

RULE NO.: R161-20.03

POSTING DATE: February 3, 2020 FEB 3 2020 PM 2:06

NOTICE OF PROPOSED RULE

The General Manager of the Department of Austin Energy proposes to adopt the following rule. This notice solicits comments from the public. This notice of proposed rule is issued under the authority of Chapter 1-2 of the City Code.

Comments on the proposed rule are requested from the public. Comments should be submitted to Philip Oliver Higgs; Austin Energy, 2500 Montopolis Dr, Austin, Texas 78741; Phone: (512) 322-6160; Email: Philip.Higgs@austinenergy.com. To be considered, comments must be submitted before March 3, 2020, the 32nd day after the date this notice is posted. A summary of the written comments received will be included in the notice of rule adoption that must be posted for the rule to become effective.

An affordability impact statement regarding the proposed rule is pending; once approved it is available for inspection or copying at the address noted in the preceding paragraph

EFFECTIVE DATE OF PROPOSED RULE

A rule proposed in this notice may not become effective before the effective date established by a separate notice of rule adoption. A notice of rule adoption may not be posted before March 3, 2020 (the 32nd day after the date of this notice) or not after April 10, 2020 (the 70th day after the date of this notice).

If a proposed rule is not adopted on or before April 10, 2020, it is automatically withdrawn and cannot be adopted without first posting a new notice of a proposed rule.

TEXT OF PROPOSED RULE

A copy of the complete text of the proposed rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

Department of Austin Energy located at St. Elmo 2500 Montopolis Dr, Austin, Texas 78741; and

Office of the City Clerk, City Hall, located at 301 West 2nd Street, Austin, Texas.

BRIEF EXPLANATION OF PROPOSED RULE

R161-20.03: Revises the 'Austin Energy Pole Attachments' located in Section 6 of Utilities Criteria Manual:

Attachment of certain cabinets, power supplies, and other equipment to poles

Attachment of more than 3 riser conduits to a pole

Update Diagrams

Grammar and Format corrections

Update References

AUTHORITY FOR ADOPTION OF PROPOSED RULE

The authority and procedure for adoption of a rule to assist in the implementation, administration, or enforcement of a provision of the City Code is provided in Chapter 1-2 of the City Code. The authority to regulate construction requirements is established in Chapter 15-9 of the City Code.

CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Proposed Rule (R161-20.03), the City Attorney certifies the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

REVIEWED AND APPROVED



Jackie A. Sargent
General Manager, Austin Energy Department

Date: 1-27-2020



Anne L. Morgan
City Attorney

Date: 2/3/2020

SECTION 6 – AUSTIN ENERGY POLE ATTACHMENTS

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SECTION 6 – AUSTIN ENERGY POLE ATTACHMENTS

6.1 – PURPOSE, SAFETY, DEFINITIONS

6.1.1 – PURPOSE

This section implements City Code Chapter 15-7 pertaining to the use of Austin Energy distribution and street lighting infrastructure by providers of cable television, telecommunication, and certain other data or communication services, including wireless service, who possess the right by virtue of city, state, or federal law to access and operate on electric utility infrastructure. It is intended to set forth the general terms and conditions under which Austin Energy will accommodate pole attachments by these service providers, including standard license agreements that must be executed before pole attachments will be permitted. It also provides the engineering design and construction standards and practices that must be adhered to by all entities attaching to Austin Energy infrastructure.

Adherence to the standards, guidelines, procedures, and requirements of this section will support the application process, and will allow completion of providers' installation projects with minimum delay and conflict while helping ensure the safety and reliability of Austin Energy's system.

Execution of a license agreement does not guarantee permission for an attachment will be granted. Austin Energy may always deny access to a pole where insufficient space or other capacity exists, or reasons of safety, reliability, or generally accepted engineering or electrical grid operating practices.

This document is intended only as standards and guidelines and is not an engineering specification. This section is to be used in conjunction with the current version of the National Electrical Safety Code (NESC), which establishes the minimum design requirements with regard to the design and installation of communication cables and other facilities on electric infrastructure. Austin Energy's design standards may nonetheless exceed those of the NESC – in any given instance the more stringent of the two requirements shall apply unless a specific variance has been granted by Austin Energy in writing.

Service providers attaching to Austin Energy infrastructure must comply with all standards and requirements set forth in this section or otherwise required by law. In all situations it is the responsibility

of the attaching provider to be familiar with and adhere to the current versions of applicable laws and regulations during the installation, maintenance, and operation of their facilities on Austin Energy infrastructure.

Austin Energy will publish and adopt amendments to this document as it deems necessary.

6.1.2 – SAFETY

Austin Energy's poles are part of an overhead electrical distribution system, and power lines attached to these Poles should be presumed energized at all times. All persons, including an attaching service provider's employees and contractors, must exercise proper caution and take reasonable precautions when working on or near electric utility poles and lines. Federal state statutes and regulations directly address construction activity in the vicinity of overhead electric lines, and violators may be subject to criminal penalties and civil liabilities. These laws apply to employees, contractors, owners and any other parties or persons responsible for or engaged in construction activities.

Employees and contractors of attaching service providers shall install and use adequate protective equipment and clothing to ensure the safety of all personnel working within the electric supply space. Safety practices shall include those recommended by the American Public Power Association (APPA). Austin Energy or City personnel may halt any work, at any time, if a safety violation is observed.

Service providers shall ensure their employees and those of their contractors are qualified to work on or near electric distribution lines. Work above the communications space on poles may be performed only by contractors pre-approved by Austin Energy to perform such work.

Communication cables must be properly guyed and anchored before tensioning. A separate guy and anchor is required – use of Austin Energy's supply guys and/or anchors is prohibited. Attaching companies are responsible for the costs of any damage to Austin Energy facilities resulting from improper guying, anchoring, and/or loading.

EMERGENCY SITUATIONS - In the event of contact by construction equipment with overhead or underground electric lines, call 512-322-9100 to provide information as to the location of the incident and whether the situation is life threatening. In all instances call 911 immediately if emergency response is required.

6.1.3 – DEFINITIONS

AE DISTRIBUTION CONSTRUCTION STANDARDS – All engineering and construction standards, specifications, and designs maintained and referenced internally by AE, and complied with in all material respects by AE, for its own distribution construction and engineering work.

APPLICABLE STANDARDS – All federal, state and local laws, rules and regulations (including this Section and other parts of the City of Austin Utilities Criteria Manual), the National Electric Code, the National Electrical Safety Code, AE's Distribution Construction Standards, AE's Attachment Application Guidelines, and applicable industry standards).

APPLICATION – The application form promulgated by Austin Energy together with all required documents, maps, proposed routes, project descriptions, and proposed schedules that Licensee must submit, in full, in order to trigger consideration of a request for an Attachment License.

ATTACHMENT – (1) Each Cable owned, controlled, or used by Licensee that is affixed to a Pole for wireline transmission, together with its associated messenger strand, guy wires, anchors, and other appurtenant and incidental facilities, or (2) if allowed, each amplifier, repeater, controller, appliance, device, or piece of equipment occupying one linear-foot of space or less that is owned, controlled, or used by Licensee for wireline transmission and affixed to a Pole, or (3) a Network Node.

ATTACHMENT APPLICATION GUIDELINES – The procedures by which a Licensee may apply for an Attachment License as approved by Austin Energy and described on its website.

ATTACHMENT LICENSE – The revocable, non-exclusive license to make an Attachment to a Pole, pursuant to Austin Energy's approval of an Application and subject to (1) any modifications, conditions, and specifications imposed by AE pursuant to this Criteria Manual or applicable law when approving the Application and (2) all Design Documents issued by AE with respect to the Attachment and Pole in question. An Attachment License authorizes Attachments solely for lawful communications purposes. The use of any Attachment for purpose other than providing services authorized by (1) City franchise or interlocal governmental agreement, (2) Chapters 283 or 284 of the Texas Local Government Code, (3) Chapter 66 of the Texas Utilities Code, or (4) Title III of the Communications Act of 1934, as amended, is prohibited.

ATTACHMENT POINT – The point, referenced as a height above ground level, or a given distance from other equipment, attachment, or facilities on the Pole, of the centerline of the bolt or strap which provides the primary support for a Licensee's facilities on a Pole.

CABLE – A conductor, wire, or fiber, or a bound or sheathed assembly of conductors, wires, or fibers, used as a wire communications or transmission medium (a bare messenger is also a Cable).

COMMUNICATIONS SPACE – The area on a Pole, below and sufficiently remote from the Supply Space as required by National Electrical Safety Code, within which Attachments may lie. The term Communications Space has the equivalent meaning as that used in the National Electrical Safety Code.

DESIGN DOCUMENTS – All specifications, drawings, schematics, blueprints, engineering documents, and written requirements for materials, equipment, design, construction, and workmanship issued by AE to Licensee or contained in this Section with respect to Make-Ready Work and installation work for a particular Attachment or group of Attachments.

DISTRIBUTION POLE – A pole supporting electric distribution lines having a nominal voltage of not more than 35kV. The term Pole does not include (1) night watchman poles, (2) poles or towers supporting transmission lines carrying a nominal voltage greater than 35kv, unless such poles are also used to support electrical lines carrying a nominal voltage of not more than 35kv, (3) any structure or facility within a substation, (4) conduits, (5) any structure not used for electric power distribution, (6) Street Light Poles, or (7) poles supporting signage or traffic-control devices.

LICENSEE – A party to a License Agreement with Austin Energy for the making of one or more Attachments to one or more Poles.

MAKE-READY WORK – All work required to accommodate Licensee's Attachments on a Pole with in accordance with the design standards and documents.

NETWORK NODE – Defined by Local Government Code Section 284.002(12).

PLA – Pole Loading Analysis

POLE – A Distribution Pole or a Street Light Pole

SAFETY SPACE – The space between the lowest point of supply conductors, neutral conductors, or Austin Energy equipment on a Pole and the highest allowed attachment or occupied space for communication cables or equipment as specified by the National Electrical Safety Code.

SERVICE POLE – a Distribution Pole that is out of line from Austin Energy's normal primary line location, and is installed for the support of service drops or secondary across a street, or to support service drops on a customer's property.

STREET LIGHT POLE – A pole located in a public right-of-way that supports only street lighting and that is not decorative in nature.

SUPPLY EQUIPMENT – Austin Energy equipment such as transformers, transformer banks, switches, sectionalizers, capacitor banks, regulators, reclosers, auto devices, AMI equipment or primary risers.

SUPPLY SPACE – The area on a Pole, above the Communications Space and Safety Space, reserved for the placement of electric supply lines, electrical equipment, and other AE facilities. The term Supply Space has the equivalent meaning as that used in the National Electrical Safety Code.

TRANSPORT FACILITY – Defined by Local Government Code Section 284.002(22).

WIRELINE ATTACHMENT – An attachment other than a Network Node or Transport Facility.

6.2 – GENERAL ADMINISTRATIVE PROVISIONS

6.2.1 – Fees and Charges

Approval of an Application shall be conditioned on Licensee's payment, within forty-five (45) days of receiving invoice, for (i) all applicable fees associated with an application, as set forth in the City of Austin fee schedule, and (ii) the then current Annual Usage Charge for each approved Attachment License, prorated to reflect the number of months remaining in the calendar year after AE's invoice, with any partial month deemed to be a full month.

All fees associated with Attachments, other than the Annual Usage Charge, are set forth in the fee schedule of the then-effective City of Austin budget ordinance.

Austin Energy may require payment for any sums due from Licensee be paid directly to a contractor, if any, retained by Austin Energy to administer oversight or performance all or any part of its Pole Attachment programs.

6.2.2 – License Agreement

Before a Licensee may be granted an Attachment License, the Licensee must execute a License Agreement with Austin Energy in the form set forth in Appendix B.

6.2.2 – Attachment Licenses

6.2.2.1 – Attachment License Required

Before a Licensee may make an Attachment or perform work on a Pole (other than inspections necessary to prepare an Application), Licensee must first obtain and accept an Attachment

License. Licensee must have an Attachment License for each Pole or group of Poles to which Licensee's Attachments are to be affixed, identifying each separate Attachment to the Pole(s) by type.

6.2.2.2 – Overlapping

Licensee must obtain an Attachment License for any Attachment it seeks to overlap to an existing Attachment. Licensee may not allow a third party to overlap to Licensee's facilities unless the third party has a License Agreement and an Attachment License for the overlapping attachment. Licensee may not charge or accept any financial consideration for allowing a third party to overlap to an Attachment without AE's written consent.

6.2.2.3 – Application Process

An Application must be submitted in the then-approved AE format. The Application and all required supporting documentation and other procedures, are within the reasonable discretion of AE unless a process or timeline is prescribed by applicable state law. Austin may change its processes from time to time unless such changes would be inconsistent with state law or the terms of a License Agreement. AE may reject entirely an incomplete Application, or it may request additional information to support the Application, in which event the requested information shall be promptly furnished.

6.2.2.4 – Order of Consideration

Applications for the same Pole will be considered and acted upon by AE in the order in which they are filed. For purposes of evaluating an Application with respect to pole capacity and existing attachments, AE will consider not only all existing attachments but also all valid Attachment Licenses and reserved AE space (if reserved pursuant to a *bona fide* development plan) as existing Attachments.

6.2.2.5 – Application Process for Network Nodes on Street Lights

Applications to attach a Network Node to a Street Light Pole shall be processed in accordance with AE-approved procedures to the extent consistent with Local Government Code Chapter 284.

6.2.2.6 – Engineering/Pole Loading Analyses

All PLAs and other engineering documents must be sealed by a professional engineer licensed in the State of Texas. AE shall accept and rely on such documentation, but shall reserve the right to perform, or have a firm retained by AE perform, its own engineering and field evaluation. All costs for such engineering and field evaluation shall be paid by Licensee. In granting an Attachment License, AE shall issue to Licensee the Design Documents governing the approved Attachment(s).

Austin Energy may require a PLA as part of any Application. PLA guidelines may be established by Austin Energy and changed from time to time. A PLA shall be required for (1) a Pole with five or more existing attachments, (2) a Pole bearing primary service lines running in two or more directions, (3) a transmission structure, and (4) an Application for a Network Node. The total usage of a Pole based on the available ground line moment capacity of the Pole shall remain less than eighty percent (80%). Any Pole that will exceed eighty percent (80%) capacity based on a PLA shall be replaced with a calculated Pole size that will pass the eighty percent (80%) usage capacity requirement after placement of Licensee's Attachment.

AE may accept and rely on documentation submitted by Licensee but reserves the right to perform, or have a firm retained by AE perform, its own engineering and field evaluation. All costs for such engineering and field evaluations shall be paid by Licensee.

6.2.2.7 – Application Approval

AE retains sole and complete discretion to deny or modify any Application in order to be able to preserve the safety, reliability, integrity, and effectiveness of the electric distribution system that constitutes the core of its business and its governmental mandate. AE may approve an Application as submitted, approve it on a modified or conditional basis, or may deny the Application in accordance with the procedures set forth in this Section and the policies adopted by AE pursuant thereto.

6.2.2.8 – Conditional Approval

If AE denies an Application and the Pole may be modified or replaced to resolve the reason for which the Application was denied, AE may, but is not obligated to, reconsider the Application if (i)) the Licensee agrees in writing to pay AE's costs to so modify or replace the Pole, if any, and (ii) he Application is otherwise acceptable and grantable pursuant to the terms and conditions of the Licensee's License Agreement and applicable law. In such event, AE shall approve the application following receipt of payment for, and completion of, such Pole modification or replacement.

6.3 – GENERAL REQUIREMENTS

6.3.1 – Compliance with Design Requirements

Licensee shall perform all make-ready and installation work in accordance with the Design Documents and all Applicable Standards.

6.3.2 -- AE Oversight

AE shall have the right to conduct on-site field oversight and inspections of Licensee's Attachments, work, and operations on Poles and in AE easements. AE shall at all times have unrestricted access to Poles and to all field work sites of Licensee and Licensee's contractors. Both AE and AE's representative at any Pole site shall have complete and final authority to order the immediate suspension of Licensee's construction or installation activities if AE or AE's representative, in its sole discretion and judgment, deems such action necessary for reasons of safety, engineering, electrical service reliability, or property owner complaint. In the event of an oral suspension order, AE shall send written notice to Licensee within three days after such suspension, identifying the alleged violation. Such suspension shall be in effect until such time as the Licensee cures, at Licensee's sole Cost, the alleged violation. In no event shall AE be responsible for any damages, losses, or Costs incurred by Licensee as a result of such work stoppage unless such stoppage is a result of gross negligence or willful or intentional misconduct on the part of AE.

