

# **City of Hamilton, Ohio Pole Attachment Tariff**



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## **Pole Attachment Tariff**

### **1. Scope of Tariff**

1.1 This tariff ("Tariff") establishes the rates, terms, and conditions under which the City of Hamilton, Ohio ("the City"), will permit a provider of cable television, Internet, data transmission, and/or other telecommunication services, as the case may be (respectively, a "Licensee"), to make Attachments to City electric distribution poles and to continue to maintain such Attachments located on City distribution poles, including those which are now owned by a Licensee and which were permitted and approved pursuant to any earlier Pole Attachment Agreement; provided, further, that such Licensee does not have an effective written contract allowing the installation of facilities on City poles at the time of the effective date of this Tariff, or at any future time.

1.2 Nothing in this Tariff shall be construed as a grant by the City of an exclusive license, right or privilege to a Licensee, nor as a limitation, restriction, or prohibition upon the City's right to grant interests to third parties to the pole attachment rights granted hereunder; provided, further, that nothing in this Tariff shall be construed to effect a grant of any rights under any license, permit, or agreement between the City and any third party with respect to attachment to poles owned by such third party.

1.3 All poles covered by this Tariff remain the property of the City regardless of any payment by Licensee toward the cost of such poles. No use, however extended, of City poles or payment of any rate or charge required hereunder shall create or vest in Licensee any claim of right, possession, title, interest or ownership in such poles. Nothing in this Tariff shall be construed to compel the City to construct, reconstruct, retain, extend, repair, place, replace or maintain any pole which, in the City's sole discretion, is not needed for its own purposes. The City shall have the right to operate, relocate and maintain its poles and attendant facilities in such a manner as will best enable it, in its sole discretion, to fulfill its service requirements.

1.4 If the City has conferred upon others, by contract or otherwise, rights and privileges to use any pole covered by this Tariff, nothing herein contained shall be construed as affecting said rights and privileges, and the City shall have the right, by contract or otherwise, to continue and extend such existing rights and privileges; provided, further, that such rights and privileges shall continue and be extended as provided by this Section 1.4 to any renewal of such contract or other arrangement.

### **2. Definitions**

For the purpose of this Tariff, the following terms shall have the meanings set forth below:

2.1 Annual Attachment Rate. The annual charge per attachment assessed by the City in accordance with the terms and conditions of this Tariff.

2.2 Attachment or Attachments. Any materials or apparatus, excluding power supplies, now or hereafter used by a Licensee in the construction, operation, or maintenance of its telecommunications facilities carried on any City poles. An Attachment shall be a single point of wire line contact utilizing no more than one foot of vertical space on each pole and no more than twenty percent (20%) of each pole's loading capacity. Pole mounted antennas are not approved attachments.

2.3 Contract Year. The annual rental period of January 1 to December 31 of each year.

2.4 Design Standards. All applicable regulations or codes promulgated by any federal, state, local or other governmental authority having jurisdiction, including, but not limited to, the National Electrical Safety Code and City design or attachment requirements.

2.5 Incremental Cost. The difference between the Total Cost of installing a pole to accommodate both the City and Licensee(s) on a new pole (either as new construction or replacement of an existing pole at the City's initiation) and the Total Cost of installing a pole that meets City needs.

2.6 Interest Rate. Interest per year divided by principal amount, expressed as a percentage—in this case, eight percent (8%) unless otherwise determined by City Council.

2.7 Joint Use. The simultaneous use of any pole for attachments of both parties in conformity with the specifications in Sections 5 and 6.

2.8 Make-Ready Work. Changes required to a pole due to the Licensee submitting a proposal. The City shall complete all make-ready work before Licensee can make contact.

2.9 Non-Standard Attachment. Attachments described on Exhibit A which the City permits to be attached in accordance with the City's sole and absolute discretion.

2.10 Pole Ground. A ground rod or wire connected thereto to which Licensee may connect at the base of an electric utility pole without causing the pole to be considered Joint Use as defined herein.

2.11 Proposal. A pole attachment construction proposal, in a format acceptable to the City.

2.12 The City Rearranging. The transferring and/or rearranging of Attachment facilities which includes tree cutting or trimming incidental to said transferring and/or rearranging of Attachments.

2.13 Reserved Space. Such space on a pole which is occupied and maintained and provided by the City either for its own exclusive use, or expressly for the Licensee's exclusive use at the Licensee's request.

2.14 Standard Space. The following described space on a joint pole for the exclusive use of each party, respectively, except only as to such space which, by the terms of the specifications referred to in Section 3, may be occupied by certain attachments therein described of the other party:

- a. For the City, uppermost twenty (20) feet.
- b. For attachments, a space of three (3) feet at sufficient distance below the space of the City of Hamilton to provide at all times the minimum clearance required by the specifications referred to in Sections 5 and 6, and at a sufficient height above the ground to provide proper vertical clearance for the lowest horizontally run wire or cable attached to such space, pursuant to Article 235C of the National Electrical Safety Code.
- c. Mutual vertical clearance space on the pole between each entity's Attachments shall never be less than that which will obtain minimum separation as required. These specifications do not preclude certain attachments being located in and extending vertically through space reserved for the other party.
- d. Except by mutual written agreement of the City and the Licensee addressing specific situations, Attachments shall not be permitted in the neutral space required by code and specification. This limitation does not apply to Attachments of street lighting or traffic control systems owned or used by government facilities.

