

Greene County Commission Briefing
Commission Office
1443 N. Robberson, 10th Floor
December 06, 2018
9:30 a.m.

Present: Harold Bengsch, Lincoln Hough, Cindy Stein, Kevin Barnes, Chris Coulter and Megan Applegate.

Resource Management Director Kevin Barnes presented Commission with an agreement, City Utilities Communication Services. (Exhibit I) Commissioner Hough moved to approve the City Utilities Communications Services Agreement. Commissioner Bengsch seconded the motion and it was unanimously approved. AYE: Bengsch and Hough. NAY: NONE. Abstain: NONE. Absent: Cirtin.

Barnes informed the Commission of Dave Dunn, Director of Building Operations upcoming retirement. There is a celebration to celebrate Dunn on December 11th. Franz will pick up the slack in light of Dunn's retirement. Discussion of the jail plumbing issue ensued amongst the Commission and Barnes. Barnes said the prediction of snow this weekend could be problematic as the bobcat used to plow snow it broken. Planning and Zoning is implementing a new 90 day appeal period for issues.

With no other business the meeting was adjourned.

AGREEMENT

THIS AGREEMENT (the "Agreement"), dated the 20 day of ^{December}~~October~~, 2018, by and between **THE BOARD OF PUBLIC UTILITIES OF THE CITY OF SPRINGFIELD, MISSOURI**, 301 East Central, Springfield, Missouri 65802, hereinafter called "City Utilities", and **GREENE COUNTY MISSOURI** hereinafter called "Communication Company".

WITNESSETH:

WHEREAS, Communication Company proposes to furnish communications services in the City of Springfield, Greene County, Missouri and various municipalities within Greene County, and desires to erect and maintain communications wires and other facilities (hereinafter cumulatively referred to as the "Facilities"¹ and defined herein) in an area now served by City Utilities and desires to attach its Facilities to poles of City Utilities; and

WHEREAS, City Utilities is willing to permit, to the extent that it may lawfully do so, the attachment of said Facilities to its poles, where, in its judgment, such use will not interfere with its own service requirements (or the service requirements of others authorized to use poles of City Utilities), increase its costs, impair safety or otherwise interfere with the use of the poles and attachments of City Utilities;

NOW, THEREFORE, the parties hereto, each in consideration of the acts, undertakings and obligations of the other set forth herein and the execution hereof by the other do hereby agree and bind themselves, subject to the provisions of the section covering assignment of rights, their successors and assigns, as follows:

PART I

OVERHEAD FACILITIES

ARTICLE I

SCOPE

(A) Communication Company shall secure all authorizations and franchises which may be required by any governmental authority for the construction, operation and maintenance of the Facilities. In the event any such authorization lapses without renewal, City Utilities shall not be required to accept new requests for attachments of Communication Company's Facilities until such authorization is granted or renewed.

¹"Facilities" is a defined term whenever used in this document. With respect to poles, "Facilities" is defined as any object or attachment of any kind whatsoever, including objects which directly or indirectly are attached to or come into contact with the pole or other property of City Utilities. With respect to common trenches, "Facilities" is defined as underground conduit, underground lines, and related equipment.

(B) This Agreement shall apply to designated poles now existing or hereinafter constructed when said Facilities are placed into service, subject to the approval of City Utilities and in accordance with the procedures hereinafter provided.

(C) The rights and privileges of the Communication Company shall be subject to the rights and privileges of others upon whom City Utilities has conferred, prior to the establishing of joint use by the parties hereto, rights or privileges to use poles by contract or otherwise. If Communication Company desires to use space allocated to other pole attachers, Communication Company must reach a financial and space allocation agreement with such attachers.

Nothing contained in this Agreement shall be construed as a limitation, prohibition or restriction against City Utilities with respect to any agreement and/or arrangement which City Utilities has heretofore entered into, or may enter into in the future, with other persons or entities who are not parties to this Agreement, regarding poles covered by this Agreement. The rights of the Communication Company shall at all times be subject to any such agreement and/or arrangements, except that such agreements and/or arrangements entered into subsequent to this Agreement shall not act to limit or interfere with the rights conferred herein.

(D) City Utilities reserves the right to exclude its poles from joint use.

City Utilities reserves the right to deny the attachment of Facilities or the addition of additional Facilities to existing poles where Facilities have already been attached where in the judgment of City Utilities poles are (i) required for the sole use of City Utilities or (ii) would not readily lend themselves to attachments by the Communication Company because of interference, hazards, or similar impediments. The procedures for City Utilities' review of Communication Company's proposed Facilities are set forth in Section 2.1(E).

(E) Subject to the provisions of this Agreement, including the revocation and termination rights of City Utilities, City Utilities agrees to grant to Communication Company, for any lawful communications purpose, a non-exclusive license authorizing the attachment of City Utilities-approved Communication Company Facilities to City Utilities' poles. Communication Company may not assign its rights under this Agreement to any other entity, except as provided in Article XV, below.

(F) No use, however extended, of City Utilities' poles or payment of fees or charges required under this Agreement shall create or vest in Communication Company any ownership or property rights in such poles. Communication Company's rights herein shall be and remain a mere license for the duration of the Agreement. Neither this Agreement nor any license granted hereunder shall constitute an assignment of any of City Utilities' rights to use the public or private property at the location of City Utilities' poles, except as otherwise provided for by law.

(G) Nothing contained in this Agreement shall be construed to compel City Utilities to construct, retain, extend, place, or maintain any pole or other Facilities not needed for City Utilities' own service requirements.

(H) Upon termination of this Agreement for any reason, Communication Company shall, at the request of City Utilities, remove at Communication Company's expense all its Facilities from City Utilities' poles. The maximum time limit for Communication Company to remove its Facilities from City Utilities' poles shall be two (2) years. If Communication Company has not removed its Facilities within this time, Communication Company forfeits all rights to any bond, or certificate of deposit hereunder, and City Utilities may remove, retain or otherwise dispose of Communication Company Facilities at the expense of Communication Company.

(I) It is expressly understood by Communication Company that all services provided by City Utilities, including its electric circuits, are to continue in normal operation during Communication Company's performance of any construction or maintenance activities hereunder, and Communication Company is to provide and use all protective equipment necessary for the protection of Communication Company's employees and equipment and to guard against interference with normal operation of such electric circuits and other services provided by City Utilities.

ARTICLE II

PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS

Section 2.1 Application and License

(A) City Utilities must obtain budget authority and approval from the Board of Public Utilities prior to any City Utilities construction work.

(B) Before making attachment of any Facility to any pole of City Utilities, Communication Company shall make application and receive a license therefor in the form of Exhibit A, attached hereto and made a part hereof. This application requires a payment of \$50.00 per pole nonrefundable application fee at the time the application is made. Unless waived in writing by City Utilities, Communication Company shall commence and complete all attachment work within the time limits set forth in said Exhibit A.