6.3.3 – Standards Conflicts

If there is a difference, conflict, or discrepancy between or among the requirements or practices of any Applicable Standard the following rules shall apply: (A) if one specification or practice is more stringent than the other, the more stringent shall apply; (B) if one is not more stringent than the other, the National Electric Safety Code shall govern; and (C) if the first two rules are insufficient to resolve the conflict in a clear and unambiguous manner, AE shall determine which standard shall apply, giving

highest priority to safety considerations. If there a difference, conflict, or discrepancy between or among the requirements the Design Documents and AE Distribution Construction Standard, the Design Documents shall govern. In the event Licensee believes a Design Document or AE Distribution Construction Standard is inconsistent with Electrical Code or applicable law, Licensee shall refer the matter to AE for determination.

6.3.4 – Cabinets, Power Supplies and Other Equipment

~~No cabinets, power supplies, or equipment (other than an antenna array) may be attached to or placed on a Pole.~~

6.3.54 – Tagging

Each Attachment (including risers) made to an Pole shall be identified at each Pole and at all times by a Cable Tag in a form specified by AE's Attachment Application Guidelines or otherwise approved by AE. During the Permit Application process, the Licensee will be required to install or replace its cable tags to fully meet this requirement.

6.3.65 – Maintenance

Licensee shall, at its sole expense, make and maintain its Attachments in a safe condition and in good repair, and in such a manner as not to interfere with or interrupt AE's lines, facilities, and services or with other service providers' attachments, facilities, and services.

6.3.76 – Tree Trimming

Licensee shall be responsible for all tree trimming necessary for the safe and reliable installation, use, and maintenance of its Attachments, and to avoid stress on Poles caused by contact between tree limbs and Licensee's Attachments. All tree trimming shall be performed in accordance with then current AE tree-trimming policies (to the extent not inconsistent with the terms and conditions of ~~under the terms of~~ the License Agreement), including without limitation those relating to owner notification and consent.

6.3.87 – No Damage

Licensee shall not cause damage to AE or Third Party User facilities or operations. If Licensee, its contractors, agents, employees, or Attachments cause damage to AE or Third Party User facilities or operations, Licensee assumes all responsibility for, and shall, as determined by AE, either repair or promptly reimburse AE or the Third Party User for all loss and expense caused by such damage. Licensee shall immediately inform AE and all damaged Third Party Users of any damage to their facilities.

6.4 – MAKE-READY CONSTRUCTION

6.4.1 – Performance of Make-Ready Work

A Licensee shall perform all Make-Ready Work at its sole cost, including without limitation, costs of planning, engineering, construction, and Pole replacement.

6.4.2 – Existing Attachments

The Make-Ready Work costs that are to be paid by Licensee include all costs and expenses to relocate or alter the attachments or facilities of any pre-existing attachments as may be necessary to accommodate Licensee's Attachment. Licensee shall provide at least thirty (30) days' notice to each owner of the existing attachments of its need to relocate or alter their facilities, using the National Joint Utilities Notification System, if reasonably available for use, and make all other necessary arrangements to directly with the affected owners.

Licensee shall notify AE if Licensee determines that an existing attachment on a Pole is out of compliance with Applicable Standards, and AE shall provide notice to the owner of the non-compliant attachment to bring it into compliance within thirty (30) days of such notice. If after thirty (30) days the owner of the out-of-compliance attachment has not completed its work and brought its attachment in to compliance with Applicable Standards, or if AE is unable to identify the owner of the non-compliant attachment, AE shall declare the non-compliant attachment to be unauthorized, and AE or Licensee may relocate or alter the attachment at the owner's cost.

AE may suspend acceptance of applications from any Licensee that fails to move or modify an attachment in order to bring it into compliance with Applicable Standards.

6.4.3 – Construction

All work performed by or on behalf of Licensee pursuant to an Attachment License shall be done in a good and workmanlike manner. Licensee's acceptance of an Attachment License constitutes Licensee's agreement to be bound by its terms and conditions. All Attachments, Make-Ready Work, and other work performed or maintained by Licensee on a Pole shall strictly comply with the Design Documents and Applicable Standards. If Licensee fails to comply with any material requirement of the Design Documents and Applicable Standards, AE shall have the right to suspend Licensee's Make-Ready and installation operations, deem the violation an unauthorized attachment, and to seek specific performance.

6.4.4 – Coordination of Make-Ready Efforts

If multiple service providers have been granted Attachment Licenses for the same Pole and a disagreement arises between them as to construction and installation schedules, AE shall have the right to require a representative of Licensee who has authority to agree on these issues to attend a meeting called by AE to discuss and agree on these issues. Failure to reach an agreement shall result in mandatory submittal of these issues to binding arbitration at the applicants' expense; provided, however, that if AE in its reasonable discretion determines that Licensee is not bargaining in good faith, AE may revoke or modify Licensee's Attachment License.

6.4.5 – Authority to Proceed

An Attachment License is not authority to proceed with Make-Ready Work on a Pole. Before beginning Make-Ready Work, Licensee shall give AE not less than fourteen (14) days written notice of the Pole location, the proposed date on which work will commence, and whether any electrical service interruptions or de-energizations will be required. If AE does not approve of such date (such approval not to be unreasonably withheld, conditioned, or delayed), the parties shall mutually agree on a date for construction to take place and shall make all necessary arrangements and schedules for line and equipment de-energization. Licensee shall not begin Make-Ready Work without authority to proceed from AE, and shall comply with the agreed upon construction and de-energization schedule. Licensee

shall be responsible for coordinating its efforts with AE field inspection personnel and for any actions or notifications required by the AE Energy Control Center.

6.4.6 – Service Interruptions

Licensee shall not cause any interruption of AE services without first obtaining AE's express written consent. If it is necessary for AE to de-energize any equipment or lines for Licensee's benefit, Licensee shall reimburse AE in full for all costs in doing so. In the event Licensee damages any of AE's equipment or lines or causes any service interruption, Licensee, at its sole expense, shall immediately do all things reasonable to avoid injury and further damage, direct and incidental, resulting therefrom and shall notify AE immediately. Licensee shall be liable for all costs resulting from such damage and any necessary repairs.

If AE agrees to a service outage and Licensee fails to comply with the agreed construction schedule, AE may opt immediately to revoke Licensee's Attachment License(s) for the Poles in question and restore the interrupted power and services at Licensee's sole Cost.

6.4.7 – Contractors

All work performed by or on behalf of Licensee above the Communications Space pursuant to an Attachment License shall be done by a Contractor selected from an AE issued list of approved Contractors. Licensee may propose Contractors for inclusion in such list, and AE may or may not approve such proposed Contractor in its reasonable judgment and discretion. Only orderly and competent workers shall be used. Neither Licensee's workers nor those of its Contractors may possess any weapon, or use, possess or be under the influence of any alcoholic or other intoxicating beverage, drug or controlled substance while performing any work on or around a Pole. If AE finds any Licensee or contract worker to be incompetent, disorderly, in the possession of any weapon, or in the possession of or under the influence of alcohol or drugs, Licensee shall promptly suspend work and remove such worker from all work on or around Poles, shall not resume work until such worker is and remains off-site, shall verify compliance of all work performed by such worker, and may not again use such worker on work on or around Poles without the prior express written consent of AE.

6.4.8 – Materials

Licensee shall furnish all necessary materials and hardware including but not limited to poles, crossarms, mounting hardware, guys, anchors, insulators, conductors, and any associated miscellaneous hardware. All materials used by Licensee for Make-Ready Work on Poles shall be obtained, at its sole cost and expense, from AE-approved vendors and shall be new and of good quality and free from known material defects.

6.4.9 – AE Property

All Poles, materials, and equipment installed in the Make-Ready process shall become and remain AE's sole property, regardless of which entity procured or paid for them. Licensee shall execute any documents reasonably requested by AE to evidence the transfer of title to such Poles, materials, and equipment to AE, and Licensee shall brand and tag all new Poles to indicate AE ownership. Licensee's performance of Make-Ready Work or payment of any costs (A) shall in no way create or vest in Licensee any ownership right, title, or interest in any Pole or electrical facilities, (B) shall not entitle Licensee to any offsets, credits, payments, or income from AE's operation of the Pole or facilities, (C) shall not alter or affect AE's rights under the License Agreement Between AE and Licensee, or (D) shall not restrict AE's

ability to allow access to a Pole by Third Party Users. Licensee's interest shall at all times remain a bare revocable license subject to the terms of the License Agreement.

6.5 – MODIFICATION OF ATTACHMENTS

6.5.1 – Unauthorized Modifications

Except for routine maintenance, Licensee shall not change the type, nature, or location of any Attachment or alter its use of a Pole without the prior written consent of AE. Licensee shall not construct any other or additional Attachments except as authorized by the License Agreement and Attachment Licenses. Any Attachment changed or added in violation of this section shall be deemed to be an unauthorized Attachment.

6.5.2 – Routine Modifications

Licensee does not need AE consent for (a) changes incident to routine maintenance and repair, including modifications permitted to be made without AE's consent by virtue of state law; (b) the installation of service drops; (c) removal of Licensee's Attachments. Licensee shall nonetheless provide AE with a comprehensive report each month identifying all such changes in Attachments in the previous month.

6.5.3 -- AE Mandated Modifications

Within thirty (30) days of written request by AE, Licensee shall move or rearrange its Attachments in order to maximize the usable available Pole space and/or to accommodate AE facilities. Licensee shall do so at its sole cost and risk, except that Licensee shall not be responsible for any costs or expenses incurred to relocate or alter its Attachments to accommodate the Make-Ready Work of other Third Party Users. If Licensee fails or refuses to comply with the directions of AE to change, alter, improve, move, remove or rearrange any of its Attachments in accordance with the License Agreement, AE may then opt to change, alter, improve, move, remove or rearrange such Attachments without incurring any liability to Licensee and at Licensee's sole cost, or AE may proceed under the terms of the License Agreement.

6.5.4 – Emergencies

In case of an Emergency or a situation that materially and adversely interferes with the performance of AE or another Third Party User's service obligations, AE may move, rearrange or transfer Licensee's Attachments without notice and without liability to Licensee or to any other person, in which event Licensee shall also be responsible for all costs.

6.5.5 – Destroyed Poles

If any Pole on which Licensee has an Attachment is substantially destroyed or damaged by fire, storm, accident, or otherwise, AE shall be under no obligation to rebuild or replace such Pole, but may elect to terminate Licensee's Attachment License for such Pole without any liability to Licensee. AE shall notify Licensee in writing of a termination under this paragraph, and Licensee shall be entitled to a pro-rata refund of any prepaid but unearned Annual Usage Charge attributable to the Attachments on such damaged or destroyed Pole.

6.5.6 – Pole Transfers

If AE replaces an existing Pole supporting an Attachment with a new Pole, AE may use the National Joint Utilities Notification System to notify Licensee of transfers. If the timeline provided by the National Joint Utilities Notification System expires and the transfer has not been completed AE may elect to transfer or have its contractor transfer the Attachment at Licensee's sole cost and risk and/or to deem the Attachment an Unauthorized Attachment.

6.5.7 – Underground Conversion

Upon written notice, Licensee agrees that it will bear all costs associated with the relocation or re-routing of its Attachments in the event AE facilities are removed from a Pole and re-routed through underground conduits. In such event, AE shall be under no obligation to maintain any Poles that no longer support AE supply lines and may remove Licensee's Attachments when removing the abandoned Pole at Licensee's sole cost and risk and/or to deem the Attachment an Unauthorized Attachment.

6.6 – INVENTORY AND INSPECTION

6.6.1 – Right to Inspect

AE may inspect Licensee's work and Attachments at any time, for any purpose, including: AE may conduct these inspections for any purpose relating to Licensee's use of AE's Poles, including: (a) determining compliance with the Design Documents and Applicable Standards, and (b) auditing and inventorying. The making of an inspection by AE shall not operate in any way to relieve Licensee or Licensee's insurers of any responsibility, duty, obligation, or liability under the License Agreement or otherwise, nor does AE's ability to make inspections relieve Licensee from its obligations to exercise due care in the operation and inspection of its Attachments.

6.6.2 – Compliance

If an inspection of an existing Attachment reveals that corrections or other actions are required of Licensee under this Criteria Manual or the License Agreement, including without limitation those required for reasons of safety or structural integrity, Licensee shall make such corrections or take the requested actions within thirty (30) days after the date AE sends Licensee a written notice informing Licensee of the corrections to be made. AE may also perform such work without notice, at Licensee's sole Cost and risk, if AE determines in its reasonable judgment and discretion that an Emergency does not permit full advance notice to Licensee. If Licensee fails or refuses to comply with the directions of AE, the Attachments in question shall thereafter be deemed to be Unauthorized Attachments. AE may opt to change, alter, improve, move, remove or rearrange such Unauthorized Attachments without incurring any liability to Licensee, and at Licensee's sole Cost and risk.

6.6.3 – System-Wide Inventory

Periodically, but not more than once per year, AE may, but is under no obligation to, conduct a system-wide inventory of all Licensee Attachments and other attachments on its Poles, for which Licensee shall bear its proportionate share of costs. AE will notify Licensee of the times and places of such inventory, and Licensee may have representatives accompany AE on the inventory. AE may use the results of the inventory for purposes of calculating the Annual Usage Charge, but may also rely upon a statistically significant number of geographical grids or other mutually agreeable census to determine the correct count.

6.7 – LICENSE TERMINATION

6.7.1 – Expiration for Inactivity

An Attachment License shall expire if the Licensee fails to complete all Make-Ready Work and Attachment installation within one hundred-twenty (120) days following issuance of the Attachment License, or such longer period as (a) AE may agree to in writing upon a showing of good-cause from the Licensee or (b) may be required by applicable law.

6.7.2 – Termination

An attachment License shall terminate if the Licensee (a) removes the Attachment other than in the course of routine maintenance or replacement or due to emergency, (b) ceases to offer services through the Attachment or loses the legal authority by which it has access to AE infrastructure or the underlying right-of-way, or (c) fails to materially comply with a Design Document or Applicable Standard.

6.8 – INSURANCE

6.8.1 – Insurance Required

A Licensee, and all contractors of Licensee performing work on a Pole, shall at all times carry insurance issued by companies duly licensed to provide insurance in the State of Texas and approved by AE (which shall not be unreasonably withheld) to protect Licensee (or its contractor), AE, and the City of Austin against any and all claims, demands, actions, judgments, costs, expenses, or liabilities of every kind that may arise, directly or indirectly, from or by reason of losses, injuries, or damages described in this Section.

6.8.2 – Minimum Coverages

At a minimum, Licensee and its contractors shall carry and maintain the following coverages and shall furnish the City Risk Manager certificates of insurance as evidence thereof:

- A. Commercial General Liability coverage in the minimum amount of \$2,000,000 per occurrence;
- B. Worker's Compensation coverage with statutory benefits as set forth in the Texas Worker's Compensation Act and Employer's Liability coverage of not less than \$1,000,000 bodily injury per accident, \$1,000,000 bodily injury per disease and \$1,000,000 per disease per employee;
- C. Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000.

6.8.3 – AE as Additional Insured

The Commercial General Liability and Business Liability Policies shall name AE and the City of Austin as an additional insured as its interest may appear. The City's risk manager will be included as a party to be notified under the policy before any non-renewal, cancellation or material change in coverage in accordance with the terms of such policy. The "other insurance" clause shall not apply to the City; it being the intention of the parties that the above policies covering Licensee and the City shall be considered primary coverage. Each policy shall contain a waiver of all rights of recovery or subrogation against AE and the City, its officers, agents, employees, and elected officials.

6.9 – WIRELINE ATTACHMENTS TO UTILITY POLES

The standards set forth in this Subsection apply to Wireline Attachments to Distribution Poles.

6.9.1 – Communication Space.

Except as otherwise provided herein, all Wireline Attachments must be placed and remain in the Communications Space. Licensee operations in the Supply Space or in the Safety Space may be performed only with prior approval from AE using AE-approved contractors.

