

JOINT USE AGREEMENT

THIS AGREEMENT is made and entered into as of the ____ day of ____ 2011, by and between **CITY OF TALLAHASSEE**, a Florida municipal corporation ("City"), and **LEON COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida ("Permittee").

WITNESSETH:

WHEREAS, Permittee proposes to furnish itself with certain telecommunications services and other services which Permittee is authorized or required to provide under applicable law, throughout the electrical service area of City and will need to attach certain cables, wires and appliances to utility poles owned or used by City and/or to install certain underground cables, equipment and facilities in conduit system owned or used by City; and

WHEREAS, City is willing to permit, to the extent it may lawfully do so, the attachment and installation of said cables, wires, appliances, equipment and facilities in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties, intending to be legally bound, do hereby mutually covenant and agree as follows:

ARTICLE I -- DEFINITIONS

For the purpose of this Agreement, the following terms when used herein shall have the following meanings:

Attachment: any number of wires, cables, or strands affixed to a pole safely by a single clamp, or other material, equipment or apparatus affixed to a Pole or installed within the Conduit System and used in the construction, operation or maintenance of services by a Party.

City: the City of Tallahassee, Florida.

Code: the most current edition, throughout the term of this Agreement, of the National Electrical Safety Code (NESC), as it refers to the American National Standards Institute Standard ANSI C-2, and all revisions thereto, and shall include requirements of federal, state, and local laws, statutes, ordinances, and regulations, as they may apply to municipalities.

Conduit System: any reinforced passage or opening in, on, under or through the ground owned by the City, or the use of which may be permitted by the City, capable of containing utility distribution services or communications facilities including, without limitation, the following: main conduit; underground dips and short sections of conduit under roadways, driveways, parking lots and similar conduit installations; laterals to poles and into buildings; and ducts, manholes, and vaults.

Franchise: A nonexclusive right granted by the City for the express use of City's public streets and roads, rights-of-ways, alleys, and easements for the construction, operation, and maintenance of facilities owned by another.

Installed Cost: the entire current cost of placing a bare pole or conduit and electrical ground, including material, labor, equipment, and overheads.

Manhole: a subsurface enclosure that personnel may enter used for the purpose of installing operating, and maintaining submersible equipment and cable.

Neutral Zone: the minimum separation on a Pole prescribed by the Code between the City's "neutral" conductor (or equivalent) and the closest Attachment of Permittee.

Party: the City or the County.

Permittee: the person or entity authorized by City to make certain Attachments under the terms of this Joint Use Agreement.

Pole: any utility pole owned by City or owned by others which City has the right to allow Permittee to use.

Rearrange: moving Attachment from one position to another on a Pole.

Relocate: changing the locations of an existing Pole by removing and reinstalling said Pole in a new location or installing a new Pole in the new location and removing the existing Pole.

Replace: installing a new Pole in close proximity to an existing Pole and removing the existing Pole.

Right-of-Way: property adjoining or within public streets, roadways, highways, or other thoroughfares owned by the City or owned by others and which the City has the right to allow Permittee to use.

Salvage Value: the depreciated material value of the removed materials less handling costs.

Transfer: removing Attachment from one pole and placing them on another.

Vaults: an enclosure above or below ground that personnel may enter used for the purpose of installing, operating, or maintaining equipment or cable, which need not be of a submersible design.

ARTICLE II -- SCOPE OF AGREEMENT

2.1 Any permit granted pursuant to this Agreement is nonexclusive to Permittee and is granted only for the exclusive purpose of allowing use of the Poles and Conduit System by Permittee in the furnishing of telecommunications services and/or other services which Permittee is authorized or required to provide under applicable law (such services may be hereinafter referred to as "telecommunications services"), throughout the City's defined electric service area.. This Agreement authorizes the use of any City Right-of-Way property on which the pole or conduit is located. Permittee shall not make or use any Attachments for an unlawful purpose.

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2.2 No use, however extended, of Poles or the Conduit System or payment of any fees or charges required under this, or any other similar, Agreement shall create or vest in Permittee any ownership or property rights in said Poles or Conduit System, but Permittee's rights therein shall be and remain a mere permit. Nothing herein contained shall be construed to compel City to construct, retain, extend, place or maintain any facilities not needed for its own service requirements.

2.3 It is recognized by Permittee that the City has heretofore entered into, or may in the future enter into, agreements or arrangements with others not parties to this Agreement regarding the Poles and the Conduit System. City shall have the right to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any of its Poles or portions of its Conduit System covered by this Agreement. Nothing herein contained shall be construed as a limitation, restriction or prohibition against the City with respect to such other agreements or arrangements.

2.4 This Agreement does not confer upon Permittee any property rights in City's utility system nor does it compel City to maintain said utility system longer than in City's judgment its own business requires.

2.5 The City shall have no duty, obligation, or responsibility to take any actions that benefit, or might benefit, Permittee unless specifically required to do so by the terms and provisions of this Agreement, and Permittee shall have no recourse against the City for any failure to do so. By way of example and not limitation, the City shall be under no duty to protect Permittee or its facilities against damages resulting from any acts or omissions of the City or others, or to enforce any contract or ordinance against any other person or entity.

2.6 Neither the execution of this Agreement, nor any provision thereof, shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the City, as it may now or hereafter exist.

