GAATN POLICIES AND PROCEDURES
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GAATN
ACCOMMODATION POLICY

1. Accommodation work is defined as network rearrangements or reroutes that are developer-driven, non-GAATN initiated projects. The purpose is usually to clear an area for development or aesthetic purposes. The developer may be a GAATN entity or a third party. All changes made to the network must incorporate current GAATN standards.

2. Requests for accommodation work will be evaluated to determine net impact of the request on the established network. Once the scope of the work is defined, a cost estimate is obtained by GAATN Management. GAATN Management will return a cost estimate and an accommodation letter outlining compliance stipulations to the requestor.

3. Requestor bears 100% of the cost for accommodation work, unless otherwise approved by the GAATN Board of Directors. No work may be scheduled or performed until an agreement for payment is executed by the GAATN Network Manager.

4. Network Manager will present to GAATN for review and approval all accommodation work as well as any other project, regardless of size, that will require splicing into active ring fiber.

GAATN CABLE REMNANT POLICY

WHEREAS, after the completion of GAATN maintenance, repair, upgrade, construction or other projects, there may be fiber optic cable remnants ("Cable Remnants") remaining of various lengths;

WHEREAS, it is GAATN policy to minimize where feasible the number of cable splices in the GAATN cable system, to maintain the integrity and quality of the system and the signals it transmits, and to minimize signal and performance degradation introduced by splices in the fiber optic cable;

WHEREAS, it is therefore GAATN policy to avoid introducing new or additional splices in cable segments in place in the event of repair or replacement of a segment;

WHEREAS, it is therefore GAATN policy in replacing damaged or installing new or upgraded cable segments to replace entire segment lengths of damaged or outmoded cable, rather than to merely splice in a new sub-segment of shorter length to replace the damaged or degraded portion of a cable segment;

WHEREAS, on August 8, 2008, the GAATN Board formally found that Cable Remnants having lengths of fifteen hundred (1500) feet or less ("Short Cable Remnants") are of insufficient length to be of prospective use or value to GAATN;

WHEREAS, there are costs in time, manpower and monies to GAATN associated with maintaining, storing and keeping such Short Cable Remnants in the GAATN inventory or that of GAATN's Maintenance Contractor;

NOW THEREFORE, the GAATN Board hereby finds that: (i) Short Cable Remnants are surplus property to GAATN; (ii) the cost and effort associated with continuing to possess, store and maintain such Short Cable Remnants in GAATN's inventory is inefficient; and (iii) Short Cable Remnants should be disposed of instead of retained by GAATN; and to that end the Board also finds that (iv) the following Cable Remnant Surplus and Salvage Policy is in the best interest of efficient operation of GAATN, and hereby establishes the following policy and procedures concerning disposal of Short Cable Remnants:

1. After each six-month period, any GAATN fiber optic cable of lengths of fifteen hundred (1500) feet or less, whether on reels or otherwise, shall be identified and declared to be Non-Asset Segments suitable for disposal.

2. The Network Manager shall identify and list non-asset segments, including their inventory designations, lengths, age, and other applicable information. This list shall be posted on the GAATN secure (Participant-access only) website.

3. At the Network Manager's discretion and to the benefit of the GAATN Agency, the Network Manager shall determine the best process to utilize for disposal of non-asset cable segments. Both the list and the planned disposal process will be shared with the GAATN Technical Committee prior to actual cable destruction.

4. Destruction will be the usual and routine disposal method for Non-Asset cable Segments, although each situation will be reviewed as it occurs. Destruction is defined as chopping the non-useful cable segments into very short sections, then bundling them together for shipment to an appropriate cable destruction service for recycling or disposal.

5. Non-Asset Cable Segments may not be donated or sold to persons or entities that are not GAATN Participants.

Enacted Dec.1, 2008

GAATN CANCELLATION/RESCHEDULE POLICY FOR SCHEDULED WORK ON THE NETWORK

1. This policy applies to any work to be performed by a GAATN maintenance provider that has used the proper notification procedure for scheduled work. Scheduled Work here is as defined in GAATN Board definitions for work occurring under normal circumstances.

2. Cancellation as defined here means the immediate shutdown/postponement of scheduled GAATN Ring work. Work cancelled for a specific date will be rescheduled for a suitable future date.

3. Any Participant may request cancellation of Scheduled Work using the following procedure:

   To stop Scheduled Work, contact must be made with the Network Manager.

   If the Network Manager is unavailable, contact should progress in the following order:

   (1) Back-up Network Manager

   (2) Network Coordinator

   (3) GAATN Vice-Chair

   (4) GAATN Chair.

   The notified individual will then contact the Maintenance Contractor to more fully assess the situation and make an informed decision whether or not to cancel.

   Once a decision has been made, the Network Manager, or substitute per above, will notify the cancellation requestor of the decision. If work is being cancelled, the Network Manager or substitute will issue an e-mail cancellation advisement to all GAATN entities and the Maintenance Contractor.

If the request for cancellation occurs later than 7am at least two business days prior to the Scheduled Work Start Time, the requesting Participant will incur a cancellation fee of $500, to be invoiced by GAATN. The Scheduled Work Start Time is defined to be 7 a.m. local time on the day the Scheduled Work is to commence.

Valid Cancellations Within the Last Two Business Day Interval:
Only cancellations initiated by the GAATN Network Manager, typically resulting from cable teardowns or other unforeseen damage situations, will not be subject to a cancellation fee.

Dispute Resolution:
If a Participant feels it should not incur a cancellation fee, it may present its case to the Technical Subcommittee, which may recommend to the Board by unanimous vote whether the cancellation fee should be waived.

Enacted: 01/12/2004
Revision 1: 01/30/2006
Revision 2: 07/09/2007
Revision 3: 01/09/2012

GAATN
EMERGENCY NOTIFICATION PROCEDURE

1. In the event of an emergency, per the Maintenance Contract, the Maintenance Provider will make phone contact within 30 minutes of receiving an emergency page and, if necessary, be on site within 2 hours of receiving the page. Normally, the Network Manager will be the person making first contact, although any of the entities may directly notify the Maintenance Provider of network problems.

2. In the event of a visible teardown, the entity observing the problem should notify the Maintenance Provider (see ATTACHMENT A). The Maintenance Provider will dispatch personnel immediately to secure GAATN plant and minimize potential for additional damage. Under most circumstances, Maintenance Provider personnel will be on site within 30 minutes. The 2 hour maximum response time in Item 1 will govern situations occurring outside normal working hours. As soon as practical, the Maintenance Provider will issue an e-mail to the Board and Technical Subcommittee to report status/disposition on each incident.

3. In the event of an incident detected via individual entity network monitoring systems, the detecting entity should attempt to determine if the problem is in its equipment or in the fiber. If it appears that the problem is with the physical fiber, the entity should contact the Maintenance Provider (see ATTACHMENT A). The Maintenance Provider will evaluate the situation and dispatch personnel as needed to investigate. Under most circumstances, Maintenance Provider personnel will be on site within 30 minutes. The 2 hour maximum response time in Item 1 will govern situations occurring outside normal working hours. Upon discovery of the problem, Maintenance Provider personnel will secure the GAATN plant to minimize potential for additional damage and begin restoration procedures. As soon as practical, the Maintenance Provider will issue an e-mail to the Board and Technical Subcommittee to report status/disposition on each incident.

ATTACHMENT A
GAATN MAINTENANCE PROVIDER
EMERGENCY NOTIFICATION PROCEDURE

Maintenance Provider of Record 7/1/2026 – 06/30/2028 (with three possible extensions thru 6/30/2031 pending Board action):

BryComm, LLC

1051 New Technology Blvd. Hutto, TX 78634

Phone: 512.712.4008

24/7/365 Emergency GAATN Line: 512.974.2286

GAATN Point of Contact: Chris Gonzales

Email: chris.gonzales@brycomm.com

During business hours, call the main office number and request that Chris be paged. After hours, call the Emergency GAATN Line. Leave your message and a call back number. This will automatically page the supervisor on call. You will receive a call back, usually within 15 minutes.

GAATN

FUND BALANCE POLICY

In 2002, the Agency implemented the practice of maintaining a Fund Balance of approximately ten percent of the replacement value of the at-risk portion[1] of the GAATN Network as a ready reserve. The purpose of this reserve account is for contingency use in the event of catastrophic loss. The Board has identified two additional purposes that should be supported by reserve funds: (1) contingency use in the event of unplanned and/or capital improvement projects, and (2) budget balancing across fiscal years. Accordingly, in addition to the existing Catastrophic Loss Contingency Reserve Fund, the Board establishes two additional reserve funds: The Unplanned Project Contingency Reserve Fund and the Budget Balancing Reserve Fund. All reserve fund balances and funding amounts will be reviewed and set by the Board on an annual basis. For convenience, the reserve funds need not be treated as GAATN budget accounts distinct from each other.

CONTINGENCY USE FOR CATASTROPHIC LOSS

Even though the GAATN Network is insured, there would be a delay between a major loss and any insurance payment. One purpose of the Catastrophic Loss Contingency Reserve Fund is to ensure that GAATN has available funds that will enable it to begin restoration immediately after such a catastrophic disaster event that has resulted in major damage to the GAATN Network. This reserve fund can also be utilized to cover any deductibles that might apply resulting from catastrophic damage events. This reserve fund has been established in the amount of ten percent (10%) of the estimated total replacement value of the at risk portion of the GAATN Network. That estimate, and hence the reserve fund amount, may be reviewed and modified from time to time in the Board's discretion.

CONTINGENCY USE FOR UNPLANNED AND CAPITAL IMPROVEMENT PROJECTS

The Board determines that a reserve fund balance of $250,000 is established for an Unplanned Project Contingency Reserve Fund. This reserve fund may be used to fund unplanned or unanticipated projects (such as an unanticipated requirement by TxDoT to relocate existing GAATN Network in the current fiscal year) or to fund capital improvement projects whose cost is in excess of the current fiscal year's budgeted amount. If the Unplanned Project Contingency Reserve Fund is utilized, it is intended that it will be replenished to the original level of $250,000 in the following fiscal year. This amount or its replenishment time may be reviewed and modified from time to time in the Board's discretion.

[1] The "at-risk portion of the GAATN Network" is defined as the sum of:
1) all exposed plant (100% of the aerial placements);
2) splicing or resplicing reel to reel and node fiber locations; and
3) approximately one-half of the terminations.

USE FOR BUDGET BALANCING

The Interlocal Agreement, Section 7, second paragraph, provides:

> The Variable Cost part of the budget may take into account any surplus remaining from the prior year (for which a credit shall be made in the budget) or any deficit incurred in the prior year (for which an amount sufficient to recover such deficit may be included in the budget for the following year).

This provision allows a budget surplus at the end of a fiscal year (which has variously been referred as a "fund balance," a "fund balance hold account," or a "hold balance", etc.) to be utilized in whole or part as a credit in the following fiscal year's budget. Alternatively, in the event of a budget deficit, or for other budgeting purposes such as to keep to the total budget amounts relatively constant, such surplus funds in the hold account may be used to balance a proposed budget (contribute as if revenue) in the Board's discretion.

GAATN MAINTENANCE POLICY/PROCEDURE

1. GAATN will maintain an inventory of at least 40,000 feet of the current GAATN standard count ring fiber cable at the Maintenance Provider's premises at all times. This inventory will be used for maintenance, restoration and repair purposes solely for the GAATN Network and will remain the property of GAATN.

2. GAATN will contract to perform full-time continuous, comprehensive and systematic inspection of the GAATN Network, cumulatively totaling at least two (2) complete and fully documented Network inspections per year. The plant will be inspected for: a) compliance with clearance specifications; b) detection of bad plant conditions; and c) verification of underground/aerial splice locations.

3. GAATN will contract to perform at least one splice case audit of a full ring per year, so that all splice cases will be audited approximately every ten years. The splice case audits shall be performed by the current GAATN Maintenance contractor as "Additional Work."

4. The GAATN Maintenance contractor will coordinate routine cable transfers originating from Austin Energy and other utility companies. Such field work performed by the Maintenance contractor will be considered "Additional Work" under the maintenance contract.

5. The GAATN Network Manager will coordinate cable relocation efforts between the GAATN Engineer of Record, the GAATN Maintenance Provider, and the holder of the GAATN As-Built Network Records.

6. The GAATN Network Manager has the authority to spend up to the amount of $25,000 for maintenance work on the GAATN network that falls beyond the scope of the Maintenance Contract (such as riser transfers in concrete, multiple cable transfers in a single area, etc.).

Revised	10/6/2026
Revised	7/7/2020
Revised	2/1/2010
Enacted	10/4/1999

GAATN
MATERIAL SURPLUS
AND DISPOSITION POLICY

WHEREAS, the Greater Austin Area Telecommunications Network (GAATN) was formed in 1993 as an administrative agency under the Interlocal Cooperation Act, Tex. Gov. Code ch. 791;

WHEREAS, under the Interlocal Cooperation Act, the parties to an interlocal contract may form an administrative agency to conduct the functions provided for in the contract, and pursuant to section 791.012 of the Act may elect to have the law applicable to one of the participating entities apply to the agency;

WHEREAS, the Participants of GAATN, including the Austin Independent School District, have elected under the GAATN Interlocal Agreement to have the law of Texas independent school districts apply to GAATN;

WHEREAS, school district boards of trustees have authority under Tex. Education Code section 11.151(c) to, in any appropriate manner, dispose of property that is determined no longer to be necessary for the operation of the district; and under section 11.151(d) to adopt rules and bylaws necessary to carry out district management and operation;

WHEREAS, the GAATN Board of Directors therefore determines that it has the authority to provide for the disposal of GAATN property that is determined no longer to be necessary for GAATN operation, and to adopt policies and rules to for that purpose;

WHEREAS, in the course of normal GAATN network maintenance, repair, upgrade, construction or other projects, quantities of material no longer needed or useful for GAATN operation but which may otherwise be useful to others (“Otherwise Useful Materials”) or which may be materials suitable for salvage, recycling or other disposal (“Disposable Materials”) may from time to time accumulate;

WHEREAS, for reasons of economy and efficiency of operation and administration, it is GAATN policy to minimize its inventory of material including stock on hand;

WHEREAS, there are costs in time, manpower and monies to GAATN associated with maintaining, storing and keeping such material in the GAATN inventory or that of GAATN’s Maintenance Contractor(s);

WHEREAS, the GAATN Board hereby finds that: (i) Otherwise Reusable Material is surplus property to GAATN and is no longer necessary or useful for GAATN operation; (ii) Disposable Materials are no longer necessary or useful for GAATN operation; (iii) the cost and administrative burden associated with continuing to possess, store and maintain such materials in GAATN’s inventory is inefficient; and (iv) such materials should be appropriately disposed of instead of being retained by GAATN; and

WHEREAS, to that end the Board also finds that the following Material Surplus and Disposition Policy is in the best interest of and will further the efficient operation of GAATN;

NOW, THEREFORE, does the GAATN Board of Directors hereby establish the following policy and procedures concerning disposition of materials no longer necessary for the operation of GAATN:

1. Periodically, but no less frequently than semi-annually, the inventory of accumulated potentially disposable materials shall be inventoried by the Network Manager, who shall review such materials and recommend to the GAATN Technical Subcommittee how each of such materials should be categorized according to its potential for reuse by GAATN or by other Qualified Entities.

a. Any materials determined no longer to be necessary for the operation of GAATN shall be identified. Such materials shall then be further classified as Otherwise Useful Materials or as Disposable Materials.

b. Otherwise Useful Materials shall include materials no longer necessary for GAATN operation that may nonetheless be useful to other Qualified Entities, and also any materials unlikely to be used by GAATN within a two-month period following the inventory and classification but that may nonetheless be useful to other Qualified Entities.

c. Disposable Materials shall include materials no longer necessary for GAATN operation that are not likely to be otherwise useful to other Qualified Entities.

d. Absent commercially reasonable reasons to except them, the Network Manager shall recommend that all Otherwise Useful Materials and Disposable Materials be declared suitable for disposition under this Policy.

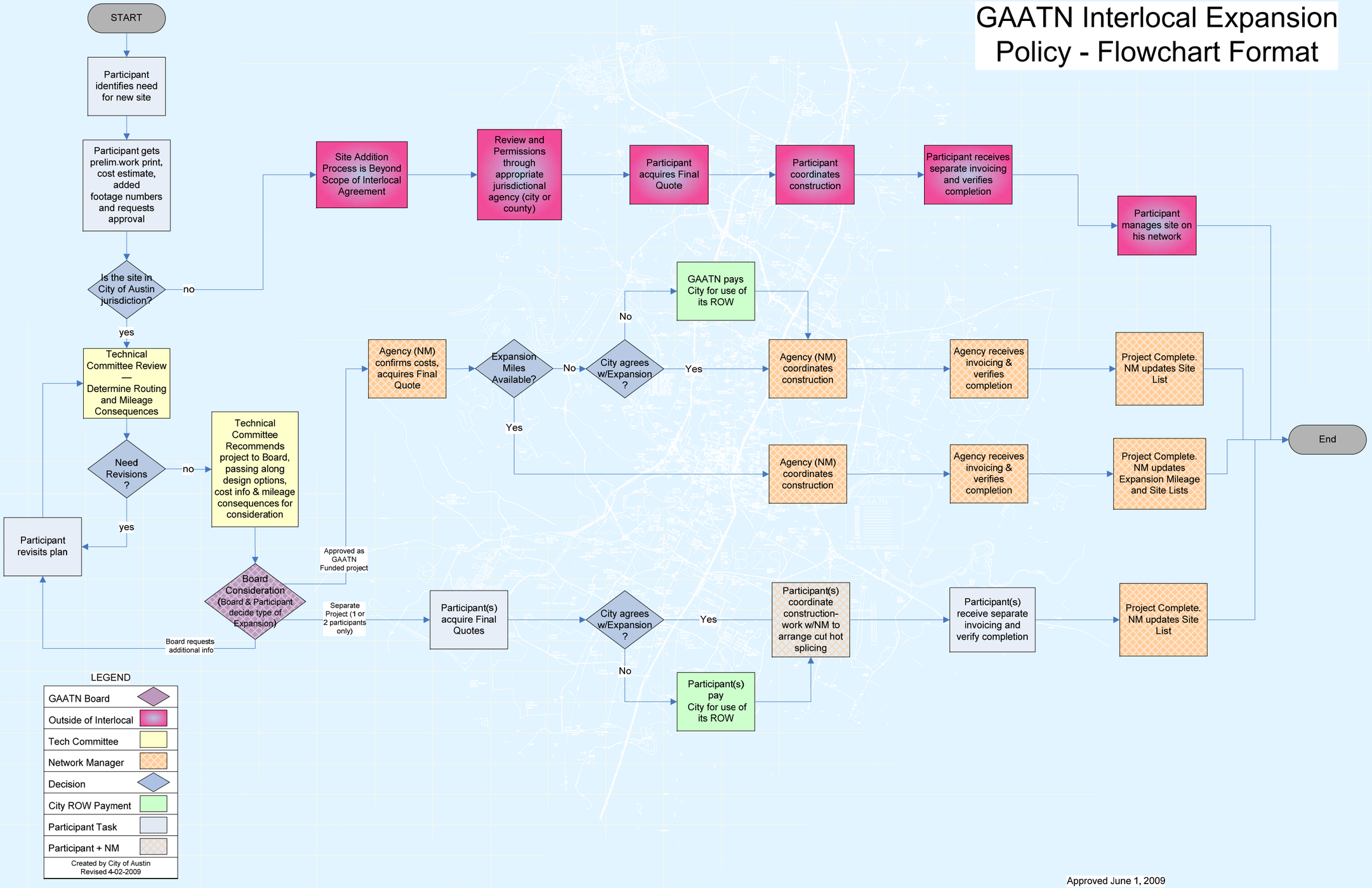
2. The Technical Subcommittee shall review the recommendations of the Network Manager, including whether each of such materials is no longer useful or necessary for GAATN operation and the recommended classifications as Otherwise Useful Materials or as Disposable Materials and then recommend classification for each such material to the GAATN Board, including recommendations for appropriate disposition.

