

**Fayetteville Public Works Commission
Wireless Facility Attachment Tariff**

1. **AVAILABILITY.** Except as provided for herein, this Wireless Facility Attachment Tariff (the “Tariff”) of the Fayetteville Public Works Commission (“PWC”) is applicable to any Attaching Entity that is a Wireless Services Provider that installs in aggregate less than one hundred (100) Attachments on, in, or along the Communication Space of any Poles. Attachments are not permitted under this Tariff either in the Electric Space of a Pole or on, in, or along any PWC sub-transmission (66kV) or transmission pole.

2. **DEFINITIONS.** The following capitalized words, terms, and phrases, when used in this Tariff, shall have the meanings ascribed below, unless more specifically defined within a specific section herein or where the context clearly indicates a different meaning:
 - 2.1. **Actual Cost** – The reasonable, actual, and documented costs incurred, paid or payable, which include, but are not limited to, the following: (a) external contractor or subcontractor labor costs and professional fees; (b) other costs and out-of-pocket expenses on a pass-through basis (e.g., equipment, materials, supplies or contract services.); (c) internal labor costs directly related to the completion of work authorized under this Tariff, including Make-Ready Work; and (d) reasonable allocations of administrative overhead.

 - 2.2. **Additional Attachment Fee** – The fee to be paid with an Application for each proposed Attachment in an Application in excess of the first 5 proposed Attachments.

 - 2.3. **Annual License Fee** – The annual fee a Licensee pays per Attachment in accordance with this Tariff.

 - 2.4. **Applicable Specifications** – The applicable engineering, safety, and other applicable specifications, standards, and/or guides governing the placement, installation, maintenance, and operation of Wireless Facilities and the performance of all work in or around Poles and includes the most current versions of National Electrical Safety Code (“NESC”), the National Electrical Code (“NEC”), the Institute of Electrical and Electronic Engineers (“IEEE”), and the regulations of the United States Department of Labor, Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference into this Tariff, and/or other reasonable safety and engineering requirements of PWC, including the most current version of PWC’s construction standards, which may be amended from time to time provided that such PWC construction standard amendments will not be applied retroactively to Licensee’s existing authorized Attachments, as well as other federal, state, or local

authorities with jurisdiction over PWC's Poles and/or Wireless Facilities.

- 2.5. **Application** – The fully completed Wireless Facility Attachment Application (Appendix 1), including all required and requested documentation, information, and fees.
- 2.6. **Application Fee** – The fee to be paid with an Application per proposed Attachment for each of the first five (5) proposed Attachments in an Application.
- 2.7. **Applicant** – The Party that submits an Application for one or more Attachments. The Applicant becomes a Licensee upon approval of the Application by PWC.
- 2.8. **Attaching Entity** – Any public or private entity, including a Licensee, which is authorized to place or install and maintain facilities on PWC Poles.
- 2.9. **Attachment** – Any Wireless Facilities of Licensee that are placed on, in, or along the Communication Space of any Pole or adjacent to any Pole.
- 2.10. **Capacity** – The ability of an existing or replacement Pole to accommodate an Attachment based on Applicable Specifications, available space, and loading considerations.
- 2.11. **Communications Space** – the area of a Pole that is: (a) for wood electric distribution poles, located at least forty (40) inches, but no more than forty-three (43) inches (unless otherwise required by the NESC), below PWC's lowest electrical conductors; and (b) for all non-wood poles, including but not limited to steel, concrete, fiberglass, and other pre-fabricated composite materials, located in accordance with the designated pre-existing communications attachment area(s) of the Pole to the extent such designated area(s) satisfy at least the minimum applicable neutral (or safety) space specified by the NESC.
- 2.12. **Correction** – each of the following: (i) the removal of an Unauthorized Attachment; (ii) the removal or remedying of a noncompliant Attachment; (iii) the transfer of an Attachment to another Pole; (iv) the rearrangement of one or more Attachments on a Pole; (v) the removal of an Attachment from a Pole that has been abandoned or will be abandoned after notice to Licensee; (vi) the removal or rearrangement of an Attachment for reasons of safety or electric system integrity, including but not limited to PWC's reasonable need for space

for its core electric service; (vii) the removal of each Attachment after Licensee's surrender or PWC's revocation of the Permit for the Attachment.

- 2.13. Electric Space** – The area of PWC's Poles located above the Communications Space.
- 2.14. Emergency** – A situation exists which, in the reasonable discretion of Licensee or PWC, if not remedied immediately, poses an imminent threat to public health, life, or safety, damage to property or a service outage.
- 2.15. Existing Attacher** – A public or private entity that has attached its communications equipment to one or more Poles pursuant to the rights granted by PWC to use the Pole(s).
- 2.16. Incremental Cost** – The difference between the Actual Cost of installing a replacement Pole that is equivalent to the existing Pole to accommodate PWC, Licensee, and each Existing Attacher, as well as the Actual Cost of installing an upgraded Pole (taller, stronger, different material, specially engineered, etc.) to replace the existing Pole. PWC shall utilize good faith estimates of its Actual Cost for Poles to compute the applicable Incremental Cost.
- 2.17. Licensee** – The Wireless Service Provider issued a Permit by PWC pursuant to the provisions of this Tariff to attach its facilities to a Pole.
- 2.18. Licensee Engineer** – A qualified and experienced professional engineer with a valid State of North Carolina professional engineering license in good standing, or an employee or contractor of Licensee who has been approved by PWC, acting reasonably, whose professional engineer's or employee/contractor's qualifications include experience performing pre-construction surveys and post-construction inspections, or substantially similar work, on electric and/or lighting systems.
- 2.19. Make-Ready Work** – All work performed or to be performed in PWC's sole discretion, and at Applicant's, or Licensee's (as applicable), sole cost, to prepare a Pole for an Attachment without regard to whether the work is for an initial or subsequent Attachment, including but not limited to rearrangement and/or transfer of existing facilities, replacement of a Pole and associated inspections, engineering work, permitting work, or any other changes where the work is performed to accommodate an Attachment. Make-Ready Work also includes all work necessary to bring a Pole into full compliance with all Applicable Specifications necessary for a Licensee's Attachment (except to the

extent any such noncompliance is caused by an Existing Attacher). Similar work performed after the Attachment is installed due in material part to the existence of the Licensee's Attachment(s) shall be deemed Make-Ready Work.

- 2.20. Material Modification** – Any increase in size (dimensions or weight) of the Attachment from the dimensions and weight for which a Permit was issued or a change in configuration that modifies the appearance of such Attachment in a manner readily evident to the public.
- 2.21. Party** – Refers to either PWC or Licensee, both of whom are collectively referred to as Parties.
- 2.22. Permit** – Written or electronic authorization of PWC that provides a license for Licensee to make one or more Attachments to one or more specific Poles pursuant to the requirements of this Tariff.
- 2.23. Pole** – A utility electric distribution pole or streetlight pole and other wireless support structure that is designed to support or capable of supporting wireless facilities, such as a monopole, lattice tower, or guyed tower, but specifically excluding water towers, buildings, and electric sub-transmission, and transmission poles, owned or controlled by PWC, as well as any associated anchors, hardware, wires, cables, strands, apparatus, enclosures, structures, or other items attached to each such Pole or hardware affixed to or associated with the Pole.
- 2.24. Post-Construction Inspection** – An examination conducted by PWC and/or a PWC-approved contractor(s) to verify that Attachments have been made in accordance with all Applicable Specifications and requirements of individual Permits.
- 2.25. Pre-Construction Survey** – All work or operations required by Applicable Specifications and/or PWC to determine the Make-Ready Work necessary to accommodate Licensee's requested Attachment on a Pole. Such work includes, but is not limited to, a pole loading analysis by a professional licensed engineer, field inspections, and administrative processing.
- 2.26. PWC Facilities** – The facilities and equipment installed for the sole use of PWC in furnishing electric or lighting service, including aerial wires, drop wires, tap-offs, above or underground cables, amplifiers, transformers, switches, breakers, luminaire, solar power panels, signal transmittal apparatus, and any other associated hardware, equipment and facilities.

