

POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment Licensing Agreement (the “Agreement”) dated this ___ day of _____, 2019 is made by and between **Public Utility District No. 3 of Mason County** (hereinafter referred to as “District” / “Licensor”), a municipal corporation of the State of Washington, and _____ (hereinafter referred to as “Licensee”).

Recitals

- A. Whereas, Licensee proposes to install and maintain Attachments and associated communications equipment on District Poles to provide Communications Services; and
- B. Whereas, the District is willing, when it may lawfully do so and in accordance with the laws of the State of Washington, to issue one or more Permits authorizing the placement or installation of Licensee’s Attachments on District Poles, provided that the District may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, or the inability to meet generally applicable engineering standards and practices; and
- C. Therefore, in consideration of the mutual covenants, terms and conditions and remunerations herein provided, and the rights and obligations created hereunder, the parties hereto agree as follows:

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AGREEMENT

Article 1—Definitions

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within a specific Article or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall first be construed according to industry standard, then under the common and ordinary meaning.

- 1.1 **Affiliate**: when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
- 1.2 **Applicable Standards**: means all applicable engineering and safety standards and requirements governing the installation, maintenance and operation of facilities and the performance of all work in or around District Facilities, as set forth in the District’s Joint Use Rules and Regulations (as now existing or hereafter amended), and as set forth by other federal, state, municipal, or local governmental authority with jurisdiction over District Facilities.
- 1.3 **Assigned Space**: means space on District’s Poles that can be used, as defined by the Applicable Standards, for the Attachment or placement of wires, cables and associated equipment for the provision of Communications Service or electric service. The Supply Space and communicating worker safety zone (safety space) are not considered Assigned Space.
- 1.4 **Attaching Entity**: means any public or private entity, other than the District, who places an Attachment on Pole to provide Communications Service.
- 1.5 **Attachment(s)**: per RCW 54.04.045(1)(a), means the affixation or installation of any wire, cable, or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any Pole owned or controlled in whole or in part by the District.

This definition of Attachment shall exclude:

- a) Risers and conduits in association with or in support of an Attachment;
 - b) Overlapping (even if a common application form is used to facilitate review for both Attachments and Overlapping).
- 1.6 **Capacity**: means the ability of a Pole to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.
- 1.7 **Communications Service**: means the transmission or receipt of voice, video, data, Internet or other forms of digital or analog signals over the Attachments.
- 1.8 **Communication Space**: means the space on joint-use structures below the communication worker safety zone and above the vertical space for meeting ground clearance requirements under the National Electrical Safety Code or authorizing agency.
- 1.9 **District Facilities / Facilities**: means all personal property and real property owned or controlled by the District, including Poles and District installed anchors.
- 1.10 **Joint Use Rules and Regulations**: means the rules and regulations governing fees, costs, construction, violations, and operation and maintenance standards as related to Pole Attachments and as adopted by Mason PUD 3's board of commissioners from time to time. District may change these rules and regulations by commission action after six (6) months' notice to Licensee.
- 1.11 **Licensee**: means Licensee identified on page one, its authorized successors and assignees.
- 1.12 **Make-Ready Work**: means all work, as mutually agreed by the District and Licensee, required to prepare District's facilities to accommodate Licensee's Attachments and/or to comply with all Applicable Standards. Such work includes, but is not limited to, Pre-Construction Meeting, rearrangement and/or transfer of the District Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes, or that is not directly required to accommodate the proposed Attachment), or Pole replacement and construction.
- 1.13 **Nonfunctional Attachment**: means a cable, wire, or other physical material attached to a Pole that is no longer used or no longer fit for service by the Licensee. This definition of Nonfunctional Attachment shall exclude Service Drops.
- 1.14 **Occupancy**: means the use or specific reservation of Assigned Space for Attachments on Pole.

