

G. Network - shall include fiber optic communications cable, coaxial cable installation hardware, equipment, and accessories owned and/or operated by the entities.

H. Conduit Attachment - shall mean an attachment consisting of fiber optic cable occupying a single conduit, duct, or innerduct in an NES underground system.

I. Equipment Attachment - shall mean an attachment consisting of equipment, other than fiber optic cable and its hardware, which is attached to an NES pole outside the space normally designated for communication lines, or located on an NES substation site, or located in an NES manhole.

J. Guy Strand - a metal cable attached to a pole (or another pole) for the purpose of increasing pole stability.

K. Innerduct - shall mean a flexible conduit installed by NES inside a larger conduit for the placement of fiber optic cable.

L. Joint Owner - a person, firm, corporation or other legal entity sharing ownership of the pole and/or anchor with NES.

M. Joint-Use Agreement - shall mean an agreement whereby each party to an agreement owns poles and have agreed that the other party has the right to attach to and occupy space upon the poles owned by it.

N. Joint User - a joint user which may attach to a pole, anchor, or occupy conduit, either solely or partially owned by NES, in return for granting NES equivalent rights of attachment to poles, anchors, and/or occupancy of conduit which it owns, either solely or partially.

O. Major Service Interruption - shall mean a complete loss of any optical signal between any of the NES buildings.

P. Make Ready - shall mean any work performed by NES, including engineering and administrative work, associated with the accommodation of Operator's attachments on NES facilities.

Q. Material Degree - shall mean any change in the fiber network that would cause a loss of optical signal.

R. Pole Attachment - shall mean an attachment to an NES pole consisting of a fiber optic cable located in the space normally designated for communication lines.

S. Rearrangement of Attachment - is the moving of attachments from one position to another on the same pole or in the same conduit.

T. Transfer of Attachments - the removing of attachments from one pole and placing these onto another pole or moving of attachments from one location in NES' conduit system to another location in NES' conduit system.

U. User - a user is any applicant who has received final approval of an application to use Utility Infrastructure and has executed an Infrastructure Use Agreement authorizing installation of an attachment or attachments.

V. Utility Infrastructure - Utility Infrastructure includes NES distribution poles, transmission structures, ducts, conduit, vaults, radio equipment, fiber optic cable capacity and active communications capacity, buildings, and all other utility infrastructure and associated materials and equipment on or connected to these structures.

W. Work or Works - when used in the agreement shall be understood to include all supervision, materials, labor, transportation, and equipment. When referencing Operator, the term shall refer to everything agreed to be done and furnished by Operator.

2. Transfer of Optical Fibers

In consideration for future encumbrance of NES' infrastructure, Operator agrees to transfer to NES six (6) optical fibers on each and every route Operator hereafter constructs with routing by way of the electric distribution system and more particularly described in Exhibit A ("Optical Fibers") and the equipment for use in connecting the optical fibers more particularly described in Exhibit B ("Equipment"). The route shall reasonably correspond with the route in Exhibit A and said route should be substantially completed before venturing to outlying areas. The optical fibers and the equipment are collectively referred to in this agreement as the "System." The transfer of ownership of these six (6) optical fibers on each route shall be at zero (0) cost with Operator maintaining all of these fibers. All future requests by NES for additional cable spurs and equipment shall be sold to NES by Operator on the basis of Operator's incremental cost for such fiber spurs and/or equipment. Under this agreement, fiber cables

installed by NES shall, at NES' request, be connected by Operator to NES' fiber network transferred to NES by Operator as outlined in Exhibit A. NES agrees to pay Operator's cost of time and materials to connect these fibers.

For telecommunications routes shown in Exhibit A, where pre-existing physical limitations permits the provisioning of two (2) or more but less than six (6) dark fibers, Operator will, at NES request and upon approval by NES, provide specified equipment necessary to provide capacity at the specified standard optical rate. The equipment necessary for initial provisioning at the initial optical rate is detailed in Exhibit B. With respect to this Article 2, Operator shall perform all splicing and shall provide all necessary materials to facilitate splicing and connecting.

3. Ownership

The parties agree that upon acceptance of the System by NES, NES shall only own the fibers and equipment as described in Article 2 and as listed in Exhibits A and B provided under this agreement and as may be amended by mutual agreement of both parties, and that the ownership of all other cables and other equipment related to the area-wide fiber optic network shall be owned by Operator.

4. Title

Upon acceptance of the System by NES, to the extent applicable, Operator shall deliver to NES Certificates of Ownership for all of the six (6) optical fiber routes and equipment as described in Articles 2 and 3, free and clear of all claims, liens and encumbrances except for any security interest granted by Operator to equipment or optical fiber vendors or financial institutions for the construction of the system.

The Certificates of Ownership shall provide a complete list of all personal property provided to NES and shall become the property of NES at that time and are not to be returned upon termination of agreement.

5. Repair and Maintenance

All repair and maintenance of the Equipment Attachment and the cable containing the optical fibers shall be performed by Operator or an individual or entity authorized by Operator for the term of this agreement without additional charge to NES.

6. Service Interruption

Operator shall furnish to NES the optical fibers and equipment to provide fiber optic network service to NES. Operator shall be responsible for the installation and maintenance of all services as described in this agreement and shall respond to a major service interruption within two (2) hours of NES' trouble report. All other services shall be performed in a commercially reasonable time.

7. NES' Obligations

NES shall be responsible to:

- A. provide Utility Infrastructure for Operator's use at NES' discretion as described elsewhere in this agreement;
- B. allow Operator to place its cables in/on additional agreed upon NES' infrastructure to connect its facilities to new locations in the NES service area; and
- C. make Operator's service components and equipment available for maintenance at all reasonable times upon proper notification to NES and with proper NES representation present at the time of maintenance.

8. Scope of Agreement

- A. Subject to the provisions of this agreement, NES will issue to Operator, for any lawful purpose, a revocable, nonexclusive license authorizing the attachment of Operator's cables, equipment, and facilities to NES' infrastructure within NES' service area.
- B. No use, however extended, of NES' infrastructure or payment of any fees or charges required under this agreement shall create or vest in Operator any ownership or property rights in said poles, anchors or duct facilities, but Operator's rights therein shall be and remain a mere license. Nothing herein contained shall be construed to compel NES to construct, retain, extend, place or maintain any infrastructure not needed for its own service requirements.
- C. It is recognized by Operator that NES has therefore entered into, or may in the future enter into, agreements and arrangements with others not parties to this agreement, regarding the infrastructure covered by this agreement. Nothing herein contained shall be construed as a limitation, restriction, or prohibition against NES with respect to such other agreements and arrangements.
- D. The rights of Operator shall at all times be subject to any present or future joint-use arrangement between NES and any other party regarding use of the facilities covered herein, including without limitation the South Central Bell Telephone Company Joint Pole Agreement (set out further in Article 28).
- E. In the event Operator shall at any time attach any of its lines, cables, or any other facilities to NES' private security light pole which is located upon privately owned property upon which NES has no easement, Operator shall forthwith remove all such attachment to such pole immediately upon request by the owner of said property.

9. Reservation and Restrictions

A. NES shall retain for its own use transmission structures, the electric supply area on poles, and conduit that is co-resident with electric service or terminates in electric service vaults or manholes.

B. Specific units of Utility Infrastructure may be determined by NES to be necessary for NES' exclusive use due to legal, mechanical, structural, safety, environmental, service or other requirements, and therefore, will be unavailable for use by others.

C. Within the electric service area, other entities own some portions of distribution poles, transmission structures, and underground duct and conduit. This agreement does not address the use of non-NES structures.

D. NES makes no representation or warranty of any nature that its existing or future rights-of-way, easements or other property rights, private or public, were, are or will be sufficient to permit the attachment, maintenance, replacement, relocation, repair, modification or removal of equipment on or between any Utility Infrastructure.

10. Service Interruptions Caused by System Maintenance

System maintenance normally will not result in material service interruptions. In the event that system maintenance should require the interruption of service to a material degree, to the extent possible, Operator shall so notify NES within a reasonable time but not later than 48 hours prior to such interruption.

11. Force Majeure - Operator

Notwithstanding any other term or provision in this agreement, Operator shall not be liable to NES or any other person, firm, or entity for any failure of performance hereunder if such failure is due to any cause or causes beyond the control of Operator. Such causes shall include: acts of God or any civil or military authority, national emergencies, insurrections, riots or wars. Restoration of any part of the system due to incidents of force majeure or otherwise beyond the control of either party will be at Operator's sole cost and expense.

12. Indemnification and Insurance

Operator shall indemnify, insure, exonerate, and save harmless the Metropolitan Government of Nashville and Davidson County, the Electric Power Board, officers and employees of Nashville Electric Service, against all claims, suits or actions, of every kind and description, of all persons whomsoever, including without limitation, claims of employees, agents or servants of Operator and his subcontractors, for all losses and damages whether for personal injury, property damage and/or loss of life or property and use thereof, resulting from or in any way connected with functions, work, or operations under this agreement, including without limitation, such claims as are based upon alleged deliberate and/or intentional conduct, even though such intentional acts are authorized or required by the terms and provisions of this

agreement, active or passive negligence, joint negligence of both parties, or any other basis, in law or in equity.

In the event any person or persons, not a party to this agreement, shall make a claim or file any lawsuit against NES for any reason whatsoever growing out of or in any way based upon this agreement and/or work performed under it, NES will forthwith notify Operator, and Operator shall within a reasonable time advise NES if it intends to take over management of the claim and, without limitations, to investigate the claim, negotiate a settlement or defend any such legal action, or otherwise assume responsibility for protecting the interest of NES. If after ten (10) days from the date such notice is mailed or delivered to Operator, NES has not received a response from Operator that it will assume responsibility, NES is then authorized to take such action as it considers in its best interest. NES shall then have sole and exclusive control of the actions to be taken and decisions to be made including the decision to compromise and settle any such claim or legal action and Operator will be conclusively presumed to consent thereto and concur therein. In the event legal action is not settled, NES will defend by staff or private counsel and hold Operator responsible for all damages, interest, judgments, cost of court and cost of investigating and settling or attempting to settle such claims and actions, including attorneys' fees.

Operator shall take out and maintain throughout the agreement period, insurance in the following minimum requirements:

A. Workers' compensation insurance covering all employees in statutory limits who perform any of the obligations assumed by Operator under the proposal.

B. Public liability and property damage liability insurance covering all operations under the proposal; limits for bodily injury or death not less than \$500,000 for one person and \$1,000,000 for each accident; for property damage, not less than \$250,000 for each accident and \$1,000,000 aggregate for accidents during the policy period. The Owner and the Metropolitan Government of Nashville and Davidson County in its regular corporate capacity shall be named as additional insureds in this policy or policies.

C. Automobile liability insurance on all self-propelled vehicles used in connection with the agreement, whether owned, non-owned, hired, or otherwise. This policy shall be comprehensive automobile liability policy as approved by the National Bureau of Casualty Underwriters and the Insurance Department of the State of Tennessee. Public liability limits of not less than \$300,000 for one person and \$1,000,000 for each accident; property damage limit of \$250,000 for each accident. The Metropolitan Government of Nashville and Davidson County acting by and through the Electric Power Board of the said Metropolitan Government and the Metropolitan Government of Nashville and Davidson County in its regular corporate capacity shall be named as an additional insured in this policy or policies. Duplicate of this policy or policies required for our files.

NES shall have the right at any time to require public liability insurance and property damage liability insurance limits greater than those stated above. In any such event, the

additional premium or premiums payable solely as the result of such additional insurance shall be added to the agreement price.

Operator shall obtain and maintain an umbrella liability policy certificate in addition to the certificates listed above with minimum acceptable limits of liability to be \$5,000,000 per occurrence.

NES and its officers, employees and agents shall all be named as additional insureds in all policies required under this section of this agreement.

Operator shall provide NES with thirty (30) days prior written notice of the cancellation, modification, or expiration of any insurance policy required under this agreement.

Operator shall provide NES with a current Certificate of Insurance evidencing all of the insurance required above in this article prior to the installation of its system and at times thereafter while this agreement remains in effect. Each insurance certificate shall state that the issuer of the insurance certificate shall give NES thirty (30) days prior written notice of any cancellation, modification or expiration of any insurance policy referred to in the certificate. Replacement certificates shall be filed with NES at least thirty (30) days before the expiration of the current insurance policies.

All insurance required by this section to be maintained by Operator shall be affected by valid and enforceable policies issued by insurers authorized to conduct business in Tennessee and in good standing of the laws of Tennessee.

Failure of Operator to maintain the proper insurance required under this section shall result in immediate termination of this agreement if the breach is not rectified within five (5) calendar days of the breach. The agreement shall then become null and void.

Upon NES' request from time to time, Operator shall deliver duplicate originals of such policies and renewal policies for such insurance to NES.

13. Duties, Responsibilities and Exculpation

NES makes no representation as to the condition of the premises or equipment at or near which Operator will work, the existing poles, equipment or installations, and has and assumes no responsibility to Operator, its employees, agents, servants, and subcontractors, except to inform Operator of any hidden defects or dangerous conditions known to NES and not known to or ascertainable by Operator by reasonable inspection.

By executing the contract, Operator warrants that it has or will fully acquaint itself with the conditions relating to the work it will undertake under this agreement, and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.

