

**RESOLUTION NO. 6-07**

**A RESOLUTION AUTHORIZING REVISION OF THE JOINT POLE USE AGREEMENT AND PROVIDING FOR A REVISION IN THE JOINT POLE USE FEES OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, RESCINDING ALL RESOLUTIONS, OR PORTIONS THEREOF, IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Utilities Commission, City of New Smyrna Beach, Florida, has the full and exclusive authority over the management, supply, operation and control of all the City's electric, water and wastewater (sanitary sewer), and reuse (reclaimed) water utilities and has the duty to prescribe rules, rates and regulations governing the use of such facilities, wherever such are provided by the Utilities Commission, and to make such changes from time to time in the rules, rates and regulations as it deems necessary; and

**WHEREAS**, the Joint Pole Use Agreement and joint pole use fees have been reviewed by staff and legal counsel and it has been determined that it is necessary to revise both; and

**WHEREAS**, the Utilities Commission presented the revised Joint Pole Use Agreement and revised joint pole use fees to the customers of the Utilities Commission, and to other parties of interest, at two public hearings, which were duly noticed and advertised on this matter; preliminary public hearing held on July 16, 2007 and final public hearing held on August 20, 2007.

**NOW, THEREFORE, BE IT RESOLVED BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, AS FOLLOWS:**

**SECTION 1:** That the following Joint Pole Use Agreement and joint pole use fees are hereby adopted which are attached to and made a part of this resolution.

**SECTION 2:** If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 3:** All Resolutions, or portions thereof, in conflict herewith are hereby rescinded and superseded.

**SECTION 4:** After adoption by the Utilities Commission, this Resolution shall take effect immediately upon passage.

THE ABOVE AND FOREGOING RESOLUTION was introduced at a regular meeting of the Utilities Commission, City of New Smyrna Beach, Florida, held on August 20, 2007, by Commissioner Diesen, who moved its adoption, which motion was seconded by Commissioner Hall, and upon roll call vote of the Commission was as follows:

CHAIRMAN

[Signature]

yes

VICE CHAIRMAN

[Signature]

yes

SECY.-TREAS.

[Signature]

yes

ASST. SECY.-TREAS.

[Signature]

COMMISSIONER

[Signature]

APPROVED:

ATTEST:

[Signature]

[Signature]

CHAIRMAN

SECRETARY-TREASURER

S E A L

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]

Utilities Commission Attorney

**JOINT POLE USE AGREEMENT  
BETWEEN  
UTILITIES COMMISSION  
City of New Smyrna Beach, Florida  
AND**

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**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the **UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA**, existing under the laws of the State of Florida, hereinafter referred to as "**COMMISSION**", and \_\_\_\_\_, a corporation organized and existing under the laws of the State of Florida, hereinafter referred to as "**ATTACHER**".

**W I T N E S S E T H:**

**WHEREAS**, the parties hereto desire to cooperate in accordance with the terms and provisions set forth in this document, the National Electrical Code and the National Electric Safety Code in their present forms or as subsequently revised, amended or superseded; and

**WHEREAS**, the conditions determining the necessity or desirability of joint use depend upon the service requirements to be met by both parties, including considerations of safety and economy, and each of them should be the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be properly met by the joint use of poles.

**NOW, THEREFORE**, in consideration of the foregoing premises and of the mutual benefits to be obtained from the covenants herein set forth, the parties hereto, for themselves and for their successors and assigns, do hereby agree as follows:

**ARTICLE 1. DEFINITIONS**

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

**1.1.1 Code** - The "National Electrical Safety Code" and/or the "National Electrical Code" in its present forms or as subsequently revised, amended or superseded.

**1.1.2 Attachments** - Materials or apparatus now or hereafter used by either party in the construction, operation or maintenance of its plant carried on poles.

**1.1.3 Joint Use** - Maintaining or specifically reserving space for the attachments of both parties and others on the same pole at the same time.

**1.1.4 Joint Use Pole** - A pole upon which space is provided under this Agreement for the attachments of both parties and others, whether such space is actually occupied by attachments or reserved therefore upon specific request.

**1.1.5 Special Poles** - Poles of special materials, such as steel, laminated wood or prestressed concrete. At locations where the **COMMISSION**, at its option, sets special poles, **ATTACHER** may attach its facilities after having obtained specific written permission. This will be in the form of a "REQUEST FOR ATTACHMENT TO COMMISSION SPECIAL POLES", (Exhibit "D" attached hereto and made a part hereof).

