

CHAPTER 15

FRANCHISES

ARTICLE I – AMEREN GAS

15-1-1 **CONTRACT CONTINUATION.** It is the intent of the parties by this Chapter to extend for an additional term, subject to the terms and conditions here stated, the authorization to Ameren Illinois, its successors and assigns, to construct, operate and maintain a gas utility system within the Village as originally authorized by Ordinance No. 382 approved on March 1, 1960. The parties acknowledge that by so doing they are continuing an existing relationship authorizing the services of a utility for the provision of gas energy and other purposes within the Village for the benefit of its citizens and residents as well as other consumers of gas energy located within its corporate limits.

15-1-2 **GRANTING FRANCHISE.** There is hereby given and granted to Ameren Illinois, its successors and assigns (hereinafter referred to as the "Company"), the right, privilege and authority to construct, operate, maintain and/or extend within the corporate limits, as the same now exists or may hereafter be extended, of the Village of Freeburg (hereinafter referred to as "Municipality"), a gas utility system for the transmission, distribution and/or sale of gas energy and other purposes (the "System"), together with the right, privilege and authority to lay, erect, construct, install, operate and/or maintain all necessary mains, pipes, valves, equipment and/or other apparatus as may be necessary or convenient for the System, in, upon, along, over, under, through and/or across each and all of the streets, avenues, alleys, bridges, easements, rights of way and/or other public places.

15-1-3 **LOCATION OF PIPING.** All mains, pipes, valves and apparatus shall, so far as practicable, be placed underground and shall be so located and laid as not to interfere with any pipes, conduits, sewers, drains, pavements or other public improvements existing at the time of such location, and said Company shall forthwith repair any damage caused to such improvements to the satisfaction of the official or officials of said Municipality having charge of the supervision thereof. There shall be no unnecessary obstruction to the streets, avenues, alleys and public places of said Municipality in the laying, installation, operation or maintenance of any of said mains, pipes, valves or apparatus. All facilities of Company in said Municipality shall be installed and maintained in accordance with the applicable rules and regulations of the Illinois Commerce Commission.

When any street, avenue or other public place shall be graded, curbed, paved or otherwise changed so as to make the resetting or relocation of any pipes or other equipment placed or installed under this Chapter necessary, the Company shall make such resetting or relocation at the Company's cost and expense. Municipality shall provide the Company with a suitable location for the resetting or relocation of such pipes or other equipment, and the Company's obligation shall be limited to resetting or relocating pipes or other equipment of the same type and configuration as the displaced pipes or other equipment. Company shall make such resetting or relocation within a reasonable time after receiving written notice of the need for the same from the authorized representative of the Municipality, and the establishment by the Municipality of the permanent grade at the new location.

15-1-4 **RATE STRUCTURE.** The rates to be charged by the Company for gas service rendered under this Chapter shall be such as are approved from time to time by the Illinois Commerce Commission of the State of Illinois and/or such other duly constituted governmental authority as shall have jurisdiction thereof. All Rules and Regulations of the Illinois Commerce Commission of the State of Illinois applicable to the rights, privileges and authority granted by this Chapter, in the event of conflict herewith, shall govern.

15-1-5 **PAYMENT CONSIDERATIONS.** As a further consideration for the rights, privileges and authorities granted by this Chapter, the Company shall, in Year 1 of the agreement, furnish Municipality compensation in the amount of **Fourteen Thousand Nine Hundred Eighty-Five Dollars (\$14,985.00)**, payable within **thirty (30) days** of the acceptance of this Chapter by the Municipality. In subsequent years, payment will be made within **thirty (30) days** of the anniversary date of the ordinance on the following graduated scale: Year 2 – **Twelve Thousand Four Hundred Seventy-Five Dollars (\$12,475.00)**; Year 3 – **Nine Thousand Nine Hundred Sixty-Five Dollars (\$9,965.00)**; Year 4 – **Seven Thousand Four Hundred Fifty-Five Dollars (\$7,455.00)**; and Year 5 and all remaining years – **Four Thousand Nine Hundred Fifty Dollars (\$4,950.00)**.

15-1-6 **SUCCESSORS RIGHTS.** The rights, privileges and authority hereby granted shall inure to and be vested in Company, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon Company shall devolve and be binding upon its successors and assigns, successively, in the same manner.