ARTICLE III -- FEES AND CHARGES

3.1 Permittee shall pay to City certain fees and charges as specified in Appendix 1, attached hereto and made a part hereof. Such fees and charges may be changed by the City not more frequently than once per calendar year, provided that the City gives written notice of such

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adjustment to Permittee no later than sixty (60) calendar days prior to the effective date thereof, and Permittee shall begin paying the increased charges as of the noticed effective date. Permittee may terminate this Agreement by giving written notice thereof to the City within sixty (60) calendar days following its receipt of such notice, which termination shall be effective no sooner than thirty (30) days from the date of such written notice. The notice does not affect Permittee's obligation to pay increased charges prior to the termination date. Permittee shall continue to pay a prorated fee for any Attachments remaining on the City's facilities beyond the termination date until such Attachments are removed. Notwithstanding any provision to the contrary in this Agreement, no fees in any category under Appendix 1 or other fees specified herein, may be increased in any calendar year in excess of that amount which is determined by multiplying such fees for the year immediately preceding the year of increase (or the first calendar year, in the case of the first increase) by the percentage increase in the CPI. The percentage increase in the CPI shall be a fraction, the numerator of which shall be the Consumer Price Index for the last day of the full calendar month six (6) months preceding the month in which the increase becomes effective and the denominator of which shall be the Consumer Price Index one year prior to such month. As used herein, "Consumer Price Index" shall mean the Consumer Price Index - U.S. City Averages for Urban Wage Earners and Clerical Workers (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics. If this Index ceases to be published, then a reasonable Index shall be used.

3.2 Failure by Permittee to pay any amounts due, or which may become due, under this Agreement in a timely manner shall constitute a default of this Agreement, subject to the notice provisions under Article XIII.

3.3 Any changes to the charges and fees set forth in Appendix 1 shall be made by providing written notice thereof to Permittee as set forth in Section 3.1 above. Any other changes or amendments to Appendix 1 shall be effected by the separate execution of an amended Appendix 1 which shall become a part of and be governed by the terms and conditions of this Agreement.

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3.4 No acceptance by the City of any payment or fee shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall acceptance of such payment or fee be construed as a release of any claim the City may have for additional sums payable.

3.5 Unless otherwise specifically provided in this Agreement, any act or obligation that Permittee is required to perform under this Agreement shall be performed at its own cost and expense (and at no cost or expense to the City).

ARTICLE IV -- SPECIFICATIONS

4.1 Permittee's Attachments, and all of its cables, equipment and facilities, shall be placed and maintained in accordance with the requirements and specifications of Appendix 2, which is attached hereto and made a part hereof. Permittee's use of Poles and the Conduit System shall at all times conform to the requirements of the Code.

4.2 The City may make changes or amendments to Appendix 2, with ninety (90) days prior written notice to Permittee in accordance with Section 15.1. That document, as so modified, shall become a part of this Agreement.

4.3 If City is cited by the Florida Public Service Commission ("FPSC") for failure to comply with any provisions of the Code as a result of acts or omissions attributable to Permittee, the City shall give prompt written notice thereof to Permittee. Permittee shall remedy each such failure to comply within sixty (60) calendar days following its receipt of such written notice or within the time frame allowed by the FPSC, whichever time period is shorter. Should Permittee fail to timely complete such remedial action, such failure shall constitute a default, and the City, at its option and without further notice to Permittee, may cause such remedial action to be taken. In the event the City proceeds to take such remedial action, Permittee shall pay to the City, within fifteen (15) days of receiving an invoice therefor, all costs and expenses incurred by the City in taking such action. The City and Permittee agree that the City will suffer damages if Permittee fails to complete such remedial action in a timely manner and further acknowledge that such damages will be difficult, if not impossible, to calculate. Without limiting other rights the City may have under this Agreement or otherwise, the City, at its discretion and provided that the City has promptly notified Permittee of the FPSC notice, may assess, as liquidated damages and not as a penalty, an administrative fee in the amount of \$250.00 for each such violation. Such administrative fee,

together with damages equal to the cost of remedial action in connection with such default, shall be the City's sole and exclusive compensation with respect to such violation.

ARTICLE V -- LEGAL AUTHORITY

5.1 Prior to making or installing any Attachments, Permittee shall secure all necessary permits and consents from federal, state, and local governmental authorities and from the owners of property for construction, maintenance, and operation of its facilities at the locations of Poles and in the Conduit System. 5.2 The Parties hereto shall at all times observe and comply with the provisions of this Agreement and with all laws, statutes, ordinances, rules, and regulations applicable to their respective performance or obligations under this Agreement or to the subject matter of this Agreement.

ARTICLE VI -- ISSUANCE OF PERMITS

6.1 Before making or installing any new Attachments, relocating or rearranging existing Attachments or removing Attachments on a Pole or in the Conduit System, Permittee shall submit an application for Joint Use to City Electric Operations; and the City must grant, grant with conditions, or deny the requested permit within 45 days of its receipt of the application and required documentation. The City agrees that Permittee shall not be required to submit any permits for its (or its predecessors) Attachments made and authorized by the City, prior to the effective date of this Agreement ("Existing Attachments"), provided such Attachments are not altered in any way. Existing Attachments shall be governed by the terms and conditions of this Agreement, as of and following the effective date hereof.