6.9.2 – Cable Position on the Pole

- A. AE will assign each Licensee a position on a Pole, determined by the position of existing attachments so as to minimize impact to the Pole and the existing attachments of other service providers.
- B. A Licensee must place all cables on the same side of the Pole as the electric neutral. If cables are attached on both sides of the Pole (boxed in), the new cable will be placed on the same side of the Pole as the majority of the existing attachments (including the neutral); if evenly split, the new cable will be placed on the same side of the Pole as the neutral.
- C. No more than 5 cable Attachments may be placed within the Communication Space on a Pole.
- D. Installation of a horizontal extension arm requires the advance written permission of AE. AE will approve the request only if it determines the installation will not interfere with the safe and reliable operation of AE's electric distribution system.
- E. A Licensee may not weave its cables from one vertical position to another in relation to other cables on the same pole line route, or transition its cable from one position to another. Weaving from one side of the Pole to the other along the pole route is also not permitted.
- F. Bolts may not extend greater than two inches (2") beyond the tightened nut. A shorter bolt may be substituted if required, but no sawed bolts may be installed on AE Poles.
- G. Take-offs and guys must be on one Attachment Point.

6.9.3 – Clearance at the Pole

- A. The clearance between AE electrical facilities and Licensee's facilities must be in accordance with the most stringent requirement of the Applicable Standards.
- B. Vertical clearances must be measured at Attachment Points, bolt-to-bolt. If the Licensee is using banding, the measurement will be from messenger to messenger or from messenger to bolt.
- C. Diagonal measurements do not apply to the vertical clearance requirement.
- D. See Appendix D, Diagram 1.

6.9.4 – Non-Wooden Poles

Attachments to steel, concrete, or fiberglass distribution Poles must be clamped or banded to the Poles with stainless steel straps. The drilling of holes in these Poles for an attachment or any other purpose is prohibited, except in the instance that drilled holes in steel Poles at road crossings of greater than three hundred feet (300') are permitted if approved by AE.

6.9.5 – Sag and Mid-Span Clearances

Licensee shall leave proper sag in its lines and cables and shall observe the established sag of power line conductors and other cables so that during the life of the Attachment minimum clearances are (1) achieved at Poles located on both sides of the span and (2) maintained throughout the span. A minimum clearance between surfaces must be maintained between Licensee's and other service providers' cables at mid-span and between Licensee's and others' Attachments on the Poles.

- A. Sag Clearance between various electrical facilities and communications cables in the area between Pole attachments (mid-span) shall be as specified by the most stringent requirement of the Applicable Standards.
- B. NESC specifies that the required vertical clearances must be measured surface-to-surface, not center-to-center.
- C. Any mid-span Service Drop or device mounted on a communications cable or messenger must be a minimum of fifteen inches (15") from the Pole face at its nearest point to ensure adequate climbing space.
- D. The minimum clearance between communications cables at all points shall be six inches (6").
- E. The maximum separation between communications cables at all points shall be 18 inches (18").
- F. See Appendix D, Diagram 2.

6.9.6 – Anchors and Guying

Licensee shall provide all anchors and guying necessary to accommodate the additional stress and load placed upon a Pole by its Attachments. Anchors shall not be placed outside of the easement in which a Pole stands.

- A. An anchor and guy rod with attached guy wire must be set for each turn or cable angle equal or greater than five (5) degrees on every dead-end Pole, and on each side of a road crossing and on any Pole AE has guyed.
- B. Slack spans may be no more than seventy feet (70') without guying.
- C. Slack spans under seventy feet (70') may be un-guyed provided both Poles meet AE's loading requirements.
- D. Sidewalk guys are prohibited unless specifically agreed to in writing by Licensee and AE, on a case-by-case basis.
- E. A Licensee may never attach its guy to an AE anchor.

- F. All anchors (supply and/or communications) must be at least three feet (3') apart.
- G. Anchor rod eyes must not be more than eight inches (8") above ground.
- H. No cable or messenger/strand shall be placed on a Pole until anchor rods and down guys are installed.
- I. All communications guys shall have guy markers installed for visibility.
- J. No communication anchor shall be installed closer than five feet from the service of the Pole.
- K. See Appendix D, Diagram 3.

6.9.7 – Bonding and Grounding Requirements

- A. All messengers and down-guys placed by the Licensee must be bonded directly to the pole ground with #6 soft-drawn bare copper wire. All-dielectric self-supporting communications cables and all-dielectric communications cables supported by a non-metallic messenger strand are not required to be bonded and grounded.
- B. Any ground placed by a Licensee must be bonded to the AE ground near the level of the communications messenger.
- C. See Appendix D, Diagram 4.

6.9.8 – Climbing Space

An unobstructed climbing space must be maintained at all times on the face of all Poles as required by Applicable Standards, as well as adequate ground access to Poles. All Attachments must be placed as to allow and maintain a clear and proper climbing space.

6.9.10 – Service Drop Requirements

- A. Communications service drops shall be connected fifteen inches (15") from the Pole to the Attacher's cable main supporting Messenger.
- B. Service drops shall not exceed one hundred feet (100') without use of Messenger.
- C. See Appendix D, Diagram 5.

6.9.11 – Communications Cable Riser Requirements

- A. A Licensee may place a vertical run of communications cable, enclosed in conduit, shielded, or guarded, and attached to a stand-off bracket mounted to the Pole.
- B. The Licensee's communications cable riser should be composed of, or covered with, a suitable material and must at all points maintain the greater of (1) the Pole circumference or (2) two inches (2") from through-bolts or other metallic objects on the Pole:
- C. Although non-metallic conduit is preferred, metallic conduit may be used if it is properly

grounded to existing pole grounds and is the initial section of riser.

- D. Supply and communications cable risers must maintain one side (180 degrees) of the Pole clear for climbing space and eventual replacement of the Pole. Communications cable risers should be located on the same side of the Pole as their overhead communications cables are attached.
- E. Communications cable risers should end no more than three inches (3") below the communications cable attachment point.
- F. The maximum number of riser conduits on a Pole is three (3), including AE risers, **unless otherwise approved in writing by AE**. Risers mounted on a shared vertical run of standoff brackets shall count as one riser.
- G. Only one set of risers mounted to a vertical run of standoff brackets is allowed per Pole. The first Licensee to install a riser shall provide the brackets to mount riser conduit; future Licensees shall utilize the bracket until it is fully occupied.
- H. Sharing of conduit or ducts is prohibited unless agreed to by AE in writing.
- I. See Appendix D, Diagram 6.

6.10 WIRELESS FACILITIES

6.10.1 – Equipment Size and Dimensions

Network Nodes and related equipment installed on Poles shall not exceed dimensions and specification described in Texas Local Government Code Section 284.003 unless otherwise approved in writing by the AE.

6.10.2 – Signage

Licensee shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the Network Node that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the City. Two RF warning signs shall be installed. One sign shall be installed near the pole top at the level where the safe approach distance ends for FCC General Population/Uncontrolled power levels. The second sign shall be installed near the base of the Pole. This sign shall read, "Warning Antenna Approach Distance Is XX Feet". At a minimum, each sign or decal shall indicate the Antenna's owner/operator's name, emergency 24-hour contact number, and unique identifier for that Antenna site. Signage must be made of weather, corrosion, and UV resistant materials easily visible from the ground level.

Except as required by laws, Licensee shall not post any other signage. Licensee shall not place commercial advertising on any of its facilities on AE infrastructure.

6.10.3 – RF and EMF Compliance

Licensee shall comply with all laws and regulations relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs"), including without limitation, all applicable standards adopted by the Federal Communications Commission ("FCC"), whether such RF or EMF presence or exposure results from Licensee's Network Node alone or from the cumulative effect of Licensee's Network Node added to all other sources at a location. AE shall not agree to allow any Licensee to co-locate wireless equipment that would cause an increase in RF or EMF levels such that the cumulative levels exceed allowable levels. The City may from time to time require Licensee to document RF or EMF levels at a Licensed Location.

6.10.4 – Network Nodes on Distribution Poles

The standards set forth in this Subsection apply to Network Nodes on Distribution Poles.

- A. Network Nodes may be installed only on in-line tangent Poles or Service Poles that do not have Supply Equipment installed, provided that with prior AE approval, installation of Network Nodes on a Pole with a single transformer or secondary riser may be allowed. Network Nodes may not be installed on dead-ended, corner, or double-circuit Poles, or on Poles framed for primary junctions.
- B. Network Nodes may only be installed on Poles located in the public right-of way and that are bucket truck accessible. Exceptions must be evaluated on a case by case basis and approved by AE.
- C. Power supplies may not be mounted on a Pole or connected directly to AE's distribution system, **unless otherwise approved in writing by AE.** ~~All batteries, power sources, radio heads, or other equipment required to support a Network Node must be installed as ground furniture.~~
- D. Austin Energy may require a Licensee to install a new Pole to provide a five foot (5') clearance above AE's facilities to accommodate a Network Node to be installed on the top of AE Poles. The use of pole-top extensions is prohibited.
- E. The installation of Poles taller than sixty feet (60') or larger than Class 2 will not be considered.
- F. The standards for Wireline Attachments in subsection 6.9 apply to Wireless Attachments on Distribution Poles unless by their nature they could only apply to cable Attachments.
- G. All installations shall be in accordance with Appendix D, **unless otherwise approved in writing by AE.** ~~Diagrams 7 and 8.~~

6.10.5 – Network Nodes on Street Light Poles

The standards set forth in this Subsection 6.8 apply to Network Nodes on Distribution Poles.

- A. Network Nodes may not be powered from the light photo cell on Distribution Poles that have a street light installed.

- B. Licensee may not install overhead cables on a Street Light Pole. All cables, including power and fiber optic, connecting to the Network Node shall be placed in conduit that is to be buried below ground.
- C. Licensee's installation shall not block or hinder access to handhold covers.
- D. All installations shall be in accordance with Appendix D, **unless otherwise approved in writing by AED** **Diagram 9.**

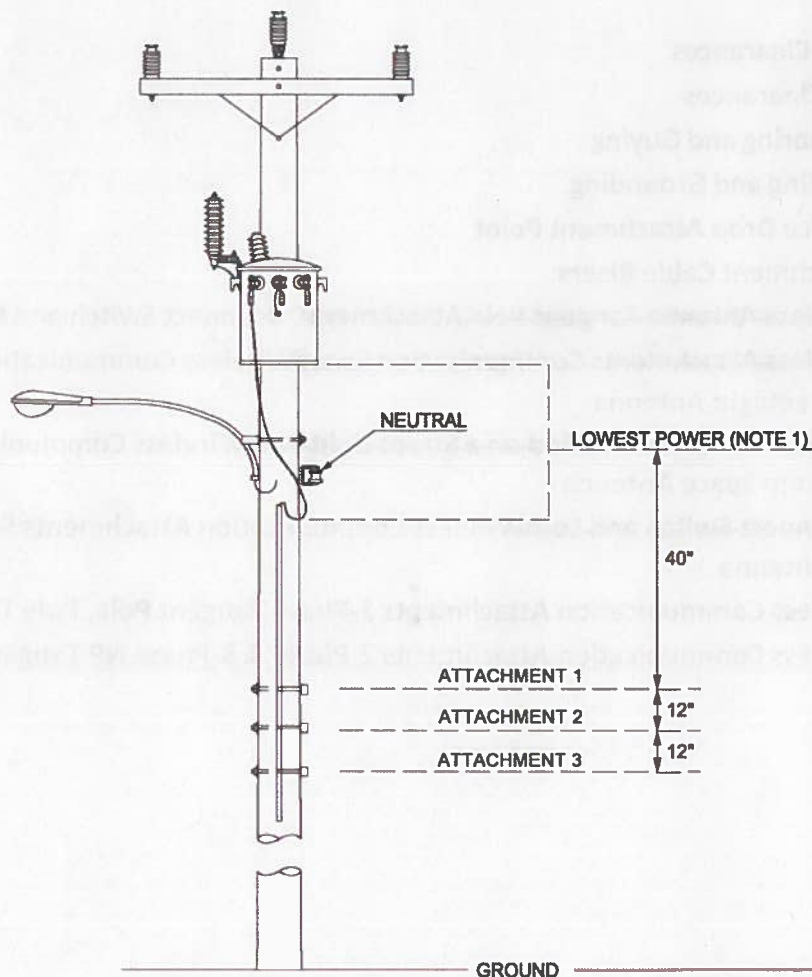
UTILITIES CRITERIA MANUAL

AUSTIN ENERGY POLE ATTACHMENTS

APPENDIX D – DIAGRAMS FOR POLE ATTACHMENTS

- DIAGRAM 1 Pole Clearances
- DIAGRAM 2 Sag Clearances
- DIAGRAM 3 Anchoring and Guying
- DIAGRAM 4 Bonding and Grounding
- DIAGRAM 5 Service Drop Attachment Point
- DIAGRAM 6 Attachment Cable Risers
- DIAGRAM 7 ~~Wireless Antenna Tangent Pole Attachment~~ Disconnect Switch and Lock
- DIAGRAM 8 ~~Wireless Attachments Communication Space~~ Wireless Communication Attachments Streetlight Antenna
- DIAGRAM 9 ~~Wireless Antenna Installed on a Street Light Pole~~ Wireless Communication Attachments Comm Space Antenna
- DIAGRAM 10 ~~Disconnect Switch and Lock~~ Wireless Communication Attachments Secondary Pole, Pole Top Antenna
- DIAGRAM 11 Wireless Communication Attachments 1-Phase Tangent Pole, Pole Top Antenna
- DIAGRAM 12 Wireless Communication Attachments 2-Phase & 3-Phase NP Tangent, Pole Top Antenna

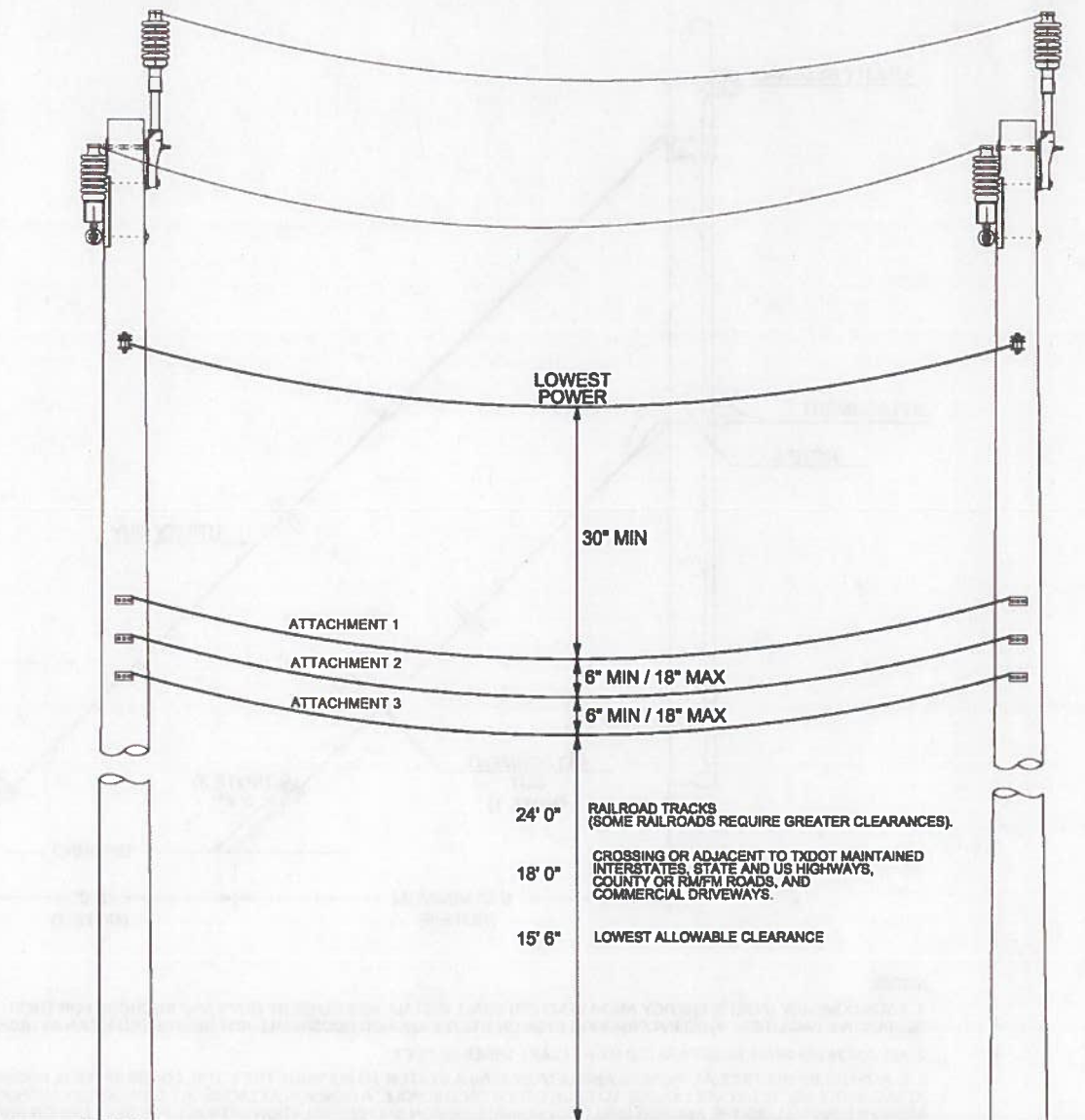
	POLE CLEARANCES	
	DIAGRAM 1	
		NOT TO SCALE



NOTE:

1. AN ATTACHMENT SHALL BE MINIMUM 40" BELOW LOWEST POWER WHICH INCLUDES BUT NOT LIMITED TO: NEUTRAL, DRIP LOOPS, ENERGIZED CONDUCTORS, BOTTOM OF TRANSFORMERS, TOP OF PRIMARY AND SECONDARY RISERS.