15-1-7 **ACCEPTANCE.** This Chapter shall confer no right, privilege or authority on Company, its successors or assigns, unless Company shall within **ninety (90) days** after due notice to the Company of the enactment of this Chapter, file with the Village Clerk an acceptance of the terms and provisions hereof; provided, however, that if such acceptance be not so filed within said period of **ninety (90) days**, all rights, privileges, and authority herein granted shall become null and void.

15-1-8 **TERM OF CONTRACT.** All rights, privileges and authority given and granted by this Chapter are granted for a term of **ten (10) years** from and after the acceptance of this Chapter as hereinafter provided (the "Initial Term"), and thereafter on a year-to-year basis (each a "Subsequent Term") unless either the Company or Municipality notifies the other in writing of its desire to terminate this Chapter at least **six (6) months** prior to the expiration of the Initial Term or any Subsequent Term.

15-1-9 **VESTED RIGHTS ACKNOWLEDGED.** The Municipality acknowledges that Company is vested in rights, permission and authority independent of this Chapter. Neither acceptance of this Chapter nor compliance with its provisions shall impair in any way or waive any right, permission or authority which Company may have independent of this Chapter. In addition, neither use by Company of public property or places as authorized by this Chapter nor service rendered by Company in said Municipality shall be treated as use solely of the rights,

permission and authority provided for by this Chapter and in no way shall indicate non-use of any right, permission or authority vested in the Company independent of this Chapter. In the event the Municipality vacates any streets, avenues, alleys, easements, rights of way, bridges or other public places during the term of this Chapter, Municipality agrees to reserve unto Company the rights, privileges and authority herein given and granted to the Company in, upon, under, along, over and across each and all of such vacated remises which are at that time in use by the Company.

15-1-10 CONFLICTING PROVISIONS. All ordinances and parts of ordinance with this Chapter or with any of its provisions are, to the extent of such conflict, hereby repealed.

15-1-11 WRITTEN PERMITS REQUIRED. This Chapter shall not relieve Company of the obligation to comply with any ordinance now existing in the Municipality or enacted in the future requiring Company to obtain written permits or other approval from the Municipality prior to commencement of construction of facilities within the streets thereof, except Company shall not be required to obtain permits or other approval from the Municipality for the maintenance, upgrading and repair of its facilities. Except in cases of emergency, prior to engaging in any excavation activity that is expected to create an obstruction or other hazardous condition in any street avenue, alley or public place, the Company shall notify Municipality of the location and extend of the planned excavation. In cases of emergency, Company shall notify Municipality of the location and extent of the planned excavation. In cases of emergency, Company shall notify Municipality of the location and extent of any such activity as soon as practicable after the emergency has been abated.

15-1-12 INVALID PROVISIONS. If any provision of this Chapter, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Chapter, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

15-1-13 ADDITIONAL SUPPLIERS. If at any time during the term of this contract, Municipality permits another entity or person to provide gas distribution or similar services, and Company reasonably believes the other entity or person is granted more favorable treatment, terms or conditions, then Company shall notify Municipality of such treatment, terms or conditions. Alternatively, if Municipality reasonably believes the other entity or person grants Municipality more favorable treatment, terms or conditions, then Municipality shall notify Company of such treatment, terms or conditions. Upon receipt of such notice, Municipality and Company shall negotiate in good faith to amend this Chapter to provide Company or Municipality such more favorable treatment, terms or conditions on an equivalent basis. Such amendment shall take into consideration all circumstances that distinguish between Company and the entity or person receiving the more favorable or less favorable treatment, terms or conditions.

15-1-14 **APPURTENANCE TAX STATUS.** The Company shall be exempt from any special tax, assessment, license, rental or other charge during the term of this Chapter, on all mains, pipes, valves, equipment and other apparatus placed under the streets, alleys, avenues, bridges, easements, rights of way or other public places within the corporate limits of Municipality.

(Ord. No. 1398; 08-15-11)

ARTICLE II – AGREEMENT FOR JOINT USE OF POLES

15-2-1 THE VILLAGE’S GRANT OF LICENSEE TO ATTACH TO THE VILLAGE’S POLES AND OCCUPY PUBLIC RIGHTS-OF-WAY.