6.2 The application of Permittee must include plans and drawings, in form and level of detail satisfactory to the City, showing the design of its proposed facilities and Attachments. The City shall review the application, plans, and drawings and, in its discretion, may place conditions on such permit or may deny such permit if the construction of such facilities or the making or installation of such Attachments may have an unreasonable or adverse impact on the City's electric service or the City's use of the Poles or the Conduit System, including, without limitation, issues concerning economy, safety, lack of capacity, reliability, general engineering concerns, and the City's identified future demand for space, and any obligations the City may have regarding the control or use of affected property, Poles, or the Conduit System.

6.3 Upon receiving a permit issued under this Agreement, Permittee shall be authorized to make or install Attachments as set forth therein subject to the terms and conditions in this Agreement, as if set forth in the permit, and the terms of the permit. Acceptance of the permit constitutes an unconditional acceptance of all the terms and conditions thereof.

6.4 The City shall not have, and does not hereby assume, any responsibility for securing any rights of way, easements or permits for the installation, operation, or maintenance of any system or facilities of Permittee or others, which responsibility shall be and remain with Permittee or others, as applicable. The City shall in no way be responsible for the construction, operation, maintenance or performance of Permittee's system or any part thereof.

ARTICLE VII -- CONSTRUCTION AND MAINTENANCE OF FACILITIES

7.1 Permittee, at its sole cost and expense, shall make or install its Attachments in a location and manner acceptable to the City which will not conflict with the use of the Poles or Conduit System by the City or by other permittees, and shall maintain its Attachments in a safe condition and in a good and proper state of repair.

7.2 Permittee agrees to take all necessary precautions, as may be required by the Code or otherwise by the City, to protect and safeguard all persons and property against all injury or damage that may result or arise from Permittee's Attachments. Such precautions shall include, without limitation, installation of protective equipment. If Permittee fails to take such precautions, the City, after reasonable written notice to Permittee, may require Permittee to remove any dangerous or potentially damaging Attachments or equipment. The City shall not be responsible, in any way, for the adequacy or inadequacy of the precautions taken by Permittee.

7.3 Emergency restoration of service may be accomplished by Permittee without prior written authorization, provided that the work of Permittee conforms to Code, and Permittee notifies the City as soon as practicable after the work has been completed.

7.4 Permittee shall comply strictly with all requirements set forth in this Article VII or otherwise imposed by the City or by applicable federal, state, or local law, statute, ordinance, or regulation, relating to making, placing, installing, Relocating, Rearranging, or removing its Attachments, equipment, or facilities.

7.5 Permittee shall open City Manholes only as permitted by City's authorized employees or agents. Prior to opening such Manholes or commencing any work therein, Permittee shall obtain all necessary permits from federal, state, and local governmental authorities, if any, to open Manholes and perform the work. Permittee's employees, agents or contractors will be permitted to enter or work in City's Manholes only when an authorized agent or employee of City is present, and the reasonable cost of having such agent or employee present shall be borne solely by Permittee. City's said agent or employee shall have the authority to stop any work being performed in or around City's Manholes if such work is not being performed in compliance with the terms and conditions of this Agreement. However, neither the City, its agent, nor its employee shall have any responsibility for such work, work practices, or supervision.

7.6 Subject to the limitations contained in Sections 11.4 and 11.5 below, Permittee shall be responsible for, and shall promptly and properly repair at its sole cost and expense, all damage to Poles, the Conduit System, to other City property, and to property of other persons or entities to the extent such costs or expenses arise or result from actions or omissions of Permittee, its officers, officials, employees, agents, representatives, or contractors.

ARTICLE VIII -- REPLACEMENT, REARRANGEMENT, ABANDONMENT, AND REMOVAL

8.1 In the event the City determines that its existing facilities, attachments, Poles, or Conduit System are, in its opinion, inadequate or would require Rearrangement, Relocation, or Replacement in order to support or accommodate the Attachments for which Permittee submits an application under Article IV hereof, the City will notify Permittee, in writing, of such requirements, the estimated cost, and the time required to complete such work. If Permittee desires to proceed with the proposed Attachments, Permittee shall so advise the City, in writing, and shall deposit with the City the full amount of such estimated cost. The City will proceed with such required work and, within thirty (30) days following completion, shall provide an invoice to Permittee detailing the actual cost of such work. If the actual cost of work differs from the estimate, the City will refund any overpayment to Permittee or Permittee will pay any underpayment to the City within thirty (30) days after the date of such invoice. Permittee shall also reimburse the owner(s) of other affected facilities for all expenses incurred in Relocating or Rearranging said facilities to accommodate Permittee's Attachments. Other permittees shall

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likewise be required to reimburse Permittee such expenses when Permittee moves its facilities to accommodate another permittee's attachments. Charges payable under the Agreement for Replacement of Poles shall include the entire cost to City, including the cost of placing the new Poles, cost of removal less any Salvage Value, the cost of transferring City's facilities from the old to the new Poles, and the cost of any necessary Rearrangement.

8.2 If the City receives multiple applications, including application of Permittee, relating to the use of the same Poles or portion(s) of the City's Conduit System, City will allocate among Permittee and other applicants the common expenses of Rearrangement, Relocation, and Replacement, if any, required in order to support or accommodate the proposed Attachments. Permittee and other applicants shall be bound by the City's determination as to the required work and any such allocation of costs.