(C) Pole attachment applications may be submitted to City Utilities at any time. Each application shall be in the form of Exhibit A and must include a construction drawing showing the requested pole attachment locations. Any application received from a second communication company for attachment of Facilities to the same pole(s) within fifteen (15) days after the first application shall be considered as a simultaneous application. Communication companies making simultaneous applications shall share the make ready costs equally with all the other simultaneous applicants. Any application received more than fifteen (15) days after the first application shall not be entitled to proration of costs from any prior applicant.

(D) If any Communication Company facilities for which no license has been issued shall be found attached to City Utilities' poles, City Utilities may assess a twenty-five dollar (\$25.00) Unauthorized Use Fee per year for each unauthorized attachment to City Utilities' facilities, without prejudice to its other rights or remedies under this Agreement, including termination, and

require Communication Company to submit, within fifteen (15) days after the date of notification from City Utilities of the unauthorized attachment, a pole attachment license application. If such application is not received by City Utilities within the specified time period, Communication Company shall immediately remove its unauthorized attachment, or City Utilities may remove such Communication Company facilities, and the expense of such removal shall be borne by Communication Company. The Unauthorized Use Fee is a separate fee from the pole rental fee. Unauthorized overloading is treated the same as an unauthorized attachment. No act or failure to act by City Utilities with regard to said unauthorized attachment shall be deemed as ratification or the licensing of the unauthorized attachment. If any license should be subsequently issued, said license shall not operate retroactively or constitute a waiver by City Utilities of any of its rights or privileges under this Agreement; provided, however, that Communication Company shall be subject to all liabilities, obligations and responsibilities of this Agreement from its inception in regard to said unauthorized attachment.

(E) Prior to any alteration of the Facilities, other than routine maintenance, Communication Company shall provide City Utilities with written notice of such plans at least fifteen (15) days prior to the commencement of such work.

(F) City Utilities will make every reasonable effort to review Communication Company projects in a timely manner. Any City Utilities labor overtime required to meet Communication Company schedules will be reimbursed to City Utilities by Communication Company. Overtime will not be worked on Communication Company projects without the written permission of Communication Company.

(G) Communication Company shall designate in writing a representative who has authority to make decisions in its behalf concerning payments to be made under this Agreement; time schedules for attachments, or make-ready work, or other work; and construction of attachments.

Section 2.2 Maintenance and Rearranging

(A) Communication Company shall, at its own risk and expense, make and maintain its Facilities attached to City Utilities' poles in safe condition and in thorough repair, and in compliance with all applicable laws and regulations, including, without limitation, the National Electrical Safety Code (NESC), National Electric Code (NEC), and the Occupational Safety and Health Act (OSHA), and in a manner suitable to City Utilities, so said Facilities will not conflict with the use of said poles by City Utilities, or by other companies using said poles or interfere with the working use of other Facilities thereon or which may from time to time be placed thereon. On written notice from City Utilities, Communication Company shall forthwith, at its own expense, remove, relocate, replace, or renew its Facilities placed on any pole or pole line, or transfer them to substituted poles, or perform any other work in connection with said Facilities that may be required by City Utilities. However, if there is an emergency or if Communication Company does not perform the requested work within thirty (30) days of the notice from City Utilities or such other mutually agreeable timeframe, City Utilities may, but shall not be obligated to, arrange to relocate, replace or renew the Facilities placed on said poles by Communication Company, transfer them to substituted poles, or perform any other work in connection with said Facilities that may be required thereon or which may be placed thereon, or for the service needs of City Utilities, and

Communication Company shall, on demand, reimburse City Utilities for the expense thereby incurred. On mutual agreement of the parties, City Utilities shall transfer Communication Company's tangent fiber optic facilities at the cost of FIFTY DOLLARS (\$50.00) per attachment, to be paid by Communication Company to City Utilities within thirty (30) days after the work is completed.

(B) When more than one communication company is making simultaneous application for attachment of Facilities to the same pole, as defined in Section 2.1, paragraph (C), above, the cost as described in this section of such changes shall be borne in equal shares per pole. Nothing in this section shall be construed to relieve Communication Company of maintaining adequate work forces readily at hand to promptly repair, service, and maintain Communication Company's Facilities where such condition is hindering City Utilities' operations.

(C) In the event City Utilities determines that Communication Company may attach new Facilities and may do so without interfering with the use of the poles or Facilities of City Utilities or other users, then Communication Company will be allowed to attach new Facilities to City Utilities' poles, but shall be required to pay all costs of make-ready work and rearrangement necessary to accommodate all other parties attached to the pole, including the costs of rearrangement incurred by the existing users. City Utilities shall notify Communication Company of the estimated cost of the make-ready work, and Communication Company shall pay that amount to City Utilities as a deposit against the actual cost of the make-ready work. If the actual cost exceeds the deposit, City Utilities shall notify Communication Company and Communication Company shall pay the difference. If the actual cost is less than the estimated cost, City Utilities shall refund the difference to Communication Company. Should make-ready work and rearrangement be required on poles occupied by another permitted user of the pole, City Utilities shall assure that space remains available for all Communication Company's attachments on the rearranged or replaced pole.

(D) To compensate City Utilities for the cost of locating Facilities that are not maintained in compliance with this section, Communication Company shall pay the sum of \$12.00 for each time that City Utilities locates Facilities of Communication Company that are not maintained in safe condition and in thorough repair, or are not in compliance with the NESC, NEC, or the OSHA, and notifies Communication Company of same in writing.

Section 2.3 Construction Drawings, Specifications, and Minimum Construction

(A) Except as otherwise provided, the joint use of poles covered by this agreement shall at all times be in conformity with practices as prescribed by the latest editions of or latest amendments to or revisions, in effect at the time of construction or modification of the Facility, of the NESC, the NEC, and City Utilities Electric Construction Standards, including all supplements and future revisions and supplements thereto, except where the requirements of public authorities may be in excess of the requirements of the NESC and NEC, in which case the requirements of the public authorities shall be followed.

(B) Communication Company's cables, wires, and equipment, in each and every location, shall be erected and maintained in accordance with the specifications and/or requirements of City

Utilities, or any amendments or revisions of said specifications and/or requirements, and at the location designated by City Utilities.

(C) Communication Company shall submit construction drawings to City Utilities for City Utilities' approval before Communication Company desires to begin initial construction. Construction drawings shall be in final form. If Communication Company submits any changes to the construction drawings, it may result in an extension of time for City Utilities' review at City Utilities sole discretion. Initial construction shall not begin until City Utilities has approved the construction drawings. After the construction drawings are approved by City Utilities, City Utilities shall prepare an estimate of the cost of make-ready work and require a deposit per Section 2.2(C). No Communication Company construction technique shall be used that has not been approved in writing by City Utilities. Any Communication Company construction techniques not approved shall not be allowed; any violations shall be corrected at the expense of Communication Company. City Utilities reserves the right to reevaluate at any time any approved Communication Company construction drawings. City Utilities may void its written approval of any previously submitted Communication Company construction drawings for future use, thereby abolishing the right of Communication Company to continue using voided Communication Company construction drawings for future construction.