(A) All authority granted under this Agreement or under any license under this Agreement specifically authorizes Licensee to occupy the Village’s right-of-way and other public easements for the purpose of installing and maintaining communications attachments. For any Village poles (“Pole”) or Village rights-of-way (“Right-of-Way”) that occupy or constitute anything other than public rights-of-way or easements. The Village expressly apports or grants Licensee the right to occupy that right of way or easement, to the extent that the Village may lawfully do so.

(B) No use, however extended, of Poles or Rights-of-Way under this Agreement shall create or vest in Licensee any ownership of property right in said Poles or Right-of-Way, but Licensee’s rights in such Poles and Rights-of-Way shall be and remain a mere license. Nothing in this Agreement shall be construed to compel the Village to maintain any Pole or Right-of-Way for any period of time.

(C) The license granted to Licensee hereunder with respect to any Pole or Right-of-Way shall be non-exclusive in that the Village reserves the right to use any and all such Poles for any lawful purpose of business or to lease or otherwise permit any other person or entity the right to lease or use any or all Poles for any lawful purpose.

15-2-2 TECHNICAL REQUIREMENTS. Licensee’s use of Poles covered by this Agreement shall at all times be in conformity with the requirements of the latest edition of the National Electric Safety Code (NESC), including any applicable grandfathering provisions, National Electric Code (NEC), Occupational Safety and Health Code (OSHA) and the requirements of the Village’s written specifications or other public authorities in effect at the time of the original construction or major change to Attachments.

15-2-3 ESTABLISHING JOINT USE OF POLES.

(A) Throughout the term of this Agreement, Licensee may designate a Pole or Poles on which it desires to place any attachment. Licensee shall not place any attachment on the Village’s Pole(s) prior to receiving an approved Application for Permit from the Village, attached hereto as Exhibit A.

(B) As approved on Exhibit B (Pole Attachment Permit Application Process), upon receipt of Licensee’s Application for Permit, the Village shall schedule a joint ride-out of the Poles designated in the Application for Permit, if necessary, in order to conduct a pre-construction survey to determine whether make-ready is necessary to accommodate Licensee’s proposed attachments. Licensee shall participate in the pre-construction survey.

(C) Whether or not it was necessary to conduct a joint ride-out and pre-construction survey, within **thirty (30) days** of the receipt of Licensee’s Application for Permit the Village shall approve, conditionally approve or deny each Application for Permit by returning **one (1) copy** of it to Licensee reflecting its approval, conditional approval or denial in the appropriate space.

(D) The Village shall not unreasonably withhold approval of Licensee’s Permit Applications, and shall not withhold approval except for reasons of reliability, capacity, safety and generally applicable engineering purposes.

(E) If make-ready is necessary to accommodate Licensee's Attachment, including the modification or rearrangement of the attachments of the Village or any other third party attacher on any Pole or the placement of new Poles or replacement of one or more existing Poles, the Village shall return a copy of the Application for Permit to Licensee reflecting such conditional approval and detailing the required make-ready and the estimated cost, and schedule associated with such make-ready. If Licensee is willing to accept the Village's modifications to the Permit Application, Licensee shall return the Permit Application to the Village signed by a duly authorized representative and reflecting Licensee's acceptance of the make-ready and payment of the estimated cost associated with such make-ready.

(F) Upon receipt of written authorization and payment, the Village will proceed with the make-ready work according to the specific agreed upon installation plans and the terms of the Agreement. Upon completion of the make-ready work, the Village shall sign and return a copy of the approved Application for Permit authorizing Licensee to make its Attachment(s).

(G) In the event the actual make-ready costs exceed the estimate, Licensee shall pay the balance upon invoicing. In the event actual make-ready costs are less than the estimate, the Village shall reimburse Licensee the balance immediately upon completion of the make-ready work.

15-2-4 RELOCATION, REPLACEMENT OR MODIFICATION OF LICENSEE'S ATTACHMENTS AT THE VILLAGE'S REQUEST.

