

**POLE ATTACHMENT LICENSE AGREEMENT
(SAMPLE)**

BETWEEN

ORLANDO UTILITIES COMMISSION

AND

XXXX GROUP, LLC

DATED AS OF

_____, 2024

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POLE ATTACHMENT LICENSE AGREEMENT

PREAMBLE

THIS POLE ATTACHMENT LICENSE AGREEMENT (“Agreement”), effective as of the ___ day of _____, 2024 (“Effective Date”), by and between Orlando Utilities Commission (the “Licensor”), and XXXX Group, LLC (the “Licensee”), referred to collectively as the “Parties,” or individually as a “Party”.

WHEREAS, the Licensor and Licensee desire to enter into a pole attachment license agreement for the use of Licensor’s poles, erected or to be erected within the area in which both Parties render service in the State of Florida, to be consistent with the terms of this Agreement

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained and other consideration set forth herein the adequacy of which is acknowledged, the Parties hereto for themselves, their successors and assigns do hereby agree to the following terms and conditions:

ARTICLE 1 - SCOPE OF AGREEMENT

A. This Agreement shall be in effect in the area in which both of the Parties render service in the State of Florida, and shall cover all eligible poles now existing or hereafter erected, in the above territory when said poles are deemed eligible by Licensor for use under this Agreement in accordance with the procedure hereinafter provided.

B. In accordance with this Agreement, Licensor reserves the right for good cause to exclude from use any of its facilities for objective reasons of safety, reliability, capacity, and generally applicable engineering standards that cannot be remedied by rearranging, expanding or otherwise reengineering facilities.

ARTICLE 2 – EXPLANATION OF TERMS

A. For the purpose of this Agreement, the following terms shall have the following meanings:

“Actual Costs” means all costs, including, but not limited to, the costs of materials, labor, equipment, engineering, supervision, overheads, transportation and contractor fees, when used in lieu of Licensor labor. Actual Costs shall be verifiably comparable to the cost Licensor pays for similar work to its own facilities.

“Actual Inventory” is defined in Article 10 A hereof.

“Application” means the process described in Article 4 hereof used by the Licensee to receive Licensor’s permission to install initial facilities, or to add additional facilities outside the Licensee’s previously allocated twelve inches (12”) of space on Licensor’s poles, as provided

herein. The form used for the Application process is identified as Exhibit A and is included as a part of this Agreement.

“Attaching Entity” means any entity that is licensed by Licensor to install an Attachment to a Pole.

“Attachment” means any wire, line or related apparatus of Licensee attached to a Pole, including, but not limited to, cables, Service Drops, power supplies, amplifiers, pedestals, bonding wires, overlashings, guy wires and anchors required to support unbalanced loads.

“Clearance Space” means the space on the Pole below the point where horizontal wire or horizontal cable equipment may be installed in accordance with the Specifications. For purposes of this definition, “horizontal” means spanning from Pole to Pole or extending more than three feet (3’) from the surface of the Pole.

“Communication Space” means the space on the Pole where horizontal wire or horizontal cable equipment may be installed in accordance with the Specifications. For purposes of this definition, “horizontal” means spanning from Pole to Pole or extending more than three feet (3’) from the surface of the Pole.

“Contact Person” is defined in Article 15 (Notices).

“Cost in Place” means the cost of the bare Pole, labor, and equipment to install the Pole and associated overheads, including engineering.

“Effective Date” is defined in the Preamble.

“Estimated Cost” shall mean the preconstruction price estimate of Actual Costs which will be pre-paid by Licensee under Article 6 D for replacement of Poles by Licensor.

“Force Majeure Event” is defined in Article 21.C.

“Imminent Danger Violation” shall have the meaning set forth in Article 7 D.

“Joint User” means a person or entity, other than Licensor or Licensee, that is currently occupying or reserving space on a Poles, and has a right to attach to such Pole in return for granting Licensor equivalent rights of Attachment or occupancy to poles which the Joint User owns. Licensee shall be treated in a nondiscriminatory manner to any Joint User.

“J-Hook” is a screw-like threaded item used to make attachments. The item resembles the letter “J”.

“License” means permission granted by Licensor to Licensee under the terms of this Agreement to install an Attachment to a Pole.

“Licensed Pole” means a pole for which Licensee has a valid permit to locate and maintain an Attachment pursuant to the terms of this Agreement.

“Licensee” means XXXX Group, LLC, its authorized successors and assignees.

“Licensor” is defined in the Preamble.

“Licensor Facilities” means all of Licensed Poles and associated lines, equipment and structures of Licensor in and around such Licensed Poles.

“Licensor Permit” shall mean permission granted by Licensor to Licensee under this Agreement to install an Attachment on a Pole.

“Make Ready” or “Make Ready Work” means all work Licensor reasonably determines to be required to accommodate Licensee’s Attachments to comply with applicable standards. Such work includes, but is not limited to, Rearrangements, replacement of the Pole, Transfers and other work incident thereto.

“Make Ready Costs” means all reasonable costs necessary for Licensor, and other existing parties on the applicable Pole, to prepare the Poles for Licensee’s new, additional or modified Attachments, including, but not limited to, the costs of materials, labor, equipment, engineering, supervision, overheads, and tree trimming costs. Engineering includes design, proper conductor spacing and bonding, review of Licensee’s pole loadings calculations to determine proper ground clearances and Pole down guy and anchor strength requirements for horizontal and transverse loading, and compliance with all applicable requirements. Also included among Make Ready Costs are the costs of installing or changing out primary Poles, secondary Poles and drop and lift poles, including the cost of installation and/or removal of guys, anchors, stub poles, materials and equipment, temporary construction and all other construction in accordance with the technical requirements and specifications as outlined in this Agreement. Licensor Make Ready Costs shall be verifiably comparable to the cost Licensor pays for similar Make Ready Work to its own facilities. Make Ready Costs do not include any costs associated with correcting existing violations of the Licensor, or others attached to a Pole.