8.3 If the City desires or is required by others to abandon or Relocate any Pole or portion of the Conduit System, it shall give Permittee written notice to that effect at least sixty (60) calendar days prior to the date on which such abandonment or Relocation takes effect or, if such abandonment or Relocation is required by others, such prior written notice as is practicable under the circumstances; and Permittee shall remove its affected Attachments, cable, equipment, and facilities in a timely manner as set forth in such notice. In the event Permittee fails to so move its facilities, the City may, but shall not be obligated to, move Permittee's facilities, and Permittee shall pay the City's reasonable costs therefore within thirty (30) days following the date of the City's invoice for such costs. In addition to, and without limiting other rights the City may have under this Agreement or otherwise, Permittee shall pay to the City, as liquidated costs and not as a penalty, the greater of \$250.00 or an amount equal to \$10.00 for each affected Pole and \$1.00 for each linear foot, or portion thereof, of affected cable if Permittee fails to remove its affected Attachments, cable, equipment, or facilities before the earlier of (i) the date on which City's abandonment or Relocation is completed, or (ii) the effective date of such abandonment or Relocation, as set forth in the notice, or (iii) the date on which such abandonment or Relocation is required by others to be completed. In addition, and subject to the limitations contained in Sections 11.4 and 11.5 below, Permittee shall pay all costs, expenses, and damages of every

kind, including without limitation costs incurred by or assessed against the City for construction delays, resulting from the failure by Permittee to move its facilities as directed.

8.4 City reserves the right to remove, at Permittee's expense, any Attachments, cables, equipment or facilities, or any part thereof, from Poles or the Conduit System should Permittee fail to comply with any terms or conditions of this Agreement following notice to Permittee as provided herein and the lapse of the applicable cure period. Permit(s) granted shall thereupon terminate as to the Attachments, cables, equipment, and facilities so removed. Subject to the limitations contained in Sections 11.4 and 11.5 below, Permittee agrees to hold the City harmless from, and City shall not be responsible for, claims related to interruption of service by customers of Permittee if City is required to remove Attachments, cables, equipment or facilities pursuant to this section.

8.5 In the event of an emergency, as determined in the sole judgment of the City, the City, at Permittee's sole expense and without incurring any liability, may remove Permittee's Attachments from Poles or the Conduit System. As soon as practical thereafter, the City will endeavor to make arrangements for the Relocation or Replacement of such Attachments, all of which shall be accomplished at the sole expense of Permittee.

8.6 If Permittee's facilities need to be removed or relocated on a temporary basis due to a special circumstance, such as movement of large equipment along a roadway, or in the event of an emergency situation, the City will notify Permittee but shall have the right to remove or relocate the facilities if circumstances require a rapid response. Permittee shall reimburse the City for all of its costs incurred in regard to such removal or relocation.

ARTICLE IX -- INSPECTIONS OF PERMITTEE'S INSTALLATIONS

9.1 The City reserves the right, at its sole discretion, to inventory or to make inspections of all or any portion of the Attachments, cable, equipment or facilities of Permittee, during installation and throughout the term of this Agreement. These inspections may be made in addition to or in conjunction with regular inspections of Pole integrity made by the City as a part of its ongoing electric utility maintenance programs. In the event that such inventory, inspection, or audit is either requested by Permittee or is required by some regulatory body having appropriate jurisdiction, other than the City, the City may, at its sole discretion, assess against Permittee, as

applicable, all or a proportionate share of the associated cost, as determined in accordance with the regular and customary methods used by the City. Permittee shall remit payment of any such assessment within thirty (30) days of receipt of the applicable invoice. The making of such inspections or the failure to do so shall not operate to relieve Permittee of any of its responsibility, obligation or liability under this Agreement. Permittee shall have no recourse against the City for any damages resulting from the City's inspection or maintenance of, or its failure to inspect or maintain, Poles, the Conduit System, or any portion thereof, or to enforce any contract or ordinance against any other person.

9.2 If during any inventory or inspection, the City discovers Attachments of Permittee or use of the Conduit System that do not comply with the requirements of this Agreement, Permittee shall be notified and given fifteen (15) days to correct such non-compliance, or in the event that a longer cure period is required, will notify the City and the parties will mutually agree on an appropriate cure period. If the non-compliance involves unauthorized Attachments, the City reserves the right to assess liquidated damages in an amount up to \$10.00 for each affected Attachment and up to \$1.00 for each linear foot, or portion thereof, of affected cable. Failure by Permittee to cure any identified non-compliance shall be considered a default under this Agreement.

ARTICLE X -- TERMINATION OF PERMITS

10.1 Upon notice from City to Permittee that the use of any Pole(s) or portion of the Conduit System is not authorized by federal, state, or local governmental authorities or private property owners, the permit covering the use of such Pole(s) or portion of the Conduit System shall immediately terminate as to such Pole(s) or portion of the Conduit System. In such event, Permittee, at Permittee's sole expense and within such time as may be allowed by the City, promptly shall remove all Attachments, or shall have all such Attachments removed, from the affected Pole(s) and from the affected portion of the Conduit System.

10.2 If Permittee desires to remove or abandon any of its Attachments or any portion of its cable, equipment, or facilities, written notice of said removal or abandonment shall be given to City. If Permittee provides notice of removal or abandonment but fails to remove its Attachments,

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cables, equipment, or facilities from the Poles or from the Conduit System within ninety (90) calendar days from date of notification, City shall have the right to remove such Attachments, cables, equipment, and facilities at Permittee's expense and without any liability on the part of City for damage or injury as a result of such removal. In the event that such Attachments, cable, equipment, or facilities shall be removed from any Pole or from the Conduit System as provided by this Article, no Attachments shall again be made to any Poles or in the Conduit System unless Permittee shall have first complied with all of the provisions of this Agreement as though no such Attachments had previously been made by Permittee.

