

**AGREEMENT
COVERING THE JOINT USE OF POLES
ON A RENTAL BASIS**

THIS AGREEMENT COVERING THE JOINT USE OF POLES ON A RENTAL BASIS ("Agreement"), made this ___ day of _____, 202__, by and between the Jamestown Town Council for the Jamestown Municipal Light and Power Company of the State of Indiana, hereinafter called the "Power Company", and _____, a corporation of the State of Indiana, hereinafter called the "Telecommunications/Internet Provider," and hereinafter, collectively, the "Parties."

RECITALS

WHEREAS, the Power Company operates and maintains various pole lines extending in and through the corporate boundaries of the Town of Jamestown, State of Indiana; and

WHEREAS, the Power Company, as owner of its poles, is willing, subject to the conditions hereinafter set forth, to permit the Telecommunications/Internet Provider, as Licensee, to place its attachments on said poles for the purpose of providing telecommunications and/or internet services to the Town of Jamestown, the residents of the Town of Jamestown, and the residents of the surrounding areas; and

WHEREAS, the area within which the Telecommunications/Internet Provider may place attachments on the poles owned by the Power Company is more particularly described in Exhibit A attached hereto and incorporated herein.

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

AGREEMENT

1. Scope. This Agreement shall cover the poles of the Power Company used jointly by the Power Company and the Telecommunications/Internet Provider as of the date of this Agreement and any other pole of the Power Company when brought hereunder in accordance with the procedures hereinafter provided.

2. Definitions.

- a. For the purpose of this Agreement, the phrase "joint-use pole" shall mean a pole conforming to the latest specifications of the American Standards Association and containing at least one contact.
- b. A "contact," "pole contact" or "attachment" is defined within this Agreement as any wire, cable, strand, material, or apparatus, affixed to the poles of the Power Company now or hereafter used by the Telecommunications/Internet

Provider in the construction, operation, or maintenance of its utility.

- c. For the purpose of this Agreement, any reference to the phrase “mutually agreed upon by both parties” shall be construed as written approval of any terms, processes and/or timelines agreed to for situations noted throughout this Agreement. When identifying an area where mutual agreement is required, the resources listed herein, or their successors, will be utilized to provide any approvals required.
- d. For the purpose of this Agreement, any reference to "Telecommunications/Internet" shall be construed as “the science and technology of communication by electronic transmission of impulses or otherwise, as by telegraphy, cable, telephony, radio, internet, broadband, or television.
- e. For the purpose of this Agreement, any reference to NESC shall be construed as the “National Electrical Safety Code.”

3. Specifications.

- a. The joint use poles covered by this Agreement shall be placed and maintained in accordance with the most stringent requirements, specifications, rules and regulations of the latest edition of the NESC, including any subsequent revisions or amendments thereto, any governing authority having jurisdiction, and the rules and practices of the Power Company as the same may be amended, modified, changed or rescinded from time to time in the reasonable discretion of the Power Company.
- b. It is understood and agreed between the Parties that the Power Company’s rules and practices set out in Exhibit "B" may be changed by the Power Company, or new rules and practices may be adopted by the Power Company, by giving written notice thereof to Telecommunications/Internet Provider.
- c. The Power Company shall give Telecommunications/Internet Provider written notice of such changes or adoptions of its rules and practices in the manner contemplated herein and Telecommunications/Internet Provider agrees to make such changes or alterations in its installations or maintenance of its facilities as may be required in order to fully comply with the provisions of such notice, within sixty (60) days of receipt of such notice.
- d. No tag, brand, or other device showing Telecommunications/Internet Provider's name or insignia should be placed on, or attached to, any pole of the Power Company, except such tag or insignia which shows Telecommunications/Internet Provider to be the Telecommunications/Internet Provider of such pole and not the owner thereof and then only after obtaining the written consent of the Power Company.

- e. The strength of poles covered by this Agreement shall be sufficient to withstand the transverse and vertical loads imposed upon them under the storm loadings of the NESC assumed for the area in which they are located.
- f. Any unbalanced loading of the Power Company's poles caused by the placement of Telecommunications/Internet Provider's attachments shall be properly guyed and anchored by Telecommunications/Internet Provider, at no expense to the Power Company.

