

# CITY OF HIGH POINT

## AGENDA ITEM

**Title: Pole Attachment Agreement-FiberTech****From:** Garey S. Edwards, Electric Utilities Director**Meeting Date:** August 17, 2015**Public Hearing:** N/A**Advertising Date /****Advertised By:** N/A**Attachments:** Attachment A: Pole Attachment Agreement

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**PURPOSE:**

This agreement/contract will allow FiberTech to attach their lines/equipment to our overhead distribution system.

**BACKGROUND:**

Under State law we are required to allow pole attachments to our overhead distribution system. FiberTech is a communication provider that works in conjunction with cell phone providers in our area. This document has been reviewed by the Electric Department and the city's legal staff.

**BUDGET IMPACT:**

FiberTech is responsible for all attachment fees and make ready cost incurred by the City.

**RECOMMENDATION / ACTION REQUESTED:**

City Council is requested to approve this contract/agreement and authorize the appropriate city official to execute all necessary documents.

**POLE ATTACHMENT AGREEMENT**

**BETWEEN**

**FIBER TECHNOLOGIES NETWORKS, L.L.C.**

**AND**

**City of High Point, North Carolina**

\_\_\_\_\_, 2015

**Pole Attachment Agreement**  
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## **POLE ATTACHMENT AGREEMENT**

THIS POLE ATTACHMENT AGREEMENT ("Agreement"), entered into on this \_\_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date") by and between the City of High Point, North Carolina (hereinafter "Licensor"), and Fiber Technologies Networks, L.L.C., a New York limited liability company (hereinafter "Licensee"), sometimes referred to collectively as the Parties or individually as "Party";

WHEREAS Licensee proposes to furnish communications services and desires to install and maintain all facilities, including, but not limited to, aerial cables, , wires, and associated hardware (hereinafter cumulatively referred to as "Facilities") on Licensor's poles in Licensor's and in the rights of way of Licensor. Licensee's small cell equipment shall be expressly prohibited from being attached to Licensor's poles under this Agreement; and

WHEREAS Licensor is willing to permit, subject to the terms and conditions set forth herein, to the extent required by law, including, but not limited to, North Carolina General Statutes § 62-350 the attachment of Licensee's Facilities to its poles, where such use will not interfere with Licensor's own primary electric service requirements or the existing attachments of others authorized to use the poles of Licensor;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties do hereby mutually covenant and agree as follows:

### **ARTICLE I.** **SCOPE OF AGREEMENT**

#### **1.1 Service Area.**

This Agreement shall be in effect in all Licensor areas and shall apply to Licensor poles now existing or hereafter constructed during the term of this Agreement.

#### **1.2 Intentionally Left Blank.**

#### **1.3 Authorization.**

Subject to the terms and conditions of this Agreement, Licensor grants to Licensee and Licensee accepts from Licensor, a non-exclusive license to occupy, place and maintain its Facilities on Licensor's poles, which non-exclusive license includes the use of Licensor's drop/service poles. No use of Licensor's poles, however extended, or payment of fees or charges required under this Agreement, shall create or vest in Licensee any ownership or property rights in such poles. Licensee rights herein shall remain those of a mere license.

#### **1.4 Assignment.**

Licensee may not assign its rights under this Agreement to any other entity without Licensor's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Licensee may assign its rights under this Agreement to an entity acquiring fifty-one percent (51%) or more of Licensee stock or assets or any

subsidiary or affiliated company in which Licensee holds a 10% or greater interest or an entity controlling or under common control with Licensee without obtaining Licensor's consent. Licensor shall notify Licensee within thirty (30) days in the event it assigns its rights under this Agreement or if it transfers ownership of any or all of its poles to another entity. Notwithstanding the foregoing, this Section 1.4 shall not prohibit Licensee from leasing fibers or capacity in its facilities.

1.5 **Facility Removal.**

Upon termination of this Agreement for any reason, and subject to the provisions of applicable North Carolina law, Licensee, at the request of Licensor, shall remove, at Licensee's expense, all Facilities from Licensor's poles. The maximum time limit within which Licensee shall remove its Facilities from Licensor's poles shall be ninety (90) days. If Licensee does not remove its Facilities from Licensor's poles as required by this Section 1.5, Licensor shall have the right to remove Licensee's Facilities at the sole risk and expense of Licensee.