It is further understood by and between the parties that in the performance of the work performed under this agreement, Operator, its agents, servants, employees, and subcontractors will necessarily be required to work near, about, adjacent to and in the vicinity of energized (hot) lines, transformers, or other equipment of NES, and it is the intention that energy therein will not be interrupted during the continuance of this agreement, except in an emergency endangering life, grave personal injury, or property. Operator is fully and solely responsible for seeing that its employees, servants, agents or subcontractors shall have the necessary skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of NES, and the general public, from harm or injury while performing under this agreement, and furnishing them with competent supervision and sufficient and adequate tools and equipment, for their work to be performed in a safe manner while the existing equipment of NES is energized. Except in an emergency, Operator shall not deenergize any of NES' system without first obtaining permission so to do from NES.

In the event any transformer or line is deenergized at Operator's request and for its purposes, benefit and convenience in performing a particular segment of any work, Operator shall be responsible for seeing that all clearances and arrangements for such cutoff of electric service shall conform with all applicable safety rules and regulations and Operator shall complete the work with all reasonable speed so that service may be restored without unnecessary delay. In the event that Operator shall unintentionally or accidentally cause an interruption of service by damaging or interfering with any equipment or facilities of NES, Operator shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify NES immediately. Operator shall be solely answerable for any injuries or damages or claims for losses growing out of such interruption or deenergization of NES' electric system, to all persons whomsoever, and does hereby indemnify and hold harmless NES therefrom.

Operator further warrants that it is apprised of, conscious of, and understands the imminent dangers inherent in the work necessary to make installations on NES' poles by its personnel, employees, servants, agents and subcontractors, and accepts it as its duty and sole responsibility to notify and inform its personnel, employees, and subcontractors of such dangers, and to keep them informed.

14. General Limitation of Liability of Operator

A. Service Interruptions: In the event service is interrupted for any reason whatsoever, except for the negligent or willful acts or omissions of Operator or its agents or representatives, or Operator equipment failure, Operator shall not be liable to NES for any damages, including, without limitation, any direct, indirect, consequential, special, actual, punitive or any other damages, or for any lost profits of any kind whatsoever. Except for damage due to the negligent or willful acts or omissions of Operator or its agents or representatives, Operator's sole obligation to NES in the event service is interrupted, for whatever reason, is to use its best efforts to repair the service within a commercially reasonable time.

B. Damage: Operator shall pay NES for any damage caused to NES' facilities and the facilities of others by Operator's negligence, omission, willful acts or by Operator's equipment malfunction. Operator shall indemnify, defend and hold harmless NES and its agents and representatives from any and all claims, demands and causes of actions including the payment of NES' attorney fees in attempting to require performance of Operator under the terms of this agreement. Operator shall notify NES promptly in case of such damage to any of its facilities.

15. Protection Against Claims for Improper Programming

Operator shall indemnify, save harmless and insure NES with respect to all material transmitted over Operator's system from and against any and all claims and demands for damages or loss for infringement of copyright, for libel and slander, for unauthorized use thereof and from and against all claims and demands for infringement of patents with respect to the manufacture, use and operation of Operator's equipment whether arising from the use of Operator's equipment in combination with NES' poles and conduit.

16. Indemnification for Patent Infringement

In the event that any claim, demand or liability is made or asserted against NES by any third party based upon allegations that the System violates any patent laws, then, and in such event, Operator shall indemnify, defend and hold harmless NES and its agents and representatives of and from any and all such claims, demands, lawsuits and liability, including the payment of NES' legal fees.

17. Permits, Licenses and Rights-of-Way

In order to construct, place and maintain its optical fiber network on NES' system, Operator must first obtain from the various federal, state, county and local authorities permits, license, and franchise agreements. The cost of such permits, licenses, and franchise agreements shall be born by Operator and shall be secured before this agreement is entered into between Operator and NES.

18. Further Approvals

Operator shall be solely responsible for obtaining all necessary rights-of-way and easements or approvals, either public or private, which may be necessary prior to the beginning of construction, and this agreement shall be contingent upon acquisition of all such permits, consents or approvals under terms acceptable solely to Operator. Operator shall provide to NES prior to commencement of work written consent from private property owner or owners, stating that Operator has permission to ingress and egress and also to construct and operate its facilities over and under and upon the NES owned poles located on said private property. Operator shall use its best efforts to obtain such permits, consents or approvals.

19. Non-Exclusive

NES grants Operator non-exclusive rights for its attachments on poles, or in conduit. NES does not suggest, imply or guarantee that Operator will have sole occupancy of a pole or conduit.

20. Application Requirements

Before making attachments to any poles or equipment of NES, Operator shall make application and receive a license therefor, with respect to each pole or conduit, in the form of Exhibit D, Item 1. If the pole or conduit is located on public right-of-way, Operator shall obtain all necessary permits from city of Nashville, Davidson County, or surrounding counties NES serves, or state of Tennessee, and present to NES at time request is made to attach to said poles or in conduit.

Once Operator has made application and received a license as set out above, Operator shall submit for approval by NES' authorized representative(s), Exhibit D, Items 2A or 2B, as application for use of NES' poles, equipment, or conduit system.

To reiterate, the method and location of installation on poles or in conduits must first be approved by NES. Such approvals shall not be unreasonably withheld.

21. Conduit Application Requirements

In addition to the procedures set out in Article 20, NES reserves the right to determine routes and conduit to be used.

If conduit system occupancy is to be surrendered, Exhibit D, Item 3, shall be submitted to NES. The date this application is received by NES shall serve as the effective date.

Compliance to the Work Rules of Article 25 is required in all cases.

Application for non-standard installation, while some of the standards and technical requirements for Operator's cable are set forth herein, NES reserves the right to specify the type of construction required in situations not otherwise covered. In such cases, NES will at its discretion furnish to Operator written materials which will specify and explain the required construction. Operator reserves the right to terminate this agreement in the event it disagrees with NES' specification of the type of or cost of construction required in situations not otherwise covered. Operator shall use its best efforts to negotiate disputed specifications before termination.

Operator shall furnish NES with a construction drawing indicating the location of and specifying the type of cable to be installed (specification - Exhibit C) with a target date for completion of construction by NES.

22. Occupancy of Conduit System

For the purpose of computing the total conduit occupancy fee due hereunder, the length of the conduit shall be measured from the center to the center of manholes, or from the center of a manhole to the end of NES' conduit system occupied by Operator's cable. Occupancy fee will not be charged for conduit installed under Article 32(C).

23. OPGW Attachment

Connections for OPGW in place of conventional static wire will be considered upon request.

24. Illegal Attachments

If during the term of this agreement, NES discovers attachments placed illegally on its poles or in its manholes, NES shall send written notification of such illegal attachments to Operator in accordance with Article 47. Operator shall then have fifteen (15) days to rectify the matter. Noncompliance shall result in immediate termination of this agreement.

There will be no overlash of facilities without permission by NES. Permission to overlash will not be unreasonably withheld

25. Work Rules

NES' manholes or transformer vaults shall not be opened or tampered with by an employee, agent or Contractor of Operator.

No employee, agent or Contractor of Operator shall enter or work in any of NES' manholes or transformer vaults without an authorized representative of NES present.

NES shall place, remove, change, and maintain all cable in NES' conduit system with materials supplied by Operator, approved by NES and delivered in a timely manner to the location designated by NES.

NES and Operator's cable shall be permanently identified by tags at each manhole or other access opening in the conduit system. Tags shall be of a type and wording satisfactory to NES. All cost of this identification shall be at the expense of Operator.

Where manholes or transformer vaults must be pumped in order to allow work operations to proceed, pumping shall be done by NES at Operator's expense.

Any leak detection liquid or device used by Operator or Operator's agents, employees or contractors shall be of a type approved in writing by NES.

When Operator, its agents, employees, or Contractors are working around any part of NES' conduit system located in the streets, alleys, highways, or other public rights-of-way or

easements granted to NES or city of Nashville, the protection of persons and property shall be provided by Operator in an adequate and satisfactory manner; Operator shall be solely responsible for providing adequate barricades, warning lights, traffic cones, danger signs, and other similar devices to protect all traffic, persons, and property around the work area from danger. Also, in areas of the city, where NES is required to have uniformed police, this cost will also be borne by Operator.

NES' authorized representative shall have the authority to terminate Operator's work operations around NES' manholes or transformer vaults if, in the sole discretion of NES' authorized representative, any hazardous condition arises or any unsafe practice is being followed by Operator's agents, employees or contractors. Said discretion shall not be unreasonably executed.

Operator further agrees to comply with all safety laws, regulations, ordinances, and statutes pertaining to the work to be performed hereunder and the tools and equipment used to accomplish such work, and to be and remain solely responsible for the compliance therewith by its employees, agents, servants and/or subcontractors.

26. Emergency Conditions

In cases of emergency:

- A. NES' work shall take precedence over any and all operations of Operator.
- B. Operator is responsible for supplying to NES a point(s) of contact for non-emergency and emergency 24-hour service and for informing NES of any change in point(s) of contact.
- C. NES may pull a cable into any of NES' conduits either occupied by or scheduled to be occupied by Operator's facilities. Should it become necessary for NES to use a conduit occupied by Operator, Operator's cable may be removed by NES. NES will endeavor to make other conduit space available for the displaced facilities of Operator as soon as possible.
- D. NES may rearrange Operator's cable at the expense of Operator when necessary to make maximum use of its system.

27. Attachment and Installation Procedures

No attachment, placement or installation shall be made by Operator on any poles before written permission is received from NES. The procedure and forms to be used in making application and receiving permission for attachment, placements or installations shall be as provided for as described in this agreement. All installations in conduits must be approved and performed by NES. Operator shall reimburse NES for all costs incurred. Such permission shall not be unreasonably withheld.

28. Joint Construction

Minimum requirements for joint construction shall be in conformity with the then current edition of the National Electrical Safety Code except where modified by authority of the state of Tennessee or any other authority having jurisdiction.

29. Abandonment of Jointly Used Poles

If NES desires at any time to abandon any jointly used poles owned by NES, it shall give Operator notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, NES shall have no attachments on such pole, but Operator shall not have removed all of its attachments therefrom, such pole shall thereupon become the property of Operator except in incidences where South Central Bell also has attachments on the pole after the date of abandonment. Then Operator shall be subject to the terms and conditions of the Joint Use Agreement dated October 15, 1958, entered into by and between NES and South Central Bell Telephone Company, or any subsequent amendments. If South Central Bell refuses to buy the pole, then Operator shall be required to buy said pole.

If Operator shall become owner of said pole, Operator shall save harmless NES from all obligation, liability, damages, cost expenses, or charges incurred thereafter, because of, or arising out of, the presence or condition of such pole or any attachments thereon; and shall pay NES a sum equal to the then value in place of such abandoned pole, or poles, or such other equitable sum as may be agreed upon between the parties.

30. Decommissioning

NES may, in its sole judgment, remove any conduits not needed for its service requirements; and Operator shall, upon written notification from NES, remove its attachments from such conduits.

31. Install and Transfer Facilities

Operator shall, at its own expense make and maintain said attachments in safe conditions and in good repair, or relocate or replace its facilities placed on said poles or in conduit or perform other work that may be required by NES; provided, however, that in case of emergency, NES may arrange to relocate, replace or transfer Operator's facilities. Operator shall on demand, reimburse NES for the expenses thereby incurred.

32. Rearrangement and Relocation of Attachments (Make Ready)

A. In the event an Applicant's plans relative to Utility Infrastructure necessitate changes in or additions to the existing Utility Infrastructure and NES agrees to make such changes, NES shall prepare a reasonable monetary and schedule estimate for "make ready". As a condition of further consideration of the application, Applicant is required to acknowledge and approve the estimate. Applicant's approval establishes its obligation to pay NES' actual costs, not limited in any way by the estimate.

B. When an application has been approved and NES has received payment for “make ready” work, NES will promptly proceed with the work and shall diligently prosecute it within the monetary and schedule estimate approved by Applicant. Any anticipated delay in schedule or increase in cost will be communicated to Applicant.

C. Pole Attachments

1. Operator shall compensate NES for the full actual cost, including engineering and administrative cost, for rearranging, transferring, and/or relocating NES facilities on poles in order to accommodate Operator's attachment.

2. Operator shall reimburse the owner or owners of other facilities attached to NES poles for any expense incurred by them for rearranging or transferring such facilities.

D. Pole Replacements

1. Operator shall compensate NES for the full actual cost, including engineering and administrative cost, for replacing any pole that must be replaced in order to be able to support Operator's attachments.

2. If additional communications companies request attachments on an existing pole and it is determined by NES that the pole must be replaced in order to be able to support the additional attachments, then the company requesting the additional attachments must absorb the entire cost of the replacement.

E. Conduit Attachments

1. Operator shall compensate NES for the full actual cost, including engineering and administrative cost, for the connection of Operator's conduit which connects to NES' manhole or transformer vault. The section of connecting conduit shall not be longer than five (5) feet and shall be maintained by NES at Operator's expense.

2. Operator shall compensate NES for the full actual cost, including engineering and administrative cost, for any work required to make a conduit usable for the initial placing of Operator's cable.

F. Equipment Attachments

1. Operator shall compensate NES for the full actual cost, including engineering and administrative cost, for rearranging, transferring, and/or relocating NES facilities to accommodate Operator's equipment attachments.

2. Operator shall reimburse the owner or owners of other facilities attached to NES facilities for any expense incurred by them for rearranging or transferring such facilities.