4. Establishing Joint Use of Poles.

- a. Before the Telecommunications/Internet Provider shall make a pole contact or attachment to any of the Power Company's poles, the Telecommunications/Internet Provider must submit a completed application in the form attached and identified as Exhibit C and shall comply with the procedures set forth in this section.
- b. If, in the judgment of the Power Company, joint use under the circumstances is undesirable, the Power Company shall have the right to reject the application. In any event, within forty-five (45) days after the receipt of such application, the Power Company shall notify the Telecommunications/Internet Provider in writing whether the application is approved or rejected. If the Power Company does not respond within forty-five (45) days, the dispute resolution process described herein shall be invoked.
Telecommunications/Internet Provider must submit a new application whenever the Telecommunications/Internet Provider desires to add, relocate, replace, or otherwise modify Telecommunications/Internet Provider's facilities. Service drops may be attached or replaced without The Power Company's prior approval provided the new attachments are applied for within thirty (30) days of completion. The Power Company reserves the right to deny proposed attachments in space that is required for The Power Company's use in accordance with an existing bona fide plan for expansion of core business or is not acceptable for Telecommunications/Internet Provider's use due to capacity, safety, reliability, or engineering concerns.
Telecommunications/Internet Provider shall not over-lash an existing pole contact or attachment, except to add a service drop, unless further application is made and is approved by the Power Company. In the event the Power Company proposes to deny an application, the Power Company shall provide the Telecommunications/Internet Provider the reasons for denial. If requested by the Telecommunications/Internet Provider, the Power Company and Telecommunications/Internet Provider shall explore in good faith reasonable alternatives to accommodate the proposed attachment.
- c. Upon receipt of the completed application, the Power Company may deem that a make ready survey is necessary to determine the adequacy of the

existing poles and anchors or conduit capacity to accommodate the Telecommunications/Internet Provider's facilities. If any make ready work is required, the Power Company will provide a written response to each application within forty-five (45) days of the receipt of the request. A representative of the Power Company will perform the field inspection portion of the make ready survey and will notify the Telecommunications/Internet Provider when it will be performed. The Telecommunications/Internet Provider may be present if they so desire. If the Power Company approves the request, it will complete the description of the make ready work to be performed to prepare the Power Company's facility(s) for the Telecommunications/Internet Provider's proposed attachment(s). The Power Company will also prepare an estimate of make ready costs and determine the anticipated completion date for this work. This information will be forwarded to the Telecommunications/Internet Provider, along with the application approval. Costs include materials, less salvage, labor, engineering, supervision, and overheads (engineering includes design, proper conductor spacing and bonding, and calculations to determine proper ground clearances and pole and downguy strength requirements for horizontal and transverse loading). If the Telecommunications/Internet Provider agrees that the make ready costs are acceptable and elects to proceed with the proposed attachment(s), the Telecommunications/Internet Provider must sign and return the authorization to proceed within fifteen (15) days after receipt, along with a deposit in the amount of the anticipated make ready costs. If no make ready work is required, the Power Company will either approve or deny the application based on the Telecommunications/Internet Provider's requirements and current field conditions. Upon written notice of acceptance of the make ready costs by the Telecommunications/Internet Provider, the Power Company shall proceed with the necessary changes in the pole line covered by the referenced cost estimate. The Power Company shall make every effort to complete this work at a mutually agreed upon completion date. Nothing shall preclude the Parties from making any mutually agreeable arrangement for contracting for or otherwise accomplishing the necessary make ready changes. Upon completion of all changes, the Telecommunications/Internet Provider shall have the right to use the poles jointly and to make attachments in accordance with the terms of the application and of this Agreement. In addition, the Telecommunications/Internet Provider, upon receipt of invoice from the Power Company, shall pay any difference between the estimated make ready costs previously paid and the actual make ready costs. An itemized statement of each work step, per pole, of the actual costs of all such changes shall be submitted by the Power Company to the Telecommunications/Internet Provider, in a form mutually agreed upon. If the actual make ready costs are less than estimated costs previously paid, The Power Company shall refund the overpayment to the Telecommunications/Internet Provider within thirty (30) days. The Telecommunications/Internet Provider shall, at its own expense, make attachments in such a manner as not to interfere with the

service of the Power Company.

- d. Upon completion of any required make ready work by the Power Company, the Telecommunications/Internet Provider must then complete its attachment(s) within one hundred eighty (180) days. If the Telecommunications/Internet Provider does not complete its attachment(s) within that timeframe, The Power Company may elect to terminate its approval for the attachment by providing written notice to Telecommunications/Internet Provider. Telecommunications/Internet Provider is not entitled to a refund of any make ready costs previously paid for incomplete attachment.
- e. Any re-clearing of existing rights-of-way, and any tree trimming necessary for the establishment of joint use, shall be performed by the party making the attachment(s) or as may be mutually agreed upon.
- f. All poles jointly used under this Agreement shall remain the property of the Power Company, and any payments made by the Telecommunications/Internet Provider for changes in pole lines under this Agreement shall not entitle the Telecommunications/Internet Provider to ownership of any of said poles.