1.6 **Authorizations Required.**

Licensee, at its sole cost and expense, shall secure all authorizations, franchises, licenses, permits and consents required for the construction, operation and maintenance of the Facilities. If any authorizations, franchises, licenses, permits or consents obtained by Licensee are subsequently revoked, terminated or denied for any reason, Licensee shall retain the right to pursue and exhaust all legal, administrative, and equitable remedies in all state and federal forums before Licensor may revoke Licensee's permission to attach to Licensor's poles.

1.7 **Term.**

This Agreement shall become effective upon its execution and shall continue in effect for an initial term of five (5) years (the "Initial Term"); thereafter, this Agreement shall renew automatically for one (1) successive term of five (5) years (each, a "Renewal Term"). After the original term and Renewal Term, Parties may choose to renew the contract for additional terms and may do so in writing, signed by both Parties. Licensor or Licensee may terminate this Agreement at any time during the Initial Term or any Renewal Term with six (6) months written notice to the other. In the event that this Agreement is terminated, the contract terms and conditions, including the applicable rates, shall continue as stated herein until this Agreement is renewed on terms and conditions satisfactory to both Parties. If the Parties are unable to agree on satisfactory renewal terms and conditions after six months, and unless the Parties are proceeding in accordance with North Carolina General Statutes § 62-350, Licensee shall remove its Facilities in accordance with the provisions of Section 1.5 of this Agreement.

**ARTICLE II.**

**PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS**

2.1 **Permit Application; Confidentiality.**

Before making or modifying any attachment to any pole or poles of Licensor, Licensee shall submit a permit application (see **Exhibit A**) and receive from Licensor a permit for such attachment/placement. The Parties agree Licensee shall not be required to submit a permit application in order to perform routine maintenance, including replacement of cables or overlashing; however, Licensee shall provide Licensor with five (5) days advance notice of any overlashing. In addition, Licensor agrees that a permit application shall not be required for Licensee to make an attachment to drop poles subject to the requirements stated in Section 2.8 of this Agreement. All materials submitted by Licensee in connection with permit applications for Facilities are to be handled and reviewed only by those Licensor personnel directly responsible for the coordination and administration of joint-use requests. Such materials are of a confidential, proprietary, and commercially sensitive nature and, unless otherwise required by law, shall not be disclosed by Licensor or its employees for any reason other than to process and administer Licensee Facilities' permit application request.

## 2.2 **Make-ready Survey.**

When Licensor receives a permit application, a make-ready survey may be necessary to determine the adequacy of the existing poles and anchors to accommodate Licensee's Facilities. Licensor, upon prior notice to Licensee, may perform the field inspection portion of the make-ready survey and Licensee may be present if desired.

## 2.3 **Grant or Denial of Access.**

Except as otherwise provided by law, Licensor reserves the right to deny Licensee access to any pole, on a non-discriminatory basis, where there is insufficient capacity on or in Licensor's poles or for reasons of safety, reliability or generally applicable engineering standards, provided that before Licensor denies access based on insufficient capacity, Licensor shall explore potential accommodations in good faith and take all reasonable steps to accommodate Licensee request for access. In addition, Licensor shall not arbitrarily deny or condition Licensee's permit application based upon Licensee's status as a communications service provider under North Carolina General Statutes § 62-350. Licensor shall either grant or deny access to its facilities within forty-five (45) calendar days of Licensee permit application. If access is not granted by Licensor within forty-five (45) days of Licensee permit application, Licensor must confirm the denial of access in writing by the forty-fifth (45th) day. Licensor's denial shall be specific and shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information related to the denial of access for reasons of lack of capacity, safety reliability or generally applicable engineering standards.

## 2.4 **Make-ready.**

(A) Whenever any pole to which Licensee seeks attachment can and must be modified or replaced solely to accommodate Licensee's Facilities, Licensor will provide Licensee with a detailed estimate of make-ready work it believes to be necessary to prepare the pole for Licensee's Facilities. Licensor will provide Licensee with such estimate within forty-five (45) days of receiving Licensee's permit application for attachment. After

receiving this estimate, if Licensee still desires to make the attachments, Licensee shall notify Licensor within 15 days of receiving such estimate of such continuing desire to attach or occupy, and shall pay to Licensor any required advance payment for the reasonable and actual cost of such make-ready work, which may include engineering, materials (including poles and associated hardware), cost of removal (less any salvage value), and the expense of transferring Licensor's facilities, as well as the attachments of other preexisting occupants, from the old to the new poles if required solely to accommodate Licensee's Facilities. Where the advance payment of estimated expenses made to Licensor by Licensee for both non-replacement make-ready and replacements is less than the reasonable and actual cost of work described above, Licensee shall pay Licensor the amount in excess of the amount of the advance payment. Where the advance payment of estimated expenses made to Licensor by Licensee exceeds such reasonable and actual costs, Licensor shall refund the difference to Licensee. Licensor shall commence all requested make-ready and pole replacement work within 15 days of receiving any work request confirmation and any required advance payment from Licensee. Licensee shall not be responsible for any make ready costs required to cure pre-existing violations of the NESC or other applicable requirements.