For the purpose of this Agreement, **ATTACHER** will not be required to, but may at its option, set special poles.

A "REQUEST FOR ATTACHMENT TO COMMISSION SPECIAL POLES" will be required by **ATTACHER** to attach to special poles installed subsequent to the date of this Agreement.

**1.1.6 Standard Space** - On a joint use pole for the use of each party shall not be less than that required by the Code and shall be for the exclusive use of the parties except as set forth in the Code whereby certain attachments of one party may be made in the space reserved for the other party. This standard space is specifically described as follows:

A. For the **COMMISSION**, the uppermost fourteen (14) feet.

B. For **ATTACHER**, a space of sufficient distance below 40 inches of the standard space of the **COMMISSION** or 12 inches below existing attachments to provide at all times the minimum clearance required by the specifications referred to in this Agreement Document and clearances at mid span.

C. It is the intention of the parties that any pole space in excess of the aforementioned reservations and clearance requirements shall be between the standard space allocations of the parties. This excess space, if any, is thereby available for the use of either party without creating a necessity for rearranging the attachment of the other party.

**1.1.7 Make Ready Work** - Means all work, as reasonably determined by the **COMMISSION**, required to accommodate **ATTACHER's** proposed facilities and/or to comply with all Applicable Standards as specified in Article 6. Such work includes but is not limited to, Pre-Construction Survey, rearrangement and/or transfer of **COMMISSION's** Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), pole replacement and construction, or Conduit System clearing.

**1.1.8 Owner** - The party hereto owning the pole to which attachments are made.

**1.1.9 Licensee** - The party hereto, other than the Owner, who is making the joint use of a pole hereunder.

**1.1.10 Installed Cost** - The cost incurred in setting a new pole (either as a new installation or replacement) and includes the cost of materials, direct labor, construction and equipment charges, engineering and supervision, and standard overhead charges of the Owner as commonly and reasonably incurred in the joint use of poles. The installed cost does not include the cost of attaching or transfer costs.

**1.1.11 Then Value in Place** - The current in-plant pole cost less observed deterioration.

**1.1.12 Cost of Attaching** - The cost of making attachments to a new pole and includes the charge for hardware necessary to make the attachment.

**1.1.13 Transfer Cost** - The cost of transferring attachments from the replaced pole to the replacement pole. It does not include the material cost of replacing hardware.

**1.1.14 Vertical Ground Wire** - A #6 copper or equivalent copperweld conductor conforming to the requirements of the Code, attached vertically to the pole and extending through ATTACHER's space to the base of the pole where it may be either butt wrapped on the pole or attached to a ground electrode. ATTACHER shall adhere to grounding requirements as set forth by the Code.

**1.1.15 Multi-Grounded Neutral** - A COMMISSION conductor located in the COMMISSION space which is bonded to all COMMISSION vertical ground wires.

**1.1.16 Bonding Wire** - A suitable conductor conforming to the requirements of the Code connecting equipment of ATTACHER and the COMMISSION to the vertical ground wire or to the multi-grounded neutral.

**1.1.17 Salvage Value** - Under this Agreement, this means a wood pole that has been set will have no salvage value.

**1.1.18 Permit** - Under this Agreement, this means a "REPORT OF COMMISSION ATTACHMENTS TO ATTACHER POLES" (Exhibit "B" attached hereto and made a part hereof), or similar report of ATTACHER's attachments to COMMISSION poles, or a "REQUEST FOR ATTACHMENT TO COMMISSION SPECIAL POLES." **All attachments to or removal of attachments from joint use poles by a Licensee shall be recorded by use of an appropriate Permit.**

**1.1.19 Post-Construction Inspection** - Under this Agreement, this means the inspection required by the COMMISSION to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Permit.

**1.1.20 Pre-Construction Survey** - Under this Agreement, this means all work or operations required by Applicable Standards and/or **COMMISSION** to determine the potential Make-Ready Work necessary to accommodate Licensee's Facilities on a Pole or within a span of a Conduit System. Such work includes, but is not limited to, field inspection, engineering calculations, storm hardening requirements and administrative processing.

**1.1.21 Tag** - Under this Agreement, means to place distinct markers on wires and cables, coded by color or other means specified by the **COMMISSION** and/or applicable federal, state or local regulations that will readily identify the type of Attachment (e.g., cable TV, telephone, high-speed broadband data, public safety, etc.) and its owner.

**1.1.22 Commission Facilities** - Under this Agreement, means all personal property and real property owned or controlled by the **COMMISSION**, including Poles and Conduit Systems.