2.15 Total Cost. The cost of all materials, labor and overhead expenses relating to an Attachment. When replacing a pole and for additional poles due solely to Licensee's requirements, Total Cost includes the cost of transferring facilities and removal of the old pole (with credit for any salvageable material) and for a second trip (to allow transfers) to pull the old pole or the cost to transfer the facilities of the City and all other attaching parties.

2.16 Transferring. The moving of Attachments from one pole and placing them on another.

2.17 Transferring and Rearranging. The Transferring and Rearranging of the Attachment facilities which includes any tree cutting or trimming incidental to the transfer of the Attachment(s).

### **3. Procedure for Establishing Attachments**

3.1 A Licensee shall make written application for permission to install or change Attachments on any pole of the City, specifying the location of each pole in question, the character of its proposed Attachment(s) and the amount and location of space desired. Within forty-five (45) days after receipt of the application, the City shall notify Licensee in writing whether or not it is willing to permit Joint Use of such poles and if so, under what conditions. Such applications and the permits granted with respect thereto shall be in the form attached hereto as Exhibit C, or such other approved form as may be issued from time to time by the City. The City shall have the sole right to determine the availability of such poles for Joint Use and shall be under no obligation to grant permission for Joint Use by Licensee, but it will not unreasonably refuse to grant permission. City riser poles are to be contacted only under exceptional circumstances. If permission is granted, Licensee shall have the right to occupy the space allotted by the City solely in accordance with the conditions specified in said permit and the terms of this Tariff. The City may at any time authorize other parties to also place Attachments on City poles.

3.2 If Make-Ready Work is necessary to prepare any poles for proposed Attachments, then Licensee shall not attach its telecommunication facilities to City poles until Licensee receives notice from the City that said Make-Ready Work is completed.

### **4. Multiple Applicants**

4.1 When the City receives applications from more than one applicant for Attachment space on any particular pole, and because of such multiple Attachments either the pole must be replaced or the facilities thereon must be rearranged to provide additional space for said attachments, the City will prorate the additional Total Cost resulting from the pole replacement or rearrangement in a fair and reasonable way to the extent practicable between the Licensee and the other Attachment applicant(s). Such prorated Total Costs shall include common engineering, material and other expenses which result to the City from said multiple Attachments. City proration of total costs shall be determinative as to all parties.

### **5. Installation Standards**

5.1 All Attachments and any associated equipment permitted by the City shall be installed in a manner satisfactory to the City so as not to interfere with the present or any future use which the City may desire to make of said poles or the wires attached thereto. The City shall determine, in its sole discretion, whether Attachments

interfere with the City's present or future pole use plans. All Attachments made hereunder shall be installed and maintained by Licensee in compliance with the Design Standards. Licensee shall identify all Attachments at each pole location using the City tagging system.

5.2 Licensee acknowledges that City poles have energized facilities installed upon them and that working in the vicinity of energized facilities poses inherent dangers. At all times during the term of this Tariff, and particularly during the time of any construction, repair, or maintenance of Attachments covered by this Tariff, Licensee shall consider the electric facilities of the City to be energized. Licensee shall warn all of its employees, agents, contractors and subcontractors, or any other parties who may be working on behalf of the Licensee, of the inherent dangers involved in working around energized electric facilities, and the necessity of taking appropriate precautions against such inherent dangers. Licensee assumes full and complete responsibility for taking any and all necessary precautions by the installation of protective equipment, or other means, to protect all persons and property of all kinds against injury or damage occurring by reason of Licensee's Attachments on City poles.

## **6. Pole Installation**

6.1 Poles installed in new locations. Where the City desires to install a new pole in a location where facilities have not been previously placed, and Licensee desires to attach to such pole, the City and Licensee shall follow the procedures set forth in this Section. Licensee shall submit a Proposal setting forth a description of the facilities that the Licensee intends to attach to City poles. The City shall make a determination of the size and height of the pole(s) necessary to accommodate its facilities alone and shall calculate the Total Cost necessary to procure and install such pole. The City shall then make a determination of the size and height of the pole(s) necessary to accommodate both City and Licensee facilities. Licensee shall pay the City the Incremental Cost, if such applies. If other parties request to attach to the same pole, then Licensee shall only be responsible for its pro rata share of the Incremental Cost of the pole necessary to accommodate all parties, divided by the total number of attaching parties (exclusive of the City).

6.2 Replacement of Existing Poles Caused by the Installation of a Licensee's Existing or Proposed Attachment. Where, in the City's sole judgment, an existing pole must be replaced solely to adequately provide for Licensee's existing or proposed attachment, Licensee shall pay the City the Total Cost of the engineering and replacement of the pole.