- 2.27. Rearrange and Rearranging** – Relocating, reconfiguring or reconstructing Attachments on a Pole without transferring from another Pole and without a Material Modification of the Attachment.
- 2.28. Reserved Capacity** – Capacity or space on a Pole that PWC has identified and reserved for its own future core utility requirements at the time of the Permit grant pursuant to a development plan projecting a need for such use and disclosed to Licensee during the Application review process, including the installation of private internal communication circuits for operation of PWC's utilities system.
- 2.29. Right to Access** – The right to use the land or other property of another to place structures and equipment upon it, or to provide access to the structures and equipment, and would include rights-of-way, easements, encroachments agreements, etc. A Right to Access may run under, on or above public or private property (including air space above public or private property).
- 2.30. Schedule** – The Wireless Attachment Fee Schedule adopted by PWC's board of commissioners, as amended from time to time by PWC's board of commissioners.
- 2.31. Tag** – Distinct markers on each Attachment, coded by color or other means specified by PWC and/or applicable federal, State, or local regulations, that will readily identify Licensee as the responsible Party for the Attachment.
- 2.32. Unauthorized Attachment** – An Attachment made, placed, or installed on a Pole without a Permit.
- 2.33. Wireless Facility(ies)** – The wireless attachment and associated equipment including, but not limited to, antennas, amplifiers, cabinets, enclosures, power supplies, hardware. An antenna is limited to six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than 6 cubic feet on the Pole, provided that such Attachment may not be installed on an electric distribution Pole above the Communications Space. All other wireless equipment associated with the Wireless Facility other than an antenna is limited to a cumulative volume of no more than twenty-eight (28) cubic feet. For the purposes of this definition, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches,

vertical cable runs for the connection of power and other services, or other support structures. Wireless attachments are wireless transmitters and receivers designed to provide network coverage to densely developed environments. Wireless Facilities do not include: (a) wireline backhaul facilities or (b) coaxial or fiber-optic cable located between wireless structures or Poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna, any and all of which require a separate Permit from PWC. All cabinets shall be ground mounted in a location approved by PWC and screened in a manner appropriate for the location of the Pole, as determined by PWC. Cabinets may not be installed on a Pole.

- 2.34. Wireless Services Provider** – Any person or entity that provides and any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using Wireless Facilities or any entity that leases Wireless Facilities to a person or entity providing services to the public using Wireless Facilities.

3. PERMITS

- 3.1. Permit Required.** Subject to Section 7.4, no person or entity shall install, construct, place, replace, make any Material Modification of any Attachment, or perform any other work on any Pole (other than inspections necessary to prepare an Application) without first filing an Application and obtaining a Permit from PWC for such Attachments. Each Attachment for which a Permit is issued must comply fully with:

- 3.1.1.** All applicable provisions of this Tariff;
- 3.1.2.** All conditions imposed upon the issuance of the Permit; and
- 3.1.3.** All Applicable Specifications and all other applicable codes, laws, and regulations pertaining to the installation, operation, and maintenance of an Attachment.

- 3.2. Issuance of Permit.** PWC will issue one or more Permits to an Applicant for the Attachment(s) that are subject of the corresponding Application(s) only after PWC determines, in its sole judgment, exercised reasonably, that (i) PWC has sufficient Capacity on the applicable Pole(s) to accommodate the requested Attachment(s) in accordance with all Applicable Specifications or a new Pole is provided consistent with this Tariff and Section 7.2 herein; (ii) Licensee possesses each necessary Right to Access for the applicable Poles; and (iii) when the following requirements are satisfied:

- 3.2.1.** The completed Application for such Attachment(s) is approved by PWC pursuant to Section 5;
- 3.2.2.** The Applicant submits proof of insurance as required by Section 12 and PWC accepts such proof as adequate;
- 3.2.3.** All Make-Ready Work has been paid for and completed as required by this Tariff; and
- 3.2.4.** All other conditions established by PWC in this Tariff as a pre-requisite to issuance of the Permit are fulfilled.
- 3.3. Scope of Denial.** The denial of any Attachment(s) proposed in an Application will not necessarily affect other Attachments on Pole(s) proposed in the same Application. When one or more Attachments proposed in a consolidated Application have been denied, PWC may grant a Permit for any other Pole(s) proposed in the Application.
- 3.4. Other Authorizations.** Prior to commencing any work authorized under this Tariff or a Permit, Licensee must obtain all other permits and licenses that are required by North Carolina law or any other applicable regulation, ordinance, or law for carrying out the work and provide proof of same to PWC, as requested.
- 3.5. Current Violations as Ground for Denial.** PWC may deny an Application for a Permit sought by an Applicant that is currently in violation of any of the provisions of this Tariff regarding any other Wireless Facilities owned, placed, or maintained by the Applicant.
- 3.6. Limits on Authority.** A Permit issued pursuant to this Tariff:

 - 3.6.1.** Authorizes non-exclusive use of a Pole(s) as designated in the Permit;
 - 3.6.2.** Does not create a property right or grant authority to Licensee to impinge upon the rights of others that may already have authorization to use a specified Pole, nor does it extend to the use of any property outside of that specified in the Permit; and
 - 3.6.3.** Does not authorize the use of any other support structures owned, maintained, or controlled by PWC unless an agreement for the use of such support structures has been authorized by PWC.
- 3.7. Exceptions.** No new Permit is required for:

3.7.1. Relocations, rearrangements, transfers, or modifications performed at PWC's direction; or

3.7.2. Responses to outages or malfunctions involving Licensee's Attachments, provided that:

3.7.2.1. Licensee must provide a description of the work to be performed to PWC at least twenty-four (24) hours prior to commencement of the work and receive approval from PWC to perform such work; provided that if PWC does not respond within twenty-four (24) hours Licensee may proceed with the work and shall notify PWC in writing all work that was undertaken within twenty-four (24) hours of completion of such work;

3.7.2.2. Any response involving excavations, construction work, or the redirection of vehicular or pedestrian traffic must be coordinated with PWC; and

3.7.2.3. Licensee refrains from engaging in any Material Modifications to the extent not specifically required to remedy an Emergency.

4. UNAUTHORIZED ATTACHMENTS

4.1. If any equipment and/or facilities of Licensee are found attached to a Pole for which Licensee has not received a Permit, PWC may, without prejudice to its other rights or remedies under this Tariff, including termination or otherwise, impose a charge as set forth in Sections 4.1.1 and 4.1.2 and require Licensee to submit in writing, within thirty (30) days after delivery of written notification from PWC of the Unauthorized Attachment, evidence of a valid Permit or an Application for the Unauthorized Attachment(s). If an Application is necessary and such Application is not timely submitted to PWC by Licensee, Licensee will be required to remove its Unauthorized Attachment(s) within ten (10) days of the final date for submitting the Application or PWC may remove Licensee's Attachment(s), without liability, and at Licensee's expense. PWC may charge Licensee 120% of its Actual Cost to perform such work.

4.1.1. The Unauthorized Attachment will be treated as having existed for the shorter of a period of five (5) years prior to its discovery or for the period beginning with the date of Licensee's first Permit. The charges applicable to this Section 4 shall be due and payable by Licensee regardless of whether Licensee subsequently receives a Permit for the Unauthorized Attachment(s).

4.1.2. For each Unauthorized Attachment, Licensee will also be required to pay the

applicable Annual License Fee for each year and partial year that the Unauthorized Attachment existed.

- 4.2. If PWC discovers one or more noncompliant Attachments for which PWC has issued a Permit, PWC shall notify Licensee. Within forty-five (45) days after delivery of the notice, Licensee shall, at its own expense, bring each noncompliant Attachment into compliance or remove the noncompliant Attachment(s). If Licensee fails to timely make compliant such noncompliant Attachment(s) or to remove it, PWC may revoke the applicable Permit(s) and remove the noncompliant Attachment(s), without liability, and at Licensee's expense. PWC may charge Licensee 120% of its Actual Cost to perform such work.

