

**NIAGARA MOHAWK POWER CORPORATION - _____
CAMERA ATTACHMENT AGREEMENT**

THIS AGREEMENT, effective _____, 20 ____, is by and between Niagara Mohawk Power Corporation, a corporation organized and existing under the laws of the State of New York, having its principal office at 300 Erie Boulevard West, Syracuse, New York ("Licensor"), and the City of NIAGARA FALLS, having its principal office at 745 MAIN STREET NIAGARA FALLS, NY 14301 ("Licensee").

WITNESSETH:

WHEREAS, Licensee has made application to Licensor for permission to make camera and camera accessory attachments to various electric utility poles owned by Licensor; and

WHEREAS, Licensor has agreed to permit Licensee to make such attachments, in accordance with the Terms and Conditions specified hereafter.

NOW, THEREFORE, the parties, with the intent to be bound, agree as follows:

TERMS AND CONDITIONS:

FIRST: DEFINITIONS

As used in this Agreement:

- (A) Licensor's "poles" means electric distribution poles owned in total or part by Licensor.
- (B) Licensee's "attachments" means camera and camera accessory attachments to the following Licensor poles:

POLE NO.	ADDRESS (STREET NAME)	TOWN/CITY/VILLAGE
1438	N/W CORNER OF 15 TH ST / PINE AVE	NIAGARA FALLS
2827	S/W CORNER OF 29 TH ST / PINE AVE	NIAGARA FALLS
37	HIGHLAND AVE / COLLEGE AVE	NIAGARA FALLS
89	WEST SIDE OF HIGHLAND AVE NORHT OF GARDEN AVE	NIAGARA FALLS
2314	24 TH STREET / PINE AVE *** TO REPLACE CURRENT CAMERA ALREADY ON THE POLE	NIAGARA FALLS
5T245	1 ST ST / OLD FALLS ST	NIAGARA FALLS
*** NO # VISIBLE	S/E CORNER OF 19 TH ST / NIAGARA ST	NIAGARA FALLS

SECOND: GENERAL TERMS

(A) Licensee attachments shall be (i) constructed and maintained in accordance with the provisions of the National Electric Safety Code (NESC) or National Electric Code (NEC) as applicable and as from time to time supplemented and amended, and (ii) of such material and in such location, form and manner as to comply with the standard specifications of Licensor. Licensee shall alter the location, form or manner of its attachments when required so to do to accommodate them to the altered or added construction of Licensor. Licensee shall inspect the attachments at reasonable intervals and shall maintain the same in good order and repair. All of the above actions shall be at Licensee's sole cost and expense.

(B) Licensor does not make any representation or warranty as to the present or future strength, condition, or state of repair of any poles. Licensee shall by test or observation determine that poles are safe to perform work thereon. If the integrity of any pole or equipment/facilities thereon is in question or is marked by Licensor as unsafe, Licensee shall confirm said condition with Licensor and refrain from working on the pole. Licensee shall assume all risk of loss to any person(s) who may be injured or any property that may be damaged as a result of its action.

(C) Nothing contained herein shall be construed to confer upon or warrant to

Licensee any rights of property in said poles. Licensor does not guarantee to Licensee the right to attach to said structures and maintain such license as it may have the legal right to give, and shall not be liable to Licensee in damages for any delay, obstruction or interference, whether by litigation or otherwise, with the placing and maintenance of said attachments. Licensee shall at the sole cost and expense of Licensee, comply with all laws, ordinances, rules and regulations of the state and municipal authorities and departments relating to or affecting the right of Licensee hereunder to attach and maintain the attachments, and shall, at Licensee's sole cost and expense, secure and obtain any and all permits, licenses and consents that may be necessary in connection therewith.

(D) No use, however extended, of the poles of Licensor by Licensee shall be taken as creating or vesting in Licensee any greater right than that herein expressed.

(E) Poles may be jointly owned with the local telephone company. In the event the Licensee proposes to make attachment to jointly owned poles, the Licensee shall apply to and obtain independent of the Licensor, consent of the joint pole owner for the proposed attachment.

(F) This Agreement shall continue in effect for a term of five (5) years from the date hereof and thereafter automatically renew for successive periods of five (5) years, unless at least one (1) year prior to the expiration of the initial or any renewal term either party gives written notice of termination to the other.

THIRD: LICENSEE COVENANTS

Licensee hereby covenants in consideration of the privileges herein granted:

(A) To pay Licensor in advance, the amount of the charge(s) herein fixed.

(B) To pay any and all taxes assessed against Licensor because of said attachments upon its structures, and in case Licensor pays the same, to make reimbursement of the full amount upon demand.

(C) To use the attachments only for purposes of operating and maintaining public security cameras and related accessory equipment.

(D) In the event Licensor's business needs require the removal of Licensee's attachments, Licensee shall remove or relocate its attachments from the structures of Licensor within fifteen (15) days after the mailing of written notice by Licensor to Licensee at the above address, and upon failure so to remove within said fifteen days Licensor may proceed to remove the same at the expense of Licensee and the latter shall promptly and on demand pay to Licensor the entire expense incurred in making such removal.

FOURTH: FEES

(A) Attachment Fee - Licensee shall pre-pay to Licensor an attachment fee.

The current rate is \$14.04/pole attachment/year. The attachment fee is subject to periodic change, as determined by Licensor or as directed by any governmental agency having jurisdiction.