3. The GAATN Board will determine the classifications of the potentially surplus materials, considering the recommendations of the Technical Subcommittee, and on the basis of such determinations, will authorize the disposition of Otherwise Useful Materials or Disposable Materials in accordance with this Policy.

4. A list of the materials determined by the GAATN Board to be suitable for disposition shall be maintained by the Network Manager, including their classifications, the date such classification, and the date and manner of disposition.

5. Possible methods for disposition of such surplus materials include: sale, swap, donation as may be permitted by law, destruction, and/or recycling.

GAATN Interlocal Expansion Policy - Flowchart Format



Approved June 1, 2009

GAATN
NETWORK EXPANSION

1. Ring cable is defined as that fiber optic cable, placed at the request of the GAATN Board and serving as a backbone transport facility for separate wide area networks, where at least two or more of the seven GAATN entities' fibers are contained within a common cable sheath.

2. Individual fiber extensions from an entity's existing splice in the GAATN ring cable (existing Point Of Presence or "POP") may be made at the will of the developing entity. Individual entities should consider notifying the other GAATN partners of work under this category via a brief courtesy e-mail. In the event the "extension" is considered an expansion of an entity's GAATN presence or the extension is a new entity presence in a pre-existing POP, the Additional POP (Item 3) requirements must be met. If the splice case is also a connection point for another GAATN entity, notification requirements under number 7 apply.

3. An additional POP may be created on a GAATN ring at the request of an individual entity provided:
    a) Technical Subcommittee has analyzed and recommended approval of the additions to the GAATN Board;
    b) the GAATN Board has voted to approve the additions; and
    c) sites served are added to the appropriate entity's Network Ownership Share tabulation.

4. If cable slack does not exist for development of a new POP, sufficient cable length must be added into the ring at the time of POP insertion. Splicing cost for the insertion of this extra cable length will be borne by the responsible entity per the GAATN CABLE SLACK ADDITION AND MAINTENANCE POLICY. (This cost should be less than $2000 ===>based on current pricing: the additional splice case & splicing cost). This procedure will establish appropriate slack in the region for on-going POP and ring maintenance and will add to the recoverability of the network.

5. On projects requiring slack addition, the Technical Subcommittee will determine where and what length cable slack will be inserted. This will allow the Committee to govern the routine addition of loss to the network.

6. Only the approved GAATN Maintenance and MAC (Moves, Adds & Changes) Providers are authorized to perform work on active GAATN plant.

7. Entities planning any work on **ring** cable where no splice case exists, that will involve the handling and/or splicing of individual buffer tubes and fibers will notify all entities via e-mail at least 4 working days in advance of the scheduled construction date. Upon receiving this notification, it is each entity's responsibility to notify the Maintenance Provider of any condition existing in its network, on the affected or a related ring, that should force a delay in the planned work.

GAATN
NETWORK EXPANSION (con't)

8. Ring Cable Expansions will be handled in accordance with the procedures outlined in Sections 5A and 10 of the GAATN INTERLOCAL AGREEMENT. Notification shall be rendered to all affected entities per Item 5 in this procedure list.

9. Any entity doing any work in the common GAATN rack(s) at a Supernode location is required to notify the GAATN Maintenance Provider and the GAATNTECH list server at least 24 hours before performing any work. This notification will assist the entities in intelligently monitoring conditions on their networks.

10. Any maintenance/restoration work that will interrupt services over an active GAATN ring will be handled in accordance with Item 8 of the GAATN REPAIR/RESTORA-TION PROCEDURE.

GAATN POLICY
FOR NETWORK MANAGEMENT NOTIFICATION

1. The Network Manager for the Greater Austin Area Telecommunications Network serves as a liaison among all participants fairly and equally. This individual must also communicate regularly with the Maintenance Contractor for GAATN back to the various participants. These communications are done to better facilitate network expansion and changes as favorably as possible for all GAATN members. The considerations of being favorable include but are not limited too, equity among the GAATN partners, economic savings for the GAATN partners, and convenience for successful completion with minimal impact to the individual networks of the GAATN Board members.

2. The need for the Network Manager to impartially participate with the GAATN Board Members is paramount to the position held. Should issues concerning trades, exchanges, swaps, or in-kind contributions be discussed during the course of daily business activity, these offers or deals must be placed on the agenda and presented to the next Technical Subcommittee meeting and/or Board Meeting depending on which meeting will be taking place the closest time to the realization that a deal or offer becomes a point of discussion among one or more members of the GAATN Board. The communication of said issue will be relayed appropriately, at either meeting, in either open or closed session as deemed necessary according to House Bill 9.

3. It will be a function of the Network Manager from henceforth to document discussions that take place between any GAATN participant and/or the Maintenance Contractor that pertains to the aforementioned issues. This will protect the Network Manager against perceived improprieties and favoritisms. This includes, but is not limited to emails, phone conversations, or personal conversations. This information will need to be shared at the next required meeting wherein the deal or offer will also be discussed.

Enacted April 5, 2004

GAATN
POLE ATTACHMENT POLICY

1. Requests for attachment to GAATN Agency owned poles will be accepted and evaluated case by case, considering but not limited to the following factors: 1. Pole Attachment Policy Requirements, 2. Pole Capacities, and 3. Legitimate Use (purpose of attachment). All requests for pole attachment will be routed to the GAATN Network Manager for evaluation and subsequent denial or development of appropriate attachment agreement documents.

2. Requests from entities without existing pole attachment agreements will be held pending negotiation and execution of the appropriate formal agreements. A copy of the approved GAATN Pole Attachment License Agreement document is included here as Attachment A.

3. All proposed agreements will be reviewed by the GAATN Attorney and executed by the GAATN Network Manager.

4. Requests from entities with existing pole attachment agreements will be handled per the established agreement.

5. The costs associated with any make-ready work necessary to clear attachment space on a GAATN owned pole will be quoted to and paid for by the foreign attachment requesting entity prior to their making attachment to said pole.

6. An attachment audit of all GAATN owned poles will be made periodically (at least every 5 years) by the approved GAATN Maintenance Contractor. This audit will include documentation of each GAATN owned pole's location and condition along with identification of all existing foreign pole contacts. A copy of the most recent pole inventory is included with this policy as Attachment B.

Approved 10/06/2003

POLE INFRASTRUCTURE LICENSE AGREEMENT BETWEEN GREATER AUSTIN AREA TELECOMMUNICATIONS NETWORK AND LICENSEE

This License Agreement is between **Greater Austin Area Telecommunications Network ("GAATN")** and _____ ("Licensee"). GAATN is an administrative agency created and operating the GAATN fiber optic Network under the authority of Texas Government Code chapter 791, for and on behalf of its constituent governmental Participant members, including the City of Austin (COA), Austin Independent School District (AISD), University of Texas (UT), Austin Community College (ACC), State of Texas Department of Information Resources (DIR), Travis County (TC), and the Lower Colorado River Authority (LCRA), and Licensee ("Licensee").

WHEREAS, Licensee desires to provide cable, internet, data transmission, and telecommunication services within GAATN's service area; and

WHEREAS, Licensee may wish to place and maintain cables, equipment, and facilities within GAATN's service area and desires to place such cables, equipment, and facilities on various Poles owned by GAATN and utilize certain easements owned by GAATN or to which GAATN has a right of use and to permit certain third-party use; and

WHEREAS, GAATN is willing to grant Licensee revocable, non-exclusive licenses to use certain Poles on the strict terms and conditions set forth in this Agreement and subject to: GAATN's right and authority to permit such use, consistent with the GAATN Interlocal Agreement, including but not limited to its provisions regarding GAATN Participants' use of each other's easements and rights of way; and, to the extent applicable, the terms of the City of Austin's Infrastructure Usage Ordinance (Austin City Code Chapter 18-7) as it may be amended from time to time; and

WHEREAS, GAATN is willing to allow Licensee to undertake the Make-Ready construction work necessary to prepare certain Poles to accommodate Licensee's cables, equipment, and facilities under the strict terms and conditions set forth in this Agreement;

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

ARTICLE 1
DEFINITIONS AND CONSTRUCTION

1.1 **Definitions:** For purposes of this Agreement, capitalized terms are defined as follows:

A. **GAATN Distribution Construction Standards** means those engineering and construction standards, specifications, and designs maintained and referenced internally by GAATN for its own Pole distribution construction and engineering efforts.

B. **Annual Usage Charge** means the recurring charge that Licensee is to pay GAATN annually under this Agreement for the use of GAATN's Poles. The Annual Usage Charge is in addition to any Costs and Filing Fees Licensee may incur during a Contract Year, and shall be

determined by GAATN as of December 1 of each Contract Year, other than the first Contract Year. To the extent lawfully permitted, the Annual Usage Charge for any Contract Year shall be the number of Attachments shown on GAATN's records to exist as of December 1 of the preceding Contract Year multiplied by the Usage Rate for the new Contract Year. Provided, however, that the calculation of the Annual Usage Charge will not include Attachments overlashed to any of Licensee's Attachment for which a Usage Rate is chargeable, unless applicable state or federal law allows such a charge. Unless otherwise expressly provided in this Agreement, Annual Usage Charges are not refundable.

C. **Application** means the GAATN prescribed application sheet, together with all required prints, maps, proposed routes, project descriptions, and proposed schedules that Licensee must submit, in full, to GAATN in order to request and be granted an Attachment License for a particular Pole or group of Poles.

D. **Attachment** means:

1. each Cable owned, controlled, or used by Licensee, together with its associated messenger strand, guy wires, anchors, and other appurtenant and incidental facilities (other than those covered by parts 2 and 3 of this definition), affixed to a Pole regardless of the means by which affixed (a Cable lashed to another Cable and each Cable lashed to a common messenger is a separate Attachment);

2. each amplifier, repeater, controller, box, cabinet, appliance, device, or piece of equipment owned, controlled, or used by Licensee and affixed to a Pole, regardless of the means by which it is affixed, except that an Attachment shall not be an antenna, wireless transceiver, or other similar device used for or associated with wireless communication or wireless data transmission; and

3. each amplifier, repeater, controller, box, cabinet, appliance, device, or piece of equipment owned, controlled, or used by Licensee that is resting on the ground but is connected to a Pole, Attachment, or GAATN line by a conductor, except that an Attachment shall not be an antenna, wireless transceiver, or other similar device used for or associated with wireless communication or wireless data transmission.

E. **Attachment License** means the revocable, non-exclusive right of Licensee to make an Attachment to a Pole under this Agreement, pursuant to GAATN's approval of an Application and subject to (1) any modifications, conditions, and specifications imposed by GAATN when approving the Application and (2) all Design Documents issued by GAATN with respect to the Attachment and Pole in question. An Attachment License authorizes Attachments solely for lawful communications purposes. The use of any Attachment for any purpose other than providing services authorized by (1) City franchise or (2) Chapter 283 of the Texas Local Government Code is prohibited and shall constitute a material breach of this Agreement.

F. **Cable** means a conductor, wire, or fiber or a bound or sheathed assembly of conductors, wires, or fibers used as a wire communications or transmission medium (a bare messenger is also a Cable).

G. **Communications Space** means the area on any given Pole, below and sufficiently

remote from the Supply Space as required by Electrical Code, within which Attachments and Pole Contacts may lie. The term Communications Space has the equivalent meaning as that used in the Electrical Code. The top surface of the Communications Space must remain at least 40 inches from the lowest surface of the Supply Space and from any other electrical lines, conductors, or equipment. The bottom surface of the Communications Space must maintain a clearance of at least 18 feet above the ground.

H. **Contract Year** means any calendar year during which this Agreement is in effect, beginning January 1 and ending December 31, except that the first Contract Year shall run from the Effective Date until December 31 of that year and the final Contract Year shall run from January 1 of that year until the date of termination.

I. **Contractor** includes subcontractors.

J. **Cost** means the total reasonable cost to GAATN for any particular task under this Agreement, including incidental and other indirect costs and expenses, and includes without limitation reasonable labor, material, and equipment usage, outside Contractor and vendor charges, overhead, and general and administrative expenses. Costs may be incurred for, without limitation, engineering and engineering review, Make-Ready construction, inspections and oversight, auditing, public relations and intervention, and other services. Costs shall be determined by GAATN in its sole judgment and reasonable discretion, and shall be paid by Licensee in accordance with either of the following, at GAATN's sole option:

1. Any advance estimate provided by GAATN, in which event GAATN shall have the right to refuse to incur the Costs until the estimate is paid; and/or

2. Any final invoice submitted by GAATN. In the event an advance estimate was paid by Licensee for Costs, the final invoice will reflect such payment.

K. **Design Documents** mean all specifications, drawings, schematics, blueprints, engineering documents, and written requirements for materials, equipment, design, construction, and workmanship issued by GAATN to Licensee with respect to Make-Ready and installation work on a particular Attachment or Pole or group of Attachments or Poles.

L. **Effective Date** means the date GAATN signs this Agreement as shown on the signature page of this Agreement.

M. **Electrical Code** means the National Electrical Safety Code (NESC), the National Electrical Code (NEC), and Chapter 752 of the Texas Health and Safety Code.

N. **Filing Fee** means the initial, non-refundable fee charged to Licensee for filing an Application for an Attachment License. The GAATN filing Fee is to compensate GAATN for reviewing and processing an Application and does not include or offset Costs or Annual Usage Charges.

O. **Infrastructure Usage Ordinance** means Austin City Code Chapter 18-7 and any other City ordinance that may be enacted to govern usage or rental of City's electric utility or other infrastructure.

P. **Pole** means any electric distribution pole owned by GAATN that supports electric lines having a nominal voltage of not more than 35kv, or any other pole owned by GAATN for communications network or similar purposes. Unless otherwise agreed by GAATN with respect to a particular pole, the term Pole does not include (1) street lighting, traffic signal, or night watchman poles, (2) poles or towers supporting transmission lines carrying a nominal voltage greater than 35kv, (3) any structure or facility within a substation, (4) conduits, or (5) any structure not used for electric power distribution or communications network purposes.

Q. **Pole Contact** means the point or contiguous area on a Pole at which one or more of Licensee's Attachments make physical contact with (1) a Pole or (2) a Third Party User's Attachment, during a Contract Year, regardless of the duration for which the Pole Contact existed.

R. **Make-Ready** means all work, as determined by GAATN in its sole judgment and discretion, required to accommodate Licensee's Attachments on a Pole with respect to GAATN and Third Party User needs and in compliance with Electrical Code, GAATN Distribution Construction Standards, generally accepted engineering and construction practices, and applicable laws.

S. **Maximum Lawful Usage Rate** means the maximum amount that GAATN may lawfully charge for an Attachment under applicable state and federal law, rules and regulations in effect from time to time. If, within a particular Attachment, Licensee bundles services having regulated attachment rates with services for which attachment rates are not regulated, the Maximum Lawful Rate may, to the extent lawfully permitted, include separate rates for the regulated and the unregulated services. If for any Contract Year, applicable state or federal law does not limit the amount GAATN may charge Licensee for a particular Attachment or service under this Agreement, the Maximum Lawful Rate for the Attachment or service shall be the amount that GAATN determines, in its sole judgment and discretion, to constitute a reasonable and non-discriminatory annual Usage Rate.

T. **Supply Space** means the area on any given Pole, above the Communications Space, that is reserved for the placement of GAATN facilities. The term Supply Space has the equivalent meaning as that used in the Electrical Code. Licensee may not place any Attachments or Pole Contacts in the Supply Space.

U. **Third Party User** means any third party that has, or may be granted, an Attachment License or other right to attach with respect to a Pole.

V. **Unauthorized Attachment.** means an Attachment or any other affixing or placing of Licensee's facilities onto GAATN property for which Licensee does not have a valid Attachment License.

W. **Usage Rate** means, for each given Contract Year, the amount Licensee must pay GAATN for each Attachment.

1.2 **Syntax** Except as otherwise expressly provided herein, all nouns, pronouns and variations thereof shall be deemed to refer to the singular and plural.

1.3 **Amendments.** Any reference to a law, code, or document shall mean such law, code, or document as it may be amended from time to time.

1.4 **Third Party User Agreements.** GAATN has in the past entered into other Pole usage agreements with Third Party Users. In construing this Agreement, no variations between this Agreement and other agreements with Third Party Users shall have any evidentiary value or be construed against GAATN.

1.5 **Infrastructure Usage Ordinance.** To the extent they do not directly and irreconcilably conflict, this Agreement and the Infrastructure Usage Ordinance, to the extent it may apply, are cumulative and applicable to Licensee. To the extent a provision of the Infrastructure Usage Ordinance has been rendered invalid or preempted by state or federal law, this Agreement shall control. The absence in this Agreement of an Infrastructure Usage Ordinance provision, or vice versa, shall not be construed to relieve Licensee from complying with or being subject to such provision.

1.6 **No Construction against GAATN.** Licensee agrees that the rule of construction that ambiguities in a contract are to be construed against the drafting party shall not apply to this Agreement.

1.7 **Headings.** The descriptive headings in this Agreement are only for the convenience of the parties and shall not be deemed to affect the meaning or construction of any provision.

ARTICLE 2
SCOPE AND TERM OF AGREEMENT

2.1 **General Purpose.** In accordance with the provisions of this Agreement, GAATN may issue Attachment Licenses to Licensee on the terms and conditions set forth herein. Before Licensee makes any Attachment to or begins any work on a Pole, it shall file an Application and await GAATN's issuance of an Attachment License and Design Documents with respect to that particular Attachment or Pole. Nothing in this Agreement shall be construed to obligate GAATN to grant an Attachment License with respect to any particular Pole.