(A) Upon written notice from the Village, Licensee, within the period specified in the notice, shall replace, relocate or modify all and any portion of its attachments on a Pole that the Village, in its reasonable discretion, requests in such notice. Should the replacement, relocation or modification of Licensee's attachments be due to the request and/or benefit of any other attacher, Licensee will be reimbursed by such attacher, for costs associated with the replacement, relocation or modification of Licensee's Attachments. If Licensee fails to perform such work within the period specified in the notice, the Village, in the exercise of its sole discretion, may perform all or any portion of such work and charge Licensee the costs thereof.

(B) Whenever any Right-of-Way consideration or any city, county or state regulation makes relocation of a Pole necessary, the Village shall bear the cost of relocation of such Pole, except Licensee shall bear the entire risk and expense of relocating its Attachments.

15-2-5 MAINTENANCE AND REPAIR OF ATTACHMENT.

(A) Licensee shall exercise precautions to avoid damage to facilities of the Village and of others supported on Village Poles. Licensee shall make an immediate report to the Village of the occurrence of any such damage and hereby agrees to reimburse the Village for the full expense incurred in making repairs and agrees to indemnify the Village as otherwise provided herein.

(B) Licensee shall at its sole risk and expense, maintain all its Attachments on Poles in a safe condition, in accordance with the Technical Requirements specified in **Section 15-2-2**. Licensee will immediately cure any condition which presents an imminent threat to safety of lives or property. Licensee may perform maintenance and repair work without giving prior written notice to the Village. However, should Licensee fail to comply materially with the standards set forth in this agreement, the Village may require Licensee to correct such conditions within either **thirty (30) days**, or longer period depending on the circumstances and the time required to correct the noncompliance. However, the Village, in the exercise of its

sole discretion, and after making reasonable attempts to notify Licensee, to include written notice mailed to the notice address specified in **Section 15-2-16**, may perform such repairs or maintenance that it deems necessary to protect the health, safety and welfare of its employees and the general public and shall be reimbursed by the Licensee for the direct costs of making such repairs or maintenance.

15-2-6 REMOVAL OF ATTACHMENTS.

(A) Licensee, in the exercise of its sole discretion, may remove any Attachment on any Pole, without the prior approval of the Village. Licensee shall, however, notify the Village within **thirty (30) days** of removal.

(B) If the Village is requested by a third party to remove its Pole(s), upon **thirty (30) days'** notice from the Village, Licensee, at its sole risk and expense and within the period so specified in the notice, shall remove all or any portion of the Attachments on any Pole(s) that the Village, in the exercise of its reasonable discretion, requests in such notice. Notwithstanding the foregoing, if such request is by a private property owner and the Village's poles are legitimately on the third party's private property, the Village shall notify private property owner that it must pay Licensee to remove its attachments and for any accommodations necessary for the continued operation of Licensee's attachment (i.e., placing Licensee's facilities underground). Otherwise, Licensee shall not be required to remove its Attachments from the Pole(s). In the event upon removal of the Village's Attachments Licensee's Attachments remain on the Pole(s), the Pole(s) shall become the property of Licensee and Licensee shall hold harmless. The Village from every obligation, liability or cost and from all damages, expenses or charges incurred thereafter, arising out of or because of the presence of or condition of the Pole(s). Licensee shall also pay to the Village a sum equal to the present salvage value in place of such abandoned Pole(s) or other equitable sum as agreed to by the Parties and Licensor shall provide Licensee with a properly authorized bill of sale for such Pole(s).

15-2-7 EMERGENCIES.

(A) In the event of an emergency, Licensee, at its sole risk and expense, shall have the right to place, replace, relocate or modify attachments on any Pole without first obtaining the Village's approval for such work, however, Licensee will make all efforts to notify the Village. If such emergency placement, replacement, relocation or modification does not conform to the standards set forth in this agreement, Licensee, at its sole risk and expense, shall remove, replace, relocate or modify all or any portion of such attachments upon written notice from the Village and within the time period specified in the notice.

(B) In the event of an emergency, the Village should make every reasonable effort to notify Licensee, but, if under the circumstances it cannot, the Village may permanently or temporarily replace, relocate, remove, modify or perform any other work in connection with Licensee's attachments on any Pole. Licensee shall reimburse the Village for the actual expense that the Village may incur for such emergency work. In such event, the Village shall notify Licensee immediately of both the Poles affected and the work performed.