	SAG CLEARANCES	
	DIAGRAM 2	
	NOT TO SCALE	

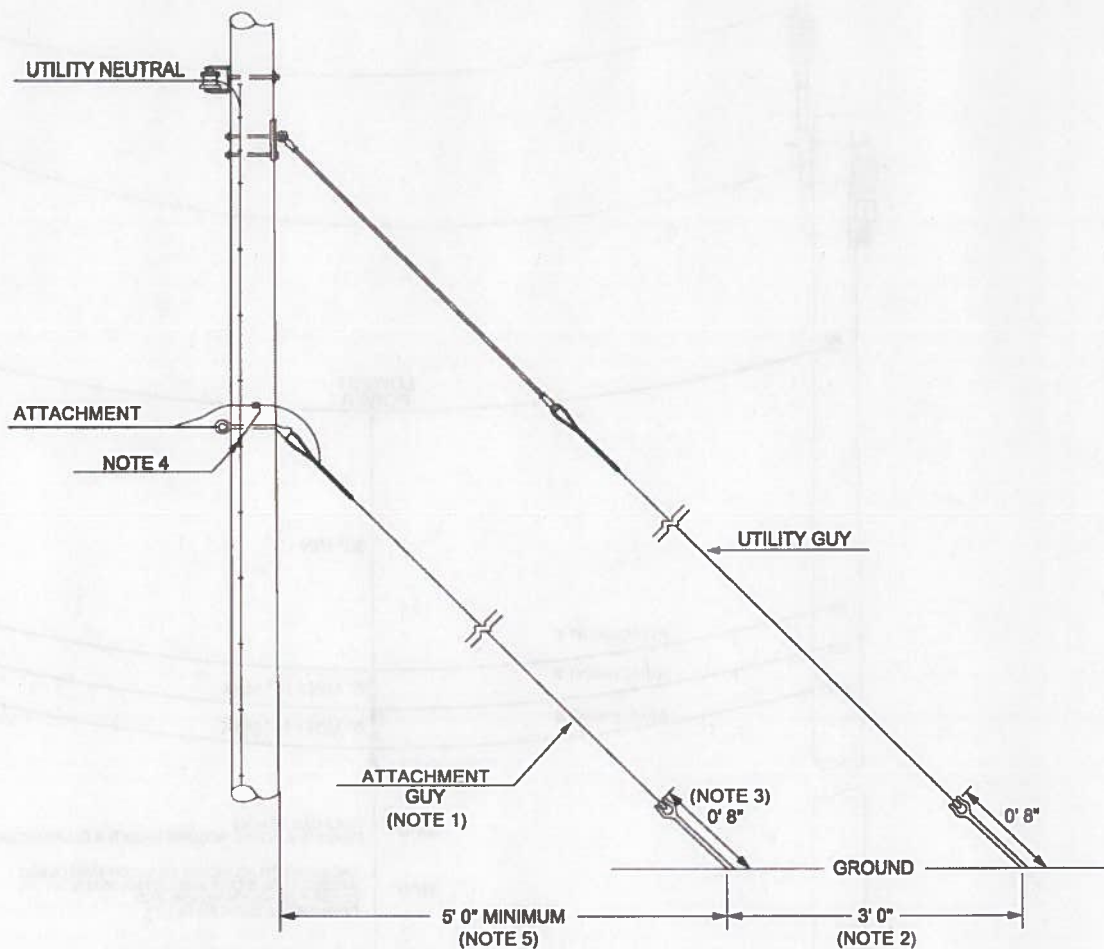


NOTE:

IN THE EVENT OF MULTIPLE GOVERNING AUTHORITIES THE MOST STRINGENT RULE SHALL APPLY.

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	ANCHORING AND GUYING DIAGRAM 3		
			NOT TO SCALE



NOTES:

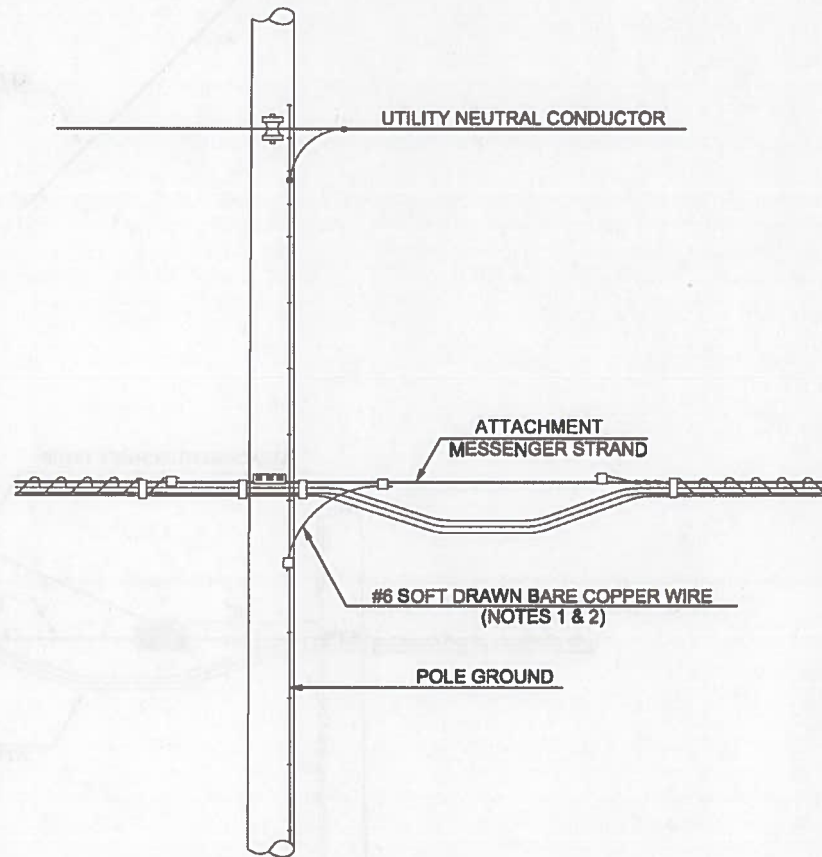
1. EACH COMPANY (AUSTIN ENERGY AND ATTACHER) SHALL INSTALL INDEPENDENT GUYS AND ANCHORS FOR THEIR RESPECTIVE FACILITIES. AUXILIARY ANCHOR EYES ON UTILITY ANCHOR RODS SHALL NOT BE UTILIZED BY AN ATTACHER.
2. ALL ANCHORS MUST BE SEPARATED BY AT LEAST THREE (3) FEET.
3. IF AGREED BY MULTIPLE ATTACHERS AND DESIGNED AS A SYSTEM TO SUPPORT THE TOTAL LOADS APPLIED, PROVIDED THE POINTS OF ATTACHMENT ARE RELATIVELY CLOSE TO EACH OTHER ON THE POLE, A COMMON ATTACHMENT GUY AND/OR ANCHOR CAN BE INSTALLED. ATTACHER INSTALLING THE ANCHOR SHALL COORDINATE DESIGN AND INSTALLATION WITH ALL PARTIES. DESIGN SHALL BE SUBMITTED TO AUSTIN ENERGY FOR APPROVAL BEFORE CONSTRUCTION.
4. ATTACHMENT STRAND AND GUY WIRES SHALL BE BONDED AND CONNECTED TO THE POLE GROUND. ATTACHERS SHALL FURNISH THE NECESSARY #6 SOFT DRAWN BARE COPPER WIRE AND CONNECTORS TO CONNECT DIRECTLY TO THE POLE GROUND.
5. NO ATTACHMENT ANCHOR SHALL BE INSTALLED CLOSER THAN FIVE (5) FEET FROM THE SURFACE OF THE POLE.



BONDING AND GROUNDING

DIAGRAM 4

NOT TO SCALE

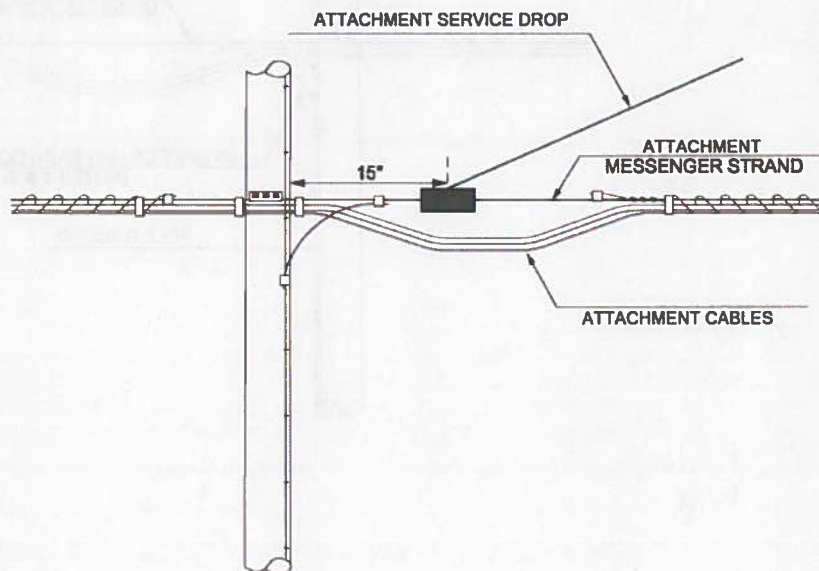
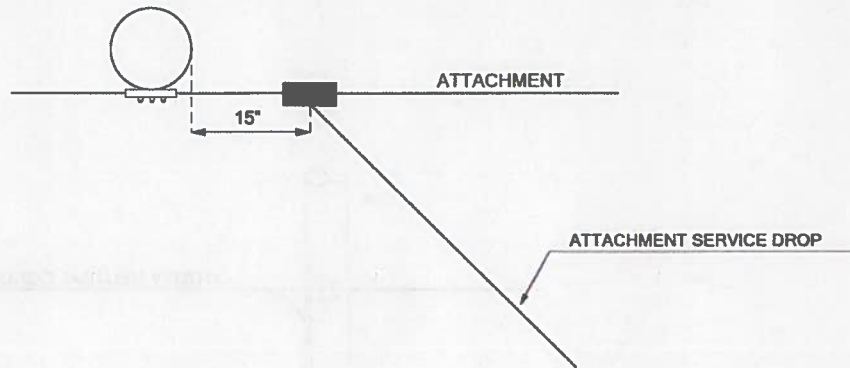


NOTES:

1. ATTACHMENT MESSENGER STRAND SHALL BE BONDED TO POLE GROUND ON EVERY POLE.
2. ATTACHER TO FURNISH #6 SOFT DRAWN BARE COPPER BONDING WIRE AND CONNECTORS AND CONNECT TO POLE GROUND.

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	SERVICE DROP ATTACHMENT POINT	
	DIAGRAM 5	
		NOT TO SCALE



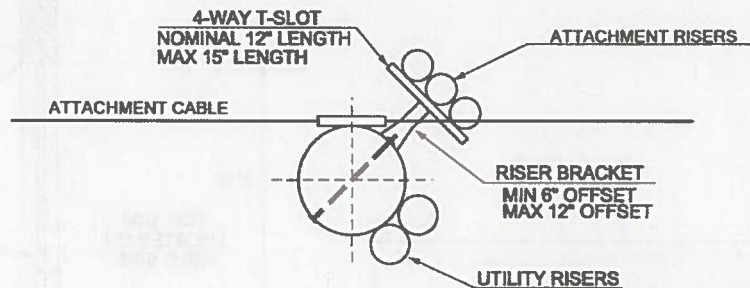
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ATTACHMENT CABLE RISERS

DIAGRAM 6

NOT TO SCALE

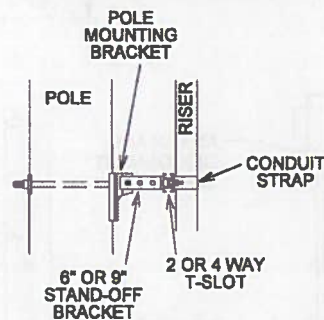


RISER PLAN VIEW

NOTES:

1. PLACE RISER BRACKETS EVERY SIX (6) VERTICAL FEET OR SPACE EVENLY. MINIMUM OF THREE (3) BRACKETS PER POLE.
2. UTILITY AND ATTACHMENT RISERS SHALL NOT BE MADE ON THE SAME POLE WHERE IT IS PRACTICABLE TO PLACE THEM ON SEPARATE POLES.
3. ALL RISERS SHALL BE SO ARRANGED AS NOT TO INTERFERE WITH CLIMBING OR WORKING SPACE.
4. CONSULT SECTION 239 OF THE NESC FOR SITUATIONS NOT COVERED BY THIS STANDARD.

RISER PROFILE VIEW



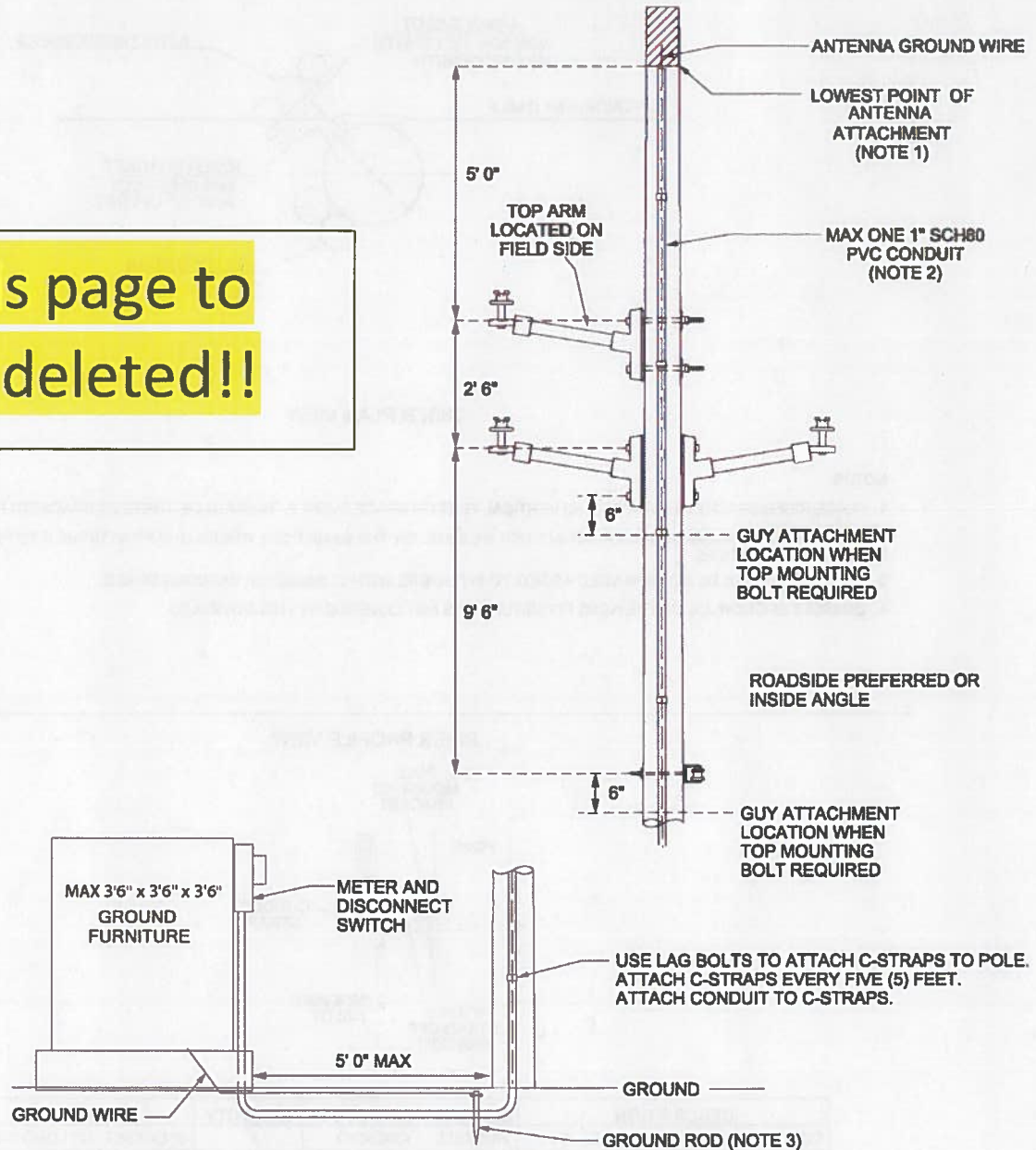
DESCRIPTION	SUPPLIER	CATALOG #	QUANTITY	NOTES
CONDUIT STANDOFF BRACKET KIT	HUBBELL	C9CSO12	1	9" OFFSET, 12" LONG T-SLOT
CONDUIT STRAP KIT	HUBBELL	CSTK4	1	FOR A 4" CONDUIT



WIRELESS ATTACHMENTS TANGENT POLE ATTACHMENT DIAGRAM 7

NOT TO SCALE

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NOTES:

1. USE THROUGH BOLTS TO ATTACH TO WOOD POLES.
2. ON STEEL POLES USE BOLT-A-BAND EVERY FIVE (5) FEET AND ATTACH CONDUIT TO BANDS.
3. GROUND ANTENNA AND ENCLOSURE TO GROUND ROD INSTALLED BY LICENSEE.