- 1.15 **Overlash**: means to place or lash or mechanically lash an additional wire or cable onto an existing Attachment.
- 1.16 **Pedestals/Vaults/Enclosures**: means above- or below-ground housings that are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices and/or provide a service connection point and shall not be attached to District Poles. Installation must comply with the Applicable Standards.
- 1.17 **Permit**: means written or electronic authorization pursuant to the Applicable Standards, for Licensee to make or maintain Attachment(s) to specific District Poles pursuant to the requirements of this Agreement.
- 1.18 **Pole**: means a Pole owned by the District used for the distribution of electricity and/or Communications Service that is capable of supporting Attachments.
- 1.19 **Pole-Mounted Wireless Equipment**: includes antennas, receivers, transceivers, repeaters, and other wireless communications equipment that is attached to a Pole. Pole-mounted wireless equipment shall be subject to the provisions of the Joint Use Rules and Regulations and is not considered an Attachment as governed by this Agreement.
- 1.20 **Pre-Application Meeting**: means a meeting scheduled prior to permit submittal, at the request of the prospective applicant, to provide an opportunity to discuss proposal concepts and attempt to identify and/or eliminate potential problems or challenges that are recognized during the meeting. District staff may elect to attend the meeting to discuss related details. This meeting is for basic informational purposes only, and may be scheduled at the District's discretion per request received from a prospective applicant, prior to permit submittal. The District does not charge a fee for a Pre-Application Meeting.
- 1.21 **Pre-Construction Meeting**: means all work or operations required by Applicable Standards as reasonably applied by the District to determine the potential Make-Ready Work necessary to accommodate Licensee's Attachments on a Pole. The Pre-Construction Meeting shall be coordinated with the District and include Licensee's representative.
- 1.22 **Reserved Capacity**: means Capacity or space on a Pole that the District has identified and reserved for its own utility requirements.
- 1.23 **Service Drop**: means a wire or cable which provides services to a single customer as an extension of the Licensee's backbone or distribution network. Service drops are limited to 500 feet in length or less.

- 1.24 **Span-Mounted Equipment:** means junction boxes, amplifiers, or other auxiliary equipment which may be mounted to a span, no closer than three (3) feet and no further than six (6) feet from a Pole.
- 1.25 **Span-Mounted Wireless Equipment:** includes antennas, receivers, transceivers, repeaters, and other wireless communications equipment that is suspended from a span attached to a Pole. Span-mounted wireless equipment is prohibited.
- 1.26 **Supply Space:** means the space on joint-use structures where the supply facilities are separated from the Communication Space by the Communication Worker Safety Zone.
- 1.27 **Tag:** means to place distinct markers on wires and cables, coded by color or other means approved by the District and/or applicable federal, state or local regulations, that will readily identify, from the ground, its owner and cable type.

Article 2—Scope of Agreement

- 2.1 **Grant of License.** Subject to the provisions of this Agreement, the District hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain permitted Attachments to District's Poles when authorized by any applicable Permit(s) issued pursuant to the terms of this Agreement, and when in compliance with the terms of such Permit(s) and all Applicable Standards.
- 2.2 **Parties Bound by Agreement.** Licensee and the District agree to be bound by all provisions of this Agreement, Permits issued pursuant to this Agreement, and all Applicable Standards.
- 2.3 **Permit Issuance Conditions.** The District will issue a Permit(s) to Licensee when the District determines, in its sole judgment, which shall not be unreasonably withheld, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) permitting the Attachment(s) is consistent with safety and reliability, and (iii) Licensee meets all generally applicable engineering standards and practices.
- 2.4 **Reserved Capacity.** Access to Assigned Space on District Poles will be made available to Licensee with the understanding that the District may reclaim its Reserved Capacity on giving Licensee at least sixty (60) calendar days' prior notice. The District shall give Licensee the option to remove or relocate its Attachment(s) from the affected Pole(s).

When the District elects to reclaim its Reserved Capacity on a Pole, the District will be responsible for all Make-Ready Work to accommodate its Attachment(s), with the exception of any existing violations. The allocation of the cost of any such Make-Ready Work to remedy existing violations (including the transfer, rearrangement, or relocation of any Attachments requiring a qualified electrical worker) shall be determined as provided in the Joint Use Rules and Regulations.