5. APPLICATION

- 5.1. **Application.** Any person or entity seeking to obtain a Permit to construct, place, replace, or modify an Attachment for one or more Poles must submit an Application to PWC in the then-approved PWC format, a copy of which is attached to this Tariff as Appendix 1, along with all required supporting information, documentation, and fees. PWC 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.

- 5.2. **Submission of Application.** All Applications shall be submitted in electronic format via e-mail to wireless.app@faypwc.com, unless otherwise specified by PWC. Applicant shall submit a properly executed Application, which shall include a Pre-Construction Survey and detailed plans for the proposed Attachments, including a description of any necessary Make-Ready Work to accommodate the proposed Attachment(s).

- 5.2.1. A single Application for Wireless Facilities may contain applications for up to a maximum of twenty-five (25) proposed Attachments, provided that the proposed Wireless Facilities to be installed at each such location are substantially of the same type, size, design, appearance, and configuration, and are to be installed on substantially the same type of Pole. Licensee may submit Applications for up to fifty (50) proposed Attachments during any consecutive thirty (30) day period. If Licensee exceeds the fifty (50) proposed Attachment limit, PWC may in its discretion either defer action on the additional proposed Attachments for an additional thirty (30) days per 50 excess proposed Attachments or retain a third-party contractor to review the Application(s) at Applicant's sole expense.

- 5.2.2. Each Application shall be completed in full and include: (i) proper execution by an authorized employee of Applicant; (ii) the applicable fee(s), which are

non-refundable, in accordance with the Schedule; (iii) a detailed description of the Attachment(s) proposed to be installed, including the type(s) and size of the components and the proposed safety signage and tagging for RF emissions as required under FCC guidelines and ANSI Z535 for PWC employees, licensees and contractors who may be required to work near and/or around the type of Attachment(s) that Applicant proposes to install, (iv) the installation design, (v) pole loading analysis and calculations for each Pole on which attachment is sought performed by Licensee Engineer and prepared in accordance with general industry standards using a commercially available software product, unless Applicant is proposing to replace an existing Pole, in which event Applicant shall provide an analysis of the ability of the proposed new replacement Pole to accommodate the existing facilities and the proposed new Attachment, (vi) detailed drawings of each device proposed to be attached, and (vii) an RF evaluation and RF studies and documentation (datasheets and technical specifications of the antenna system) certifying the compliance with FCC RF exposure levels.

- 5.2.3.** PWC's acceptance of any submitted design documents does not relieve Applicant of sole and full responsibility for any errors and/or omissions in the engineering analysis.
- 5.2.4.** PWC will provide written notice to an Applicant stating whether an Application is incomplete or deficient within thirty (30) days of receiving the Application, and indicate, if applicable, the information that is deficient or missing from the Application.
- 5.2.5.** PWC may, in its discretion, deny an Application if: (i) it does not meet local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment; (ii) public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way; (iii) any historic preservation requirements; or, (iv) for an Attachment in the City of Fayetteville or its municipal influence area, it does not meet the City of Fayetteville's applicable ordinances.
- 5.2.6.** PWC will review and respond to a properly executed, complete Application within thirty (30) days of receipt that does not require any Make-Ready Work or within sixty (60) days of receipt that requires an assessment by a third-party technical consultant retained by PWC of either Applicant's proposed Make-Ready Work or a determination of the required Make-Ready Work.

5.2.7. Licensee's submission of an Application, whether determined to be fully complete or deficient, shall serve as Licensee's acceptance of the terms and conditions of this Tariff.

5.3. Application Fees. Applicant shall submit with its Application the applicable fee(s) set forth in the Schedule. For an Application to be considered complete, Applicant must have paid to PWC the applicable (i) Application Fee and Additional Attachment Fee, (ii) Technical Consulting Fee, and (iii) Administrative Documentation Fee.

5.3.1. In the event PWC determines during its review of the Application that any of fees set forth in the Schedule are not required for the Application, PWC will return in whole or in part, as applicable, those amounts to Applicant within 60 days of the issuance or denial of a Permit. The remaining amounts paid to PWC pursuant to Section 5.3 shall be nonrefundable.

5.4. PWC's Response. PWC's response will either: (i) approve the Application; (ii) if Make-Ready Work is submitted with an Application, either (a) concur with the proposed Make-Ready Work as described in Applicant's Application and provide a cost estimate for PWC's portion of that Make-Ready Work or (b) inform Applicant that a further Make-Ready Work assessment is necessary as determined in PWC's reasonable discretion; or (iii) provide a written explanation as to why the Application is being denied, in whole or in part, for reasons of safety, reliability, or insufficient Capacity that cannot be resolved consistent with Applicable Specifications.

5.4.1. If PWC determines that either Make-Ready Work is necessary or Applicant's proposed Make-Ready Work needs to be further evaluated, PWC will provide notice of such need to Applicant.

5.4.1.1. PWC's estimate of the required Make-Ready Work will include documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.

5.4.1.2. Upon delivery of PWC's assessment, an Applicant shall have fourteen (14) days to accept PWC's estimate of any proposed Make-Ready Work and deliver a deposit of the estimated amount to PWC. If Applicant fails to accept the estimate and deliver the deposit to PWC within the fourteen (14) day period, the Application is deemed to be denied.

5.5. Additional Conditions. In addition to the specific standards set forth in this Tariff, approval of an Application by PWC may be made subject to additional conditions when it is deemed necessary to protect and preserve existing uses in the area, address

safety issues, or to otherwise fulfill the intent of this Tariff.

5.6. Public Records. Applications are public records that may be made publicly available upon request pursuant to North Carolina law. Licensee may designate portions of a completed Application or associated documentation that it reasonably believes constitutes confidential information, which such information includes, but is not limited to, trade secrets, personnel records, and customer billing records on the condition that Licensee shall indemnify and hold harmless PWC and its Commissioners, employees, and agents from any liability associated with or arising from PWC's denial of a public records request for such information.

6. PRE-CONSTRUCTION SURVEYS AND MAKE-READY WORK

6.1. Pre-Construction Survey. A Pre-Construction Survey completed and approved by Licensee Engineer shall be provided, at Applicant's sole expense, with each Application for which an Applicant seeks a Permit for an Attachment. Failure to complete and provide a Pre-Construction Survey is grounds for denial of an Application.

6.1.1. PWC will, as necessary, schedule a field inspection to be performed by PWC personnel and Licensee Engineer, with optional participation by the personnel of any Existing Attacher.

6.1.2. The Pre-Construction Survey shall set forth any Make-Ready Work that Applicant reasonably believes is necessary to accommodate its Attachment(s); provided, however, that PWC may, in its reasonable discretion, hire a licensed professional engineer to repeat, approve, or revise an applicant's Pre-Construction Survey. Applicant shall pay for the Actual Cost of such action up to the amount of the Technical Consulting Fee.

6.1.3. PWC will provide an estimate of any Make-Ready Work within sixty (60) days of PWC's receipt of an Application that was properly completed and submitted by or on behalf of Applicant.

6.2. Commencing Work. Upon PWC's receipt of written authorization from an Applicant along with delivery of the required deposit for Make-Ready Work, PWC will in good faith attempt to complete such Make-Ready Work on the relevant Pole(s) within ninety (90) days. If there are extenuating circumstances that make the necessary Make-Ready Work more complicated or time-consuming, including, but not limited to, the relative novelty of the type of Wireless Facilities and associated equipment to be attached, the extent of the Make-Ready Work, the total number of Poles upon which PWC is currently obligated to perform Make-Ready Work, or seasonal weather

conditions, PWC will identify those factors in the Make-Ready Work description and cost estimate and provide to Applicant a reasonable timeframe for completion. PWC may toll the time period for completion of Make-Ready Work by written notice in order to respond to severe storms, natural disasters, and/or Emergency situations.

6.3. Scheduling Make-Ready Work. In performing Make-Ready Work, PWC will endeavor to include such work in its normal work schedule. If Licensee requests and PWC agrees to perform Make-Ready Work on a priority basis or outside of PWC's normal work hours, Licensee will pay any resulting increased Actual Cost. Nothing in this Tariff shall be construed to require PWC to perform work to accommodate Licensee's Attachments before other scheduled work or PWC utility service restoration.