**1.1.23 Occupancy** - Under this Agreement, means the use or specific reservation of Assigned Space on the same **COMMISSION** Pole or Portion of **COMMISSION** Conduit System.

**1.1.24 Overlash** - Under this Agreement, means to place an additional wire or cable Communications Facility onto an existing Attachment owned by Licensee.

## **ARTICLE 2. SCOPE OF AGREEMENT**

**2.1** This Agreement shall be in effect in those parts of Volusia County in the State of Florida now or hereafter served by both the **ATTACHER** and the **COMMISSION**, and shall cover all Poles and Conduit Systems of each of the parties now existing in such service areas, or hereafter erected or acquired therein, when said Poles and Conduit Systems are brought hereunder as joint use poles in accordance with the procedures hereinafter provided.

**2.2** Each party reserves the right to exclude from joint use those facilities which have been installed for purposes other than, or in addition to, normal distribution of electric or cable service. Among those included in this category are poles which, in the judgment of the Owner, (a) are required for the sole use of the Owner; (b) would not readily lend themselves to joint use because of interference, safety hazards or similar impediments, present or future; or (c) have been installed primarily for the use of a third party. In the event one of the parties deems it desirable to attach to any such excluded poles, the party wishing to attach will proceed in the manner provided in Article 3. Where a third party use is involved, approval must be obtained from such third party as a prerequisite to processing under Article 3.

**2.3** **ATTACHER** shall not make initial or additional attachments to **COMMISSION** transmission line poles (above 35,000 volts phase-to-phase nominal rating) without the written approval of **COMMISSION** as provided in Article 3 of this Agreement.

2.4 **ATTACHER** and **COMMISSION** agree that this agreement does not in any way limit **COMMISSION**'s right to locate, operate, maintain, or remove its Poles or Conduit System in the manner that will best enable it to fulfill its service requirement.

2.5 **COMMISSION** will take reasonable steps to accommodate existing Licensee's Attachments when expanding facilities. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require **COMMISSION** to install, retain, extend or maintain any Pole or portion of the Conduit System for use when such Pole/Conduit System is not needed for **COMMISSION**'s service requirements.

### **ARTICLE 3. PERMIT APPLICATION PROCEDURES**

The following procedure is to be followed by each Licensee seeking to make new Attachments and/or Overlash new facilities to existing Licensee's facilities and/or **COMMISSION**'s facilities. No entity may make any Attachments to **COMMISSION**'s facilities without having first entered into a binding Joint Use Agreement.

3.1 Licensee shall submit a written request (Exhibit A) to perform proposed attachment(s) to **COMMISSION**'s facilities. The request must include a proposed route description with proposed number of attachments. The request must include the proposed attachment height and Make Ready modifications that may be required to provide for the proposed attachments.

3.2 The **COMMISSION** will perform Pre-Construction Survey to review the Licensee's Make Ready recommendations and assure compliance with Code and Storm Hardening requirements. All Licensee's Make Ready recommendations will be reviewed with the Licensee and charges (if applicable) will be invoiced to the attention of the corresponding Licensee Representative submitting the Exhibit A.

3.3 Upon receipt of Licensee's payment the Make Ready Work will be scheduled. Corresponding Licensee Representative submitting the Exhibit A will be sent the executed Exhibit A as a completion notification of Make Ready Work.

3.4 After receiving notification, Licensee may start installing proposed attachment(s) to **COMMISSION**'s facilities. Licensee will be responsible to secure required permits from all corresponding Permitting Authorities for the installation of proposed attachments. Installation must be in compliance with applicable **COMMISSION** standards, Code and all Permitting Authorities requirements.

3.5 Within thirty (30) calendar days of completion of proposed installation, Licensee will submit properly filled written notification (Exhibit B) to **COMMISSION**'s Representative that executed Exhibit A.

3.6 The **COMMISSION** will perform a Post-Construction Inspection to assure compliance. Should non-compliance issues be discovered the Licensee must correct them within thirty (30) calendar days unless in the reasonable judgment of the **COMMISSION** they are deemed safety hazards. **Safety hazards must be corrected immediately.**

#### **ARTICLE 4. PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS AND BONDING ATTACHMENTS**

4.1 Whenever either party desires to reserve space on any pole of the other, for any attachments requiring space thereon not then specifically reserved by application hereunder for its use, it shall make written application (Exhibit A) to the other party specifying in such application the location of the pole in question. Within thirty (30) days after the receipt of such application, the Owner shall notify the applicant in writing, advising whether or not said pole is one of those excluded. After the Owner completes any Make Ready work which may be required in respect to attachments on said poles, the applicant shall have the right as Licensee to use said space in accordance with the terms of this Agreement.