6.3 Reserved /Loaned Space. The City may reserve space on poles for future development or other needs. Such space may, in the sole discretion of the City, be used temporarily by the Licensee (subject to City consent in each case) for attachment of Licensee's Attachments. In the event the City intends to reclaim such "loaned space,"

the City shall provide notice to Licensee of the space reclamation. Upon such notice, Licensee shall either remove its facilities from the reclaimed space within sixty (60) days of City notice, or pay the Total Cost of replacing the pole with a pole which will accommodate all of the existing and planned Attachments on the pole, including the cost of removing the old pole, and transferring the facilities of the City and any other attaching party to the new pole. If Licensee is sharing such "loaned space" with another attaching party, then Licensee and the other attaching party shall share the Total Cost of the project. The City and Licensee using the loaned space shall each keep and maintain records indicating the poles on which loaned space has been provided. For purposes of this Tariff, any Attachments in a loaned space shall be regarded the same as any other Attachment.

6.4 Pole Replacements. In the event that the City must replace or relocate a pole, and such replacement or relocation is not caused by the addition of a new Licensee Attachment, the City shall provide Licensee reasonable advance notice before undertaking such replacement or relocation. Licensee shall transfer its Attachments within thirty (30) days of receiving notice that the new pole is in place. If Licensee does not transfer its Attachments within said thirty (30) days, then the City may transfer the Attachments at Licensee's expense. If the City or another party is required to make a return trip to remove a pole as a result of Licensee failing to transfer its Attachments within the time set forth herein, then Licensee shall reimburse the City or such third party for the Total Cost incurred by such return trip according to Exhibit A.

6.5 General. Licensee shall remain responsible for the Total Cost of all projects initiated by the City (exclusive of pole attachment rates) as the result of a Licensee Proposal, regardless of whether Licensee elects to install the Attachments. Licensee shall be responsible for the cost of all engineering, inspection, and construction work undertaken by the City on all third party owned poles where such work is initiated as a result of the proposed attachment of Licensee's facilities.

## **7. Rearrangement of Attachments**

7.1 If Licensee's desired Attachments can be accommodated on existing poles of the City in accordance with the Design Standards by Transferring and Rearranging facilities of the City or existing attachments thereon of any other party, or if because of Licensee's existing or proposed Attachments it is necessary for the City to rearrange its facilities on any pole owned by a third party, then in any such case Licensee shall reimburse the City and any such other party for the respective Total Cost incurred in making such rearrangement.

## **8. Guying**

8.1 Any guying required pursuant to the Design Standards shall be installed by and at the expense of Licensee. Licensee shall not use City guys or anchors without City permission.

## **9. Non-Standard Attachments**

9.1 Licensee shall not install any equipment other than Attachments upon City poles. Attachments do not include pole mounted antennas. If Licensee desires to install equipment other than an Attachment to a new or existing pole, Licensee shall submit in writing the design and installation specifications of the proposed equipment and such other data required by the City to assess the impact of such equipment on the existing pole. Except as otherwise set forth herein, all Non-Standard Attachments approved hereunder shall be treated as an Attachment and shall be billed an annual attachment rate in accordance with Exhibit A attached hereto and incorporated herein. The City may revise the rates set forth on Exhibit A by providing thirty (30) days prior written notice.

## **10. Inspection**

10.1 The City may conduct at Licensee's expense a post-construction inspection of all new Attachment installations or modifications of existing Attachments. In addition, the City may make additional inspections at Licensee's expense, if the City has reasonable cause to believe that Licensee is not maintaining its Attachments in accordance with Design Standards and the terms of this Tariff. The City right to make any inspections and any inspection made pursuant to such right shall not relieve Licensee of any responsibility, obligation or liability assumed under this Tariff to maintain its Attachments in accordance with Design Standards and other prudent practices.

## **11. Attachment Inventory**

11.1 The City shall use its inventory for the purpose of verifying the number and location of all Attachments within its system that are covered by this Tariff, and will typically update its inventory of Attachments not less frequently than every five years.

## **12. Unauthorized Attachments**

12.1 Any Attachment made without the advance written approval of the City pursuant to Section 3 of this Tariff, or any prior agreement governing such facilities, shall be considered an unauthorized Attachment. Unauthorized overlashing of

additional cable by Licensee on a third party's cable installed on City poles (see Section 14.1 herein) shall also be considered an unauthorized Attachment.

12.2 Upon discovery of an unauthorized Attachment, the City may elect either of the following options: (i) order Licensee to remove the Attachment within thirty (30) days; or (ii) review such Attachment, at Licensee's expense, to determine if the Attachment is in compliance with Design Standards and, if necessary, order Licensee to comply with Design Standards either through rearrangement pursuant to Section 6 above or pole replacement pursuant to Section 5 above.