33. Guys and Anchor Attachments

Operator shall at its own expense and to the satisfaction of NES place guys and anchors to sustain any unbalanced loads caused by Operator's attachments. When, in unusual circumstances, Operator determines that it is necessary or desirable for it to attach its guys to anchors owned by NES, it may make application to do so in a manner similar to that outlined in Article 20 above for application to make pole attachments. In such circumstances, all the provisions of this agreement that are applicable to poles shall also be separately applicable to anchors. In the event that any anchor or guy to which Operator desires to make attachments is inadequate to support the additional facilities in accordance with the aforesaid specifications, NES will notify Operator of the changes necessary to provide an adequate anchor or guy, together with the estimated cost thereof to Operator. Operator will compensate NES for the full actual expense including engineering and administrative cost for changing the guy and anchor.

For anchors in place to which Operator wishes to attach, Operator shall pay to NES an installation cost in accordance with the rate schedule set out in Exhibit G.

34. Installation of Grounds

When NES is requested by Operator to install grounds or make connections to NES' system neutral, Operator shall on demand reimburse NES for the total expenses including engineering, clerical and administrative cost thereby incurred on initial installation only.

All grounds installed by Operator shall be in accordance with NES' standard grounding practices shown in Exhibit E attached hereto and made a part hereof.

35. Charges for Incomplete Work

In the event that requests for attachments are made by Operator and steps are taken by NES to carry out the request by performing necessary engineering and administrative work and the job is canceled causing the job not to be done or completed, Operator shall reimburse NES for the total estimated cost incurred by NES including engineering, clerical and administrative and make ready construction costs upon demand.

36. Poles not Covered by this Agreement

Should Operator attach any of its facilities to poles not covered by this agreement or should Operator attach any of its facilities to poles that NES has a joint use agreement, it shall maintain proper clearance between such equipment and communication lines and street lighting wires and shall otherwise install, maintain and remove the equipment on such poles in such manner as to satisfy the requirements of Article 41 hereof with respect to safety, good workmanship and avoidance of hazard.

37. Poles not Allowed to be Joint

Upon notice from NES to Operator that the use of any pole is forbidden by municipal authorities or property owner, the permit covering the use of such pole shall immediately terminate and the cables, wires and appliances of Operator shall be removed, within a reasonable length of time, from the affected pole at cost to Operator.

38. Removal of Attachments for Overhead to Underground Conversion

Upon notice from NES to Operator that the system is to be converted from overhead to underground in a specified area and the joint use poles will be removed, the permit covering the use of said poles shall immediately terminate and the cables, wires and appliances of Operator shall be removed promptly from the affected pole.

39. Emergency Restoration

In the event Operator experiences an emergency with its facilities located in NES' conduit system, it is necessary that a NES representative be at the site before Operator, or its Operator, enters a manhole and/or works on the cable in a NES conduit system facility for any reason. NES will respond to an emergency as arranged between Operator and a NES representative. An emergency call associated with Operator or NES' customers out of service will be treated on a "priority" basis. NES' response time will be based on the situation existing at the time of the emergency. All NES labor and material associated with a Operator emergency will be billed to Operator.

40. Inspection

NES reserves the right to inspect each new installation of Operator and to make periodic inspections, as conditions may warrant, of the entire system of Operator. Such inspections, or the failure to make such inspections, shall not operate to relieve Operator of any responsibility or obligation or liability assumed under this agreement.

41. Protection and Indemnity

NES reserves to itself, its successors and assigns, the right to maintain its poles, manholes and conduit and to operate its facilities thereon in such manner as will best enable it to fulfill its own service requirements. NES shall exercise reasonable precaution to prevent damage to, or interference with the operation of the equipment of Operator, but NES shall not be liable for any such damage or interference which may arise out of the use of NES' poles, manholes or conduit hereunder. Operator shall exercise special precautions to avoid damage to facilities of NES or of other authorized users of said poles or conduit; and Operator hereby assumes all responsibility for any and all damage to facilities of said NES or other authorized users arising out of or caused by the erection, maintenance, installation, presence, use or removal of Operator's facilities. Operator shall make an immediate report to the particular owner of the facilities affected by the occurrence of any damage and hereby agrees to reimburse such owner for the expenses incurred in making the necessary repairs and replacement.

42. Codes, Rules and Standards

Operator's facilities, in each and every location, shall be erected and maintained in accordance with the requirements and specifications of the latest revision of the National Electric Safety Code, as the same may be amended from time to time, and in compliance with any rules or orders now in effect or that may hereafter be issued by NES or other authority having jurisdiction. Operator's attachments shall be made in accordance with Exhibit F and the location of any attachment may be redesignated from time to time. Operator shall reimburse NES for all costs, including administrative charges and transportation costs incurred while working with Operator and while working out approvals for initial or rearrangement of attachments.

43. Time is of the Essence and Default

Time is of the essence in the performance and completion of this agreement. The parties agree that damages arising from Operator's failure to timely complete its build schedule incorporated under this agreement cannot be easily determined. NES is not set up to identify work and costs specifically caused by a breach of agreement. Therefore, the parties agree that if Operator fails to perform under this agreement, whether by the expiration of time or by anticipatory breach, Operator shall pay to NES the sum of \$300,000. Said sum shall be liquidated damages and not a penalty.

NES may, in its sole discretion, determine if it is in NES' best interest to otherwise enter into an agreement with a third party to provide all, or any portion of, the services Operator was obligated to provide. If NES makes the determination to enter into an agreement with a third party, it shall notify Operator of its decision. This notice shall act as a termination of that portion of the agreement being recontracted. Notwithstanding the foregoing, NES may terminate any or all of the agreement.

44. Use Restriction

A. NES shall utilize Operator's infrastructure for its own internal use and shall not sell or lease optical fibers to any other entity during the term of this agreement except as provided in this article.

B. NES shall have the right to utilize Operator's infrastructure for energy related services and services in furtherance of its charter in business. This includes, but is not necessarily limited to, the right to connect to its suppliers, regulators, customers and distributors and to provide metering, load management and supervisory equipment and similar incidental and peripheral services. NES shall not use Operator's infrastructure to provide message telephone service for hire to third parties during the term of this agreement.

45. Assignment

Operator shall not assign or transfer any of its rights under this agreement in whole or in part, by merger, consolidation, reorganization or change in the ownership or control of Operator's business or by other means without the prior written consent of NES, which consent

shall not be unreasonably withheld. If any cable containing the optical fibers is sold, transferred or assigned by Operator, the new owner or operator of the cable shall be required by Operator to promptly acknowledge in writing to NES that maintenance and repair will continue under the same terms and conditions set forth in this agreement and that the new owner or operator shall be bound by all terms of this agreement to the full extent as is Operator. Failure of new owner or operator to give such notice shall be cause for termination of this agreement, at the option of NES.

46. Additional Provisions

A. The failure of either party to give notice of default or to enforce or insist upon compliance with any of the terms or conditions of this agreement, the waiver of any term or conditions of this agreement or the granting of an extension of time for performance shall not constitute the permanent waiver of any term or condition of this agreement and this agreement and each of its provisions shall remain at all times in full force and effect until modified by authorized parties in writing;

B. The provision of the service will not create a partnership or joint venture between the parties nor result in a joint communications service offering to the customers of either Operator or NES;

C. Operator shall not, without the prior written consent of NES use any of its facilities attached to NES' poles, or installed in NES' conduit, for any purpose other than that provided in this agreement. Whenever, in the reasonable judgment of NES, Operator has used its facilities for any purpose not authorized herein, NES shall forthwith notify Operator. Upon receipt of such notice, Operator shall as promptly as practicable (and no later than twelve hours after receipt of such notice) cease such use complained of in the notice. Failure to do so or repeated unauthorized use shall constitute a default of Operator's obligations and, notwithstanding any other provision of this agreement, NES may at its option forthwith terminate this agreement.

D. No subsequent agreement between NES and Operator concerning the service shall be effective or binding unless it is made by authorized representatives of the parties hereto and no representation, promise, inducement or statement of intention has been made by either party which is not embodied herein;

E. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

F. This agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings relating to its subject matter;

G. If any part of any provision of this agreement or any other agreement, document or writing given pursuant to or in connection with this agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining

provisions of this agreement, and the parties hereby agree to negotiate with respect to any such invalid or unenforceable part to the extent necessary to render such part valid and enforceable;

H. Descriptive headings in this agreement are for convenience only and shall not affect the construction of this agreement.

I. If any legal action is necessary to enforce the terms of this agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which that party may be entitled.

J. If during the term of this agreement, Operator shall have reason to believe that it has any claim against NES in respect to any transaction growing out of this agreement, Operator shall notify NES in writing within 10 days after it knows, or has reason to know, the basis of any such claim.

Failure to give the notice prescribed supra shall relieve NES from all liability on any claim in respect to any transaction arising out of this agreement.

The provisions of this section shall survive the termination of any other portions of this agreement.

47. Notice

Notices under this agreement shall be in writing and delivered to the persons whose names and business addresses appear below or as otherwise provided for by proper notice hereunder and the effective date of any notice under this agreement shall be the date of delivery of such notice, not the date of mailing.

If to Operator:

COMPANY

***ADDRESS ***

Attention: _____

If to NES:

Nashville Electric Service
1214 Church Street
Nashville, Tennessee 37203
Attention: President & CEO

48. Rights

Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by NES, by agreement or otherwise, to others not parties to this agreement, to use any poles or conduit covered by this agreement; and NES shall have the right to continue and extend such rights or privileges to subsequent licensees. The attachment privileges herein granted shall at all times be subject to such existing contracts and arrangements.

49. Other Compensation

In addition to providing and maintaining six (6) dark fibers to NES' described facilities, Operator also agrees to make annual payments to NES of the greater dollar amount of the two payment options for telecommunications usage:

Facilities Attachment Obligation

Basic Pole Attachment Fee for each attachment for a twelve (12) month period as set out in Exhibit G.

Basic Conduit Attachment Fee for each foot for a twelve (12) month period as set out in Exhibit G.

The basic pole and conduit attachment rental fees ("Fees") shall be increased/decreased by the change in percentage over time in the Handy Whitman Index.

Operator's obligation for pole/conduit attachment rental shall be paid in accordance with the billing procedures detailed below.

All rental adjustments shall be made on July 1 every year except for the first year when adjustments shall be made no less than six (6) months and no more than eighteen (18) months. The fees shall be multiplied by the percentage of increase/decrease in the Handy Whitman Index since the last change in fees and the change shall be added to the then current fees to determine the new fees. Operator payments for pole and conduit attachment rental shall be determined by using the newly calculated fees. Nonpayment of any amount due under this agreement shall constitute a default of this agreement and licenses.

Revenue Obligation

If gross revenue exceeds the amount billed for pole and conduit attachment rentals, NES shall have the option of basing the billing on the revenue obligation. This shall represent four percent (4%) of gross Operator revenue derived from rent or sale of fiber optic network services provided on Operator's fiber network. Gross revenue shall be as shown in independently audited annual financial statements, a copy of which shall be provided to NES on May 1 of the year following the origination date of the fiber optic contract and annually on that day thereafter. Fiber optic network services include sale, lease or rent of fibers or capacity or bandwidth between any points on Operator fiber network.

Billing Procedures

Billing procedures will be detailed in Exhibit G, however in concept, Operator shall be billed as a minimum, semi-annually for the annual facilities attachment obligation and annually for the remaining accrued facilities attachment provision plus the amount that the revenue obligation exceeds the total annual facilities attachment obligation.

50. Actual Inventory

NES will at intervals not exceeding five (5) years perform an actual inventory of the attachments of jointly used poles in all or in part of the territory covered by this agreement, for the purpose of checking and verifying the number of poles on which Operator has attachments. Such field check shall be made jointly by both parties and shall be at the expense of Operator.

51. Expenses

Operator shall be responsible for reimbursing NES for all expenses as stated throughout this agreement. Such expenses will include all engineering labor, material and equipment used for Operator's work to be inclusive of all loading, interest and administrative costs. NES will provide monthly invoices for work that has occurred under this agreement. Payment for such work shall be made within thirty (30) days after receipt of invoice. Non-payment of such costs shall constitute a default of this agreement. In the event of such default, NES shall be entitled to recover the full amount due under this Article plus any reasonable expenses or collection including attorneys fees and court costs.

52. Term

This agreement shall become effective on the day and year below written; and if not terminated in accordance with the provisions herein, shall continue in effect for the term of the franchise or ten (10) years whichever comes first, from said date. The agreement is automatically renewed for an additional five (5) year period, unless a notice is given in writing six (6) months before the end of the ten (10) year period. Either party may terminate the agreement after the first four (4) years of the initial five (5) year agreement by giving at least six (6) months prior written notice. In the succeeding five (5) year period either party may cancel by giving six (6) months notice in any year of the agreement. Such termination in no way exempts payment for pole and conduit attachment rental prior to the actual removal of all facilities. Upon termination of the agreement in accordance with any of its terms, Operator after receiving notice of intent to terminate shall immediately remove its cables, wires and appurtenances (except for those under Article 2) from all poles or conduit of NES. If not so removed, NES shall have the right to remove them at the cost and expense of Operator and without any liability therefor, and Operator agrees to pay the reasonable cost thereof within ten (10) days after it has received an invoice from NES.

53. Receivership, Foreclosure or Act of Bankruptcy

The pole and conduit use of this agreement granted hereunder shall at the option of NES cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of Operator whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

A. Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the agreement; and

B. Such receivers or trustees shall within said one hundred twenty (120) days, execute an agreement duly approved by NES having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise herein granted.