5. Easements and Right-of-Way for Attachments. While the Power Company and Telecommunications/Internet Provider will cooperate as far as may be practicable in obtaining rights-of-way for both parties on joint poles, the Power Company does not warrant or assure to the Telecommunications/Internet Provider any right-of-way privileges or easements on, over, or across streets, alleys and public thoroughfares, and private or publicly owned property. If the Telecommunications/Internet Provider shall at any time be prevented from placing or maintaining its attachments on the Power Company's poles, no liability on account thereof shall attach to the Power Company. Telecommunications/Internet Provider shall be responsible for obtaining its own easements and rights-of-way. The Power Company disclaims any warranty or other representation regarding the permitted use of its easements and rights-of-way by Telecommunications/Internet Provider.

6. Maintenance of Poles, Attachments, and Right-of-Ways.

- a. The Power Company shall, at its own expense, maintain the jointly used poles in a safe and serviceable condition and in accordance with the specifications contained herein, and shall replace, reinforce, or repair such poles as they become defective, at its expense.
- b. Whenever right-of-way considerations or public regulations make relocation of a pole necessary, such relocation shall be made by the Power Company at its own expense, except each party shall bear the cost and responsibility of transferring its own attachments as stated herein.
- c. Whenever it is necessary to replace or relocate a jointly used pole, the Power

Company shall, before making such replacement or relocation, give thirty (30) days' notice in writing, except in cases of emergency, when verbal notice will be given and subsequently confirmed in writing, to the Telecommunications/Internet Provider, specifying in such notice the time and locations of such proposed replacement or relocation. Telecommunications/Internet Provider shall, at the time so specified in said notice, transfer its attachments to the new or relocated joint use pole. The Power Company shall be the sole judge in determining whether to abandon and remove an existing pole line. Should the Telecommunications/Internet Provider fail to transfer its attachments to the new or relocated joint pole at the time specified for such transfer of attachments, the Power Company may elect to do such work and the Telecommunications/Internet Provider shall pay the Power Company the cost thereof. In the event the Telecommunications/Internet Provider fails to transfer its attachments and the Power Company does the work, the Power Company shall not be liable for any loss or damage to the Telecommunications/Internet Provider's facilities that may result.

- d. Except as otherwise provided in this Agreement, each party shall at all times maintain all of its attachments in accordance with the specifications contained herein and shall keep them in safe condition and thorough repair. Each party shall be responsible for maintenance and tree trimming / cutting for their own facilities, at its own expense. Hazardous tree conditions requiring immediate attention will be cared for by the party whose facility is being affected, upon notification by either party to this Agreement, in a mutually agreed upon timeframe.
- e. Any existing joint use construction of the Parties which does not conform to the specifications mentioned herein and has been identified as a hazard, shall be brought into conformity as soon as practicable, within a timeframe agreed upon by both Parties, per current NESC guidelines. When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in this Section. Should Telecommunications/Internet Provider fail to comply with this requirement, The Power Company may elect to perform such work and the Telecommunications/Internet Provider shall pay the Power Company the cost thereof. If in the Power Company's sole reasonable judgment there is an immediate risk of personal injury or property damage, the Power Company may require the Telecommunications/Internet Provider to take corrective action within a shorter period of time and may elect to do such work itself or hire a contractor qualified to work in the electrical space, and the Telecommunications/Internet Provider shall reimburse the Power Company for all costs incurred by the Power Company or its agent. Failure by the Power Company to inspect the Telecommunications/Internet Provider's conformance to the technical requirements and specifications listed in this Section or to take action on its own to bring such attachments into compliance shall not cause the Power Company to be liable for any loss or injury resulting from such failure of conformance and shall not relieve the Telecommunications/Internet Provider of its obligations of indemnification

hereunder.

- f. The Telecommunications/Internet Provider expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, agents, contractors, or employees of contractors. The Power Company disclaims any warranty or representation regarding the condition and safety of the poles of the Power Company. The Power Company agrees that, upon written notification, it will replace any pole that has become unserviceable at the Power Company's cost, when in The Power Company's opinion; the pole in question is unserviceable for its intended original purpose and no longer meets specifications contained herein.