(D) At a minimum, all downguys and anchors required for Communication Company conductor shall be installed and properly tensioned before any Communication Company conductor is attached to a City Utilities' pole route or to any individual pole. In addition, all cable which is being attached to City Utilities' Facilities shall be pulled in a manner which will not place sudden tensions on City Utilities' Facilities while pulling the cable. City Utilities reserves the right to add or modify minimum construction requirements at any time throughout the term hereof at the sole discretion of City Utilities and such additions or modification shall be applicable to all attachment requests subsequent to issuance.

Section 2.4 Establishing Joint Use of Existing Poles

(A) Whenever Communication Company desires to reserve space for its Facilities on any existing pole owned by City Utilities, it shall make written application in the form of Exhibit A, including a construction drawing specifying the location of the poles in question and the number of Facilities to be attached to them. The application shall contain the construction drawings for making the attachments, including, without limitation, the location of the proposed joint poles, the number of attachments, the manner of attaching the Facilities, and mechanical and safety review of each pole both before and after the attachment of the Facilities (i.e., calculation of weight and stress on the pole). Within sixty (60) days after the receipt of such application, City Utilities shall notify Communication Company in writing whether or not the application is sufficient and whether the requested poles are acceptable for joint attachment. City Utilities will use its best efforts to complete make-ready work within thirty (30) days after it approves the construction drawings. However, City Utilities, in its sole discretion, may extend the time for completing make-ready work depending on the amount of make-ready work required and the amount of make-ready work it is doing for other attachers. After the completion of any make-ready work by City Utilities or others attached to the requested poles, Communications Company have the right to attach Facilities as specified in said application in accordance with the terms of this Agreement. Applications and

approvals as provided for in this agreement shall be submitted or secured so as to allow work to proceed as mutually agreed upon, or as otherwise herein provided.

(B) Whenever any joint pole, or any pole about to be so used under the provision of this Agreement, is insufficient in height or strength for the existing Facilities and for the proposed immediate additional Facilities thereon, City Utilities will indicate on Exhibit A the changes necessary to provide adequate poles and the estimated cost thereof and return it to Communication Company. If Communication Company still desires to attach the Facilities and returns Exhibit A marked to so indicate, together with an advance payment to reimburse City Utilities for the entire reasonable estimated cost and expense thereof, including the total associated engineering and/or consultant cost, the total in place cost of new poles, the cost of removal, and the expense of transferring City Utilities' Facilities from the old to the new poles, less any salvage recovery, City Utilities will replace, where necessary, such inadequate poles with adequate poles. Communications Company shall reimburse City Utilities and others previously attached to existing for the actual, reasonable cost of all make-ready work. These costs shall include, but not be limited to, the following: retiring the existing pole; installing a taller or stronger pole; transferring facilities to the new pole; and engineering and consulting.

(C) Communication Company shall, at its own expense, except as otherwise provided in this Agreement, and risk, and by the terms of this Agreement, place, transfer, and rearrange its own Facilities, place guys to sustain any unbalanced loads caused by its own Facilities, and shall at all times perform such work promptly and in such manner as not to interfere with the service of City Utilities or by other utility companies using said poles. Communication Company may not attach to City Utilities' anchors.

(D) Communication Company shall submit engineering calculations to City Utilities detailing mechanical strength calculations for all communication attachment requests as well as sag and tension information for communication cables. The calculations must adhere to NESC Grade B, NEC and OSHA codes and requirements.

(E) All Communication Company construction drawings which entail any work on City Utilities' Facilities or poles shall be prepared under the supervision of a Professional Engineer who is registered with the State Board for Architects, Engineers and Land Surveyors for the state of Missouri. All of the above-mentioned construction drawings shall be properly sealed by the Registered Engineer.

Section 2.5 Establishing Joint Use of Additional Poles

(A) When Communication Company requires additional poles between existing poles, because of Communication Company's proposed attachment to support the Facilities of the parties hereto and others having Facilities thereon, Communication Company shall be obligated to pay City Utilities the entire cost of such additional poles placed by City Utilities, plus the costs for City Utilities to attach its Facilities to the additional poles, and shall pay to other parties or companies having Facilities on said poles their cost of attaching to the additional poles. Establishing the joint use of additional poles shall follow the same process as for existing poles (given in Section 2.4),

including the Communication Company's submittal of written application (Exhibit A) and associated construction drawing(s).

(B) In the construction of additional pole lines, extensions of existing pole lines, or reconstruction of existing pole lines, City Utilities may, at the request of Communication Company, but solely at City Utilities' option, install poles suitable for support of Communication Company's Facilities. If City Utilities installs a pole exceeding (in height and/or class) the requirements of City Utilities' sole needs, Communication Company shall be obligated to pay City Utilities the difference in cost for the larger pole.

Section 2.6 Maintenance of Poles and Facilities

(A) City Utilities reserves to itself, its successors and assigns, the right to maintain its poles and to operate its Facilities thereon in such manner as will best enable it to fulfill its own service requirements, and the requirements of the latest edition of the NEC and NESC and City Utilities Electric Construction Standards, or any amendments or revisions of said documents, and such specifications particularly applying to City Utilities hereinbefore referred to. City Utilities shall not be liable to Communication Company or its customers for any interference with the operation of communication, wires, equipment, or Facilities of Communication Company arising in any manner out of the use of City Utilities' poles hereunder. Each party will exercise precautions to avoid damage to the poles and Facilities of the other.

(B) Any City Utilities' work that is required because of a Communication Company request to reduce or eliminate radio noise with respect to Facilities placed after the date of this Agreement shall be charged to Communication Company.

(C) Communication Company will at all times prevent its agents, employees, and contractors from damaging, altering, or repairing City Utilities' poles or Facilities or making attachments to them, except as allowed by this Agreement. Communication Company shall at all times exercise precautions to avoid damage to poles or Facilities of City Utilities and of others.

(D) City Utilities shall at all times exercise precautions to avoid damage to Facilities of Communication Company. However, damage to plant or Facilities of Communication Company or damage to any equipment of a subscriber to Communication Company's service arising from accidental contact to City Utilities' energized conductors shall be assumed by Communication Company, except to the extent caused by City Utilities' intentional misconduct.

(E) Communication Company shall at all times maintain all of its Facilities in accordance with the practices mentioned in this Article II and shall keep them in safe condition and in thorough repair.

Section 2.7 Bonding to City Utilities Ground

(A) For the purpose of this section, the following terms when used herein shall have the following meanings:

VERTICAL GROUND WIRE shall mean a wire conductor of City Utilities attached vertically to the pole and extended from City Utilities' multi-grounded neutral (defined below) through Communication Company's space to the base of the pole where it may be either butt wrapped on the pole or attached to a grounded electrode.

MULTI-GROUNDED NEUTRAL shall mean a City Utilities' conductor located in City Utilities' space which is bonded to all City Utilities' vertical ground wires.