“Make Ready Estimate” means the estimate prepared by Licensor for all Make Ready Work that may be required by Licensor to accommodate Attachment(s) by Licensee.

“NESC” is defined in Article 3 (Specifications).

“Nonfunctional Attachment” has the meaning set forth in Article 3 (D).

“Outside Party” is defined as persons or entities not party to this Agreement.

“Overlashing” means affixing an additional cable or wire owned and operated by Licensee to a cable or wire owned and operated by Licensee already attached to a Pole. Licensee shall not allow third party Overlashing without Licensor’s prior approval or Overlashing to Unauthorized Attachments.

“Parties” is defined in the Preamble.

“Pole” or “pole” means an eligible wooden, concrete or steel structure owned, controlled, or otherwise operated by Licensor to support distribution lines and related facilities of Licensor, including drop and lift poles.

“Pole Attachment Fee” means the annual amount per billable Attachment (as defined herein) per Attachment per Pole that Licensee must pay to Licensor pursuant to Article 10 of this Agreement.

“Rearrangement” means the moving of Licensee Attachments, the Licensor’s equipment or a third party’s equipment from one position to another on the same Pole.

“Safety Inspection” means a safety inspection of Licensor poles to identify and remediate non-conforming Attachments (e.g. NESC violations) and other safety conditions on Licensor poles, performed after the Effective Date.

“Security Instrument” shall mean a bond, letter of credit or other instrument agreed by Licensor in form and substance, provided by Licensee under Article 17 of this Agreement.

“Service Drop” means a Licensee wire or other facility used to connect to a customer’s location from a Licensor pole.

“Specifications” is defined in Article 3 hereof.

“Transfer” means the removal of Attachments from one Pole and the placement of such Attachments or substantially identical Attachments upon another Pole located adjacent to original pole.

“Unauthorized Attachment” means any affixation of any Licensee Attachment to a Licensor Pole, which has not been authorized as required by this Agreement.

“Unauthorized Attachment Fee” means the fee to be paid by Licensee for each Unauthorized Attachment.

“Vertical Attachment” is defined in Article 4.G (a).

B. The following rules of interpretation apply to this Agreement and are by this reference incorporated into this Agreement:

(a) the word “or” is not exclusive and the words “including” or “include” are not limiting;

(b) the words “hereby,” “herein,” “hereof,” “hereunder” or other words of similar meaning refer to the entire document in which it is contained;

(c) a reference to any agreement or other contract includes permitted supplements, amendments and restatements;

(d) a reference to a law includes any amendment or modification to such law and any rules or regulations promulgated thereunder or any law enacted in substitution or replacement therefore;

(e) a reference to singular includes plural and vice-versa and each gender includes the other;

(f) a reference to days, months, or years refers to calendar days, months, and years, unless business days are specified;

(g) Article and Section headings and table of contents are only for reference and are not to be considered in interpreting this Agreement;

(h) a reference to an Article, Section, Exhibit or Schedule which does not specify a particular document is to the relevant Article, Section, Exhibit or Schedule of the document containing the reference;

(i) a reference to an Article includes all Sections and subsections contained in such Article, and a reference to a Section or subsection includes all subsections of such Section or subsection;

(j) All terms not otherwise defined herein will have the meaning commonly ascribed thereto in the relevant industry;

(k) "\$" or "dollars" refers to United States dollars; and

(l) The word "will" has the same meaning as "shall".

ARTICLE 3 - SPECIFICATIONS

The use of the Poles covered by this Agreement shall be in conformity with all applicable engineering and/or safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around the Licensor's Facilities including, the National Electrical Safety Code (NESC), including any retroactive provisions of the NESC, the National Electrical Code (NEC), and in compliance with any lawful rules or orders now in effect or that hereafter may be issued by the City of Orlando, the City of St. Cloud, Orange County, Osceola County, the State of Florida or other governmental authorities having jurisdiction (including but not limited to federal agencies). Existing Attachments, including maintenance replacements, which complied with the NESC and other requirements when made, need not be modified to comply with new requirements except as may be necessary for safety reasons, which relate to the maintenance of proper clearances and related safety issues, the regulations of the Occupational Safety and Health Act (OSHA), applicable regulations of the Federal Communications Commission (FCC), the Environmental Protection Agency (EPA), lawful requirements of Public Authorities, and/or other requirements of the Licensor that are non-discriminatory to attaching entities as compared to all other attaching entities of Licensor specifications in effect at the time of original construction or subsequent major change to Licensee's Attachments.

A. Prior to Licensee placing an Attachment on a Pole, Licensee shall perform an industry standard pole loading calculation to be included with the Application to determine the strength of the Poles to ensure its sufficiency for transverse and vertical loads imposed upon them under heavy storm loading conditions of the NESC.

B. Licensee shall place a plated hot dip galvanized or stainless-steel band for any attachments to a concrete or steel Pole. Licensee shall not drill or modify any concrete or steel Pole of its original structural integrity.

C. Licensee shall place marker tags having a minimum surface area of 2.25 square inches per side (1.5" x 1.5") to each of its Attachments prior to affixing it to Poles or any other Licensor Facilities. All marker tags must be located at or near the point where such Attachments are affixed to each Pole or Licensor Facility and must be (i) be non-metallic, (ii) be of a distinctive and uniform design, (iii) include the standard color used by Licensee across its network and (iv) be legible, clearly visible and recognizable from the ground by a person having normal vision. Licensee shall be responsible for periodically inspecting its Attachments to ensure they have marker tags. Should Licensor encounter any of Licensee's Attachments without marker tags, Licensor will notify Licensee with the appropriate locations and Licensee shall have thirty (30) days from the date of notice to place marker tags on such Attachments or Licensor Facilities. Failure to place marker tags within thirty (30) days' notice may result in Licensor removing attachments at Licensee's expense, provided no service interruption or risk to public safety. Licensor, at its sole discretion, may maintain marker tags at Licensee's expense. All other existing Attachments shall be tagged in accordance with the requirements as provided in this Article 3, C within one (1) year of the date of this Agreement, unless otherwise mutually agreed upon by the Parties. Licensor shall not be held liable for any damages resulting from such removal.