7. Recovery, Rearranging, or Relocation of Facilities.

- a. In the event it becomes necessary for use in the Power Company's business, necessary for the business of another utility or third-party with whom the Power Company has an agreement for the joint use of poles, or necessary for the Power Company to meet federal, state, or local laws and regulations for the Telecommunications/Internet Provider to vacate space on poles that are currently occupied or contracted for by the Telecommunications/Internet Provider, the Telecommunications/Internet Provider shall, upon receipt of a sixty (60) day written notice, either:
 - i. Vacate the space by removing its attachments; or
 - ii. Instruct the Power Company to replace the pole at the Telecommunications/Internet Provider's expense.
- b. Whenever it is necessary to replace or change the location of a joint use pole, for reasons other than those set out in (a) above, the Power Company shall, before making such change, give due notice to the Telecommunications/Internet Provider, specifying in such notice the time and location of proposed changes, and the Telecommunications/Internet Provider shall promptly transfer or remove its attachments. In the case of any such pole replacement or relocation where The Power Company has transferred or removed its attachments and Telecommunications/Internet Provider has not transferred or removed its attachments within sixty (60) days after receipt of such written notice and no other parties prevented the Telecommunications/Internet Provider from performing their work, the Telecommunications/Internet Provider shall become liable for such old pole, if it still exists, as provided in Section 9 and the Power Company will provide written documentation to reflect the transfer of ownership.
- c. In the event of any changes contemplated in this Section, the Telecommunications/Internet Provider shall pay the entire cost of any removal, transfer, or installation of its own attachments.

8. Abandonment. If the Power Company desires to abandon any jointly used pole hereunder, it shall give the Telecommunications/Internet Provider sixty (60) days prior written notice of such intention. The Telecommunications/Internet Provider shall either remove its attachments from the said pole during said sixty (60) day period or purchase the pole at its then value in place. If, after the expiration of said sixty (60) day period, the Power Company shall no longer have any attachments on the pole, but the Telecommunications/Internet Provider shall be still occupying the pole, it shall save harmless the former owner of such pole from all obligation or liability incurred thereafter with respect to such pole. The Telecommunications/Internet Provider may, at any time, abandon the use of a jointly used pole hereunder by giving thirty (30) days written notice thereof to the Power Company, and by removing therefrom all of its attachments.

9. Rentals, Charges, and Rates.

- a. The Telecommunications/Internet Provider, as Licensee of the poles, agrees to pay to the Power Company, as Owner of the poles, an annual rental of _____ (\$9.00) for the use of each of the Power Company's poles, any portion of which is occupied by, or reserved at the Telecommunication/Internet Provider's request for the attachments of the Telecommunication/Internet Provider at any time during the rental year, unless hereinafter exempted from rental. The annual rental is due and payable for each previous rental year on the first day of the calendar year next after attachments are installed or removed.
- b. Failure to make payment, when due, and after the elapse of forty-five (45) calendar days from the date noted on the invoice shall bear interest at the rate of 12.0% per annum until paid.
- c. No rental shall be paid by the Telecommunications/Internet Provider for the use of any pole where such use consists only in the attachment of guys or attaching wires or cables for the sole purpose of providing clearance between such wires or cables and the Power Company's pole or attachments.

10. Term and Termination. This Agreement shall continue in full force and effect for a period of one (1) year from and after the date of this Agreement and thereafter from year to year unless terminated by either party by giving written notice of its intention to do so not less than thirty (30) days prior to the end of any yearly period. Upon termination of this Agreement, as herein provided, the Telecommunications/Internet Provider shall remove its attachments from the poles of the Power Company within ninety (90) days after effective date of such termination.

11. Default.

- a. If the Telecommunications/Internet Provider defaults upon any of its obligations under this Agreement and such default continues thirty (30) days after written notice thereof from the Power Company, the right of the

Telecommunications/Internet Provider hereunder to make additional attachments to the poles of the Telecommunications/Internet Provider shall be suspended, and if such default on the part of the Telecommunications/Internet Provider shall continue for a period of thirty (30) days after such suspension, the Power Company may, without further notice, remove any or all of the Telecommunications/Internet Provider's attachments from the jointly used poles involved in the default at the expense of the Telecommunications/Internet Provider and the Power Company shall not incur any liability for such action.

- b. If either party shall make default in the performance of any work which it is obligated to do under this Agreement at its sole expense, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof. Failure on the part of the defaulting party to make such payment within sixty (60) days upon presentation of bills therefore, shall, at the election of the other party, constitute a default of this Agreement.

12. Unauthorized Attachment.

- a. If any of Telecommunications/Internet Provider's facilities for which no permit has been issued shall be found attached to the Power Company's poles, the Power Company may, without prejudice to its other rights or remedies under this Agreement, including termination, require Telecommunications/Internet Provider to submit a pole attachment license application within thirty (30) days after the receipt of written notification from the Power Company of the unauthorized attachment. In addition, the Telecommunications/Internet Provider shall pay double the sum of rental per pole, for each unauthorized attachment, dating back to the original installation date or for a period of three (3) years, whichever is less. If such application is not received by the Power Company within the specified time period, the dispute resolution process shall begin.
- b. No act or failure to act by the Power Company with regard to said unauthorized attachment(s) shall be deemed as ratification or the licensing of the unauthorized attachment. If any license should be subsequently issued, said license shall not operate retroactively or constitute a waiver by the Power Company of any of its rights or privileges under this Agreement; provided, however, that the Telecommunications/Internet Provider shall be subject to all liabilities, obligations and, responsibilities of this Agreement from its inception in regard to said unauthorized attachment.
- c. Periodic audits shall be conducted to identify any unauthorized attachments. The timeframe and audit content will be mutually agreed upon by both Parties, when either party feels an audit is deemed necessary. When performing these audits and unauthorized attachments are identified, both Parties will compare their records to identify the installation date. Once the

installation date is determined, sixty (60) days will be added and this will become the date utilized for billing purposes.