12.3 For each unauthorized Attachment, Licensee shall also pay the City the applicable Attachment Rate hereunder for a period of time equal to the greater of: (i) five years; or (ii) the number of years since the last Attachment inventory (including inventories conducted pursuant to earlier pole license Tariffs governing such facilities), plus \$150.00 per Attachment. The City shall further be entitled to interest at the current Interest Rate on such rates accruing from the date the Attachment is assumed to have been on the pole.

### **13. Interference or Hazard**

13.1 Whenever the City notifies Licensee in writing or orally, with written confirmation, that any Attachment made hereunder does not comply with Design Standards, Licensee shall within thirty (30) days of receiving such notice, either remove such non-complying Attachment, or bring such Attachment into compliance with Design Standards. If non-compliance of such Design Standards is causing interference with City use or maintenance of the pole, or is causing a hazard, then Licensee shall undertake the remedial efforts set forth above in this Section within ten (10) days of receiving notice from the City.

13.2 In case of an emergency, which in the City's reasonable judgment requires the City to immediately remove or relocate the Licensee's Attachments, the City may remove or relocate such Attachments as required at Licensee's expense, without prior notice or responsibility for any damage to Licensee caused by such removal or rearrangement.

### **14. Overlashing**

14.1 Licensee may not overlash its existing Attachments or a third party Attachment without an additional and separate written consent from the City for the overlashed Attachment. Licensee may not allow another party to overlash Licensee's facilities without such party first having an approved license from the City. Poles are the sole property of the City, and Licensee shall not charge or accept any financial consideration for allowing a third party to overlash an Attachment without the City's written consent.

14.2 The City shall not unreasonably withhold its consent to such overlashing, provided such third party overlashed facilities are reviewed by the City pursuant to the procedure set forth in Section 5 above, and both overlashing parties consent to such overlashing in a written format acceptable to the City. Any overlashing must be done in accordance with generally accepted engineering standards.

14.3 In general, no additional payment will required for a Licensee to overlash more of its facilities to its existing attached facilities, unless it necessitates additional costs such as guying or additional pole strength, occupies additional attachment space on the pole, or provides a different utility service than Licensee's existing facilities.

## 15. Attachment Removal/Abandonment

15.1 Licensee may, at any time, abandon the use of a pole hereunder by giving written notice to the City and then removing from the pole all of Licensee's Attachments. Such removal shall not result in a rebate or credit of any Annual Attachment Rate paid or owing.

## 16. Charges and Fees

16.1 Non-Recurring Expenses. Except as otherwise set forth herein, Licensee shall reimburse the City for the Total Cost of all non-recurring expenses incurred by the City caused by or attributable to Licensee's Attachments as shown in Exhibit A.

16.2 Annual Attachment Rate. As a condition of its right to maintain any Attachment to City poles under this Tariff, Licensee shall pay the City an Annual Attachment Rate for each attachment as set forth on Exhibit B attached hereto and incorporated herein. The City may revise Exhibit B by providing Licensee written notice prior to the effective date of such revision. Billing of Annual Attachment Rates shall be rendered on or about January 1 of each year for the current Contract Year.

16.3 Third Party Overlash Annual Attachment Rate. Licensee shall pay an overlash annual attachment rate for each pole where Licensee has overlashed Attachments to a third party's facilities, which are attached to City poles, equal to the applicable Annual Attachment Rate set forth in Exhibit B. Such third party overlash rate shall be paid in the manner set forth in this Section 16.

16.4 General. Licensee shall pay the applicable Annual Attachment Rate for each new Attachment or third party overlashed Attachment made during the Contract Year. There shall be no proration of rates hereunder, including adjustments in billing for those Attachments made or removed during the Contract Year.

## **17. Non-Permitted Use of Attachments**

17.1 Licensee represents and warrants that it shall only use its Attachments as a part of its cable television, Internet or other telecommunications system, with the advance consent of the City obtained through the processes established by this Tariff or any predecessor agreement in writing between the City and the Licensee granting Licensee the right to make Attachments for such purposes ("Permitted Use"). Upon discovery of the use of an Attachment without authorization of the City, or for any purpose other than the Permitted Use ("Non-Permitted Use"), the City may terminate Licensee's license to make Attachments to City poles under this Tariff and/or require Licensee to pay the City additional Annual Attachment Rates as set forth in the following paragraph, in addition to any other remedies which may be available to the City under applicable law.

17.2 Upon discovery of a Non-Permitted Use, Licensee shall pay the City an additional Annual Attachment Rate for each Attachment involved in the Non-Permitted Use of \$150.00 per Attachment and interest at the Interest Rate accrued since the assumed Non-Permitted Use commenced. Unless Licensee can prove otherwise, it shall be assumed for purposes of making the above calculation that Licensee has engaged in such Non-Permitted Use since the commencement of Licensee's service under this Tariff or since the last Attachment Inventory was performed. Licensee shall also pay the City any and all non-recurring administrative expenses the City incurs as a result of processing and documenting such Non-Permitted Use Attachments.