BONDING WIRE shall mean a number 6 AWG copper wire or equivalent copper conductor connecting equipment of Communication Company and City Utilities to the vertical ground wire. The bond wire shall be connected by a City Utilities' approved bolted connector. Connecting the bond wire by a squeeze-on type connector to the vertical ground wire shall not be permitted.

NOTE: **Items B, C, D & E apply only to current carrying conductor and equipment.**

(B) At the time the Communication Company cable is installed, Communication Company shall install a "bonding wire" on every pole where a "vertical ground wire" exists. Any piece of communication equipment attached to a City Utilities' pole which does not have a "vertical ground wire" shall be bonded to the fiber optics cable messenger.

(C) Communication Company will use reasonable care not to break, cut, sever, or otherwise damage City Utilities' vertical ground wire.

(D) City Utilities reserves the right to install a bonding wire to any piece of Communication Company equipment where, in the opinion of City Utilities, a safety hazard exists or may exist in the future. The City Utilities' costs associated with this type of bonding wire installation shall be paid for by Communication Company.

(E) For the safety of its employees, Communication Company shall instruct its employees working on City Utilities' poles of the dangers involved in bonding Communications Company's wires to City Utilities' vertical ground wire and shall furnish proper protective equipment to its employees. City Utilities assumes no responsibility either for instructing, for furnishing equipment to, or for the liability arising from Communication Company's agents, employees, and contractors working on City Utilities' poles. Communication Company shall indemnify, defend and hold harmless City Utilities, its agents and employees from and against all claims, expenses and attorney fees arising from injuries or damage to Communication Company, its agents, employees, and contractors, even if caused by the negligence of City Utilities, except to the extent caused by the willful misconduct of City Utilities, its agents, employees, or contractors.

Section 2.8 Calculation of City Utilities' Costs

All costs incurred by City Utilities and billed to Communication Company (including, but not limited to, make-ready costs) shall be calculated in accordance with the standard accounting practices of City Utilities.

ARTICLE III

LEGAL REQUIREMENTS

Section 3.1 Right-Of-Way for Communication Company Attachments

No guarantee is given by City Utilities of permission from property owners, municipalities or others for the use of its poles by Communication Company. Communication Company shall be obligated to specify use and obtain all necessary authority from the property owners, municipalities or others for the attachment of its Facilities. Should Communication Company fail to obtain proper authority and the owner demand removal of its Facilities, Communication Company shall promptly remove same or promptly pursue administrative or judicial relief. In any event Communication Company shall hold harmless and indemnify City Utilities from any loss, damages, attorney fees or other costs incurred for reasons of attachment without authority. Should Communication Company fail to remove its Facilities within thirty (30) days after final order requiring removal, City Utilities may remove them without any liability for loss or damage, and Communication Company shall reimburse City Utilities for the expense incurred.

Section 3.2 Governmental Requirements

(A) Communication Company shall secure all authorizations which may be required by any governmental authority for the construction, operation and maintenance of its Facilities.

(B) No license granted under this Agreement shall extend to any of City Utilities' poles or underground systems where the placement of Communication Company's Facilities would result in a forfeiture of the rights of City Utilities, or joint users, to occupy the property on which such poles or underground systems are located. If the existence of Communication Company Facilities on City Utilities' pole or underground system would cause a forfeiture of the right of City Utilities, or joint users, or both to occupy such property, Communication Company agrees to remove its Facilities forthwith upon notification by City Utilities. If said Facilities are not so removed, City Utilities may perform and/or have performed such removal without liability on the part of City Utilities, and Communication Company agrees to pay City Utilities, or joint user, or both, the cost thereof and for all losses and damage that may result, except to the extent caused by the willful misconduct of City Utilities, its agents, employees, or contractors.

ARTICLE IV

EVIDENCE TO OPERATE FROM GOVERNMENT AND MUNICIPAL AUTHORITIES

Communication Company shall obtain necessary authority from all governmental agencies to own and operate a communication system in the geographical area described in this Agreement and upon request submit to City Utilities evidence of such authority. City Utilities reserves the right to terminate an existing license or refuse to grant a new license if Communication Company fails to provide satisfactory evidence of such authority.

ARTICLE V

INSPECTION

City Utilities, because of the importance of its service, reserves the right to inspect each new Communication Company installation on City Utilities' poles and in the vicinity of City Utilities' lines. City Utilities also reserves the right to make periodic inspections to determine if the Communication Company's construction complies with the approved construction drawings, City Utilities' requirements and/or standards and applicable codes, and to determine if unauthorized attachments have been made to City Utilities' poles. If a significant violation of this provision on the part of Communication Company is discovered, City Utilities shall notify Communication Company and may require Communication Company to provide a representative to accompany a City Utilities' representative on a complete inspection of all joint use Facilities if the violations appear to affect a substantial portion of joint use Facilities. Communication Company shall, on demand, reimburse City Utilities for the expense of such inspections. Any charges imposed by City Utilities for such inspections shall be in addition to any other sums due and payable by Communication Company under this Agreement. City Utilities' periodic inspections or the lack thereof shall not relieve Communication Company of any responsibilities, obligations, or liabilities assumed under this Agreement. Existing installations, including maintenance replacements, that currently comply with prior standards, need not be modified to comply with new standards except as may be required pursuant to Section 2.3(A) above. Within twenty-four (24) hours after receiving notice from City Utilities, Communication Company shall remedy any unsafe condition in its Facilities or within thirty (30) days, or such other mutually agreeable timeframe, remedy any condition in its Facilities that interferes with City Utilities' poles, lines, or equipment or the Facilities of any other company attached to City Utilities' poles. If Communication Company fails to do so, then City Utilities may remedy such condition and Communication Company shall pay City Utilities' costs for doing so. In the event of an emergency, City Utilities may correct the condition without providing notice, but shall use commercially reasonable efforts to provide notice as soon possible once the emergency condition is addressed. Nothing contained herein shall be construed as creating a duty on the part of City Utilities to inspect or maintain Communication Company's Facilities.

ARTICLE VI

ABANDONMENT OF JOINT POLES AND REMOVAL OF FACILITIES

(A) Communication Company may, at any time, remove its Facilities from any pole or poles of City Utilities, but shall give City Utilities written notice within seven (7) days of such removal in the form of Exhibit B, attached hereto and made a part hereof.

(B) Upon receipt of written notice from City Utilities that said Facilities interfere with City Utilities' property or any relocation, removal, or rearrangement thereof, or endanger its employees or the public, Communication Company shall, at its own expense, retire, alter, rearrange, reroute, improve or repair said attachments in such manner as City Utilities may reasonably request.

(C) City Utilities and Communication Company will cooperate to schedule work as soon as possible after notification. Communication Company will pursue its work so as not to delay the work of City Utilities.