In the case of foreclosure or other judicial sale of the plant, property and equipment of Operator, or any part thereof, including or excluding this agreement, NES may serve notice of termination upon Operator and the successful bidder at such sale, in which event the agreement herein granted and all rights and privileges of the agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

A. NES shall have approved the transfer of this agreement, as and in the manner in this agreement provided; and

B. Unless such successful bidder shall have covenanted and agreed with NES to assume and be bound by all the terms and conditions to this agreement.

54. Transfer Rights of Attachments

Operator shall not assign, transfer, sublease or resell the rights of attachments hereby granted to it, or the rights to use facilities so attached to NES' poles, without prior consent in writing of NES. Failure of Operator to give such notice shall be cause for termination of this agreement.

55. Rights of NES - Ownership

No use, however, extended of NES' poles or conduit, under this agreement, shall create or vest in Operator any ownership or property rights of said poles or conduit, but Operator's rights therein shall be and remain a mere license.

56. Removal of Attachments

Operator may at any time remove its attachments, except for those under Article 2, from any facility of NES, but shall immediately give NES written notice of such removals in the form of Exhibit D, Item 3, hereto attached and made a part hereof. No refund of any rental will be due on account of such removal.

57. Performance Bond

Operator shall furnish a Performance Bond (form attached) executed by a surety company acceptable to NES which is duly authorized to do business in the state of Tennessee, in the amount of Three Hundred Thousand Dollars (\$300,000.00) for the duration of this construction period as security for the faithful performance of this agreement and for the payment of all persons performing labor and furnishing materials in connection with this agreement.

58. Make-Ready Bond

Operator shall furnish bond with corporate surety or other satisfactory evidence of security in such amount as NES from time to time requires, in an initial amount of \$50,000, but not exceeding \$75,000, to guarantee the payment of any sums which may become due to NES for fees due hereunder or charges for work performed for the benefit of Operator under this agreement, including the removal of Operator's facilities upon termination of this agreement by any of its provisions or upon termination of any license issued hereunder. This bond requirement may be waived in writing by NES' Electric Power Board.

59. Default

If NES or Operator shall fail to comply with any of the terms or provisions of this agreement, or default in any of its obligations under this agreement and shall fail within thirty (30) days after written notice from the other party to correct such default or non-compliance, the party may, at its option, terminate this agreement.

60. Termination

In the event of termination not the fault of NES, Operator shall compensate NES as described in this agreement for expenses incurred to date of termination.

61. Jurisdiction

Any and all disputes arising out of this agreement shall be governed, construed and enforced according to the laws of the state of Tennessee. All actions relating to the validity, construction, interpretation and enforcement of this agreement shall be instituted and litigated in the courts of Tennessee, in accordance herewith the parties to this agreement submit to the jurisdiction of the courts of Tennessee, located in Davidson County, Tennessee.

62. Training

Operator shall provide training for NES construction and engineering personnel for the installation of fiber optic cable, splice capsules and innerduct in conduit and manholes. Training shall be conducted by representatives of Operator's underground fiber cable, splice capsule and innerduct manufacturers at an NES facility in Nashville.

Underground cable, splice capsule and innerduct installation instruction manuals, videos and other training aids deemed necessary by the manufacturers' representatives shall be given to NES at no cost to NES.

The cost of the training representatives and all training expenses shall be paid by Operator. Training facilities shall be provided by NES. Training shall be scheduled by mutual consent of NES and Operator.

63. Operator's Representative

Operator's representative shall be present during all NES installation of underground fiber cable, innerduct, splice capsules and accessories. Operator's representative shall be knowledgeable and experienced in underground fiber cable, innerduct, splice capsules and accessory installation and shall be authorized by Operator to answer questions and make decisions on Operator's behalf regarding problems and questions that occur during NES installation of underground cable, innerduct, splice capsules and accessories. Operator's representative shall be furnished at Operator's expense.

64. Franchise

The Metropolitan Government of Nashville ordinance(s) granting Operator a franchise in Davidson County with authority for the placement of said cables, equipment, and facilities on NES' poles or conduit shall be incorporated into this agreement and set out in Exhibit H.

Any subsequent amendment(s) to said franchise(s) shall be subject to review by NES with the option of terminating this agreement before the amendment(s) can be incorporated into said agreement.

65. Supersedure of Previous Agreement(s)

This Agreement supersedes all previous agreements, whether written or oral, between NES and Operator for attachment and maintenance of Operator's communications facilities on poles, anchors, and in conduit systems within the geographical area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein. All currently effective licenses heretofore granted pursuant to such previous agreements shall be subject to the terms and conditions of this Agreement.

66. Nondiscriminatory Employment Practice/Absence of Conflict of Interest

Contractor makes oath, in a form similar to that set forth in Exhibit/Attachment _____, that its employment standards meet all local, state, and federal laws prohibiting discriminatory employment practices, and that neither the mayor, city councilmen, members of the Electric Power Board, nor any other Metropolitan Government official has direct or indirect interest in this contract as set forth in the Contractor/Vendor Affidavit.

If Contractor subcontracts with any person or firm to perform any services or provide any materials under this contract in excess of \$10,000, Contractor shall obtain a "Statement of Absence of Conflict of Interest" from subcontractors and vendors. Said form shall be filed with NES' purchasing manager within fifteen (15) days after the date the subcontractor is chosen.

Contractor assures that it will comply with pertinent statutes, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap, be excluded from participating in any activity conducted with or benefited from NES or the Metropolitan Government.

67. Approval of Previously Submitted Pole Attachment Permits

NES represents and warrants that permits for the pole attachments contemplated in this agreement, and for which applications have been submitted by Operator for telecommunications use, shall be released by NES within fourteen (14) days of the execution of this agreement.

Executed in duplicate at Nashville, Tennessee, on the day and date written below, each executed instrument to be considered as the original for all purposes.

METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON
COUNTY, ACTING BY AND
THROUGH THE ELECTRIC POWER
BOARD OF SAID GOVERNMENT

ATTEST:

Secretary

By _____
Chairman of the Board

Date _____

By _____
President & CEO

Date _____

Approved as to Form & Legality

By _____
General Counsel

Date _____

ATTEST:

CONTRACTOR
COMPANY NAME

By _____
(Signature)

(Print Name)

Title _____

Date _____

Exhibit F

THIS AGREEMENT, made this fifteenth day of October, 1958 by and between the CITY OF NASHVILLE, a Municipal Corporation, Acting by and through the Electric Power Board of said City, created and existing under Chapter 246, Private Acts of the General Assembly of the State of Tennessee for the year 1947,

~~incorporated under the laws of the State of~~ hereinafter called the "Electric Company," party of the first part, and the SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, a corporation of the State of New York, hereinafter called the "Telephone Company," party of the second part.

WITNESSETH:

WHEREAS, the Electric Company and the Telephone Company desire to cooperate in accordance with the "Principles and Practices for the Joint Use of Wood Poles by Supply and Communication Companies" as contained in the report of the Joint General Committee of the Edison Electric Institute and the Bell Telephone System dated July 1945, and amendments thereto, and to establish joint use of their respective poles when and where joint use shall be of mutual advantage; and

WHEREAS, the conditions determining necessity or desirability of joint use depend upon service requirements to be met by both parties, including considerations of safety and economy, and each of them should be the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be properly met by joint use of poles;

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

**ARTICLE I
DEFINITIONS**

For the purpose of this agreement, the following terms when used herein, shall have the following meanings:

- A. **NORMAL SPACE**—means sufficient space on a joint use pole for the use of each party, taking into consideration requirements of the National Electrical Safety Code. Except only as to the portion of its said space which, by the terms of the National Electrical Safety Code, may be occupied by certain attachments therein described of the other party, this space is specifically defined as follows:
 - (1) for the Electric Company, the uppermost six (6) feet;
 - (2) for the Telephone Company, a space of four (4) feet at sufficient distance below the space of the Electric Company to provide at all times the minimum clearance required by the specifications referred to in Article IV, and at sufficient height above the ground to provide proper vertical clearance for the lowest horizontally run line wires or cables attached in such space.
- B. **NORMAL JOINT USE POLE**—means a pole which meets the requirements of the National Electrical Safety Code for support and clearance of supply and communication conductors under conditions existing at the time joint use is established, or is to be created under known plans of either party. Specifically, a normal joint pole under this agreement shall be a 40 foot class 4 wood pole.

40" clearance

The foregoing definition of "a normal joint pole" is not intended to preclude the use of joint poles shorter or of less strength than the normal joint pole in locations where such poles will meet the known or anticipated requirements of the parties hereto.

- C. **ATTACHMENTS**—mean materials or apparatus now or hereafter used by either party in the construction, operation or maintenance of its plant carried on poles.
- D. **CLEARANCE ATTACHMENTS**—mean any attachment made to a pole of the owner for the purpose of obtaining clearance between plant of the Licensee and that of the Owner, where, in general, a pole for the purpose of supporting the Licensee's attachments would not be required if it were not for the presence of the other (Owner's) route.

Guy Poles are considered as part of the anchor and guy structure, and, as such, guy attachments are not considered as units to be counted but are given the same treatment as clearance attachments.
- E. **SUPPORTING ATTACHMENTS**—mean attachments made on poles which, in general, relieve the Licensee of the necessity of providing a pole at or near the same location for the purpose of supporting its wires or cables.
- F. **OWNER**—means the party owning the pole to which attachments are made.
- G. **LICENSEE**—means the party having the right under this agreement to make attachments to a pole of which the other party is the Owner.

ARTICLE II
TERRITORY AND SCOPE OF AGREEMENT

This agreement shall be in effect and shall cover all wooden poles of each of the parties now existing, hereinafter erected or acquired, within the common operating areas served by the parties hereto, when said poles are brought hereunder, excepting: ~~*~~

- A. Poles which, in the Owner's judgment, are necessary for its own sole use; and
- B. Poles which carry, or are intended to carry, circuits of a character that in the Owner's judgment proper rendering of its service now or in the future makes joint use of such poles undesirable.
- C. Poles located in rural areas which are covered by a separate agreement dated _____
The dividing points between the areas covered by this agreement and the above referred to separate agreement are described as follows: _____

It is understood and agreed that the division points may be changed at any time during the life of this agreement, when such changes are mutually agreed to by designated representatives of both parties, and thereupon, the division points will be changed accordingly, and will be made a part of this contract by an exchange of letter or appropriate addendum.

ARTICLE III
PERMISSION FOR JOINT USE

Each party hereto hereby permits joint use by the other party of any of its poles when brought under this agreement as herein provided, subject to the terms and conditions herein stated. ~~*~~ CONTRACT # REC.V.

ARTICLE IV
SPECIFICATIONS

Joint use of poles covered by this agreement shall at all times be in conformity with terms and provisions of the current issue of the National Electrical Safety Code as to minimum requirements, and such revisions and amendments thereto from time to time as may be necessary by reason of developments and improvements in the art as may be mutually agreed upon and approved in writing by the _____ Chief Engineer _____ of the Electric Company and the Chief Engineer of the Telephone Company.

Edison Electric Institute Publication M-12, a report of the Joint Committee on Plant Coordination of the Edison Electric Institute and the Bell Telephone System, based on the National Electrical Safety Code, and such revisions and amendments thereto as may be made from time to time is to be used as a guide in the administration of this agreement.

ARTICLE V
RIGHT OF WAY FOR LICENSEE'S ATTACHMENTS

- A. The Owner and Licensee will cooperate as far as may be practicable in obtaining rights of way for both parties. When a written easement is secured it shall be in sufficient detail for identification and recording, where required, and shall be subject to inspection by the other party upon request. However, no guarantee is given by the Owner of permission from property owners, municipalities or others for the use of poles by the Licensee, and if objection is made thereto and the Licensee is unable to satisfactorily adjust the matter within a reasonable time, the Owner may at any time, upon thirty (30) days notice in writing to the Licensee, require the Licensee to remove its attachments from the poles involved, and the Licensee shall, within thirty (30) days after receipt of said notice, remove its attachments from such poles at its sole expense. Should the Licensee fail to remove its attachments as herein provided, the Owner may remove them at the Licensee's expense, without any liability whatever for such removal or the manner of making it, for which expense the Licensee shall reimburse the Owner on demand.
- B. Where the property owners will allow it, the owner of the line shall obtain a right of way swath extending up to 7½ feet on each side of the center line of the line. Where property owners object to this swath each party will be responsible for obtaining permission for a swath satisfactory for its own requirements.
After permission of property owners is obtained, the owner of the line will provide the initial clearance of the swath to meet the requirements of both parties, up to a maximum of 7½ feet on each side of the centerline of the line.
However, in cases where the right of way clearance, including tree trimming, is more than indicated above, due to the requirements of the Licensee, the extra clearance costs shall be borne by the Licensee.
- C. It is agreed that the cost of maintenance of right of way and recurring trimming should be borne jointly to the extent that each of the parties will benefit by the joint endeavor. Due to varying

conditions expected to be encountered, the division of cost of maintaining right of way and tree trimming shall be agreed upon after a joint inspection by representatives of both parties of the work operations required to provide necessary clearances.

The division of cost as provided in this section shall be based on mutually agreeable predetermined divisions of cost and shall be subject to revision at the request of either party upon ninety (90) days written notice. The Division of Cost, as agreed to, shall then be evidenced by an exchange of letters as provided under Article XXII.