## **18. Time of Payment**

18.1 Unless otherwise set forth herein, payments due hereunder shall be made within thirty (30) days from the date of the invoice therefore. On all amounts not so paid, an additional charge for interest at the Interest Rate, compounded daily will be assessed. Where the provisions of this Tariff require any payment by Licensee to the City other than for the Annual Attachment Rate, the City may, at its option, require that the estimated amount thereof be paid in advance of permission to use any pole or the performance by the City of any work.

## **19. Liability and Damages**

19.1 The City shall not be liable, whether based on contract, indemnification, warranty, tort, strict liability or otherwise, to any Licensee, or any third party or other person for damages whatsoever, including, without limitation, direct, incidental, consequential, punitive, special, exemplary or indirect damages arising or resulting from any act or omission in any way associated with acts provided for under this Tariff, including, but not limited to, any act or omission that results in an interruption, deficiency or imperfection of service, except to the extent that the City is found liable for gross negligence or intentional or willful misconduct, in which case the City will not be

liable for any incidental, consequential, punitive, special, exemplary or indirect damages. Nothing in this section, however, is intended to affect obligations otherwise provided in agreements between the Licensee and the City.

19.2 The City shall not be liable for damages arising out of services provided under this Tariff, including, but not limited to, any act or omission that results in an interruption, deficiency or imperfection of service, occurring as a result of conditions or circumstances beyond the control of the City.

19.3 As used herein, direct damages shall not include loss of profit, loss of revenue, loss of production, loss of earnings, loss of contract, or any other indirect, special or consequential loss or damage.

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

19.5 Licensee is expected to inspect all Poles on which its Attachments will be placed and shall rely solely on such inspection to determine the suitability of said Poles for its purposes. CITY DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTIES CONCERNING ANY POLE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACCEPTS THE USE OF ALL POLE(S) AS IS, WHERE IS, AND WITH ALL FAULTS.

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

all Poles are properly labeled, and agrees that the City is not liable for any injuries or damages caused by or in connection with missing labels or otherwise improperly labeled Pole(s). Licensee further agrees to immediately notify the City if labels or tags are missing or otherwise improper.

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

## **20. Insurance and Indemnification**

20.1 Licensee shall obtain and furnish the insurance described in this Section 20. Licensee shall maintain, and shall cause its Contractors and Subcontractors performing any work in connection with activities permitted under any license granted under this Tariff to maintain, such insurance at all times during the term of any license granted to it under this Tariff.

20.2 Coverage for the legal liability of Licensee and its Contractors and Subcontractors under the Workers' Compensation and occupational disease law of the State of Ohio, with coverage of not less than \$1,000,000 bodily injury per accident, \$1,000,000 bodily injury per disease and \$1,000,000 per disease per employee;

20.3 Commercial general liability coverage in the minimum amount of \$2,000,000 as to any one person and \$5,000,000 as to any one accident/occurrence; coverage against liability due to property damage in the amount of \$2,000,000 as to each accident and \$5,000,000 aggregate;

20.4 Business automobile liability insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000.

20.5 Licensee will not be permitted to access City poles until the City receives from Licensee one copy of an acceptable certificate of insurance covering the terms of Subsections 20.1-20.4 above. Such certificate shall state that the insurance carrier has issued the policies providing for the insurance specified above, that such policies are in force, and that the insurance carrier will give the City thirty (30) days prior written notice of any material change in, or cancellation of, such policies. If such insurance policies are subject to any exceptions to the terms specified herein, such exceptions shall be explained in full in such certificates. The City may, at its discretion, require Licensee to obtain insurance policies that are not subject to any exceptions. Licensee and its Contractors and Subcontractors shall obtain waivers of subrogation on all of their insurance for the benefit of the City. Policies written on a "claims-made" basis shall be maintained for a period of five years after termination of any license granted to the Licensee under the terms of this Tariff. Licensee acknowledges that continued maintenance of the insurance requirements under this Tariff is a substantial and important part of this Tariff and that any lapse in insurance coverage shall be corrected so that coverage will be in place during the period required hereunder, with no gaps or lapses in coverage.

20.6 The amounts of insurance required under this Tariff shall be adjusted as the City may reasonably require from time to time to account for inflation, generally increased insurance settlements, court verdicts or any other business purposes. If Licensee does not timely deliver to the City a certificate showing all of the required insurance to be in full force and effect as required by this Tariff, the City may either: (i), declare Licensee to be in substantial default under the terms of this Tariff upon which event this Tariff shall automatically terminate within sixty (60) days without the need for any further notice, or (ii) obtain the insurance to fulfill any and all of the insurance obligations under this Tariff. On the City's demand, Licensee shall reimburse the City the full amount of any insurance premiums paid by the City, a fee to cover applicable expenses and overhead costs incurred by the City, and interest at the Interest Rate, compounded daily, from the date of the City demand, until reimbursed by Licensee.