- 2.5 No Interest in Property.** No use, however lengthy, of any District Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of the District's rights to District Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a Licensee only.
- 2.6 Licensee's Right to Attach.** Unless otherwise specified in this Agreement, Licensee must have a Permit issued pursuant to Article 6, prior to attaching Licensee's Attachments to any Pole, and must complete work, including submittal of all as-builts and post-issuance inspections within timelines specified in this Agreement and Applicable Standards, in order to retain Licensee's right to attach.
- 2.7 District's Rights over Poles.** The parties agree that this Agreement does not in any way limit the District's right to locate, operate, maintain or remove its Poles in the manner that will best enable it to fulfill its statutory and all other applicable service requirements.
- 2.8 Tagging.** Licensee shall Tag all of its Attachments as specified in the Joint Use Rules and Regulations. Pre-existing Attachments of Licensee shall be tagged within five (5) years of the execution of this Agreement. Failure to provide proper tagging will be considered a violation of this Agreement and the Applicable Standards.
- 2.9 Pole-Mounted Wireless Equipment.** Pole-Mounted Wireless equipment shall be subject to the provisions of the Joint Use Rules and Regulations and is not considered an Attachment as governed by this Agreement.
- 2.10 Span-Mounted Wireless Equipment.** Span-mounted wireless equipment is prohibited.
- 2.11 Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit the District from fulfilling any agreement or arrangement regarding Poles into which the District has previously entered, or may enter in the future, with others not party to this Agreement.

- 2.12 **Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals stated above and no other use shall be allowed without the District's express written consent. Nothing in this Agreement shall be construed to require District to allow Licensee to use the District's Poles after the termination or conclusion of this Agreement or subject Permit, or in any manner contrary to this Agreement or any applicable regulations.

Article 3— Rates, Fees and Charges

- 3.1 **Payment of Fees and Charges.** Licensee shall pay to the District the rates, fees and charges specified in the District's Joint Use Rules and Regulations and shall comply with the terms and conditions specified therein.
- 3.2 **Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from the District pursuant to this Agreement within forty-five (45) calendar days of the date of the invoice.
- 3.3 **Billing of Attachment Fee.** The District shall invoice Licensee for each individual Attachment annually. The District will submit to Licensee an invoice for the annual rental period on or about July 1 of each year. Each annual rental period shall be July 1 through June 30 of the next year. The invoice shall set forth the total number of the District's Poles and specific number of Attachments per Pole on which Licensee was issued and/or holds a Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits.
- 3.4 **Refunds.** Except as explicitly otherwise provided herein or as otherwise provided in Applicable Standards, no rates, fees and charges specified in the District's Joint Use Rules and Regulations shall be refunded on account of any surrender of a Permit granted hereunder. Nor shall any refund be owed if the District abandons a Pole.
- 3.5 **Late Charge.** If the District does not receive payment for any undisputed fee or other undisputed amount owed within forty-five (45) calendar days of the billing date, Licensee, upon receipt of fifteen (15) calendar days written notice, shall pay interest in the amount due to the District at the lesser of twelve percent (12%) or one percent (1%) per month, or the maximum rate allowed by law, whichever is less.
- 3.6 **Payment for Work.** Licensee will be responsible for payment of all actual, reasonable and documented costs to the District for all work the District or

District's contractors perform pursuant to this Agreement and any associated permits, to accommodate Licensee's Attachments.

- 3.7 Work Performed by the District.** Wherever this Agreement requires the District to perform any work, Licensee acknowledges and agrees that the District, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work.
- 3.8 Default for Nonpayment.** Nonpayment of any undisputed amount due under this Agreement beyond ninety (90) days shall constitute a material default of this Agreement. In the event of a billing dispute between the District and the Licensee, District will continue to provide service under this Agreement as long as the Licensee continues to make all payments not in dispute. The Licensee shall file and Appeal as provided in the Applicable Standards – Joint Use Rules and Regulations, and the parties shall work in good faith to resolve the dispute in a timely manner.

Article 4—Specifications

- 4.1 Installation/Maintenance of Attachments.** When a Permit is issued pursuant to this Agreement, Licensee's Attachments shall be installed and maintained in accordance with the requirements and specifications of this Agreement and the Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Attachments. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards. Upon execution of this Agreement, Licensee is not required to modify, update or upgrade its existing Attachments where not required to do so by the terms and conditions of this or prior Agreements, prior editions of the National Electrical Safety Code (NESC), prior editions of the National Electrical Code (NEC) or other applicable regulations applicable at the time of the existing Attachment installation, unless otherwise required by law or regulation.
- 4.2 Interference.** Licensee shall not allow its Attachments to impair the ability of the District or other Licensees to use the District Poles nor shall Licensee allow its Attachments to interfere with the operation of any District Facilities. The Attachment rights subsequently granted by the District to other Attaching Entities pursuant to licenses, permits, or rental agreements shall not limit or interfere with any prior Attachment rights granted to the Licensee hereunder or result in further rearrangement or make-ready costs without reimbursement.