As between the parties to this contract, the company performing the work shall assume all responsibility of claims and suits which may arise from this work.

ARTICLE VI

PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS

- CONTACT #5
- A. Whenever either party desires to reserve space on any pole of the other, for any attachments requiring space thereon, not then specifically reserved hereunder for its use, it shall make written application therefor, specifying in such notice the location of the pole in question, the number and kind of attachments which it desires to place thereon, and the character of the circuits to be used. Within ten (10) days after the receipt of such notice, the Owner shall notify the Applicant in writing whether or not said pole is of those excluded from joint use under the provisions of Article II. Upon receipt of notice from the Owner that said pole is not of those excluded, and after completion of any transferring or rearranging which is then required in respect to attachments on said poles, including any necessary pole replacements as provided in Article VII "A," the Applicant shall have the right as Licensee hereunder to use said space for attachments and circuits of the character specified in said application in accordance with the terms of this agreement. Service wire attachments or emergency construction can be placed in accordance with the specifications, upon verbal approval, subsequently approved in writing.
 - B. Except as herein otherwise expressly provided, each party shall place, maintain, rearrange, transfer and remove its own attachments, and shall at all times perform such work promptly and in such a manner as not to interfere with work being done by the other party.
 - C. In any case where one party provides at the request of the other party double thimble guy rods for the use of both parties, the party requesting the double thimble guy rod shall pay to the party placing the guy rod a sum equal to half of the cost of the anchor and guy rod in place. In cases where existing anchors are adequate for the needs of either party, the party desiring additional guys will, where necessary, install double thimble guy rods at no expense to the other party, and the other party will, at its own expense, transfer its guys to the new rod. The ownership of the double thimble rod will be vested in the owner of the pole.

ARTICLE VII

ERECTING, REPLACING OR RELOCATING POLES

- A. Whenever any jointly used pole, or any pole about to be so used under the provisions of this agreement, is insufficient in size or strength for the existing attachments and for the proposed immediate additional attachments thereon, the Owner shall promptly replace such pole with a new pole of the necessary size and strength, and make such other changes in the existing pole line, in which such pole is included, as may be made necessary by the replacement of such pole and the placing of the Licensee's circuits as proposed.
- B. Whenever it is necessary to change the location of a jointly used pole, by reason of any state, municipal or other governmental requirement, or the requirements of a property owner, the Owner shall, before making such change in location, give notice thereof in writing (except in cases of emergency when verbal notice will be given, and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed relocation, and the Licensee shall, at the time so specified, transfer its attachment to the pole at the new location.
In the case of a pole along subdivided property which is not set opposite a lot line, the owner of such pole will, if conditions require, move same at the request of the Licensee, each party bearing the cost of moving its facilities.
- C. Whenever either party hereto is about to erect new poles within the territory covered by this agreement, either as an additional pole line, as an extension of an existing pole line, or as the reconstruction of an existing pole line, it shall notify the other in writing at least thirty (30) days before beginning the work (shorter notice, including verbal notice subsequently confirmed in writing, may be given in cases of emergency), and shall submit with such notice its plans showing the proposed location and size of the new poles and the character of circuits it will use thereon. The other party shall, within twenty (20) days after the receipt of such notice, reply in writing to the party erecting the new poles, stating whether such other party does, or does not, desire space on the said poles, and if it does desire space thereon, the character of the circuits it desires to use and the amount of space it wishes to reserve. This notice of desire to establish

- joint use should include detail plans of any changes in the plans of the other party which are desired in order to permit the establishment of joint use. If such other party requests space on the new poles, and if the character and number of circuits and attachments are such that the Owner does not wish to exclude the poles from joint use under the provision of Article II, then poles suitable for the said joint use shall be erected in accordance with the provisions and the payment of costs as provided in paragraphs "D," "E" and "F" of this Article.
- D. In any case where the parties hereto shall conclude arrangements for the joint use of any new poles to be erected, the ownership of such poles shall be determined by mutual agreement, to the end that each party hereto shall at all times own approximately one-half of the total number of poles jointly used under this agreement, due regard being given to the desirability of avoiding mixed ownership in any given line. In the event of disagreement as to ownership, the party then owning the smaller number of joint poles under this agreement shall promptly erect the new joint poles and be the owner thereof.
- E. The costs of erecting joint poles coming under this agreement, either as new pole lines, as extensions of existing pole lines, or to replace existing poles, either existing jointly used poles or poles not previously involved in joint use, shall be borne by the parties as follows:
1. A normal joint pole, or a joint pole shorter or smaller than the normal pole, shall be erected at the sole expense of the Owner, except as provided in Section "F" of this Article.
 2. A pole taller or stronger than the normal pole, the extra height and strength of which is due wholly to the Owner's requirements, shall be erected at the sole expense of the Owner.
 3. In the case of a pole taller or stronger than the normal pole, the extra height and strength of which is due wholly to the Licensee's requirements, the Licensee shall pay to the Owner a sum equal to the difference between the cost in place of such pole and the cost in place of a normal joint pole, the rest of the cost of erecting such pole to be borne by the Owner, except as provided in Section "F" of this Article.
 4. In the case of a pole taller or stronger than the normal pole, the extra height and strength of which is due to the requirements of both parties, the Licensee shall pay to the Owner a sum equal to one-half the difference between the cost in place of such pole and the cost in place of a normal joint pole, the rest of the cost of erecting such pole to be borne by the Owner.
 5. In the case of a pole taller or stronger than the normal pole, where height and strength in addition to that needed for the purpose of either or both of the parties hereto is necessary in order to meet the requirements of public authority or of property owners, one-half of the excess cost of such pole due to such requirements shall be borne by the Licensee; the rest of the cost of such pole to be borne as provided in that one of the preceding paragraphs 1, 2, 3 or 4, within which it would otherwise properly fall.
- F. In any case where a pole is erected hereunder to replace another pole solely because such other pole is not tall enough, or of the required strength, to provide adequately for the Licensee's requirements, or where such pole, whether it carry space reserved for the Licensee's use or not, had at the time of its erection, been pronounced by the Licensee as satisfactory and adequate for its requirements, the Licensee shall, upon erection of the new pole, pay to the Owner, in addition to any amounts payable by the Licensee under paragraphs 3, 4 or 5, of Section "E" of this Article, a sum equal to the sacrificed life of the pole which is replaced (then value in place of the pole replaced plus cost of removal less salvage), and the pole removed shall remain the property of the Owner. In any case where the other party by mutual consent erects and owns a joint pole to replace an existing pole of the Owner (instead of the Owner doing so as it is contemplated by Section "A" of this Article that the Owner will do), such other party shall pay to the Owner of the replaced pole a sum equal to the then value in place of the pole which is replaced, and the pole removed shall thereupon become the property of such other party which has erected the replacing pole.
- G. When replacing a jointly used pole carrying aerial cable terminals, underground connections or transformer equipment, the new pole shall be set in the same hole which the replaced pole occupied, unless special conditions make it necessary or mutually desirable to set it in a different location.
- H. Any payments made by the Licensee under the foregoing provisions of this Article for poles taller than normal shall not in any way affect the ownership of said poles.
- I. Any payments as provided in the foregoing provisions of this Article may be based on mutually agreeable predetermined amounts. The amounts agreed to shall be subject to revision at the request of either party at the end of each three year period, or at other times as may be mutually agreed to, and may be cancelled at any time by either party by a written notice. The amounts agreed to shall be evidenced by an exchange of letters, as provided under Article XXII.

**ARTICLE VIII
MAINTENANCE OF POLES AND ATTACHMENTS**

- A. The Owner shall, at its own expense, maintain its joint poles in a safe and serviceable condition, and in accordance with Article IV of this agreement and the requirements of the National Electrical Safety Code, and shall replace, subject to the provisions of Article VII, such of said poles that become defective.
- B. Each party shall, at its own expense, at all times maintain all of its attachments in accordance with Article IV of this agreement and the National Electrical Safety Code and keep them in safe condition and in thorough repair.

**ARTICLE IX
PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED**

When either party desires to change the character of its circuits on jointly used poles, such party shall give sixty (60) days notice to the other party of such contemplated change, and in the event that the party agrees to joint use with such changed circuits, then the joint use of such poles shall be continued with such changes in construction as may be necessary to meet the requirements of the National Electrical Safety Code, being made at the expense of the party desiring to make the change. In the event, however, that the other party fails within thirty (30) days from receipt of such notice to agree in writing to such change, then both parties shall cooperate in accordance with the following plan:

- A. The parties hereto shall determine the most practical and economical method of effectively providing for separate lines, and the party whose circuits are to be moved shall promptly carry out the necessary work.
- B. The cost of re-establishing such circuits in the new location as are necessary to furnish the same business facilities that existed in the joint use at the time such change was decided upon, shall be equitably apportioned between the parties hereto.

Unless otherwise agreed by the parties, ownership of any new line constructed under the foregoing provision in a new location shall vest in the party for whose use it is constructed. The net cost of establishing service in the new location shall be exclusive of any increased cost due to the substitution for existing facilities of other facilities of a substantially new or improved type or of increased capacity, but shall include, among other items, the cost of the new pole line, including rights of way, the cost of removing attachments from the old poles to the new location, and the cost of placing the attachments on the poles in the new location.

**ARTICLE X
BILLS AND PAYMENTS FOR WORK**

Upon the completion of work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other, the party performing the work shall present to the other party, within thirty (30) days after the completion of such work, a statement showing the amount due, and such other party shall, within thirty (30) days after such statement is presented, pay to the party doing the work the amount due.

**ARTICLE XI
ABANDONMENT OF JOINTLY USED POLES**

- A. If the Owner desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, the Owner shall have no attachments on such pole but the Licensee shall not have removed all of its attachments therefrom, such pole shall thereupon become the property of the Licensee, and the Licensee shall save harmless the former Owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter, because of, or arising out of, the presence or condition of such pole or any attachments thereon; and shall pay the Owner a sum equal to the then value in place of such abandoned pole, or poles, or such other equitable sum as may be agreed upon between the parties. Credit shall be allowed for any payments which the Licensee may have made under the provisions of Article VII, Sections "E" and "F", when the pole was originally set, provided the Licensee furnishes proof of such payment.
- B. The Licensee may at any time abandon the use of a joint pole by giving due notice thereof in writing to the Owner and by removing therefrom any and all attachments it may have thereon.

**ARTICLE XII
ADJUSTMENT PAYMENTS**

The parties contemplate that the use or reservation of space on poles by each party, as Licensee of the other under this agreement, shall be reciprocal and mutual insofar as this may be practicable.

- A. Adjustment payments per pole due from either party as Licensee to the other party as Owner shall, subject to the provision of Article XIII, be \$3.00 per annum.

- B. On or about December 1st of each year, each party, acting in cooperation with the other, subject to the provisions of the following paragraph of this Section, shall have ascertained and tabulated the total number of poles in use by each party as Licensee for which an adjustment payment shall be made to the other party as Owner.

For the purpose of such tabulation, poles shall not be included where the use by the other party consists only of attaching thereto guys, customer service leads crossing routes of either party, span wires supporting street lights, messenger not supporting cables or conductors, and the attaching thereto of wires or cables of the Licensee for the purpose of clearance between the poles and said wires or cables and not for the primary purpose of supporting said wires or cables.

- C. The total adjustment payment due each party shall be determined by multiplying the poles owned by each party, tabulated as indicated in the first paragraph of Section "B" of this Article, by the adjustment payment in Section "A" of this Article.

The smaller total amount covered above shall be deducted from the larger amount and the Electric Company or the Telephone Company, whichever shall owe the larger amount, shall pay to the other the difference between said two amounts as the net adjustment payment due for the year involved. Within ten (10) days after the first day of December next ensuing after the date of this agreement, and within ten (10) days after the first day of December each year thereafter, during the time this agreement shall be in effect, the party to which said adjustment payment is owed, as of said first day of December, shall submit a written statement to the other party giving the correct amount owed by the other party.

The adjustment payment herein provided for shall be paid within ten (10) days after the bill has been submitted, unless said party disputes the amount of such bill within five (5) days from receipt thereof.

Any recurring cost incurred by the Owner, beyond the control of the Owner, solely because of the use of the Owner's poles by the Licensee, shall be paid by the Licensee.

- D. At intervals not exceeding five (5) years an actual inventory of attachments shall be made by representatives of the parties. If there is any difference in the number of attachments found by the inventory and the number arrived at by tabulating those reported, correction will be made by retroactive billing for any attachments identified as being responsible for the difference, and any remaining difference will be spread evenly over the years since the last inventory, and billing adjusted accordingly.

ARTICLE XIII

PERIODICAL REVISION OF ADJUSTMENT PAYMENT RATE

- A. At any time after January 1, 1960, and at intervals of not less than three (3) years thereafter, the adjustment payment rates applicable under this agreement shall be subject to joint review and revision, as provided for under Section "B" of this Article, upon the written request of either party. In case of revision of the adjustment payment rates as herein provided, the new adjustment payment rates agreed upon shall apply, starting with the annual bill next rendered and continuing until again adjusted.
- B. Revisions of the adjustment payments shall be based on experience resulting from previous administration of this agreement. Any changes shall take into account the original cost factors pertinent to the establishing of the pole facilities involved in all joint use existing under this agreement at the time of the said review. If, within ninety (90) days after the receipt of such request, by either party from the other, the parties hereto fail to agree upon a revision of such rate, then the adjustment payment per pole so to be paid shall be an amount equal to one-half of the then average annual total cost per pole, based on average in-plant cost factors, of providing and maintaining the joint poles covered by this agreement. In case of a revision of the adjustment payment as herein provided, the new rate shall be applicable until again revised.