15-2-8 POLE ATTACHMENT FEES, CHARGES AND RATES.

(A) The Village shall invoice Licensee on **February 1** of each year for the number of poles on which attachments are maintained. Annual Pole Attachment Fee invoices shall be payable on **April 1st** of each year and the effective date of any annual rate adjustment shall also be effective on **April 1** of the same year. For purposes of calculating the annual Pole Attachment Fees, the Village shall pro-rate the fees based on the number of months an attachment actually occupied a pole. For the purposes of this paragraph, any attachment placed within a particular month shall be deemed to have occupied the pole for the entire month.

(B) Equipment associated with Licensee's mainline attachments set forth in the preceding paragraphs, such as power supplies, conduit, risers, cables, wires or other ancillary equipment necessary to the operation of Licensee's network shall be considered "associated equipment" included in the annual Pole Attachment Fee and shall not incur additional Pole Attachment Fees when attached to a pole with a mainline attachment.

(C) The pole attachment fee for the first year of this agreement shall be **Ten Dollars (\$10.00)** per pole per year. As provided in **Section 15-2-8(A)** above, upon **sixty (60) days** advance written notice, the Village may increase the Pole Attachment Fee once per year. Annual Pole Attachment Fee increases during the first **five (5) year term** of this Agreement shall be based on the Consumer Price Index ("CPI") for Urban Consumers but the total Pole Attachment Fee shall be capped at **Twenty Dollars (\$20.00)** per pole. Following the first **five (5) year term**, upon the Village's request, the parties shall negotiate whether the **Twenty Dollar (\$20.00)** per pole cap shall remain in place or increase.

(D) Whenever Licensee is required under this Agreement to reimburse the Village for the Village's expenses, such expenses shall include the Village's full and actual cost and expense therefore. Bills for expenses and other charges under this Agreement, other than annual Pole Attachment Fees, shall be payable within **forty-five (45) days** after receipt of a detailed invoice therefore. If Licensee disputes any annual Pole Attachment Fee increase under this Agreement, Licensee must nevertheless pay an amount equal to the prior year's rental rate for the number of poles it currently occupies, by the due date contained on the invoice, subject to **Section 15-2-18**, which requires that in the event the Parties have been negotiating a disputed rate for more than a year, the annual Pole Attachment Fee increases during the disputed period will be based on the CPI for Urban Consumers and any balance due will be retroactive to the date of the original invoice.

(E) Interest shall be charged at the rate of **eight percent (8%)** annually or the maximum allowed by law, whichever is less, on the unpaid balance of delinquent, undisputed bills for each month or part thereof that any bill remains unpaid.

15-2-9 UNAUTHORIZED ATTACHMENTS.

(A) If any of Licensee's Attachments for which no Permit Application has been issued shall be found attached to the Village's Poles, Licensee, within **thirty (30) days** of receipt of written notification from the Village shall submit a Permit Application for such unauthorized Attachment.

(B) The charge for each unauthorized Attachment shall be in an amount equal to the annual Pole Attachment Fee per each unauthorized Attachment for the number of years the attachment has occupied the pole. If the parties cannot reasonably determine the date on which the attachment was installed, the fee shall be equal to the rental payments due since the last inventory the Village conducted or dating back **five (5) years** whichever is less.

15-2-10 INVENTORIES AND AUDITS.

(A) The Village may request annually that Licensee provide an inventory of poles to which Licensee is attached. The Village may, thereafter, at its own expense, conduct an inventory or audit to verify Licensee's report.

(B) No inventory or inspection, or lack thereof, by the Village shall operate to relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement.

(C) Any safety violations associated with Licensee's Attachments will be corrected within **thirty (30) day's** written notice. If the safety violation cannot be reasonably corrected within **thirty (30) days**, the parties will establish an extended time frame based on the difficulty of making the correction and the number of parties and Village Poles involved. If Licensee fails to correct any safety violation within the agreed upon time frame, the Village, in the exercise of its sole discretion and without further notice or demand to Licensee and at the sole risk and expense, may perform such work as it deems necessary.

15-2-11 DEFAULTS.