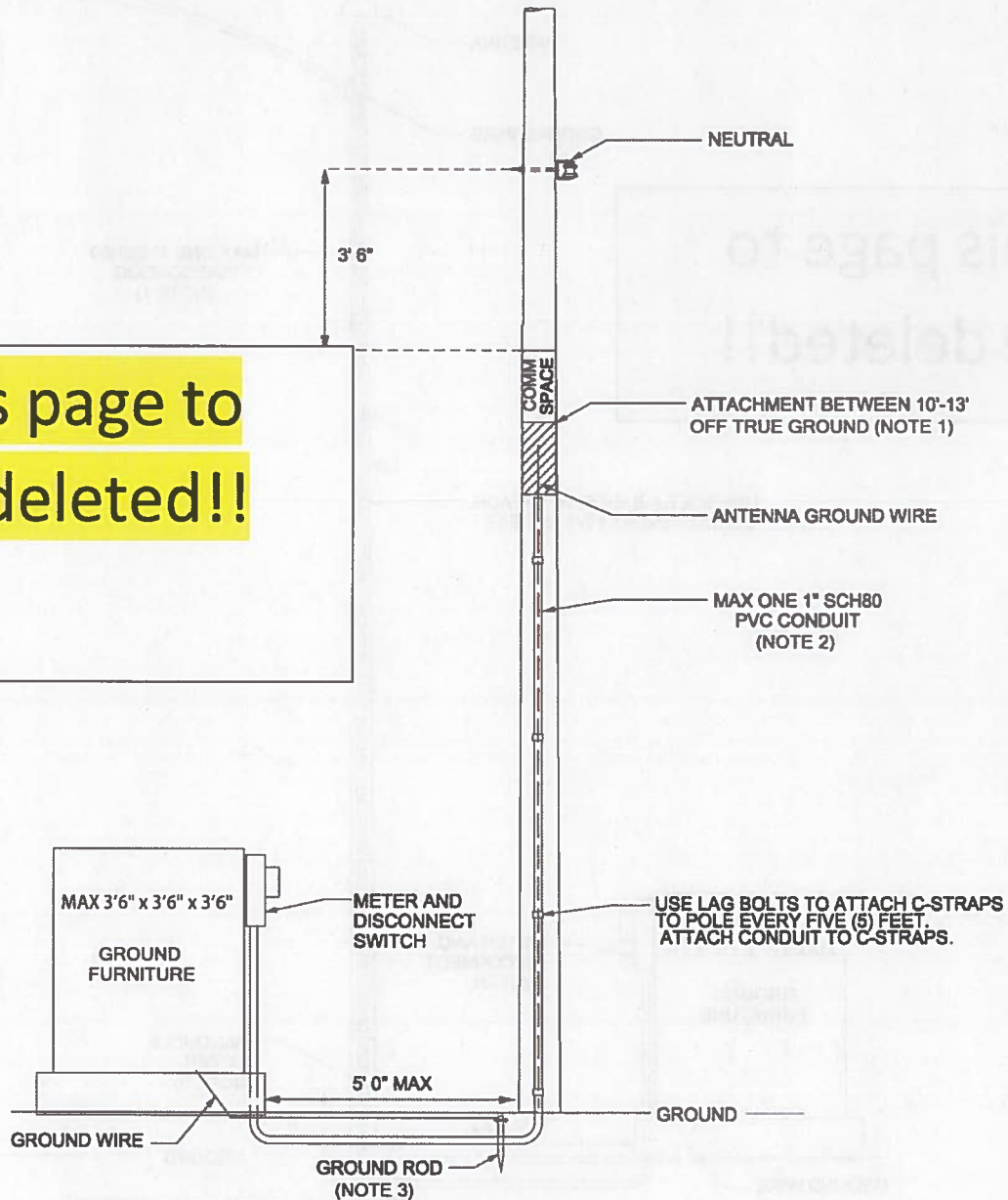
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WIRELESS ATTACHMENTS
COMMUNICATION SPACE
DIAGRAM 8

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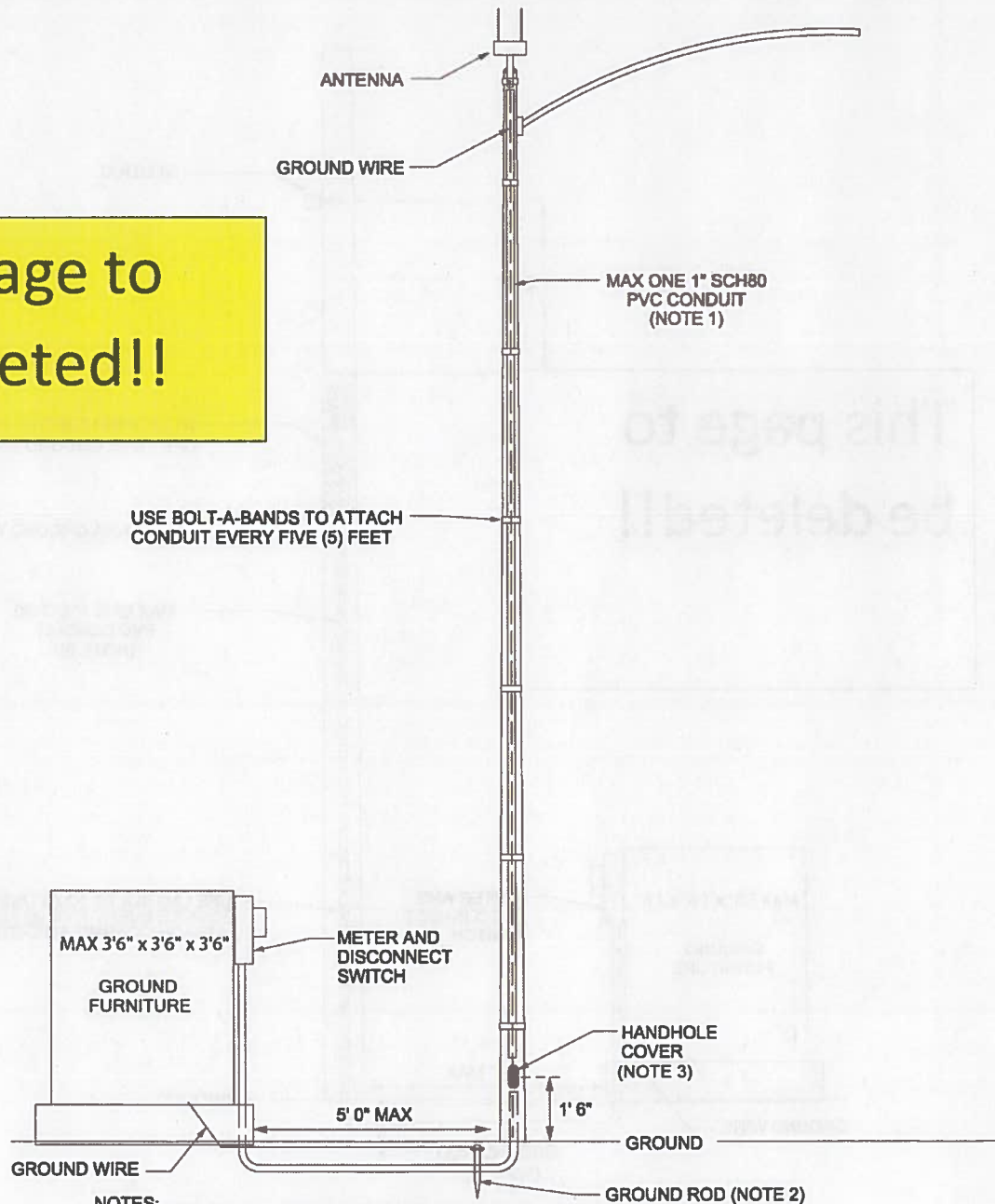
1. USE THROUGH BOLTS TO ATTACH TO WOOD POLES.
 2. ON STEEL POLE USE BOLT-A-BAND EVERY FIVE (5) FEET AND ATTACH CONDUIT TO BANDS
 3. GROUND ANTENNA AND ENCLOSURE TO GROUND ROD INSTALLED BY LICENSEE.
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WIRELESS ATTACHMENTS
STREET LIGHT POLES
DIAGRAM 9

NOT TO SCALE

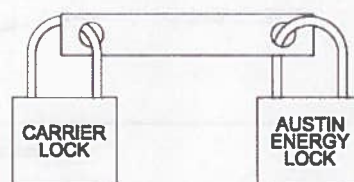
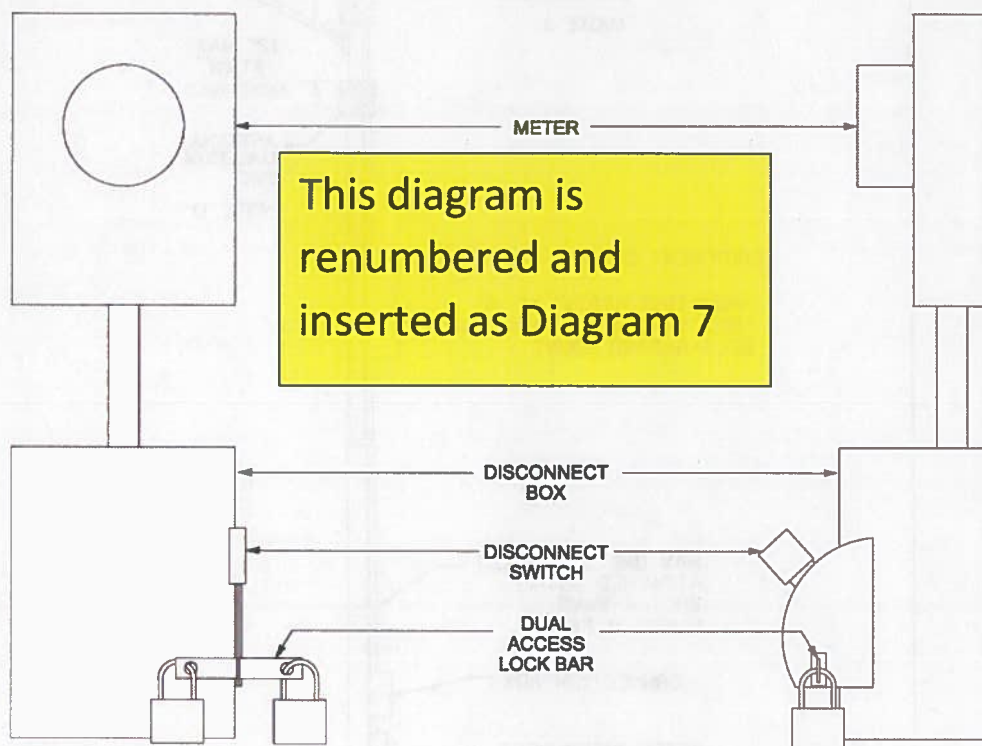
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NOTES:

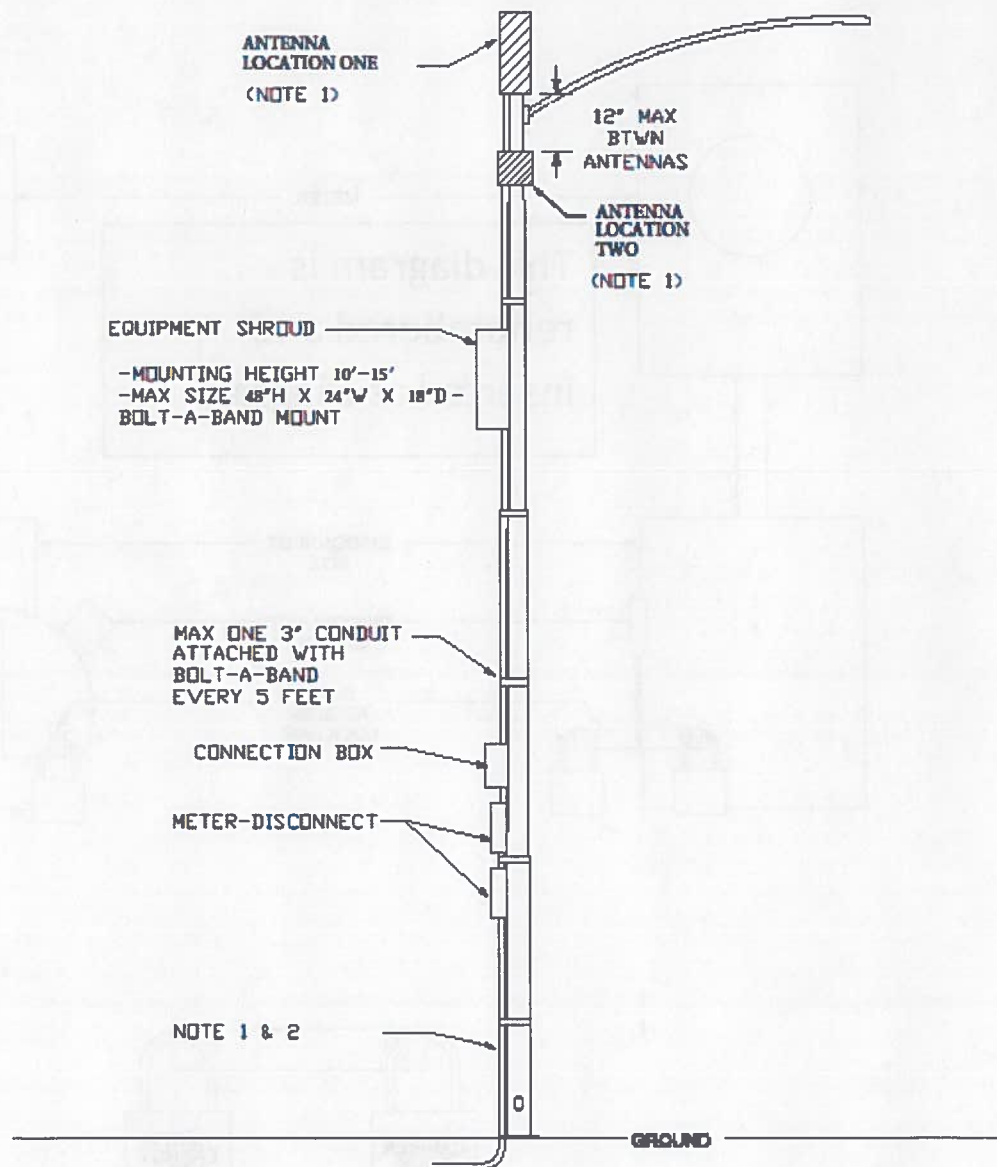
1. ON STEEL POLES USE BOLT-A-BAND AND ATTACH CONDUIT TO BAND.
2. GROUND ANTENNA AND ENCLOSURE TO GROUND ROD INSTALLED BY LICENSEE.
3. INSTALLATIONS SHALL NOT BLOCK OR HINDER ACCESS TO HANDHOLE COVERS.