(B) Notwithstanding the foregoing, Licensor may require Licensee to perform any new or additional make-ready work. Should Licensor exercise this option, Licensee, with Licensor's prior written consent, may choose a contractor, that meets industry standard qualifications and criteria, to perform make-ready work on its behalf. In secured areas where safety or system reliability concerns are an issue, Licensor may require an escort to supervise the work of Licensee's agents. Licensor shall also retain the right to perform post-installation inspections, at Licensee's expense, to ensure Licensee's agents' work meets Licensor's standards. Licensee agrees to indemnify Licensor, its employees, officers and assigns, against any and all claims made against Licensor related to work done by Licensee's contractor under this subsection (B).

(C) Licensor shall be responsible for notifying other parties with existing attachments or occupancy and coordinating the make-ready work necessary in order to accommodate Licensee's attachments.

## **2.5 Multiple Applications.**

When applications to occupy the same pole have been received from two or more prospective occupants, including Licensee, before any one of them is given a permit, and, if to accommodate their respective facilities it would be necessary to rearrange existing facilities or replace the pole, each such prospective occupant shall bear the applicable costs of rearrangement or replacement incurred in conjunction with its own application(s).

## **2.6 Modifications and Cost Allocation.**

If a pole to which Licensee has previously made an attachment is to be modified or replaced due to the requirements of another joint-user, including Licensor, except when such modification is for the purpose of performing routine maintenance or to respond to



an emergency situation, Licensor shall provide Licensee with forty-five (45) days notice of the proposed modification or replacement so that Licensee can determine whether it wishes, subject to the provisions of Section 2.1, above, to add to or modify its existing attachment or occupancy in connection with the proposed modification or replacement. For purposes of this Section 2.6 only, and in the event Licensee decides to add to or modify its existing attachment or occupancy in connection with the proposed modification or replacement, Licensee give notice to Licensor of its intent within thirty (30) days of receipt of notice from Licensor.

In the event that a pole is modified as a result of the requirements of Licensor, Licensee or any other joint-user, the costs of modification (including, but not limited to, the cost of rearranging or replacing the attachments of other joint-users who do not take part in or directly benefit from the modification) shall be borne proportionately by all such entities that require such modification to obtain access to such pole. For the purpose of allocating modification costs under this section, the proportion of the modification costs attributable to each modifying or newly attaching entity shall be determined by the ratio of the new useable space occupied by each modifying or newly attaching entity in relation to the total new usable space occupied by all modifying or newly attaching entities. For example:

(A) Should Licensor replace any poles because of the increased requirements of more than one pole occupant, including those of Licensee, Licensee shall be responsible only for its transfer costs from the old pole to the new pole and the cost of any non-betterment portion of the new pole.

(B) Should Licensor replace any poles solely because of Licensee increased requirements, in addition to being obligated to transfer its attachments to the new pole at its own expense, Licensee shall pay those costs and expenses associated with the transfer of other pole occupants' facilities from the old pole to the new pole.

(C) Should the increased requirements of Licensor and/or the requirements or increased requirements of other pole occupants call for the replacement of any poles without any increase in the requirements of Licensee, Licensee shall not be required to bear any costs associated with such pole replacements, and Licensee shall be reimbursed for any costs associated with the transfer of its Facilities from the old pole to the new pole. Whenever Licensor intends to modify or replace a pole, Licensor shall provide 45 days advance written notification of such action to Licensee so that Licensee may have a reasonable opportunity to add to or to modify its attachment.

## 2.7 **Pole Maintenance.**

(A) Should Licensor replace any poles because of (i) deterioration or (ii) the requirements of public authorities or property owners, and should Licensee desire to occupy the new pole, Licensee shall be obligated to transfer its attachments to the new pole at its own expense.

(B) Licensee, at its own expense and risk and by the terms of this Agreement, shall place, transfer, and rearrange its own attachments on Licensor's poles, place guys to sustain any unbalanced pole loads caused by its own attachments, and perform any tree trimming or cutting incidental thereto. Licensee at all times shall perform such work promptly and in such manner as not to interfere with the service of Licensor or by other pole occupant.