6.4. Notification of Make-Ready Work. Before commencing any Make-Ready Work, PWC will notify all Existing Attachers of the date and location of the scheduled work and notify them of the need to Rearrange and/or transfer their facilities at Licensee's cost within the specified time period. To the extent that PWC has the legal authority, it shall Rearrange and /or transfer existing facilities of such other Existing Attacher that have not been moved in a timely manner. Licensee shall pay for any such Rearrangement or transfer.

6.5. Payment for Make-Ready Work. After completion of the Make-Ready Work, PWC will compare the deposit received from Licensee (based upon estimated cost) to the Actual Cost of the Make-Ready Work. If the difference between the deposit and Actual Cost for the Make-Ready Work exceeds five percent (5%) of the deposit, PWC will either invoice or refund, as appropriate, Licensee for the entire difference. There will not be a true-up if the Actual Cost of the Make-Ready Work is within five percent (5%) of the applicable deposit. Licensee shall be responsible for entering into an agreement with other Existing Attachers to reimburse any costs that the entity(ies) incur in Rearranging or transferring those preexisting facilities to accommodate Licensee's Attachments.

7. GENERAL REQUIREMENTS

7.1. Installation and Maintenance

7.1.1. Licensee shall, at its sole expense, place or install its Attachment(s) in accordance with all Applicable Specifications, as amended, and as designated in the applicable Permit.

7.1.2. Licensee shall compensate PWC at its Actual Cost for any and all attending/tending time for Licensee's activities that require PWC's presence,

the necessity of which shall be determined by PWC in its reasonable discretion, at any of Licensee's installations, maintenance activities, or other work activities pursuant to this Tariff and for any time devoted by PWC to providing such services.

- 7.1.3.** The following rules shall apply if there is a difference, conflict, or discrepancy between or among the requirements or practices of the Applicable Specifications: (a) if one specification is more stringent than the other, the more stringent shall apply; (b) if one is not more stringent than the other, the NESC shall govern; and (c) if rules (a) or (b) are insufficient to resolve the conflict in a clear and unambiguous manner, PWC shall determine which standard shall apply.
- 7.1.4.** The location of any Attachment may be reasonably redesignated by PWC from time to time to accommodate other facilities or for reasons of electrical or lighting service, safety, or reliability, with costs allocated in accordance with this Tariff.
- 7.1.5.** If any Attachment that complied with the Applicable Specifications at the time such Attachment was made becomes noncompliant due to revisions to the Applicable Specifications, Licensee shall be required to bring such Attachment into compliance with the then-current Applicable Specifications only in connection with a Rearrangement, transfer, Pole replacement, or rebuild affecting such Attachment, or the regular maintenance plan of PWC or Licensee.
- 7.1.6.** 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 PWC's lines, facilities, and services or with the services of an Existing Attacher.
- 7.1.7.** Licensee shall not install or place Wireless Facilities that are suspended on cables strung between existing utility poles or city utility poles without first obtaining and maintaining a specific Permit from PWC authorizing such placement or installation.
- 7.1.8.** Licensee shall not at any time Rearrange or otherwise modify the Attachments of any Existing Attacher without obtaining the prior written consent of such Existing Attacher. Licensee shall indemnify, defend, and hold harmless PWC from all damages to the facilities of Existing Attacher(s).
- 7.1.9.** Any Wireless Facility or component thereof that is installed, mounted, or

otherwise placed on or in the ground shall be located at least four (4) feet from the Pole and positioned in a manner that does not interfere with PWC's safe access to the Pole. Any approved ground-mounted equipment shall incorporate concealment and screening elements into the proposed design and shall be concealed within a single shroud or cabinet unless otherwise agreed to by PWC in writing. Where environmentally and technically feasible and appropriate for the location or required for the Pole(s), accessory equipment may be required to be installed in an underground vault.

- 7.1.10.** To the extent feasible and practicable, as determined in PWC's sole discretion, all Wireless Facilities shall be designed to blend into the surrounding environment and complement the existing surrounding structures and streetscape elements using color, camouflaging, screening, concealment, and other architectural treatment and shall be installed in a manner that minimizes the visual and physical impact to the public.
- 7.1.11.** Licensee shall have 120 continuous calendar days after the issuance of a Permit to complete the installation or placement of the Attachment(s), activate the Attachment(s), and notify PWC of such completion. If Licensee fails to install or place and activate its Attachments within the applicable time period set forth in this Section 7.1.11, the Permit shall be automatically revoked at 5:00 p.m. E.S.T. on the last day of applicable time period, unless otherwise agreed to in writing by PWC.
- 7.1.12.** No later than ten (10) days after completion of each installation or Material Modification of Attachment pursuant to each Permit, Licensee shall deliver written notice of completion to PWC in order facilitate PWC's verification of completion.
- 7.1.12.1.** If the installation or modification is noncompliant, as determined by or on behalf of PWC, Licensee shall correct the installation or modification to achieve compliance with the Applicable Specifications and deliver an additional notice of completion to PWC within thirty (30) calendar days. If Licensee fails to correct the noncompliant Attachment and provide to PWC the notice required herein, Licensee will be required to remove its Attachment(s) within ten (10) days of the final date for submitting the notice or PWC may remove Licensee's Attachment(s) without liability and with the Actual Cost of such removal being borne by Licensee. Licensee shall at all times comply with the Applicable Specifications.
- 7.1.12.2.** If Licensee fails to correct any noncompliant installation or modification to meet the Applicable Specifications within ten (10) of the final date for

submitting the notice contemplated in Section 7.1.12.1, PWC may, at its option, correct said installation or modification, without liability and at Licensee's expense, and/or revoke the Permit(s) that noncompliant Attachment. PWC may charge Licensee 120% of its Actual Cost to perform such work.

7.1.13. Licensee shall not be required to submit an Application in order to perform routine maintenance or make a modification consistent with Section 7.4 but must provide at least ten (10) days prior written notice to PWC of such proposed maintenance and obtain PWC's prior scheduling approval except in cases of an Emergency, upon which Licensee shall provide notice as soon as possible after performance of emergency maintenance. In cases of an outage or malfunction involving Licensee's Attachments, Licensee shall comply with the requirements of Subsections 3.7.2.1 through 3.7.2.3.

7.2. New Pole. When a new Pole is needed to accommodate Licensee's Attachment(s) as part of any Make-Ready Work, Licensee shall be responsible for ordering, paying for, and delivering each new Pole to PWC at Licensee's sole expense and in accordance with PWC's specifications, including but not limited to specifications that require full concealment of Licensee's Wireless Facilities, unless PWC provides written notice to Licensee of other arrangements for a new Pole (including, for example, if a Pole is available to PWC in its existing inventory). If PWC purchases the new Pole, Licensee shall pay for the Actual Cost of procuring and delivering the new Pole.

7.2.1. PWC and/or its contractors will install each new Pole at the designated location and in accordance with the Make-Ready Work assessment.

7.2.2. Notwithstanding Licensee's payment of the costs of purchasing any one or more Poles, all Poles installed, used, or that form the basis of any part of an Application shall be owned and controlled by PWC. Licensee's use of Poles, however extended, or payment of any fees, costs, or charges does not create or vest in Licensee any ownership or property right in any Poles.

7.3. Limitations. Absent PWC's prior written agreement to the contrary, the following limitations shall apply:

7.3.1. One Wireless Communication Facility Per Pole. No more than one (1) Wireless Facility may be installed on a single Pole (a single Wireless Facility installation consisting of multiple antennas or nodes is permissible).

7.3.2. Poles with Electric Distribution Equipment Installed. Wireless Facilities shall not be installed on PWC Poles that have PWC Facilities installed on them that would create congestion or difficulty in accessing and/or safely

maintaining PWC's Facilities, such as, but not limited to, transformers, capacitors, reclosers, sectionalizers, voltage-regulators, and/or voltage-regulator racks.

7.3.3. Electric Space. Licensee shall not use this Tariff to install or place any Attachments in the Electric Space of a Pole.