(A) If Licensee shall fail to comply with the material provisions of this Agreement, or should default in any of its material obligations under this Agreement, the Village shall grant Licensee **thirty (30) days'** notice and opportunity to cure.

(B) Should Licensee fail to either cure the default or present a plan for a timely cure of the default within **thirty (30) days**, the Village, in exercise of its reasonable discretion, may terminate the agreement on **thirty (30) days'** additional notice.

(C) If Licensee defaults in the performance of any work which it is obligated to do under this Agreement, the Village may elect to do such work and Licensee shall reimburse the Village for all cost thereof.

(D) Upon termination or cancellation of this Agreement, in whole or in part, for any reason, Licensee shall remain liable to the Village for any and all fees, other payments and damages that may be due or sustained prior to such termination or cancellation.

15-2-12 INDEMNIFICATION AND INSURANCE.

(A) Licensee shall indemnify, protect, save harmless and insure the Village, its officers, directors, employees, members, agents, contractors and subcontractors from and against any and all liability, losses, costs, expenses, causes of action, damages, claims and demands for, or litigation with respect to damages to property and for injury or death to persons, including payments made under any Worker's Compensation law or under any plan for employee disability and death benefits and including all expenses incurred in defending against any such claims or demands, or other damages that may be caused by Licensee, its officers, directors, employees, members, agents, contractors or subcontractors with respect to the erection, operation, maintenance, presence, use, repair, transfer, rearrangement or removal of Licensee's attachments or unauthorized attachments on or in the vicinity of the Village's distribution poles or Village's easements or rights-of-way. Such indemnity obligation shall apply except in the event of the Village's acts of negligence or intentional misconduct.

(B) UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THE OTHER PARTY OR BY ANY CUSTOMER OF THE OTHER PARTY FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY PROVISION OF INDEMNITY, OR OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY UPON WHICH ANY SUCH CLAIM MAY BE BASED.

(C) Licensee shall carry insurance at its sole cost and expense to cover its indemnification obligations under this Agreement. The amounts of such insurance against liability due to damage to property or to injury or death of persons as to any one occurrence shall be in the amount of \$3,000,000.00 per injury or damage claim with a total of \$5,000,000.00 against all damage claims. Licensee shall also carry such insurance as will protect it from claims under any Workers' Compensation laws in effect that may be applicable to it. All insurance required shall be kept in force by Licensee for the entire life of the agreement and the company or companies issuing such insurance shall have an A.M. best rating of A- or better. Licensee shall submit to the Village certificates by each company insuring Licensee to the effect that it has insured Licensee for all liabilities of Licensee under this agreement and that it will not cancel nor fail to renew any policy of insurance issued to Licensee except after **thirty (30) days'** notice to the Village.

15-2-13 ASSIGNMENTS.

(A) Licensee shall not, without prior written consent of the Village transfer, assign, delegate or sublet any of its rights or obligations under this Agreement, which consent shall not be unreasonably withheld, conditioned, delayed or denied. However, Licensee may assign or transfer this Agreement and the rights or obligations under it, in whole or in part, without approval, to any affiliate controlling, controlled by or under common control with said Party, or an entity that acquires or succeeds to ownership of all or substantially all of Licensee's assets, upon **thirty (30) days'** notice prior to such assignment or transfer.

(B) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns where assignment is permitted by this Agreement.

15-2-14 APPLICABLE LAW. This Agreement shall be governed by and interpreted and construed in accordance with the laws of the State of Illinois. The venue of any legal proceeding relative to this Agreement shall be in a court of competent jurisdiction in Illinois or appropriate regulatory forum as the case may be.

15-2-15 ENTIRE AGREEMENT. This Agreement and all attachments hereto shall constitute the entire Agreement of the Parties pertaining to the subject of this Agreement and supersedes all prior agreements, negotiations, undertakings, understandings, proposals, statements and representations, whether written or oral, concerning such matters.

15-2-16 NOTICE.