ARTICLE XI -- LIABILITY AND DAMAGES

11.1 City reserves to itself, its successors and assigns, the right to maintain its Poles and Conduit System and to operate its facilities thereon in such manner as will best enable it to fulfill its own service requirements. City shall not be liable to Permittee for any interruption or impairment to service of Permittee or for interference with the operation of the Attachments or the cables, equipment or facilities of Permittee arising in any manner from or out of Permittee's use of City's Poles or Conduit System or arising out of any act or omission of the City related to Permittee's use of the City's Poles or Conduit System. Permittee shall have no recourse against the City for damages of any kind whatsoever, including but not limited to incidental, special, or consequential damages, resulting or arising in any way from, or related in any way to, the use of the Poles or Conduit System by the City or any other entity, the City's response or failure to respond to a request to use the Poles or Conduit System, or the revocation of a permit to use the Poles or Conduit System. This includes, by way of example and not limitation, damages that result from failure to inspect or maintain the Poles or Conduit System; or failure to enforce any contract or ordinance.

11.2 Permittee agrees to take necessary precautions, by the installation of protective equipment or otherwise, to protect all persons and property against injury or damage that may result from Permittee's Attachments, cable, equipment, or facilities; and, subject to the limitations contained in Sections 11.4 and 11.5 below, Permittee hereby assumes all responsibility for any and all injury, loss, expense, and damage resulting from its Attachments, cables, equipment or facilities, except to the extent such damages are caused directly and solely by the City, its

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employees or contractors. Permittee shall promptly report to the City all such injury, loss, expense, and damage caused by Permittee and shall reimburse the City and the respective owners for all costs, expenses, and damages incurred as a result thereof.

11.3 Subject to the limitations contained in Sections 11.4 and 11.5 below, Permittee shall indemnify and save the City harmless (i) against all costs and expenses, of whatever kind, that the City may incur as a result of any loss, injury, or damage to any Attachments, wires, equipment, facilities, or property owned or used by the City as a result of Permittee's actions or omissions hereunder, and (ii) from and against any and all legal and other expenses, costs, losses, claims, suits and judgments for damages or injuries (collectively, "Claims and Expenses") occurring to persons or property by reason of Permittee's construction, operation, use or maintenance of its Attachments, cables, equipment, or facilities on the Poles or in the Conduit System.

11.4 Notwithstanding any other provision of this Agreement to the contrary, the liability of Permittee under this Agreement is intended to be consistent with limitations of Florida law, including the state's waiver of sovereign immunity pursuant to, and the \$100,000 and \$200,000 limitations of liability as set forth in, Section 768.28, Florida Statutes. No obligation imposed by this Agreement on Permittee shall be deemed to alter said waiver or to extend any liability of Permittee beyond such limits, nor shall any such obligation be deemed or construed as a waiver of any defense of sovereign immunity to which Permittee may be entitled. Should any limitation of liability set forth in this Section be finally adjudicated to be void as a violation of the public policy of the State of Florida, then such limitation of liability shall apply only to the extent required to eliminate such avoidance, and such limitation of liability shall remain in full force and effect with respect to all other applications herein to the fullest extent permitted by law.

11.5 Notwithstanding any other provision of this Agreement to the contrary, in no event shall City or Permittee, or their respective officers, officials, or employees, be liable, in contract, tort or otherwise (including negligence, warranty and strict liability), for any special, indirect or consequential damages, including specifically but without limitation, loss of profits or revenue, loss of full or partial use of any equipment or facility, cost of capital, loss of goodwill, claims of customers, or similar damages.

11.6 Permittee shall secure Commercial General/Umbrella Liability Insurance, issued by an insurer satisfactory to the City and naming the City as an additional insured, covering bodily injury and property damage in an amount of not less than \$1,000,000. per occurrence. Permittee should indicate whether the coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following:

- a) Premise/Operations
- b) Explosion, Collapse and Underground Property Damage Hazard (only when applicable to the project)
- c) Products/Completed Operations
- d) Contractual
- e) Independent Contractors
- f) Broad Form Property Damage
- g) Personal Injury

Permittee shall furnish certificates of such insurance and for any renewals thereof to City so long as this Agreement shall remain in effect. This requirement shall be in addition to insurance requirements set forth in other agreements relating to Permittee's operations within the City. Permittee shall also furnish Workers' Compensation and Employers'/Umbrella Liability Insurance with statutory limits as required by Chapter 440, Florida Statutes. This policy shall include Employers'/Umbrella Liability coverage for \$500,000 per accident. All Insurance is to be placed with Florida admitted insurers rated B+X or better by A.M. Best's rating service. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City's Contracts Administrator at the address set forth in Section 15.1.

11.7 For new Attachments made after the effective date hereof and as Permittee modifies or relocates Existing Attachments, Permittee shall install and maintain identification of ownership, satisfactory to the City, on every fifth Pole, on messenger strand and on amplifier stations, and in every access facility within the portion of the Conduit System used by Permittee, on all cable, amplifiers, and other equipment. In the case of existing Attachments, if any, that are not relocated or modified, the City and Permittee shall mutually agree on an appropriate method of identification.