7.4. Modifications. Modifications to existing Attachments that replace existing equipment with equipment that does not exceed the size and weight of the existing equipment or routine maintenance on a Wireless Facility or is not otherwise a Material Modification will not require an Application, new Permit, or other prior approval of PWC except as required by Section 7.1.12. Any Material Modification request for an Attachment shall be made using an Application and shall require a new or amended Permit.

7.4.1. If Licensee's modification requires PWC or one or more Existing Attachers to rearrange or transfer any existing facilities, Licensee shall pay PWC's Actual Cost, including any Pole replacement, and shall arrange to pay the rearrangement or transfer costs of Existing Attacher(s).

7.5. Request of a Waiver. Licensee may request a waiver of specific requirements of the Applicable Specifications or this Tariff by submitting a written request for waiver either before or contemporaneously with submitting an Application. The request must specifically identify the Applicable Specification(s) and/or provision(s) requested to be waived, justification for requesting the granting of the waiver, and the proposed solution as a result of the waiver. PWC shall notify Licensee in writing within a reasonable period of time from receipt as to whether the request is granted in whole or in part or denied. PWC will not grant any waiver that in the sole opinion of PWC will result in a violation of any Applicable Specifications related to safety, or any applicable federal, State, or local law, regulation, or ordinance.

7.6. Tagging. Licensee shall Tag all its Wireless Facilities as specified by PWC, pursuant to the Applicable Specifications, or by applicable federal, state, or local regulations upon installation of such facilities. Failure to provide proper Tags will be considered a violation of this Tariff.

7.7. Interference and RF Emissions

7.7.1. Licensee shall not allow its Wireless Facilities to adversely impact the ability of PWC or any other Attaching Entity to use Poles.

7.7.2. Licensee shall not allow its Wireless Facilities to interfere with the operation of

any of PWC's Facilities or Attachments of Existing Attachments.

- 7.7.3.** Licensee is solely responsible for the radio frequency (RF) emissions emitted by its Wireless Facilities and associated equipment, which shall not cause measurable interference with PWC's Facilities or operations, that are operated within their licensed frequencies and/or in accordance with the Federal Communications Commission and all Applicable Specifications. If in the reasonable judgment of PWC, Licensee's Attachments or operations cause measurable interference with PWC's Facilities or operations, then Licensee, following reasonable notice to Licensee and explanation from PWC concerning such interference, shall immediately undertake all reasonable efforts to eliminate the interference, including, but not limited to, reducing power to the equipment causing such interference. PWC and Licensee shall then cooperate in good faith to jointly address the interference issues including controlled powering up of the equipment for intermittent testing.
- 7.7.4.** PWC shall be under no obligation to remedy or resolve RF interference between Licensee and other Attaching Entities and shall not be liable for any such RF interference between Licensee and other Attaching Entities.

7.8. RF Safety

- 7.8.1. Signage.** To the extent required by the FCC and/or ANSI Z535, Licensee shall install appropriate signage to notify workers and third parties of the potential for exposure to RF emissions. The signage shall be placed so that it is clearly visible to workers who climb the Pole or ascend by mechanical means.
- 7.8.2. Cut-Off Switch.** Licensee shall install a power cut-off switch as directed by PWC and consistent with Applicable Specifications on every Pole to which Licensee is attaching Wireless Facilities that can emit RF energy. The cut-off switch will allow for the power source and any back-up power sources to be disconnected so that RF emissions can be eliminated while workers are performing installation, repair, maintenance, transfer, removal, or other work on or within thirty feet (30') of the applicable Pole. PWC shall be authorized to provide its own lock to allow for access in the event a lockable power cut-off switch is installed by Licensee. Power cut-off switches and meter sockets must be installed according to PWC's standards.
- 7.8.2.1.** In ordinary circumstances, PWC's authorized field personnel will contact Licensee to inform Licensee of the need for a temporary power shutdown. PWC is authorized to power down Licensee's Attachment if Licensee does not complete the necessary power down within 24 hours of

PWC's notice to Licensee.

7.8.2.2. In the event of an unplanned power outage or other unplanned cut-off of power, or an Emergency, the power-down will be with such advance notice as may be practicable and, if circumstances warrant, employees and contractors of PWC may accomplish the power-down by operation of the power cut-off switch without advance notice to Licensee but shall thereafter notify Licensee as soon as possible. In all such instances, once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power-down shall restore power and inform Licensee as soon as possible that power has been restored.

7.9. Emergency Contact Information. Licensee shall provide emergency after-hours contact information to PWC to ensure proper notification in case of an Emergency. Information will include 24/7 telephone contact. Licensee shall be required to include signage that indicates Licensee's emergency contact information and any other information as required by applicable law.

8. FEES AND CHARGES

8.1. Annual Fee. Licensee shall pay PWC the Annual License Fee for each Attachment for which it has received authorization via Permit from PWC to install, attach, or maintain Licensee's Attachments and as specified in the Schedule. The Annual License Fee shall be due and owing by Licensee to PWC for each year that the Permit for the Attachment(s) is in effect, even if the Attachment(s) have not yet been installed or have been removed.

8.1.1. All Annual License Fees shall be payable annually in advance, except as otherwise set forth herein. PWC shall issue an invoice by January 30 of each calendar year for all Permits issued to Licensee through December 31 of the preceding calendar year, and payment from Licensee shall be due in full within thirty (30) days after PWC's issuance of the invoice; provided, however, in the first calendar year in which each Permit is issued to Licensee, PWC shall invoice Licensee for the Annual License Fee associated with each such Permit upon its issuance on a pro rata basis using the number of days remaining in the calendar year in which the Permit is issued, and Licensee shall pay each such invoice within thirty (30) days after PWC's issuance of the invoice and prior to Licensee initiating any actions to install the Attachment pursuant to the Permit.

8.1.2. Licensee shall also be responsible for payment of all applicable fees, charges and costs as specified in this Tariff and the Schedule, including, but not limited

to, all charges for work performed or expenses incurred by PWC regardless of whether Licensee subsequently withdraws its Permit application(s) on which such work was performed.

8.2. Payments. Unless otherwise provided elsewhere in this Tariff, Licensee shall pay all fees and charges due to PWC within thirty (30) days from the date that each invoice is issued by PWC, and PWC may issue such invoices from time-to-time at a schedule established in its discretion. Each late payment by Licensee shall accrue interest beginning on the date payment is due at twelve percent (12%) per annum.

8.3. Billing Information. PWC will invoice Licensee for all applicable fees and charges due to PWC at the physical address provided by Licensee in its Application unless Licensee otherwise instructs PWC in writing. Licensee shall notify PWC in writing of any updates or changes to its billing contact information no later than fifteen (15) calendar days from the date of the change. Mailed invoices shall be deemed to be received by Licensee on the postmark date of such mailing.

9. SCOPE

9.1. Amendment. This Tariff may be amended by the PWC board of commissioners from time to time in accordance with their ratemaking authority. Termination or amendment of this Tariff shall not relieve Licensee of any obligation, whether indemnity or otherwise, which accrued prior to such expiration or termination.

9.2. Existing Facilities Only. Except as otherwise required by applicable North Carolina law, (i) PWC is under no obligation to add, build, keep, maintain, or replace any Pole or other facility for the use or convenience of Licensee when any limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at a reasonable cost; and (ii) the maintenance, replacement, removal, relocation, or addition of any Pole by PWC shall remain within the sole province and discretion of PWC.

9.3. City Rights-of-Ways. Nothing in this Tariff 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 Fayetteville, except for the placement of Attachments on Poles or other facilities covered by this Tariff 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.

9.4. No Property Rights in Poles. No use, however extended, of any PWC Facilities or Pole, and no payment of any fee or charge required under this Tariff shall create or vest in Licensee any ownership or property right of any kind nature in any portion of such Facilities or Poles. The existence of such a license shall not in any way alter or

affect PWC's rights to use, change, operate, maintain, or remove its Poles, subject to the terms and conditions of this Tariff.