ARTICLE XIV

DEFAULTS

- A. If either party shall make default in any of its obligations under this agreement, and such default shall continue thirty (30) days after notice thereof in writing from the other party, all rights of the party in default hereunder pertaining to the establishment of future joint use shall be suspended, and if such default shall continue for a period of ninety (90) days after such suspension, the other party may forthwith terminate the right of both parties to make additional attachments. Any such termination of the right to make additional attachments by reason of any such default shall not, however, abrogate or terminate the right of either party to maintain the attachments theretofore made on the poles of the other, and all such prior attachments shall continue thereafter to be maintained pursuant to and in accordance with the terms of this agreement, which agreement shall, so long as said attachments are continued, remain in full force and effect

solely and only for the purpose of governing and controlling the rights and obligations of the parties with respect to said attachments.

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

ARTICLE XV LIABILITY AND DAMAGES

Whenever any liability for damages is incurred by either or both of the parties hereto for injuries to the employees, or for injury to the property of either party, or for injuries to other persons or their property, arising out of the joint use of poles under this agreement, or due to the proximity of the wires and fixtures of the parties hereto attached to the jointly used poles covered by this agreement, the liability for such damages, as between the parties hereto, shall be as follows:

- A. Each party shall be liable for all damages for such injuries to persons or property caused solely by its negligence or solely by its failure to comply at any time with the specifications as provided herein.
- B. Each party shall be liable for all damages for such injuries to its own employees or its own property that are caused by the concurrent negligence of both parties hereto, or that are due to causes which cannot be traced to the sole negligence of the other party.
- C. Each party shall be liable for one-half ($\frac{1}{2}$) of all damages for such injuries to persons other than employees of either party, and for one-half ($\frac{1}{2}$) of all damages for such injuries to property not belonging to either party, that are caused by the concurrent negligence of both parties hereto, or that are due to causes which cannot be traced to the sole negligence of the other party.
- D. Where, on account of injuries of the character described in the preceding paragraphs of this Article, either party hereto shall make any payments to injured employees or to their relatives or representatives in conformity with: (1) the provision of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, or (2) any plan for employees' disability benefits or death benefits now established or hereafter adopted by the parties hereto, or either of them, such payments shall be construed to be damages within the terms of the preceding paragraphs numbered "A" and "B" and shall be paid by the parties hereto accordingly.
- E. All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case where the Claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which said terms are acceptable may, at its election, pay to the other party one-half ($\frac{1}{2}$) of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.
- F. In the adjustment between the parties hereto of any claim for damages arising hereunder, the liability assumed hereunder, by the parties, shall include, in addition to the amounts paid to the Claimant, all expenses incurred by the parties in connection therewith, which shall comprise costs, attorneys' fees, disbursements and other proper charges and expenditures.

ARTICLE XVI EXISTING RIGHTS OF OTHER PARTIES

If either of the parties hereto has, prior to the execution of this agreement, conferred upon others, not parties to this agreement, by contract or otherwise, rights or privileges to use any poles covered by this agreement, nothing herein contained shall be construed as affecting said rights or privileges, and either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights or privileges; it being expressly understood, however, that for the purpose of this agreement, the attachments of any such outside party shall be treated as attachments belonging to the Grantor, and the rights, obligations, and liabilities hereunder of the Grantor in respect to such attachments shall be the same as if it were the actual Owner thereof. Where municipal regulations require either party to allow the use of its poles for fire alarm, police or other like signal systems, such use shall be permitted under the terms of this Article.

ARTICLE XVII SERVICE OF NOTICES

Wherever in this agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed, or by personal delivery, to the Electric Company

at its office at Nashville, Tennessee

or to the Telephone Company at its office at Nashville, Tennessee
as the case may be, or to such other address as either party may, from time to time, designate in writing for that purpose.

**ARTICLE XVIII
TERMINATION OF AGREEMENT**

This agreement shall continue in full force and effect until the 31st day of December, 1963, and shall continue thereafter until terminated, insofar as the making of additional attachments is concerned, by either party, giving to the other one (1) years notice in writing of intention to terminate the right of making additional attachments. Any such termination of the right to make additional attachments shall not, however, abrogate or terminate the right of either party to maintain the attachments theretofore made on the poles of the other, and all such prior attachments shall continue thereafter to be maintained, pursuant to and in accordance with the terms of this agreement, which agreement shall, so long as said attachments are continued, remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties with respect to said attachments.

**ARTICLE XIX
ASSIGNMENT OF RIGHTS**

Except as otherwise provided in this agreement, neither party hereto shall assign or otherwise dispose of this agreement, in whole or in part, without the written consent of the other party; except that either party shall have the right to mortgage any or all of its property, rights, privileges and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage, or in case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to such successors and assigns; and provided, further, that subject to all of the terms and conditions of this agreement, either party may permit any corporation conducting a business of the same general character as that of such party, with which it is affiliated, or connecting with it, the rights and privileges of this agreement, in the conduct of its said business; and for the purpose of this agreement, all such attachments maintained on any such pole by the permission as aforesaid of either party hereto shall be considered as the attachments of the party granting such permission, and the rights, obligations and liabilities of such party under this agreement, in respect to such attachments, shall be the same as if it were the actual owner thereof.

**ARTICLE XX
WAIVER OF TERMS OR CONDITIONS**

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

**ARTICLE XXI
EXISTING CONTRACTS**

All existing agreements between the parties hereto for the joint use of wood poles upon a rental basis within the territory covered by this agreement, except the one dated _____ day of _____ which covers attachments in _____

_____ areas as described in Article II, Section "C" are, by mutual consent, hereby abrogated and annulled.

**ARTICLE XXII
SUPPLEMENTAL ROUTINES AND PRACTICES**

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

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, on the day and year first above written.

Attest

[Signature]
Secretary

Attest

[Signature]
Secretary

By [Signature] Chairman
The Electric Power Board of the City of Nashville, (ELECTRIC COMPANY)

[Signature]
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
By [Signature] Vice President

Exhibit G

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THIS AGREEMENT, made this 9th day of July, 1968, by and between the METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, a Municipal Corporation, Acting by and through the Electric Power Board of said Metropolitan Government, created and existing under Chapter 246, Private Acts of the General Assembly of the State of Tennessee for the year 1947, hereinafter called the "Electric Company", party of the first part, and the TENNESSEE TELEPHONE COMPANY, a corporation of the State of Tennessee, hereinafter called the "Telephone Company", party of the second part.

WITNESSETH:

WHEREAS, the Electric Company and the Telephone Company desire to cooperate in accordance with the "Principles and Practices for the Joint Use of Wood Poles by Supply and Communication Companies" as contained in the report of the Joint General Committee of the Edison Electric Institute and the Bell Telephone System dated July 1945, and amendments thereto, and to establish joint use of their respective poles when and where joint use shall be of mutual advantage; and

WHEREAS, the conditions determining necessity or desirability of joint use depend upon service requirements to be met by both parties, including considerations of safety and economy, and each of them should be the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be properly met by joint use of poles;

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

ARTICLE I Definitions

For the purpose of this agreement, the following terms when used herein, shall have the following meanings:

- A. **NORMAL SPACE**-means sufficient space on a joint use pole for the use of each party, taking into consideration requirements of the National Electrical Safety Code.

Except only as to the portion of its said space which, by the terms of the National Electrical Safety Code, may be occupied by certain attachments therein described of the other party, this space is specifically defined as follows:

- (1) for the Electric Company, the uppermost six (6) feet;
- (2) for the Telephone Company, a space of four (4) feet at sufficient distance below the space of the Electric Company to provide at all times below the minimum clearance required by the specifications referred to in Article IV, and at sufficient height above the ground to provide proper vertical clearance for the lowest horizontally run line wires or cables attached in such space.

- B. **NORMAL JOINT USE POLE**-means a pole which meets the requirements of the National Electrical Safety Code for support and clearance of supply and communication conductors under conditions existing at the time joint use is established, or is to be created under known plans of either party. Specifically, a normal joint pole under this agreement shall be a 40 foot class 4 wood pole.

The foregoing definition of "a normal joint pole" is not intended to preclude the use of joint poles shorter or of less strength than the normal joint pole in locations where such poles will meet the known or anticipated requirements of the parties hereto.

- C. ATTACHMENTS-mean materials or apparatus now or hereafter used by either party in the construction, operation or maintenance of its plant carried on poles.
- D. CLEARANCE ATTACHMENTS-mean any attachment made to a pole of the owner for the purpose of obtaining clearance between plant of the Licensee and that of the Owner, where, in general, a pole for the purpose of supporting the Licensee's attachments would not be required if it were not for the presence of the other (Owner's) route. GUY POLES are considered as part of the anchor and guy structure, and, as such, guy attachments are not considered as units to be counted but are given the same treatment as clearance attachments.
- E. SUPPORTING ATTACHMENTS-mean attachments made on poles which, in general relieve the Licensee of the necessity of providing a pole at or near the same location for the purpose of supporting its wires or cables.
- F. OWNER-means the party owning the pole to which attachments are made.
- G. LICENSEE-means the party having the right under this agreement to make attachments to a pole of which the other party is the Owner.

ARTICLE II

Territory and Scope of Agreement

This agreement shall be in effect and shall cover all wooden poles of each of the parties now existing, hereinafter erected or acquired, within the common operating areas served by the parties hereto, when said poles are brought hereunder, excepting:

- A. Poles which, in the Owner's judgment, are necessary for its own sole use; and
- B. Poles which carry, or are intended to carry, circuits of a character that in the Owner's judgment proper rendering of its service now or in the future makes joint use of such poles undesirable.

ARTICLE III

Permission for Joint Use

Each party hereto hereby permits joint use by the other party of any of its poles when brought under this agreement as herein provided, subject to the terms and conditions herein stated.

ARTICLE IV

Specifications

Joint use of poles covered by this agreement shall at all times be in conformity with terms and provisions of the current issue of the National Electrical Safety Code as to minimum requirements, and such revisions and

amendments thereto from time to time as may be necessary by reason of development and improvements in the art as may be mutually agreed upon and approved in writing by the Chief Engineer of the Electric Company and the Chief Engineer of the Telephone Company.

Edison Electric Institute Publication M-12, a report of the Joint Committee on Plant Coordination of the Edison Electric Institute and the Bell Telephone System, based on the National Electrical Safety Code, and such revisions and amendments thereto as may be made from time to time is to be used as a guide in the administration of this agreement.

ARTICLE V

Right of Way for Licensee's Attachments

- A. The Owner and Licensee will cooperate as far as may be practicable in obtaining rights of way for both parties. When a written easement is secured it shall be in sufficient detail for identification and recording, where required, and shall be subject to inspection by the other party upon request. However, no guarantee is given by the Owner of permission from property owners, municipalities or others for the use of poles by the Licensee, and if objection is made thereto and the Licensee is unable to satisfactorily adjust the matter within a reasonable time, the Owner may at any time, upon (30) days notice in writing to the Licensee, require the Licensee to remove its attachments from the poles involved, and the Licensee shall within thirty (30) days after receipt of said notice, remove its attachments from such poles at its sole expense. Should the Licensee fail to remove its attachments as herein provided, the Owner may remove them at the Licensee's expense, without any liability whatever for such removal or the manner of making it, for which expense the Licensee shall reimburse the Owner on demand.
- B. Where the property owners will allow it, the owner of the line shall obtain a right of way swath extending up to 7½ feet on each side of the center line of the line. Where property owners object to this swath each party will be responsible for obtaining permission for a swath satisfactory for its own requirements. After permission of property owners is obtained, the owner of the line will provide the initial clearance of the swath to meet the requirements of both parties, up to a maximum of 7½ feet on each side of the centerline of the line.
However, in cases where the right of way clearance, including tree trimming, is more than indicated above, due to the requirements of the Licensee, the extra clearance costs shall be borne by the Licensee.
- C. It is agreed that the cost of maintenance of right of way and recurring trimming should be borne jointly to the extent that each of the parties will benefit by the joint endeavor. Due to varying conditions expected to be encountered, the division of cost of maintaining right of way and tree trimming shall be agreed upon after a joint inspection by representatives of both parties of the work operations

required to provide necessary clearances.

The division of cost as provided in this section shall be based on mutually agreeable predetermined divisions of cost and shall be subject to revision at the request of either party upon ninety (90) days written notice. The Division of Cost, as agreed to, shall then be evidenced by an exchange of letters as provided under Article XXII.

As between the parties to this contract, the company performing the work shall assume all responsibility of claims and suits which may arise from this work.