11.8 Should Permittee fail to timely perform any of its responsibilities or obligations under this Agreement, the City, at its sole discretion and after giving Permittee such notice as may be required under this Agreement and the applicable opportunity to cure such nonperformance, may perform such responsibilities or obligations; and, in such event, Permittee shall pay to the City, within ten (10) days after receiving an invoice therefor, all reasonable costs and expenses incurred by the City in completing, in whole or in part, such performance.

ARTICLE XII -- ASSIGNMENT OF RIGHTS

12.1 The privileges granted by this Agreement may not, directly or indirectly, be transferred, assigned, or disposed of by sale, lease, merger, consolidation or other act of Permittee, by operation of law or otherwise, without the prior written consent of the City, and then only on such conditions as may be prescribed therein; provided, however, that such transfer, assignment, or disposition to an affiliate of Permittee shall not require such consent. The City shall communicate its consent or objection to such proposed action within ninety (90) days following the City's receipt of written notice thereof from Permittee.

12.2 For purposes of Section 12.1 above, any transactions which singularly or collectively result in (i) a change in majority ownership of Permittee, or (ii) a change in working control, in whatever manner exercised, of Permittee, or (iii) a change in the ownership or working control of permits granted under this Agreement shall be considered an assignment or transfer requiring City approval in accordance with that Section. Notwithstanding the foregoing, the following assignments or transfers shall not require consent by the City:

(i) an assignment or transfer in trust, mortgage, or by other similar instrument of hypothecation to secure funding for the construction, operation, or repair of Permittee's cable, equipment, or other facilities which are attached, placed, or installed under this Agreement so long as that arrangement would not, in any respect or under any condition, prevent Permittee or any successor from complying with the terms of this Agreement, or permit a third party to succeed to the interest of Permittee, or to own or control Permittee's cable, equipment, or other facilities, without the prior consent of the City. Any such arrangement shall be subject and subordinate to the rights of the City under this Agreement and applicable law.

(ii) An assignment or transfer to an affiliate of Permittee or to any such person acquiring all or substantially all of the assets or stock of Permittee, provided that use of the Right-of-Way by Permittee and such transferee requires a Franchise from the City and the City has given its consent to transfer of such Franchise to transferee.

12.3 Every assignee or transferee must agree, in a written document acceptable to the City, to abide by and accept all terms of this Agreement and to assume all obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of Permittee under this Agreement. Any assignment or transfer, except in accordance with the requirements of this Article, shall be ineffective and shall make this Agreement, and permits granted hereunder, subject to termination, at the discretion of the City, and to any other remedies available under this Agreement or under applicable laws.

ARTICLE XIII -- TERMINATION OF AGREEMENT

13.1 In addition to other such rights set forth in this Agreement, if Permittee or City shall fail to comply with any of the terms or conditions of this Agreement or shall default in any of their obligations under this Agreement, or if Permittee upon its default fails to cure such default within the cure periods specified in Section 13.4 below, the Permittee or City may, at its option, forthwith terminate this Agreement and all permits granted hereunder, or the permits applicable to the Poles or portion of the Conduit System to which such default or noncompliance shall have occurred. Upon such termination by Permittee, the provisions of Section 10.2 shall apply with regard to Permittee's removal of its Attachments and any of its cable, equipment, or facilities from the Poles and from the Conduit System.

13.2 Notwithstanding the requirements of Section 13.1 above, City shall have the right to terminate this entire Agreement, or individual permits granted hereunder, without prior notice:

(1) If Permittee's Attachments, cables, equipment, facilities, or system is maintained or used in violation of any law, statute, ordinance, rule, or regulation or in aid of any unlawful act or undertaking; or,

(2) If any permit or other authorization which may be required by any governmental authority for the operation or maintenance of Permittee's system, Attachments,

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cables, equipment or facilities is revoked, denied, or not granted before the date when possession of such permit or authorization becomes a condition of continued operations; or,

(3) If Permittee defaults under Article IV of this Agreement.

13.3 If Permittee's insurance carrier shall at any time notify City that the insurance coverage required by Article XI hereof has been canceled or modified so that the requirements of Article XI will no longer be satisfied, and Permittee fails to secure such insurance within ten (10) days of the City's written notice thereof then, at the option of the City, this Agreement and all permits issued hereunder shall cease and terminate upon the effective date of such notification. If written notice is not provided to the City as set forth in this section, Permittee shall be deemed to have defaulted under this Agreement, and the City, in its sole discretion, may terminate this Agreement and all permits issued hereunder.

13.4 Should the City determine that Permittee is in default under the terms and conditions of this Agreement, the circumstances of default will be communicated in writing to Permittee. Permittee shall have thirty (30) calendar days after such written notice from City to correct such default or noncompliance. For any default that, by nature of the default, cannot be cured within the thirty (30) day period, Permittee shall commence and diligently pursue measures to cure the default and shall notify the City of the anticipated timeframe to cure the default; provided, however, that in no event shall the cure period be longer than ninety (90) days from the date of notice by the City, unless otherwise authorized by the City. Subject to the limitations contained in Sections 11.4 and 11.5, above, Permittee shall reimburse the City for all fines, fees, financial penalties, costs, and expenses, including without limitation related attorney's fees and costs, incurred by the City due to or arising from the default of Permittee or the cure by the City of such default within ten (10) days following the date on which notice thereof is sent to Permittee.