- 4.3 Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities, consistent with Applicable Standards. Licensee shall at its own expense install protective devices designed to handle the voltage and current impressed on its Attachments in the event of a contact with the supply conductor, as specified in Applicable Standards. Except as otherwise explicitly provided in this Agreement, the District shall not be liable for any actual or consequential damages to Licensee's Attachments or Licensee's customers' facilities.
- 4.4 Violation of Specifications.** If Licensee's Attachments, or any part thereof, are installed, used or maintained in violation of this Agreement, Licensee shall correct the violation(s) caused by Licensee within sixty (60) calendar days from the date of written notice of the violation(s) from the District or later date as specified in the notice of violation, subject to the expedited provision for immediate threat detailed below. If the nature of the violation is such that correction of the violation cannot reasonably be completed within sixty (60) days, the District and Licensee may agree that the Licensee shall commence corrective action within the sixty (60) day period, and complete all corrective action pursuant to a reasonable schedule approved by the District. The District shall notify Licensee in writing prior to the District performing corrective work whenever possible. When the District reasonably believes, however, that violation(s) pose an immediate threat to the safety of any person or property, materially interfere with the performance of District's service obligations, or pose an immediate threat to the physical integrity of District Facilities, the District may perform corrective work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable thereafter, the District will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual documented, and reasonable costs incurred by the District in taking action pursuant to this provision including overtime rates incurred by the District, where directly related to and caused by the actions of Licensee, but excluding any costs caused by the District's negligence or willful misconduct.
- 4.5 Restoration of District Service.** The District's service restoration efforts shall take precedence over any and all work operations of Licensee on District's Poles.
- 4.6 Effect of Failure to Exercise Access Rights.**
- 4.6.1** Failure by Licensee to fully exercise access rights granted pursuant to this Agreement and/or applicable Permit(s) within:
- (a)** 120 days from Permit approval/issuance date (in event no Make-Ready Work is required); and/or

- (b) 120 days from date Make-Ready Work is completed (in event Make-Ready Work is required); or
- (c) any mutually agreed date which District will accommodate in good faith based on showing of need related to third party approvals pending (e.g.: permit approvals) or similar circumstances

shall constitute failure to fully exercise access rights, and in this event the District may use the space scheduled for Licensee’s Attachment(s) for its own needs or other Attaching Entities.

In such instances, the District shall endeavor to make other space available to Licensee, upon written application per Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions.

4.6.2 Licensee’s failure to submit acceptable as-builts and any other required documentation and inspections within:

- (a) 140 days of date of application approval when Make-Ready work is not required (*120 days to complete work from date of application approval, plus 20 days to complete and submit required inspections/documentations*); and/or
- (b) 140 days of completion of Make-Ready work (*120 days to complete work from date Make-Ready work completed, plus 20 days to complete and submit required inspections/documentation*), or
- (c) any mutually agreed date which District will accommodate in good faith based on showing of need related to third party approvals pending (e.g.: permit approvals) or similar circumstances shall also constitute failure to fully exercise access rights, and in this event the District may use the space scheduled for Licensee’s Attachment(s) for its own needs or other Attaching Entities.

In such instances, the District shall endeavor to make other space available to Licensee, upon written application per Article 6, as soon as reasonably possible and subject to all requirements of this Agreement.

4.7 Removal of Nonfunctional Attachments. At its sole expense, Licensee shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service (“Nonfunctional Attachment”) as

provided in this Agreement and Applicable Standards. A Nonfunctional Attachment that Licensee has failed to remove as required in this Paragraph shall constitute an unauthorized Attachment and is subject to the Unauthorized Attachment Inspection Fee specified in the Applicable Standards. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments and notify the District of the removal in writing within ninety (90) days of the Attachment becoming nonfunctional, unless Licensee receives written notice from the District that removal is necessary to accommodate the District's or another Attaching Entity's use of the affected Pole(s), in which case Licensee shall remove the Nonfunctional Attachment within the time period specified in the notice. Where Licensee has received a Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until the District notifies Licensee that removal is necessary to accommodate the District's or another Attaching Entity's use of the affected Pole(s). Licensee shall give the District notice of any Nonfunctional Attachments.