D. Licensee at its sole expense shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service ("Nonfunctional Attachment") as provided in this Article 3 D. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an Unauthorized Attachment and is subject to the Unauthorized Attachment Fee specified in Article 8. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written permission from Licensor to extend the allotted time for removal of the specified Nonfunctional Attachment(s) or unless Licensee receives written notice from Licensor that removal is necessary to accommodate Licensor's or another Attaching Entity's use of the affected Pole(s) in which case Licensee shall remove the Nonfunctional Attachment within sixty (60) days of receiving the notice. If Licensee contests whether the Attachment is nonfunctional, provisions of Article 11 shall apply. Where Licensee has received a Licensor Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment must first be removed before Licensee can apply for a new Attachment in the same mounting location. In such case, no additional Attachment fee will be charged assuming the Licensee was already paying for the Non-Functional Attachment.

E. Licensee shall make no service connection to any Licensor power supply unless and until the local permitting jurisdiction electrical inspector has completed the required inspection. All new and upgraded power supplies or associated equipment requiring power shall be metered and require a disconnect switch. Any service connections without Licensor consent

shall be considered an Unauthorized Attachment subject to the provisions of Article 8.

ARTICLE 4 - ESTABLISHING ATTACHMENTS TO POLES

A. Except in connection with (i) the placement of Service Drops, (ii) Pole Transfers, or correcting noncompliance, Licensee must submit to Licensor an Application for any Attachment on Poles (including reconstruction of existing Pole lines) that involves the placement of new Attachments. Licensee shall submit to Licensor a completed Application on the form attached hereto and identified as Exhibit A, and all supporting data in accordance with said Application. The Application shall be sent either (i) by electronic mail with electronic mail “read” receipt obtained or (ii) hand delivery, with proof of delivery. When transmittal is by hand, the Licensee will also send an electronic mail message, to Licensor as notice that the Application was hand-delivered.

B. Notwithstanding the above, Licensee shall notify Licensor of a Service Drop attachment within thirty (30) days of installation. Any Service Drop that Licensor discovers more than thirty (30) days after installation will be considered an Unauthorized Attachment subject to the provisions of Article 8. Applications involving Pole locations that are contiguous may be submitted on a single Application. In instances where poles are not contiguous or at random locations, a single Application shall be filled out for each location.

C. Licensee shall be charged in the amount of fifty dollars (\$50) per Pole for each Application submitted under this Agreement. All fees arising as part of the permitting process must be paid before the Licensor Permit will be issued. Failure to include all pertinent information relating to the Application set forth in Exhibit A will result in the Licensor holding the Application until the required documentation is received, upon Licensor request.

D. Within sixty (60) days of confirmed receipt of a new Application, Licensor shall make commercially reasonable efforts to process the request and provide Licensee with notification that the Application is either approved or rejected. In the event that the Application is rejected, Licensor shall provide detailed rationale for the rejection and Licensee shall have an opportunity to revise and resubmit the Application.

E. E. If Licensee’s Application is approved, Licensor shall include a Make Ready Estimate with its response. The Make Ready Estimate shall offer sufficient detail so that Licensee can readily identify the components of the proposed Make Ready Work. The Licensor’s total charges shall be based on the cost estimate provided by the Licensor. Provided invoice will only be valid for the duration and work scope listed on the cost letter.

F. Licensee shall make payment in advance for Licensor’s Make Ready Work. Licensor shall provide written notice via electronic mail message to Licensee following the completion of Make Ready Work. Upon receipt of notice by Licensee from Licensor that the Make Ready work has been completed, the Licensee shall have the right hereunder to place its Attachments in accordance with the terms of the Application and this Agreement (including Article 3 herein). If the Licensee fails to initiate construction within one (1) calendar year from receipt of

Licensors' notice of completion of Make Ready Work, the Licensor may, in its sole discretion, deem the Application approval terms and conditions outlined in the Exhibit A null and void, and require the submission of another Application, along with engineering fees necessary to reimburse the Licensor for revised engineering and cost estimates, in the event Licensee still desires to attach to the Poles originally approved for attachment. Where field conditions preclude such compliance (e.g., when the Licensee's construction is delayed), Licensee shall notify the Licensor prior to construction. Licensee shall provide written notice to Licensor no later than fifteen (15) business days following the completion of Licensee's work so that Licensor may perform its post inspection of Licensee's new or modified Attachments to a Pole. Part of the post inspection will include a review of the work area to ensure all unused materials and or debris have been disposed properly by the Licensee or its contractor. Should the Licensor find any work areas as such during their post inspection, the Licensor will provide notice to Licensee to remedy those areas identified. If the Licensee fails to comply within forty-eight (48) hours after notice or such alternative time period that might be agreed upon, the Licensor may perform the necessary work and bill Licensee for the Actual Costs plus 20% which shall be separate from the initial Make Ready Estimate. Any Service Drop that is placed by the Licensee on a Licensor Pole shall be subject to all the terms and provisions of this Agreement.