(C) In the event Licensor determines, in Licensor's reasonable judgment, that a particular condition or situation is an emergency, Licensor may arrange to relocate, replace, remove, renew or disconnect Licensee's Facilities and transfer them to substituted poles or perform any other work in connection with Licensee's Facilities that may be required during the emergency. Licensor shall provide Licensee with the immediate notice of the situation so that Licensor and Licensee, if possible, may coordinate their responses to the emergency. If notice is impossible during the emergency situation, Licensor shall notify of any emergency and any relocation, replacement or removal affecting Licensee's attachments, as soon as reasonably practicable.

(D) Licensee shall have access to Licensor's maintenance duct to perform maintenance work and emergency repairs. Licensee shall notify Licensor of any maintenance work or emergency repairs prior to accessing Licensor's maintenance ducts.

(E) Licensee shall be responsible for trimming and cutting all trees, shrubbery, and other vegetation in the vicinity of its Facilities as necessary for the operation of its own Facilities and at its own expense. This shall be done in a manner not to interfere with or damage any existing attachments. For non-emergency maintenance, property owner(s) shall be notified in advance of any work performed by Licensee.

## **2.8 Drop Poles Runs.**

Notwithstanding any other provision set forth in this Agreement, after initial construction of its Facilities, Licensee shall have the right to attach non-current carrying drops to drop poles ("Drops") without prior application; provided, however, that Licensee shall forward a notice of attachment of Drops quarterly for billing adjustments.

## **2.9 Continuous Licensor Operation.**

Licensee expressly agrees that Licensee shall not intentionally interfere with the normal operation of Licensor's equipment during Licensee's performance of any construction or maintenance, and that Licensee shall provide and use all protective equipment necessary for the protection of Licensee employees and equipment and to guard against interferences with normal operation of Licensor's equipment.

## **2.10 Compliance with and Supplements to Safety Codes.**

Licensee shall attach its Facilities to Licensor's poles in a safe condition and maintain them in thorough repair, and in compliance with the requirements and specifications set forth in applicable Federal and State law, the National Electrical Safety Code in effect as of the time of attachment ("NESC") and the applicable rules and regulations of the

Occupational Safety and Health Act. In the event the NESC is updated, all Facilities installed by Licensee after the effective date of the updated NESC shall comply with the applicable requirements of the updated NESC. Licensor shall apply to Licensee only such specifications, standards and practices as are uniformly applied to all parties attached to the poles.

2.11 **Non-Interference with Licensor Facilities.**

Licensee at all times shall ensure that its agents, servants, employees, and contractors neither take nor attempt to take any action whatsoever to interfere with Licensor's wires, attachments, and other facilities attached to or supported by poles covered by this Agreement. Each Party shall exercise reasonable precautions to avoid damage to the facilities of the other.

**ARTICLE III.**  
**INSPECTIONS**

3.1 **Post-Installation and Safety Inspections.**

Licensor reserves the right to inspect each new Licensee installation on Licensor's poles and in the vicinity of Licensor's lines. Licensor also reserves the right to make reasonable periodic inspections as conditions may warrant, to determine if Licensee's construction and installation complies with the approved shop drawings, construction drawings, and/or applicable safety codes or laws.

3.2 **Facilities Inventory.**

(A) Licensee and Licensor, acting in a cooperative manner for purposes of rendering bills, shall tabulate the total number of Licensee attachments on Licensor's poles. This tabulation shall be based on a perpetual inventory of permits.

(B) Within three (3) months after the Effective Date, Licensor shall conduct an initial inventory of Licensee's attachments to verify the number of poles on which Licensee has attached its equipment and may conduct subsequent inspections as set forth herein. All such attachments found in the initial inventory shall be deemed authorized. Licensor shall provide thirty (30) days' notice of such initial inventory so that Licensee may be present and observe such inventory. After completion of the initial inventory of poles, subsequent inventories may be taken by Licensor as frequently as annually. To the extent subsequent inventories identify Facilities that have been attached without permits since the most recently completed inventory, Licensee shall pay Licensor the unauthorized attachment fee set forth below in Section 3.3.

(C) Inventories may be conducted, in Licensor's discretion, either by Licensor or by an independent contractor selected by Licensor. Licensee shall be permitted to observe the conduct of the physical inventory. Subsequent inventories shall be preceded by ninety (90) days advance written notice to Licensee. Prior to such inventory, the projected costs of the inventory shall be submitted to Licensee in advance for approval. Licensee shall be

responsible for a pro-rata share of the actual inventory costs on poles to which Licensee has attachments.