13. Dispute Resolution. The Power Company and the Telecommunications/Internet Provider agree to attempt to resolve any dispute, controversy, or claim arising out of or relating to this Agreement or breach thereof before filing a lawsuit or Complaint by submitting said dispute, controversy, or claim to mediation, which shall toll any and all filing deadlines until the completion of said mediation. Following unsuccessful mediation, the aggrieved party may file a lawsuit or Complaint.

14. Right, License, or Permit. The Power Company shall not be required to secure any right, license, or permit any governmental body or other person or persons which may be necessary in the construction of said attachments of the Telecommunication/Internet Provider nor will the Power Company guarantee any rights-of-way for said attachments.

15. Responsibility. The Parties agree to exercise reasonable skill, care, and diligence in the performance of services and will carry out all responsibilities in accordance with customarily accepted professional practices with regard to the installation and maintenance of their respective equipment on the poles so as not to damage the equipment of the other.

16. Insurance. The Internet Provider shall, at its own expense, maintain, in effect during the term of this Agreement, the following insurance with limits as shown or greater:

General Liability – combined single limit of \$1,000,000.00;

Workers Compensation – statutory limit; and

Professional Liability for protection against claims arising out of the installation or maintenance of its equipment on the poles caused by negligent error, omission, or act in the amount of \$1,000,000.00.

17. Non-Discrimination. Pursuant to Indiana and Federal Law, the Telecommunications/Internet Provider and any of its subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the installation or maintenance of its equipment on the poles or in the performance of anything else under this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment because of race, color, religion, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

18. E-Verify.

- a. The Telecommunications/Internet Provider affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien.

- b. The Telecommunications/Internet Provider shall enroll and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Telecommunications/Internet Provider is not required to participate should the E-Verify program cease to exist. Additionally, the Telecommunications/Internet Provider is not required to participate if the Telecommunications/Internet Provider is self-employed and does not employ any employees.
- c. The Telecommunications/Internet Provider shall not knowingly employ or contract with an unauthorized alien. The Telecommunications/Internet Provider shall not retain any employee or contract with a person that the Telecommunications/Internet Provider subsequently learns is an unauthorized alien.
- d. The Telecommunications/Internet Provider shall require any subcontractor who performs any work necessary under this Agreement to certify to the Telecommunications/Internet Provider that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The subcontractor agrees to maintain this certification throughout the duration of the term of the subcontractor's work under this Agreement.
- e. The Power Company may terminate for default if the Telecommunications/Internet Provider fails to cure a breach of its provision no later than thirty (30) days after being notified, in writing, by the Power Company.

19. Engaging in Activities with Iran. By signing this Agreement, the Telecommunications/Internet Provider certifies that it is not engaged in investment activities in the country of Iran as set forth in I.C. 5-22-16.5.

20. Indemnification. The Telecommunications/Internet Provider, for itself, its agents, employees, heirs, officers, officials, and assigns, hereby agrees to indemnify and hold harmless the Power Company and its agents, employees, heirs, officers, elected officials, and assigns from and against any and all actions, causes of action, claims, demands, damages, costs, expenses, attorney fees, and other losses of any nature whatsoever arising out of the Telecommunications/Internet Provider's activities carried out pursuant to the terms of this Agreement whether arising from the Telecommunications/Internet Provider's alleged negligence, gross negligence, or willful malfeasance. The Telecommunications/Internet Provider, however, shall not hold the Power Company harmless from claims arising out of the negligence, gross negligence, or willful malfeasance of the Power Company or its agents, employees, heirs, officers, elected officials, or assigns.

21. Pole Ownership. By virtue of this Agreement, the Telecommunications/Internet Provider acquires no rights, title, or interest in the poles or any equipment attached thereto by the Power Company. The poles, and any equipment attached thereto by the Power Company, shall remain the property of the Power Company.