Article 5—Private and Regulatory Compliance

- 5.1 Necessary Authorizations.** Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Attachments on public and/or private property before it occupies any portion of the District's Poles. Licensee's obligations under this Article 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith. Licensee shall defend, indemnify and hold harmless the District for all reasonable loss and expense, including reasonable attorney's fees, that the District may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Attachments on the District's Poles.
- 5.2 Lawful Purpose and Use.** Licensee's Attachments must at all times serve a lawful purpose, and the use of such facilities must comply with all applicable federal, state and local laws.
- 5.3 Forfeiture of District's Rights.** No Permit granted under this Agreement shall extend to any Pole on which the Attachment of Licensee's Attachments would result in a forfeiture of the District's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of the District's rights, is invalid. Further, if any of Licensee's existing Attachments, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall, upon receipt of

written notice from District: i) provide District with a written response that Licensee is taking corrective action to remedy the underlying issue creating the claimed potential for forfeiture; ii) provide District a written response challenging the basis for a claim of forfeiture; or iii) promptly remove its Attachments. If Licensee does not take corrective action or challenge the basis for the claim of forfeiture through the correct forum and in accordance with procedural requirements, and subsequently fails to remove the related Attachments, subject to Section 10.1 (Termination of Permit), the District will perform such removal at Licensee's expense not sooner than the expiration of sixty (60) calendar days from the District's issuance of the written notice.

- 5.4 Effect of Consent to Construction/Maintenance.** Consent by the District to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

Article 6—Pole Attachment Permit Application Procedures

- 6.1 Permit Required.** Except in cases of emergency or as otherwise authorized (such as for Service Drops as addressed in 6.1.1), Licensee shall not install any Attachments on any Pole without first applying for and obtaining a Permit pursuant to the requirements of this Agreement and the Applicable Standards. Pre-existing Attachment(s) of Licensee as of the Effective Date of this Agreement may be grandfathered with respect to Permitting, but shall be subject to Pole Attachment Rates, fees or charges in future billing periods.

In order to be grandfathered:

- (a)** Licensee shall provide the District with a list, on the District's approved spreadsheet, of all such pre-existing Attachments within eighteen (18) months following the effective date of this Agreement; and shall provide an updated list by April 1 of the fifth year following the effective date of this Agreement, and by April 1 of every fifth year thereafter should this Agreement term be extended.
- (b)** All such pre-existing Attachments shall comply with the terms of this Agreement.

Attachments to, or rights to occupy, the District Facilities not covered by this Agreement must be separately negotiated.

Licensee shall Tag all of its Attachments as specified in the District's Joint Use Rules and Regulations. Pre-existing Attachments of Licensee shall be Tagged within five (5) years of the execution of this Agreement. Failure to provide proper Tagging will be considered a violation of this Agreement and the Applicable Standards. At the time of Tagging, Licensee is required to address any "J" hooks and any service drops that are directly attached to the Pole(s), by removing the "J" hooks and transferring the drops to the Licensee's main cable (if a main cable is installed), utilizing the review and permit process set forth in this Agreement and the Joint Use Rules and Regulations.

6.1.1 Service Drop Procedure. Licensee shall submit a complete Service Drop Application within twenty (20) days after the date the Service Drop Attachment is made.

6.2 Permits for Overlashing. Permits are required for any Overlashing allowed under this Agreement. Licensee, Licensee's Affiliate or other third party, as applicable, shall pay any necessary Make-Ready Work costs to accommodate such Overlashing.

6.3 District Review of Permit Application. Prior to submitting an Application for Pole Attachment Permit ("Application"), a prospective applicant may request a Pre-Application meeting (as defined in this Agreement). A Pre-Application meeting may be scheduled at the District's discretion.

An Application for Pole Attachment Permit ("Application") shall contain all items required pursuant to the Joint Use Rules and Regulations, including but not limited to a Pre-Construction Meeting (if requested by either party), and detailed plans in the form specified in the Joint Use Rules and Regulations. Upon receipt of an Application, the District will review and issue a determination of completeness, or a determination of incompleteness, within forty-five (45) days of receipt of the Application. A determination of Incompleteness shall include a statement of what information/action is needed to make the Application complete. The applicant shall promptly submit any missing information and complete any action detailed in any determination of incompleteness, to enable the District to make a completeness determination with forty-five (45) days of receipt of the original date of Application submittal. Should the applicant fail to achieve complete status within forty-five (45) days from the original date of Application submittal, the Application may be deemed "expired" and may be denied on that basis. Following a determination of

completeness, the District will review the Application, and may discuss any issues with the Licensee, for example, Make-Ready Work requirements. Within sixty (60) days from the date a determination of completeness is issued, the District will issue an approval/acceptance to Attach in the form of an issued Permit:

- (a) without Make-Ready Work required and with no conditions;
- (b) without Make-Ready Work required but with conditions (*for example, trench past Pole number; attach at specified height, etc.*);
- (c) with Make-Ready Work required and conditions;

OR will issue a denial. A denial shall include written reasons for denial, which must be nondiscriminatory, based on a finding of insufficient capacity, or based on reasons of safety, reliability, or inability to meet generally acceptable engineering standards and practices.