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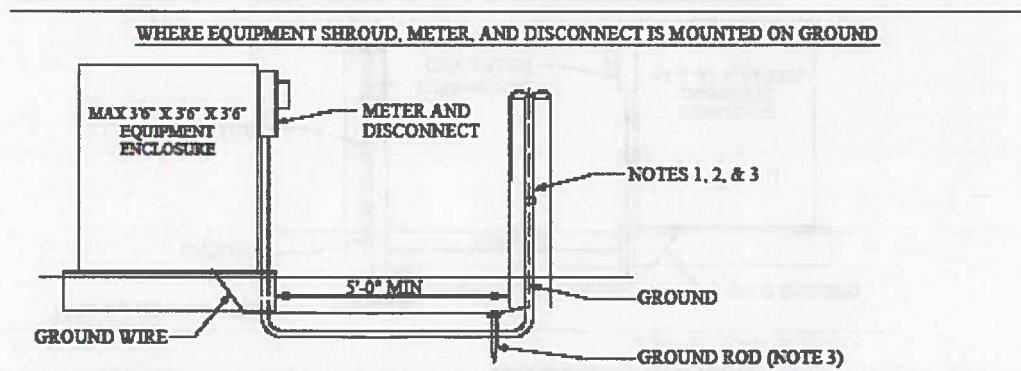
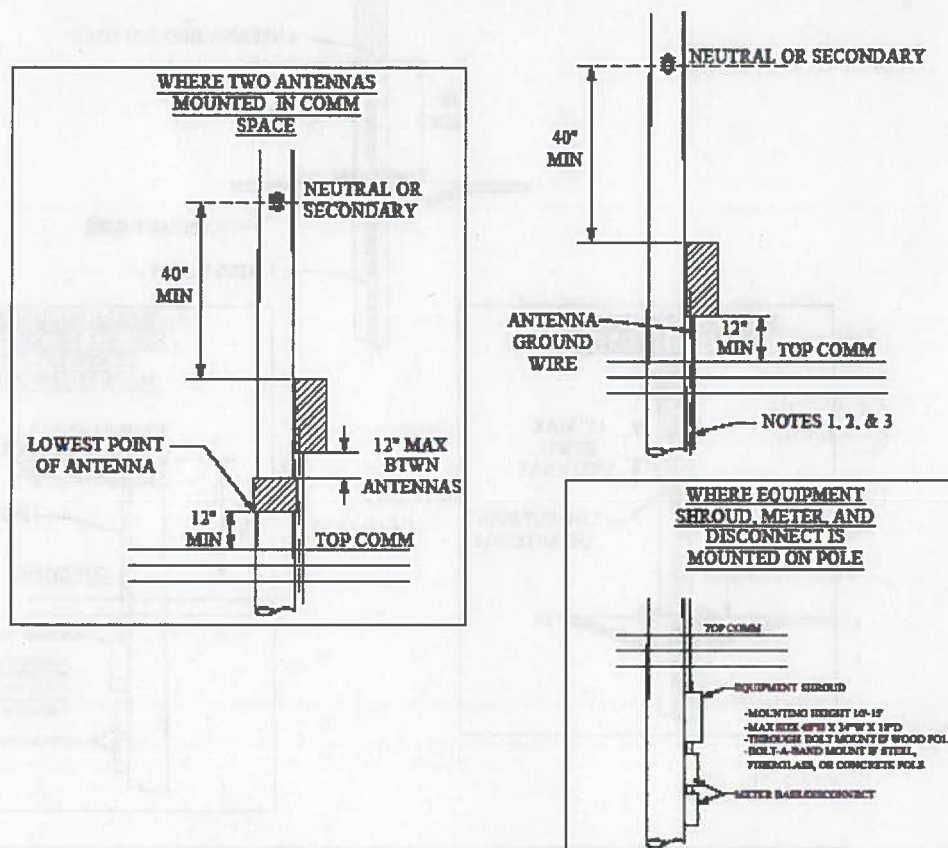
DUAL ACCESS LOCK BAR

	WIRELESS COMMUNICATION ATTACHMENTS	
	STREETLIGHT ANTENNA	
NOT TO SCALE	DIAGRAM 8	



- NOTES:
1. MAX TWO 3" SCH80 PVC CONDUIT
 2. ON STEEL POLES USE BOLT-A-BAND EVERY FIVE (5) FEET. ATTACH CONDUIT TO BANDS.
 3. INSTALLATION SHALL NOT BLOCK OR HINDER ACCESS TO HAND-HOLE COVERS.
 4. GROUND ANTENNA AND ENCLOSURE TO GROUND ROD. USE EXISTING POLE GROUND IF AVAILABLE.

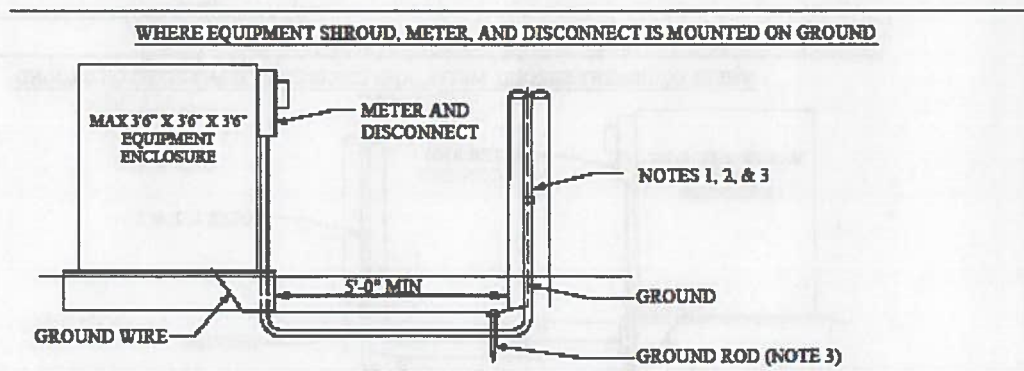
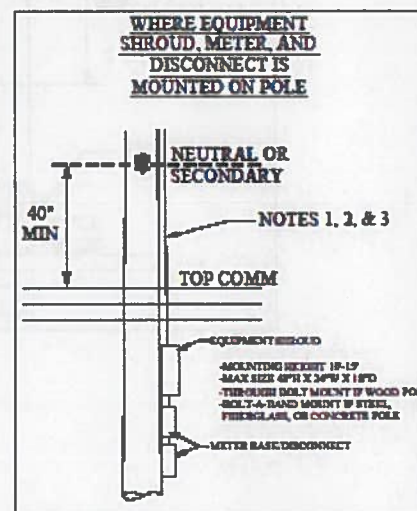
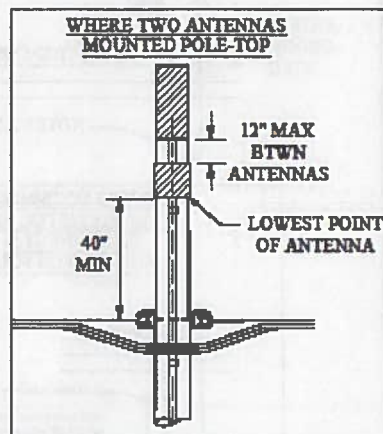
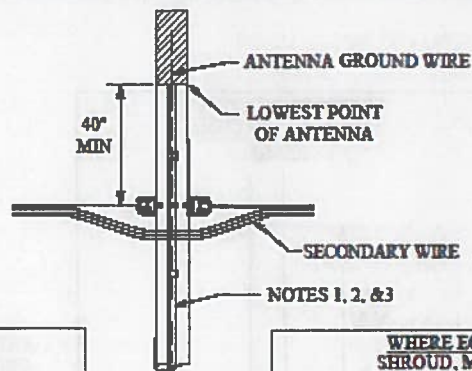
	WIRELESS COMMUNICATION ATTACHMENTS	
	COMM SPACE ANTENNA	
NOT TO SCALE	DIAGRAM 9	



NOTES:

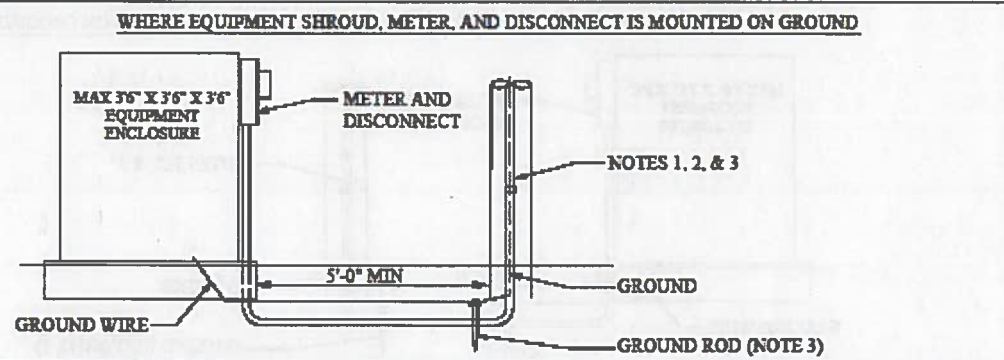
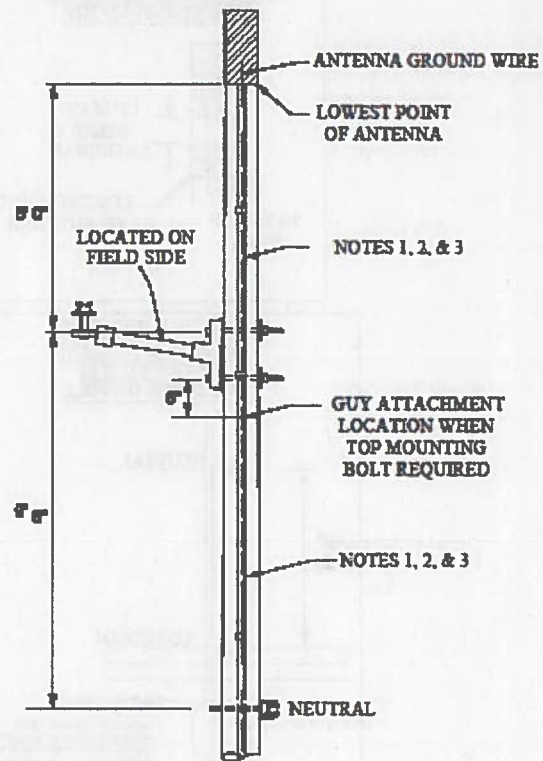
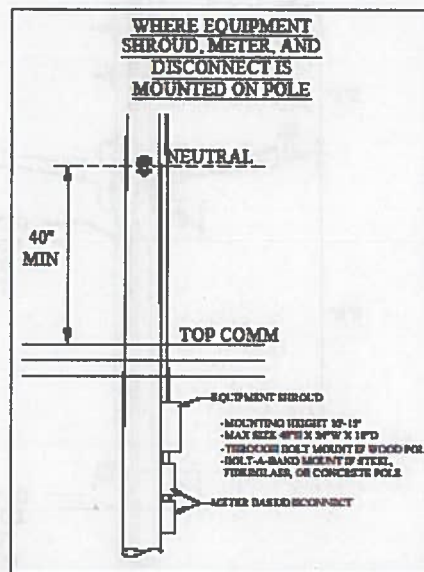
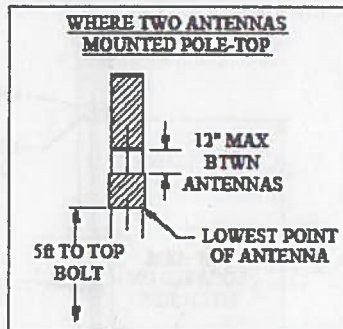
1. MAX TWO 3" SCH 80 PVC CONDUIT
2. USE THROUGH BOLTS TO ATTACH TO WOOD POLES.
3. ON STEEL POLES USE BOLT-A-BAND EVERY FIVE (5) FEET. ATTACH CONDUIT TO BANDS.
4. GROUND ANTENNA AND ENCLOSURE TO GROUND ROD. USE EXISTING POLE GROUND IF AVAILABLE.

	WIRELESS COMMUNICATION ATTACHMENTS	
	SECONDARY POLE, POLE TOP ANTENNA	
NOT TO SCALE	DIAGRAM 10	



- NOTES:
1. MAX TWO 3" SCH 80 PVC CONDUIT
 2. USE THROUGH BOLTS TO ATTACH TO WOOD POLES.
 3. ON STEEL POLES USE BOLT-A-BAND EVERY FIVE (5) FEET. ATTACH CONDUIT TO BANDS.
 4. GROUND ANTENNA AND ENCLOSURE TO GROUND ROD. USE EXISTING POLE GROUND IF AVAILABLE.

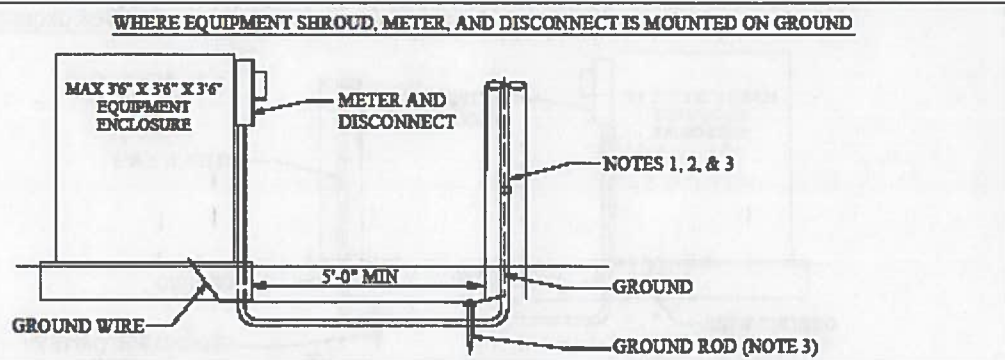
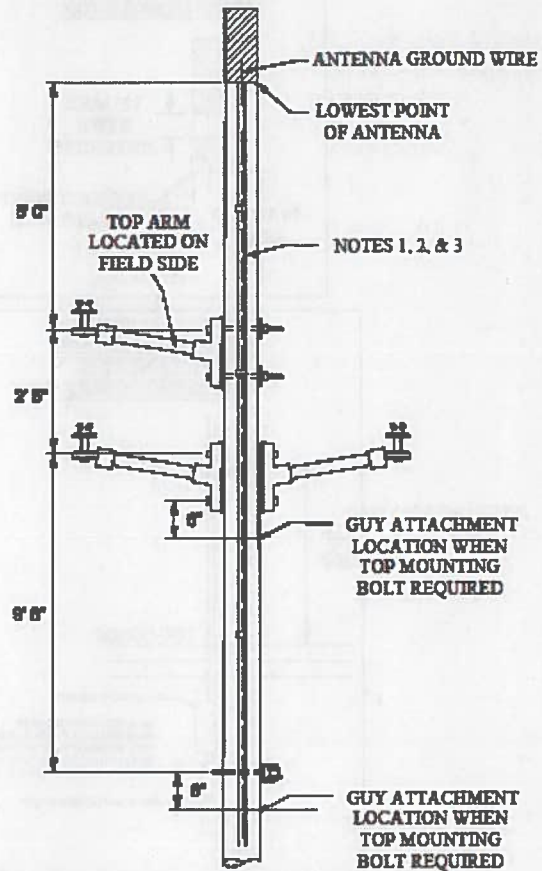
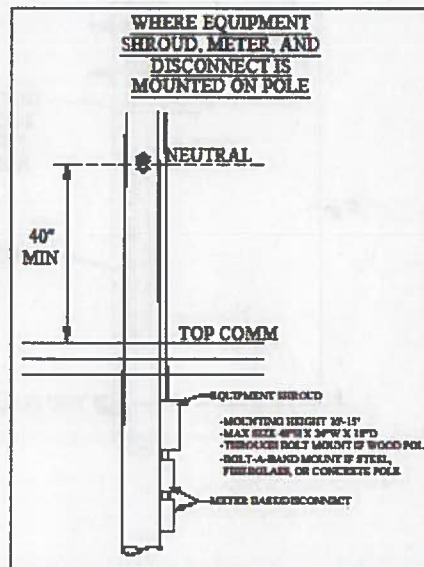
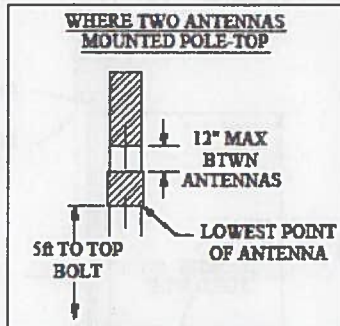
	WIRELESS COMMUNICATION ATTACHMENTS	
	1-PHASE TANGENT POLE, POLE TOP ANTENNA	
NOT TO SCALE	DIAGRAM 11	



- NOTES:**
1. MAX TWO 3" SCH 80 PVC CONDUIT
 2. USE THROUGH BOLTS TO ATTACH TO WOOD POLES.
 3. ON STEEL POLES USE BOLT-A-BAND EVERY FIVE (5) FEET. ATTACH CONDUIT TO BANDS.
 4. GROUND ANTENNA AND ENCLOSURE TO GROUND ROD. USE EXISTING POLE GROUND IF AVAILABLE.