22. Miscellaneous Provisions.

- a. Waiver. Failure of either party to enforce or insist upon compliance with any of the term or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.
- b. Past Agreements. All existing agreements, written or verbal, between the Parties hereto for the joint use of poles, other than this, are by mutual consent hereby terminated.
- c. Modification. No modification of this Agreement shall be valid unless by a writing signed by the authorized officers of the Parties.
- d. Successors and Assigns. The Parties each bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement.
- e. Subletting. The Telecommunications/Internet Provider shall not assign, sublet, or transfer its interest in this Agreement without the prior written consent of the Power Company.
- f. Notices. Any and all notices required to be provided in writing to the Parties shall be sent via USPS certified mail or hand delivered to the following:

If to the Power Company:
The Town of Jamestown
Attn: Clerk/Treasurer of the Town of Jamestown
P.O. Box 165
Jamestown, IN 46147

If to the Telecommunications/Internet Provider:

- g. Governing Law. This Agreement and all of the terms and provisions shall be interpreted and construed according to the laws of the State of Indiana. Should any clause, paragraph, or other part of this Agreement be held or declared to be void or illegal, for any reason, by any court having competent jurisdiction, all

other causes, paragraphs, or parts of this Agreement shall nevertheless remain in full force and effect.

- h. Mediation and Venue. All claims or disputes between the Parties arising out of or relating to this Agreement shall be first submitted to non-binding mediation. If a claim or dispute is not resolved by mediation, the party making the claim or alleging a dispute shall have the right to institute any legal or equitable proceeding in a court, whether state or federal, of competent jurisdiction located in Boone County, Indiana or Hendricks County, Indiana.
- i. Attorney Fees. In the event litigation is commenced to enforce any term or condition of this Agreement, the prevailing party shall be entitled to reasonable litigation costs including a reasonable attorney fee.
- j. Prerequisite Authority. The undersigned, on behalf of the Telecommunications/Internet Provider, warrants and represents to having the prerequisite power and authority to enter into this Agreement and to be bound by the terms herein

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed, and their corporate seals to be affixed thereto by their officers thereunto duly authorized as of the day and year first above written.

TOWN COUNCIL OF THE
TOWN OF JAMESTOWN on
behalf of the POWER COMPANY

THE TELECOMMUNICATION/
INTERNET PROVIDER

By: _____
Council Member

Printed: _____
Its: _____

By: _____
Council Member

By: _____
Council Member

EXHIBIT A
LOCATION OF THE TELECOMMUNICATIONS/INTERNET PROVIDER'S DISTRIBUTION
SYSTEM SERVICE AREA

Attached here as Exhibit "A" is a map or sketch entitled, "Location of the Telecommunications/Internet Provider Distribution System Service Area", stating the corporate name of Telecommunications/Internet Provider, and showing, outlined in red, the service area of the Telecommunications/Internet Provider as required on Page 1 of this agreement. This map shall be marked Exhibit "A", should be no larger than 30" x 30", shall be properly folded to the size of 8 1/2" x 11" for inclusion in this Agreement and stapled to the Agreement in the upper left corner. This Exhibit need not show location of The Power Company's poles and lines, (see Section 20, Supplying Information); but should illustrate the area in which contacts are planned.

EXHIBIT B
RULES AND PRACTICES FOR TELECOMMUNICATION ATTACHMENTS

1. All of the Telecommunications/Internet Provider's facilities attached to the Power Company's poles shall be installed in a manner to ensure compliance with the requirements of the "National Electrical Safety Code" in effect at the time of installation.
2. All proposed joint use poles must be permitted. This includes all main line poles and lift poles used for drops. A \$25.00 application fee, per pole, shall be paid by the Telecommunications/Internet Provider.
3. The location of all cables or power supplies on the Power Company's poles shall be approved, in writing by the Power Company, using the application process.
4. The Power Company requires strand maps to be furnished by the Telecommunications/Internet Provider showing all poles and all attachment poles including lift poles for individual service drops that the Telecommunications/Internet Provider plans to attach to.
5. The Telecommunications/Internet Provider shall provide full specifications of the facilities to be installed including:
 - a. Size and type of messenger including weight/ft. and design tension.
 - b. Size and type of facilities including weight/ft. and diameter.
 - c. Drawings showing type of bolted attachments.
 - d. Drawing showing installation specifications, rating and type of guy and anchor assemblies proposed to be used by Telecommunications/Internet Provider.
6. A preliminary "ride through" of the proposed route of the Telecommunications/Internet Provider facility shall be made by a representative from the Power Company and the Telecommunications/Internet Provider may be present, if desired.
7. A "make ready" survey shall be performed by the Power Company or the Power Company's representative, to determine if the existing poles are adequate to receive the additional attachment(s) of the Telecommunications/Internet Provider:
 - a. The Telecommunications/Internet Provider shall also pay, to the Power Company, the anticipated make ready costs. The obligations of the Telecommunications/Internet Provider shall not be limited to amounts shown

as estimates by the Power Company. Costs include materials, less salvage, labor, engineering, supervision and overheads (engineering includes design, proper conductor spacing and bonding, and calculations to determine proper ground clearances and pole and down guy strength requirements for horizontal and transverse loading.) An itemized statement of each work step, per pole, of the actual costs of all such changes shall be submitted by the Power Company to the Telecommunications/Internet Provider, in a form mutually agreed upon.