(D) If City Utilities desires at any time to abandon any joint pole(s), it shall give Communication Company 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, City Utilities shall have no Facilities on such pole(s) but Communication Company shall not have removed all of its Facilities therefrom, City Utilities may remove, at the expense and risk of Communication Company, Communication Company's Facilities, as stated in Article II, Section 2.2(A) above, or City Utilities may sell, at City Utilities' option, the joint pole(s) to Communication Company (or other joint users), and Communication Company shall save harmless City Utilities of such sold pole(s) from all obligation, liability, damages, costs, expenses, including attorney fees, or charges incurred thereafter because of or, arising out of, the presence or condition of such pole or of any Facilities thereon, even if caused by the negligence of City Utilities; and shall pay City Utilities a sum equal to the current in-place value less expired service life of such abandoned pole or poles at time of abandonment. Expired service life shall be based on an assumed pole life of twenty-five (25) years.

ARTICLE VII

RENTAL AND PROCEDURE FOR PAYMENTS

Section 7.1 Rental Determination

(A) The monthly rental amount to be paid by the Communication Company for each attachment on City Utilities' poles shall be in accordance with Exhibit D - Rental Costs, unless other mutually agreed upon arrangements are made. Any change in rental shall be pursuant to written notice by City Utilities at least 60 days prior to the commencement of the new monthly billing period.

(B) City Utilities' pole attachment rates are based on the following formula:

$$\text{Maximum Rate} = \text{Unusable Space Factor} + \text{Usable Space Factor}$$

$$\text{Where: } \text{Unusable Space Factor} = \frac{2}{3} \times \frac{\text{Unusable Space}}{\text{Pole Height}} \times \frac{\text{Net Cost of Bare Pole}}{\text{Number of Attachments}} \times \frac{\text{Carrying Charge Rate}}$$

$$\text{Usable Space Factor} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}}$$

The costs to be used in the formula are based on historical costs. "Unusable space" includes ground clearance with pole set in ground and 40 inches of safety space. "Usable space" is pole space available for use by City Utilities and attachments.

(C) City Utilities' pole attachment rates will be updated as needed, but no more frequently than once per calendar year, in order to continue to reflect its cost of providing pole attachment services.

(D) Overlashing shall be treated as a separate attachment except that attachers may overlash their own facilities' at no additional cost. However, proper application must be made to City Utilities for all planned overlashing. Attachers are responsible for any additional make-ready costs attributable to their overlashing, including overlashing to their own facilities. The term "overlashing" refers to the practice by which a new cable or wire is wrapped around an existing cable or wire, rather than being strung separately.

(E) The first payment shall be due on the effective date of this agreement. Subsequent payments shall be due on the first day of each month thereafter for the term of this agreement. The rental per pole shall apply to any attachments made or removed during the month and rents shall not be prorated.

(F) Failure to pay any rental payment within thirty (30) days after it is due shall constitute a default of this agreement if such remains unpaid ten (10) days after receipt of written notice of such nonpayment.

(G) In the event said rental amount due is not paid in full within thirty (30) days after it is due, a service charge in the amount of one and one-half percent (1½%) compounded monthly or the maximum interest rate permitted by state law, whichever is less shall be applied to the unpaid rental balance existing on the first day of each month, continuing for each subsequent month until rental amount is paid in full.

(H) Each Communication Company power attachment to City Utilities' secondary service shall be considered one service each and the General Terms and Conditions Governing Electric Service shall be effective and abided by unless other arrangements are mutually agreed upon in writing between Communication Company and City Utilities.

Section 7.2 Inventory of Communication Company Contacts

City Utilities shall maintain a perpetual inventory of total Communication Company Facilities and all future rental fees shall be based on such perpetual inventory. City Utilities shall have the right to require a physical inventory to be taken of Communication Company's Facilities on City Utilities' poles upon ninety (90) days' advance written notice. City Utilities may perform the inventory in-house or select a contractor for the inventory through a competitive bid process or through an existing service contract. If a competitive bid process for the inventory is used, Communication Company shall be permitted to supplement City Utilities' invitation to bid list to include contractors designated by Communication Company.

A physical inventory shall be taken no more frequently than once every year; provided, however, that City Utilities may request and require a physical inventory to be taken more frequently in the event of a material default by Communication Company in the performance of its obligations hereunder. The cost of all physical inventories shall be shared equally among City Utilities and pole users who are being inventoried. As an alternative to performance of the jointly conducted physical inventory, the parties may, if mutually agreeable, determine the number of Facilities from existing maps and/or Facilities records, provided that such maps or records exist and that each party

agrees that results with reasonable accuracy can be achieved. If this method is agreed upon by both parties, any maps and/or records belonging to one of the parties and utilized to count Facilities shall be made accessible to the other party and the number of Facilities shall be determined through a mutual and cooperative effort of both parties. The results of Facilities counts performed in this manner shall be treated, for the purpose of determining rentals and other charges due for unauthorized Facilities, as if results were achieved by an actual physical inventory.

Section 7.3 Back Payments of Unreported Pole Contacts

In the event that the number of poles to which Communication Company has attached its Facilities differs from the number shown in City Utilities' records, the difference shall be prorated over the period since the last such accounting or to the date of this Agreement, whichever is later. If this results in an increase in the number of poles to which Communication Company has attached for any year during such period, Communication Company shall forthwith pay to City Utilities the fees due for such poles for such year. If it results in a decrease in the number of poles to which Communication Company has attached for any year during such period, City Utilities shall forthwith refund to Communication Company the fees previously paid for such poles for such years. The prorated payment is in addition to the \$25.00 payment discussed in Article II Section 2.1D.

ARTICLE VIII

UNDERGROUND INSTALLATIONS

Joint use utilizing underground Facilities are outlined in Part II, "Underground Installations," of this Agreement.

ARTICLE IX

LIABILITY AND INSURANCE

Except where specifically provided elsewhere in this Agreement, when any liability is incurred by either or both of the parties hereto for damages 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 or Facilities under this Agreement, or due to the proximity of the Facilities of the parties 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 third persons or third person's property caused solely by its negligence or willful misconduct or solely by its failure to comply at any time with the practices herein provided, except as provided otherwise herein.
- (B) In the event such injuries are proximately caused by the concurrent negligence of both parties hereto, each party shall be liable for such damages in the same proportion that the damages caused by the negligence of the respective party bears to the total damages.

(C) Where, on account of injuries of the character described in the preceding paragraphs of this Article, either party hereto shall be required to make any payment to its injured employees or to the relatives or representatives in conformity with: (1) the provisions of any Workers' Compensation Act or any act creating a liability on the part of 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 sections of this Article.

(D) 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 under the provisions of Section (B) of this Article 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 the share 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.

(E) In the adjustment between the parties hereto of any claim for damages arising hereunder, or the liability assumed hereunder, 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, attorney fees, disbursements and other proper charges and expenditures.