	WIRELESS COMMUNICATION ATTACHMENTS 2-PHASE & 3-PHASE NP TANGENT, POLE TOP ANTENNA	
NOT TO SCALE		

DIAGRAM 12



NOTES:

1. MAX TWO 3" SCH 80 PVC CONDUIT
2. USE THROUGH BOLTS TO ATTACH TO WOOD POLES.
3. ON STEEL POLES USE BOLT-A-BAND EVERY FIVE (5) FEET. ATTACH CONDUIT TO BANDS.
4. GROUND ANTENNA AND ENCLOSURE TO GROUND ROD. USE EXISTING POLE GROUND IF AVAILABLE.

UTILITIES CRITERIA MANUAL

AUSTIN ENERGY POLE ATTACHMENTS

APPENDIX E – STANDARD POLE LICENSE AGREEMENT

This License Agreement ("Agreement") is between Austin Energy ("AE"), an electric utility wholly owned by the City of Austin, a Texas home-rule municipal corporation, and [name], a [state] [corporate form] ("Licensee"); hereinafter referred to individually as "Party" or collectively as "Parties".

WHEREAS, Licensee desires to provide telecommunications, video, internet, broadband or other data transmission services within AE's service area; and

WHEREAS, Licensee has obtained a franchise from the State of Texas or the City of Austin authorizing it to offer telecommunications, video, internet, broadband or other data transmission services, or is otherwise authorized by law to place attachments on AE Poles; and

WHEREAS, Licensee will need to place and maintain cables, equipment, or other facilities within AE's service area and desires to place such cables, equipment, and facilities on various Poles and easements owned by AE; and

WHEREAS, AE is willing to grant Licensee revocable, non-exclusive licenses to use certain AE Poles on the strict terms and conditions set forth in this Agreement and subject to the terms of the City of Austin's Infrastructure Usage Ordinance (Austin City Code Chapter 15-7) and the rules and regulations of the City of Austin adopted thereunder, as each may be amended from time to time; and

WHEREAS, AE is willing to allow Licensee to undertake the make-ready construction work necessary to prepare certain AE Poles to accommodate Licensee's cables, equipment, and facilities under the strict terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, AE and Licensee do hereby mutually covenant and agree as follows:

Article 1 – Definitions and Construction

1.1 **Definitions:** Capitalized terms in this Agreement shall have the same meanings given in Section 6 of the Utilities Criteria Manual (Pole Attachments). Otherwise, capitalized terms used in this Agreement are defined as follows:

Annual Usage Charge means the recurring charge that Licensee is to pay AE annually under this Agreement for the use of AE's Poles. The Annual Usage Charge is in addition to any Costs and Filing Fees Licensee may incur during a Contract Year, and shall be determined by AE as of December 1 of each Contract Year, other than the first Contract Year.

Contract Year means any calendar year during which this Agreement is in effect, beginning January 1 and ending December 31, except that the first Contract Year shall run from the Effective Date until December 31 of that year and the final Contract Year shall run from January 1 of that year until the date of termination.

Contractor includes subcontractors.

Cost means the total cost reasonably incurred by AE for any particular task under this Agreement, and includes without limitation reasonable labor, material, equipment usage, outside Contractor and vendor charges, reasonable overhead, and reasonable general and administrative expenses. Costs may be incurred for, without limitation, engineering and engineering review, Make-Ready construction, inspections and oversight, auditing, public relations and intervention, and other services. Certain Cost rates are specified in the fee schedules adopted as part of the City's annual budget ordinance, as may be amended. Cost rates shall be based on AE's actual and reasonable cost of labor, materials, and equipment usage. Subject to the foregoing, Costs shall be determined by AE in its reasonable judgment and reasonable discretion, and shall be paid by Licensee in accordance with either of the following, at AE's sole option:

1. Any advance estimate provided by AE, in which event AE shall have the right to refuse to incur the Costs until the estimate is paid; and/or
2. Any final invoice submitted by AE. In the event an advance estimate was paid by Licensee for Costs, the final invoice will reflect such payment.

Effective Date means the last date on which a party signs this Agreement as shown on the signature page of this Agreement.

Filing Fee means the initial, non-refundable fee charged to Licensee for filing an Application for an Attachment License. Filing Fees are currently set by city ordinance, though will be set by AE to the extent they are no longer set by ordinance (in which case the Filing Fee shall not exceed the actual and reasonable cost to AE of reviewing and processing an Application). The Filing Fee is solely to compensate AE for reviewing and processing an Application and does not include or offset Costs or Annual Usage Charges.

Infrastructure Usage Ordinance means Austin City Code Chapter 15-7 and any other City ordinance that may be enacted to govern electric utility infrastructure usage or rental.

Make-Ready means all work required to accommodate Licensee's Attachments on a Pole with respect to AE and Third Party User needs and in compliance with Applicable Standards, generally accepted engineering and construction practices, and applicable laws.

Third Party User means any attaching entity not part of this Agreement that has, or may be granted, a valid Attachment License or other right to attach with respect to an AE Pole.

Unauthorized Attachment means an Attachment or any other affixing or placing of Licensee's facilities onto AE property for which Licensee does not have a valid Attachment License, or which does not comply with the terms of this Agreement, the Section 6 of the Utilities Criteria Manual (Pole Attachments), Design Documents or the Electrical Code.

Usage Rate means, for each given Contract Year, the amount Licensee must pay AE for each Attachment.

1.2 **Interpretation.** Except as otherwise expressly provided herein, all nouns, pronouns and variations thereof shall be deemed to refer to the singular and plural. The descriptive headings in this Agreement are only for the convenience of the parties and shall not be deemed to affect the meaning or construction of any provision. The rule of construction that ambiguities in a contract are to be construed against the drafting party shall not apply to this Agreement. Any reference to a law, code or document shall mean such law, code or document as it may be amended from time to time.

1.3 **Third Party User Agreements** AE has in the past entered into other Pole usage agreements with Third Party Users. In construing this Agreement, no variations between this Agreement and other agreements with Third Party Users shall have any evidentiary value or be construed against AE.

1.4 **Compliance with Infrastructure Usage Ordinance and Rules** This Agreement is intended to further the goals and policies of the Infrastructure Usage Ordinance. The Infrastructure Usage Ordinance and Section 6 of the Utilities Criteria Manual (Pole Attachments) are incorporated by reference into, and are part of, this Agreement. Any changes to the Infrastructure Usage Ordinance or Section 6 of the Utilities Criteria Manual (Pole Attachments) shall be incorporated into and made part of this Agreement as of the effective date of the change. The absence in this Agreement of a provision that appears in the Infrastructure Usage Ordinance or Section 6 of the Utilities Criteria Manual (Pole Attachments), or vice versa, shall not be construed to relieve Licensee from complying with or being subject to such provision.

1.5 **State Law.** This Agreement is intended to comply with applicable state law. The terms of this Agreement govern Licensee's use of and access to AE Poles unless a term conflicts with a requirement of state law, in which case the state law shall govern.

Article 2 – Scope and Term of Agreement

2.1 **Term** This Agreement commences on the Effective Date and continues thereafter until terminated by either Party by written notice provided at least ninety (90) days prior to the date of termination, or until terminated without such advance notice due to Licensee's uncured default in accordance with this Agreement. This paragraph is subject to and conditioned upon any lawful requirements or limits imposed by City franchise or by Chapter 66 of the Texas Utilities Code.

2.2 **Existing Facilities Only** Except as otherwise set forth in the Section 6 of the Utilities Criteria Manual (Pole Attachments), (i) AE is under no obligation to add, build, keep, maintain, or replace Poles or any other facilities for the use or convenience of Licensee; and (ii) the maintenance, replacement, removal, relocation, or addition of AE Poles and facilities shall remain within the sole province and discretion of AE.

2.3 **Poles Only** This Agreement addresses only Attachments to AE Poles. This Agreement does not authorize Licensee to install or maintain Attachments on other AE property and facilities, including without limitation conduits, buildings, and towers.

2.4 **City Rights-of-Ways** Nothing in this Agreement shall be construed to grant Licensee any right or authorization to use or occupy the public streets or rights-of-way of the City of Austin, except for the placement of Attachments on Poles or other facilities covered by this Agreement which may be located in the public streets or rights-of-way, including access in the public streets or rights-of-way to such Attachments.

2.5 **No Property Rights in Poles** All Poles shall remain the property of AE and no payment made by Licensee shall create or vest in Licensee any ownership right, title, or interest in any Pole, but Licensee's interest shall remain a bare license. The existence of such a license shall not in any way alter or affect AE's right to use, change, operate, maintain, or remove its Poles, subject to the terms and conditions hereof.

2.6 **License not Exclusive** Licensee acknowledges that AE has entered into before, and may enter into in the future, similar or other agreements concerning the use of Poles by third parties, including Licensee's competitors. Nothing in this Agreement shall be construed to limit or in any way affect AE's right or ability to enter into or honor other agreements, or to grant any rights, licenses, or access concerning any Pole, irrespective of the character or degree of economic competition or loss caused to Licensee.

2.7 **No Cost or Expense to AE** The engineering, construction, installation, use, operation, and maintenance of Licensee's Attachments shall be at Licensee's sole expense. Unless otherwise expressly provided herein, nothing in this Agreement shall be construed to require AE to expend any funds or to incur or bear any cost or expense.

Article 3 – Usage Rates and Charges

3.1 **Calculation of Usage Rates** For each Contract Year, the Usage Rate shall be calculated per the Infrastructure Usage Ordinance governing Pole attachments within AE's service territory.

- A. To the extent lawfully permitted, the Annual Usage Charge for any Contract Year shall be, for Wireline Attachments, the number of Wireline Attachments shown on AE's records to exist as of December 1 of the preceding Contract Year multiplied by the Usage Rate for the new Contract Year. Provided, however, that the calculation of the Annual Usage Charge will not include Wireline Attachments overlashed to any of Licensee's Attachment for which a Usage Rate is chargeable, unless applicable state or federal law is amended to allow such a charge. The Annual Usage Charge for a Network Node shall be calculated using the Usage Rate for Wireline Attachments on a linear per-foot basis.
- B. If Licensee disagrees in good faith with AE's determination of the Usage Rate, Licensee may protest in writing within thirty (30) days of receipt of the notice. The protest shall include copies of all records and other documentation that support Licensee's position.
- C. Failure to timely protest AE's proposed Usage Rate shall constitute agreement to and acceptance of AE's determination.

- D. If Licensee does timely protest a proposed Usage Rate, the parties shall endeavor in good faith to negotiate a resolution of the dispute. If the parties are unable to resolve the dispute within sixty (60) days from the date of Licensee's protest, then either party may seek relief from the Texas Public Utilities Commission pursuant to Chapter 54.204 of the Texas Utilities Code, any successor regulation, or any other law conferring jurisdiction on the Texas Public Utilities Commission.
- E. If the dispute is not resolved by the time the Annual Usage Charge invoice is issued, Licensee shall nonetheless pay the invoice based upon the disputed Usage Rate. Payment by Licensee of the invoice shall not prejudice Licensee's ability to continue to contest the Usage Rate, and AE agrees not to interpose any claim, defense, or counterclaim that Licensee has waived its right to contest the Usage Rate by paying the disputed invoice.

3.2 **Subsequent Annual Usage Charges** In each January of each Contract Year and continuing thereafter until the termination of this Agreement, AE will invoice for, and Licensee shall pay, within forty-five (45) days after receipt of invoice, the Annual Usage Charge for the new Contract Year.

3.3 **Invoice Disputes** If Licensee believes in good faith that an invoice is incorrect, it may pay the invoice under protest. To protest an invoice, Licensee must give AE written notice of the nature of its protest no later than the due date for payment of the invoice together with copies of records and other documentation supporting its position. If Licensee's protest concerns the Attachment count used to calculate the Annual Usage Charge, the parties shall promptly meet to resolve the discrepancies in their records to determine the correct Attachment count. If the parties are unable to resolve a discrepancy as to the correct count, the parties shall jointly conduct a physical inventory of a statistically significant number of geographical grids or other mutually agreeable census to determine the correct count. The cost to conduct such inventory or census shall be equally divided between the parties.

3.4 **Adjustments** If upon resolution of a dispute between the parties under paragraph 3.1 or paragraph 3.3, a refund is due to Licensee, AE shall refund the amount of the overcharge together with interest at the rate specified in paragraph 9.5 from the date of AE's receipt of the protested Annual Usage Charge payment. If Licensee owes additional money, a corrected invoice shall be issued by AE for the additional Annual Usage Charge due, plus accrued interest at the rate specified in paragraph 9.5 from the due date of the original invoice.

3.5 **No Allowances** Unless otherwise expressly stated in this Agreement, there shall be no offsets against any sums due under this Agreement, or any other allowances, for system improvement, materials or labor supplied, upgrading, life extension, or other direct or incidental benefits conferred by Licensee upon AE or its Poles, system, or facilities. All such improvements and benefits belong solely to AE, and the fact that such improvements or benefits may accrue shall in no way alter or affect Licensee's obligations under this Agreement.

Article 4 – General Requirements

4.1 **Work Site Safety** In performing any work on or near Poles supporting energized electric lines, Licensee, and its Contractors, agents and employees shall comply with Chapter 752 of the Texas

Health and Safety Code and all federal, state and local laws, rules and regulations governing work in proximity to energized electric lines, including without limitation, those promulgated by the Occupational Safety and Health Administration. LICENSEE SHALL DEFEND, INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, SUITS AND JUDGMENTS ARISING FROM OR CONCERNING A BREACH BY LICENSEE OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

4.2 **Laws** To the extent that the Code of the City of Austin lawfully requires Licensee to possess a valid franchise or construction permit before engaging in a particular act, Licensee must comply with such requirement before beginning Make-Ready construction or installing Attachments. Nothing in this Agreement shall be construed as waiving other City requirements or permitting the construction of facilities other than Attachments. Attachments must conform to local, state, and federal law. Licensee's Attachments and Licensee's use of any Pole shall at all times conform to the requirements of the City Code, the Infrastructure Usage Ordinance, and the published policies and rules promulgated by the City pursuant thereto, including the Section 6 of the Utilities Criteria Manual (Pole Attachments).

Article 5 – Unauthorized Attachments

5.1 **Unauthorized Attachments** Licensee shall not place any Attachments on a Pole or other AE infrastructure except as authorized by an Attachment License. If one or more unauthorized Attachments are discovered, AE may, but shall not be required to, remove the unauthorized Attachment without incurring any liability to Licensee and at Licensee's sole Cost. With respect to any unauthorized Attachment, AE may opt to:

- A. require that Licensee remove such unauthorized Attachment upon demand or, if Licensee fails to do so, AE may remove such Attachment at Licensee's sole cost and risk or suspend processing of Licensee's Attachment Applications until the unauthorized Attachment is removed; or
- B. require that Licensee submit an Application for each such unauthorized Attachment, together with the then-current application filing fee and Annual Usage Charge relating back to the installation date of such unauthorized Attachment, or the time at which such Attachment was deemed an unauthorized Attachment pursuant to the terms and conditions of under the terms of the License Agreement. If such Application and charges are not received by AE within fifteen (15) days of notice of the unauthorized Attachment, AE may then opt to proceed under part A of this section.