4.2 The provisions of Section 4.1 do not apply to the poles of either party being used jointly by the other party as of the effective date of this Agreement; therefore, the Licensee shall have the right to use space on these poles for attachments in accordance with the terms of this Agreement.

4.3 Except as herein otherwise expressly provided, each party shall place, maintain, rearrange, transfer and remove its own attachments at its own expense, and shall at all times perform such work promptly and in such manner as not to interfere with the service of the other party.

4.4 Each party, regardless of pole ownership, shall be responsible for determining the proper pole strength, wind loading requirements and arranging for any necessary guying of a joint pole where a requirement therefore is created by the addition or alteration of attachments thereon by such party.

4.5 The **COMMISSION** shall give sixty (60) days written notice to **ATTACHER** advising **ATTACHER** of any initial attachments or conversions of any existing attachments that will result in joint use with any of the following conditions:

- A. The absence of a multiple grounded **COMMISSION** neutral line conductor.
- B. Voltage in excess of 15,000 volts phase to ground.

4.6 The ownership of any new line constructed in a new location under the foregoing provision shall be vested in the party for whose use it is constructed, unless otherwise agreed by the parties.

4.7 On joint use poles, **ATTACHER** may, at its own expense, bond its attachments in **ATTACHER's** space together and to the vertical ground wire where the same exists.

4.8 Under no condition will the **COMMISSION's** vertical ground wire be broken, cut, severed or otherwise damaged by **ATTACHER**.

4.9 On joint use poles, the **COMMISSION** shall, at its own expense, bond its street light brackets, conduit and other attachments in **ATTACHER's** space together and to the vertical ground wire where the same exists.

**4.10** Licensee shall not install steps of any type on new joint use poles. Licensee will endeavor to remove pole steps that are not necessary when doing work on existing joint use poles.

**4.11** Licensee's attachments on Owner's Poles including metal attachment clamps and bolts, metal cross-arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the Code and in drawings and specifications **COMMISSION** may from time to time furnish Licensee.

**4.12** Licensee shall observe the established sag of power line conductors and other cables so that minimum clearances are (a) achieved at poles located on both ends of the span; and (b) retained throughout the span. At mid span, a minimum of twelve (12) inches separation must be maintained between any other cables. At the pole support, a twelve (12) inches separation must be maintained between Licensee and any other communication connection/attachment.

## **ARTICLE 5. ERECTING, REPLACING OR RELOCATING POLES**

**5.1** Whenever, for whatever reason, the Owner shall deem it necessary to change the location of a jointly used pole, the Owner shall, before making such change in location, give timely notice thereof to the Licensee in writing (except in cases of emergency when verbal notice will be given, and subsequently confirmed in writing), specifying in such notice the time of such proposed relocation, and the Licensee shall, within thirty (30) days, transfer its attachments to the pole at the new location.

**5.2** Whenever either party hereto is about to erect new poles within the territory covered by this Agreement, either as a new pole line, an extension of an existing pole line, or as the reconstruction of an existing pole line being jointly used hereunder, such party shall immediately notify the other party hereto prior to completion of engineering plans for such erection in order that any necessary joint planning may be coordinated and so that compliance may be had with the provisions of Articles 4 and 5.

**5.3** The Make Ready Work associated with new and replacement poles, and such other changes in the existing pole line as new conditions may require, are to be outlined in Section 5.4

**5.4** The Make Ready cost of erecting joint use poles coming under this Agreement shall be borne as provided in one or more of the following subsections:

**5.4.1** For any new pole that is taller and/or stronger than the existing pole, the cost of the extra height and/or strength shall be apportioned as follows:

A. If the extra height and/or strength are due wholly to the Owner's requirements, the entire cost of the pole shall be borne by the Owner.

B. If the extra height and/or strength are due wholly to the Licensee's requirements, the Licensee shall pay the Owner a sum equal to the difference between the Make Ready cost of the required pole and the salvage value of the existing installation.

**5.4.2** For a new pole to which no existing facilities of either party are to be attached (e.g., new pole lines), the pole shall be the obligation of the Owner. If a pole taller and/or stronger than design pole is required, the obligation of the parties for such extra cost shall be in accordance with Subsection 5.4.1.