(D) As an alternative to performance of a physical inventory, the Parties may, if mutually agreed, determine the number of attachments from existing maps and/or attachment records provided that such maps or records exist and provided that each Party agrees that results with reasonable accuracy can be achieved. If the Parties agree to this method, any maps and/or records belonging to one of the Parties and utilized to count attachments shall be made accessible to the other Party and the number of attachments shall be determined through a mutual and cooperative effort of both Parties. The results of attachment counts performed in this manner shall be treated, for the purpose of determining rentals and other charges due for unauthorized attachments, as if results were achieved by an actual jointly conducted physical inventory.

### 3.3 **Inventory Disparity.**

(A) Following the initial inventory described above in Section 3.2, in the event the number of poles to which Licensee has attached its Facilities differs from the number shown in Licensors records, Licensors may collect from Licensee, for each pole with an unauthorized attachment, an unauthorized attachment penalty not in excess of an amount approximately equal to the otherwise applicable annual pole for the number of years since the most recent inventory or five years, whichever is less. This penalty shall be imposed in lieu of any amounts recoverable for unpaid annual fees. Within forty-five (45) days from notice by Licensors to Licensee of an unauthorized attachment, Licensee shall either apply for a permit or remove its unauthorized attachment. If Licensee fails to either apply for a permit or remove its unauthorized attachment within such forty-five (45) days, Licensors shall have the right to remove the unauthorized attachment at the sole risk and expense of Licensee.

## **ARTICLE IV.**

### **ABANDONMENT OF JOINT POLES AND REMOVAL OF ATTACHMENTS**

#### 4.1 **Notice.**

Licensee, at any time, may remove its Facilities from any pole(s) of Licensors, and shall give Licensors written notice within thirty (30) days of such removal.

#### 4.2 **Pole Abandonment.**

(A) If Licensors desires at any time to abandon any pole(s), it shall give Licensee notice in writing to that effect at least 90 days prior to the date on which it intends to abandon such pole. If, at the expiration of such 90 day period, Licensors has no attachments on such pole(s) but Licensee has not removed all of its attachments from such pole(s), Licensors may transfer ownership of the pole(s) to Licensee if accepted by Licensee. In the event Licensee agrees to accept such poles, Licensee shall hold Licensors harmless from all obligation, liability, damages, costs, expenses or charges incurred

thereafter, and not arising out of any prior event or occurrence theretofore as a result of any attachments to such pole(s).

(B) If Licensee does not accept the transfer of ownership of pole(s) or abandoned by Licensor, Licensor shall have the right to remove Licensee's attachments at the sole risk and expense of Licensee.

## **ARTICLE V.**

### **RENTAL AND PROCEDURE FOR PAYMENTS**

#### **5.1 Rental Rate.**

The annual rental amount to be paid by Licensee shall be \$ 7.00 per year for each pole to which Licensee's Facilities are attached for the first year of this Agreement. Each year after the first year of this Agreement, including all extension periods, the rate will increase annually based upon the CPI-W rate percentage increase ("Rate Increase"). Licensor agrees to charge and Licensee agrees to pay the Rate Increase for each year in which the Parties operate under this Agreement.

#### **5.2 Payment Due Date.**

Rental payments shall be invoiced annually. Licensor will submit to Licensee an invoice for the annual rental period no later than the sixtieth (60<sup>th</sup>) day after the Effective Date (and no later than the sixtieth (60<sup>th</sup>) day after the anniversary of the Effective Date for each renewal term). The invoice will reflect the number of attachments as of the Effective Date. Rental bills shall be considered delinquent if not paid in full within 30 days upon receipt. If Licensor does not receive any undisputed fee or other undisputed billable amount within (30) days after it becomes due, Licensee shall pay interest to Licensor at a rate set for that period by the Internal Revenue Service for individual underpayments pursuant to Section 6621 of the Internal Revenue Code.

#### **5.3 Payment of Other Amounts.**

Any other payments required to be made by either Party pursuant to the terms of this Agreement shall be made in accordance with the provisions of this Article V.