(F) (1) Communication Company shall indemnify, defend, and save City Utilities harmless from and against all liability including but not limited to all costs, attorneys' fees, disbursements, and other proper charges and expenditures which City Utilities may incur, regardless of Communication Company's insurance limits, as a result of the negligence or breach of the terms of the Agreement, or the willful or grossly negligent acts or omissions of Communication Company, its employees, agents, servants or independent contractors (other than City Utilities), while in the course of the performance of this Agreement which causes damages to third parties or to the property of third parties as a result of interference or interruptions in electric, gas, telecommunications, or water service which are proximately caused by such acts, omissions or breaches. The obligation to indemnify and save harmless City Utilities is conditioned on the following:

(a) that City Utilities shall give reasonable notice in writing to Communication Company of such a claim; and

(b) that Communication Company shall have the sole control of the defense of any action on such a claim, and all negotiations for the settlement or compromise of the same; and

(c) should any situation become, or in Communication Company's opinion be likely to become, the subject of any such claim or action, City Utilities shall permit Communication Company, at the option and expense of Communication

Company, to take such reasonable action as may be appropriate under the circumstances to avoid such claim, or to effectuate the settlement thereof; and

(d) Communication Company shall have no liability to City Utilities hereunder for any damages caused solely by City Utilities, its agents, servants, employees, or independent contractors (other than Communication Company), except as expressly provided otherwise herein;

(2) In the event Communication Company compromises or settles such a claim with a third party, Communication Company shall obtain a release of all claims arising out of that particular incident against City Utilities, in addition to any release in favor of Communication Company.

(G) Communication Company shall carry and keep in force, while this Agreement is in effect, insurance contracts, policies and protection in a reliable company or companies satisfactory to City Utilities in amounts and for coverage deemed necessary for its protection by Communication Company, but in no event for amounts or coverage less than the following minimum requirements:

(1) Comprehensive general liability insurance and independent contractor's insurance, with minimum limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate for bodily injury and property damage, including coverage for damage caused by blasting, collapse or structural injury, and/or damage to underground Facilities, protecting Communication Company against and in respect to all matters, liabilities, contingencies, and responsibilities created, referred to or touched upon in this Agreement, including, without limiting the foregoing, contractual liability insurance covering Communication Company's obligations under this Agreement with minimum limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate for bodily injury and property damage to indemnify and to so hold City Utilities harmless.

(2) Communication Company shall also carry and keep in force, while this agreement is in effect, Workers' Compensation insurance in compliance with the laws of this State and employer's liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000).

(3) Communication Company shall furnish City Utilities with certificates of insurance showing that such insurance is in force and will not be canceled or modified without thirty (30) days' prior notice in writing by the insuring company to the Risk Manager of City Utilities. Neither acceptance nor knowledge (by and of City Utilities) of the procurement of Communication Company of insurance protection of lesser scope than that required to be procured by them under this Agreement shall in any manner or for any purpose constitute or be deemed a waiver by City Utilities of the requirements imposed respecting insurance protection, nor shall any such acceptance or knowledge of insurance protection of lesser scope in any manner or for any purpose lessen or modify or constitute a limiting interpretation of the scope of the matters covered by and obligations of Communication Company under this Agreement.

ARTICLE X

THIRD-PARTY CONTRACTS

Nothing herein contained shall be construed to confer on Communication Company an exclusive right to attach Facilities to City Utilities' poles in the geographic area covered by this Agreement and any supplement hereto, and it is expressly understood that City Utilities has the unconditional right to permit any other person, firm or corporation to make attachments to the same poles in the geographic area covered in this Agreement and any supplements hereto.

ARTICLE XI

GOOD FAITH ENDEAVOR

The parties agree to conduct themselves reasonably and in good faith in implementing the terms of this Agreement.

ARTICLE XII

EXISTING CONTRACTS

All existing agreements between the parties hereto for the joint use of poles and Facilities are by mutual consent hereby abrogated and superseded by this Agreement.

ARTICLE XIII

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 XIV

PAYMENT OF TAXES

Each party shall pay all taxes and assessments lawfully levied on its own property upon said joint Facilities.

ARTICLE XV

ASSIGNMENT OF RIGHTS

- (A) Communication Company shall not assign, transfer or sublet the privileges hereby granted without the prior written consent of City Utilities, which it may withhold in its sole discretion.
- (B) No use, however extended, of City Utilities' poles, under this Agreement, shall create or

vest in Communication Company any ownership or property rights in said poles, but Communication Company's rights therein shall be and remain a mere license or right to use property. Nothing herein contained shall be construed to compel City Utilities to maintain any of said poles for a period longer than demanded by its own service requirements. City Utilities reserves the right to refuse to license a portion of any pole to Communication Company for any reason whatsoever (within the sole discretion of City Utilities). At the time an application is denied, City Utilities shall advise Communication Company in writing of its reason for refusing any such license.

ARTICLE XVI

TERM OF AGREEMENT

This Agreement shall become effective upon its execution and shall have an Initial Term that expires ten (10) years thereafter.

ARTICLE XVII

TERMINATION AND DEFAULTS

(A) If Communication Company shall materially default in any obligation under this Agreement, City Utilities may, in addition to all other legal and equitable remedies which it may have or pursue, elect one or more of the following remedies all of which shall be cumulative in nature and the election of any one of which shall not be deemed an exclusive remedy to the exclusion of the others;

- (1) cause the obligation to be fulfilled, in which event, in each such instance, Communication Company shall be obligated to reimburse City Utilities for the cost thereof;
- (2) if the obligation cannot be remedied pursuant to (1), City Utilities may assess special damages of ONE HUNDRED DOLLARS (\$100) per day of default not to exceed FIVE THOUSAND DOLLARS (\$5000) per event;
- (2) or City Utilities, at its option, may terminate Communication Company's use of particular poles covered by this Agreement;
- (3) or City Utilities may, at its option, terminate this Agreement in its entirety.

Any such termination shall be effective by written notice from City Utilities to Communication Company, and termination shall be effective at such time as shall be stated in the notice.

Prior to exercising any remedy or terminating this Agreement, City Utilities shall provide written notice to Communication Company and an opportunity to cure the alleged default within thirty (30) days, or within such time frame as is reasonable to effect a cure which cannot be completed within thirty (30) days.

(B) Termination shall not relieve or affect any obligation of Communication Company to City Utilities which shall have arisen or which shall exist at the time of termination or which, under the provisions of this Agreement or by law, shall exist or arise upon or by reason of or after termination.

(C) Upon termination of Communication Company's use of particular poles, Communication Company shall immediately remove its Facilities from all such poles; the failure to do so shall entitle City Utilities to remove same.

(D) In each instance in which City Utilities removes Facilities of Communication Company hereunder, City Utilities may, at its option, store, place, or deposit same at any location owned or occupied by Communication Company or any location convenient to City Utilities, or may dispose of same as scrap or waste without any responsibility or liability on account thereof or for the protection and care thereof; City Utilities shall have and is hereby granted by Communication Company complete power to take and effectuate any of the forgoing options without liability therefor. Communication Company will indemnify City Utilities and hold it forever harmless from all liability, loss, expense, costs, damages, causes of action, and claims of every kind and nature by any and all persons on account of any acts or omissions of City Utilities under this section, including City Utilities' negligence. Communication Company shall reimburse City Utilities for its costs in removing Communication Company's Facilities.