- a) Licensee, without following the Application procedure, may utilize Clearance Space below the standard Communication Space, its Attachments, for terminals, risers, or other vertical Attachments extending horizontally from the Pole no more than eighteen inches (18"), and such use does not interfere with the Licensor's operations or the operations of other Licensees or Joint Users presently attached to the Pole, and is otherwise compliant with the terms of this Agreement. Any such Vertical Attachments will be subject to all other provisions of this Agreement, except that Licensee shall owe no Pole Attachment Fees for such Vertical Attachments.
- b) Licensee shall Transfer and rearrange its own Attachments and shall place its own guys and anchors to sustain any unbalanced loads caused by its Attachments. Licensee anchors and guys shall be in place and in effect prior to the installation of Attachments and cables. Licensee shall not attach its guy wires to Licensor's anchors without prior written permission of Licensor and Licensee will illustrate anchors in the permit drawings and attach to the Application. Licensee understands that it may be necessary for other attachers to relocate their attachments in order for the Licensor Permit to be approved. Licensee is responsible for requesting and coordinating relocation of other attachers attachments in order to provide space for licensee's proposed Attachments.
- c) Licensee shall use the following information for new/overlash of attachments to Licensor poles.
 - i. Attachments will not be allowed on transmission poles without distribution facilities.
 - ii. A minimum clearance is 3'-4" below neutral or secondary conductors.

- iii. A minimum 1' separation is required from other existing foreign utilities
- iv. Licensee will propose attachment to front side of poles only.
- v. Standoff brackets are not allowed.
- vi. The standard attachment space will be provided between 18' to 22' on concrete distribution poles. Licensee shall refer to NESC guidelines for attachment height restrictions
- vii. Florida Department of Transportation (FDOT) minimum height over roadways – 18'
- viii. The City of Orlando minimum height over roadways – 17.5'
- ix. Licensee shall not cross other foreign utilities when attaching to the poles within a continuous span.

ARTICLE 5 - MAINTENANCE OF POLES AND ATTACHMENTS

A. Licensee acknowledges that Poles and related items carry hazardous voltages, deteriorate over time and may contain various hazardous chemicals or properties. Licensee shall instruct and equip its personnel, including its employees, contractors and other agents, of the hazards associated with working on Poles, and Licensee will provide necessary training and equipment for its representatives to safely execute their work on a Pole. Prior to working on a Pole, Licensee shall, through visual inspection and reasonable effort, make an assessment that the Pole is in safe working condition. If Licensee believes that a Pole contains non-compliant or unsafe conditions, Licensee shall promptly notify Licensor of any existing substandard condition (i.e., physical, mechanical or electrical, etc.), that jeopardizes either the general public or workman safety, and Licensor will cause the existing condition to be promptly corrected if the condition is found to exist. Licensee will insure that contractors will comply with provisions of this Agreement. Licensor does not warrant, guarantee, or imply that any Pole abandoned by Licensor possesses sufficient mechanical strength as required by or for any use of Licensee.

B. The Parties recognize that improved coordination of activities such as Pole Attachments and Pole Attachment Transfers by Pole owners and Attaching Entities is to the benefit of all Parties, and that Licensee's and Licensor's participation in the National Joint Utilities Notification System ("NJUNS"), a Web-based system developed for the purpose of improving the coordination of such joint use activities, shall be used to coordinate such joint use activities under this Agreement. If Licensee is not a member of NJUNS, Licensee will join NJUNS within 30 days of the execution of this Agreement. Licensee shall actively monitor and manage that account. Should Licensee fail to actively participate in NJUNS and should such failure cause Licensor to incur expense or liability to others, Licensee shall reimburse Licensor its expense and indemnify and hold harmless Licensor from any damages or liability arising out of such failure. For the

purposes of this Agreement, any work being managed with NJUNS will be considered incomplete until the NJUNS ticket is completed in the system, regardless of whether or not the work is physically completed in the field.

C. Licensee is responsible for monitoring and updating NJUNS tickets. Licensee will be notified through NJUNS that a pending Pole Transfer needs to be completed within sixty (60) days of such notification. Licensee will notify Licensor through NJUNS that Transfers have been completed when Attachments are transferred to new poles.

D. Should Licensee fail to Transfer its Attachments to the newly Licensed Pole after the date specified for such Transfer of Attachments, or at such mutually agreed alternative date and time, Licensor shall notify Licensee in writing (using the form attached hereto as Exhibit B) of an Unauthorized Discovery Attachment Fee of \$150.00 and of an Unauthorized Attachment Daily Fee of \$5.00 that shall apply if Licensee fails to Transfer its Attachments. Licensor may at any time after the specified or agreed transfer date, transfer Licensee's Attachments and Licensee shall pay Licensor's Cost plus 20% upon invoice. Licensor will make a reasonable attempt to notify Licensee of such transfer and its associated cost. In the event Licensor does such work, Licensor shall not be liable for any loss or damage to Licensee's facilities, which may result therefrom. In addition, in the event the Licensee notifies the Licensor that the Transfer has been accomplished and the Licensor returns to the job site to remove the old Pole and discovers that the Transfer has not been made, then the Licensee will pay the Licensor's cost of the trip to and from the job site, plus 20%.

ARTICLE 6 - REPLACEMENT OF EXISTING POLES

A. **REPLACEMENT OF EXISTING POLES.** Where an existing Pole is replaced for maintenance purposes, Licensor shall erect a Pole adequate for the existing Attachments and Attachments for which Applications have been delivered, unless such Application is denied in accordance herewith, and the Licensor will pay all the costs of installing the replacement Pole. Licensee will pay to replace its existing Attachments at its sole expense. The replaced Pole shall be removed and retained by Licensor.

1. A Pole larger than the existing Pole, which is installed to replace an existing Pole, the extra height or strength of which is due wholly to the Licensor's requirements, such as providing service, normal maintenance, or keeping the Licensor's wires clear of trees, shall be erected at the sole expense of the Licensor. The Licensee shall bear the full expense of replacing or transferring all the Licensee's Attachments.

2. For a Pole larger than the existing Pole, which is installed to replace an existing Pole, the extra height or strength of which is due wholly to the Licensee's requirements, including Licensee's requirements as to keeping the Licensee's wires clear of trees, the Licensee shall pay to the Licensor the Make Ready Cost plus 20% of the new Pole.