ARTICLE XIV -- TERM OF AGREEMENT

The term of this Agreement shall begin on the date first written above and shall end on the Termination Date. The phrase "Termination Date" shall mean the fifth anniversary of the date first written above; or, if earlier, the date on which this Agreement is terminated by either Party under the terms hereof. Within sixty (60) days of termination of this Agreement, Permittee agrees to remove its Attachments, cable, equipment, and facilities, from the affected Poles and

portion of the Conduit System. If removal is not completed by the end of that time frame, the City will remove the cable and charge Permittee for this removal; the City shall incur no liability to Permittee or its users/customers as a result of this removal. Permittee shall continue to pay a pro-rated fee to the City for Attachments, cable, equipment, and facilities that remain attached to Poles or in the Conduit System during the sixty (60) day period. Upon any such termination of this Agreement, removal of Permittee's Attachments, cables, equipment, or facilities, and payment of all fees and other amounts required under this Agreement, the obligation to make further payments hereunder shall terminate.

ARTICLE XV -- MISCELLANEOUS

15.1 Notices under this Agreement shall be given by hand delivery, recognized overnight delivery service, or by first class mail, registered and return receipt requested, to Permittee as follows:

Leon County Management Information Services
c/o Pat Curtis, Director
Leon County Courthouse
301 South Monroe Street
Tallahassee, FL 32301

and a copy of all default notices shall be sent to:

Leon County Attorney's Office
Leon County Courthouse
301 South Monroe Street
Tallahassee, FL 32301

and to the City as follows:

Joint Use Contract Administration
City of Tallahassee – Electric Operations
2602 Jackson Bluff Road
Tallahassee, Florida 32304

15.2 This Agreement supersedes all previous agreements, whether written or oral, between Permittee and City relating to use of the Poles or the Conduit System by Permittee, and there are no other provisions, terms or conditions to this Agreement except as expressed herein.

15.3 The City and Permittee reserve and may seek any and all remedies and relief available at law. Neither the City nor Permittee shall be deemed to have waived any rights or remedies under any law by virtue of signing this Agreement.

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15.4 Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement or any permit(s) granted hereunder terminated shall not constitute a general waiver or relinquishment of the same or any other terms, conditions, or acts; but the same shall be and remain at all times in full force and effect.

15.5 Time is of the essence as to each provision of this Agreement which specifies a time within which performance is to occur. In the absence of any specific time for performance, performance shall be completed within a reasonable time.

15.6 The City, Permittee, and their respective subcontractors and consultants shall retain, for a period of three (3) years following the end of the term or other termination of this Agreement, all books, drawings, specifications, documents, and other records of any kind whatsoever relating to the subject matter of this Agreement. So long as such records are retained, either party to this Agreement, or its representative, shall have the right to inspect the same, after three (3) days prior notice, at any time during normal working hours at the locations where such records are kept in the normal course of business.

15.7 With the exception of Appendices 1 and 2, of this Agreement (which may only be amended as specified herein), this Agreement may be amended only in a writing signed by persons authorized to bind the parties thereto.

15.8 This Agreement shall be enforced and interpreted under the laws of the State of Florida.

15.9 All titles or subtitles appearing herein have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions hereof. The language of this Agreement shall be construed according to its fair meaning, not strictly for or against the City or Permittee. The singular shall include the plural; use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

15.10 The obligations of the Parties that, by their nature, continue beyond the term of this Agreement shall survive the termination of this Agreement.

15.11 This Agreement is intended to supersede all previous agreements, if any, between the parties related to joint use of Poles or the Conduit System.

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ARTICLE XVI – REVIEW AND REVISION OF RATES AND CHARGES

Subject to the cap on increases as set forth in Article III hereof, all rates, charges, and fees set forth in this Agreement, with the exception of rates for assessment of liquidated costs and damages, shall be subject to review and revision by the City, at its sole discretion, once during each calendar year. In the event that the City intends to so increase any such rates, charges, or fees, the City shall first provide written notice thereof to Permittee no later than sixty (60) days prior to the date on which such increase shall become effective.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate effective the day and year first above written.

City of Tallahassee

Attest:

Gary Herndon, Treasurer-Clerk

By: _____
Anita Favors-Thompson, City Manager

Date: _____

Attest:

Bob Inzer
Clerk of Court

Permittee:
Leon County, Florida

By: _____
Parwez Alam, County Administrator

Date: _____

APPENDIX 1 -- SCHEDULE OF FEES AND CHARGES

This APPENDIX 1 is dated _____, 2011. It contains the fees and charges applicable to the use of and the Conduit System as set forth in that certain Agreement between the **City of Tallahassee** (the "City") and **Leon County, Florida**, a charter county and political subdivision of the State of Florida, as Permittee, dated _____, 2011 (the "Agreement"), and is intended to supersede all preceding versions or copies of this Appendix 1. This Appendix 1 is effective the year and day written above.

1. Fees and charges for Pole Attachments shall be assessed at the annual rate of \$14.18 per Attachment effective January 1, 2003, subject to review by the City in accordance with Article XVI of this Agreement.

2 Fees and charges for use of the City's Conduit System shall be assessed at the annual rate of \$2.30 per linear foot per duct (or conduit).