9.5. License not Exclusive. Nothing in this Tariff shall be construed to limit or in any way affect PWC's right or ability to enter into or honor existing and future 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.

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

10. GENERAL REQUIREMENTS

10.1. Safety. While work is performed under this Tariff in the easements controlled by PWC or in the streets, alleys, highways, or other public rights-of-way, the protection of persons and property shall be provided by Licensee, who shall be solely responsible for providing adequate traffic control barricades, warning lights, traffic cones, danger signs, and other similar devices to protect all traffic, persons, and property around the work area from danger. Licensee shall at all times ensure that Licensee (including its employees, contractors, and agents) neither engages in nor attempts to engage in any action whatsoever that interferes or reasonably may interfere with PWC's operations, wires, attachments, and other facilities attached to or installed in or around the Poles. Licensee shall at all times use all protective equipment and techniques necessary for the protection any of its employees, contractors, and agents. Licensee shall exercise reasonable care and precautions to avoid damage to the Poles and the facilities and equipment of PWC and other parties whose property is attached to the Poles. Licensee shall promptly repair all damage to PWC equipment and other assets and third-party property, including rights-of-way, caused by Licensee's activities while occupying, installing, repairing, or maintaining Equipment and return the property to its functional equivalence before the damage. If Licensee fails to make the required repairs within a reasonable time after written notice of the damage, PWC may, at its sole discretion, undertake those repairs and charge Licensee for 120% of the Actual Cost of the repairs.

10.2. Licensee Requirements. To properly submit an Application and become subject to this Tariff, Licensee shall (a) be a Wireless Services Provider; and (b) obtain, other than the Permit(s) for which Licensee is applying hereunder, all permits, authorizations, consents, and easements required by law to install any Attachments

on the Pole(s). Licensee must comply with such requirements before installing Attachments. Nothing in this Tariff shall be construed as waiving other requirements set forth by the ordinances of the City of Fayetteville or permitting the construction of facilities other than Attachments.

11. INSPECTION OF LICENSEE'S ATTACHMENTS

11.1. Right to Inspect. PWC reserves the right to make any post-construction, subsequent, and periodic inspections, of any part of all, of Licensee's Attachments to any Pole.

11.2. Cost. Licensee shall reimburse PWC for the Actual Cost of such inspections if a noncompliant Attachment or Unauthorized Attachment of Licensee is discovered.

11.3. Scope of Inspections. Inspections may include, but are not limited to, the following matters: (1) checking the physical condition of Licensee Facilities and the impact on PWC's Facilities (and the Facilities of Existing Attachers); (2) checking for Unauthorized Attachments, noncompliant Attachments, and noncompliant clearances; (3) checking the number of Attachments, when an Attachment was made, the type and size of Licensee's Attachments and the location of Attachments (and those of Existing Attachers); and/or confirming that a Licensee's Attachment is consistent with the Permit under which such PWC authorized such Attachment.

11.3.1. Where a post-construction inspection by PWC is completed within thirty (30) days of the date of installing or placing any of Licensee's Attachments to any Pole(s), Licensee shall be obligated to correct any noncomplying conditions or Corrections within fifteen (15) days of the date of the written notice from PWC or as otherwise agreed to in writing by PWC and Licensee.

11.3.1.1. If the noncomplying conditions are not remedied or the Corrections are not completed within the fifteen (15) days period, Licensee's Permits for the Pole(s) where the noncomplying conditions or Corrections remain uncorrected shall terminate thereafter, regardless of whether Licensee has energized the Attachments to said Pole(s), and Licensee shall remove its facilities from said Pole(s) in accordance with the provisions of this Tariff unless otherwise agreed to in writing by PWC.

11.3.1.2. PWC may, in its discretion, deny any further Permits to Licensee until Licensee's Attachments are removed from the Pole(s) where such non-complying conditions exist.



11.3.2. Where post-construction inspection by PWC is completed more than thirty (30) days after the date of Attachment of Licensee's Attachments to any Pole(s), Licensee shall correct any non-complying conditions or complete any Corrections consistent with Section 15.4 of this Tariff.

11.4. The making of any post-construction, subsequent, and/or periodic inspections or the failure to do so shall not relieve Licensee of any responsibility, obligation, or liability specified in this Tariff.

12. OTHER OBLIGATIONS OF LICENSEE

12.1. Insurance

12.1.1. Licensee must obtain and maintain insurance coverage with financially reputable and admitted insurers that are licensed to do business throughout the State of North Carolina, or in all areas where a Party makes an Attachment under this Tariff, in the following types and amounts of coverage:

12.1.1.1. Workers' Compensation as required by North Carolina law;

12.1.1.2. Commercial General Liability, including coverage for Contractual Liability and Products/Completed Operations Liability, with a limit of not less than \$5,000,000 combined single limit per occurrence for bodily injury, property damage and personal injury liability and \$10,000,000 general aggregate, with Licensee naming PWC as an additional insured; and

12.1.1.3. Motor vehicle insurance covering the ownership, maintenance or use of any owned, non-owned or hired vehicle with a limit of not less than \$1,000,000 combined single limit per accident for bodily injury and property damage liability, with Licensee naming PWC as an additional insured.

12.1.2. All such policies of insurance obtained by Licensee concerning its property shall waive the insurer's right of subrogation against PWC. All policies of Licensee's insurance shall contain endorsements that the insurer(s) shall give PWC and its designees at least thirty (30) days' advance written notice of any change, cancellation, termination or lapse of insurance. Licensee may satisfy its coverage requirements through a combination of primary and excess coverages.

12.1.3. Certificate of Insurance. Prior to or coincident with Licensee submitting its

first Application, Licensee shall deliver to PWC a certificate of insurance reasonably satisfactory to PWC evidencing that the required insurance is in force and will not be canceled without first giving PWC thirty (30) days prior written notice (“Certificate of Insurance”).

12.2. Representations. By submitting an Application, Applicant represents and warrants to PWC that:

12.2.1. Applicant is validly existing with authority to conduct business in the State of North Carolina and in good standing under the laws of the State of North Carolina;

12.2.2. Applicant is a Wireless Services Provider; and

12.2.3. Applicant has all necessary corporate power and authority to execute, deliver, and perform the requirements of this Tariff and the Applicable Specifications.

12.3. Indemnification. Licensee shall indemnify, hold harmless, and defend PWC, the City of Fayetteville, and each of their respective Commissioners, Council members, officers, managers, employees, and agents (collectively “PWC Indemnitees”) from and against any and all claims, suits, liens, actions, damages, penalties, assessments, fines, losses, liabilities, costs, expenses, fees, including reasonable attorneys’ fees from any claim by a third party against one or more of PWC Indemnitees arising from or related to a actions or failure to act, as required by this Tariff, by Licensee or its agents, employees, contractors, subcontractors, or consultants (collectively “Licensee Indemnitors”).

12.3.1. Licensee’s obligation to indemnify, hold harmless, and defend extends to any act or omission of Licensee Indemnitors arising out of, but not limited to, the construction, installation, operation, maintenance, or removal of any of Licensee’s Attachments.

12.3.2. Licensee shall promptly notify, but in no case longer than twenty-four (24) hours), PWC of any known claim or demand arising out of the construction, installation, operation, maintenance, or removal of any of Licensee’s Attachments.

13. RIGHT TO ACCESS

13.1. Licensee is solely responsible for obtaining all necessary Right to Access, including but not limited to required licenses, authorizations, permits, franchise agreements, rights-of-way, easements, rights and consents from any governmental authority or

any private individual or entity, and if applicable from PWC to place, use, or maintain its Attachments on any Poles.