- b. The "make ready" survey shall consist of inspection of the pole for all clearance and strength as specified by the current edition of the NESC and good utility practice. The intent of the survey is to determine if the existing the Power Company pole line is ready to receive the additional attachment(s) of the Telecommunications/Internet Provider facility and/or determine the adjustments that must be done to make the Power Company's existing pole line ready to receive the Telecommunications/Internet Provider facility. Houses, buildings and meter poles shall not be included in the make ready survey. It shall be the responsibility of the Telecommunications/Internet Provider to survey these facilities and obtain code clearance for its attachments.
- c. Pole condition will also be checked by sounding with a hammer and a visual inspection. No digging or boring will be done. The intent is to replace all defective poles at the Power Company's expense prior to the Telecommunications/Internet Provider construction. However, it shall be the responsibility of the Telecommunications/Internet Provider or contractor to check and verify pole condition prior to climbing or performing work on any pole. If a pole is deemed unsafe, the Telecommunications/Internet Provider is to immediately notify the Power Company in writing and by telephone to replace the defective pole or assemblies.

8. "Make Ready" costs shall consist of the following:

- a. The cost of the initial survey and inspection of the line by the Power Company to determine clearance problems if the Telecommunications/Internet Provider is to be under-built, including time of person required and expenses shall be paid by the Telecommunications/Internet Provider. A written report shall be issued to the Telecommunications/Internet Provider listing all changes necessary and estimating construction costs.
- b. All costs of changing out primary poles, secondary poles, and lift poles including the cost of installation and/or removal of guys, anchors, stub poles, temporary construction and all other construction items needed to make the resulting construction in accordance with the NESC shall be borne solely by the Telecommunications/Internet Provider asking for attachment permits. If re-sagging of primary conductors is requested or necessary to achieve NESC compliance, all re-sagging costs shall be borne by the

Telecommunications/Internet Provider. If the work performed during the “make ready” is normal maintenance or NESC required updates, this will not be considered part of the make ready costs.

9. Adjustments to the Power Company's existing pole line to "make it ready" to receive the additional Telecommunications/Internet Provider attachment shall be done based on the construction staking sheets and report developed during the "make ready" survey. These adjustments shall include all changes to the primary wire or to the primary poles, secondary (lift) poles, stub poles, guys, anchors, and/or any replacements or other construction necessary to make the Power Company's system ready to accept the additional Telecommunications/Internet Provider attachment(s). This does not include repair of any defective poles or equipment on the Power Company's facilities.
 - a. The Telecommunications/Internet Provider shall also pay, to the Power Company, the anticipated make ready costs. The obligations of the Telecommunications/Internet Provider shall not be limited to amounts shown as estimates by the Power Company. Costs include materials, less salvage, labor, engineering, supervision and overheads (engineering includes design, proper conductor spacing and bonding, and calculations to determine proper ground clearances and pole and down guy strength requirements for horizontal and transverse loading.) An itemized statement of each work step, per pole, of the actual costs of all such changes shall be submitted by the Power Company to the Telecommunications/Internet Provider, in a form mutually agreed upon.
 - b. It shall be the responsibility of the Telecommunications/Internet Provider to attach at proper height, to achieve proper clearance, and to construct their facilities in accordance with the current edition of the National Electrical Safety Code. If the Telecommunications/Internet Provider finds that it cannot make an attachment on a pole and be in compliance with the NESC, then it shall be immediately brought to the attention of the Power Company in writing and by telephone and the pole will be re-surveyed and appropriate measures taken to make it ready for attachment. If this occurs and the Power Company had already provided approvals and/or completed the make ready work, the Telecommunications/Internet Provider will be reimbursed those expenses to compensate for their time waiting for additional make ready work to be performed by the Power Company.
10. All power supplies shall be located on the same side of each pole as any existing cable, or as designated by the Power Company.
11. On jointly-used poles where the Power Company has secondary conductors, all cables and power supplies shall be located on the same side of the pole as the secondary conductors, or as designated by the Power Company.
12. The Telecommunications/Internet Provider service connections or drops to its customers shall be installed and maintained so as to provide at least a forty (40) inch square

climbing space directly over and corresponding to the climbing space provided for and through any cable or telephone service connections or drops. Specifically, the climbing space and working space provisions of the NESC shall be enforced.