20.7 Licensee shall fully indemnify and defend the City and each of the City's and all associated, affiliated, allied and subsidiary entities of the City, whether existing now or in the future, and their respective officials, officers, departments, agencies, boards, representatives, employees, agents, contractors and attorneys, from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including reasonable attorneys' fees, directly related to this Tariff, to the extent caused by: (i) any act or omission of Licensee, or any of the officers, partners, members, managers, shareholders, principals, directors, trustees, employees, representatives, or successors of Licensee; or (ii) failure to comply by Licensee with any of the provisions of this Tariff, or default by Licensee in the performance of any of its obligations under this Tariff.

20.8 SUBJECT ONLY TO PARAGRAPH 20.9, IT IS THE EXPRESS INTENT OF THE PARTIES THAT THE FOREGOING INDEMNITY IS TO PROTECT AND INDEMNIFY THE CITY AGAINST THE CONSEQUENCES OF ITS OWN FAULT WHERE THE CITY'S FAULT IS A CONCURRENT CAUSE OF THE INDEMNIFIED LIABILITY.

20.9 The indemnity obligations set forth in paragraphs 20.7 and 20.8 shall apply to fully protect and indemnify the City from all such claimed damages regardless of whether the City is a joint tortfeasor unless (1) the indemnified liability was the result of intentional or reckless misconduct on the part of the City, or its agents, employees, or contractors, or (2) by virtue of a final judgment, a finder of fact determines the City's percentage of responsibility for the indemnified liability to be 50% or greater, in which case each party shall then be liable for its found percentage of damages in accordance with Ohio law.

20.10 No provision of this Tariff is intended, or shall be construed, to affect or alter in any way any limitation of City liability in tort as established by Ohio Revised Code Chapter 2744 or any other applicable provision of law.

## **21. Easements**

21.1 Licensee shall secure any right, license or permit from any governmental body, authority or other person or persons, which may be required for the construction or maintenance of Licensee's Attachments. The City does not grant, convey, or guarantee any easements, rights-of-way or franchises for the construction and maintenance of Attachments. Licensee hereby agrees to indemnify and save the City harmless from any and all claims, including expenses incurred by the City to defend itself against such claims, resulting from or arising out of the failure of Licensee to secure such right, license, permit or easement for the construction or maintenance of its Attachments on City poles, the loss of right-of-way or property owner consent, of the costs of relocating any City facilities or other Attachments on City poles. In the event that the City becomes aware of a claim affecting Licensee under the terms of this provision, the City shall endeavor to put Licensee on timely notice of such claim. However, such notice obligation of the City does not extend to permits or franchises required by governmental entities. As applicable, all of the terms of the indemnity set forth in this Tariff are incorporated herein and shall apply with equal force to the indemnity set forth in this Section.

## **22. Financial Assurance Requirements**

22.1 To protect the City and its customers against the possibility of failure of performance or payment in connection with Licensee's financial and operational obligations under this Tariff, Licensee shall furnish to the City reasonable documentation of Licensee's creditworthiness and ability to perform its financial obligations under any license granted under this Tariff. In the event that the City

determines, in the exercise of reasonable discretion, that additional assurance of payment is necessary in order to ensure fulfillment of Licensee's obligations, Licensee shall provide such assurance in accordance with the provisions of this Section.

22.2 Where the City reasonably estimates that the cost of its performance of any action authorized or required under this Tariff will exceed five thousand dollars (\$5,000) but is unlikely to exceed ten thousand dollars (\$10,000), the City may require Licensee to make a cash deposit for the estimated cost of City performance of the relevant action. In such circumstances, the City will provide Licensee with a reasonably itemized, written estimate of its costs as part of its demand for such cash deposit, and shall notify Licensee in writing as to the date on which such deposit is due. Upon receipt of the cash deposit, the City shall be entitled to draw on the deposit for reimbursement of its costs in connection with performance of the relevant action and shall periodically present to Licensee a itemized statement of the disbursements and other costs to which it has applied the deposit.

22.3 Where the City reasonably estimates that the cost of its performance of any action authorized or required under this Tariff or the cost to the City of Licensee's non-performance of any obligation under this Tariff, is likely to exceed an amount equal to two (2) years' Annual Attachment Rates for all Attachments, or \$10,000 dollars, whichever is greater, the City may in its reasonable discretion require Licensee to supply any of the following forms of financial assurance, in a form reasonably acceptable to the City for payment or performance of the relevant action or obligation, or such other form of financial assurance as may be mutually agreeable to the City and Licensee:

22.3.1 An irrevocable standby letter of credit, issued by a bank having a minimum corporate debt rating of an "A-" by Standard & Poor's or "A3" by Moody's or "A-" by Duff & Phelps or "A-" by Fitch, or an equivalent short term debt rating by one of these agencies, for the full value of the required financial assurance. The letter of credit will renew automatically unless the issuing bank provides notice to the City at least ninety (90) days prior to the letter of credit's expiration of the bank's decision not to renew the letter of credit. If the letter of credit amount falls below the required level because of a drawing, it must be replenished immediately.