- 13.2.** Right to Access includes Licensee obtaining the appropriate real property interest for any Attachment that is to be used on, placed within, or may require entry onto private property or a public street, highway, or other public thoroughfare.
- 13.3.** PWC shall have no duty to solicit any property owner or take any other affirmative action on behalf of Licensee for the acquisition of such rights secured from any third party. PWC shall have no liability to Licensee with respect to any third-party objection regarding any Right to Access.
- 13.4.** Upon notice from PWC to Licensee that Licensee's presence on any Pole is prohibited by official action taken by government authorities or any order in any judicial proceeding or appeals of judicial proceedings, initiated by any person or entity, the Permit covering such Pole(s) shall terminate and Licensee's Wireless Facilities shall be removed from the affected Pole(s). Except in the circumstances where a more immediate or timely removal is ordered or required by judicial proceedings or appeals of judicial proceedings, Licensee shall have forty-five (45) days from the judicial order to remove Wireless Facilities from the specified Pole(s). Should Licensee fail to comply within the specified time, PWC may remove the Wireless Facilities without liability of PWC to Licensee. PWC may charge Licensee 120% of its Actual Cost to perform such work.
- 13.5.** PWC shall not be liable to Licensee if Licensee is prevented from placing or maintaining an Attachment due to Licensee's failure to obtain a Right to Access, or due to revocation or termination of such access.
- 13.6. Revocation of Right to Access.** If a necessary Right to Access is revoked, expires, or terminates for any reason after an Attachment is made and for which PWC granted a Permit, the Permit will be automatically revoked, effective the day the Right to Access is revoked, expires or terminates. Licensee shall then remove the Attachments covered under the revoked Permit(s) in accordance with this Tariff. Licensee may, however, at its option, litigate or appeal the revocation, expiration or termination of the Right to Access, and if Licensee is diligently pursuing the litigation or appeal, the Permit will remain in effect and Licensee may continue to maintain its Attachment provided that no court has entered orders providing otherwise which have not been stayed or vacated. In doing so, Licensee agrees to defend, hold harmless, and indemnify each PWC Indemnitee from and against any and all claims, suits, liens, actions, damages, penalties, assessments, fines, losses, liabilities, costs, expenses, fees, including reasonable attorneys' fees resulting from Licensee's continuation of the Attachment subject to the Right to Access being

litigated or appealed.

13.7. Denial of Application. If a Right to Access is revoked, expires, or terminates for any reason after an Application is made for which the access is required, but before the Application is approved by PWC, Licensee shall promptly notify PWC, and PWC may deny the Application on that basis. However, Licensee seeking the Application may, at its option, litigate or appeal the revocation, expiration or termination of the Right to Access, and if Licensee is diligently pursuing the litigation or appeal, PWC will delay any decision on the pending Application, except for matters addressed by Section 13.4 of this Tariff, until resolution of the litigation or appeal. During any pending litigation, if a third party applies for a Permit for the same Pole at issue, the Application of each such third party shall be given priority over the Application of Licensee.

14. REVOCATION OF PERMIT

14.1. Right to Revoke. Each Permit granted by PWC to Licensee shall constitute a revocable, non-exclusive temporary license to install an Attachment on the specified Pole(s) as set forth in the Permit. PWC reserves the right to revoke any Permit by providing to Licensee ninety (90) days prior written notice to remove the Attachment if PWC needs the Pole(s) for PWC's electric transmission or distribution or other utility services other than for Reserved Capacity as addressed in Section 15.5 of this Tariff.

14.1.1. If such circumstances occur, PWC will work in good faith with Licensee to assist Licensee in finding alternatives for its Attachments, including offering Licensee the option, if available, to pay for Make-Ready Work to be performed by PWC that could expand the Pole capacity to accommodate Licensee's Attachments.

14.1.2. PWC may remove Licensee's Attachment(s) at Licensee's sole expense and liability if the Attachment is not removed by the expiration of the ninety (90) day notice period.

14.2. Revocation for Cause. PWC may revoke a Permit for Licensee's Attachments if it determines, in its reasonable discretion, that:

14.2.1. Licensee knowingly provided false or erroneous information in its Application;
or

14.2.2. Licensee violates any of the provisions of this Tariff or any of the conditions

imposed on the issuance of the Permit.

14.3. Notice of Violation. Prior to revoking a Permit for cause, PWC will provide Licensee written notice of the violation(s) using the most recent contact information provided to PWC by Licensee. If Licensee fails to correct the violation(s) as required by this Tariff, PWC will revoke the Permit, provided that:

14.3.1. PWC may prescribe a shorter period for correction of the violation(s) and revocation of the Permit if:

14.3.1.1. PWC determines that public health and safety necessitates a shorter notice period; or

14.3.1.2. Licensee has already failed to complete repairs, alterations, or modifications called for in conjunction with an inspection under Section 11.

14.3.2. PWC may allow a longer period when the correction of the violation(s) is reasonably expected to take longer than fifteen (15) calendar days. PWC may require interim health and safety measures when a longer notice period is allowed.

14.4. Effect of Revocation. Upon revocation of a Permit for cause, Licensee must remove Licensee's Attachments for which the Permit was issued, including all related equipment and appurtenances. Any of Licensee's Attachments that are not removed as required under this section will be treated as abandoned.

15. REMOVAL, RELOCATION, OR CORRECTIONS OF FACILITIES

15.1. Notice. Within thirty (30) calendar days following written notice from PWC, Licensee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of Licensee's Attachments whenever PWC has determined that such action is reasonably necessary for the operations of PWC or the construction, repair, maintenance, or installation of any public improvement upon the Pole. If Licensee fails to act as required within the required time period following written notice, PWC may arrange for such action to be taken and charge Licensee for the Actual Cost of such action. Licensee shall pay any such charges within thirty (30) calendar days of the date Licensee is invoiced by PWC.

15.2. Emergency Removal or Relocation. PWC retains the right to move, remove, or modify Licensee's Attachments to a Pole, as PWC may determine to be necessary,

appropriate, or useful in response to any public health or safety Emergency or any interference with public safety communications, traffic signal systems, or other government communications. If circumstances permit, PWC will notify Licensee and provide an opportunity to move, remove, or modify Licensee's Attachments before initiating action. Unless the condition which necessitates the move, removal, or modification of Licensee's Attachments is caused by PWC, Licensee shall reimburse PWC for PWC's Actual Cost for such actions. If Licensee believes that the cause of the Emergency was related to the acts of third-party Attaching Entity, Licensee shall pursue any claims for reimbursement directly with such third-party Attaching Entity.

15.3. Corrections. If PWC determines, in its reasonable discretion, that Licensee must complete a Correction, PWC will provide Licensee with a written notice for the Correction to be completed by Licensee and a statement of the work describing the required Correction. Licensee shall complete the Correction at its sole cost and expense within thirty (30) days of receiving the written notice from PWC. If Licensee does not complete the Correction within thirty (30) days after PWC's delivery of written notice to Licensee, PWC may complete the Correction or retain a third party to do so, in either case at Licensee's sole expense and without liability of PWC to Licensee, and PWC will invoice Licensee for the work. PWC may charge Licensee 120% of its Actual Cost to perform such work. When PWC believes, however, that a Correction is necessary to avoid an imminent Emergency, Licensee will be notified and allowed forty-eight (48) hours, or as much time as practicable under the circumstances, to take corrective action. If Licensee fails for any reason to complete the Correction, PWC may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable afterward, PWC will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all Actual Cost incurred by PWC. Licensee shall indemnify PWC for any such work.

15.3.1. Notwithstanding any other provision in this Agreement to the contrary, in an Emergency, PWC may without prior notice to Licensee Rearrange, replace, remove, renew, disconnect or temporarily remove Attachments, and unless the condition which necessitates such remedial action with regard to Licensee's facilities is directly caused by the acts or omissions of PWC, Licensee shall reimburse PWC for its Actual Cost of within forty-five (45) days of the invoice issuance date for an invoice from PWC

15.4. Rearrangement Period. If Licensee is required to Rearrange or transfer its Wireless Facilities in order to accommodate the facilities of a third-party Attaching Entity, Licensee shall complete such Rearrangement or transfer work within thirty (30) days of the notice from PWC, otherwise PWC may conduct such



Rearrangement or transfer work at Licensee’s expense and without liability to Licensee.