5.2 **Excessive Unauthorized Attachments** If AE determines that Licensee has made more than fifty (50) Unauthorized Attachments of cable cumulatively during any Contract Year, or five (5) Unauthorized Attachments of Network Nodes, Licensee shall be considered to be in material breach of this Agreement and AE will have the right to terminate this Agreement and require removal of Licensee's Attachments in accordance with Article 6 of this Agreement.

5.3 **Remedies Cumulative** The remedies afforded AE under this Agreement are in addition to any civil or criminal penalties provided by the Infrastructure Usage Ordinance for Unauthorized Attachments or related rules.

5.4 **Ratification Must Be in Writing** No act or failure to act by AE with respect to an Unauthorized Attachment or any other unauthorized use of AE Poles or property shall be considered to be a ratification, licensing, or permitting of the unauthorized use, irrespective of any otherwise applicable doctrine of waiver or laches.

Article 6 – Termination

6.1 **Right of Suspension** If Licensee fails either to make any payment required under this Agreement, including timely payments to Contractors for Make-Ready Work, or to perform timely any material obligation under this Agreement, and such default continues for thirty (30) days after the date the payment or performance is due, then, in addition to any other available right or remedy, AE may, upon written notice to Licensee, immediately suspend all Attachment Licenses of Licensee and decline to review any application for Attachment Licenses of Licensee, until such time as the default is cured. The payment under protest of a disputed amount in order to avoid, or lift, suspension of Attachment Licenses shall not prejudice the rights of Licensee to continue the payment dispute. A suspension of Attachment Licenses under this paragraph shall not prevent Licensee from operating, maintaining, repairing or removing its existing Attachments, but Licensee shall not install any new or additional Attachments or make any changes to existing Attachments (except for removal or routine repair or maintenance necessary to continue to provide services to then-existing Licensee customers) during the period of suspension.

6.2 **Termination of Agreement by AE** If Licensee fails either to pay any payment required under this Agreement, including timely payments to Contractors for Make-Ready Work, or timely perform any material obligation under this Agreement, and if such default has not been cured within three (3) months of Licensee's receipt of written notice of default, AE may terminate this Agreement and all Attachment Licenses upon written notice to Licensee. Upon receipt of a notice of termination, Licensee shall promptly begin the process of removing all Attachments from Poles. All such Attachments shall be removed within thirty (30) days after the date of the notice of termination, or within such time as AE may agree. Until all of Licensee's Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Such payment by Licensee or acceptance by AE of Annual Usage Charges shall not act to cure the default that triggered the termination nor shall it reinstate this Agreement or Licensee's Attachment Licenses hereunder.

6.3 **Failure to Remove Attachments** If Licensee has not removed all its Attachments within the period of time specified in the preceding paragraph, or such additional period of time granted by AE in writing, then AE may remove Licensee's Attachments at Licensee's sole Cost and risk, in which event Licensee shall pay to AE as liquidated damages, and not as a penalty, for the use and occupancy of AE Poles a sum equal to one half of the monthly Usage Rate for each Pole Contact for each month (or part thereof) until all such Attachments have been removed. Alternatively, AE may, in its reasonable discretion and upon written notice to Licensee, deem the Attachments to have been abandoned and assume ownership thereof.

6.4 **Termination of Agreement by Licensee** Licensee may terminate this Agreement upon sixty (60) days written notice to AE, in which event all Attachments shall be removed within one hundred-twenty (120) days after the date of the notice of termination or within such other time as AE

agrees. Until all of Licensee's Pole Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Termination by Licensee during a Contract Year shall not relieve Licensee from payment for the full Annual Usage Charge for that Contract Year or any other sums owing AE.

6.5 **Survival** Licensee's obligations under this Article shall survive termination of this Agreement.

Article 7 – Assignments

7.1 **Permissible Assignments** Licensee may not assign or otherwise transfer this Agreement or any Attachment Licenses without AE's prior written consent, except that Licensee may without consent:

- A. transfer or assign this Agreement to an affiliate or subsidiary of Licensee. Licensee's rights and obligations hereunder shall pass to such successor only upon receipt by AE of written notice of such transfer or assignment, together with true copies of the documents specified in paragraph 7.2 below; and
- B. lease capacity on its telecommunications system and network to another service provider that provides telecommunications services, as defined in the Telecommunications Act of 1996. No such lease of capacity shall relieve Licensee of any of its obligations or duties hereunder, and any failure of performance, non-payment or other default by such lessee, shall be deemed to be a failure of performance, non-payment or default by Licensee, for which AE may assert all available rights and remedies under this Agreement or under law or in equity. In the event of a lease of capacity, Licensee shall deliver to AE contemporaneous copies of all information and documents that Licensee is required to provide AE under its franchise. Nothing in this Agreement shall be construed to grant any Attachment Licenses to any party leasing capacity from Licensee; and
- C. mortgage any or all of its property, rights, privileges and franchises, or to enter into any merger, consolidation, or sale of its assets in the area served by AE substantially in their entirety. Licensee shall provide advance written notice of foreclosure, merger, consolidation or sale, together with true copies of the documents specified in paragraph 7.2 below within thirty (30) days of closing such transaction.

7.2 **Information to AE** In the event of a transfer or assignment of this Agreement, Licensee shall provide AE with true and complete copies of the transfer or assignment documents; documents showing the ownership of the assignee and its relationship to Licensee, if any; a copy of the assignee's most current audited annual financial statement (or unaudited financial statement if an audited annual financial statement has not been prepared); a copy of the assignee's franchise with the City, if any; copies of all insurance certificates and bonds required by this Agreement; and such other information as AE may reasonably request.

7.3 **Other Assignments Void** A purported assignment or transfer made in violation of the provisions of this Article 7 shall not be binding upon AE and shall be deemed to be a material default of this Agreement.

7.4 **Assignment by AE** AE may assign this Agreement in whole or in part without the consent of Licensee. AE shall give Licensee written notice of the transaction within ten (10) days after closing.

7.5 **Partial Assignments** If Licensee sells, conveys, or transfers some, but not all, of Licensee's Attachments, and such assignment complies with this Article 7, the assignee must nonetheless obtain a separate agreement from AE for the assignee's Attachments in accordance with City of Austin and AE policies, rules, regulations and Ordinances in effect at that time. Until the assignee executes a separate agreement, the assignment is not binding upon AE and the assignee's Attachments shall continue to be deemed to be the Attachments of Licensee for all purposes hereunder, including billing and payment of Annual Usage Charges.

Article 8 – Liability & Indemnity; Warranty

8.1 **AE Liability** AE reserves to itself the right to maintain and operate its Poles in such manner as will best enable it to fulfill its own service requirements, subject in all respects to the terms and conditions of this Agreement. AE shall not be liable for any damages incurred by Licensee for damage or interruption to its Attachments except for actual repair costs caused by the negligence or intentional misconduct of AE; provided, however, that AE shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's Attachments. **NEITHER AE NOR LICENSEE SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THE USE OF OR DAMAGE TO AE'S OR LICENSEE'S FACILITIES.**

8.2 **No Warranties by AE** Licensee is expected to inspect the Poles on which its Attachments will be placed and shall rely solely on such inspection to determine the suitability of the Poles for its purposes. **AE DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTIES CONCERNING ANY POLE, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACCEPTS THE USE OF ALL POLES AS IS, WHERE IS, AND WITH ALL FAULTS, EXCEPT AS OTHERWISE PROVIDED HEREIN.**

8.3 **Unsafe Poles** Licensee acknowledges and agrees that AE does not warrant the condition or safety of AE's Poles, or the premises surrounding the Poles, and LICENSEE HEREBY ASSUMES ALL RISKS OF AND INDEMNIFIES AE FROM ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH LICENSEE'S OR LICENSEE'S CONTRACTORS' USE OF THE POLES AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN, OR SURROUNDING THE POLES. Licensee expressly agrees that it will undertake responsibility for inspecting and evaluating the condition of any Pole before allowing any workers, whether those of Licensee or Licensee's Contractors, to climb or otherwise work on such Pole. If Licensee discovers any Poles that are rotten or otherwise unsafe for climbing or Attachment installation, Licensee shall immediately report such unsafe condition to AE. Licensee further acknowledges that AE does not warrant that all Poles are properly labeled, and agrees

that AE is not liable for any injuries or damages caused by or in connection with missing labels or otherwise improperly labeled Pole. Licensee further agrees to immediately notify AE if labels or tags are missing or otherwise improper.

8.4 **Dangerous Nature of the Work** Licensee acknowledges that in performing the work contemplated by this Agreement, Licensee and its agents, servants, employees, and Contractors will work near electrically energized lines, transformers, and other electrical equipment, and it is the intention that the power flowing through such facilities will not be interrupted except by AE. Licensee shall ensure that its employees, servants, agents, and Contractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of AE, and the general public, from harm or injury while performing work permitted by this Agreement. In addition, Licensee shall furnish its employees, and shall require its agents and Contractors to furnish their employees, with competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee further warrants that it is apprised of, conscious of, and understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on AE's Poles by Licensee's employees, servants, agents, and Contractors, and accepts it as its duty and sole responsibility to notify and inform Licensee's employees, and to require its agents and Contractors to inform their employees, of such dangers, and to keep them informed regarding same.

8.5 **Licensee Liability and Indemnity** Subject only to paragraph 8.7, Licensee shall defend, indemnify and hold harmless AE and the City of Austin and all affiliated entities of AE and the City of Austin, whether existing now or in the future, and their respective officials, officers, departments, agencies, boards, representatives, employees, agents, Contractors and attorneys against any and all liability, claims, costs, damages, fines, taxes, penalties, punitive damages, expenses, demands, lawsuits or disputes (including reasonable attorney fees of counsel selected by AE and all other costs and expenses of litigation) arising from or related to any of the following:

- A. All acts or omissions by Licensee or its Contractors done in the course of Make-Ready or installation construction or in the maintenance, use, or operation of Licensee's Attachments;
- B. Any work performed by AE that was necessitated by the installation, maintenance, presence, use or removal of Licensee's Attachments or from any work this Agreement authorizes AE to perform on Licensee's behalf;
- C. All claims or causes of action for damage to property or injury to or death of any persons, including payments made by AE under any Worker's Compensation Laws or under any plan for employees' disability and death benefits, arising out of the erection, maintenance, repair, presence, use, relocation, transfer or removal of Licensee's Attachments or the proximity of Licensee's Attachments to AE's facilities or the property of any other Third Party User, or by any act or omission of Licensee on or in the vicinity of AE's Poles;

- D. All claims or causes of action for property damage, bodily injury or death arising out of the performance or nonperformance of any work or obligation undertaken by Licensee pursuant to this Agreement;
- E. Any claim or cause of action related to Licensee's erection, maintenance, repair, presence, use, relocation, transfer or removal of Licensee's Attachments, including liabilities incurred as a result of violation of any law, rule, or regulation of the United States, State of Texas or any other governmental entity or administrative agency;
- F. A violation of any state or federal law arising out of Licensee's erection, maintenance, repair, presence or use, relocation, transfer or removal of Licensee's Attachments or the proximity of Licensee's Attachments to AE's facilities or the property of any Third Party User, or by any act or omission of Licensee on or in the vicinity of AE's Poles, whether such violation is the result of a violation of a statute by AE or the Licensee solely or any joint violation thereof.
- G. Claims of governmental bodies, property owners or others alleging that Licensee does not have a sufficient right or authority for placing and maintaining Licensee's facilities at the locations of Poles owned by AE or joint users.
- H. Claims for taxes by others that arise directly or indirectly from the construction, maintenance or operation of Licensee's facilities.
- I. Claims or causes of action caused by or relating in any manner to a breach of this Agreement or a failure to follow the terms of this Agreement by Licensee or its agents and employees or by Licensee's contractors or their agents and employees.
- J. All claims or causes of action of Third Party Users alleging interference from Licensee's Attachments or damage to Third Party User Attachments or facilities.
- K. Any third party claims or causes of action alleging that Licensee's use of any hardware, software or other materials embedded in Licensee's Attachments infringes or misappropriates such third party's intellectual property rights in such hardware, software or other materials.

8.6 AE Fault SUBJECT ONLY TO PARAGRAPH 8.7, IT IS THE EXPRESS INTENT OF THE PARTIES THAT THE FOREGOING INDEMNITY IS TO PROTECT AND INDEMNIFY AE AND THE CITY OF AUSTIN AGAINST THE CONSEQUENCES OF ITS OWN FAULT WHERE AE'S OR THE CITY'S FAULT IS A CONCURRENT CAUSE OF THE INDEMNIFIED LIABILITY.

8.7 Joint Liability The indemnity obligations set forth in paragraph 8.5 shall apply to fully protect and indemnify AE and the City of Austin from all such claimed damages unless the indemnified liability was the result of intentional or reckless misconduct or negligence on the part of AE or the City of Austin, or their agents, servants, employees, or contractors, in which case each party shall be liable for

its found percentage of damages in accordance with Texas law based upon a final judgment in which a finder of fact determines AE's and/or the City of Austin's percentage of responsibility for the indemnified liability.

8.8 **Other Indemnification Provisions** No indemnification provision contained in this Article shall be construed in any way to limit any other indemnification provision contained in this Agreement.

8.9 **Licensee's Construction Warranty** LICENSEE WARRANTS AND GUARANTEES TO AE THAT ALL MAKE-READY WORK WILL CONFORM TO THE SECTION 6 OF THE UTILITIES CRITERIA MANUAL (POLE ATTACHMENTS) AND THE DESIGN DOCUMENTS, BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER IN ACCORDANCE WITH THIS AGREEMENT, AND WILL NOT BE DEFECTIVE. LICENSEE'S WARRANTY AND GUARANTEE HEREUNDER EXCLUDES DEFECTS OR DAMAGE CAUSED BY: (I) ABUSE, MODIFICATION OR IMPROPER MAINTENANCE OR OPERATION BY PERSONS OTHER THAN LICENSEE, ITS SUBCONTRACTORS OR SUPPLIERS; OR (II) NORMAL WEAR AND TEAR UNDER NORMAL USAGE.

8.10 **Survival** This Article 8 shall survive the termination of this Agreement.

Article 9 – Miscellaneous Provisions

9.1 **Integration** This Agreement constitutes the entire understanding of the parties relating to the use of Poles hereunder; and there shall be no modification or waiver hereof except by writing, signed by the party asserted to be bound thereby. There are no oral representations or agreements between the parties. All previous agreements, correspondence, statements, and negotiations are superseded by this Agreement.

9.2 **No Waiver** 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 duly force and effect.

9.3 **Applicable Law** The parties hereto agree and intend that all disputes that may arise from, out of, under or respecting the terms and conditions of this Agreement, or concerning the rights or obligations of the parties hereunder, or respecting any performance or failure of performance by either party hereunder, shall be governed by the laws of the State of Texas, without application of its Conflict of Laws provisions. The parties further agree and intend that venue shall be proper and shall lie exclusively in Travis County, Texas, except where otherwise provided herein and except where the Texas Public Utilities Commission lawfully has jurisdiction.

9.4 **Severability** If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants and provisions of this Agreement shall remain in full force and effect.

9.5 **Payments & Interest** All monetary payments under this Agreement shall be due and payable within forty-five (45) days after receipt of invoice. All overdue balances shall accrue interest at the rate of one-percent (1%) per month from the due date until paid, or the maximum rate allowed by law, whichever is less.

9.6 **Notices** When notice is required to be given under this Agreement by either party, it shall be in writing mailed or delivered to the other party at the following address or to such other address as either party may from time to time designate in writing for that purpose. All notices shall be effective upon receipt.

City

Austin Energy
721 Barton Springs Road
Austin, TX 78704
Phone (512) 322-6148
Fax (512) 505-3938
Attn: Vice President, ESD

Licensee

[Contact Information]

With a copy to:

Austin Energy - Infrastructure Asset
Management
Attn: Manager
721 Barton Springs Road
Austin, TX 78704

IN WITNESS WHEREOF, the undersigned have executed this Agreement through their duly authorized representatives.

LICENSEE:

[NAME]

By: _____
Name: _____
Title: _____
Date: _____

CITY OF AUSTIN d/b/a AUSTIN ENERGY

By: _____

Name: _____

Title: _____

Date: _____