2.2 **Term.** The initial term of this Agreement is five years, beginning on the Effective Date. Upon mutual agreement, including to any modified terms or conditions, this Agreement may be renewed for up to four additional terms of five years each, or such other terms as may be agreed, as provided in this paragraph. At the end of each then-current initial or renewal term, Licensee shall, if it intends to request renewal, give GAATN written notice of its request to renew at least sixty (60) days before the end of the then-current term. If, in GAATN's sole determination, Licensee has not materially defaulted during the course of the then-current term, and if, (i) in GAATN's sole judgment, there are no legal or practical reasons affecting or that may affect GAATN or any of its Participants why renewal should be refused; (ii) Licensee's performance, cooperation, and compliance with the terms and conditions of this Agreement during the then-current and preceding terms have been acceptable to GAATN; and (iii) GAATN and the Licensee have agreed on modified terms and conditions, if any, including but not limited to fees, as applicable, the request to renew ordinarily will be allowed; provided, that GAATN reserves the right, in its sole discretion, to refuse to renew. If GAATN determines not to renew, GAATN will give written notice of the nonrenewal and this Agreement will expire at the end of the then-current

term. This paragraph is subject to and conditioned upon any lawful requirements or limits imposed by City franchise or other ordinances or requirements affecting GAATN, or those of other GAATN Participants, or other restrictions regarding use of rights-of-way, easements, or other legal rights of third parties.

2.3 **Existing Facilities Only.** GAATN is under no obligation to add, build, keep, maintain, or replace Poles or any other facilities for the use or convenience of Licensee. The maintenance, replacement, removal, relocation, modification, or addition of GAATN Poles and facilities shall remain within the sole province and discretion of GAATN.

2.4 **Poles Only.** This Agreement addresses only Attachments to GAATN Poles. Attaching to or using other GAATN property and facilities, including without limitation conduits, buildings, and towers, is prohibited without further written agreement by GAATN.

2.5 **Wireless Communications.** Nothing in this Agreement shall be construed to permit Licensee to place wireless communication facilities or equipment on GAATN facilities or property.

2.6 **City and Other Rights-of-Way.** Nothing in this Agreement shall be construed to grant Licensee any right or authorization to use or occupy the public streets or rights-of-way or to use the facilities of the City of Austin or of any other GAATN Participant, or of other third-party easements, rights-of-way or facilities, the use of which has been granted to GAATN directly or indirectly, except for the placement of Attachments on Poles or other facilities covered by this Agreement which may be located in the public streets or rights-of-way and which GAATN has the legal right to permit Licensee to use in the manner licensed under this agreement.

2.7 **Private Easements.** Licensee understands that some Poles are located on dedicated easements over private property that, by their terms, restrict the use of the easement to GAATN or for a particular or limited purpose. Nothing in this Agreement shall require GAATN to extend any property rights or consents to use such Poles to Licensee GAATN does not have, e.g., where GAATN has no right to license third-party use by Licensee or to grant consent to make a non-complying use. Nothing in this Agreement and no action by GAATN shall be construed to offer, grant or approve any right or license to use such easement or to affix an Attachment to a Pole within such easement without the consent of the owner of the property on which the easement lies or to which the easement is appurtenant, unless otherwise allowed by law. GAATN has no obligation to expand or obtain rights in such easement on Licensee's behalf, or to incur any expense of Licensee's behalf to acquire such rights. It is the sole obligation of Licensee to obtain the necessary consent or additional easement rights, if any, at Licensee's own expense. In submitting an Application for a Pole on private property, Licensee shall provide GAATN with evidence acceptable to GAATN that Licensee has obtained all necessary and recordable easement rights and owner consents. IN THE EVENT A PROPERTY OWNER CONTESTS LICENSEE'S RIGHT TO ATTACH TO GAATN POLE(S) OR CROSS THE PROPERTY OWNER'S PROPERTY, LICENSEE AGREES TO INDEMNIFY AND HOLD HARMLESS GAATN AND ITS PARTICIPANTS AGAINST ANY LOSSES, CLAIMS, DAMAGES, LIABILTY, OR COSTS THEREFOR.

2.8 **Eminent Domain.** GAATN is under no obligation to exercise any power of eminent domain on Licensee's behalf.

2.9 **No Property Rights In Poles.** All Poles shall remain the property of GAATN and no payment made by Licensee shall create or vest in Licensee any ownership right, title, or interest in any Pole, but Licensee's interest shall remain a bare license. The existence of such a license shall not in any way alter or affect GAATN's right to use, change, operate, maintain, or remove its Poles and facilities as it sees fit, and GAATN shall not be liable to Licensee for any damage to or interference with the maintenance or the operation of Licensee's Attachments resulting from GAATN's use, operation, maintenance, or removal of its Poles and facilities. If GAATN's use of its Poles materially and adversely affects Licensee's use and operation of an Attachment, Licensee may, by written notice to GAATN, remove its Attachments from any adversely affected Pole. Such termination shall be implemented by written notice to Greater Austin Area Telecommunications Network. For each such termination, Licensee shall be entitled to a pro-rata refund of any pre-paid Annual Usage Charge attributable to the terminated Attachment.

2.10 **License not Exclusive.** Licensee acknowledges that GAATN has entered into before, and may enter into in the future, similar or other agreements concerning the use of Poles by third parties, including Licensee's competitors. Nothing in this Agreement shall be construed to limit or in any way affect GAATN's right or ability to (i) enter into or honor other agreements, (ii) to grant to third parties any rights, licenses, or access concerning any Pole, irrespective of the character or degree of economic competition or loss caused to Licensee; or (iii) to establish priority of use and other rights in the use of GAATN Poles or other facilities by Licensee and third parties.

2.11 **GAATN Priority.** The primary purpose of a Pole is to support the GAATN communication Network, and GAATN reserves to itself first priority in the use of a Pole. In the event of any conflict between the use or proposed use of a Pole by GAATN and use of that Pole by Licensee hereunder, the use or proposed use of a Pole by GAATN shall prevail and have priority over Licensee's use of the Pole. GAATN retains and shall have exclusive use of the Supply Space, including any expansions of Supply Space occasioned by proposed GAATN use. All of Licensee's aerial Attachments shall remain within the Communications Space.

2.12 **Discretion of GAATN Final.** GAATN reserves the right to deny any Application, reserve any Pole or portion thereof to its own use, or modify any Pole for legal, safety, mechanical, structural, engineering, environmental, reliability, or service reasons. Determination of these issues shall at all times remain within the sole and final discretion of GAATN.

2.13 **No Cost or Expense to GAATN.** GAATN consents to Licensee's use of GAATN Poles hereunder solely as a convenience to Licensee, and accepts no liability for, related to, or arising from such Licensee use. The engineering, construction, installation, use, operation, and maintenance of Licensee's Attachments, and any damages, costs, or expenses resulting therefrom, directly or indirectly, shall be Licensee's sole responsibility and at Licensee's sole expense. Unless otherwise expressly provided, nothing in this Agreement shall be construed to require GAATN to expend any funds or to incur or bear any cost or expense.

ARTICLE 3
USAGE RATES AND CHARGES

3.1 **Payment Due upon License Approval.** GAATN's approval of an Attachment License shall be conditioned, if applicable and as stated in **Exhibit A**, on Licensee's payment, within thirty

(30) days of approval, of the then-current Usage Rate for each approved Attachment, prorated to reflect the number of months remaining in the Contract Year after GAATN's invoice, with any partial month being considered to be a full month.

3.2 **Calculation of Usage Rates.** If Usage Rates are applicable as stated in **Exhibit A**, this paragraph shall apply: For the initial Contract Year and for each subsequent Contract Year, the Usage Rate shall be the Maximum Lawful Usage Rate. Before each new Contract Year, GAATN will notify Licensee of the Maximum Lawful Usage Rate for such Contract Year (failure to provide such notice, however, shall not affect GAATN's ability to implement such Usage Rate). The Maximum Lawful Rate may take into account changes in applicable law that are to go into effect during the upcoming Contract Year. If Licensee disagrees in good faith with GAATN's determination of the Maximum Lawful Usage Rate, Licensee may protest in writing within 30 days of receipt of the notice. The protest shall include copies of all records and other documentation that support Licensee's position. Failure to timely protest GAATN's proposed Usage Rate shall constitute agreement to and acceptance of GAATN's determination. If Licensee does timely protest a proposed Usage Rate, the parties shall endeavor in good faith to negotiate a resolution of the dispute. If the parties are unable to resolve the dispute within 60 days from the date of Licensee's protest, then either party may refer the matter to non-binding mediation in. If the dispute is not resolved by the time the Annual Usage Charge invoice is issued, Licensee shall nonetheless pay the invoice based upon the disputed Usage Rate. Payment by Licensee of the invoice shall not prejudice Licensee's ability to continue to contest the Usage Rate.

3.3 **Invoice Disputes**. If Licensee believes in good faith that an Attachment count contained in an Annual Usage Charge invoice is incorrect, it may pay the invoice under protest. To protest an invoice, Licensee must give GAATN written notice of the nature of its protest no later than the due date for payment of the invoice together with copies of records and other documentation supporting its position. The parties shall promptly meet to resolve the discrepancies in their records to determine the correct Attachment count. If the parties are unable to resolve a discrepancy as to the correct count, the parties shall jointly conduct a physical inventory of a statistically significant number of geographical grids or other mutually agreeable census to determine the correct count. The cost to conduct such inventory or census shall be equally divided between the parties.

3.4 **Adjustments.** If upon resolution of a dispute between the parties under paragraph 3.2 or paragraph 3.3, a refund is due to Licensee, GAATN shall refund the amount of the overcharge together with interest at the rate specified in paragraph 17.5 from the date of GAATN's receipt of the protested Annual Usage Charge payment. If Licensee owes additional money, a corrected invoice shall be issued by GAATN for the additional Annual Usage Charge due, plus accrued interest at the rate specified in paragraph 17.5 from the due date of the original invoice.

3.5 **No Allowances.** Unless otherwise expressly stated in this Agreement, there shall be no offsets against any sums due under this Agreement, or any other allowances, for system improvement, materials or labor supplied, upgrading, life extension, or other direct or incidental benefits conferred by Licensee upon GAATN or its poles, system, or facilities. All such improvements and benefits belong solely to GAATN, and the fact that such improvements or benefits may accrue shall in no way alter or affect Licensee's obligations under this Agreement.

3.6 **Effect of Reciprocal Agreements** Any fees imposed under this Agreement will be stated in **Exhibit A.** If there are other agreements in effect between Licensee and GAATN under which

no fees are due and payable by GAATN to Licensee for GAATN's use of Licensee's poles and easements ("Reciprocal Agreement"), in general GAATN will reciprocate by not imposing fees on Licensee hereunder, although Licensee will remain responsible for all costs, expenses and other liabilities as provided in this Agreement; provided, however, that (i) if Licensee imposes fees of any kind for GAATN's use of such poles and easements under a Reciprocal Agreement, GAATN reserves the right to impose fees under this Agreement effective on and retroactive to the date on which such fees were imposed on GAATN under the Reciprocal Agreement; (ii) notwithstanding the foregoing, GAATN may impose fees on Licensee hereunder if the scope (qualitative or quantitative) or kind of Licensee's use of GAATN poles and easements hereunder is disproportionately larger than corresponding GAATN use of Licensee's poles and easements under a Reciprocal Agreement; and (iii) GAATN reserves the right unilaterally to amend **Exhibit A** to impose fees if fees are imposed or increased by Licensee under a Reciprocal Agreement. If such fees are imposed hereunder, Licensee may terminate this Agreement upon at least sixty days' written notice.

ARTICLE 4
ATTACHMENT LICENSES

4.1 **Attachment License Required.** Before Licensee may make any Contact or Attachment or perform any work on a Pole other than inspections necessary for preparing an Attachment Application, and before Licensee may place any Attachment or other facility on GAATN property or easements, Licensee must first obtain and accept an Attachment License. Licensee must have an Attachment License for each Pole to which Licensee's Attachments are to be affixed and for each separate Attachment to the Pole. Grant or renewal of a license as to any particular attachment may be on special terms or subject to special insurance, bond, fees, use, make-ready, maintenance, installation, inspection, security, or other requirements determined by GAATN in its sole discretion.

4.2 **Overlashing.** Licensee may not overlash to an existing Licensee or Third Party User Attachment or Pole Contact without an additional and separate Attachment License for the overlashed Attachment. Licensee may not allow another party to overlash to Licensee's facilities without such party first having an agreement with and Attachment License from GAATN. Poles are the sole property of GAATN, and Licensee shall not charge or accept any financial consideration for allowing a third party to overlash to an Attachment or Pole Contact without GAATN's written consent.

4.3 **Application Process.** The Application must be submitted in the approved GAATN format. The Application form, and all required supporting documentation and other procedures, are within the discretion of GAATN and may change from time to time without prior notice. Applications made on a multiple pole or project basis are subject to further GAATN policies and procedures that may change from time to time without prior notice. GAATN may reject entirely an incomplete Application, or it may request additional information to support the Application, in which event the requested information shall be promptly furnished.

4.4 **Filing Fee.** The Filing Fee, if applicable as specified in **Exhibit A**, shall be paid at the time the Application is submitted. No Application will be considered before payment of a required Filing Fee.

4.5 **Approval.** GAATN retains sole and complete discretion to deny or modify any Attachment Application in order to be able to preserve the safety, reliability, integrity, and effectiveness of the communication distribution system that constitutes the core of its business and its governmental mandate. The denial, approval, or modification of an Attachment License shall be governed exclusively by the terms of this Agreement, and shall not be subject to appeal under the Infrastructure Usage Ordinance. However, Licensee may request GAATN to reconsider a denial or modification of an Attachment Application. GAATN may approve an Application as submitted, approve it on a modified or conditional basis, or may deny the Application in accordance with the procedures set forth in the Infrastructure Usage Ordinance and the policies adopted by GAATN pursuant thereto. GAATN may also refuse to issue an Attachment License when, in its sole discretion, it determines that the space on a Pole is required for its own exclusive use or that Pole may not reasonably be arranged or replaced to accommodate Licensee's proposed Attachment. By way of example only and not by limitation, an Application may be denied if the proposed Attachment:

A. is of excessive size or weight or would otherwise subject a GAATN Pole to unacceptable levels of stress;

B. would interfere with, or jeopardize the reliability or integrity of, the GAATN communications Network or of individual Poles, or the operations of any Third Party attached to a GAATN Pole;

C. would present a safety hazard to GAATN employees or the public;

D. would impair GAATN's ability to operate or maintain a Pole;

E. would require an unacceptable change or addition to a Pole;

F. would expose the city, GAATN, its Participants, or other Third Party Users to increased actual or potential liability or financial risk.

4.6 **Order of Approval.** Applications concerning a particular Pole will be considered and acted upon by GAATN in the order in which they are filed. For purposes of evaluating an Application with respect to Pole capacity and existing Third Party User Attachments, GAATN will consider not only all existing attachments but also all valid Attachment Licenses and reserved GAATN space as existing Attachments.

4.7 **Engineering.** When processing an Application, GAATN shall have the right to perform, or have a firm retained by GAATN perform, its own engineering and field evaluation, irrespective of whether Licensee has performed such services for its own benefit. All Costs for such engineering and field evaluation shall be paid by Licensee. GAATN's engineering requirements and determinations shall be within its sole discretion and final. GAATN may consider but is not bound by Licensee's own engineering determinations. With respect to a particular Pole, GAATN's engineering shall take into account and allow space for all Attachment Licenses which are valid for that Pole. In granting an Attachment License, GAATN shall issue to Licensee the Design Documents governing the approved Attachment(s).

4.8 **Attachment License Expiration.** All Attachment Licenses and Design Documents and any rights conferred thereunder shall expire within 90 days of issuance (or such longer period as the parties may agree to in writing), unless all Make-Ready and installation work has occurred in accordance with the Design Documents before the end of such period. If an Attachment License for a Pole expires, Licensee shall re-apply, *de novo*, for an Attachment License before working on or making an Attachment to that Pole.

ARTICLE 5
GENERAL REQUIREMENTS

5.1 **Work Site Safety.** In performing any work on or near Poles supporting energized electric lines, Licensee, and its Contractors, agents and employees shall comply with Chapter 752 of the Texas Health and Safety Code and all federal, state and local laws, rules and regulations governing work in proximity to energized electric lines, including without limitation, those promulgated by the Occupational Safety and Health Administration. **LICENSEE SHALL DEFEND, INDEMNIFY AND HOLD GAATN AND GAATN PARTICIPANTS HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, SUITS AND JUDGMENTS ARISING FROM OR CONCERNING A BREACH BY LICENSEE OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

5.2 **Code Compliance.** Licensee, and its Contractors, agents and employees, and all work, Contacts, and Attachments on a Pole shall at all times comply with then current Electrical Code and any other applicable safety, engineering, or other codes or accepted industry practices.

5.3 **Design Documents.** All Make-Ready, installation, and other work performed by Licensee on a Pole or Attachment shall at all times comply with the Design Documents and GAATN Distribution Construction Standards.

5.4 **Service Interruptions.** Licensee shall not cause any interruption of GAATN or Third Party User services without first obtaining GAATN's express written consent as provided by Article 6. If it is necessary for GAATN to de-energize or relocate any equipment or lines for Licensee's benefit, and GAATN in its sole discretion agrees to do so, or if GAATN or any GAATN Participant or Third-Party User suffers any service outage or material service (signal) degradation, attenuation or other adverse effects due to Licensee's work, directly or indirectly, Licensee shall reimburse GAATN in full for all Costs to GAATN and GAATN Participants to restore or replace service, and all Costs and lost revenue to Third-Party Users. In the event Licensee damages any of GAATN's, any GAATN Participant's, or any Third-Party User's equipment or lines or causes any service interruption to GAATN, any GAATN Participant, or any Third-Party User, Licensee, at its sole expense, shall immediately do all things practicable to avoid injury and further damage, direct and incidental, resulting therefrom and shall notify GAATN immediately. Licensee shall be liable for all Costs resulting from such damage and any necessary repairs and for any lost revenue resulting from such a service interruption.

5.5 **GAATN Oversight.** GAATN shall have the right to conduct on-site field oversight and inspections of Licensee's Attachments, work, and operations on Poles and in GAATN easements. GAATN shall at all times have unrestricted access to Poles and to all work sites of Licensee and Licensee's Contractors. Both GAATN and GAATN's representative at any Pole site shall have complete and final authority to order the immediate suspension of Licensee's construction or

installation activities if GAATN or GAATN's representative, in its sole discretion and judgment, deems such action necessary for reasons of safety, engineering, service reliability, or property owner complaint. In the event of an oral suspension order, GAATN shall send written notice to Licensee within three business days after such suspension, identifying the alleged violation. Such suspension shall be in effect until such time as the Licensee cures, at Licensee's sole Cost, the alleged violation. In no event shall GAATN be responsible for any damages, losses, or costs incurred by Licensee as a result of such work stoppage unless such stoppage is a result of willful or intentional misconduct on the part of GAATN. Licensee's failure to obey a suspension order shall constitute a material breach of this Agreement and shall entitle GAATN to terminate any or all of Licensee's Attachment Licenses without concern for any cure period provided by other provisions of this Agreement. No person or contractor may work on GAATN facilities without the express written consent of GAATN.