15.4.1. Licensee must seek any desired reimbursement or cost sharing solely from the third-party Attaching Entity.

15.5. Recovery of Reserved Capacity. Should PWC reasonably require the use of Reserved Capacity on a Pole occupied by Licensee’s Attachments for the provision of PWC’s core electric service, Licensee shall, within sixty (60) days receipt of written notice: (a) Rearrange its Attachments to other space if available on the Pole, at Licensee’s own expense, (b) vacate the Reserved Capacity space by removing its Attachments at its own expense or (c) if no space is available Licensee may request that PWC replace the Pole with a larger Pole that can accommodate Licensee’s Attachments, at Licensee’s expense.

16. WARRANTIES AND DISCLAIMERS

16.1. DISCLAIMER OF WARRANTIES. BY SUBMITTING AN APPLICATION PURSUANT TO THIS TARIFF, LICENSEE ACKNOWLEDGES THAT PWC (OR ANYONE ON PWC’S BEHALF) HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS, TO, CONCERNING OR WITH RESPECT TO:

16.1.1. THE VALUE, NATURE, QUALITY, PHYSICAL OR OTHER CONDITION OF POLES,

16.1.2. THE SUITABILITY OF POLES FOR ANY ACTIVITIES AND USES WHICH LICENSEE MAY OR PLANS TO CONDUCT ON POLES;

16.1.3. THE COMPLIANCE OF OR BY POLES OR THEIR OPERATION WITH ANY LAWS, RULES, ORDINANCES, ORDERS, DECISIONS OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY;

16.1.4. THE HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF POLES;

16.1.5. THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO POLES;

16.1.6. THE MANNER, QUALITY, STATE OF REPAIR, OR LACK OF REPAIR OF POLES; OR

16.1.7. ANY OTHER MATTER WITH RESPECT TO POLES AND, SPECIFICALLY, THAT PWC HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL LAW, PROTECTION, POLLUTION, LAND USE, ZONING, DEVELOPMENT OR IMPACT LAWS, RULES, REGULATIONS, ORDERS, DECISIONS OR REQUIREMENTS.

16.2. Environmental Hazards. Licensee shall represent and warrant that its use of PWC's Poles will not generate any Hazardous Substances, that it will not store or dispose on or about PWC's Poles or transport to PWC's Poles any Hazardous Substances and that Licensee's Wireless Facilities will not constitute or contain and will not generate any Hazardous Substance in violation of federal, North Carolina, or local law now or hereafter in effect, including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, North Carolina, or local laws, regulations or rules now or hereafter in effect, including any amendments. Licensee shall further represent and warrant that in the event of breakage, leakage, incineration, or other accident, its Wireless Facilities would not release any Hazardous Substances. Licensee and its Actors shall defend, indemnify, and hold harmless all PWC Indemnitees against any and all liability, costs, Damages, fines, taxes, special charges by others, penalties, punitive damages, or expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage, or discovery of any Hazardous Substances on, under, or adjacent to PWC's Poles attributable to Licensee's use of PWC's Poles.

17. MISCELLANEOUS

17.1. Assignment and Sublicense. Neither Permit(s) nor any of the rights, interests, or obligations granted under this Tariff pursuant to an approved Application shall be assigned by Licensee (whether by operation of law or otherwise) without the prior written consent of PWC. Any Permits authorized under this Tariff (along with the applicable Application and supporting documents) are not intended to confer upon any person other than Licensee of the Permit(s) any rights or remedies.

- 17.2. Governing Law.** This Tariff, an Application, and any Permits shall be governed by the laws of the State of North Carolina, without application of the laws of any other state. The exclusive venue for all proceedings regarding this Agreement shall be the North Carolina Utilities Commission and the State and Federal Courts serving Cumberland County, North Carolina, and Licensee consents to personal jurisdiction in such agency and courts.
- 17.3. Waiver.** No breach or non-performance of any term of this Tariff or a Permit shall be deemed to be waived by a party unless said breach or non-performance is waived in writing and signed by PWC and Licensee. No waiver of any breach or non-performance under this Tariff or a Permit shall be deemed to constitute a waiver of any subsequent breach or non-performance, and for any such breach or non-performance each party shall be entitled to such remedies as provided by law. No consent or waiver by a party shall be effective unless it is in writing and then only to the extent specifically stated.
- 17.4. Survival of Obligations.** Each party's payment, performance, indemnification, and release obligations will survive the expiration or termination of a Permit issued pursuant to this Tariff.
- 17.5. Force Majeure.** If PWC or Licensee is delayed from performing an obligation because of strikes, lockouts, labor troubles, the inability to procure materials, power failure, restrictive governmental laws or regulations, riots, insurrection, pandemic, storms, hurricanes, earthquakes or other natural disasters, acts of God, war or other reason which is not the fault of or is beyond the reasonable control of the party delayed, then performance of the obligation under this Tariff will be excused for the period of the delay.
- 17.6. Taxes.** Any federal, state or local excise, license, sales, use or other taxes or tax-like charges (excluding any taxes levied on income) resulting from the provisions of this Tariff (collectively, "Taxes") shall be borne by the party upon which applicable law imposes the payment obligation, even if the obligation to collect and remit the Taxes is placed upon the other party. Taxes must be shown as separate items on applicable invoices. The party obligated to collect and remit Taxes will do so unless the other party provides evidence of exemption. The party obligated to pay Taxes may contest the Taxes in good faith at its own expense and is entitled to the benefit of any refund or recovery. This provision does not permit a party to allow a lien to be placed on an asset of the other party by reason of a tax contest. The party obligated to collect and remit Taxes will cooperate in any tax contest by the other party by, to the extent legally possible, providing records or other information reasonably necessary to pursue the contest.

- 17.7. Amendment and Modification.** PWC may upon prior written notice amend the provisions of this Tariff on a non-discriminatory basis, such changes shall be applicable to Licensee and its existing Attachments on a going-forward basis.
- 17.8. Severability.** The invalidity, illegality, or un-enforceability of any portion or provision of this Tariff or a Permit shall in no way affect the validity, legality and/or enforceability of any other portion or provision of this Tariff or the applicable Permit. Any invalid, illegal or unenforceable provision of this Tariff or a Permit shall be deemed severed from this Tariff or applicable Permit, and the balance of the Tariff or applicable Permit shall be construed and enforced the same as if the Tariff or applicable Permit had not contained any portion or provision which was invalid, illegal or unenforceable; provided, however, severability shall not prevent the entire Tariff or applicable Permit from being void in the event any portion or provision of the Tariff or applicable Permit that is of the essence of this Tariff shall be void.
- 17.9. Headings Not Controlling.** The headings and numbering of the Sections in this Tariff are for convenience only and do not define or limit any of the terms or affect the meaning or interpretation of this Tariff.
- 17.10. Equal Employment Opportunities.** The equal employment opportunity provisions required by law, regulation or executive order shall be incorporated into Permit.
- 17.11. Electric Power Requirements.** To the extent Licensee requires electric service for its Wireless Facilities, Licensee shall obtain and pay for such power pursuant to the applicable standard process for such service and the applicable electric service rate schedule, except as otherwise mutually approved by the parties in writing.
- 17.12. Notices.** Any notice which either party is required or desires to give the other hereunder shall be deemed sufficiently given if, in writing, it is delivered personally or sent by email the receipt of which is confirmed by the recipient (“Confirmed Email”), or sent by standard U.S. mail, return-receipt requested, postage prepaid, to the address listed hereinbelow for PWC and to the address listed on Licensee’s Application, or such other address as either party shall give to the other party by written notice in accordance herewith. Any notice given herein by personal delivery or Confirmed Email shall be deemed delivered when received. Any properly addressed notice given herein by certified mail shall be deemed delivered on the third Business Day after the same is deposited in an official United States Post Office, postage prepaid, or if sooner upon the date when the return receipt therefor is signed, or refusal to accept the mailing by the addressee is noted thereon by the postal authorities.



FAYETTEVILLE PUBLIC WORKS COMMISSION

To PWC:
Fayetteville Public Works Commission
Attn: CEO/General Manager
PO Box 1089
Fayetteville, NC 28302

with a copy to:

Fayetteville Public Works Commission
Attn: General Counsel
955 Old Wilmington Road
Fayetteville, NC 28301