3. For a Pole larger than the existing Pole, which is installed to replace an existing Pole, the extra height or strength of which is due wholly to another Attaching Entity or Joint User's requirements such as providing service, correcting a safety violation

or keeping the other Attaching Entity's or Joint User's wires clear of trees, the other Attaching Entity or Joint User shall pay all of the Make Ready Cost of the new Pole, including any costs associated with replacing or Transferring Licensee's Attachments.

4. In the case of a Pole larger than the existing Pole, which is installed to replace an existing Pole, the extra height or strength which is due to the requirements of all parties on the Pole, such as when the parties share responsibility for correcting a safety violation, the difference between the Cost in Place of such new Pole and the Cost in Place of the existing Pole shall be shared equally among the Licensee, Licensor, and other third parties, and if applicable, the rest of the cost of erecting such Pole to be borne by the Licensor.

B. **RESPONSIBILITY FOR OWN ATTACHMENTS.** Licensee, shall place, maintain, rearrange, Transfer and remove its own Attachments at its own expense except as otherwise expressly provided herein.

C. **SERVICE DROPS.** Where an existing Pole is replaced by a taller one to provide the necessary clearance for the Licensee's Service Drop, the Licensee shall pay to the Licensor the installed cost of the new Pole plus the labor costs of replacing or Transferring of the Attachments on the existing Pole and the cost to remove the existing Pole.

D. **PAYMENT BASIS.** Payments made under the provisions of this Article shall be paid in advance based on the estimated cost (including overhead) of making such changes, but in no event shall Licensee be required to pay for such changes more than 120% over the Estimated Cost if such cost estimate shall have been requested and furnished before the changes were made. If the Estimated Cost is less than the Actual Cost, the Licensor shall refund to the Licensee the difference. Estimated costs are only valid for sixty (60) days after notification to Licensee.

E. **UTILITIES INSTALLING LARGER POLES FOR UTILITY'S FUTURE USE.** In the event the Licensor installs a Pole larger than is initially required for Licensor's and Licensee's use in anticipation of Licensor's future requirements or additions, the additional space provided by Licensor shall be reserved for Licensor's own future use, pursuant to reasonable projected needs or business plans.

F. **PAYMENTS DO NOT AFFECT OWNERSHIP.** Any payments for Poles made by the Licensee under any provisions of this Article shall not entitle the Licensee to the ownership of any part of said Poles for which it has contributed in whole or in part.

ARTICLE 7 - INSPECTIONS PERFORMANCE AND CORRECTIVE ACTIONS

A. **INSPECTION PERFORMANCE.** Licensor may perform inspections of Licensee's Attachments at any time. Licensor may also perform system-wide inspections of Licensor Poles, including Licensee Attachments. When system-wide inspections are performed, the Licensor shall provide advanced written notice of such inspection to Licensee. Such notice shall describe the scope of the inspection and provide Licensee with an opportunity to participate. Licensee, Licensor, and other attachers to Licensed Poles, shall share cost on a pro-rata basis for system-wide inspections.

B. **CORRECTIVE ACTIONS.** In the event any Licensee facilities has caused a violation of the Specifications and such violation poses an imminent danger to persons or property and is discovered (“Imminent Danger Violation”), Licensee shall correct such violation as soon as possible, but in any event, within twenty-four (24) hours from discovery. Should Licensee fail to correct such Imminent Danger Violation after notice, the Licensor may correct the Imminent Danger Violation and bill Licensee for the Actual Costs incurred, plus 20%. If any Attachment of the Licensee is not found to be an Imminent Danger Violation, but Licensee has none-the-less caused a violation of the Specifications, Licensee shall have thirty-day (30) calendar days to correct any such violation upon written notice from Licensor, or within a longer, mutually agreed-to time frame if correction of the violation is not possible within thirty calendar (30) days. Licensee shall insure that its employees, agents, contractors or other Outside Parties, which Licensee causes to work on Poles, will be notified of pending, unresolved Poles requiring corrective actions prior to activities on such Poles.

ARTICLE 8 - UNAUTHORIZED ATTACHMENTS

A. If any Attachment made to a Pole for which the Application requirements (as set forth herein), or notification requirements as provided for in Article 4 (Establishing Attachment to Poles), have not been satisfied (“Unauthorized Attachment”), Licensor’s may in its sole discretion either a) require removal of the Unauthorized Attachment or b) allow such Attachments to remain and require Licensor to pay an Unauthorized Attachment Fee of \$150.00 per Pole containing an Unauthorized Attachment. When discovered, Licensor will notify Licensee of the Unauthorized Attachment using the form attached hereto as Exhibit B. Licensee shall within thirty (30) days after being notified or such other mutually agreeable timeframe remove such Unauthorized Attachment or shall make Application for a Licensor Permit and the provisions of Article 4 shall apply. Failure of Licensee to remove the Unauthorized Attachment or to make Application for a Licensor Permit within thirty (30) days after being notified by Licensor or such other mutually agreeable timeframe will be considered an event of default.

ARTICLE 9 – ABANDONMENT OR UNDERGROUND RELOCATION

A. If Licensor desires at any time to abandon, remove, or underground any Poles to which Licensee’s Attachments are attached, it shall give Licensee notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such a Poles. Notice may be limited to thirty (30) calendar days if Licensor is required to remove or abandon its Poles as the result of the action of a third party and the lengthier notice period is not practical. If, following the expiration of the thirty (30) or sixty (60) day period as applicable, Licensee has not yet removed and/or transferred all of its Attachments Licensor shall have the right, but not the obligation, to remove or transfer Licensee’s Attachments at Licensee’s expense. Licensor shall give Licensee prior written notice of any such removal or transfer of Licensee’s Facilities.