(B) Make-Ready - Licensor shall determine whether, in order to accommodate the attachments of Licensee, any rearrangements or changes are necessary to the poles. The evaluation and resulting work is referred to as "make ready" work, and is reimbursable by Licensee to Licensor.

The costs of Licensor inspections made during construction and the initial post-construction survey (if any) shall be borne by Licensee as part of make-ready charges. The costs of periodic inspections or special inspections, if found necessary due to the existence of substandard or unauthorized attachments, shall be recovered as additional make-ready payable by Licensee.

If any camera, camera accessory equipment, or other facility of Licensee shall be found on a pole for which no license has been granted pursuant to this Agreement, Licensor, without prejudice to its other rights or remedies under this Agreement or otherwise, may: (i) impose a fee, (ii) require Licensee to remove such cable, equipment, and facilities forthwith, or (iii) require Licensee to make application for attachments. For the purpose of determining the fee, absent evidence satisfactory to Licensor to the contrary, the unlicensed use shall be treated as having existed for a period beginning on the date of this Agreement, and the fee for any such period shall be calculated at the then-current attachment rate. Any such fee imposed by Licensor shall be in addition to its rights to any other sums due and payable and to any claims or damages under this Agreement or otherwise. No act or failure to act by Licensor with regard to said fee or said unlicensed use shall be deemed as a ratification or the licensing of the unlicensed use.

(C) Payment for all reimbursable fees shall be received by Licensor within 30 days of date of invoice. Late fees of 1.5 percent per month will be applied to all outstanding balances in excess of 30 days. Failure to pay all reimbursable fees and late fees on the specified date may, in the sole determination of Licensor, be deemed a material default by Licensee under this Agreement.

Upon payment of make ready and attachment fees, completion of required make ready work, submittal of the required insurance certificate, and full compliance with the terms and conditions detailed herein, Licensor will permit Licensee to install and maintain Licensee's attachments, at the sole cost and expense of Licensee.

FIFTH: LIABILITY

(A) In consideration of the privileges granted herein, Licensee shall defend, protect, indemnify, and save harmless Licensor from and against any and all loss resulting from injury (including injuries to the employees or damage to the property of Licensor arising out of, resulting from, or in any manner caused by the presence, use of maintenance of said attachments or equipment on said poles, or by the acts or omissions of Licensee's agents or employees while

engaged in the work of placing, maintaining, or renewing said attachments or equipment on said poles, or of removing them therefrom; and such loss shall include all costs, charges, expenses, and attorney's fees reasonably incurred in connection with such injury or damage and, also, any payments made by Licensor to its injured employees or to their relatives or representatives in conformity with the provisions of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to any employee by accident in the course of employment, whether based on negligence on the part of its injured employees by virtue of any collective bargaining agreement or employee's benefit plan.

(B) For the duration of this agreement, Licensee shall provide and maintain at its own expense, insurance policies, issued by reputable insurance companies acceptable to Licensor, which meet or exceed the requirements listed herein:

- (i) A public liability policy insuring Licensee against liability for injuries to persons (including death at any time resulting therefrom) and damage to property, resulting or arising from or connected with Licensee's operations under this Agreement with the following minimum limits of liability per occurrence:

Bodily Injury - \$1,000,000/1,000,000
Property Damage - \$1,000,000/1,000,000
OR
Combined Single Limit - \$1,000,000
OR
BI & PD per Occurrence - \$1,000,000
General Aggregate & Product Aggregate - \$2,000,000 each

This policy shall include Contractual Liability and include Licensor as an Additional Insured.

- (ii) Licensee shall promptly provide Licensor with a Certificate of Insurance for all coverages required herein at the following address:

Niagara Mohawk Power Corporation
Attn: Risk Management, Bldg. B-3
300 Erie Boulevard West
Syracuse, NY 13202

Such certificates, and any renewals or extensions thereof, shall provide that at least 30 days prior written notice shall be given to Niagara Mohawk in the event of any cancellation or diminution of coverage.

- (iii) Licensee shall promptly advise in writing Licensor's representative of:
- (a) all claims relating to damage to property or injury to or death of persons arising or alleged to have arisen in any manner by or

directly or indirectly associated with the erection, maintenance, presence, use or removal of the Licensee's equipment. Copies of all accident reports and statements, made to the Insurer by Licensee or others, shall be furnished promptly to Licensor; and

- (b) any discovered damage or defects in pole or equipment condition, required repairs, etc.

SIXTH: ASSIGNMENTS AND TRANSFERS

Licensee shall not assign this instrument or any rights in or under the same without the written consent of Licensor first obtained. Any assignment, transfer, or subletting of this Agreement or any licenses by Licensee shall be null and void, unless written approval or consent has been granted by Licensor. Subject to the foregoing, however, this Agreement shall extend to and bind the successors and assigns of the parties hereto.

SEVENTH: AMENDMENTS AND MERGER

This Agreement supersedes all previous agreements between the parties for maintenance and placement of cameras and camera accessory equipment by Licensee and constitutes the entire agreement between the parties. It may not be modified or amended nor may any obligation of either party be changed or discharged except in writing signed by the duly authorized officer or agent of the party to be charged.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first above written.

ACCEPTED:

**NIAGARA MOHAWK POWER CORPORATION
(Licensor)**

By:(signature) _____

Name:

Title:

Date: _____

ACCEPTED:

~~TOWN / CITY OF~~ NIAGARA FALLS, NY
(Licensee)

By: (signature) Paul A. Dyster

Name: PAUL A. DYSTER

Title: MAYOR

Date: 4/27/2018