## **ARTICLE VI.**

### **LIABILITY AND INSURANCE**

#### **6.1 Indemnity and Allocation of Liability.**

The Parties shall exercise reasonable care to avoid damage to the facilities of each other, to the facilities of other joint-users on Licensor's poles or to other persons or their property. When any liability is incurred by either or both of the Parties hereto for damages for injuries to the employees or for injury to the property of either Party, or for injuries to other persons or their property, arising out of the joint use of facilities under this Agreement, or due to the proximity of the facilities of the Parties covered by this

Agreement, the liability for such damages, as between the Parties hereto, shall be as follows:

(A) Except as otherwise provided in this Article VI, each Party hereby assumes all responsibility and shall be liable for any and all loss for damage to the facilities of the other and to the facilities of other joint-users on Licensor's poles caused solely by its gross negligence or willful misconduct, or that of its employees, agents, servants or independent contractors;

(B) Each Party hereby assumes all liability and shall be liable for all damages caused by such Party for injuries to third persons or third person's property caused solely by its gross negligence or willful misconduct, or that of its employees, agents, servants or independent contractors;

(C) In the event such injuries are proximately caused by the concurrent gross negligence or willful misconduct of both Parties hereto, each Party shall be liable for the damages in the same proportion that the damages caused by the gross negligence or willful misconduct of the respective Party bears to the total damages;

(D) Where, on account of injuries of the character described in the preceding paragraphs of this Article, either Party hereto shall be required to make any payment to its injured employees or to the relatives or representatives in conformity with: (1) the provisions of any Workers' Compensation Act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, or (2) any plan for employees' disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them, such payments shall be construed to be damages within the terms of the preceding sections of this Article.

(E) Intentionally Omitted.

(F) Intentionally Omitted.

(G) To the extent allowed by the laws of North Carolina, each Party shall indemnify (the "Indemnifying Party") and save harmless the other party (the "Indemnified Party") from and against all liability, including, but not limited to, all damages, costs, attorneys' fees, disbursements, and other proper charges and expenditures that the Indemnified Party may incur, solely as a result of the gross negligence or willful misconduct of the Indemnifying Party, its employees, agents, servants or independent contractors (other than the Indemnified Party), while in the course of their employment or in the performance of their contract which causes damages to third parties or to the property of third parties which are proximately caused by such acts, omissions or breaches. The agreement to indemnify and save harmless is conditioned on the following:

- (i) that the Indemnified Party shall give prompt notice in writing to the Indemnifying Party of such a claim; and

- (ii) that the Indemnifying Party shall have the sole control of the defense of any action on such a claim, and all negotiations for the settlement or compromise of the same; provided, however, that the Indemnifying Party shall not settle or compromise an action or claim on behalf of the Indemnified Party without the prior written consent of the Indemnified Party;
- (iii) should any situation become, or in Indemnifying Party's opinion be likely to become, the subject of any such claim or action, the Indemnified Party shall permit Indemnifying Party, at the option and expense of the Indemnifying Party, to take such reasonable action as may be appropriate under the circumstances to avoid such claim, or to effectuate the settlement thereof; and
- (iv) the Indemnifying Party shall have no liability to the Indemnified Party hereunder for any damages caused solely by the Indemnified Party, its agents, servants, employees, or independent contractors (other than the Indemnifying Party).

#### 6.2 **Consequential Damages.**

Notwithstanding the foregoing, neither Party shall be liable to the other for any indirect, special or consequential damages, including, but not limited to, loss of profits or revenues, interruption of customer service or interference with business operations.

#### 6.3 **Settlement.**

In the event the Indemnifying Party compromises or settles any such claim with a third party, the Indemnifying Party shall obtain a release of all claims arising out of that particular incident against the Indemnified Party, in addition to any release in favor of the Indemnifying Party.

#### 6.4 **Insurance Requirements.**

Licensee shall carry and keep in force, while this Agreement is in effect, insurance contracts, policies and protection with a reliance company or companies satisfactory to Licensors and licensed to do business in North Carolina in amounts and for coverage deemed necessary for its protection by Licensee, but in no event for amounts or coverage less than the following minimum requirements:

(A) Commercial General Liability Insurance (including, but not limited to premises, operations, explosion, collapse and underground hazard, broad form property damage, products/completed operations, contractual liability, independent contractors, personal injury) with limits of at least \$2,000,000 combined single limit bodily injury and property damage for each occurrence.

(B) Licensee shall also carry and keep in force, while this Agreement is in effect, Workers' Compensation insurance in compliance with the laws of North Carolina and employer's liability insurance with minimum limits of \$1,000,000 per occurrence.

(C) Licensee shall furnish Licensor with certificates of insurance showing that such insurance is in force and will not be cancelled or modified without thirty (30) days' prior written notice to Licensor. Neither acceptance nor knowledge (by and of Licensor) of the procurement of Licensee of insurance protection of lesser scope than that required to be procured by it under this Agreement shall in any manner or for any purpose constitute or be deemed a waiver by Licensor of the requirements imposed respecting insurance protection, nor shall any such acceptance or knowledge of insurance protection of lesser scope in any manner or for any purpose lessen or modify or constitute a limiting interpretation of the scope of the matters covered by and obligations of Licensee under this Agreement.