B. If Licensor moves any portion of its aerial system underground, Licensee shall remove its Attachments from any affected Poles within sixty (60) calendar days of receipt of notice from Licensor and must either relocate its affected facilities underground with Licensor or find other means to accommodate its facilities. If Licensee does not remove its Attachments within sixty (60) days, Licensor shall have the right to remove or transfer Licensee’s Attachments at

Licensee's expense. Licensee's failure to remove its facilities as required under this Section 9 B shall subject Licensee to the enforcement provisions set forth in this Agreement.

C. If a private development or non-governmental third party requires removal or transfer of Licensee's Attachments and a dispute arises between such third party and Licensee, then Licensor shall work in good faith with Licensee to extend the time provided for removal or transfer of Licensee's Attachments to allow for such dispute to be resolved in a timely manner.

ARTICLE 10 - POLE ATTACHMENT RENTAL FEES

A. At intervals of not less than every five (5) years, unless otherwise mutually agreed by the parties, inventories of Attachments shall be made by representatives of the parties to determine the number of Licensee's Attachments to Poles ("Actual Inventory"). Licensor shall provide three (3) months' advance written notice prior to the Inventory and any subsequent Actual Inventory describing the scope of the Actual Inventories so that Licensee may plan and fully participate in and budget for such Actual Inventories.

B. Actual Inventories shall include all Outside Parties attached to the Poles that were the subject of the Actual Inventory. All Outside Parties shall incur a prorated share of the cost of performing the Actual Inventory, based on the number of Attachments each Attaching Entity has on each Pole.

C. For a year in which there is an Actual Inventory, the Pole Attachment Fees provided for herein shall be based on the Actual Inventory and the following adjustments shall be made:

1. The difference between the number of Licensee billable Attachments found by the Actual Inventory for the year in question and the number of Attachments for which Licensee was most recently invoiced for Pole Attachment Fees shall be prorated evenly based on the assumption that such Licensee Attachments were added evenly over the period since the last Actual Inventory.

D. The applicable computation of payments and calculations as above provided shall be made on or about December 1st of each year following a year in which an Actual Inventory was conducted for the next year's Pole Attachment Fees, each Party acting in cooperation with the other.

E. Effective January 1, 2024, Licensee shall pay to Licensor under this Agreement, an annual Pole Attachment Fee an amount per Attachment per Pole of Twenty-Six Dollars and ninety-five cents (\$26.95). The initial payment of \$26.95 per Attachment per Pole is due upon the effective date of this contract for the 2024 year. The Pole Attachment Fee shall be assessed annually based on the number of Attachments to Poles for which Licenses have been issued, less those for which Licenses have been terminated, as of January 1 and multiplied by the annual Pole Attachment Fee. Effective January 1, 2025, the rates will be adjusted annually by the percent change in the Consumer Price Index (CPI) data from October for the year prior. Licensor shall invoice Licensee on or about January 1st

F. The power supply will be billed monthly to Licensee based on metered usage. Licensee shall apply to Licensor for a commercially metered service through the Development Services

group of OUC at DevelopmentServices@ouc.com

ARTICLE 11 – DEFAULTS

A. If Licensee shall fail to comply with any of the provisions of this Agreement, or shall default in any of its obligations under this Agreement and shall fail within thirty (30) days, or a mutually agreed upon time, after written notice from Licensor to correct such default or non-compliance, Licensor may, at its option, forthwith terminate this Agreement and/or the entire License or any part thereof, granted to Licensee hereunder. In case of such termination, a proportionate refund of all prepaid rentals shall be made upon completion of any and all removal of Licensee Attachments from the Poles, less any costs incurred by Licensor for removal of the Licensee's Attachments. In case of a default and termination of this Agreement, the Licensee shall have six (6) months to remove all of the Licensee's Attachments from the Licensor's poles after which six-month period], the Licensor shall have the option to either 1) assume ownership of the Attachments or 2) remove and dispose of all of Licensee's Attachments without any liability or accounting therefore. In the event Licensor selects to remove the Attachments, Licensee will be invoiced for the full amount of the cost of removal, payable within forty-five (45) days. The terms and provisions of this Article 12 shall survive this Agreement.

ARTICLE 12 - ASSIGNMENT OF RIGHTS

This Agreement may be sold, assigned or transferred by Licensee without any approval or consent of OUC only to Licensee's principal, affiliates, subsidiaries of its principal, or any party that merges or consolidates with Licensee or its principal or purchases substantially all of Licensee or Licensee's principal's assets located in Orlando, Florida, provided, however that Licensee shall provide notice to OUC of any such assignment within forty-five (45) days thereof. Except as provided above, this Agreement may not be sold, assigned or transferred by Licensee to any third party without the prior written consent of OUC. NO SUBLEASE OF ANY RIGHT HEREIN SHALL BE PERMITTED without OUC's prior written consent, which consent may be withheld by OUC in its sole discretion. Notwithstanding anything contained herein to the contrary, Licensee may, without OUC's consent, provide capacity across Licensee's Attachments to Licensee's customers as long as ownership and control of such Attachments remain with Licensee. The use of Licensee's Attachments by Licensee's customers that involves no additional attachment is not considered an assignment or sublease to a third-party subject to the provisions of this Section 12.

ARTICLE 13 - WAIVER OF TERMS OR CONDITIONS

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

ARTICLE 14 - PAYMENT OF TAXES

Licensee shall pay all taxes and assessments which arise directly or indirectly from the construction, maintenance or operation of Licensee's facilities located on Poles pursuant to this Agreement and are payable by Licensee pursuant to federal, state, or local regulation.