5.6 **Laws.** To the extent that the Code of the City of Austin lawfully requires Licensee to possess a valid franchise or construction permit before engaging in a particular act, or the rights or requirements of any GAATN Participant or Third Party are or will be affected by Licensee's work, Licensee must comply with such requirements and obtain all required consents and permits before beginning Make-Ready construction or installing Attachments. Nothing in this Agreement shall be construed as waiving other requirements of the City, GAATN, or any GAATN Participant or Third Party, or permitting the construction of facilities other than Attachments. Attachments must conform to local, state, or federal law. Licensee's use of any Pole and Licensee's Attachments shall at all times conform to the requirements of the City Code, the Infrastructure Usage Ordinance and the policies promulgated by the City pursuant thereto, GAATN standards and requirements, and any other federal, state or local standards.

5.7 **Other Permits.** Licensee shall apply for and obtain all licenses, permits or other authorizations required to provide its service or to use, operate or maintain its Attachments. If Licensee is denied any required license, permit or authorization, Licensee may, upon written notice to GAATN, terminate any permit granted hereunder that was predicated upon the grant of such license, permit or authorization. However, no termination by Licensee under this section shall entitle Licensee to any refund of prepaid Filing Fees or Annual Usage Charges.

5.8 **Taxes and Liens.** Licensee shall pay all taxes and assessments lawfully levied on Licensee's Attachments and any tax, assessments, fee, or charge levied on Poles solely because of their use by Licensee. In no event shall Licensee permit any lien to be filed or to exist upon any Poles or GAATN property as a result of any claim against Licensee. Licensee shall promptly pay upon receipt of written notice from GAATN all such liens together with all fees and costs necessary to discharge same, or shall bond around such liens in the manner provided by law.

5.9 **Code Conflicts.** In the event of a difference, conflict, or discrepancy between or among the requirements or practices of any applicable code or guidelines, including but not limited to any Electrical Code or safety regulations, laws, or industry standards, the following rules shall apply: (A) if one specification or practice is more stringent than the other, the more stringent shall apply; (B) if one is not more stringent than the other, the NESC shall govern to the extent permitted by law; (C) if the first two rules are insufficient to resolve the conflict in a clear and unambiguous manner, GAATN in its sole discretion shall determine which standard shall apply, giving highest priority to safety considerations.

5.10 **Design Document Conflicts.** In the event of a difference, conflict, or discrepancy between or among the requirements or practices of the Design Documents and GAATN Distribution Construction Standard, the Design Documents shall govern. In the event Licensee believes a Design Document or GAATN Distribution Construction Standard is inconsistent with an applicable Electrical Code or other applicable law, standard or industry practice, Licensee shall refer the matter to GAATN for determination.

ARTICLE 6
MAKE-READY CONSTRUCTION

PART A - GENERAL PROVISIONS

6.1 **Performance of Make-Ready Work.** GAATN shall be under no obligation to change, repair, upgrade, modify, or replace any Pole, or any existing attachments, to accommodate Licensee. If, however, GAATN elects, in its sole discretion, to change, repair, upgrade, modify, or replace a Pole or any existing attachments to accommodate a proposed Licensee Attachment, all Make-Ready Costs shall be borne solely by Licensee, including without limitation, costs of planning, engineering, construction, and pole replacement. GAATN may in its sole discretion:

A. opt to perform the necessary Make-Ready work itself, in which case Part B of this Article 6 shall apply, though in no event shall this Agreement be construed to require GAATN to undertake Make-Ready construction, or

B. opt to authorize Licensee or another applicant to perform the necessary Make-Ready work, in which case Part C of this Article 6 shall apply.

6.2 **Third Party Facilities.** Make-Ready Costs that are to be paid by Licensee include all cost and expense to relocate or alter the attachments or facilities of any pre-existing Third Party User as may be necessary to accommodate Licensee's Attachment. Licensee shall provide at least 30 days' notice to each Third Party User of its intent to relocate or alter their facilities and make all other necessary arrangements directly with the affected Third Party Users.

PART B - CONSTRUCTION BY GAATN

6.3 **Scope.** This Part B of Article 6 shall apply only in the event GAATN has opted to perform the Make-Ready Work on a Pole.

6.4 **Construction by GAATN.** If Licensee's proposed Attachment necessitates changes in or additions to a Pole or the relocation or modification of GAATN or Third Party User facilities on a Pole, and GAATN opts in its sole discretion to perform the necessary Make-Ready work, GAATN shall, within thirty (30) days after approving the Attachment License, submit to Licensee an estimate of the Cost for such Make-Ready work and an estimated completion date. Upon receipt of Licensee's written approval of the Cost estimate, GAATN will proceed with the work in substantial compliance with the proposed schedule. In no event, however, shall GAATN be liable to Licensee or any other person for failure to complete the work in accordance with the proposed schedule.

6.5 **Cost Allocation for Multiple Applications.** Notwithstanding any other provision of this

Agreement, if another entity files an Application concerning the same Pole within thirty (30) days before or after Licensee's Application, GAATN shall equitably divide the engineering and Make-Ready and Pole replacement Costs incurred to accommodate all approved Attachments, taking into account the order in which the Applications were filed and the Costs occasioned by each applicant. GAATN's allocation of Costs shall be final and binding.

PART C - CONSTRUCTION BY LICENSEE

6.6 **Scope.** This Part C of Article 6 shall apply only in the event Licensee has been given approval by GAATN to perform Make-Ready work on a Pole.

6.7 **Construction by Licensee.** All work performed by or on behalf of Licensee pursuant to an Attachment License shall be done in a good and workmanlike manner, by GAATN-approved personnel or contractors. Licensee shall also comply with the provisions of **Exhibit B**, which GAATN may change upon sixty (60) days written notice to Licensee. Licensee's acceptance of an Attachment License constitutes Licensee's agreement to be bound by its terms and conditions. All Attachments, Contacts, Make-Ready work, and other work performed or maintained by Licensee on a Pole shall strictly comply with any applicable Electrical Code, the Design Documents, and other laws and standards as provided by Article 5. Any deviation shall constitute a material default under this Agreement and shall afford GAATN all lawful remedies it may have available to it, including without limitation the right to suspend or terminate Licensee's Make-Ready and installation operations, deem the violation an Unauthorized Attachment, or to seek specific performance of this Agreement in accordance with the Design Documents.

6.8 **Pole Replacement.** GAATN retains sole discretion to determine whether a Pole will be replaced and to determine the maximum height a Pole may reach. Replacement Poles shall be a minimum of five (5) feet higher than the replaced Pole. Pole replacement Costs shall be borne by Licensee if, because of inadequate capacity, approval of Licensee's Attachment first causes the need for the replacement.

6.9 **Coordination of Make-Ready Efforts.** In the event multiple entities have been granted Attachment Licenses for the same Pole and a disagreement arises between them as to construction and installation schedules or any other matters regarding the proposed attachments, GAATN shall have the right to require a representative of Licensee who has authority to agree on the issues to attend a meeting called by GAATN to discuss and resolve the issues. Failure to reach an agreement shall result in mandatory submittal of these issues to binding arbitration at the applicants' expense; provided, however, that if GAATN in its sole reasonable discretion determines that Licensee is not bargaining in good faith, GAATN may revoke or modify Licensee's Attachment License.

6.10 **Authority to Proceed.** An Attachment License is not an authority to proceed with Make-Ready work on a Pole. Before beginning Make-Ready work on a Pole, Licensee shall give GAATN not less than fourteen (14) days' written notice of the Pole location, the proposed date on which work will commence, and whether any electrical or other service interruptions or service (signal) degradations may occur, or any de-energizations will be required (collectively, "Interruptions"). If GAATN does not approve the proposed date, the parties shall mutually agree on a date for the work to take place and shall make all necessary arrangements and schedules for line and equipment de-energization, and service interruption and replacement or recovery (collectively, "Interruption Schedule"). Licensee shall not begin Make-Ready work without authority to proceed from

GAATN, and shall comply with the agreed-upon Interruption Schedule. Licensee shall be responsible for coordinating its efforts with GAATN field inspection personnel and for any actions or notifications required by GAATN. **LICENSEE SHALL INDEMNIFY GAATN FROM ALL CLAIMS FOR LOSS, HARM, PROPERTY DAMAGE, AND BODILY INJURY OR DEATH IN CONNECTION WITH ANY WORK PEFORMED WITHOUT THE NOTICE AND ARRANGEMENTS CONTEMPLATED BY THIS PARAGRAPH.**

6.11 **Service Interruptions.** In the event Licensee's Make-Ready work requires a scheduled Interruption of GAATN or Third Party User services, time shall be of the essence. If Licensee fails to comply with the Interruption Schedule as agreed upon pursuant to the preceding paragraph, GAATN may opt to immediately revoke Licensee's Attachment License(s) for the Poles in question and restore the Interrupted power and/or communications services at Licensee's sole Cost, unless Licensee's failure results from Force Majeure or through the fault of GAATN. Licensee will be responsible for Costs as provided in Section 5.4.

6.12 **Contractors.** All work performed by or on behalf of Licensee pursuant to an Attachment License shall be done by GAATN-approved persons or Contractors. Licensee may propose Contractors for approval, but GAATN is under no obligation to approve any proposed Contractor and may elect to do so in its sole judgment and discretion. Only orderly, well supervised, and competent workers shall be used. Neither Licensee's workers nor those of its Contractors may possess any weapon, or use, possess or be under the influence of any alcoholic or other intoxicating beverage, drug or controlled substance while performing any work on or around a Pole. If GAATN determines any Licensee or contract worker to be incompetent, disorderly, in the possession of any weapon, in the possession of or under the influence of alcohol or drugs, Licensee shall promptly remove such worker from all work on or around Poles, and may not again use such worker on work on or around Poles without the prior written consent of GAATN.

6.13 **Materials** Licensee shall furnish all necessary materials and hardware including but not limited to: poles, crossarms, mounting hardware, guys, anchors, insulators, conductors, and any associated miscellaneous hardware. All materials used by Licensee for Make-Ready work on Poles shall be obtained from GAATN-approved vendors and shall be new and of good quality and free from material defects. The use of attachment arms is prohibited without GAATN's prior written consent.

6.14 **Licensee to Bear Costs.** All Costs and expenses to complete the Make-Ready construction, including any approved relocation of GAATN facilities and Third Party User Attachments, shall be borne entirely by Licensee.

6.15 **GAATN Property.** Notwithstanding paragraphs 6.13 and 6.14, all Poles, materials, and equipment installed in the Make-Ready process shall become and remain GAATN's sole property, regardless of which entity procured or paid for it. Licensee shall execute any documents reasonably requested by GAATN to evidence the transfer of title to such Poles, materials, and equipment to GAATN, and Licensee shall brand and tag all new poles to indicate GAATN ownership. Licensee's performance of Make-Ready Work or payment of any Costs (A) shall in no way create or vest in Licensee any ownership right, title, or interest in any Pole or appurtenant facilities, (B) shall not entitle Licensee to any offsets, credits, payments, or income from GAATN's operation of the Pole or facilities, (C) alter or affect GAATN's rights under this Agreement, including those under Article 12, or (D) restrict GAATN's ability to allow access to a Pole by Third Party Users.

Licensee's interest shall at all times remain a bare non-exclusive, revocable license that is subject to the terms of this Agreement.

6.16 **Tree Trimming.** Licensee shall be responsible for all tree trimming necessary for the safe and reliable installation, use, and maintenance of its Attachments, and to avoid stress on Poles caused by contact between tree limbs and Licensee's Attachments. All tree trimming shall be performed in accordance with then-current GAATN tree-trimming policies, including without limitation those relating to owner notification and consent. Licensee shall report any proposed tree trimming activity near or adjacent to any GAATN Poles or other facilities in writing no later than five (5) business days in advance. GATTN reserves the right to require GAATN preapproval for any tree trimming.

6.17 **Anchors and Guying.** Licensee shall provide all anchors and guying necessary to accommodate the additional stress and load placed upon a Pole by its Attachments. Anchors shall not be placed outside of the easement in which a Pole stands.

ARTICLE 7
INSTALLATION AND MAINTENANCE OF ATTACHMENTS

7.1 **Installation.** Upon (A) GAATN's acceptance of the completed Make-Ready work, and (B) GAATN's receipt of full payment of all sums owing to GAATN for engineering, Make-Ready, and other Costs, Licensee may affix its Attachments to the Pole as set forth in the Attachment License and Design Documents.

7.2 **Communication Space.** All Attachments and Contacts on a Pole must remain in the Communications Space. Licensee operations in the Supply Space or in the space separating the Communication and Supply Spaces are prohibited.

7.3 **Maintenance.** Licensee shall, at its sole expense, make and maintain its Attachments in a safe condition and in good repair, and in such a manner as to not interfere with or interrupt GAATN's lines, facilities, and services or with Third Party User attachments, facilities, and services.

7.4 **No Damage.** Licensee shall not cause damage to GAATN or Third Party User facilities or operations. If Licensee, its Contractors, agents, employees, or Attachments cause damage to GAATN or Third Party User facilities or operations, Licensee assumes all responsibility for, and shall, as determined by GAATN, either repair or promptly reimburse GAATN or the Third Party User for all loss and expense directly caused by such damage, consistent with the requirements of this Agreement. Licensee shall immediately inform GAATN and all damaged Third Party Users of any damage to their facilities.

7.5 **Sag and Mid-Span Clearances.** Licensee shall leave proper sag in its lines and cables and shall observe the established sag of power line conductors and other cables so that during the life of the Attachment minimum clearances are (A) achieved at Poles located on both sides of the span and (B) maintained throughout the span. A minimum clearance between surfaces must be maintained between Licensee's and others' Cables at mid-span and between Licensee's and other's Attachments and Pole Contacts on the Poles.

7.6 **Climbing Space.** An unobstructed climbing space must be maintained at all times on the face of all Poles as required by any applicable Electrical Code or other applicable code, standard or practice, as well as adequate ground access to Poles. All Attachments must be placed as to allow and maintain a clear and proper climbing space. Licensee shall place its Attachments on the same side of the Pole as the majority of existing Attachments, if any.

7.7 **Tagging.** Each Attachment shall be identified at all times by an identifying marker approved by GAATN that, at minimum, (A) is permanent in duration and not degradable by rain or sunlight (B) has coloring and numbering or lettering unique to Licensee, and (C) is capable of being read unaided from the ground by a person with normal vision.

ARTICLE 8
MODIFICATION OF ATTACHMENTS

8.1 **No Unauthorized Modifications.** Except for routine modifications as provided in Section 8.2, Licensee shall not change the type, nature, or location of any Attachment or alter its use of a Pole without prior written GAATN consent. Licensee shall not construct any other or additional Attachments except as authorized by this Agreement together with all separate Attachment Licenses. Any Attachment changed or added in violation of this section shall be deemed to be an Unauthorized Attachment.

8.2 **Routine Modifications.** Licensee does not need GAATN consent for (A) minor changes incident to routine maintenance and repair; (B) installation of service drops; or (C) removal of Licensee's Attachments. Licensee shall nonetheless provide GAATN with a comprehensive report each year identifying all such changes in Attachments in the previous year.

8.3 **GAATN-Mandated Modifications.** Within thirty (30) days of written request by GAATN, Licensee shall move or rearrange its Attachments in order to maximize the usable available Pole space and/or to accommodate GAATN facilities. Licensee shall do so at its sole cost and risk. If Licensee fails or refuses to comply with the directions of GAATN to change, alter, improve, move, remove or rearrange any of its Attachments, such Attachments shall thereafter be deemed to be Unauthorized Attachments. GAATN may then opt to change, alter, improve, move, remove or rearrange such Attachments without incurring any liability to Licensee and at Licensee's sole cost, or GAATN may proceed under Articles 10 and 11 of this Agreement.

8.4 **Emergencies.** In case of an emergency, as determined by GAATN in its sole judgment and discretion, GAATN may move, rearrange or transfer Licensee's Attachments without notice and without liability to Licensee or to any other person, in which event Licensee shall also be responsible for all Costs.

8.5 **Destroyed Poles.** If any Pole on which Licensee has an Attachment is substantially destroyed or damaged by fire, storm, accident, or otherwise, GAATN shall be under no obligation to rebuild or replace such Pole, but may elect to terminate Licensee's Attachment License for such Pole without any liability to GAATN. GAATN shall notify Licensee in writing of a termination under this paragraph, and Licensee shall be entitled to a pro-rata refund of any prepaid but unearned Annual Usage Charge attributable to Licensee Attachments on such damaged or

destroyed Pole. Nothing herein shall prohibit Licensee from repairing or replacing such damaged or destroyed Poles at Licensee's sole cost and expense if: (A) GAATN elects not to repair or replace same, (B) GAATN consents, and (C) Licensee is permitted to do so under the City Code, the terms of Licensee's franchise, if applicable, and any applicable easements.

8.6 **Pole Transfers.** If GAATN replaces an existing Pole supporting an Attachment with a new Pole, GAATN will transfer, if reasonably feasible and at Licensee's sole risk, the Attachment to the replacement Pole when GAATN transfers its own lines and facilities, unless (A) Licensee notifies GAATN in writing that it does not desire to occupy the new Pole, or (B) other transfer arrangements satisfactory to GAATN are made in advance. Except in a GAATN-determined emergency, GAATN will try to give Licensee reasonable advance notice of scheduled Pole replacements. Failure of Licensee to timely respond to GAATN's notice shall be deemed an election to occupy the new Pole. If Licensee opts not to occupy the new Pole, Licensee's Attachment License to the replaced Pole shall terminate as of the date of replacement. Licensee shall not be entitled to a refund of any Annual Usage Charge as a result. For each Attachment transferred by GAATN, Licensee shall pay a Transfer Fee, if applicable, as set forth in **Exhibit A**.

8.7 **Underground Conversion.** Upon written notice, Licensee agrees that it will bear all Costs associated with the relocation or re-routing of its Attachments in the event GAATN facilities are removed from a Pole and re-routed through underground conduits. In such event, GAATN shall be under no obligation to maintain any Poles that no longer support GAATN supply lines and may remove Licensee's Attachments at Licensee's sole Cost and risk when removing the abandoned Pole.

ARTICLE 9
INVENTORY AND INSPECTIONS

9.1 **Right to Inspect.** GAATN may inspect Licensee's work and Attachments at any time. GAATN may conduct these inspections for any purpose relating to this Agreement or GAATN operations, including without limitation: (A) determining compliance with the Design Documents or other design and installation requirements; (B) determining compliance with Electrical Code or other applicable standards; or (3) auditing and inventorying. The making of an inspection by GAATN shall not operate in any way to relieve Licensee or Licensee's insurers of any responsibility, duty, obligation, or liability under this Agreement or otherwise, nor does GAATN's ability to make inspections relieve Licensee from its obligations to exercise due care in the operation and inspection of its Attachments.