22.3.2 A performance bond, which shall (a) be reasonably acceptable to the City as to form and substance in the amount of \$50,000 for the first five hundred (500) poles for which Application is made and \$50,000 for each additional five hundred (500) poles, but not to exceed \$1.0 million, to guarantee the performance of Licensee's obligations under this Tariff, including, but not limited to, the removal of Licensee's Attachments upon the termination of any license granted under this Tariff; (b) clearly identify the City as the obligee and provide for a penal sum equal to the full value of the required financial assurance; (c) include a clear statement that the surety will promptly and faithfully perform Licensee's obligations to the City if Licensee fails to do so; and

(d) be issued by a solvent company authorized to do business in the State of Ohio, and shall meet any other requirements established by law or by the City pursuant to applicable law. The amount of the bond or financial security does not operate as a limitation upon obligations of the Licensee under this Agreement.

22.3.3 An irrevocable corporate guaranty obtained from an affiliated company ("Guarantor") of Licensee for the full value of the required financial assurance, provided that the Guarantor that has greater financial assets than the Licensee, a strong balance sheet and income statements and, at minimum, an investment grade rating by either Standard & Poor's, Moody's, Duff & Phelps', or Fitch's.

### **23. Default or Non-Compliance**

23.1 If Licensee fails to comply with any of the provisions of this Tariff, or defaults in the performance of any of its obligations under this Tariff, and fails within thirty (30) days, after written notice from the City, to correct such default or noncompliance, the City may, at its option, take any one or more of the following actions: (i) suspend Licensee's access to climb or work on its Attachments on all City poles; (ii) terminate the specific permit or permits covering the poles to which such default or noncompliance is applicable; (iii) remove, relocate, or rearrange Attachments of Licensee to which such default or noncompliance relates, all at Licensee's expense; (iv) decline to permit additional Attachments hereunder until such default is cured; or (v) in the event of any failure to pay any of the charges, fees or amounts provided in this Tariff or any other substantial default, or of repeated defaults, terminate any License granted to Licensee under this Tariff. Notwithstanding the foregoing, Licensee shall have up to an additional thirty (30) days to correct such default or noncompliance if Licensee promptly commences its corrective efforts within the thirty (30) day period described above and diligently continues such corrective actions thereafter. No liability shall be incurred by the City because of any or all such actions. The remedies provided herein are cumulative and in addition to any other remedies available to the City under this Tariff or otherwise. No such termination, however, shall reduce or eliminate the obligation of the Licensee to make payments of any amounts due to the City for any services covered, shall not waive charges for any Attachment until said Attachment is removed from the pole to which it is attached and shall not affect Licensee's Insurance requirements contained in this Tariff. The City shall be entitled to recover any and all attorney fees, costs and expenses incurred in successfully pursuing any of the remedies set forth above.

### **24. Term of License**

24.1 Except as otherwise provided in this Section 24, the attachment right granted by this Tariff shall continue for a period of one year from the date hereof, and shall thereafter automatically renew for successive one year periods unless one party

gives the other party written notice of termination at least sixty (60) days in advance of the next renewal date. Should Licensee not place Attachments or reserve space on City poles in any portion of the area covered by this Tariff within six (6) months of its effective date, the City may, at its option, terminate the License(s) granted to Licensee under this Tariff. Licensee shall completely remove its Attachments from City poles within one-hundred twenty (120) days of the termination date, unless an extension of the existing License is negotiated or a new License covering such poles has been executed by the parties hereto. If Licensee fails to remove its facilities, the City may, and is hereby given the clear and incontestable right to, remove Licensee's facilities, at Licensee's expense, from City poles and without any liability to the City.

## **25. Transfers of Ownership**

25.1 This Tariff shall be binding upon and inure to the benefit of the parties hereto, and Licensee shall not assign, transfer, sublet or sublicense any of the rights hereby granted without the prior written consent of the City.

## **26. General Provisions**

26.1 Governing Law. This Tariff shall be construed in accordance with, and its performance shall be governed by, the Ohio Constitution and applicable laws in effect of the State of Ohio.

26.2 No Third Party Rights. This Tariff shall not create for, nor give to, any third party any claim or right of action against either party to this Tariff that would not arise in the absence of this Tariff.

26.3 No Representations as to Land Title. In granting Licensee the right to jointly use City poles or other facilities as provided herein, the City makes no representation as to what rights may exist in others regarding the land on which its poles and other facilities are located. Licensee shall have full responsibility for meeting the title claims or requirements of any other parties relating to the placement of its facilities upon, under, or above said land, and Licensee shall hold harmless the City against any such claim.

26.4 Non-Waiver. No delay, forbearance or omission in the exercise of any power or remedy herein provided or otherwise available to the City shall impair or affect the City's right thereafter to exercise the same.

26.5 Headings. Headings used in this Tariff are inserted only for convenience of reference and shall not affect the interpretation or construction of this Tariff.

26.6 Survival of License Obligations. All payment, performance and indemnity obligations of Licensee under this Tariff shall survive the termination of any license granted under this Tariff, until said obligations are satisfied.