(E) The parties stipulate and agree that if any action is instituted under the terms of this Agreement, then this Agreement shall be governed by the laws of the state of Missouri and any action pertaining to this Agreement may be maintained in the United States District Court for the Western District of Missouri Southern Division, provided that jurisdiction exists in said court or alternatively, in the Circuit Court of Greene County, Missouri. The selection of venue shall be in the sole discretion of City Utilities.

ARTICLE XVIII

BOND OR CERTIFICATE OF DEPOSIT

(A) Communication Company shall furnish a performance Bond or Certificate of Deposit to City Utilities to guarantee City Utilities the performance of Communication Company's obligations under this Agreement. If a Certificate of Deposit is furnished, an Assignment of the Certificate will be in the form of Exhibit C, attached hereto and made a part hereof. The Certificate of Deposit shall be issued by a bank, savings and loan, or by this reference similar financial institution satisfactory to City Utilities. The amount of Bond or Certificate of Deposit shall be determined by the number of Communication Company attachments as set forth in the following schedule.

<u>Number of Attachments</u>	<u>Amount of Performance Bond or Certificate of Deposit</u>
0 - 2,500	\$25,000

(B) City Utilities may waive the requirement of the Certificate of Deposit or Bond if Communication Company has established a history of satisfactory performance of Communication Company's obligations under this Agreement. Should the requirement of an Assignment of a Certificate of Deposit or a Bond be waived, City Utilities may at any time thereafter require Communication Company to again furnish an Assignment of a Certificate of Deposit or a Bond in the amount set forth in the above schedule by giving Communication Company thirty (30)-days written notice of the requirement.

ARTICLE XIX

FORCE MAJEURE

Except as otherwise provided herein, neither City Utilities nor Communications Company shall be liable or deemed in default for any delay or failure in performance of any part of this Agreement if due to a cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, governmental regulations, embargoes, work stoppages, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, other major environmental disturbances, unusually severe weather condition, inability to secure products or services of other persons or transportation facilities, acts or omissions of transportation carriers. The affected party upon giving written notice of the force majeure condition to the other party shall be excused from the performance to the extent necessitated; provided, however, that the affected party shall use its best efforts to correct such condition as soon as possible.

ARTICLE XX

NATIONAL JOINT UTILITIES NOTIFICATION SYSTEM

Communications Company shall, at its sole expense, become a member of and maintain its membership in the National Joint Utilities Notification System, or such other utility notification system that City Utilities in its sole discretion designates ("Notification System") for the term of this Agreement. Communications Company shall use the Notification System for communication and project notification under this Agreement, including, without limitation, arranging for pole attachments, conduit use, and Facilities transfers.

PART II

BURIED ELECTRIC, COMMUNICATION, AND/OR TELEPHONE

DISTRIBUTION SYSTEMS IN A COMMON TRENCH

ARTICLE I

SCOPE

- (A) Part II shall apply to buried construction in the areas in which all parties render service, when and where the joint use of a common trench will be of mutual advantage.
- (B) City Utilities reserves the right to exclude its conduits and trenches from joint use.
- (C) Communication Company shall bury, at its own risk and expense, communications cables in areas classified as utility underground areas.

ARTICLE II

DEFINITIONS

For the purpose of Part II, the following terms, when used herein, shall have the following meanings:

- (A) CODE means the National Electrical Safety Code ("NESC"), including all supplements and future revisions and supplements thereto.
- (B) COMMON TRENCH is a term used to describe a trench of the necessary width and depth on a single easement containing electrical cables, communications, and television cables and/or wires and/or cables of more than one party.
- (C) BONDING is a term used to describe the connection of the telephone, fiber optics, or television cable shield or closure to the electric neutral ground wire at designated locations.

ARTICLE III

PRACTICES

- (A) The joint use of trenches covered by Part II shall at all times be in conformity with practices as prescribed by the NESC, including all future revisions and supplements thereto, except where the requirements of the public authorities may be in excess of the requirements of the NESC. Joint-use trenches shall also be in conformity with the requirements of City Utilities Electric Distribution Construction Standards trench specifications.

ARTICLE IV

ESTABLISHING JOINT USE OF TRENCHES - RECOMMENDATIONS OF INITIAL INSTALLATION

(A) Information regarding planning and construction should be exchanged, and operation and maintenance procedures should be worked out jointly between City Utilities, Communication Company, telephone company, and any other communication companies, as well as any other parties involved with joint trenches.

(B) The route and location of the common trench should be chosen such that it will result in the most feasible location when considering accessibility, economy, and efficient operation and maintenance of Facilities owned by parties sharing the common trench. The final trench location will be determined by City Utilities when a discrepancy exists over the most feasible location of the common trench.

(C) City Utilities will prepare and submit drawings or work orders showing the location and depth of the trench for final grades and location of all junction enclosures, transformers, etc.

(D) In new developments, each party with Facilities in the common trench will each obtain the easements it requires.

(E) All parties of the joint trench installation shall cooperate to schedule performance of the work.

ARTICLE V

GENERAL INSTALLATION SPECIFICATIONS

(A) Any additional work City Utilities performs to reduce noise on the communications cables shall be at the expense of Communication Company. Communication Company shall bear all the costs to eliminate a serious induced voltage problem to the extent caused by its equipment, when such problem exists in a common trench between the parties.

(B) Minimum trench depth shall be 36 inches for City Utilities primary electric conduits with telephone and/or communications conduits/cables installed a minimum of 12" above City Utilities primary electric conduits.

(C) Minimum trench depth shall be 24 inches for City Utilities secondary and customer-owned underground electric service conduits, with telephone and/or communications conduits/cables installed a minimum of 12 inches separation from City Utilities secondary conduits. Communication Company shall note that underground electric service cables and trench installation are not provided by City Utilities.

(D) The telephone cable shield, communications cable shield, and electric neutral shall be bonded together as necessary to comply with current company practices and the NESC.

(E) Electric, communications, and/or telephone cables shall be placed, and the trench shall be backfilled so that initial and final compaction of the backfill will not damage the cables. Select backfill or sand shall be specified for bedding and backfill in close proximity to the cable whenever the excavated earth contains rocks or other sharp objects which might cause damage to direct buried telephone and/or electric cables. Backfill requirements for the joint trench shall meet trench specifications in City Utilities Electric Distribution Construction Standards.

ARTICLE VI

MAINTENANCE AND EXTENSIONS OF EXISTING SYSTEMS

COMMON TRENCH

(A) Before excavating near underground Facilities, Communication Company shall, in accordance with statutory requirements, request Missouri One Call System to locate and mark all underground Facilities.