9.2 **Compliance.** In the event any inspection of an existing Attachment reveals that corrections or other actions are required of Licensee under this Agreement, including without limitation those required for reasons of safety or structural integrity, Licensee shall make such corrections or take the requested actions within thirty (30) days after the date GAATN sends Licensee a written notice informing Licensee of the corrections to be made. GAATN may also perform such work without notice, at Licensee's sole Cost and risk, if GAATN determines in its sole judgment and discretion that emergency, public welfare, or safety considerations do not permit full advance notice to Licensee. If Licensee fails or refuses to comply with the directions of GAATN, the Attachments in question shall thereafter be deemed to be Unauthorized Attachments. GAATN may opt to change, alter, improve, move, remove, or rearrange such Attachments without incurring any liability to Licensee, and at Licensee's sole Cost and risk, or proceed under Articles

10 and 11 of this Agreement.

9.3 **System-wide Inventory.** Not more than once in a Contract Year, GAATN may, but is under no obligation to, conduct a system-wide inventory of all Licensee and Third-Party User Attachments on its Poles, for which Licensee shall bear its proportionate share of Costs. GAATN will notify Licensee of the times and places of such inventory, and Licensee may have representatives accompany GAATN on the inventory. GAATN may use the results of the inventory for purposes of calculating the Annual Usage Charge, but may also rely upon statistically significant number of geographical grids or other mutually agreeable census to determine the correct count. This provision does not preclude GAATN from conducting inventories or other inspections at other times as it sees fit, without cost to Licensee except as otherwise provided in this Agreement.

ARTICLE 10
UNAUTHORIZED ATTACHMENTS

10.1 **Unauthorized Attachments.** Licensee shall not place any Attachments on a Pole or other GAATN infrastructure except as authorized by an Attachment License. If one or more Unauthorized Attachments are discovered, Licensee shall comply with this Article 10 or GAATN may, but shall not be required to, remove the Unauthorized Attachment without incurring any liability to Licensee and at Licensee's sole Cost. With respect to any Unauthorized Attachment, GAATN may opt to:

A. Require that Licensee remove such Unauthorized Attachment upon demand or, if Licensee fails to do so, remove such Attachment at Licensee's sole Cost and risk; or

B. Require that Licensee submit an Application for each such Unauthorized Attachment, together with the then-current Filing Fee and Annual Usage Charge relating back to the inception of this Agreement. If such Application and charges are not received by GAATN within fifteen (15) days of notice of the Unauthorized Attachment, GAATN may then opt to proceed under part A of this paragraph 10.1.

10.2 **Remedies Cumulative.** The remedies afforded GAATN under this Article 10 are in addition to any remedies or rights available to GAATN in law or equity, including but not limited to civil or criminal penalties provided by, for example, the Infrastructure Usage Ordinance for Unauthorized Attachments, or other applicable law or standards.

10.3 **No Ratification of Unauthorized Use.** No act or failure to act by GAATN with respect to an Unauthorized Attachment or any other unauthorized use of GAATN Poles or property shall be considered to be a ratification, licensing, or permitting of the unauthorized use, irrespective of any otherwise applicable doctrine of waiver or laches.

10.4 **Excessive Unauthorized Attachments.** If GAATN determines that Licensee has made more than five (5) Unauthorized Attachments cumulatively during any Contract Year, Licensee shall be considered to be in material breach of this Agreement and GAATN will have the right to terminate this Agreement and require removal of Licensee's Attachments in accordance with Article 12 of this Agreement.

ARTICLE 11
PUBLIC INTERACTION

11.1 **Purpose.** Licensee acknowledges that the scope of its proposed project and the amount of Make-Ready construction and Attachment installation it intends to undertake under this Agreement may require Licensee to make extensive and repeated intrusions onto private property in order to access Poles. The purpose of this Article is to establish minimum standards of conduct with respect to property owners and other members of the public, as well as GAATN Participants and Third Party users.

11.2 **Owner Consent.** Before entering onto private property to access a Pole, Licensee shall obtain the property owner's consent, including the consent of any affected GAATN Participant.

11.3 **Licensee Conduct.** Before engaging in Make-Ready or installation work on private property, including that of any GAATN Participant, Licensee shall, at minimum:

A. Place hangers or fliers, explaining in general the nature, extent, and purpose of the work to be done and listing Licensee's telephone numbers and web site where additional information can be found, on the front door of each person whose property is to be entered upon at least forty-eight (48) hours prior to entry;

B. Require all Licensee field crews, and those of its Contractors, to carry and distribute upon request information packets explaining in detail the nature, extent, and purpose of the work being done and listing the telephone number and web site where additional information can be found;

C. Establish and maintain a local call-center telephone number during all hours during which field work is being done that is staffed by knowledgeable personnel who can answer and resolve questions and complaints concerning the work being done on their premises;

D. Establish and maintain a web site containing a project summary, work schedules, FAQs, and telephone numbers;

E. Require all field crews to wear I.D. badges and uniforms identifying themselves as employees or Contractors of Licensee;

F. Have all vehicles used in field work bear Licensee logo;

G. Require all field crews to seek permission of the premises owner before entering into a back yard; and

H. Have readily available, during all hours in which field work is being done, one or more knowledgeable personnel who can communicate with and assist GAATN Network Management and GAATN Board members regarding property owner and other complaints, and also have available qualified personnel to conduct on-site resolution of property owner and other complaints. For the purpose of this Section, "property owner"

includes residents of a property and any other persons having a legal right to access or occupy the premises, e.g., renters and lessees.

11.4 **No GAATN or GAATN Participant Affiliation.** Neither Licensee, nor its employees, Contractors, agents, or other representatives, shall at any time represent themselves to the public, any GAATN Participants, private property owner, or any resident as being associated with, having the permission of, or having been requested by GAATN or any GAATN Participant to be on private property. Licensee may inform any such persons or entities that Licensee is allowed to occupy and work on GAATN Poles by virtue of state and federal law and this Agreement, not by mere voluntary association with GAATN or any GAATN Participant.

11.5 **Service Interruptions.** Licensee shall provide written notice to GAATN, GAATN Participants, GAATN Third Party Users, and any affected residents or owners of potentially affected properties of any planned service Interruptions that will or may affect them not less than fifteen (15) business days in advance of such Interruption. Such notice shall contain the specific dates and times for such Interruptions and the reasons therefor.

ARTICLE 12
TERMINATION

12.1 **Termination of Attachment Licenses.** Attachment Licenses for specific Attachments shall terminate upon any of the following events or conditions:

A. Licensee has not completed all necessary Make-Ready work and Attachment installation within ninety (90) days of issuance of the Attachment License, unless Licensee and GAATN agree in writing for a longer period;

B. Licensee removes the Attachment other than in the course of routine maintenance or replacement;

C. Licensee ceases to offer services, or provides services unlawfully, through the Attachment; or

D. Licensee fails to comply with any material requirement of this Agreement regarding such Attachment.

12.2 **Right of Suspension.** If Licensee fails either to make any payment required under this Agreement, including timely payments to Contractors for Make-Ready Work, or to perform timely any material obligation under this Agreement, and such default continues for thirty (30) days after the date the payment or performance is due, then, in addition to any other available right or remedy, GAATN may, upon written notice to Licensee, immediately suspend all Attachment Licenses of Licensee hereunder until such time as the default is cured. The payment under protest of a disputed amount in order to avoid, or lift, suspension of Attachment Licenses shall not prejudice the rights of Licensee to continue the payment dispute. A suspension of Attachment Licenses under this paragraph shall not prevent Licensee from operating, maintaining, repairing or removing its existing Attachments, but Licensee shall not install any new or additional Attachments or make any changes to existing Attachments (except for removal or routine repair or maintenance necessary to continue to provide services to then-existing Licensee customers) during the period

of suspension.

12.3 **Termination of Agreement by GAATN.** If Licensee fails (i) to make any payment required under this Agreement, including timely payments to Contractors for Make-Ready Work; or (ii) timely perform any material obligation under this Agreement; and if such default has not been cured within ninety (90) days of Licensee's receipt of written notice of default (or such lesser time specified by GAATN for reasonable cause); (iii) if Licensee has terminated, threatened to terminate, refused to renew, or otherwise adversely modified any agreement with GAATN or any GAATN Participant permitting GAATN's or GAATN Participants' use of Licensee's facilities, including but not limited to poles and easements, or has refused to enter into such an agreement with GAATN or GAATN Participants without a commercially reasonable basis for refusal demonstrated to the reasonable satisfaction of GAATN and/or the affected GAATN Participants, GAATN may terminate this Agreement and all Attachment Licenses upon written notice to Licensee; or (iv) if GAATN determines in its sole discretion that GAATN's use, or proposed use, as to any or all Poles or Attachments concerned hereunder warrants exclusion of Licensee from making or maintaining such Attachments in order to not interfere in any way with, complicate, or preclude such GAATN use or proposed use, or make such use or proposed use directly or indirectly more expensive to GAATN.

12.4 **Removal of Attachments.** Upon receipt of a notice of termination, Licensee shall promptly begin the process of removing all Attachments from Poles. All such Attachments shall be removed within thirty (30) days after the date of the notice of termination, or within such time as GAATN may agree. Until all of Licensee's Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Such payment by Licensee or acceptance by GAATN of Annual Usage Charges shall not act to cure the default that triggered the termination nor shall it reinstate this Agreement or Licensee's Attachment Licenses hereunder.

12.5 **Failure to Remove Attachments.** If Licensee has not removed all its Attachments within the period of time specified in the preceding paragraph, or such additional period of time granted by GAATN in writing, then GAATN may remove Licensee's Attachments at Licensee's sole Cost and risk, in which event Licensee shall pay to GAATN as liquidated damages, and not as a penalty, for the use and occupancy of GAATN Poles a sum equal to one half of the Usage Rate for each Pole Contact for each month (or part thereof) until all such Attachments have been removed. Alternatively, GAATN may, in its sole discretion and upon written notice to Licensee, deem the Attachments to have been abandoned and assume ownership thereof.

12.6 **Termination of Agreement by Licensee.** Licensee may terminate this Agreement upon sixty (60) days written notice to GAATN, in which event all Attachments shall be removed within one hundred twenty (120) days after the date of the notice of termination or within such other time to which GAATN agrees. Until all of Licensee's Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Termination by Licensee during a Contract Year shall not relieve Licensee from payment for the full Annual Usage Charge for that Contract Year or any other sums owing GAATN.

12.7 **Survival.** Licensee's obligations under this Article 12 shall survive termination of this Agreement.

ARTICLE 13
ASSIGNMENTS

13.1 **Permissible Assignments.** Licensee may not assign or otherwise transfer this Agreement or any Attachment Licenses without GAATN's prior written consent, except that Licensee may without consent:

A. transfer or assign this Agreement to an affiliate or subsidiary of Licensee to whom Licensee has been duly authorized by the City to transfer or assign Licensee's franchise; provided, that transferee agrees in writing to accept the terms of the Agreement and honor them. At GAATN's discretion, Licensee/transferor will remain responsible for performance of transferee under the Agreement; in such event, the transfer shall not relieve Licensee of any of its obligations or duties hereunder, and any failure of performance, non-payment or other default by such transferee shall be deemed to be a failure of performance, non-payment or default by Licensee, for which GAATN may assert all available rights and remedies under this Agreement or under law or in equity. Licensee's rights and obligations hereunder shall pass to such successor only upon receipt by GAATN of written notice of such transfer or assignment of the franchise, together with true copies of the documents specified in this section 13.1.A and in paragraph 13.2 below;

B. lease capacity on its telecommunications system and network to another service provider that provides telecommunications services, as defined in the Telecommunications Act of 1996. No such lease of capacity shall relieve Licensee of any of its obligations or duties hereunder, and any failure of performance, non-payment or other default by such lessee, shall be deemed to be a failure of performance, non-payment or default by Licensee, for which GAATN may assert all available rights and remedies under this Agreement or under law or in equity. In the event of a lease of capacity, Licensee shall deliver to GAATN contemporaneous copies of all information and documents that Licensee is required to provide GAATN. Nothing in this section shall be construed to grant any Attachment Licenses to any party leasing capacity from Licensee; or

C. mortgage any or all of its property, rights, privileges and franchises, or to enter into any merger, consolidation, or sale of its assets in the area served by GAATN substantially in their entirety. Licensee shall provide advance written notice of such foreclosure, merger, consolidation or sale, together with true copies of the documents specified in section 13.2 below within thirty (30) days of closing such transaction.

13.2 **Information to GAATN.** In the event of a transfer or assignment of this Agreement, Licensee shall provide GAATN with true and complete copies of the transfer or assignment documents; documents showing the ownership of the assignee and its relationship to Licensee, if any; a copy of the assignee's most current audited annual financial statement; a copy of the assignee's franchise with the City, if any; copies of all insurance policies and bonds required by this Agreement; and such other information as Greater Austin Area Telecommunications Network may reasonably request.

13.3 **Other Assignments Void.** A purported assignment or transfer made in violation of the provisions of this Article 13 shall not be binding upon GAATN and shall be deemed to be a material default of this Agreement.

13.4 **Assignment by GAATN**. GAATN may assign this Agreement in whole or in part without the consent of Licensee. GAATN shall give Licensee written notice of the transaction within ten (10) days after closing.

13.5 **Partial Assignments.** If Licensee sells, conveys, or transfers some, but not all, of Licensee's Attachments, and such assignment complies with this Article 13, the assignee must nonetheless obtain a separate agreement from GAATN for the assignee's Attachments in accordance with GAATN policies, rules, regulations and any applicable City Ordinances in effect at that time. Until the assignee executes a separate agreement with GAATN, the assignment is not binding upon GAATN and the assignee's Attachments shall continue to be deemed to be the Attachments of Licensee for all purposes hereunder, including billing and payment of Annual Usage Charges. If under such circumstances, any failure of payment or other breach of this Agreement by assignee occurs that is not promptly cured by Licensee upon written notice, GAATN may immediately terminate this Agreement without penalty or further obligation to Licensee or the assignee.

ARTICLE 14
SURETY

14.1 **Payment Bond.** If GAATN requires a Payment Bond in **Exhibit A**, then within thirty (30) days of the Effective Date of this Agreement, Licensee shall provide a payment bond in the amount specified in **Exhibit A**. The payment bond will serve as security for the faithful payment of all of Licensee's obligations for contracts, subcontracts, work, labor, equipment, supplies, and materials performed under this Agreement. The payment bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by GAATN pursuant to applicable law. During the course of this Agreement, Licensee shall maintain such bond in the amount specified in **Exhibit A** for each Pole for which an Attachment Licensee has been granted but for which Make-Ready work has not been complete for more than ninety (90) days. GAATN reserves the right to impose a payment bond requirement at any time, even if none was initially imposed, upon thirty (30) days' written notice to Licensee.

14.2 **Performance Bond.** If GAATN requires a Performance Bond in **Exhibit A**, then within thirty (30) days of the Effective Date of this Agreement, Licensee shall provide a Performance Bond in the amount specified in **Exhibit A** to guarantee the performance of Licensee's obligations under this Agreement, including, but not limited to, the removal of Licensee's Attachments upon termination of this Agreement. Licensee agrees to maintain the performance bond in full force and effect during the entire term of this Agreement and until GAATN is reimbursed for all Costs incurred as a result of removing Licensee's Attachments upon termination of this Agreement. The performance bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The amount of the bond or financial security does not operate as a limitation upon obligations of the Licensee under this Agreement. GAATN reserves the right to impose a performance bond requirement at any time, even if none was initially imposed, upon thirty (30)

days' written notice to Licensee.

ARTICLE 15
LIABILITY, INDEMNITY, AND INSURANCE

15.1 **GAATN Liability.** GAATN reserves to itself the right to maintain and operate its Poles in such manner as will best enable it to fulfill its own service requirements and governmental functions. Neither GAATN nor any GAATN Participant shall be liable for any damages incurred by Licensee for damage or interruption to Licensee's Attachments except for actual repair costs caused solely by the negligence of GAATN or an applicable GAATN Participant; provided, however, that neither GAATN nor any GAATN Participant shall be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's Attachments. **NEITHER GAATN OR ANY GAATN PARTICIPANT SHALL BE LIABLE TO LICENSEE FOR ANY SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THE USE OF OR DAMAGE TO LICENSEE'S FACILITIES**.

15.2 **No Warranties by GAATN.** Licensee is expected to inspect the Poles on which its Attachments will be placed and shall rely solely on such inspection to determine the suitability of the Poles for its purposes. **GAATN DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTIES CONCERNING ANY POLE, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACCEPTS THE USE OF ALL POLES AS IS, WHERE IS, AND WITH ALL FAULTS**.

15.3 **Unsafe Poles.** Licensee acknowledges and agrees that GAATN does not warrant the condition or safety of GAATN's Poles, or the premises surrounding the Poles, and **LICENSEE HEREBY ASSUMES ALL RISKS OF AND INDEMNIFIES GAATN FROM ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH LICENSEE'S OR LICENSEE'S CONTRACTORS' USE OF THE POLES AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN, OR SURROUNDING THE POLES.** Licensee expressly agrees that it will undertake responsibility for inspecting and evaluating the condition of any Pole before allowing any workers, whether those of Licensee or Licensee's Contractors, to climb or otherwise work on such Pole. If Licensee discovers any Poles that are rotten or otherwise unsafe for climbing or Attachment installation, Licensee shall immediately report such unsafe condition to GAATN. Licensee further acknowledges that GAATN does not warrant that all poles are properly labeled, and agrees that GAATN is not liable for any injuries or damages caused by or in connection with missing labels or otherwise improperly labeled pole. Licensee further agrees to immediately notify GAATN if labels or tags are missing or otherwise improper.

15.4 **Dangerous Nature of the Work.** Licensee acknowledges that in performing the work contemplated by this Agreement, Licensee and its agents, servants, employees, and Contractors may work near electrically energized lines, transformers, and other electrical equipment, and it is the intention that the power flowing through such facilities will not be interrupted except by GAATN or the owner of those facilities. Licensee shall ensure that its employees, servants, agents, and Contractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of GAATN, and the general public, from

harm or injury while performing work permitted by this Agreement. In addition, Licensee shall furnish its employees, and shall require its agents and Contractors to furnish their employees, with competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee further warrants that it is apprised of, conscious of, and understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on GAATN's Poles by Licensee's employees, servants, agents, and Contractors, and accepts it as its duty and sole responsibility to notify and inform Licensee's employees, and to require its agents, and Contractors to inform their employees of such dangers, and to keep them informed regarding same.