**5.4.3** For a new pole to which existing facilities of either party must be attached (e.g., adding pole in existing line) and the existing pole has Licensee's facilities the new pole will accommodate the existing facilities attached to the pole. Each party shall bear its own cost of attaching.

**5.4.4** Where an existing joint use pole is inadequate and said pole is replaced, the party requiring such replacement shall be obligated for the Make Ready cost as follows:

A. If such party is the Owner of both the existing and replacement poles, the Licensee shall bear the cost of transferring the Licensee's attachments.

B. If such party is the Licensee of both the existing and replacement poles, each party shall bear the cost of transferring the attachments. Licensee shall remove the existing pole.

C. If such party is the Owner of the existing pole and the Licensee of the replacement pole, such party shall pay the new Owner's Make Ready cost less salvage of existing pole and shall remove the existing pole.

D. If such party is the Licensee of the existing pole and the Owner of the replacement pole, such party shall bear the cost of the pole and pay the former Owner a sum equal to the transferring of the attachments.

**5.4.5** Where an existing joint use pole is replaced due to deterioration or damage, each party shall pay its own transfer costs. If the required pole is taller and/or stronger than the existing joint use pole, the provisions of Subsection 5.4.1 apply.

**5.5** Any payments made by the Licensee under the foregoing provisions of this Article shall not in any affect the ownership of said poles.

**5.6** When replacing a joint use pole carrying terminals of aerial cable, underground connections or transformer equipment, the replacement pole shall be set in such a location that existing facilities may be transferred at a minimum of cost and inconvenience.

**5.7** Whenever, in any emergency, the Licensee replaces a pole of the Owner, the Owner shall reimburse the Licensee all reasonable costs and expenses that would otherwise not have been incurred by the Licensee if the Owner had made the replacement.

5.8 ATTACHER will be permitted to attach to special poles if this is done in a manner acceptable to the COMMISSION's Transmission and Distribution Division.

**ARTICLE 6. PERMISSION OF JOINT USE**

6.1 Each party hereto hereby permits joint use by the other party of any of its poles when brought under this Agreement, as herein provided, subject to the terms and conditions herein set forth.

**ARTICLE 7. SPECIFICATIONS**

7.1 Joint use of poles covered by this Agreement shall at all times be in conformity with all applicable provisions of law and the terms and provisions of the Code in its present form or as subsequently revised, amended or superseded. Said Code, by this reference, is hereby incorporated herein and made a part of this Agreement.

**ARTICLE 8. RIGHT-OF-WAY LICENSEE'S ATTACHMENTS**

8.1 While the Owner and the Licensee will cooperate as far as may be practicable in obtaining rights-of-way for both parties on joint use poles, no guarantee is given by the Owner of permission from property owners, municipalities or others for use of poles and right-of-way easement by the Licensee, and if objection is made thereto and the Licensee is unable to satisfactorily adjust the matter within a reasonable time, the Owner may, at any time upon sixty (60) days notice in writing to the Licensee, require the Licensee to remove its attachments from the poles involved and its appurtenances from the right-of-way easement involved and the Licensee shall, within sixty (60) days after the receipt of said notice, remove its attachments from said poles and its appurtenances from the right-of-way easement at its sole expense. Should the Licensee fail to remove its attachments and appurtenances as herein provided, the Owner may remove them and the Licensee shall reimburse the Owner for the expense incurred.

8.2 Each party shall be responsible for its own circuits where tree trimming or cutting (e.g., shade trees, side clearances, etc.) is required. Where benefits are mutual and the need for the work is agreed upon beforehand, costs shall be apportioned on an equitable basis.

**ARTICLE 9. MAINTENANCE OF POLES AND ATTACHMENTS**

9.1 The Owner shall, at its own expense, maintain its joint use poles in a safe and serviceable condition, and in accordance with this Agreement, shall replace, subject to the provisions of this Agreement, such of said poles as become defective. Each party shall, at its own expense and at all times, maintain all of its attachments in accordance with the specifications contained in the Code and keep said attachments in safe condition and in thorough repair.

9.2 Both parties shall, in writing, report to each other all hazardous conditions found to exist in any joint use construction hereunder, immediately upon discovery, and the responsible party shall proceed forthwith to

alter such construction so as to remove the hazard. Any existing joint use construction hereunder which does not conform to the specifications set forth in this Agreement shall be brought into conformity with said specifications at the earliest possible date.

**9.3** The cost of removing hazards and of bringing existing joint use construction into conformity with said specifications, as provided in Section 9.2, shall be borne by the parties hereto in the manner provided in Articles 4 and 5.