(B) Before excavating for a buried fault, the telephone, communications, and electric cables shall be located from ground surface, and burial depth should be determined. After excavating, electrical identification shall be made before any cables are opened or cut. In case of a dig-in where cables can be positively identified by appearance, electrical identification is not required.

(C) Buried Facilities shall be uncovered by using insulated hand tools. Power digging equipment shall not be used except when working in a direction away from the existing cables after they have been exposed by hand digging.

(D) If damage to buried cables involves only Communication Company's Facilities, Communication Company shall notify City Utilities and all other parties with Facilities in common trench prior to beginning repairs. Repair costs involving only one party shall be borne solely by the party executing the repairs.

(E) If the damage to buried cables involves only City Utilities electric Facilities, City Utilities shall immediately notify Communication Company and all other parties with Facilities in the common trench prior to beginning repairs.

(F) If the damage involves the Facilities of more than one party, the party first on the scene shall immediately notify the other parties. City Utilities should de-energize its cables, complete the excavation, and repair the electric Facilities. Each party may desire, or may be requested by the other parties, to mechanically and electrically protect its Facilities during the repair operation. The excavation and backfill for the repairs should be shared equally by the parties performing the repairs.

ARTICLE VII

COST SHARING AND PROCEDURE FOR PAYMENTS

Section 7.1 Equitable Cost Sharing for Trenching and Backfill

All parties in a common trench shall share the cost of trenching and backfilling equally.

ARTICLE VIII

PROVISIONS OF PART I APPLICABLE TO PART II

To the extent that they can be applied, the provisions of Part I are applicable to Part II, including, but not limited to, Articles I, III, IV, V, VI, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII and XIX. When applying the provisions of Part I to Part II, references to "pole" or "poles" shall be deemed to be references to conduits or trenches, as the case may be. However, only the provisions of Part II shall apply to the procedures for the establishment and use of conduits and trenches.

ARTICLE IX

JOINT OCCUPANCY WITH OTHERS

At City Utilities' option, other companies or parties will be permitted to share the common trench. Communication Company must reach a financial and trench space allocation agreement with these other parties.

Signatures are on the following page

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate by their respective officers who are duly authorized, per the dates set forth below.

**BOARD OF PUBLIC UTILITIES OF THE
CITY OF SPRINGFIELD, MISSOURI**

Date: 12/19/18

By: [Signature]

ATTEST

[Signature]
Associate General Manager

Approved by Leg
[Signature]

GREENE COUNTY MISSOURI

Dated: _____

By: Absent
Robert Cirtin
Presiding Commissioner

Dated: 12/06/18

By: [Signature]
Harold Bengsch
Commissioner 1st District

Dated: 12/06/18

By: [Signature]
Lincoln Hough
Commissioner 2nd District

COUNTY CLERK

By: [Signature]
Shane Schoeller
Greene County Clerk *by Lorie Bruer CLK*

Auditor Certification

I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of anticipated revenue appropriated for payment of same.

By: [Signature] 12/6/18
Cindy Stein
Greene County Auditor

EXHIBIT A

ATTACHMENT RENTAL CONTRACT

APPLICATION AND LICENSE

Application No. _____, 20__

In accordance with the terms of Agreement dated _____, 20__, application is hereby made for authority to make attachments to City Utilities' poles for installation of communication facilities as indicated on the attached construction detail drawing(s) number(s) _____.

A nonrefundable application fee of \$50.00 per pole is included with this application. Construction work, as provided for under this "Application and License," shall commence within thirty (30) days and be completed within one hundred twenty (120) days of the later of the following: (1) approval date of this Application and License as set forth below, or (2) completion of all make-ready work, otherwise this Application and License shall become null and void. Construction work shall conform to approved construction drawing(s) for the following purposes _____.

GREENE COUNTY MISSOURI

By: _____

Title: _____

CITY UTILITIES OF SPRINGFIELD, MISSOURI:

License will be granted, subject to your approval of the following changes and rearrangements at an estimated cost to you of \$ _____, payable in advance.

License denied under Section _____, 20__.

The above changes and rearrangements approved _____, 20__, and advance payment therefor enclosed.

Accepted:

GREENE COUNTY MISSOURI

CITY UTILITIES OF SPRINGFIELD,
MISSOURI

By: _____

By: _____

Title: _____

Title: _____

EXHIBIT B

ATTACHMENT RENTAL CONTRACT

NOTICE TO VACATE POLES

In accordance with the terms of the Agreement dated _____, 20__, please cancel from your records attachments to the City Utilities poles indicated on the attached map and discontinue rental charges per the terms of the above referenced Agreement.

Location: SEE MAP ATTACHED

GREENE COUNTY MISSOURI

By: _____

Title: _____

ACKNOWLEDGEMENT OF NOTICE

_____, 20__

Poles Discontinued This Notice _____

CITY UTILITIES OF SPRINGFIELD,
MISSOURI

By: _____

Title: _____

EXHIBIT C

ASSIGNMENT OF CERTIFICATE OF DEPOSIT

In lieu of a bond, as required by Part I, Article XVIII of the pole line Agreement between GREENE COUNTY MISSOURI and CITY UTILITIES OF SPRINGFIELD, MISSOURI, dated _____, 20____, _____ hereby sells, assigns, and transfers to CITY UTILITIES OF SPRINGFIELD, MISSOURI, a certificate of deposit, in the amount of _____ DOLLARS (\$ _____) by _____

(Name of Bank)

and hereby irrevocably appoints CITY UTILITIES OF SPRINGFIELD, MISSOURI to act as its attorney-in-fact to transfer, and/or liquidate said certificate of deposit and apply the proceeds to any indebtedness owed by GREENE COUNTY MISSOURI to CITY UTILITIES OF SPRINGFIELD, MISSOURI for any obligation under said Agreement for the attachment of any cables, wires, appliances and Facilities owned by GREENE COUNTY MISSOURI to poles of CITY UTILITIES OF SPRINGFIELD, MISSOURI.

Dated this _____ day of _____, 20____.

By: _____

STATE OF MISSOURI)
)
COUNTY OF _____) ss.

On this _____ day of _____, 20____, before me personally appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he is the _____ of GREENE COUNTY MISSOURI and that he, as such officer, being authorized to do so, had executed the foregoing instrument for the consideration, uses and purposes therein contained and in the capacities therein stated, by signing the name of the corporation by himself as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in _____, the day and year first above written.

Notary Public

My Commission Expires:

EXHIBIT D

RENTAL COST

A) Pole Attachment Rental Payment

Subject to the provisions of Part 1, Article VII, the communication company must pay City Utilities a monthly rental amount of \$0.72 per attachment for the total number of communication company attachments, new and old, existing on City Utilities poles on the first day of each month in accordance with the terms of Part I, Article VII.

B) Conduit Usage Rental Payment

Subject to the provisions of Part II, Article VII, the communication company must pay City Utilities a monthly rental amount of \$0.16 per conduit foot use for the total footage used, new and old, existing in City Utilities conduit on the first day of each month in accordance with the terms of Part II, Article VII.