15.5 **Licensee Liability and Indemnity.** Subject only to paragraph 15.7, **LICENSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS GAATN AND ITS PARTICIPANTS AND ALL GAATN PARTICIPANTS, WHETHER EXISTING NOW OR IN THE FUTURE, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, DEPARTMENTS, AGENCIES, BOARDS, REPRESENTATIVES, EMPLOYEES, AGENTS, CONTRACTORS AND ATTORNEYS AGAINST ANY AND ALL LIABILITY, CLAIMS, COSTS, DAMAGES, FINES, TAXES, SPECIAL CHARGES BY OTHERS, PENALTIES, DAMAGES (INCLUDING INCIDENTAL CONSEQUENTIAL SPECIAL, EXEMPLARY AND PUNITIVE DAMAGES), EXPENSES, DEMANDS, LAWSUITS OR DISPUTES (INCLUDING REASONABLE ATTORNEY FEES OF COUNSEL SELECTED BY GAATN OR GAATN PARTICIPANTS AND ALL OTHER COSTS AND EXPENSES OF LITIGATION) ARISING FROM OR RELATED TO ANY OF THE FOLLOWING**:

A. All acts or omissions by Licensee or its Contractors done in the course of Make-Ready or installation construction or in the maintenance, use, or operation of Licensee's Attachments;

B. Any work performed by GAATN that was necessitated by or in furtherance of the erection, installation, maintenance, presence, use, repair, replacement, relocation, transfer, or removal of Licensee's Attachments or from any work this Agreement authorizes GAATN to perform on Licensee's behalf;

C. All claims or causes of action for damage to property or injury to or death of any persons, including payments made by GAATN under any Worker's Compensation Laws or under any plan for employees' disability and death benefits, arising out of the erection, installation, maintenance, presence, use, repair, replacement, relocation, transfer, or removal of Licensee's Attachments or the proximity of Licensee's Attachments to GAATN's or any GAATN Participant's Facilities or the property of any other Third Party User, or by any act or omission of Licensee on or in the vicinity of GAATN's Poles;

D. All claims or causes of action for property damage, bodily injury or death arising out of the performance or nonperformance of any work or obligation undertaken by Licensee pursuant to this Agreement;

E. Any occurrence related to Licensee's erection, installation, maintenance, presence, use, repair, replacement, relocation, transfer, or removal of Licensee's Attachments, including liabilities incurred as a result of violation of any law, rule, or regulation of the United States, State of Texas, or any other governmental entity or

administrative agency;

F. A violation of any local, state or federal law arising out of or related to Licensee's erection, installation, maintenance, presence, use, repair, replacement, relocation, transfer, or removal of Licensee's Attachments or the proximity of Licensee's Attachments to GAATN's or any GAATN Participant's Facilities or the property of any Attaching Entity, or by any act or omission of Licensee on or in the vicinity of GAATN's Poles, whether such violation is the result of a violation of a statute by GAATN or the Licensee solely or any joint violation thereof.

G. Claims of governmental bodies, property owners or others alleging that Licensee does not have a sufficient right or authority for placing and maintaining Licensee's Facilities at the locations of poles owned by GAATN or joint users.

H. Claims for taxes or special charges by others that arise directly or indirectly from the construction, maintenance or operation of Licensee's Facilities.

I. Claims or causes of action caused by or relating in any manner to a breach of this Agreement or a failure to follow the terms of this Agreement by Licensee or its agents and employees or by Licensee's Contractors or their agents and employees.

J. All claims or causes of action of Third Party Users alleging interference from Licensee's Attachments or damage by Licensee or its Contractors to Third Party User Attachments or facilities.

K. All claims or causes of action relating to Licensee's use of its Attachments, including without limitation claims of libel and slander and claims based upon infringement of intellectual property rights.

L. All claims or causes of action relating to or arising in whole or part from, connected with, or attributable in any way to the presence, release, transport, or disposal of hazardous materials by Licensee (or its Contractors, employees, agents, or representatives) on, at, under, or in the vicinity of GAATN Poles or other GAATN property or that of GAATN Participants, arising out of, related to, or concerning the use or preparation for use by Licensee of GAATN Poles, easements, or other property, or that of any GAATN Participants.

15.6 **GAATN Fault. SUBJECT ONLY TO PARAGRAPH 15.7, IT IS THE EXPRESS INTENT OF THE PARTIES THAT THE FOREGOING INDEMNITY IS TO PROTECT AND INDEMNIFY GAATN AND ITS PARTICIPANTS AGAINST THE CONSEQUENCES OF GAATN'S OR GAATN PARTICIPANTS' OWN FAULT, WHERE GAATN'S OR APPLICABLE GAATN PARTICIPANTS' FAULT IS A CONCURRENT PROXIMATE CAUSE OF THE INDEMNIFIED LIABILITY.**

15.7 **Joint Liability** The indemnity obligations set forth in paragraphs 15.5 and 15.6 shall apply to fully protect and indemnify GAATN and its Participants from all such claimed damages regardless of whether GAATN or its Participants is a joint tortfeasor unless (1) the indemnified liability was the result of intentional or reckless misconduct on the part of GAATN or its

Participants, or their agents, servants, employees, or contractors, and such misconduct was the sole proximate cause of the damages, or (2) by virtue of a final judgment, a finder of fact determines GAATN's percentage of responsibility for the indemnified liability to be 60% or greater, in which case each party shall then be liable for its found percentage of damages in accordance with Texas law.

15.8 **Governmental Immunity.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by GAATN or any GAATN Participant of the provisions of the Texas Tort Claims Act or any other law limiting liability, or of waiving governmental immunity.

15.9 **Other Indemnification Provisions.** No indemnification provision contained in this Article shall be construed in any way to limit any other indemnification provision contained in this Agreement.

15.10 **Survival.** This Article 15 shall survive the termination of this Agreement.

ARTICLE 16
INSURANCE

16.1 **Insurance Required.** During the term of this Agreement, Licensee shall at all times carry any insurance specified in **Exhibit A**, and required Workers Compensation Insurance, issued by companies duly licensed to provide insurance in the State of Texas and approved by GAATN (which shall not be unreasonably withheld) to protect Licensee, GAATN, and GAATN Participants against any and all claims, demands, actions, judgments, costs, expenses, or liabilities of every kind that may arise, directly or indirectly, from or by reason of losses, injuries, or damages described in this Agreement. GAATN reserves the right to impose an insurance requirement at any time, even if none was initially imposed, upon thirty (30) days' written notice to Licensee.

16.2 **GAATN as Named Insured.** Unless otherwise stated in **Exhibit A**, all policies shall name GAATN and its Participants as additional named insureds. Each policy shall contain an endorsement obligating the insurer to notify the GAATN Network Manager at least thirty (30) days before any non-renewal, cancellation or material change in coverage. Each policy shall contain a waiver of all rights of recovery or subrogation against GAATN and its Participants, and each of their officers, agents, employees, and elected officials.

16.3 **Contractors.** Any Contractor (excluding subcontractors) retained by Licensee to perform work or services for Licensee under this Agreement shall be required to carry insurance to the same extent as provided above as a condition of being granted access to Poles.

ARTICLE 17
MISCELLANEOUS PROVISIONS

17.1 **Integration.** This Agreement constitutes the entire understanding of the parties relating to the use of GAATN Poles hereunder; and there shall be no modification or waiver hereof except by writing, signed by the party asserted to be bound thereby. There are no oral representations or agreements between the parties. All previous agreements, correspondence, statements, and negotiations are superseded by this Agreement.

17.2 **No Waiver**. The failure of either party 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 duly force and effect.

17.3 **Applicable Law.** The parties hereto agree and intend that all disputes that may arise from, out of, under or respecting the terms and conditions of this Agreement, or concerning the rights or obligations of the parties hereunder, or respecting any performance or failure of performance by either party hereunder, shall be governed by the laws of the State of Texas, without application of its Conflict of Laws provisions. The parties further agree and intend that venue shall be proper and shall lie exclusively the state and county courts in Travis County, Texas; and Licensee hereby submits to the jurisdiction of those courts.

17.4 **Severability.** If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants and provisions of this Contract shall remain in full force and effect. But in such event, if either party believes in good faith that the balance of mutual benefit and obligations under the Agreement has been thereby materially impaired, such party may, upon written notice to the other party, initiate a renegotiation of the Agreement to redress such imbalance. If the parties are unable to agree upon a renegotiated Agreement within thirty days, then either party may terminate the Agreement, effective six months after giving written notice to the other party, in which event all Attachments shall be removed within one hundred twenty (120) days after the date of the notice of termination or within such other time as GAATN agrees. Until all of Licensee's Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Termination by Licensee during a Contract Year shall not relieve Licensee from payment for the full Annual Usage Charge for that Contract Year or any other sums owing GAATN.

17.5 **Payments & Interest.** The provisions of Texas Government Code chapter 2251 shall govern all payment provisions of this Agreement. Except to the extent inconsistent with that chapter, all monetary payments under this Agreement shall be due and payable within thirty (30) days after receipt of invoice. All overdue balances shall accrue interest at the rate of 1% per month from the due date until paid, or the maximum rate allowed by law, whichever is less.

17.6 **Notices.** When notice is required to be given under this Agreement by either party, it shall be in writing mailed or delivered to the other party at the following address or to such other address as either party may from time to time designate in writing for that purpose. All notices shall be effective upon receipt.

Licensee _____

Licensor GREATER AUSTIN AREA TELECOMMUNICATIONS NETWORK
Greater Austin Area Telecommunications Network (GAATN)
c/o City of Austin Technology Services
Attn: Frank Ammons, GAATN Network Manager
GROVE - ATS
2001 E. 5th Street
Austin, TX 78702
Email: gaatn@austintexas.gov

17.7 **Dispute Resolution.** The parties will first attempt to resolve any disputes amicably. If they are unable to do so within thirty (30) days, they agree to participate in good faith within sixty (60) days thereafter in non-binding mediation in Travis County, Texas, and to do so before they may resort to other means, including but not limited to legal action such as filing suit. If the parties cannot agree to a mediator, they agree that a mediator shall be chosen for them by the Austin Dispute Resolution Center. Each party will bear its own costs of participation in the mediation; and the parties agree to share equally the fees and other direct costs of mediation (such as the mediator's fees and expenses, costs of mediation site, etc.). Neither party may be compelled to participate in or be bound by arbitration without its express written consent.

17.8 **Attorneys' fees.** The party prevailing in any adjudication, as that term is defined in Texas Local Government Code section 271.151 or successor statutes, of a claim by or against GAATN or any GAATN Participant, or by or against Licensee, arising under or related to this Agreement or the performance of it, shall be entitled to recovery of reasonable and necessary attorneys' fees that are equitable and just and allowed costs; provided, that Licensee as the prevailing party may recover such attorneys' fees and costs only as permitted by Texas Local Government Code section 271.153 or its successor statute. This provision is not, and shall not be construed as, a waiver of any sovereign or governmental immunity to which GAATN or any GAATN Participant may be entitled under applicable law.

17.9 **Amendment.** This Agreement may be amended only by a writing duly approved by the GAATN Board of Directors or its successor's governing body and by Licensee.

17.10 **Construction.** Descriptive headings or captions in this Agreement are for convenience only and shall not affect the construction or application of this Agreement. Words having established technical or trade meanings in the industry shall be so construed. Listings of items shall not be exclusive unless expressly so stated, but shall include other items, whether similar or dissimilar to those explicitly listed, as the context reasonably requires. No rule of construction requiring interpretation against the drafting party shall be applied or given effect. Words of any gender used herein shall be deemed to include words of any other gender; and use of the singular or the plural herein shall include the other, unless context requires otherwise.

17.11 **Force Majeure.** No party hereto shall be responsible for performance hereunder, and its obligation to perform its obligations hereunder shall be suspended, for the duration of any events of force majeure, including but not limited to: Acts of God, including fire, explosion, earthquake, flood, landslide, and catastrophic storm and other weather events; sustained power outages or fuel shortages preventing operation of necessary equipment or receipt of necessary materials, supplies or equipment; national or international failures of supply of necessary equipment, materials,

components or supplies; acts of terrorism, vandalism, sabotage, theft of necessary components, equipment, materials or supplies; any action, law, order, regulation, directive, or requirement of the United States government or of any state or local government, or of any agency, commission, court, regulatory body or other instrumentality of such government, or of any civil or military authority, having requisite authority and jurisdiction, that precludes or substantially adversely affects the party's ability to perform; war, national emergency or civil insurrection, riot or other civil disorder; strike, work stoppage or lockout; or any other event outside the control of the party or its reasonable ability to have avoided or prevented such event; and such excuse by reason of force majeure shall last until that party by the exercise of reasonable diligence removes, avoids or otherwise cures such impediment; provided, however, that failure, inability or absence of performance for any reason based on the economic condition of the party or the potential for economic advantage to that party on the basis of nonperformance shall not constitute an event of force majeure.

17.12 **Authority to execute.** Each person signing this Agreement on behalf of a party hereto represents and warrants to the other party that he/she has the requisite authority to sign this Agreement on behalf of the party for which he/she signs, and has been duly authorized by that party to execute this Agreement on the party's behalf and to bind the party thereby; and that all prerequisites to permit and authorize the agreement of the party being represented to enter into this Agreement have been taken and completed as required by applicable law.

17.13 **Consents.** Except where otherwise provided in this Agreement, where consent is required of each party to this Agreement, the parties shall not unreasonably withhold, delay or condition such consent.

17.14 **Document and information ownership.** All documents detailing information concerning or describing (i) the GAATN Network, including the location or configuration of any part of the GAATN Network (including but not limited to GAATN fiber optic cable, facilities, sites, equipment, or any other part of the GAATN Network, including but not limited to as-built diagrams or other documentation); (ii) the condition from time to time of the GAATN Network or any parts of it; (iii) details or history of any maintenance, repairs, alterations, modifications, reconfigurations, extensions, upgrades, additions or other aspects of any kind of the GAATN Network or any part of it; (iv) plans, designs or engineering work for any GAATN Network extensions, upgrades, additions, alterations, repairs, reconfigurations, maintenance or any other change of any kind to the GAATN Network or any part of it: and (v) any and all other documents related to or concerning the GAATN Network, whether provided to Licensee by GAATN, created by Licensee or its Contractors in relation to Licensee's work hereunder, or otherwise (all collectively "GAATN Information"), to which Licensee or any of its Contractors have access, or right of access or control, are and shall remain the sole and exclusive property of GAATN. Licensee understands and acknowledges that the use by Licensee of all such information shall be only in aid of the performance of Licensee’s rights and obligations hereunder, and that Licensee's unauthorized use, or the unauthorized access by or disclosure to unauthorized persons or entities, shall be a material violation of this Agreement, and that it may be and likely is proscribed by law, for which criminal penalties may be imposed. Upon termination of this Agreement for any reason, or upon demand of GAATN, Licensee agrees promptly to return all such GAATN Information to GAATN and to certify within ten (10) business days that all GAATN Information in Licensee’s possession or under its control or access, or right of control or access, has been returned to GAATN. For the purposes of this provision, "documents" includes without limitation hereby any

and all documents, records, diagrams, photographs, images, and other information of any kind, no matter where, on what medium, or by what means created, stored, written, recorded, transmitted, kept or maintained; and all GAATN Information provided to Licensee's Contractors, employees, officers, agents or representatives is considered to be under the control or right of control of Licensee.

17.15 Notice of Protected Confidentiality

Licensee is given notice that the GAATN Network is critical infrastructure, and that therefore disclosure by Licensee (or its Contractors, employees, agents, or other representatives) to third parties of information about the location, configuration, character, and other attributes of the GAATN Network or associated facilities may be prohibited under state and federal law.

IN WITNESS WHEREOF, the undersigned have executed this Agreement at Austin, Travis County, Texas through their duly authorized representatives.

GAATN

By: _____

Name: _____

Title: _____

Date: _____

(LICENSEE)

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Attachments to be placed 12 inches below existing GAATN attachments in a manner to not block the GAATN pole in (attachment must be made on the same side of the pole as the GAATN existing attachments). Attachments may not crisscross existing GAATN infrastructure.

INSURANCE REQUIREMENTS

Licensee is required to have and maintain for the duration of the applicable Attachments the insurance coverages specified in Attachment 1 to this Exhibit, and to provide proof of coverage each year of the applicable Attachment license(s) or upon other request of GAATN.

PAYMENT BOND REQUIRED

A payment bond is required pursuant to Section 14.1, in the total amount of Twenty-Five Thousand Dollars ($25,000.00) for the first twenty-five (25) Attachments. The bond must be maintained for the duration of the applicable Attachment licenses. Additional bonding may be required for additional Attachments.

PERFORMANCE BOND REQUIRED

A performance bond is required pursuant to Section 14.1, in the total amount of Twenty-Five Thousand Dollars ($25,000.00) for the first twenty-five (25) Attachments. The bond must be maintained for the duration of the applicable Attachment licenses. Additional bonding may be required for additional Attachments.

ANNUAL USAGE CHARGE

The Annual Usage Charge for the first year of this Agreement shall be Ten Dollars ($10.00) per Attachment, which rate will apply annually thereafter unless changed by GAATN upon ten (10 days written notice.

APPLICATION FILING FEE

$200 per Attachment

OTHER FEES AND ASSESSMENTS

In addition to any costs or damages incurred by GAATN, GAATN Participants, or Third-Party Users for which Licensee is responsible under the Agreement, GAATN may impose the following assessments:

Safety violation assessment, per Attachment	$100.00
Unauthorized Attachment assessment, per Attachment	$100.00
Drop Pole Transfer assessment, per Attachment	$ 50.00
Riser Pole Transfer assessment, per Attachment	$300.00
Angle Pole Transfer assessment, per Attachment	$150.00
Tangent Pole Transfer assessment, per Attachment	$ 50.00
Dead-end Pole Transfer assessment, per Attachment	$250.00
Trip Charge to Remove Pole Attachment, per Attached Pole	$250.00

ATTACHMENT 1
To Exhibit A
INSURANCE COVERAGE REQUIREMENTS

Business Automobile

$1,000,000.00 combined single limit, including

bodily injury and property damage; and

any and all owned, non-owned or hired vehicles, including employee-owned, used for business in whole or part.

Workers' Compensation

Licensee must elect coverage as required by Section 406.002 of the Texas Labor Code; and Licensee must maintain the coverage throughout the term of any Attachment licenses and comply with all provisions of Title 5 of the Texas Labor code to ensure maintenance of the coverage. Any termination of this coverage or any cancellation or non-renewal of such coverage will constitute a material breach of this Agreement. Coverage to include Employer's Liability coverage with limits of at least $1,000,000.00 each accident.

General Liability

Licensee shall have and maintain at least the following coverage:

$1,000,000.00 each occurrence,
$2,000,000.00 general aggregate;

and shall include at least the following:

Blanket contractual liability;
Personal injury and advertising injury;
Products and completed operations.

Umbrella

$5,000,000.00 each occurrence
$5,000,000.00 aggregate

Other requirements

Contractor's general liability and auto liability insurance policies through policy endorsement must include wording that states that the policy shall be primary and non-contributory with respect to any insurance carried by the Authority. The certificate of insurance must reflect that the above wording is included in evidenced policies. GAATN must be notified at least 30 days in advance of any cancellation or material modification of any of the required policies or coverages. GAATN must receive a copy of the full policy from Licensee.

EXHIBIT B

In this Exhibit, the term "Licensee" includes Licensee's contractors and subcontractors.

B.1 TRAFFIC CONTROL

1. Licensee shall allow reasonable local vehicular and pedestrian traffic, including use of driveways, to proceed safely with minimum inconvenience, except during actual construction operations. Licensee provided flaggers shall assist traffic when a street is operating under a single lane. Two-way traffic shall be maintained at all other times.