#### **ARTICLE 10. ABANDONMENT OF JOINTLY USED POLES**

**10.1** If the Owner desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. This notice of abandonment will be in the form of a "NOTICE OF ABANDONMENT", (Exhibit "C" attached hereto and made a part hereof). If, at the expiration of said period, the Owner shall have no attachments on such pole but the Licensee shall not have removed all of its attachments therefrom, such pole thereupon becomes the property of the Licensee, and the Licensee (a) shall indemnify and save harmless the former Owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter and arising out of the presence or condition of such pole or any attachments thereon, whether or not such liability is due to or caused by in whole or in part by the negligence of the former Owner, and (b) shall pay said former Owner a sum equal to the then value in place of such abandoned pole, less credit on a depreciated basis for any payments which the Licensee furnishes proof he has made under provisions of this Agreement when the pole was originally set, or shall pay such other equitable sum as may be agreed upon between the parties.

**10.2** The Licensee may at any time abandon the joint use of a pole by giving due notice thereof in writing to the Owner and by removing from said pole any and all attachments the Licensee may have thereon.

#### **ARTICLE 11. ADJUSTMENT PAYMENT**

**11.1** The parties contemplate that the use or reservation of space on poles by each party, as Licensee under this Agreement, shall be based on the equitable sharing of the costs and economies of joint use.

**11.2** On or about January 1 of each year, each party, acting in cooperation with the other and subject to the provisions of this Agreement, shall ascertain and tabulate the total number of poles in use by each party as Licensee, which tabulation shall indicate the number of poles in use by each party as Licensee for which an adjustment payment by one of the parties to the other is to be determined as hereinafter provided.

**11.3** The parties hereto agree that an attachment count also includes any pole on which it is mutually agreed that space was reserved for the Licensee at the Licensee's request and on which the Licensee has not attached. The Licensee is only liable for billing under this section until the Licensee makes an initial attachment, or an interval of five (5) unattached years elapses from the date of the space reservation, whichever condition occurs first.

**11.4** The party owning the smaller number of joint use poles to which the other party is attached shall pay to the party owning the greater number of joint use poles an annual adjustment payment in the amount of \$22.96 per excess pole, or amended amount as provided in Article 11, calculated as follows:

The respective numbers of joint use poles owned by the two parties as tabulated in Section 10.2 will be used and the smaller number will be subtracted from the larger to obtain the total excess poles. This number of excess poles will be multiplied by \$22.96 to derive the total adjustment payment due for that year by the party owning the smaller number to the party owning the greater number of joint use poles.

**11.5** Upon the execution of this Agreement and every three (3) years thereafter, or as may be mutually agreed upon, the parties hereto shall make a joint field check to verify the accuracy of the joint use records hereunder. If the parties mutually agreed to postpone the first joint field check hereunder, the parties shall use their existing records as changed from time-to-time to determine the number of jointly used poles owned by each party until the first joint field check is made hereunder. The said joint inventory shall be a one hundred (100%) percent field inventory unless the parties voluntarily and mutually agree to some other method. Upon completion of such inventories, the office records will be adjusted accordingly and subsequent billing will be based on the adjusted number of attachments. Any difference in the number of attachments shall be deemed to have been made to equally over the years elapsed since the preceding inventory and the adjustment rate shall be the rate then in effect in each of those years. Unless otherwise agreed upon, retroactive billing for the prorated adjustment will be added to the normal billing for the year following completion of the field inventory.

**11.6** Rental or other charges paid to the Owner by a third party will in no way affect the rental or charges paid between the parties of this Agreement.

**11.7** Payment of all other amounts, provision for which is made in this Agreement, shall be made currently or as mutually agreed thereto.

## **ARTICLE 12. PERIODIC REVISION OF ADJUSTMENT PAYMENT RATE**

**12.1** Article 11 of this Agreement covering Rental and Procedures for Payment shall remain in effect for a minimum term of three (3) years. The adjustment payment rate shall then become subject to change at the requests of either party triennially thereafter upon not less than six (6) months prior notice.

**12.2** In the event the parties cannot agree upon rental payments within six (6) months after a request under Section 12.1 is made, this Agreement shall terminate and be of no further force and effect insofar as the making of attachments to additional facilities is concerned. All other terms and provisions of this Agreement shall remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties herein with respect to existing joint use facilities; except that upon termination under this Article 12 the party owning less joint use facilities shall pay an adjusted annual fee using the new proposed joint use rental rate.