ARTICLE VI

Placing, Transferring or Rearranging Attachments

- A. Whenever either party desires to reserve space on any pole of the other, for any attachments requiring space thereon, not then specifically reserved hereunder for its use, it shall make written application therefor, specifying in such notice the location of the pole in question, the number and kind of attachments which it desires to place thereon, and the character of the circuit to be used. Within ten (10) days after the receipt of such notice, the Owner shall notify the Applicant in writing whether or not said pole is of those excluded from joint use under the provisions of Article II. Upon receipt of notice from the Owner that said pole is not of those excluded, and after completion of any transferring or rearranging which is then required in respect to attachments on said poles, including any necessary pole replacements as provided in Article VII "A", the Applicant shall have the right as Licensee hereunder to use said space for attachments and circuits of the character specified in said application in accordance with the terms of this agreement. Service wire attachments or emergency construction can be placed in accordance with the specifications, upon verbal approval, subsequently approved in writing.
- B. Except as herein otherwise expressly provided, each party shall place, maintain, rearrange, transfer and remove its own attachments, and shall at all times perform such work promptly and in such a manner as not to interfere with work being done by the other party.
- C. In any case where one party provides at the request of the other party double thimble guy rods for the use of both parties, the party requesting the double thimble guy rod shall pay to the party placing the guy rod a sum equal to 50% of the cost of the anchor and guy rod in place. In cases where existing anchors are adequate for the needs of either party, the party desiring additional guys will, where necessary, install double thimble guy rods at no expense to the other party, and the other party will, at its own expense transfer its guys to the new rod. The ownership of the double thimble rod will be vested in the owner of the pole.

ARTICLE VII

Erecting, Replacing or Relocating Poles

- A. Whenever any jointly used pole, or any pole about to be so used under the provisions of this agreement, is insufficient in size or strength for the existing attachments and for the proposed immediate additional attachments thereon, the Owner shall promptly replace such pole with a new pole of

the necessary size and strength, and make such other changes in the existing pole line, in which such pole is included, as may be made necessary by the replacement of such pole and the placing of the Licensee's circuits as proposed.

- B. Whenever it is necessary to change the location of a jointly used pole, by reason of any state, municipal or other governmental requirement, or the requirements of a property owner, the Owner shall, before making such change in location, give notice thereof in writing (except in cases of emergency when verbal notice will be given, and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed relocation, and the Licensee shall, at the time so specified, transfer its attachment to the pole at the new location.

In the case of a pole along subdivided property which is not set opposite a lot line, the owner of such pole will, if conditions require, move same at the request of the Licensee, each party bearing the cost of moving its facilities.

- C. Whenever either party hereto is about to erect new poles within the territory covered by this agreement, either as an additional pole line, as an extension of an existing pole line, or as the reconstruction of an existing pole line, it shall notify the other in writing at least thirty (30) days before beginning the work (shorter notice, including verbal notice subsequently confirmed in writing may be given in cases of emergency), and shall submit with such notice its plans showing the proposed location and size of the new poles and the character of circuits it will use thereon. The other party shall, within twenty (20) days after the receipt of such notice, reply in writing to the party erecting the new poles, stating whether such other party does, or does not, desire space on the said poles, and if it does desire space thereon, the character of the circuits it desires to use and the amount of space it wishes to reserve. This notice of desire to establish joint use should include detailed plans of any changes in the plans of the other party which are desired in order to permit the establishment of joint use. If such other party requests space on the new poles, and if the character and number of circuits and attachments are such that the Owner does not wish to exclude the poles from joint use under the provision of Article II, then poles suitable for the said joint use shall be erected in accordance with the provisions and the payment of costs as provided in paragraphs "D", "E" and "F" of this Article.
- D. In any case where the parties hereto shall conclude arrangements for the joint use of any new poles to be erected, the ownership of such poles shall be determined by mutual agreement, to the end that each party hereto shall at all times own approximately one-half of the total number of poles jointly used under this agreement, due regard being given to the desirability of avoiding mixed ownership in any given line. In the event of disagreement as to ownership, the party then owning the smaller number of joint poles under this agreement shall promptly erect the new joint poles and be the owner thereof.
- E. The costs of erecting joint poles coming under this agreement, either as new pole lines, as extensions of existing pole lines, or to replace existing poles, either existing jointly used poles or poles not previously involved in joint use, shall be borne by the parties as follows:

1. A normal joint pole, or a joint pole shorter or smaller than the normal pole, shall be erected at the sole expense of the Owner, except as provided in Section "F" of this Article.
 2. A pole taller or stronger than the normal pole, the extra height and strength of which is due wholly to the Owner's requirements, shall be erected at the sole expense of the Owner.
 3. In the case of a pole taller or stronger than the normal pole, the extra height and strength of which is due wholly to the Licensee's requirements, the Licensee shall pay to the Owner a sum equal to the difference between the cost in place of such pole and the cost in place of a normal joint pole, the rest of the cost of erecting such pole to be borne by the Owner except as provided in Section "F" of this Article.
 4. In the case of a pole taller or stronger than the normal pole, the extra height and strength of which is due to the requirements of both parties, the Licensee shall pay to the Owner a sum equal to one-half the difference between the cost in place of such pole and the cost in place of a normal joint pole, the rest of the cost of erecting such pole to be borne by the Owner.
 5. In the case of a pole taller or stronger than the normal pole, where height and strength in addition to that needed for the purpose of either or both of the parties hereto is necessary in order to meet the requirements of public authority or of property owners, one-half of the excess cost of such pole due to such requirement shall be borne by the Licensee; the rest of the cost of such pole to be borne as provided in that one of the preceding paragraphs 1,2,3 or 4, within which it would otherwise properly fall.
- F. In any case where a pole is erected hereunder to replace another pole solely because such other pole is not tall enough, or of the required strength, to provide adequately for the Licensee's requirements, or where such pole, whether it carry space reserved for the Licensee's use or not, had at the time of its erection, been pronounced by the Licensee as satisfactory and adequate for its requirements, the Licensee shall, upon erection of the new pole, pay to the Owner, in addition to any amounts payable by the Licensee under paragraphs 3,4 or 5, of Section "E" of this Article, a sum equal to the sacrificed life of the pole which is replaced (then value in place of the pole replaced plus cost of removal less salvage), and the pole removed shall remain the property of the Owner. In any case where the other party by mutual consent erects and owns a joint pole to replace an existing pole of the Owner (instead of the Owner doing so as it is contemplated by Section "A" of this Article that the Owner will do), such other party shall pay to the Owner of the replaced pole a sum equal to the then value in place of the pole which is replaced, and the pole removed shall thereupon become the property of such other party which has erected the replacing pole.
- G. When replacing a jointly used pole carrying aerial cable terminals, underground connections or transformer equipment, the new pole shall be set in the same

hole which the replaced pole occupied, unless special conditions make it necessary or mutually desirable to set it in a different location.

- H. Any payments made by the Licensee under the foregoing provisions of this Article for poles taller than normal shall not in any way affect the ownership of said poles.
- I. Any payments as provided in the foregoing provisions of this Article may be based on mutually agreeable predetermined amounts. The amounts agreed to shall be subject to revision at the request of either party at the end of each three year period, or at other times as may be mutually agreed to, and may be cancelled at any time by either party by a written notice. The amounts agreed to shall be evidenced by an exchange of letters, as provided under Article XXIII.

ARTICLE VIII

Maintenance of Poles and Attachments

- A. The Owner shall, at its own expense, maintain its joint poles in a safe and serviceable condition, and in accordance with Article IV of this agreement and the requirements of the National Electrical Safety Code, and shall replace, subject to the provisions of Article VII, such of said poles that become defective.
- B. Each party shall, at its own expense, at all times maintain all of its attachments in accordance with Article IV of this agreement and the National Electrical Safety Code and keep them in safe condition and in thorough repair.

ARTICLE IX

Procedure When Character of Circuits is Changed

When either party desires to change the character of its circuits on joint used poles, such party shall give sixty (60) days notice to the other party of such contemplated change, and in the event that the party agrees to joint use with such changed circuits, then the joint use of such poles shall be continued with such changes in construction as may be necessary to meet the requirements of the National Electrical Safety Code, being made at the expense of the party desiring to make the change. In the event, however, that the other party fails within thirty (30) days from receipt of such notice to agree in writing to such change, then both parties shall cooperate in accordance with the following plan:

- A. The parties hereto shall determine the most practical and economical method of effectively providing for separate lines, and the party whose circuits are to be moved shall promptly carry out the necessary work.
- B. The cost of re-establishing such circuits in the new location as are necessary to furnish the same business facilities that existed in the joint use at the time such change was decided upon, shall be equitably apportioned between the parties hereto.

Unless otherwise agreed by the parties, ownership of any new line constructed under the foregoing provision in a new location shall vest in the party for whom

use it is constructed. The net cost of establishing service in the new location shall be exclusive of any increased cost due to the substitution for existing facilities of other facilities of a substantially new or improved type or of increased capacity, but shall include among other items the cost of the new pole line, including rights of way, the cost of removing attachments from the old poles to the new location, and the cost of placing the attachments on the poles in the new location.

ARTICLE X

Bills and Payments for Work

Upon completion of work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other, the party performing the work shall present to the other party, within thirty (30) days after the completion of such work, a statement showing the amount due, and such other party shall, within thirty (30) days after such statement is presented, pay to the party doing the work the amount due.

ARTICLE XI

Abandonment of Jointly Used Poles

- A. If the Owner desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, the Owner shall have no attachments on such pole but the Licensee shall not have removed all of its attachments therefrom, such pole shall thereupon become the property of the Licensee, and the Licensee shall save harmless the former Owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter, because of, or arising out of, the presence or condition of such pole or any attachments thereon; and shall pay the Owner a sum equal to the then value in place of such abandoned pole, or poles, or such other equitable sum as may be agreed upon between parties. Credit shall be allowed for any payments which the Licensee may have made under the provisions of Article VII, Sections "E" and "F", when the pole was originally set, provided the Licensee furnishes proof of such payment.
- B. The Licensee may at any time abandon the use of a joint pole by giving due notice thereof in writing to the Owner and by removing therefrom any and all attachments it may have thereon.

ARTICLE XII

Adjustment Payments

The parties contemplate that the use or reservation of space on poles by each party, as Licensee of the other under this agreement, shall be reciprocal and mutual insofar as this may be practicable.

- A. Adjustment payments per pole due from either party as Licensee to the other party as Owner shall, subject to the provision of Article XII, be \$3.70 per annum.

- B. On or about December 1st of each year, each party, acting in cooperation with the other, subject to the provisions of the following paragraph of this section, shall have ascertained and tabulated the total number of poles in use by each party as Licensee for which an adjustment payment shall be made to the other party as Owner.

For the purpose of such tabulation, poles shall not be included where the use by the other party consists only of attaching thereto guys, customer service leads crossing routes of either party, span wires supporting street lights, messenger not supporting cables or conductors, and the attaching thereto of wires or cables of the Licensee for the purpose of clearance between the poles and said wires or cables and not for the primary purpose of supporting said wires or cables.

- C. The total adjustment payment due each party shall be determined by multiplying the poles owned by each party, tabulated as indicated in the first paragraph of Section "B" of this Article, by the adjustment payment in Section "A" of this Article.

The smaller total amount covered above shall be deducted from the larger amount and the Electric Company or the Telephone Company, whichever shall owe the larger amount, shall pay to the other the difference between said two amounts as the net adjustment payment due for the year involved. Within ten (10) days after the first day of December next ensuing after the date of this agreement, and within ten (10) days after the first day of December each year thereafter, during the time this agreement shall be in effect, the party to which said adjustment payment is owed, as of said first day of December, shall submit a written statement to the other party giving the correct amount owed by the other party.

The adjustment payment herein provided for shall be paid within ten (10) days after the bill has been submitted, unless said party disputes the amount of such bill within five (5) days from receipt thereof.

Any recurring cost incurred by the Owner, beyond the control of the Owner, solely because of the use of the Owner's poles by the Licensee, shall be paid by the Licensee.

- D. At intervals not exceeding five (5) years an actual inventory of attachments shall be made by representatives of the parties. If there is any difference in the number of attachments found by the inventory and the number arrived at by tabulating those reported, correction will be made by retroactive billing for any attachments identified as being responsible for the difference, and any remaining difference will be spread evenly over the years since the last inventory, and billing adjusted accordingly.

ARTICLE XIII

Periodical Revision of Adjustment Payment Rate

- A. During the calendar year, 1969, and at intervals of not less than three (3) years thereafter, the adjustment payment rates applicable under this agreement shall be subject to joint review and revision, as provided for

under Section "B" of this Article, upon the written request of either party. In case of revision of the adjustment payment rates as herein provided, the new adjustment payment rates agreed upon shall apply, starting with the annual bill next rendered and continuing until again adjusted.

- B. Revisions of the adjustment payments shall be based on experience resulting from previous administration of this agreement. Any changes shall take into account the original cost factors pertinent to the establishing of the pole facilities involved in all joint use existing under this agreement at the time of the said review. If, within ninety (90) days after the receipt of such request, by either party from the other, the parties hereto fail to agree upon a revision of such rate, then the adjustment payment per pole so to be paid shall be an amount equal to one-half of the then average annual total cost per pole, based on average in-plant cost factors, of providing and maintaining the joint poles covered by this agreement. In case of a revision of the adjustment payment as herein provided, the new rate shall be applicable until again revised.

ARTICLE XIV Defaults

- A. If either party shall make default in any of its obligations under this agreement, and such default shall continue thirty (30) days after notice thereof in writing from the other party, all rights of the party in default hereunder pertaining to the establishment of future joint use shall be suspended, and if such default shall continue for a period of ninety (90) days after such suspension, the other party may forthwith terminate the right of both parties to make additional attachments. Any such termination of the right to make additional attachments by reason of any such default shall not, however, abrogate or terminate the right of either party to maintain attachments theretofore made on the poles of the other, and all such prior attachments shall continue thereafter to be maintained pursuant to and in accordance with the terms of this agreement, which agreement shall, so long as said attachments are continued, remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties with respect to said attachments.
- B. If either party shall make default in the performance of any work which it is obligated to do under this contract, at its sole expense, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof. Failure on the part of the defaulting party to make such payment within thirty (30) days upon presentation of bills therefor shall, at the election of the other party, constitute a default under Section "A" of this Article.