2. Licensee shall maintain traffic by placing steel plates with Asphaltic concrete berms, temporary fill or bridging and temporary surfacing with cold-mix Asphaltic concrete paving.

3. Sidewalks shall not be obstructed, except by special permission of GAATN. Access to private dwelling and to commercial establishments shall be provided at all times.

4. Licensee shall plan and execute his operations in a manner that will cause a minimum interference with traffic. Licensee shall furnish all barricades, traffic control, and safety devices necessary to protect the work, the workman and general public as required by applicable law and standard, in the execution of any work. under this Agreement. It shall be sole responsibility of the Licensee to furnish, install, and maintain barricades, detour signs, warning signs, lights and all regulatory traffic control devices of the size and type specified, at locations indicated, or as directed or approved by the GAATN in accordance with the Texas Manual on Uniform Traffic Control Devices, (MUTCD), Part VI, Traffic Control for Street and Highway Construction and Maintenance Operations and the City of Austin Transportation Criteria Manual.

5. Barricades placed in the roadway for the purpose of warning or directing traffic shall have Type "A" or Type "C" lights attached for use during hours of darkness.

6. In the event that Licensee fails, in sole judgment and discretion of GAATN, to maintain a smooth surface for public comfort, fails to provide ingress and egress to private property, and/or does not provide and maintain proper traffic control devices, GAATN may provide these services at Licensee's sole cost. Such action by GAATN shall not relieve Licensee of its liability to protect the public at construction site.

7. A permit must be obtained from Texas Highway Department (TxDOT), prior to work being performed on state highway routes passing through the City.

8. Licensee shall notify the Police Department, Fire Department, EMS, and Department of Public Works and Transportation, at least four days in advance of

beginning any proposed work with intention to close or partially any block street or any part thereof, or of any construction affecting free flow of traffic. Licensee shall plan and adequately provide barricades and warning devices. The same parties shall be notified when normal traffic flow is restored.

9. Should Licensee, in its operations, reduce an existing two-way roadway to less than 20 feet in width, Licensee shall provide flagging operations and route traffic through the construction area one lane at a time.

10. Licensee's flaggers shall be required any time it is necessary for Licensee's equipment to move into or across an open traffic lane, or at other such times as directed by GAATN. A flagger shall be utilized to aid exit of hauling equipment from open traffic lanes to the Work area, and entry of hauling equipment from Work area to open traffic lanes. Flaggers shall be dressed and conduct operations in accordance with Texas Manual on Uniform Traffic Control Devices and the Transportation Criteria Manual. Flagging operations shall be the sole responsibility of Licensee .

11. Licensee shall confine its activities to the immediate area of the work site and provide the following:

a. Appropriate temporary fences, barricades, and/or Metal Beam Guard Fence if required, for site work involving excavation, utility extensions, remote construction work or other circumstances involving safety of public or protection of the work in progress.

b. Warning lights at open trenches, excavations, etc., during hours from dusk to dawn each day, and protection of structures, utilities, sidewalks, pavements, and other facilities immediately adjacent to excavations, from damages caused by settlement, lateral movement, undermining, washout and other hazards.

B.2 **MATERIALS**

1. When relocating any GAATN facilities or Third Party User attachments, or when replacing a Pole, Licensee shall not reuse any existing fastening hardware (including nuts, bolts, and washers), but shall instead use new hardware. All holes drilled in wood Poles for the purpose of mounting hardware shall be drilled with a bit one sixteenth (1/16') of an inch larger than the bolt to be installed When replacing a Pole, Licensee shall also install new wooden structural components, including cross arms and support braces.

2. All materials and wire removed from service, whether deemed reusable or scrap, are the property of the GAATN. GAATN shall determine the status of material and wire removed by Licensee. Reusable materials shall be broken down into the smallest standard components and kept separate from junk material until it is checked and returned to GAATN. Reusable wire shall be kept neatly coiled or on reels until returned

to GAATN. Junk material and wire shall be returned to GAATN for salvage by GAATN.

3. Old Poles removed from service by Licensee shall be provided to and evaluated by GAATN to determine if they are suitable for continued service or should be retired. If Poles are determined suitable for continued service, GAATN shall determine which location should be used for future storage or installation. Poles which are to be retired shall become the responsibility of Licensee. Licensee shall sell or dispose of such retired poles in accordance with all applicable Federal, State and local laws, rules, and regulations and in a manner acceptable to GAATN.

B.3 **CLEAN-UP**

1. As part of the work on any Pole, Licensee shall completely remove and properly dispose of all temporary work. Licensee shall remove and dispose of all temporary poles, guard poles, anchors, guys, and other material; shall remove all embankments or cofferdams made for construction purposes; shall properly fill excavations, and pole holes; shall repair all ruts, creek banks, irrigation ditches, ponds and terraces; shall properly dispose of all rubbish and debris resulting from the work; and shall do all work necessary to restore the work site to at least as good order and condition as it was at the beginning of the work. Repairs and restoration work which is required due to negligence or poor workmanship by Licensee shall be performable by GAATN at Licensee's sole cost. Such action by GAATN shall not relieve Licensee of its liability.

2. Disposal of any materials, wastes, effluents, trash, garbage, oil, grease, chemicals, etc., shall conform to all applicable Federal, State, and local laws and regulations pertaining to such disposal. If any waste material is dumped or spilled in unauthorized areas, Licensee shall remove the material and restore the area at Licensee's sole cost. If necessary, contaminated ground shall be excavated or disposed of in accordance with applicable laws and as directed by GAATN, and replaced with suitable fill material compacted and finished with top soil at the expense of Licensee. Environmental cleanup work which is required due to negligence or poor workmanship by Licensee shall be performable by GAATN at Licensee's sole cost. Such action by GAATN shall not relieve Licensee of its liability. LICENSEE SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM AND AGAINST ALL COST LOSS, EXPENSE, DAMAGE AND DISPOSE OF SUCH MATERIALS.

3. All waste material and rubbish shall be removed by Licensee at the end of each workday. Rights-of-way and work areas shall be kept in a neat and orderly condition at all times.

4. Licensee shall comply with the following:

A. At the time they become scrap, all wire clippings, bundle ties, nails, damaged bolts, nuts and other metallic scrap are to be picked up and disposed of properly.

B. Material and wire removed from service shall be separated, broken down into the smallest components, and turned over to GAATN.

C. All garbage, lunch wraps, equipment parts, oil filters, petroleum productand light packaging material such as plastic, paper and cardboard are to be removed on a daily basis.

D. At the completion of each type of work, all assembly, erection and stringing remnants and debris shall be removed from work site.

E. After completion of construction; all survey debris such as stakes, lathes, and flagging, shall be removed.

5. Licensee shall dispose of waste, trash and debris in accordance with all Federal, State and local laws and regulations governing such matters and in a manner acceptable to GAATN.

ATTACHMENT B

GAATN Owned Pole Locations

Last Update on 1-11-2012

	RING	POLE #	LOCATION	COMMENTS
1	A1N	586	Sunshine Drive	
2		588	Sunshine Dr and Houston St	
3		1136	West Avenue	
4		1142	Lawton Ave	
5	A2N	90	Guadalupe St b/w W.18th and MLK	
6		91	Guadalupe St b/w W.20th and MLK	
7	B1N	254	Corner of Cime Serena and Tallwood Dr	
8		384	Duval Rd between Hwy 183 and Angus	
9		385	Duval Rd between Hwy 183 and Angus	
10		501.2	Limerick and Galway	
11		501.3	Limerick and Galway	
12		502.5	Corner of Tomanet Trail and Blalock	
13		913	Airport Blvd across from Highland Mall	
14		977	Justin Lane and Lamar Blvd	
	B1S	(214)	Wm Cannon & Pleasant Valley @ store	GAATN no longer on pole, but phone drop is still attached
15		215	Wm Cannon & W side of Pleasant Valley	
16		401	Corner of W.1st and Powell Circle	
17		555	Barton Skyway b/w Rae Dell and Oak Haven	Now has power on pole
18		568	Barton Skyway and Rock Terrace Drive	Now has power on pole
19		641	Collier St between Kinney and S. Lamar	
20		653	W.Mary between Evergreen and S.7th St	
21		654	W.Mary between Evergreen and S.7th St	
22		655	W.Mary between Evergreen and S.7th St	
23		665	S.5th St between W.Mary and Annie	Now has power on pole
24		709	S.1st St between W.Mary and W.Johanna	
25		750	Cumberland between 1st St and La Mesa	
26	B2S	276	Vargas and Ponca St	
27		277	Vargas and Ponca St	
28	C1N	251	Rutland b/w Golden Meadow and Quail Valley	
29		457	Rundberg Lane and Dessau Rd	
30		732	Manor Rd @ Winn ES	
31		733	Manor Rd @ Winn ES	
32		804	Northeast Dr between Leheigh and Colgate Ln	
33		806	Northeast Dr b/w Colgate Ln and N.Hampton	
34		885	Rogge Ln and Sandburst	
35		887	Rogge Ln b/w Exeter and Coventry	
36		888	Rogge Ln and Coventry	
37		892	Rogge Ln and Wight Cove	
38		972	Berkman and Concordia Dr	
39		973	Berkman b/w Concordia and Reagan Hill	
40	C2S	109	5616 Old Hwy 290 b/w Patton and Small	
41	D1N	440	Sam Houston Ave b/w Tannehill and Hwy 183	
42		441	Sam Houston Ave b/w Tannehill and Hwy 183	
43		442	Sam Houston Ave b/w Tannehill and Hwy 183	
44		541	Jain Ln	
45		542	Jain Ln	
46		544	Jain Ln	
47		546	Jain Ln	
48	D1N (con't)	607	Ed Bluestein and Levander Loop	

ATTACHMENT B

GAATN Owned Pole Locations

Last Update on
1-11-2012

	RING	POLE #	LOCATION	COMMENTS
		(670)	Bolm Rd between Springdale and Mansell	Now an AE Steel Pole (3/2011)
		(671)	Bolm Rd between Springdale and Mansell	Now an AE Steel Pole (3/2011)
		(672)	Bolm Rd between Springdale and Mansell	Now an AE Steel Pole (3/2011)
49		839	Holly St between San Marcos and Waller St	
50		850	Comal St and Cotton St	New pole placed for SRN/D1N route
51	SRN	2	Sayers St @ Treaty Oak	
52		705	E 11th St and IH 35	
53		706	E 11th St and IH 35	
54			Athletic Drive west of Berkman	near Reagan HS, placed in 2010
55			Corner of Athletic Dr and Berkman	near Reagan HS, placed in 2010
56			Berkman Dr north of Athletic Dr	near Reagan HS, placed in 2010
57			Berkman Dr north of Athletic Dr	near Reagan HS, placed in 2010
58			Berkman Dr north of Athletic Dr	near Reagan HS, placed in 2010
59			Berkman Dr 250ft south of E St.Johns Ave	near Reagan HS, placed in 2010
60	SRS	46.1	W.1st St and San Antonio	
61		155.1	E.Oltorf St at Travis High School	
62		202.1	Cumberland Rd and LaMesa	
63		203	Cumberland Rd and LaMesa	

GAATN POLICY
FOR RETENTION OF ADMINISTRATIVE RECORDS

1. The GAATN Board acknowledges the importance of records retention and a corresponding process and schedule for destruction of dated material. GAATN must respond to open records requests under the Texas Public Information Act (open records act), and also may be subject to litigation in which discovery of its records is sought. A proactive approach to a records management policy will permit the process of locating and producing requested public records to be more efficient and reliable.

The goals of the policy are to (a) establish practical processes and procedures to ensure that out-of-date records are not retained, stored and maintained longer than is appropriate; (b) ensure that useful GAATN records are retained, organized, and handled properly for future research and open records requirements; and (c) ensure there are uniform practices and procedures for receiving, forwarding, storing and retaining GAATN records.

2. Historical and administrative records for GAATN will reside at the offices of the GAATN Network Coordinator/RMO, unless directed otherwise by the GAATN Board.

3. The Network Coordinator for the Greater Austin Area Telecommunications Network will serve as Record Management Officer (RMO) for the Administrative Records generated by and for GAATN. The RMO will collect and catalog any new Greater Austin Area Telecommunications Network information as provided by individual Participants. The RMO will also ensure that “essential,” “permanent” and “confidential” or “sensitive” records are properly identified, retained and secured. This will include all records, with the exception of financial records that AISD maintains as fiscal manager for GAATN.

4. It will be a function of the Network Coordinator to maintain, coordinate and perform the functions established in the following policy documents, as they may be modified by the GAATN Board or applicable law from time to time:

Attachment A: Open Records Notification Procedures and related activities.

Attachment B: Records Retention, and Destruction Schedules.

GAATN POLICY
FOR RETENTION OF ADMINISTRATIVE DOCUMENTS

ATTACHMENT A: OPEN RECORDS NOTIFICATION PROCEDURES AND RELATED ACTIVITIES

1. Any written open records request that comes directly or indirectly to the Greater Austin Area Telecommunications Network (GAATN) will need to go through that agency's designated Record Management Officer (RMO), the Network Coordinator and the designated Board Adviser.

2. Upon receipt of a written open records request form, the RMO will immediately notify legal counsel via phone, email and fax of the written request so that a legal analysis and possible response to the request is started immediately. The RMO will then notify the GAATN Board ListServe group of the Open Records request. A report of the activities pertaining to the compliance of the request will then be presented to the GAATN Technical Subcommittee, or the GAATN Board, whichever meeting occurs closest to the calendar date that the request is sent to the RMO.

3. The RMO will then confer with the GAATN Network Manager, GAATN Board Chair, GAATN Technical Subcommittee Chair, GAATN Counsel, and either the AISD GAATN Director or the AISD Alternate with all the collected information for review to the compliance of the Open Records Request. If all parties are satisfied that the material is complete, accurate, and does not violate House Bill 9, GAATN Counsel will instruct the RMO on the appropriate next step. *Time is of the essence, as the Texas Public Information Act prescribes a ten-business-day time frame for responding to the requestor and/or requesting an Attorney General open records decision.*

4. A charge per page will be assessed for the copies based on the "Cost of Copies of Public Information" publication from the Attorney General's Office; and other costs may be assessed as permitted by the Texas Public Information Act or implementing regulations. (Payments for the cost of copies and other costs, as applicable, are reimbursable to the hosting agency for the GAATN Network Coordinator.) The requestor will be notified of the material reproduction and any other costs and upon payment, responsive documents will be mailed or provided as otherwise agreed.

GAATN POLICY
FOR RETENTION OF ADMINISTRATIVE RECORDS

ATTACHMENT B: RECORDS RETENTION AND DESTRUCTION SCHEDULE

RECORDS STORED IN PAPER FORM

ITEM	PERIOD OF RETENTION
GAATN Board Minutes	Permanent
GAATN Contracts	4 years after the expiration or termination of the instrument
GAATN Policies and Procedures	Permanent
GAATN Agreements	US + 5 years or life of program + 5 years
GAATN Meeting Postings	Permanent
Ring Testing Results	Permanent
Damage Information	AV
GAATN Employee Information	**
GAATN Attorney Correspondence	2 years after case, record, or action referred to is finalized
Request for Proposals	AV
Grant Information	US + 5 years or life of program + 5 years
Fiber Testing Results	AV
GAATN Insurance Information	4 years after expiration or termination of the policy

RECORDS STORED IN ELECTRONIC FORM

GAATN Board Minutes	Permanent
GAATN Technical Subcommittee Minutes	Permanent

CODE:
US: Until Superseded
AV: As long as administratively valuable

**At the time of adoption of this Policy, GAATN has no personnel. In the event GAATN hires employees, this Policy will be amended to included a retention schedule for the many types of employment records that will need to be maintained by GAATN in accordance with applicable state and federal records retention requirements.

GAATN
SLACK ADDITION and MANAGEMENT POLICY

1) Cable utilized to add slack to a GAATN ring will be provided by GAATN from on-hand maintenance or recovered stock. This will ensure that GAATN retains ownership and responsibility for all ring-sized cable over time.

2) The participant responsible for the node addition or other circumstance requiring the addition of slack to a ring will pay for the splicing-in of the slack as well as its individual work.

3) If slack is required in the course of ring repair or restoration work, its cost will be incorporated into the repair or restoration job and paid for by the joint GAATN agency.

4) The current composition of the network is approximately 100 feet of useable slack to every 5800 linear feet of ring cable. The objective over time is for every ring to contain approximately 200 feet of slack for every 1500 linear feet of ring cable. The following guidelines are established in order to achieve this:
    a) If it is necessary to go farther than 2500', in either direction, to reach an existing access point or stored slack, an additional slack point should be created at or near the midpoint of the segment.
    b) A minimum of 200 feet of slack will be added at each opportunity. The recommended added length is 1000 feet to eliminate reflection problems during testing and to allow movement of slack into adjacent areas as needed.
    c) Every proposed slack addition point associated with node additions or rearrangements will be discussed and approved by the Technical Committee during design. Impact of the additional footage on the existing ring needs to be evaluated before implementation to avoid inadvertently "knocking down" services. This is particularly important on A1N, B1N and C1S before it's split.

5) Entities planning slack insertion work on ring cable will notify all entities via e-mail at least 4 working days in advance of the scheduled construction date. Upon receiving this notification, it is each entity's responsibility to notify the Maintenance Provider of any condition existing in its network, on the affected or a related ring,that should force a delay in the planned work.

Greater Austin Area Telecommunications Network (GAATN)
Interlocal Agency

Teardown, Damage, and Repair Policy

GAATN Board Approval Date: September 9, 2025

Overview: GAATN entities provide governmental services over the network. Additionally, some GAATN entities provide critical public safety functions. Due to the critical public safety and governmental services provided by GAATN entities, GAATN must maintain the highest network integrity in accordance with its technical guidelines.

1) Definitions

A. Emergency repair is defined as work performed under emergency conditions to restore service as quickly as possible after damage to GAATN infrastructure occurs.

B. Permanent repair is defined as work performed to restore service in accordance with GAATN technical guidelines after damage to GAATN infrastructure. If the emergency repair is determined to be inadequate for long term reliable performance of the network, then a permanent repair will be performed under normal circumstances to meet GAATN guidelines.

2) Emergency Repair Policy

A. When network management and/or the GAATN maintenance provider is notified of a service affecting issue, the maintenance provider is dispatched to the scene and assesses the damage and repair situation. The maintenance contractor takes pictures of the damage prior to repair and collects information regarding the party responsible. This may include speaking to witnesses and police and may also include collecting and retaining physical evidence. The maintenance contractor will provide pictures and an incident report to network management for insurance and possible legal purposes.

B. The GAATN maintenance provider will use GAATN-owned fiber, stored at the maintenance provider's facility, for emergency repairs of the network. Standard GAATN maintenance fiber is 192-count standard (buffer tube) color cable. If the damaged cable is a smaller count cable, such as 114, the maintenance provider will leave the non-participating entities' buffer tubes unused in the repaired segment, thereby maintaining color continuity.