(A) Any notice required to be given or made in connection with this Agreement shall be in writing and shall be made by certified or registered mail, return receipt requested, express mail or other overnight delivery service by a reputable company with tracking capability, proper postage or other charges prepaid and addressed or directed to the respective representative of the Parties below:

To Village: Village of Freeburg
Village Administrator
14 Southgate Center
Freeburg, IL 62243
618/539-5545

To Licensee: Windstream KDL, Inc.
Senior Vice President
3701 Communications Way
Evansville, IN 47715

Copy to: Windstream KDL, Inc.
Legal Dept.
8825 Bond St.
Overland Park, KS 66214

(B) Any notice given or made pursuant to or in connection with this Agreement shall be effective as of the time of delivery to or receipt by the Party to whom such notice is addressed.

15-2-17 MODIFICATION AND WAIVER.

(A) Modifications to this Agreement shall only be effective when submitted in writing and signed by the duly authorized representatives of the Parties. Such modifications to be effective shall expressly be identified as a modification with specific references to the provisions of this Agreement to be modified. Any modification shall be effective on the date such modification is signed by the Parties, unless such notification expressly provides otherwise.

(B) No duties or rights under this Agreement shall be waived except as expressly provided in this Agreement or unless the Party having the right expressly waives such duties or rights in writing so stating it is a waiver. No course of dealing, failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall constitute or be construed as a waiver or relinquishment of any term, right or condition, but shall remain at all times in full force and effect.

15-2-18 HEADINGS. The headings in this Agreement are inserted for convenience of reference only and shall in no way be considered in the interpretation of this Agreement.

15-2-19 TERM. This Agreement shall continue in force and effect for a period of **five (5) years** from the date of execution and, if not terminated by either Party giving written notice of its intent to terminate not less than **one hundred eighty (180) days** prior to the end of the first term, thereafter, year to year until terminated by either Party giving written notice of its intention to do so not less than **one hundred eighty (180) days** prior to the end of the term. Notwithstanding the foregoing, prior to the end of the initial **five (5) year** term, the Parties may choose to extend the Agreement for another multiyear term. Licensee shall remove all its Attachments from the Village's Poles within **one hundred eighty (180) days** after the effective date of termination, unless the Parties are in the process of negotiating a

replacement Pole Attachment and Right-of-Way Use Agreement. In the event the Parties are in the process of negotiating a revised Pole Attachment Fee, as per **Section 15-2-8**, the Village shall not terminate the Agreement over a disagreement about the rate or rate methodology. Instead, unless the Agreement is terminated by its terms, the Agreement shall remain in effect while the Parties are negotiating the revised Pole Attachment Fee. Notwithstanding the foregoing, if the parties are unable to reach agreement over the revised Pole Attachment Fee increase for longer than a **twelve (12) month** period from the invoice date, the existing rate shall be increased based on the CPI for Urban Consumers for each additional year during the dispute and will be retroactive to the invoice date. After termination of this Agreement, Licensee shall pay the Village for any remaining pole attachments, at the last Pole Attachment Fee for the period of time following termination until final removal of all Pole Attachments.

15-2-20 **FORCE MAJEURE.** Neither Party shall be held liable for any delay or failure in performance of the Agreement from any cause beyond its control and without its fault or negligence, such as, but not limited to, acts of civil or military authority, acts of nature, governmental regulations, embargoes, epidemics, riots, fires, wars, terrorist acts, insurrections, explosions, earthquakes, floods, strikes, power blackouts, unusually severe weather conditions or the inability to secure products and supplies.

15-2-21 **EXISTING AGREEMENTS.** All existing Agreements between the Parties hereto for the Joint Use of Poles are by previously conferred by the Villager, by contract to others not parties to this Agreement, to use any poles covered by this Agreement; and the Village shall have the right to continue and extend such rights and privileges. The attachment privileges herein granted shall at all times be subject to such existing contracts and arrangements. The attachment privileges herein granted shall be non-exclusive, and the Village shall have the right in its sole discretion to grant attachment privileges of any sort to any person, firm or corporation.

15-2-22 **THIRD PARTY BENEFICIARIES.** The Parties agree that the terms of this Agreement and the Parties' respective performance of obligations hereunder are not intended to benefit any person or entity not a party to this Agreement, that the consideration provided by each under this Agreement only inures to the respective parties hereto, and that no person or entity not a party to this Agreement shall have any rights hereunder nor the right to require the performance hereunder by either of the respective parties hereto.

(Ord. No. 1385; 06-06-11)