## **6.5 Waiver of Recovery**

Each party hereby waives any and every right or cause of action for any and all loss of, or damage to, any of its property (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom the other party may be responsible), which loss or damage is covered by valid and collectible fire, extended coverage, "All Risk" or similar policies, to the extent that such loss or damage is recovered under any of the insurance policies. Written notice of the terms of this mutual waiver shall be given to each insurance carrier and the insurance policies shall be properly endorsed, if necessary, to prevent the invalidation of any insurance coverage by reason of this waiver.

## **ARTICLE VII.** **TERMINATION AND DEFAULTS**

### **7.1 Default.**

If Licensee shall default in any material obligation under this Agreement, Licensor may, in the event Licensee fails to cure such default in accordance with Section 7.3 below, terminate Licensee's use of the particular poles covered by this Agreement which are the subject of the default or terminate this Agreement in its entirety.

### **7.2 Termination Effective Date.**

Any termination shall be effective by written notice from one Party to the other, and termination shall be effective upon 90 days notice.

### **7.3 Opportunity to Cure.**

Prior to exercising any remedy or terminating this Agreement as a result of a default by Licensee, Licensor shall provide notice to Licensee and Licensee will have an opportunity to cure within thirty (30) days, or within such time frame as is reasonable to affect a cure which cannot be completed within thirty (30) days, so long as Licensee exercises diligence in completing the cure. If Licensee cures the default during this time



or commences such cure which may not be completed within sixty days, a default will no longer exist and Licensor may not exercise any remedy or terminate this Agreement.

## **ARTICLE VIII.**

### **MISCELLANEOUS PROVISIONS**

#### **8.1 Conduct of the Parties.**

The parties agree to conduct themselves reasonably and in good faith in implementing the terms of this Agreement.

#### **8.2 Survival.**

The obligations of the parties under this Agreement, to the extent that they arose while the Agreement was in effect and remained unfulfilled at the time of termination, shall survive both the termination of this Agreement and/or the termination of any permit or license granted hereunder. Any such termination shall not release either party from any liabilities, claims, or obligations arising hereunder including, but not limited to, indemnities which may have accrued or are accruing prior to or at the time of termination.

#### **8.3 Waiver.**

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

#### **8.4 Entire Agreement.**

This Agreement, and the Exhibits attached hereto, embodies the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements between the Parties hereto for attachment of Licensee's Facilities to Licensor's poles. To the extent that there are any prior pole attachment agreements in effect between the Parties as of the Effective Date, any such agreements shall be deemed terminated as of the Effective Date. This Agreement may be amended only upon the written agreement of both Parties.

#### **8.5 Notice.**

Any notice hereunder may be given only in writing, by Certified, Registered or Return Receipt Requested United States first class mail, postage prepaid, or by a nationally recognized overnight carrier service.

If given to Licensor, addressed to:

City of High Point \_\_\_\_\_  
P.O. Box 230  
High Point, NC 27261

Attention: \_\_\_\_\_

If given to Licensee, addressed to:

Fiber Technologies Networks, L.L.C.  
300 Meridian Centre  
Rochester, NY 14618  
Attention: Legal Department

with a copy to:

Any notice so given shall conclusively be deemed to have been served upon receipt.

8.6 **Compliance with Laws and Regulations.**

Each Party shall comply with all federal and state statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement. In the event of a change in federal or state law that would apply to any of the provisions of this Agreement, such change shall be effective immediately.

8.7 **Applicable Law.**

This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the United States and the State of North Carolina, without regard to conflict of laws principles.

8.8 **Severability.**

Except as otherwise provided herein, the invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the other provisions, and this Agreement shall continue in all respects as if such invalid or unenforceable provision had not been contained herein.

8.9 **Force Majeure**

Neither Licensor nor Licensee be liable for any delay or failure in performance of any part of this Agreement if due to a cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, embargoes, work stoppages, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation carriers.

9 **Exhibits**

This Agreement shall include all Schedules and Exhibits referenced in this Agreement and attached hereto as if the Schedules and Exhibits were part of the Agreement.

Exhibit A- Pole Attachment Application  
Schedule B- Pole Attachment Specifications

IN WITNESS WHEREOF, the parties hereto have their respective officers who are duly authorized to execute this Agreement below.