ARTICLE 15 - NOTICES

Wherever this Agreement requires notice to be given by either Party to the other, such notice shall be in writing and shall be effective when personally delivered to or when mailed by certified mail, return receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

Licensee:

General Notices:

XXXX Group, LLC
Attn: Underlying Rights/Legal
1401 Wynkoop Street, Suite 500
Denver, CO 80202
legal@XXXX.com

With A Copy To:
XXXX Group, LLC
Attn: Underlying Rights/Legal
1821 30th Street, Unit A
Boulder, CO 80301
legal@XXXX.com

Emergency Contact (24/7):

Network Operations Center & Repair
XXXX Group, LLC
(888) 404 9296
XXXXncc@XXXX.com

Billing:

XXXX Group, LLC
Attn: Accounts Payable
1821 30th Street, Unit A
Boulder CO 80301

NEW INVOICE SUBMISSIONS: XXXXap@XXXX.com
AP-RELATED INQUIRIES ON PAST-DUES: askap@XXXX.com

Licensor:

Name: Operations Contract Administration
Company: Orlando Utilities Commission
Address: 100 W Anderson St.
Orlando, Florida 32801

The names, addresses, and phone numbers to which notices must be sent should be modified by either Party upon notice to the other when any of the required information has changed.

The above notwithstanding the Parties may agree to utilize electronic communications such as email for notifications related to the Licensor Permits application and approval process and necessary transfer or Pole modifications.

ARTICLE 16 - TERM OF AGREEMENT

A. This Agreement shall continue in full force and effect for five (5) years from the Effective Date (Initial Term), and shall automatically renew thereafter for successive one (1) year terms (Renewal Term) unless terminated in accordance herewith. Either Party may terminate the Agreement by giving to the other Party six (6) months' notice in writing of intention to terminate the Agreement six (6) months prior to the end of the Initial Term or any date thereafter.

B. Upon final termination of this Agreement in accordance with any of its terms, Licensee shall, within one-hundred eighty (180) days, remove all its Attachments from all Poles. If not so removed, Licensor shall have the right to either 1) assume ownership of the Attachments or 2) remove and dispose of all of Licensee's Attachments without any liability or accounting therefore. Licensee shall reimburse Licensor for any and all costs incurred by Licensor in the removal of Licensee's Attachments as detailed above. In the event that Licensee has not reimbursed Licensor within thirty (30) days of invoicing following Licensor's removal of said Attachments, then Licensor may redeem the Security Instrument described in Article 17 (Liability and Indemnification).

C. Termination of this Agreement shall not relieve either Party from fulfilling any and all of its obligations that accrued while the Agreement was in effect. The terms and provisions of this Article 16 shall survive this Agreement.

ARTICLE 17 –INDEMNIFICATION

A. With the exception of claims or damages as may be primarily due to or caused by the acts or omissions of Licensor, its employees, contractors or agents, Licensee hereby agrees to indemnify and hold Licensor, its commissioners, officers, employees and agents harmless from and against any and all claims, damages, losses, expenses, including but not limited to, cost and reasonable attorney's fees whether at trial or appellate levels or whether in mediation or arbitration, to the extent that they result or arise from (i) the acts or omissions of Licensee, its agents, subcontractors, and employees in, on or about the Poles, (ii) Licensee's breach of any term or condition of this Agreement; or (iii) the use and occupancy of the Poles and/or installation of the Attachments by the Licensee.

B. To the extent permitted by law and without waiving any rights or privileges of sovereign immunity, and with the exception of claims or damages as may be due to or caused by the acts of Licensee, its employees or agents, Licensor hereby agrees to indemnify and hold Licensee harmless from and against any and all claims of liability for personal injury or third-party structure damage to the extent that they result or arise from (i) the acts or omissions of its agents and employees in, on or about the Poles, and/or (ii) Licensor's breach of any term or

condition of this Agreement. Notwithstanding the above, the indemnity set forth herein shall not exceed the dollar amount of the liability limitations set forth in Section 768.28, *Florida Statutes*.

- C. Both parties hereby waive the right to recover punitive, indirect, incidental, special or consequential damages from the other party.
- D. Licensee shall furnish and maintain throughout the term of this Agreement, and thereafter until all of the obligations of Licensee have been fully performed, a bond (“Security Instrument”) from a surety authorized to do business in the State of Florida to guarantee the payment of any sums which may become due to Licensor or an Licensor Agent for Pole Attachment Pole Attachment Fees, inspections, inventories, Make Ready Costs, Unauthorized Attachment Fees, for work performed for the benefit of Licensee under this Agreement, including the removal of Attachments upon termination of this Agreement, for any expense that may be incurred by Licensor or an Licensor agent because of any default of Licensee, or for any other expense that is to be borne by Licensee under this Agreement. The amount of said Security Instrument, which amount shall be maintained throughout the term of the Agreement and thereafter until all of the obligations of Licensee have been fully performed, shall be equal to Twenty-Five Thousand US dollars (\$25,000). Failure to provide and maintain the aforementioned Security Instrument shall be deemed a default under this Agreement, in which event Licensor shall have the right to pursue any and all remedies set forth in this Agreement and at law or equity. The furnishing of such Security Instrument shall not affect, limit, diminish or otherwise reduce any obligations of Licensee under this Agreement.

ARTICLE 18 – INSURANCE.

A. The requirements specified herein as to types, limits, and Licensor’s approval of insurance coverage to be maintained by Licensee and its subcontractors are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Licensee and its contractors and subcontractors under this Agreement.

B. At the time of execution of this Agreement and each Permit, but in any event prior to commencing work, and as a condition precedent to Licensee and its contractors and subcontractors’ initiation of performance, Licensee and its subcontractors shall furnish Licensor with certificates of insurance as evidence that policies providing the required coverages and limits of insurance are in full force and effect. Licensee shall provide advanced notice in writing to Licensor prior to cancellation or termination of coverage of any policy of insurance. In addition, Licensee shall immediately provide written notice to Licensor upon receipt of any notice of cancellation by an insurer and such notice shall be provided within ten (10) days if cancellation is due to nonpayment, or within thirty (30) days for all other cancellations or non-renewals. All certificates of insurance shall clearly state that all applicable requirements have been satisfied, including certification that the policies are of the “occurrence” type. Certificates of insurance for Licensee and subcontractors furnished insurance and notices of any cancellations, terminations, or alterations of such policies shall be mailed to Licensor at the address listed in Article 15 of this Agreement.