3. The total fee due the City shall be paid by Permittee, in arrears to allow for the correct tabulation of attachments and conduit for the preceding year and due no later than 30 days after receipt. The City will invoice prior to January 31st of each calendar year during the term of this Agreement, based upon the number of Attachments actually made and the total linear feet of the Conduit System used by Permittee as of the first day of December of the preceding calendar year; provided, however, that the initial payment for such use shall be determined by the City based on the number of Attachments to be made and total linear feet of the Conduit System to be used by Permittee during the first calendar year, or portion thereof, of the term of this Agreement. The City will determine internally, no later than the tenth day of December of each year during the term hereof, written notice of the number of such Attachments and the total linear feet within the Conduit System used by Permittee on the first day of December of that year.

4. Failure to pay the applicable fees in a timely manner shall constitute a default of the Agreement, unless the fees are in dispute.

APPENDIX 2 -- REQUIREMENTS AND SPECIFICATIONS

This APPENDIX 2 is dated _____, 2011. It contains certain minimum requirements and specifications applicable to the use of Poles and the Conduit System as set forth in that certain Agreement between the **City of Tallahassee** (the "City") and **Leon County, Florida**, a charter county and political subdivision of the State of Florida, as Permittee, dated _____, 2011 (the "Agreement"), and is intended to supersede all preceding versions or copies of this Appendix 2. This Appendix 2 is effective the year and day written above.

GENERAL

1. Permittee is responsible for the proper design, construction and maintenance of its Attachments, cables, equipment, and facilities. Attachments generally will be limited to strand-support cable, service drops, terminals and necessary appurtenances deemed by City to be suitable for pole mounting.

2. Any Rearrangements of City's facilities or Replacement of Poles required to accommodate Permittee's Attachments, cables, equipment, and facilities shall be done by City or a contractor authorized by the City and at the cost and expense of Permittee.

3. Permittee's employees and contractors shall assure themselves that any Pole to be climbed has sufficient strength or is adequately braced or guyed to support the weight of those climbing it.

4. References to simply the "Safety Code" or to "NESC", shall have the same meaning as "Code" as defined in the Agreement.

5. While many of the standards and technical requirements for Permittee's Attachments, cable, equipment and facilities are set forth herein, the City reserves the right to specify the type of construction required in situations not otherwise covered in this Appendix. In such cases, City will in its discretion furnish to Permittee written materials that will specify and explain the required construction.

ELECTRICAL SPECIFICATIONS

6. No cable, equipment or facility of Permittee shall be permitted to be attached to Poles or installed in the Conduit System if such cable, equipment or facility, by its design, could cause electrical interference with City's facilities. Should the City determine that Permittee's Attachments, cables, equipment, or facilities are causing, or may cause, electrical interference with City's transmission, communication, or electrical facilities and so notifies Permittee, then Permittee, immediately and at its sole cost and expense, shall alleviate or remedy any such interference including, if necessary, removal of the Attachments, cables, equipment, and facilities which are causing, or which may cause, such interference.

7. No Attachments, equipment, or facilities shall use the earth as the sole conductor for any part of the circuit.

8. Permittee's cable, equipment and facilities shall be compatible with the City's facilities so as not to cause damage, by corrosion or otherwise, to any facilities of the City.

9. Permittee's Attachments are subject to the same clearances as communications facilities within the Communications Space and shall meet or exceed stated Code clearances. Where the City dictates additional requirements above the Code requirement, the permittee is required to meet the more stringent of the requirement. Permittee shall familiarize themselves with the Code requirements and the City's specifications attached hereto and made part of this agreement.

10. The location and spacing of Attachments shall be arranged dependent on the size of the applicable Pole in accordance with the City's location requirements.

11. The City of Tallahassee will be the final authority on whether permittee is allowed to attach to the pole.

WORK RULES

12. Permittee shall notify the City ten (10) days in advance of any work operation requiring entry into any Manholes; provided, however, that a particular notice requirement may be waived by the City, at its discretion, upon Permittee's request. The City and Permittee agree to specify what, if any, work shall be performed by the City, at the expense of Permittee, and the cost thereof.

13. Clearing obstructions, repairs, dig-ups and any other work required to make a duct or portion of the Conduit System usable for placement of Permittee's Attachments, cables, equipment, or facilities shall be accomplished by the City or its approved contractor at Permittee's expense.

14. Permittee's Attachments, cables, equipment, and facilities shall be placed in, removed from, changed or maintained in the Conduit System only when specific authorization for the work to be performed and approval of the person, firm or corporation that will perform the work has been obtained in writing in advance from the City. The City retains the right to specify what, if any, work shall be performed by the City.

EMERGENCY CONDITIONS

15. In cases of emergency:

a. City's work shall take precedence over any and all operations of Permittee on Poles or in the Conduit System.

b. The City may pull a cable into any of Permittee's ducts or conduit either occupied by or scheduled to be occupied by Permittee's facilities, and the City will endeavor to make other duct space available for the displaced facilities of Permittee as soon as possible.

c. The City may Rearrange Permittee's cable, equipment and facilities at the expense of the Permittee in order to support or accommodate Attachments of the City.

d. City's rights under this section 15, are contingent upon the City, where practicable, taking into account the seniority of Permittee on the Poles or in the portion of the Conduit System the City needs to utilize. City shall first look

to the most recent installation, and then the next most recent installation, continuing backwards in time when determining whether City actually needs to rearrange any of Permittee's cable, equipment and facilities.