C. In all emergency repair cases, essential fibers/buffer tubes will be restored first.

D. Network Management will notify the GAATN Technical Subcommittee and Board Members of emergency repair work via an e-mail message to the GAATNALERTS list server. Minimum required information will include geographical location of damage and estimated duration of repair work.

E. Entities will be informed of emergency repair completion status via GAATNALERTS e-mail from Network Management.

F. Occasionally, external factors beyond our control necessitate temporary deviations from our technical guidelines when making an emergency repair. It is expected that any emergency repair deviating from our technical guidelines may, as determined appropriately, be rectified in the future when conditions are appropriate to perform a permanent repair.

G. During emergency repair operations, Network Management has the discretion to determine the specific details of the repair. These discretionary items may include, but are not limited to, cable length, cable type, number of splice cases, time to completion, and other related components.

H. In an emergency repair situation, the Network Manager has the authority to spend up to the amount of $25,000 or to the limit of the maintenance budget, whichever is least, for repair of the physical network.

3) Permanent Repair Policy

A. In most circumstances, non-emergency repairs must go through a Technical Committee review and Board approval process.

B. Network Management will notify the GAATN Technical Committee and Board Members of permanent repair work via e-mail message to the GAATNALERTS list server. Required information will consist of geographical location of cable replacement, adjacent nodes, estimated duration of work, and whether work will be service affecting. Before commencing permanent repair work, the maintenance provider must have the consent of the Network Manager and of the Technical Representative of each affected entity. This is meant to avoid inadvertently creating two simultaneous openings or outages on the same ring. If the Technical Representative of each entity does not respond within forty-five (45) minutes of being contacted on the day of the repair, the maintenance provider will proceed with the repair according to the notice e-mail.

C. Entities will be informed of permanent repair completion status via GAATNALERTS e-mail from Network Management.

D. Unless otherwise approved, all permanent repairs will be made using GAATN's standard 192-count cable.

E. Network Management aims to complete all cable cut repairs using only one new splice case to the extent feasible.

F. Once Network Management has confirmed that the repair is complete, the maintenance contractor will test all spliced fiber to ensure it meets GAATN technical guidelines. Although not recommended, affected entities may opt out of testing of their assigned fiber strands.

4) Cost Recovery

A. Any party responsible for damage to the GAATN Network should be required to reimburse GAATN for the costs of any emergency repairs and any permanent repairs.

B. Where GAATN has determined that an emergency repair is adequate and no additional permanent repair is necessary to comply with GAATN Technical Guidelines or other GAATN best practices that may call for replacement of the entire affected cable segment, an Incremental Damages Amount should be recovered. In this context, best practices may include consideration of the importance of a particular ring segment's critical function regarding affected Network pathways and determinations of the need to ensure particular Network pathways are sufficiently reliable and their signal strength and quality meet GAATN Technical Guidelines or any other more stringent GAATN best practices standards for ensuring reliable performance during emergency events.

C. Where feasible and where sufficient data is available, GAATN should seek to recover allocated overhead costs arising from GAATN Network Management's oversight and other time spent dealing with any: emergency and permanent repairs, post-repair testing and verification, administration of damages claims, preparation of presentations to the GAATN Technical Committee and the GAATN Board regarding the damage and proposed repairs, and other time involved regarding the damage event.

D. Other costs directly or indirectly incurred by GAATN or GAATN Participants should be recovered, including for example costs incurred by individual GAATN Participants to implement alternative signal routes as necessary during any outage caused in whole or part by the damage incident, or other adaptations the Participants determine were necessary during the pendency of either (or both) the emergency or any permanent repairs.

E. An Incremental Damages Amount is the prorata amount that the damaging party should pay as its share of the estimated cost of an ultimate replacement of the entire affected ring segment, based on factors such as, but not limited to,

> the number of additional splices that GAATN determines will not materially degrade Network performance or reliability in the [most vulnerable / least additional signal degradation tolerable] Network pathway of which the affected segment is a part; and
>
> any other relevant factors.

GAATN Tie-In Cable Policy

All GAATN Participant (“Participant”) use of GAATN Network (“Network”) pathways for Tie-In Cables or other proposed uses must be approved by the GAATN Board (“Board”). For purposes of this Policy, Network pathways include Network routes and other GAATN rights-of-way, easements, and facilities.

A “Tie-In Cable” is a cable belonging to one or more Participants that is not part of the Network, which uses a Network pathway but does not directly connect to a Network ring cable. This includes but is not limited to: overlashing to messenger strands or existing Network cables, placement on riser poles, and placement in or other use of underground Network routes, conduits, and innerducts.

The requesting Participant must agree in writing to the terms of this Policy and any other terms imposed by the GAATN Board as a condition of approval of a Tie-In Cable request.

Tie-In Cable approvals do not confer permanent rights or entitlements, or property rights.

All Tie-In Cables approvals are permissive and provisional; they do not confer any manner of property rights in the requesting Participant regarding use of the GAATN Network, particular GAATN cables, or other GAATN facilities; or guarantee any particular duration of the Board’s consent to use GAATN facilities for the Tie-In Cable.

The Board may condition or limit applicant’s use of GAATN facilities, including but not limited to requiring reasonable costs to be borne by the requesting Participant, or making approval or continued approval contingent upon fulfillment by the requesting Participant of a present or future condition.

Approvals may be for a specified term, which may be renewed by the Board, but which term is not guaranteed to the Participant but is merely advisory; or be of unspecified duration, such as short-term temporary approvals.

All approvals are subject to termination at any time by the Board, upon written notice to the Tie-In Cable Participant,

for cause, including but not limited to: the Tie-In Cable or its installation or routing not meeting GAATN requirements; costs or expenses chargeable to the Participant not having timely been paid; an imposed condition has not timely been satisfied; or determination by the Board that the Tie-In Cable’s presence compromises or threatens to compromise GAATN Network performance, safety, reliability, security, longevity, integrity, or otherwise will or may adversely affect the Network, other GAATN facilities, or GAATN operations or functions; or

for GAATN’s convenience, including but not limited to: there being a GAATN or other Participant use or need for which, in the Board’s judgment, the removal, relocation, or reconfiguration of the Tie-In Cable is necessary or convenient.

The Tie-In Cable and its use must comply with the conditions and requirements of the GAATN Interlocal Agreement and any applicable GAATN Policies or practices, including but not limited to the Approved Contractor Policy.

No requests by non-GAATN Participants will be entertained.

No requests by a Participant for Tie-In Cables that will be used in whole or part by a non-GAATN Participant for other than governmental purposes will be considered or approved; for such third-party use requests, the requesting Participant must specifically identify the governmental use to which the third party will put the Tie-In Cable; and must have an explicit written agreement with the third party guaranteeing that no non-governmental use will be made, and indemnifying GAATN and GAATN Participants for damages or other direct or indirect consequences to them for any violation of that guarantee.

The Tie-In Cable must be installed according to GAATN technical guidelines and standards, except as otherwise approved by GAATN, such as to accommodate different cable types and configurations (e.g., different strand counts, fiber optic vs. coaxial vs. copper pairs, etc.).

The Network Manager has the following responsibilities:

Upon request, consult with a requesting Participant regarding planning, permitting, feasibility, routing, placement, best practices, and other aspects of the proposed Tie-In Cable;

Coordination between GAATN and the requesting Participant;

Review and approve the requesting Participant’s plans for any Tie-In Cable project and related work (both installation and post-installation), including applicable proposed work schedules;

Record keeping, including documentation for GAATN of the Tie-In Cable placement;

Represent the Tie-In Cable Participant in any GAATN-related utility coordination meetings or discussions, and keep the Participant informed of any obligations for maintenance, relocation, or replacement of the Tie-In Cable, or other responsibilities; and

Perform any other tasks or responsibilities assigned by the Board.

The Tie-In Cable Participant is responsible for the following:

costs of the proposed Tie-In Cable project, including but not limited to costs of planning, engineering, installing, maintaining, repairing, abandoning, relocating, rerouting, and other costs; and including make-ready costs;

damage to the Network, any Participant facilities, or any third-party facilities that is caused in whole or part by the Tie-In Cable project;

obtaining and costs of obtaining any required permits, consents, approvals, and permissions, including to use rights-of-way, easements, or facilities;

any adverse consequences to GAATN or any other Participant(s), including but not limited to any costs, fines, conditions, obligations, or penalties imposed on GAATN or the other Participant(s) resulting in whole or part from the requesting Participant's (or its contractor's) failure to strictly adhere to any conditions or requirements of a permit, including but not limited to a permit obtained by the requesting Participant or its contractor under GAATN sponsorship;

any increased cost of maintenance or repair to GAATN or another Participant that is caused by the presence of Participant's Tie-In Cable; this may also include increased make-ready costs to GAATN or another Participant for maintenance, repair, expansion, or other use of the Network. The Tie-In Cable Participant will not be responsible for any developer relocation or other costs, or for any part of third-party make-ready or other costs to use the Network pathways; and

any other additional GAATN or Participant costs, expenses, or work directly attributable to the presence of Participant's Tie-In Cable;

provided, however, that if maintenance, repair, make-ready, accommodation, or other costs attributable to Tie-In Cables that are co-located with existing GAATN Network are reimbursable by third parties or others, the Board may approve GAATN paying the associated Tie-In Cable costs and submitting those costs for reimbursement as part of the GAATN cost reimbursement, where, however, the Tie-In Cable Participant is responsible for any costs incurred by GAATN attributable to the Tie-In Cable that are not ultimately reimbursed; and

provided, further, that if maintenance, repair, make-ready, accommodation, or other costs attributable Tie-In Cables that are NOT co-located with existing GAATN Network are reimbursable by third parties or others, the Board may authorize management of the work by GAATN Network Management, where, however, the Tie-In Cable Participant is responsible for any costs incurred by GAATN attributable to the Tie-In Cable that are not ultimately reimbursed.

The Tie-In Cable Participant's Network Rights will not be affected by the presence of the Tie-In Cable.

GAATN
UNDERGROUND FACILITY LOCATION AND MARKING PROCEDURE

Background Definitions and Operation Description:

The Underground Facility Damage Prevention and Safety Act for Texas (Texas Utilities Code, Title 5, Chapter 251) made it law that all buried facility owner/operators, excavators and notification centers cooperate in accomplishing common goals of protecting lives and property throughout the state. The **Notification Center** receives calls from excavators about pending digs, compiling specifics on each site into locate requests (tickets) that are then screened against a mapping system so that each ticket can be routed to involved facility owners/operators/agents for response. GAATN joined the Lone Star Notification Center-One Call Concepts (Notification Center) in June, 2002. The Notification Center sends faxed copies of all tickets indicating potential GAATN involvement to GAATN's designated Cable Locate service.

This **Cable Locate service** *"agrees to receive transmittals directly from the One-Call Hotline for the dispatching of requests"* and shall use the received tickets to "*perform locates on all GAATN plant, whether that plant is located in right-of-way, within an easement, or behind the property line typically feeding a structure associated with a particular GAATN Participant*."

Upon receipt of a ticket from the Notification Center, the Cable Locate service will:

a. respond by marking all buried cable every 10 feet with a non-permanent biodegradable orange paint
b. include a 24 inch buffer zone on either side of the marked path of the cable, with the b.z. designated by orange paint dots approximately 5 feet apart on either side of the line markings centered over the cable
c. mark "FOK" (fiber OK) in areas where there is no cable in conflict with the digging activity as proof that GAATN underground facilities were located.

1. GAATN joined its current Notification Center in June, 2002. At that time, GAATN provided complete sets of updated underground facility maps to both Notification Center and Cable Locate service. Information on recently built GAATN plant continues to be furnished by the GAATN Coordinator at least yearly, usually after the new as-built disks have been issued by the GAATN Maintenance Contractor.

2. GAATN Members may participate in this process if they so choose at no additional cost to the participant. To be included in this yearly process, each entity must provide the GAATN Coordinator with paper and electronic copies of its entity-specific node as-builts. The underground portions of these drawings will then be included in the updated map sets provided to the Notification Center and the Cable Locate service.

   Please Note:

   The GAATN Agency is not responsible for producing entity documentation for any purpose and will not be responsible for damages resulting from inaccuracies or omissions on entity provided documentation.

   Each participant is responsible for providing at its own expense, any specific entity design documents for inclusion into the Master GAATN documentation.

3. Mapping and other information provided to both Notification Center and Cable Locate service is protected under standard GAATN confidentiality agreements that survive beyond termination of contracts.

Enacted: July 9, 2007

Adopted September 6, 2016

GAATN Permit Compliance Policy

This policy states GAATN's requirements and procedures for work performed under or subject to a third-party permit ("Permit) issued to GAATN, or issued to a GAATN contractor for work performed by the contractor for GAATN or a GAATN Participant. It is intended to apply specifically to, among others, GAATN Maintenance Contractors and GAATN MAC (Moves, Adds and Changes) Contractors.

1. Strict Permit compliance required

Strict compliance with the terms of the Permit is required, unless variations are expressly permitted by the approved Statement of Work or otherwise by GAATN Network Management, the GAATN Board, or a person to whom the Board, GAATN Network Management or this Policy has expressly delegated authority to administer work to be performed under or subject to a Permit, or by the issuer of the Permit, in writing if practicable under the circumstances, but if not then orally and promptly followed by written confirmation.

(a) All work is to be performed on the date(s) specified in the Permit.

(b) All work is to be performed during the time(s) specified in the Permit.

(c) No work is to be performed before any applicable commencement time or after any applicable end time stated in the Permit without express consent from the GAATN Network Manager or another GAATN Representative, in writing if practicable under the circumstances, but if not then orally and promptly followed by written confirmation.

(d) If an unanticipated event occurs that

(i) threatens the timely completion of the work within the time permitted by the Permit, including but not limited to delays in commencement occasioned by, for example, work personnel, materials, tools or equipment becoming unavailable or arriving late;

(ii) poses a potential hazard to worker safety or public health and safety;

(iii) threatens injury to persons or damage to property if the work continues; or

(iv) otherwise compromises safety or the timely completion of the work,

then unless otherwise permitted to proceed by the Permit issuer or its authorized representative, or another Governmental Representative with appropriate authority, AND authorized to proceed by a GAATN Representative, the Project work is to be terminated

and rescheduled, other than taking any actions necessary to secure property, restore the work site, and address safety concerns, including traffic management.

2. Work only by GAATN-approved providers and crews

All work on GAATN infrastructure under Permits is to be performed only by GAATN-approved contractors.

3. Planning and pre-Project review

(a) The Project contractor will create a detailed proposed Statement of Work (SOW), including

a planning and review schedule, including for final preparation review prior to commencement of work;

a proposed manpower schedule and roster;

identification of required equipment, hardware, supplies and other materials;

identification of permits and other consents needed, and who is responsible for obtaining them;

if applicable, a traffic control plan that complies with traffic control requirements, standards, policies and best practices imposed by the Permit issuer or other lawful authorities; and for coordination by GAATN, the Project contractor and any traffic control providers to be used; and, if the Permit will include a traffic control plan imposed or approved by the Permit issuer, a process for consultation and planning with the Permit issuer;

identification of GAATN Representative and Governmental Representatives required or expected to be on site; and

if no GAATN Representative is expected to be present, a protocol for consultation between the Project contractor's work supervisors and GAATN in the event an emergency or other unanticipated occurrence or circumstance arises that would require or otherwise result in a material departure from the approved SOW, violate the Permit, or potentially compromise the safety of the public or any persons present on site.

(b) GAATN (usually the GAATN Network Manager) will review the proposed SOW and revise it as deemed necessary or advisable, in consultation with the Project contractor. The Project may not proceed until the Statement of Work is approved by GAATN.

(c) As provided in the approved SOW, the Project contractor must demonstrate prior to commencement of work that its Project supervisors have reviewed the approved SOW with the GAATN Network Manager, and contractor must demonstrate that all materials,

tools, equipment and personnel required for the Project work are available, have been marshaled, and will be present on the work site before work is scheduled to commence.

4. GAATN Representative

(a) The GAATN Network Manager or another GAATN representative ("GAATN Representative"), as specified in the SOW, is to be present at the Project work site for any Project work involving a Major Transportation Pathway, including but not limited to highway crossings, and any other Project for which the GAATN Board directs or the Network Manager elects.

(b) The GAATN Representative shall have the authority to

(i) require the contractor to take specific steps to

(A) ensure safety and public health and welfare;
(B) ensure compliance with the approved SOW; and
(C) avoid damage to property, or risk of bodily harm to persons present;

(ii) adjust the approved SOW if exigent or changed or unanticipated circumstances arise or are discovered;

(iii) respond to lawful requests or requirements by the Permit issuer's representative, or by any other Governmental Representatives with lawful authority to direct, condition or constrain the conduct or occurrence of the work; or

(iv) cause the work or any portion of it to be terminated or suspended

(A) if, in the judgment of the GAATN Representative, safety or the public health and welfare might otherwise be compromised or threatened, or the terms of the Permit would otherwise likely be violated; or

(B) upon lawful request or order by a Governmental Representative, or others having lawful authority to direct, condition or constrain the conduct or occurrence of the work.

(c) "Major Transportation Pathways" include, but are not limited to, large public arterial roads such as interstate highways, freeways, and other major traffic arterial roads as identified or designated by the Permit issuer, the GAATN Board, GAATN Network Management, or other governmental entities having requisite jurisdiction or authority. Unless otherwise specified by the GAATN Board or GAATN Network Management for a particular project, the following are considered to be Major Highways: Interstate Highway 35 (IH35), MoPac Expressway, and the freeway portions of any major traffic arterial (such as US Hwy 290 or State Hwy 71).

5. Directions of Governmental Representatives

If authorized representatives of any governmental bodies having jurisdiction over the work site or the work activity and acting within their geographical jurisdictions and exercising lawful authority ("Governmental Representatives") are present, any GAATN Representative, the Project contractor (including all employees and subcontractors), and any other GAATN contractors (including all employees and subcontractors), are expressly subject to the lawful instructions or orders of those Governmental Representatives. Governmental Representatives may include, for example, but without limitation, representatives of the Permit issuer, or of local, state or federal agencies; and local, state or federal law officers.

6. Contractor responsible; indemnity

All third-party claims asserted, and all damages, fines, fees, penalties or other costs that may be assessed, against GAATN or any GAATN Participant (or any of their officers, employees, representatives, agents, contractors and subcontractors) that arise from or are based in whole or part on the acts or omissions of the Project contractor or its personnel, or others subject to the supervision or authority of the Project contractor, or any of its subcontractors, shall be the responsibility of the Project contractor; and the approved SOW will contain appropriate provisions imposing this responsibility and requiring indemnification of GAATN and GAATN Participants (and their officers, employees, representatives, agents, contractors and subcontractors) by the contractor, unless expressly excused by the GAATN Board. If the commencement of work is delayed, or work is postponed or canceled, because of contractor's failure to have necessary personnel, equipment, tools, supplies, or materials timely marshalled and present on the work site, contractor shall bear all costs and expenses it has incurred in the failed mobilization, and any costs and expenses reasonably incurred by GAATN, GAATN Participants, or other GAATN contractors identified in the SOW.