26.7 Operating Practices. For ease of administration of Attachments to City poles, Operating Practices may be established by the City and the Licensee. These Operating Practices shall be based on this Tariff and shall provide detailed methods and procedures that will be followed in establishing, maintaining and discontinuing Attachments on City poles. In case of any ambiguity or conflict between the provisions of this Tariff and those of the Operating Practices, the provisions of this Tariff shall be controlling. These Operating Practices may be modified at any time by mutual agreement of the City and Licensee, provided such changes do not conflict with the terms and conditions of this Tariff.

**Exhibit A**  
**Non-Standard Attachments**

Attachments:

Annual Attachment Rate:

Non-Recurring Expenses:

Transfer of Licensee's equipment

Time and Materials Plus 10%

Rearranging of Licensee's equipment

Time and Materials Plus 10%

Second trip

Time and Materials Plus 10%

**Exhibit B**  
**Pole Attachment Rate**  
Effective August 1, 2014

**I. Availability**

Available throughout the service area of the Municipal Electric Distribution System of the City of Hamilton, Ohio (City) to cable television, Internet, data transmission, and/or other telecommunication services to make attachments (with the exception of pole mounted antennas) to City distribution poles for the sole purpose of providing cable, Internet, data transmission and/or other telecommunication services, subject to the General Rules, Terms and Conditions set forth in the City Pole Attachment Tariff (Tariff).

**II. Applicability**

Applicable to all cable, Internet, data transmission, and/or other telecommunications service entities that contract with the City to make attachments to City distribution poles.

**III. Annual Rate**

\$15.00 per Attachment annually based on a single point of wire line contact utilizing no more than one foot of vertical pole space.

**IV. Tax and Assessment Adjustments**

The rates and charges hereunder are based upon Federal, State, County, Municipal and other governmental levies, including gross receipts tax, income taxes, license fees and other impositions of similar character in effect as of August 1, 2014.

**V. Terms of Payment**

The above rates are net and payable upon receipt of City invoice. The accounts shall be considered delinquent if not paid by the date shown on the invoice. The General Rules, Terms and Conditions set forth in the Tariff shall apply to delinquent accounts.

**VI. Special Provisions**

City shall provide service in accordance with the Pole Attachment Tariff effective August 1, 2014.

**VII. Term of Contract**

One year with automatic renewal for successive one year periods until terminated with sixty (60) days written notice by either party.

**Exhibit C**

**Pole Attachment Application and License**

(License effective on execution of this form by City)

**New Attachment**       **Overlash Attachment**

Notwithstanding any terms or conditions set forth on this application form, applicant's contractual rights, obligations, and remedies are set forth in, and governed solely by, the City of Hamilton Pole Attachment Tariff. The Tariff shall control to the extent of any conflict between the terms of this application and the terms and conditions of the Tariff. Incomplete applications will be returned to applicant without further action by the City of Hamilton. Required information includes the completed application, proposed schedule, prints and maps, proposed route, project description, and a copy of the Filing Fee check.

Application Information

Application # \_\_\_\_\_ Applicant Name \_\_\_\_\_ Date \_\_\_\_\_  
 Corporate Rep. \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Project Description (Attach if necessary)	No. of City Poles	No. of foreign Poles	Planned Install Date

Proposed Cable Installation \_\_\_\_\_  
 No. of cables to install \_\_\_\_\_  
 Fiber count \_\_\_\_\_  
 Pole count \_\_\_\_\_  
 Cable diameter \_\_\_\_\_

Existing Cable Installation \_\_\_\_\_  
 Existing cable count \_\_\_\_\_  
 Existing pole count \_\_\_\_\_  
 Cable(s) diameter \_\_\_\_\_  
 Strand(s) diameter \_\_\_\_\_

Application Approval

Application Approved? Yes \_\_\_ No \_\_\_ Conditional (See attached report) \_\_\_

Make Ready Work Required? Yes \_\_\_ No \_\_\_

Actual Hamilton pole count \_\_\_\_\_ Actual foreign pole count \_\_\_\_\_

Actual Install Date \_\_\_\_\_

Comments/Notes (attach if necessary)

\_\_\_\_\_

City Inspector (sign)	Phone	Fax	Email	Date

Make-Ready Work Cost Concurrence

If Make-Ready Work is required, certain City distribution equipment and/or other assets need to be changed in order to accommodate Licensee’s attachments on the poles and route described in this application. The City or Licensee is responsible for all Make-Ready Work associated with this application. As provided under the City Pole Attachment Tariff, the City will bill Licensee for all engineering design, construction and inspection services necessary to process, review, and approve this application. If the City elects to perform Make-Ready Work, Licensee shall pay for all costs related to such Work. If Licensee is directed to perform Make-Ready Work, Licensee shall perform such Work at its sole risk and expense, including the cost of final inspection(s) by the City, its subcontractors, or its agents. By signature below, the City and Licensee indicate their understanding and acceptance of these terms and conditions notwithstanding any other related terms and conditions of the City of Hamilton Pole Attachment Tariff.

City of Hamilton

Licensee Representative

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date