ARTICLE XV Liability and Damages

Whenever any liability for damages is incurred by either or both of the parties hereto for injuries to the employees, or for injury to the property

of either party, or for injuries to other persons or their property, arising out of the joint use of poles under this agreement, or due to the proximity of the wires and fixtures of the parties hereto attached to the jointly used poles covered by this agreement, the liability for such damages, as between the parties hereto shall be as follows:

- A. Each party shall be liable for all damages for such injuries to persons or property caused solely by its negligence or solely by its failure to comply at any time with the specifications as provided herein.
- B. Each party shall be liable for all damages for such injuries to its own employees or its own property that are caused by the concurrent negligence of both parties hereto, or that are due to causes which cannot be traced to the sole negligence of the other party.
- C. Each party shall be liable for one-half ($\frac{1}{2}$) of all damages for such injuries to persons other than employees of either party, and for one-half ($\frac{1}{2}$) of all damages for such injuries to property not belonging to either party, that are caused by the concurrent negligence of both parties hereto, or that are due to causes which cannot be traced to the sole negligence of the other party.
- D. Where, on account of injuries of the character described in the preceding paragraphs of this Article, either party hereto shall make any payments to injured employees or to their relatives or representatives in conformity with: (1) the provision of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, or (2) any plan for employees' disability benefits or death benefits now established or hereafter adopted by the parties hereto, either of them, such payments shall be construed to be damages within the terms of the preceding paragraphs numbered "A" and "B" and shall be paid by the parties hereto accordingly.
- E. All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case where the Claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which said terms are acceptable may, at its election, pay to the other party one-half ($\frac{1}{2}$) of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.
- F. In the adjustment between the parties hereto of any claim for damages arising hereunder, the liability assumed hereunder, by the parties, shall include, in addition to the amounts paid to the Claimant, all expenses incurred by the parties in connection therewith, which shall comprise costs, attorneys' fees, disbursements and other proper charges and expenditures.

ARTICLE XVI
Existing Rights of Other Parties

If either of the parties hereto has, prior to the execution of this agreement, conferred upon others, not parties to this agreement, by contract or otherwise

rights or privileges to use any poles covered by this agreement, nothing herein contained shall be construed as affecting said rights or privileges, and either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights or privileges; it being expressly understood, however that for the purpose of this agreement, the attachments of any such outside party shall be treated as attachments belonging to the Grantor, and the rights, obligations and liabilities hereunder of the Grantor in respect to such attachments shall be the same as if it were the actual Owner thereof. Where municipal regulations require either party to allow the use of its poles for fire alarm, police or other like signal systems, such use shall be permitted under the terms of this Article.

ARTICLE XVII
Service of Notices

Wherever in this agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed or by personal delivery, to the Electric Company at its office at Nashville, Tennessee or to the Telephone Company at its office at Mt. Juliet, Tennessee as the case may be, or to such other address as either party may, from time to time, designate in writing for that purpose.

ARTICLE XVIII
Termination of Agreement

This agreement shall continue in full force and effect until the 31st day of December, 1968, and shall continue thereafter until terminated, insofar as the making of additional attachments is concerned, by either party, giving to the other one (1) years notice in writing of intention to terminate the right of making additional attachments. Any such termination of the right to make additional attachments shall not, however, abrogate or terminate the right of either party to maintain the attachments theretofore made on the poles of the other, and all such prior attachments shall continue thereafter to be maintained pursuant to and in accordance with the terms of this agreement, which agreement shall, so long as said attachments are continued, remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties with respect to said attachments.

ARTICLE XIX
Assignment of Rights

Except as otherwise provided in this agreement, neither party hereto shall assign or otherwise dispose of this agreement, in whole or in part, without the written consent of the other party; except that either party shall have the right to mortgage any or all of its property, rights, privileges and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party or enter into any merger or consolidation; and, in case of the foreclosure of such mortgage, or in case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to such successors and assigns; and provide

further, that subject to all of the terms and conditions of this agreement, either party may permit any corporation conducting a business of the same general character as that of such party, with which it is affiliated, or connecting with it, the rights and privileges of this agreement, in the conduct of its said business; and for the purpose of this agreement, all such attachments maintained on any such pole by the permission as aforesaid of either party hereto shall be considered as the attachments of the party granting such permission, and the rights, obligations and liabilities of such party under this agreement, in respect to such attachments, shall be the same as if it were the actual owner thereof.

ARTICLE XX
Waiver of Terms or Conditions

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

ARTICLE XXI
Existing Contracts

All existing agreements between the parties hereto for the joint use of wood poles upon a rental basis within the territory covered by this agreement, listed as follows: the one dated 10th of October, 1963 between the Mt. Juliet Telephone Company, Inc., which covers attachments in the Mt. Juliet area and the Metropolitan Government of Nashville and Davidson County, Acting by and through the Electric Power Board of said Metropolitan Government; and one dated 21st of May, 1965, between the Laverne Telephone Company which concerns certain attachments in the Laverne area and the Metropolitan Government of Nashville and Davidson County, Acting by and through the Electric Power Board of said Metropolitan Government, are, by mutual consent, hereby abrogated and annulled.

ARTICLE XXII
Supplemental Routines and Practices

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

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, on the day and year first above written.

METROPOLITAN GOVERNMENT OF NASHVILLE
AND DAVIDSON COUNTY, Acting by and
through the Electric Power Board of
the Metropolitan Government

Attest

R. L. James
Secretary

By *J. C. Woodford*
Chairman

Attest

TENNESSEE TELEPHONE COMPANY

Allen D. Odle
Secretary

By *Loy I. Odle*
Manager

Tennessee Telephone Company
11646 Lebanon Road
PO Box 1000
M1 Juliet, TN 37122

Telephone 615 237-4688

9/13
Called
8:10



FACSIMILE TRANSMISSION RECORD

To: Carolyn Smith (Room 370)

Company/Location: NES

Facsimile #: 747-3634 or 747-3576

Confirmation #: _____

Date/Time: _____

From: Debbie Mitchell

Company/Location: Tennessee Telephone Co.

Number of Pages to Follow: 4

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SUPPLEMENTAL OPERATING ROUTINE
FOR JOINT USE ELECTRIC POWER BOARD
of THE METRO GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY AND TENNESSEE TELEPHONE CO.

This Supplemental Operating Routine is prepared under Article XXII of the Agreement dated the ninth day of July, 1968, between the City of Nashville, Acting by and through the Electric Power Board of the Metro Government of Nashville and Davidson County and Tennessee Telephone Co.

1. It is mutually agreed that the current cost of treated poles in plant is as follows:

<u>Height of Poles</u>	<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4</u>	<u>Class 5</u>	<u>Class 6</u>	<u>Class 7</u>	<u>Class 9</u>
25'	\$108	\$101	\$ 94	\$ 89	\$ 84	\$ 82	\$ 80	\$ 77
30'	142	132	121	113	108	100	95	89
35'	170	159	146	138	133	117	112	--
40'	207	194	184	171	158	142	132	--
45'	240	225	213	195	183	168	--	--
50'	288	269	247	226	211	194	--	--
55'	321	301	279	253	231	--	--	--
60'	359	335	310	284	257	--	--	--
65'	418	386	360	324	--	--	--	--

2. Based on the foregoing current costs payments for furnishing excess height and class poles under Article VII, Section E, Paragraphs 3, 4 and 5 of the Agreement shall be as follows:

<u>Height of Poles</u>	<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4</u>
40'	\$ 36	\$ 23	\$ 13	\$ --
45'	69	54	42	24
50'	117	98	76	55
55'	150	130	108	82
60'	188	164	139	113
65'	247	215	189	153

3. Sacrificed life payments under Article VII, Section F of the Agreement shall be as follows:

Poles Placed During Current Year

<u>Height of Poles</u>	<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4</u>	<u>Class 5</u>	<u>Class 6</u>	<u>Class 7</u>
25'	\$106	\$ 99	\$ 92	\$ 87	\$ 82	\$ 80	\$ 77
30'	134	124	113	105	100	92	87
35'	144	133	120	112	107	91	86
40'	158	145	135	122	109	--	--
45'	195	180	168	150	138	--	--
50'	218	199	178	156	142	--	--
55'	251	231	209	183	--	--	--
60'	267	243	218	192	--	--	--
65'	302	270	244	218	--	--	--

Poles 1-5 Years Old

<u>Height of Poles</u>	<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4</u>	<u>Class 5</u>	<u>Class 6</u>	<u>Class 7</u>
25'	\$ 72	\$ 67	\$ 63	\$ 58	\$ 55	\$ 53	\$ 53
30'	95	87	79	74	71	66	63
35'	112	104	97	91	89	78	73
40'	137	130	122	114	104	--	--
45'	158	148	140	128	120	--	--
50'	190	178	163	149	139	--	--
55'	211	198	185	167	--	--	--
60'	237	220	204	188	--	--	--
65'	276	254	238	214	--	--	--

Poles 6-10 Years Old

<u>Height of Poles</u>	<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4</u>	<u>Class 5</u>	<u>Class 6</u>	<u>Class 7</u>
25'	\$ 60	\$ 58	\$ 53	\$ 51	\$ 48	\$ 46	\$ 43
30'	79	74	68	63	60	55	53
35'	94	89	81	78	76	65	63
40'	117	109	104	96	88	--	--
45'	135	125	120	110	103	--	--
50'	161	151	139	127	118	--	--
55'	180	169	156	141	--	--	--
60'	200	188	173	159	--	--	--
65'	234	216	200	182	--	--	--

Poles 11-15 Years Old

<u>Height of Poles</u>	<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4</u>	<u>Class 5</u>	<u>Class 6</u>	<u>Class 7</u>
25'	\$ 51	\$ 48	\$ 43	\$ 41	\$ 39	\$ 39	\$ 36
30'	66	60	58	53	50	47	45
35'	78	76	68	65	63	55	52
40'	98	91	85	80	75	--	--
45'	113	105	100	93	85	--	--
50'	134	127	115	106	98	--	--
55'	152	141	132	119	--	--	--
60'	169	157	145	133	--	--	--
65'	196	182	170	152	--	--	--

Poles 16-20 Years Old

<u>Height of Poles</u>	<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4</u>	<u>Class 5</u>	<u>Class 6</u>	<u>Class 7</u>
25'	\$ 27	\$ 24	\$ 24	\$ 22	\$ 22	\$ 19	\$ 19
30'	34	32	29	29	26	24	24
35'	42	39	37	34	34	29	29
40'	52	49	47	41	39	--	--
45'	60	55	53	48	45	--	--
50'	72	67	62	55	53	--	--
55'	81	75	70	64	--	--	--
60'	90	84	78	71	--	--	--
65'	104	96	90	80	--	--	--

Poles Over 20 Years Old

<u>Height of Poles</u>	<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4</u>	<u>Class 5</u>	<u>Class 6</u>	<u>Class 7</u>
25'	\$ 24	\$ 22	\$ 22	\$ 19	\$ 19	\$ 17	\$ 17
30'	32	29	26	24	24	21	21
35'	37	34	31	31	29	26	23
40'	47	41	41	39	34	--	--
45'	53	50	48	43	40	--	--
50'	62	60	55	50	46	--	--
55'	70	66	62	55	--	--	--
60'	80	73	67	61	--	--	--
65'	92	84	80	72	--	--	--

4. Article VII, Section F of the Agreement specifies, "In any case where the other party by mutual consent erects and owns a joint use pole to replace an existing pole of the owner (instead of the owner doing so as is contemplated by Section A of this Article that the owner will do) such other party shall pay to the owner of the replaced pole a sum equal to the then value in place of the pole which is replaced, and the pole removed shall thereupon become the property of such other party which has erected the replacing pole." Due to local operating arrangements necessary to effectively administer the provisions of the foregoing Section, payment for the replacing of poles shall be as follows:

Such other party shall pay the owner of the replaced pole a sum equal to the sacrifice life of such pole, and the pole removed shall remain the property of the owner and shall be removed by the owner.

5. Under Article VI, Section C of the Agreement payment for one half the cost of anchor and guy rod in place shall be as follows:

<u>Size of Rod</u>	<u>Payment</u>
3/4"	\$15.00
1" or Larger	\$25.00

6. The intent of this section of the supplement is that each party will set joint use poles in such proportions that the ultimate joint use ownership will be on an equal basis. In applying the foregoing mixed ownership of any given line shall be avoided.

7. In the event that the Licensee shall request the Owner to place (not replace) a pole for clearance and/or for guying purposes only and no rental is involved and the pole is not required by the Owner, the Licensee shall pay to the Owner the current cost of the pole required. The current cost of the pole shall be the same as given in Section 1 of this Supplemental Operating Routine. Payment under this section of the current cost shall not in any way affect the ownership of said poles.

The costs and procedures outlined in the Supplemental Operating Routine shall be effective December 1, 1976 and shall cancel all prior procedures. These costs shall be subject to revision at any time provided that 30 days written notice shall be given by the party requesting the revision to the other party.

Accepted this 24 day of Nov., 1976.

Electric Power Board of the Metro Government
of Nashville and Davidson County

By J. Campbell
Chief Engineer

Accepted this 4th day of Nov., 1976.

Tennessee Telephone Company

By Robert Delle
District Engineer