13. The Telecommunications/Internet Provider shall cause all cabinets, enclosures, and messengers to be grounded by bonding to their own pole ground with #6 solid, bare, soft drawn copper wires.
14. No power supply shall be installed on any of the Power Company's poles upon which underground primary electric services, capacitor banks, sectionalizing equipment, or voltage regulators have already been installed
15. No electrical service connection to an existing power supply shall be made or installed by Telecommunications/Internet Provider until after the Power Company shall have completed inspection of an approved fused service disconnect switch or circuit breaker.
16. No bolt used by the Telecommunications/Internet Provider to attach its facilities shall extend or project more than one (1) inch beyond its nut.
17. All attachments or facilities of the Telecommunications/Internet Provider shall have at least two (2) inches clearance from grounded hardware.
18. All cables shall have at least forty (40) inches clearance under the effectively grounded parts of transformers, transformer platforms, capacitor banks and sectionalizing equipment and at least forty (40) inches clearance under the current carrying parts of such equipment (energized at 8700 volts or less). These clearances shall be increased to 43" for facilities energized at 14.4 kV (L to G). See table 235-5 of the NESC for necessary clearances at other voltages. All Telecommunications/Internet Provider cables shall have at least twenty (20) inches clearance under security light attachments. Clearances not specified in this rule shall be determined by reference to the "National Electrical Safety Code".
19. The Telecommunications/Internet Provider may, with the prior written approval of the Power Company, install cross arms, alley arms, or cable extension arms for the support of any of its facilities. However, the Telecommunications/Internet Provider shall not use any cross arm or alley arm brace above the arm which it supports.
20. The Telecommunications/Internet Provider shall install and maintain any and all of its facilities in a neat and workmanlike manner consistent with the maintenance of the overall appearance of the jointly used pole, and all subject to approval of the Power Company, provided that the Telecommunications/Internet Provider shall be solely responsible for compliance with the specifications referred to in the License Agreement.
21. All down guys, head guys or messenger dead ends installed by the Telecommunications/Internet Provider shall be attached to jointly-used poles by the use of "thru" bolts. Such bolts placed in a "bucking" position shall have at least four (4)

inches vertical clearance. Under no circumstances shall the Telecommunications/Internet Provider install down guys, head guys or messenger dead ends by means of encircling jointly-used poles with such attachments. All guys and anchors shall be installed prior to installation of any messenger wire or cables.

22. In the event that any of the Telecommunications/Internet Provider's proposed facilities are to be installed upon poles already jointly used by the Power Company and other parties, without in any way modifying the clearance requirements set forth in these Rules and Practices, the Telecommunications/Internet Provider shall negotiate with such other parties as to clearances between its facilities and the spans of the Telecommunications/Internet Provider and such other parties.
23. In the event the Telecommunications/Internet Provider desires to request a change in the number of pole contacts, it shall do so by submitting to the Power Company the standard form suitable for that purpose.
24. The Telecommunications/Internet Provider shall provide a written statement that its facilities, including protection devices, as installed, are fully compliant with the applicable rules of the NESC, other codes and requirements, and good engineering design. This inspection shall be made within thirty (30) days after installation has been completed and signed by an Engineer representing the Telecommunications/Internet Provider. Failure to comply will result in termination of this Agreement as outlined in the License Agreement.
25. From time to time, as experience has shown necessary, the Power Company will require a post-construction survey of the pole line to insure that all Telecommunications/Internet Provider attachments continue to meet clearance and loading requirements as required by the NESC.
26. In emergency situations, to correct clearance problems, the Power Company reserves the right to do anything necessary within good utility practice to maintain correct clearances. The Power Company will notify the Telecommunications/Internet Provider of the situation within 48 hours and will bill the Telecommunications/Internet Provider for their portion of the emergency repairs within 60 days.

EXHIBIT C
APPLICATION AND PERMIT FOR USE OF POLES

Application #:

Date:

In accordance with the terms of agreement dated _____, 20__.

Application is hereby made for licensee to make attachments to _____ poles located
(#) in or

near _____, in the County of _____, and the State of _____.

The poles, including proposed contact or attachment by _____ if
(Telecommunications/Internet Provider)
necessary, for which permission is requested, are listed on the attached Exhibit and further
identified on the attached map. Detailed construction plans and location drawings will be
furnished.

**Telecommunications/
Internet Provider:**

By:

Title:

Permission for contact or attachment granted _____, 20__ subject to:

(1) your approval of the following changes and rearrangements at an estimated cost to you of
\$_____.

(2) the necessary third-party rearrangements are done satisfactorily, and

(3) that Telecommunications/Internet Provider construct according to standards.

Power Company:

By:

Title:

The above estimates for make-ready changes and rearrangements are approved _____, 20__.

Telecommunications/Internet Provider intends to construct utilities within 180 days after make-ready work is complete.