- C. All coverages required under this Agreement (except Worker’s Compensation) shall include Licensor and its commissioners, directors, officers, agents, and employees as additional insureds with respect to the activities of Licensee and its contractors and subcontractors, arising out of this Agreement.

These policies shall contain either a “cross-liability” or “severability of interest” clause or endorsement. Notwithstanding any other provision of these policies, the insurance afforded shall apply separately to each insured, named insured or additional insured with respect to any claim, suit, or judgment made or brought by or for any other insured, named insured, or additional insured as though a separate policy had been issued to each, except the insurer’s liability shall not be increased beyond the amount or amounts for which the insurer would have been liable had only one insured been named.

The additional insured shall not by reason of their inclusion under these policies incur liability to the insurance carrier for payment of premium for these policies.

- D. Licensee and its subcontractors shall require their insurance carriers, with respect to all insurance policies including Workers’ Compensation, to waive all rights of subrogation against Licensor and their commissioners, directors, officers, agents, and employees.
- E. Workers’ compensation and employee’ liability insurance shall protect Licensee against all claims under applicable State workers’ compensation laws. Licensee shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a workers’ compensation law. This policy shall include an “all states” or “other states” endorsement or equivalent.

The liability limits shall not be less than:

Workers’ compensation	Statutory
Employers’ liability	\$1,000,000.00 per occurrence

- F. Automobile liability insurance shall be written in broad form and shall protect Licensee and the additional insured against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on or off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired.

The liability limits shall not be less than:

Bodily injury and Property Damage	\$1,000,000 per occurrence
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- G. Commercial general liability insurance shall be an “occurrence” type policy (excluding automobile liability) written in broad form and shall protect Licensee and the additional insured against claims arising from bodily injury, or damage to property of Licensor or others arising out of any act or omission of Licensee or its agents, employees, contractors or subcontractors. This policy shall also include protection against claims insured by usual personal injury liability coverage, a “contractual liability” endorsement to insure the

contractual liability arising out of the Agreement (subject to standard policy provisions and exclusion), and completed operations and products liability coverage (to remain in force for 2 years after final payment).

The liability limits shall not be less than:

Personal injury and Property Damage \$2,000,000 per occurrence

- H. Licensee shall comply with all of the applicable provisions of the workers' compensation statutes of the State of Florida and all amendments thereto.

The foregoing insurance is not intended to release Licensee from any responsibilities and liabilities pursuant to this Agreement.

- I. Any shortfalls in the commercial general liability and automobile liability coverage from that stated above may be met by an umbrella policy providing at least \$1,000,000 per occurrence.
- J. In the event Licensee engages contractors and/or subcontractors to perform work on the Poles as permitted in this Agreement, Licensee shall (i) require such contractors and/or subcontractors to adhere to the coverage requirements and policy terms imposed on Licensee under this Agreement or (ii) insure the activities of such contractors and/or subcontractors under Licensee's own policies consistent with the coverage requirements and policy terms required in this Agreement. For the avoidance of doubt, in the event Licensee insures the activities of such contractors and/or subcontractors under Licensee's own policies as provided herein, Licensee's contractors and/or subcontractors will not be required to provide Licensor with certificates of insurance so long as Licensee provides evidence that policies providing the required coverages and limits of insurance are in full force and effect.

ARTICLE 19 - CONSTRUCTION

This Agreement was drafted by all Parties hereto and is not to be construed against any Party. Neither the negotiations of the language of this Agreement nor any prior drafts of this Agreement or the inclusion or exclusion of any language from prior drafts shall be admissible or probative as to the meaning of this Agreement.

ARTICLE 20 - REMEDIES CUMULATIVE

Unless otherwise provided in this Agreement, all remedies set forth in this Agreement are cumulative and in addition to any other remedies that may be available herein or at law or in equity, if any.

ARTICLE 21 - MISCELLANEOUS

A. Counterparts. This Agreement may be executed in multiple counterparts, and any one of such counterparts shall be considered an original hereof.

B. Severability. In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the Parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein, and this Agreement shall be construed to adopt, but not to enlarge upon, all the applicable provisions of applicable law, and, if any provisions hereof conflict with any provision of applicable law, the latter as in effect and as interpreted by the applicable courts shall prevail in lieu of any provision hereof in conflict or not in harmony therewith.

C. Force Majeure. Neither Party will be liable for delays or any failure to perform under this Agreement due to causes that prevent the Party from performing its obligations under this Agreement by reason of a Force Majeure Event. Force Majeure Event means an event or circumstance that prevents one Party from performing its obligations under this Agreement, which event is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of commercially reasonable diligence, the claiming Party is unable to overcome or avoid or cause to be avoided, including but not limited to acts of God, fire, explosion, flood, storm or other similar catastrophe, war, revolution, civil commotion, pandemic, acts of public enemies, terrorism or national emergency, or any law, order, or regulation of the government (or any department, agency, commission, court, or bureau of a government) resulting from the above.

Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. THE SOLE AND EXCLUSIVE VENUE FOR ANY DISPUTE, CLAIM OR CONTROVERSY RELATING TO THIS AGREEMENT SHALL BE THE STATE AND FEDERAL COURTS IN ORANGE COUNTY, FLORIDA.

IN WITNESS WHEREOF the Parties hereto have caused these presents to be executed in two counterparts, each of which shall be deemed an original, and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, as of the Effective Date.

SIGNATURE PAGE TO FOLLOW:

LICENSOR

ORLANDO UTILITIES COMMISSION

By: _____

Name:

Title

Attest:

By: _____

Its:

[SEAL]

LICENSEE

XXXX GROUP, LLC

By: _____

Name:

Title

Attest:

By: _____

Its: