

LICENSE AGREEMENT

THIS AGREEMENT (hereinafter referred to as the "License Agreement") is made and entered into _____, 20__, by and between EMPIRE ELECTRIC ASSOCIATION, INC. a Colorado cooperative association, with its principal place of business in Cortez, Colorado (hereinafter called "Empire"), and [ENTITY NAME] with its principal place of business in [ENTITY LOCATION] (hereinafter called "Licensee").

WITNESSETH:

WHEREAS, Empire is a non-profit rural electric cooperative association with a service territory in the states of Colorado and Utah; and

WHEREAS, Empire owns, operates and maintains lines of poles extending in [COUNTY] County, [STATE]; and

WHEREAS, Licensee desires to place certain lines, attachments and apparatus on certain poles of Empire, for the non-exclusive limited purpose of the transmission of signals in compliance with any and all local, state or federal regulations; provided, that such transmission of signals do not interfere or compete with the corporate purposes of Empire or interfere with the furnishing of electrical service to consumers of Empire, and where in its judgment, safety will not be adversely affected; and

WHEREAS, Empire is willing to permit Licensee, to the extent it may lawfully do so, to place said lines, attachments and apparatus on said poles in the area shown on the map labeled as Exhibit A attached hereto.

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

1. DEFINITIONS

- a) For the purpose of this License Agreement, the phrase "joint use pole" shall mean a pole conforming to the latest specifications of the American Standards Association and containing at least one contact.
- b) A "pole contact" is defined as any attachment by Licensee, to the poles of Empire.

2. SPECIFICATIONS

- a) The joint use poles covered by this License Agreement shall be placed and maintained in accordance with the requirements, specifications, rules, and regulations of the latest edition of the National Electrical Safety Code (NESC), the Occupational Safety and Health Administration (OSHA), the Rural Utilities Services (RUS), any governing authority having jurisdiction, and the rules and practices of Empire as set forth in Exhibit B.

- b) It is understood and agreed between the parties that the rules and practices set out in Exhibit B may be changed by Empire, or new rules and practices may be adopted by Empire, upon sixty (60) days notice to Licensee, relating to supplementing or amending this License Agreement, and Licensee agrees to be bound by any such change or adoption subject to the notice provisions of Section 2(c) on a going-forward basis.
- c) In the event that Empire should change or adopt a rule or practice, or rules and practices, for the joint use of poles by Licensee, Empire shall give Licensee written notice of such change or adoption in the manner contemplated by Section 18 and Licensee agrees to make such changes or alterations in its installations or maintenance of its facilities as may be required in order to fully comply with the provisions of such notice. In the absence of a contrary provision in said notice, Licensee agrees to make all required changes or alterations within thirty (30) days after receipt.
- d) No tag, brand, or other device showing Licensee's name or insignia shall be placed on, or attached to, any pole of Empire, except such tag or insignia which shows Licensee to be the Licensee or lessee of such pole and not the owner thereof, and then only after obtaining the written consent of Empire.
- e) The strength of poles covered by this License Agreement shall be sufficient to withstand the transverse and vertical loads imposed upon them under the storm loadings of the National Electrical Safety Code assumed for the area in which they are located by considering the combined loadings of the proposed attachment, as presented by Licensee, together with existing loads of Empire. Empire reserves the right to deny Licensee's application if the strength of the poles is insufficient to support the combined loadings of the proposed attachment and the existing loads of Empire. Licensee shall have the duty to establish that the strength of the poles is sufficient, as set forth in Section 3.
- f) Any unbalanced loading of Empire's poles caused by the placement of Licensee's attachment shall be properly guyed and anchored by Licensee, at no expense or liability to Empire.

3. ESTABLISHING JOINT USE OF POLES

- a) Before the Licensee may make use of any of Empire's poles under this License Agreement, Empire shall approve the application form attached and identified as Exhibit C ("Application"), as completed and submitted by Licensee, and the parties shall comply with the procedures set forth in this section. For service drops, Licensee shall notify Empire in writing within thirty (30) days following their placement. The notice shall specify the date of placement, the type of placement, and the pole upon which the drop was placed.
- b) Empire shall notify the Licensee in writing whether the Application is approved or rejected within thirty (30) days after the receipt of such Application. If, in the judgment of Empire, joint use under the circumstances is undesirable, Empire shall

have the right to reject the Application. The failure of Empire to respond within thirty (30) days does not constitute an approval of the Application.

- c) After receipt of notice from Empire approving the Application, the Licensee shall furnish Empire detailed construction plans and drawings for each pole line, together with necessary maps, indicating specifically the poles of Empire to be used jointly, the number and character of the attachments to be placed on such poles, any rearrangement of Empire's fixtures and equipment necessary for joint use, any over lashing to be undertaken, any relocations or replacements of existing poles, and any additional poles which may be required. In addition, the Licensee shall submit a report from a licensed professional engineer certifying that the design and construction plans and drawings described above comply with NESC standards, including certifying that the poles can support the load contemplated by the Licensee and the existing load of Empire. Empire shall, review and approve the design and construction plans and the engineering report submitted by the Licensee. Empire reserves the right, in its sole discretion, to reject any reports or plans that do not meet Empire's requirements or request additional information or changes to the reports to make the same acceptable.
- d) Following approval of the construction plans and drawings and the engineering report, Empire shall, within thirty (30) days of completing such approval process, submit to the Licensee a cost estimate (based on Empire's method of computing costs) for all changes required by Empire in each such pole line ("Make Ready Survey"), including an estimated completion date for such changes ("Cost Estimate"). The Licensee shall remit payment of the Cost Estimate to Empire within ten (10) days of receiving the Cost Estimate.
- e) Upon receipt of the Cost Estimate, Empire shall then proceed with the necessary changes in the pole line covered by the referenced cost estimate ("Make Ready Construction"). Empire shall make every effort to complete this work at a mutually agreed upon completion date, however, Empire shall incur no liability for failing to meet such completion date. Nothing shall preclude the parties from making any mutually agreeable arrangement for contracting for or otherwise accomplishing the necessary changes.
- f) Upon completion of all changes in each pole line to be used jointly, the actual cost of making such changes shall be agreed upon between the parties. If the reasonable actual costs exceed the estimated costs, the Licensee shall pay the difference to Empire. If the actual costs are less than the estimated costs, Empire shall pay the difference to the Licensee. The obligations of the Licensee shall not be limited to amounts shown on estimates made by Empire. Costs include materials less salvage, labor, engineering, supervision, overheads, and tree trimming. An itemized statement of the actual costs of all such changes shall be submitted by Empire to the Licensee, in a form mutually agreed upon.
- g) Upon completion of all changes, the Licensee shall have the right to use the poles jointly and to make attachments in accordance with the terms of the application and of this License Agreement. The Licensee shall, at its own expense, make

attachments in such manner as not to interfere with the service of Empire, and shall place guys and anchors to sustain any unbalanced loads caused by its attachments.

- h) Empire shall reasonably determine any tree trimming and any re-clearing of existing right-of-way necessary for the establishment of joint use. Empire and each party attaching to the affected pole shall bear proportional costs of tree trimming and re-clearing that Empire finds to be good utility practice.
- i) All poles jointly used under this License Agreement shall remain the property of Empire, and any payments made by the Licensee for changes in pole lines under this License Agreement shall not entitle the Licensee to ownership of any of said poles, lines, or other equipment or materials attached thereto.
- j) Empire reserves the right to exclude any of its facilities from joint use.

4. EASEMENTS AND RIGHT-OF-WAY FOR LICENSEE'S ATTACHMENTS

- a) Empire does not warrant to the Licensee any right-of-way privilege or easements by the property owner upon whose land Empire's poles are situated; and if the Licensee shall at any time be prevented from placing or maintaining its attachments on Empire's poles, no liability shall attach to Empire. Each party shall be responsible for obtaining its own easements and right-of-way. All Licensee franchise rights and privileges with any political subdivision or other governmental entity shall be the sole responsibility of the Licensee.

5. MAINTENANCE OF POLES, ATTACHMENTS AND RIGHT-OF-WAY

- a) Empire may perform its own inspection and maintenance of the poles in accordance with its applicable maintenance and inspection policies, and may replace, reinforce or repair such poles as the same become defective. The cost associated with replacement of any jointly used poles shall be in accordance with Section 5(c).
- b) Whenever right-of-way considerations or public regulations make relocation of a pole necessary, such relocation shall be made by Empire at its own expense, except each party shall bear the cost of transferring its own attachments and the cost of securing appropriate new right-of-way easements.
- c) Whenever it is necessary to replace or relocate a jointly used pole, Empire shall, before making such replacement or relocation, give at least thirty (30) days' notice in writing (except in case of emergency, when verbal notice will be given as soon as practicable and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed replacement or relocation. Licensee shall, at the time so specified, transfer its attachments to the new or relocated joint pole or Licensee shall place its facilities underground if the pole line is to be abandoned and removed by Empire. Should the Licensee fail to transfer its attachments to the new or relocated joint pole at the time specified for such transfer of attachments, Empire may elect to do such work, and the Licensee shall pay Empire the cost. In the event the Licensee fails to transfer its attachments and Empire does such work, Empire

shall not be liable for any loss or damage to the Licensee's facilities which may result, except those due to Empire's negligence or misconduct.

- d) Except as otherwise provided in (c) of this Section, each party shall at all times maintain all of its attachments in accordance with the specifications mentioned in Section 2 and shall keep them in thorough repair. All right-of-way maintenance, including tree trimming or cutting, as determined to be necessary by Empire, shall be performed by Empire, and the cost shall be borne by the parties as provided in Section 3(h).
- e) Any existing joint use construction of the parties which does not conform to the specifications mentioned in Section 2 (subject to NESC grandfathering rules) shall be brought into conformity as soon as reasonable. When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in Section 2 (subject to NESC grandfathering rules). Should the Licensee fail to comply, Empire may elect to do such work and the Licensee shall pay Empire the cost. In no event will Licensee be liable for the cost of any compliance work for nonconformance issues it did not cause.
- f) Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, contractors, or employees of contractors. Empire disclaims any warranty or representation regarding the condition and safety of the poles of Empire.
- g) Empire agrees that, upon written notification, it will inspect and, if Empire determines in its sole discretion that it is necessary, replace any pole that does not meet applicable regulations. The cost of such replacement shall be borne equally between the Licensee and Empire. All other costs of replacement shall be borne by Licensee.
- h) Licensee must label its pole attachments to indicate ownership. Pole attachment labels may not be placed in a manner that could be interpreted to indicate an ownership of the utility pole. An attaching entity shall label any new pole attachment installed immediately upon installation. Pole Attachments installed prior to the effective date of this agreement shall be labeled at the time of routine maintenance, normal replacement, rearrangement, rebuilding, or reconstruction, and whenever practicable.

6. RECOVERY, REARRANGING OR RELOCATION OF FACILITIES

- a) In any case where facilities of Empire are required to be rearranged on the poles of Empire or of others to accommodate the attachments of Licensee, Licensee shall pay to Empire, in accordance with Section 3 of this License Agreement, the reasonable actual costs incurred by Empire in rearranging such facilities, except for costs attributable to remedying preexisting safety violations. The Licensee shall also reimburse other third party users of the poles of Empire, upon their request, for their costs of rearrangement to provide space or clearance for the facilities of Licensee to

the extent that such rearrangement is not related to remedying preexisting safety violations.

- b) Whenever it is necessary to replace or change the location of a joint use pole, for reasons over which Licensee has no control, Empire shall, before making such change, give sixty (60) days' written notice to the Licensee, specifying in such notice the time of such proposed change. The Licensee shall promptly begin to transfer or remove its attachments. If the Licensee fails to transfer or remove its attachments within the sixty (60) day time period provide in such notice, and Empire elects not to move the attachments in accordance with Section 5(c), the pole upon which the Licensee's attachments are affixed shall be deemed abandoned by Empire and shall be treated as an abandoned pole in accordance with Section 8. When Licensee is required to relocate its facilities to accommodate a third party attaching to the pole, Empire shall disclose the third party's name and contact information to Licensee at the time the rearrangement or relocation is requested. Licensee shall be entitled to seek reimbursement from the third-party attacher. In no event shall Empire be responsible for reimbursing Licensee for any costs associated with Licensee rearranging or relocating its facilities to accommodate a third party.
- c) In the event of any changes contemplated under Section 6(a), or (b), Licensee shall pay the entire cost of any removal, transfer or installation of its own attachments except as provided in this License Agreement.

7. INDEMNIFICATION

- a) A party to this License Agreement must indemnify, defend, protect, save harmless and insure the second party from and against any and all claims and demands for damages to the second party's property, and for injury or death to third persons, including payments made under any Workers' Compensation Law or under any plan for employees' disability and death benefits, and including all expenses incurred in defending against any such claims or demands, which may arise out of or be caused by the negligence or intentional misconduct of the first party or its agents and employees in the performance under this License Agreement. Further, Licensee shall indemnify Empire to the same extent as set forth above for any and all damages or claims arising from any poles that are abandoned by Empire in accordance with Section 8 below.
- b) The Licensee shall take out and maintain throughout the period during which this License Agreement shall remain in effect insurance conforming with the latest RUS requirements of CFR §1788. At the time of this writing, the RUS requirements of 7 CFR §1788.28 (Section 1788.29 is no longer valid) are as follows:
 - i. RUS requires that public liability insurance be maintained covering the ownership liability and all operations of the borrower with limits for bodily injury or death of not less than \$1 million each occurrence--\$1 million aggregate per policy period and with limits for property damage of not less than \$1 million per occurrence and \$1 million aggregate for the policy period. Borrowers have the option to

purchase \$1 million single limit coverage for bodily injury and property damage. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

- ii. The Licensee shall furnish to Empire an annual certificate evidencing compliance with the above requirements.
- iii. This certificate will list Empire as additional insured and will note specific cancellation language, as follows: “In the event of cancellation of any of the said policies, the insuring company shall give the party to whom this certificate is issued at least fifteen (15) days’ prior notice of such cancellation.” If Licensee fails to renew adequate insurance, Empire may terminate this License Agreement pursuant to Section 10 (Defaults).

8. ABANDONMENT OF JOINT USE POLES

- a) If Empire desires at any time to abandon any joint use pole, it shall give Licensee notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole or poles. If, at the expiration of said period Empire shall have no attachments on such pole but Licensee shall not have removed all of its attachments, such pole shall become the property of Licensee at the sole option of Empire, and Licensee shall hold harmless Empire from every obligation, liability, or cost, and from all damages, expenses or charges incurred thereafter, arising out of, or because of, the presence of or the condition of such pole or any attachments; and shall pay to Empire a sum equal to the present value in place of such abandoned pole or poles, or such other equitable sum as may then be agreed upon between the parties, and Empire shall provide Licensee with a properly authorized bill of sale for such pole or poles.
- b) Empire has the sole authority to remove a pole or poles and not replace them by giving Licensee at least thirty (30) days written prior notice. Within this thirty (30) day period, Licensee has the option of placing its facilities underground or transferring its facilities to the nearest facilities owned by Empire in accordance with the work rules contained in Exhibit B.
- c) Licensee may at any time abandon the use of a joint use pole by giving Empire due notice in writing of such abandonment, as provided in Section 18, and removing from such pole all attachments that Licensee may have, and in case of such abandonment of the use of any such pole, Licensee shall pay to Empire the full rental for the current year for the space on said pole set aside for the use of Licensee.

9. RENTALS, CHARGES and RATES

- a) Exhibit E sets forth certain charges and fees associated with pole attachments. Empire in its sole discretion may update Exhibit E, and shall provide written notice to the Licensee at least thirty (30) days before the effective date of any such update. The latest version of Exhibit E shall supersede and replace any previous versions and shall be attached to this License Agreement.
- b) Licensee shall pay Empire an annual rental charge based on the number of poles utilized by the Licensee at the rate set forth in Exhibit E (“Annual Rental Charge”) upon invoicing. The Annual Rental Charge shall be paid in advance in accordance with the terms of this Section. Empire shall prorate the initial Annual Rental Charge to the nearest quarter, which amount shall be added to the Cost Estimate provided in Section 3, above. Following the initial Annual Rental Charge, on or before December 31 of each year, the Licensee shall report the total number of joint use poles that will be utilized by the Licensee in the upcoming year. Empire shall utilize this report to develop an invoice for the Annual Rental Charge for the upcoming year. If Licensee fails to provide a timely report to Empire, Empire shall utilize Empire’s own records to generate said invoice. Licensee may not dispute Empire’s assessment for failing to provide a timely report. On or before February 1 of each year, the Licensee shall remit payment of the Annual Rental Charge to Empire for the upcoming year.
- c) Licensee shall also pay a pole permit fee as set forth in Exhibit E upon approval of any pole attachment, which fee shall be separate and in addition to the rental charges. Licensee shall pay the pole permit fee prior to attachment or any appropriate field surveys by Empire, except that Empire shall not charge a permit fee for an application for overlashing, provided the application includes a safety certification from a licensed professional engineer.
- d) For any unauthorized attachments, Licensee shall be subject to the charges and fees set forth in Section 11.
- e) Empire reserves the right to verify the report provided by the Licensee in Section 9(a) above and adjust the number of poles based on the outcome of that review. If requested Licensee shall provide Empire all GIS data evidencing the location of any pole attachments updated to the date of such request. The cost to provide the information requested by Empire shall be borne by Licensee.
- f) In the event that Licensee requires a source of electrical energy for power supply to a cable system which constitutes a part of the licensed attachments and apparatus, such energy will be supplied by Empire in accordance with the provisions of its standard service extension policies and approved rates and tariffs.
- g) All other amounts payable under this License Agreement, such as for erection, rearrangement, relocation or abandonment, shall be due and payable within forty-five (45) days of billing by Empire.

10. DEFAULTS

- a) It shall be an event of default for the Licensee to fail to comply with any of the provisions of this License Agreement or default in any of its obligations under this License Agreement.
- b) In the event of such default, Empire shall send written notice of default to Licensee in accordance with the notice provisions set forth in Section 18. Licensee shall have thirty (30) days to cure such noncompliance or default. If the Licensee cannot cure the default within the thirty (30) days allowed, Empire may allow for an extension upon written request from the Licensee, received before the expiration of the thirty (30) days, setting forth reasons why Licensee cannot cure within thirty (30) days. Following the expiration of the cure period, Empire may, at its option, and without further notice, terminate this License Agreement, or may terminate the permit covering the pole or poles in respect to which such default or noncompliance shall have occurred. In the event of such termination, Licensee shall promptly remove its facilities from Empire's poles. Empire shall have no obligation to refund any Annual Rental Charges made by Licensee prior to termination of the License Agreement. Should Licensee fail to remove its facilities from Empire's poles within a reasonable time following termination, Empire, at Empire's sole option, may physically remove Licensee's facilities and the cost of such removal shall be borne by Licensee. Licensee's obligation to pay any fees or charges incurred prior to termination shall survive termination of this License Agreement.
- c) If the Licensee shall default in the performance of any work which it is obligated to do under this License Agreement, Empire may elect to do such work, and the Licensee shall reimburse Empire for the reasonable, actual cost.
- d) If either party defaults in any of its obligations under this License Agreement and it becomes necessary for the other party to obtain the services of an attorney to enforce such obligations, the defaulting party agrees to pay any and all reasonable attorney fees, expert witness fees, court costs and other costs of litigation associated with the enforcement of such obligations. Venue shall only be proper in the District Court of the 22nd Judicial District, State of Colorado.

11. UNAUTHORIZED ATTACHMENT

- a) If any of the Licensee's facilities for which no permit has been issued shall be found attached to Empire's poles, Empire, without prejudice to its other rights or remedies under this License Agreement, including termination, may:
 - (i) Assess Licensee an unauthorized attachment fee as set forth in Exhibit E plus the rental for such poles from the date that Licensee's attachments were installed on such poles, or if dates of installation cannot be determined to the satisfaction of both parties, the installations shall be presumed to have occurred on the day immediately after the last field check was made. In addition, Empire may require Licensee to provide an updated engineering report in accordance with Section 3 above.

- (ii) Require the Licensee to submit, within thirty (30) days after the date of written notification from Empire of the unauthorized attachment, a pole attachment license application, in a form provided by Empire substantially similar to the form attached hereto as Exhibit C. If such application is not received by Empire within the specified time period, or if Empire does not subsequently approve the application, the Licensee shall immediately remove its unauthorized attachment, or Empire may remove such Licensee facilities without liability, and the reasonable actual expense of such removal shall be borne by the Licensee.
- b) No act or failure to act by Empire with regard to said unauthorized attachment shall be deemed as ratification or the licensing of the unauthorized attachment. If any license should be subsequently issued, said license shall not operate retroactively or constitute a waiver by Empire of any of its rights or privileges under this License Agreement; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this License Agreement from its inception in regard to said unauthorized attachment.

12. RIGHTS OF OTHER PARTIES

- a) Nothing herein shall be construed to limit the right of Empire, by contract or otherwise, to confer upon others, not parties to this License Agreement, rights or privileges to use the joint use poles covered by this License Agreement.

13. TERM OF AGREEMENT

- a) This License Agreement shall continue in force and effect for a period of one (1) year from and after the date of this License Agreement, and thereafter from year to year unless terminated by either party by giving written notice of its intention so to do not less than sixty (60) days prior to the end of any period, provided, however, if the Licensee shall fail to commence construction on the poles of Empire within the period of one hundred eighty (180) days after the date of execution of this License Agreement, then this License Agreement shall be null and void, and of no further force and effect. Upon termination of this License Agreement, Licensee shall remove its attachments from the poles of Empire within one hundred eighty (180) days after the effective date of such termination. Should the Licensee fail to comply, Empire may elect to do such work and the Licensee shall pay Empire the reasonable actual cost.

14. WAIVER OF TERMS OR CONDITIONS

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

15. SUPPLEMENTAL AGREEMENTS

- a) This License Agreement may be amended or supplemented at any time upon written agreement by the parties hereto. Should an amendment or supplement become necessary, the party desiring such amendment or supplement shall give thirty (30) days written notice to the other party setting out in detail the changes or additions desired.
- b) In the event that Licensee desires to add or reduce the number of pole contacts, Section 15(a) shall not apply, but in each case a sketch, map or other mutually acceptable notice shall be submitted to Empire, setting out in detail the pole numbers and exact locations of the poles, and the quantity of poles involved in the addition or subtraction in accordance with the work rules contained in Exhibit B.

16. PAYMENT OF TAXES

- a) Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly used poles, and the taxes and the assessments which are levied on said joint use poles shall be paid by Empire thereof, but any tax, fee or charge levied on Empire's poles solely because of their use by the Licensee shall be paid by Licensee.

17. INTEREST AND PAYMENTS

- a) All amounts to be paid by Licensee to Empire under this License Agreement shall be due and payable within thirty (30) days after an itemized statement is presented to the Licensee, except as provided in Section 9 of this License Agreement. Any payment not made within forty-five (45) days from the due date shall bear interest at the rate of eighteen percent (18%) per annum until paid.

18. NOTICES

- a) Any notice, consent or other communication required to be made in writing under this License Agreement shall be sent by (a) personal delivery; (b) certified mail (postage prepaid, return receipt requested); (c) nationally recognized overnight courier (charges prepaid and with signature upon receipt); or (d) via facsimile, e-mail or other electronic means, in each case properly addressed to the persons specified below. Notices, consents, and other communications sent in accordance with this Section are deemed delivered on the date of actual delivery or delivery refusal. Any Party may from time to time change its contact information by sending a notice in accordance with this Section. Notices shall be addressed as follows:

If notice is to Empire:

Empire Electric Association, Inc.
Attention: Clint Rapier, System Engineer
P O Box K
Cortez, Colorado 81321
Email: clint.rapier@eea.coop
Phone: 970-564-4418

If notice is to Licensee:

[ENTITY INFORMATION]

19. SUPPLYING INFORMATION

- a) It is understood and agreed to between the parties that Licensee shall furnish to Empire at least sixty (60) days before the Licensee seeks to attach to any joint use poles an application for joint use attachment according to this License Agreement and the Rules and Practices for Licensee Attachments as outlined in Exhibit B.
- b) Upon the request of Empire, the parties shall make a joint field check to verify the accuracy of contact records. If, as a result of any such joint field check, it is found that the Licensee is occupying any poles of Empire without having advised Empire as provided in Section 15(b), the provisions of Section 11 shall apply. The cost of such audit shall be borne equally by both parties.

20. CONSTRUCTION OF AGREEMENT

- a) This License Agreement is deemed executed in the State of Colorado and shall be governed and construed under the laws of the State of Colorado.

21. ASSIGNMENT OF AGREEMENT

- a) Neither party shall assign or otherwise transfer this License Agreement or any of its rights and interests to any firm, corporation or individual, without the prior written consent of the other party, provided that either party may assign or transfer this License Agreement to any parent, subsidiary, or affiliate of either party to any person, firm, or corporation which shall control, be under the control of, or be under common control with the assigning party, or to any corporation into which the assigning party may be merged or consolidated or which purchases all or substantially all of the assets or stock of the assigning party, without consent.

22. COUNTERPARTS

- a) A copy of this License Agreement may be executed by each Party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed a full and complete contract between the Parties. Faxed or electronic images of signatures shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS LICENSE AGREEMENT TO BE DULY EXECUTED.

EMPIRE ELECTRIC ASSOCIATION, INC.

Date: _____

Signature: _____

Printed Name: _____

Title: _____

[ENTITY NAME]

Date: _____

Signature: _____

Printed Name: _____

Title: _____

(this page left blank)

EXHIBIT A

Attach here, as Exhibit A, a map or sketch entitled “Location of the Licensee Distribution System Service Area”, stating the corporate name of Licensee, and showing, outlined in red, the service area of the Licensee as required on page 1 of this License Agreement. This map shall be marked Exhibit A, should be no larger than 36” x 48”, shall be properly folded to the size of 8 1/2” x 11” for inclusion in this License Agreement and stapled to the License Agreement in the upper left corner. This Exhibit need not show the actual location of Empire’s poles and lines (see Section 19 of the License Agreement, supply information), but should illustrate the area in which contacts are planned.

(this page left blank)

EXHIBIT B

RULES AND PRACTICES FOR LICENSEE ATTACHMENTS

1. All Licensee facilities attached to Empire's poles shall be installed in a manner to ensure compliance with the requirements of the "National Electrical Safety Code" (NESC) in effect at the time of installation.
2. All proposed joint use poles must be permitted prior to the attachment of Licensee's facility. This includes all main line poles and lift poles used for drops. A pole permit fee which is separate from rental charges shall be paid prior to attachment or any appropriate field surveys by Empire, except that Empire shall not charge a permit fee for an application for overlash, provided the application includes a safety certification from a licensed professional engineer.
3. The location of all cables or any other joint attachment equipment on Empire's poles shall be approved in writing by Empire prior to attachment (see Exhibit C).
4. The Licensee shall provide full specifications of the attachments to be installed including but not limited to the following:
 - (a) Size and type of messenger including weight per foot and design tension.
 - (b) Size and type of communications cable including weight per foot and diameter.
 - (c) Design sag of cable(s) and messenger(s) applied to all proposed joint use spans under the storm loadings of the National Electrical Safety Code assumed for the area in which they are located.
5. A preliminary "ride through" of the proposed route of the Licensee's attachments shall be made by a representative from Empire and the Licensee.
6. A "make ready survey" shall be performed by Empire to determine if the existing poles are adequate to receive additional attachments of the Licensee.
 - (a) The "make ready survey" shall consist of inspection of the poles for all clearance and strength as specified by the current edition of the NESC and good utility practice. The intent of the survey is to determine if the existing Empire pole line is ready to receive additional attachments of the Licensee and/or determine adjustments that must be done to make Empire's existing pole line ready to receive Licensee's attachments.

- (b) Pole condition will also be checked by visual inspection or other means. The intent is to replace all defective poles at Empire's expense prior to the Licensee's construction. However, it shall be the responsibility of the Licensee or Licensee's contractor to check and verify pole condition prior to climbing or performing work on any pole. If a pole is deemed unsafe by the Licensee, the Licensee is to immediately notify Empire. Empire will inspect the pole. If Empire deems that the pole is unsafe, Empire will proceed to design the pole replacement construction deemed necessary by Empire. Empire will then proceed to schedule the construction work to perform the work described above.
7. "Make ready construction" costs shall consist of all costs of construction including but not limited to engineering, changing out poles, installation and/or removal of guys, anchors, stub poles, temporary construction and all other construction needed to make the resulting construction in accordance with the NESC. Make ready costs shall be borne solely by the Licensee requesting the attachments, except for costs attributable to remedying preexisting safety violations. Adjustments to Empire's existing pole line to "make it ready" to receive the proposed Licensee attachment shall be done based on the construction staking sheets and reports developed during the "make ready survey".
 8. It shall be the responsibility of the Licensee to attach at proper height, to achieve proper clearance, and construct its facilities in accordance with the current edition of the NESC. If the Licensee finds that it cannot make an attachment on a pole and be in compliance with the NESC, then it shall be immediately brought to the attention of Empire in writing, and the pole will be re-surveyed and appropriate measures taken to make the pole ready for the proposed attachment.
 9. Under no circumstances shall Licensee construction begin until all required "make ready construction" has been completed by Empire and a License Agreement has been executed and approved by both parties. Only the poles permitted under the above conditions may receive a Licensee attachment.
 10. Empire shall issue a permit (see Exhibit C) to allow attachment to its poles once any required "make ready construction" is complete and the License Agreement is in effect.
 11. All Licensee attachments and power supplies shall be located on the same side of each pole as any existing communications cable, or as designated by Empire.
 12. On jointly used poles where Empire has secondary conductors, all cables and power supplies shall be located on the side of the pole opposite the secondary conductors, or as designated by Empire.
 13. All Licensee's attachments shall be installed and maintained so as to provide at least forty (40) inch square climbing space directly over and corresponding to the climbing space provided for and through any communications service connections or drops. Specifically, the climbing space and working space provisions of the NESC shall be enforced.
 14. Licensee shall cause all cabinets and enclosures to be grounded by bonding to the existing pole ground with #6 solid, bare, soft drawn copper wires.

15. No power supply shall be installed on any of Empire's poles on which are already installed underground electric services, capacitor banks, sectionalizing equipment, or voltage regulators.
16. No bolt used by Licensee to attach its facilities shall extend or project more than one (1") inch beyond its nut.
17. All attachments or facilities of Licensee shall have at least two (2) inches clearance from unbonded hardware.
18. All equipment, cables, attachments, and parts shall comply with minimum NESC safety standards for clearance.
19. The Licensee may, with the prior written approval of Empire, install cross-arms, alley arms, or cable extension arms for the support of any of its facilities. However, Licensee shall not use any cross-arm or alley arm brace above the arm which it supports.
20. Licensee shall install and maintain any and all of its facilities in a neat and workmanlike manner consistent with the maintenance of the overall appearance of the jointly used pole, and all subject to approval of Empire, provided that Licensee shall be solely responsible for compliance with the specifications referred to in Section 5 of the License Agreement.
21. All down guys, head guys or messenger dead ends installed by Licensee shall be attached to jointly used poles by the use of "through" bolts. Such bolts shall have at least three (3) inches vertical clearance. Under no circumstances shall Licensee install down guys, head guys or messenger dead ends by means of encircling jointly used poles with such attachments. All guys and anchors shall be installed prior to installation of any messenger wire or cables.
22. In the event that any of Licensee's proposed facilities are to be installed upon poles already jointly used by Empire and other parties, without in any way modifying the clearance requirements set forth in this License Agreement, Licensee shall negotiate with such other parties, as to clearances between its facilities and the spans of Licensee and such other parties.
23. In the event Licensee desires to request a change in the number of pole contacts, it shall do so by submitting to Empire the standard form suitable for that purpose (see Exhibit C).
24. The Licensee shall provide, or Empire will obtain at the Licensee's cost, a written statement, signed by a Professional Engineer registered in the State of Colorado representing the Licensee and approved by Empire, that its facilities, including protection devices, as installed are fully in compliance with the applicable rules of the NESC, other codes and requirements, and good engineering design. Licensee shall, at its own expense, modify or repair any of its facilities that are found to not be in compliance. This inspection shall be made within thirty (30) days after installation has been completed. Failure to comply will result in termination of this License Agreement as outlined in Section 10 of the License Agreement.

25. Empire will require from time to time as experience has shown necessary a post-construction survey, at the Licensee's expense, of any or all pole lines with Licensee attachments to insure that all Licensee attachments continue to meet clearance and loading requirements as required by the NESC. A certification statement signed by a Professional Engineer registered in the State of Colorado, stating that all of Licensee's facilities are in compliance with all applicable rules of the NESC, other codes and requirements, and good utility practice will be required after this survey has been completed. Licensee shall, at its own expense, modify or repair any of its facilities that are found to not be in compliance. Failure to comply will result in termination of this License Agreement as outlined in Section 10 of the License Agreement.

26. In emergency situations to correct clearance problems, Empire reserves the right to do anything deemed necessary by Empire within good utility practice to maintain correct clearances of Licensee's facilities. Empire will notify Licensee of the situation within a reasonable amount of time and Licensee shall pay all such costs of the emergency work or repairs of Licensee's facilities.

EXHIBIT C
Application and Permit for Use of Poles

Date _____

In accordance with the terms of License Agreement dated _____, application is hereby made for Licensee to make attachments to _____ poles located in or near _____ in the County of Montezuma and the State of Colorado.

The poles, including proposed construction by Empire if necessary for which permission is requested, are listed by pole number on the attachment and further identified on the attached map. Detailed construction plans and location drawings, will be furnished.

By: _____

Title: _____

[ENTITY NAME] (Licensee)

Certification to be completed by Licensee

I hereby certify that upon final inspection (which will be made within 30 days after construction is complete) the attachments fully comply with the National Electrical Safety Code (NESC), latest edition, and no facilities of Licensee will be in violation of NESC as the result of said attachments.

Registration Number (State) _____ Engineer's Signature _____ Date

Permission for construction granted on _____, subject to: (1) Licensee approval of the following changes and rearrangements at an estimated cost to Licensee of \$ _____; 2) The necessary third-party rearrangements are done satisfactorily; and (3) That Licensee construct according to standards.

By: _____

Title: _____

EMPIRE ELECTRIC ASSOCIATION, INC.
(Empire)

The above estimates for make-ready changes and rearrangements approved _____, 20 _____. Licensee intends to construct plant within 120 days after make-ready work is completed.

By: _____

Title: _____

[ENTITY NAME] (Licensee)

EXHIBIT D

NOTIFICATION OF REMOVAL

In accordance with the terms of License Agreement dated _____, 20 ____, notice is given to Empire of the removal of attachments from _____ poles located in or near _____ in the County of Montezuma and the State of Colorado

The poles from which attachments have been removed are listed below:

Exhibit D1 and further identified on the attached map.

POLE NUMBER – see sketch	Type of pole (main line, service pole, transformer pole, etc.

By:

Title:

[ENTITY NAME] (Licensee)

Notice Acknowledged
_____, 20 ____

By:

Title:

EMPIRE ELECTRIC ASSOCIATION, INC. (Empire)

(this page left blank)

EXHIBIT E

LIST OF CHARGES AND FEES

Empire in its sole discretion may update the charges and fees set forth in this Exhibit E, and shall provide written notice to the Licensee at least thirty (30) days before the effective date of any such update. The latest version of this Exhibit E shall supersede and replace any previous versions.

Annual Rental Charge: \$16.06 per pole per year

Pole Permit Fee: \$25 per pole

Unauthorized Attachment Fee: \$100 per pole

Effective Date: January 1, 2018

(this page left blank)

PROCESS CHECKLIST

- 1. Licensee submits application (Exhibit “C”) & pole permit fee to EEA
- 2. EEA will perform cursory inspection of desired route
- 3. EEA approve/deny application
- 4. Licensee provides construction plans/design
 - Size/type of attachment
 - Size/type of wire, fiber, etc. on per-foot basis
 - Design of sag, clearances & spans
 - PE report attesting to NESC compliance
- 5. EEA reviews construction plan/drawings
- 6. EEA approves or denies design
 - EEA makes recommendations if design is denied
 - EEA provides Make Ready cost estimate
- 7. Licensee remits payment based on Make Ready cost estimate and prorated rental fee
- 8. EEA performs Make Ready construction
- 9. EEA reconciles actual construction costs with Make Ready estimate
- 10. Licensee installs pole attachments, including labeling attachments
- 11. Licensees engineer inspects installation
 - PE signature on Exhibit “C” certifying NESC compliant installation
- 12. EEA, at its discretion, performs post-construction inspection