**LICENSOR:**

\_\_\_\_\_, NC

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LICENSEE:**

**Fiber Technologies Networks, L.L.C.**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**APPLICATION AND PERMIT**

\_\_\_\_\_, 201\_

\_\_\_\_\_, North Carolina

In accordance with the terms of the Pole Attachment Agreement, dated\_\_\_\_\_, 201\_, Application is hereby made for a permit to attach facilities to the poles owned and maintained by the \_\_\_\_\_, as more particularly shown on the maps, drawings and documents attached.

Description of Poles and Locations:

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Licensee)

Permit granted, \_\_\_\_\_, 201\_, subject to Licensee's approval of the attached changes and rearrangements at an estimated cost to Licensee of \$\_\_\_\_\_. Payable in advance.

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
(Licensor)

The above changes, rearrangements, charges, and rental approved and advance payment therefore enclosed.

Licensee:

By: \_\_\_\_\_

Permit No.: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT B**

### **POLE ATTACHMENT SPECIFICATIONS**

1. Licensee shall install, maintain, transfer and remove its Attachments at its own expense. All telecommunications facilities attached to Licensor's poles shall be installed in a manner to ensure compliance with the requirements of the *National Electrical Safety Code* (NESC) (ANSI C2) in effect at the time of installation, except as otherwise applied by the NESC. Maintenance and operations of the attached facilities must comply with the requirements of the NESC edition in effect at the time of installation except as otherwise applied by the NESC.
2. Any unbalanced loading of Licensor's Poles caused by the placement of Licensee's facilities shall be properly guyed and anchored by Licensee with a guy and anchor provided by Licensee, at no expense to Licensor. Licensee shall not attach any guy wire to Licensor's anchor, anchor rod, guy wire, or guy wire attachment on the pole.
3. A preliminary "ride through" of the proposed route of Licensee's facilities shall be made by representatives of Licensor and Licensee upon request by Licensor.
4. Licensee shall check and verify the condition of any Pole prior to climbing or performing work on it.
5. On Poles where Licensor has secondary/neutral conductors, all Attachments shall be located on the same side of each Pole as any existing telephone or communications cable, or as otherwise designated in advance in writing by Licensor.
6. On Poles where Licensor has secondary/neutral conductors, all Attachments shall be located on the same side of the Pole as the secondary conductors, or as otherwise designated by Licensor.
7. Where permitted, each such power supply or equipment enclosure shall be considered to be one or more Attachments.
8. Licensee shall cause all cabinets, enclosures, and messengers to be grounded by bonding to the existing pole ground with #6 solid, bare, soft drawn copper conductor where available or by installing a supplemental ground and ground rod.
9. Licensee shall not install a power supply or any other equipment enclosure on any of Licensor's Poles on which underground risers, capacitor banks, sectionalizing equipment or voltage regulators are already installed or on any Poles which are not accessible by general purpose aerial lift equipment using an all weather access road.
10. No electrical service connection to a Licensee power supply shall be made or installed by Licensee until after the local authority having jurisdiction has completed an inspection of and approved the installation of the required meter base and service equipment.
11. No bolt used by Licensee to attach its facilities shall extend or project more than one (1) inch beyond its nut.
12. All of Licensee's Attachments shall comply with NESC clearance requirements and all mid-span clearances between Licensee's facilities and Licensor's lowest conductors shall comply with NESC clearance requirements.

13. Licensee shall maintain a minimum of twelve (12) inches clearance between all of its Attachments and any attachment made by other attaching parties.
14. Licensee may not install standoff brackets, cross arms, alley arms, or cable extension arms for the support of any of its facilities without prior written approval of Licensor. In no event shall Licensee use any cross arm or alley arm brace above the arm that it supports.
15. 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, subject to the approval of Licensor in its sole discretion.
16. The type and placement of any Licensee anchor installed to accommodate Licensee's guy wire shall be approved by Licensor in writing prior to installation. Any such anchor shall be placed so that Licensee's guy wire does not interfere with any guy wire of Licensor or a third party.
17. Licensee shall provide to Licensor a statement summarizing the standards used by Licensee for its standard pole attachment installations.
18. Prior to the installation of Attachments by Licensee to a Pole on which Licensor does not have a secondary/neutral conductor, Licensor shall have identified to Licensee the point on such Pole at which Licensor may or intends to attach a secondary/neutral conductor in the future. Licensee shall install its Attachment with the applicable clearance specified in Table 235-5 of the NESC necessary to accommodate the identified future location of such secondary/neutral conductor. To the extent that make-ready work is necessary to accommodate Licensee's attachment because of Licensor's reservation of space to add a secondary/neutral conductor, Licensor shall bear the cost of such make-ready work.