In extraordinary circumstances, and with approval of the applicant, the District may extend the applicable timeframes detailed above. The District's acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis.

- 6.4 Changes / Modifications Requested After Application Approval.** Should Licensee request changes or modifications to an issued Permit, the District may, in the District's sole discretion, elect to approve the request (as documented on revised plans) and continue with the existing Permit review process, or deny the request and continue with the existing Permit review process. In the event Licensee's request is denied, Licensee, at Licensee's option, may request the Issued Permit be rescinded, which request shall not be unreasonably denied, and submit a new Application, subject to the standard review process and timeline.
- 6.5 Permit as Authorization to Attach – "Permit Issuance".** Upon completion of review and finding that the Application satisfies review criteria, and after receipt of payment for any actual, reasonable, and verifiable Make-Ready Work (if applicable), the District will sign and return the Permit Application ("Permit Issuance"), which shall serve as authorization for Licensee to make its Attachment(s) after the District has completed all Make-Ready Work (if applicable).
- 6.6 Timing of Construction / Improvements.** Licensee must complete all work/improvements authorized by the Issued Permit as follows:

- (a) Within 120 days from Permit Issuance date (in event no Make-Ready Work is required); or
- (b) Within 120 days from date Make-Ready Work is completed (in event Make-Ready Work is required); or
- (c) any mutually agreed date which District will accommodate in good faith based on showing of need related to third-party approvals pending (e.g.: permit approvals) or similar circumstances.

In the event Licensee fails to complete work/improvements within this timeline, the District may rescind/cancel the Issued Permit, and issue notice requiring Licensee to remove any and all partially completed work/improvements.

6.7 Timing of As-Built Documentation Submittal and Final Permit Approval.

Licensee must submit as-builts for any changes in design or construction under a permit and all other required inspections and documentation in order to receive a final Permit approval as follows:

- (a) Within 140 days of Permit Issuance when Make-Ready work is not required (*120 days to complete work from date of Permit Issuance, plus 20 days to complete and submit as-builts and all other required inspections/documentations*); or
- (b) Within 140 days of completion of Make-Ready work (*120 days to complete work from date Make-Ready work completed, plus 20 days to complete and submit as-builts and all other required inspections/documentation*), or
- (c) any mutually agreed date which District will accommodate in good faith based on showing of need related to third-party approvals pending (e.g.: permit approvals) or similar circumstances.

In the event Licensee fails to submit as-builts and all other required documentation within this timeline, the District may rescind/cancel the Issued Permit, decline to issue final Permit approval, and issue notice requiring Licensee to remove any and all partially completed work/improvements.

Upon satisfying all requirements and approval of submitted as-built, the District will issue a final Permit approval.

6.8 Notice of Correction. In the event that the District determines corrections are required, the District shall provide written notice of required corrections. Licensee shall complete required corrections within the earlier of sixty (60) calendar days of date of Notice of Correction, or sixty (60) calendar days from the date

additional required Make-Ready Work is completed, or other mutually agreed date which District will accommodate in good faith based on showing of need related to third party approvals pending (e.g.: permit approvals) or similar circumstances. Such completed corrections shall be clearly shown on updated as-built and any other required documentation, submitted within the completion timeline specified in this Paragraph.

Licensee's failure to complete all corrections within the time period detailed in this section (with all corrections to be detailed on updated as-built and any other required documentation submitted within the same time period detailed in this section) provides a basis for the District to revoke/rescind the Issued Permit, and to require removal of work/improvements completed.

Article 7—Transfers and Relocations

- 7.1 **Required Transfers and/or Relocations of Licensee's Attachments.** If the District reasonably determines that a transfer and/or relocation of Licensee's Attachments is necessary, Licensee agrees to allow or perform such transfer and/or relocation per the terms outlined in Joint Use Rules and Regulations.

Article 8—Abandonment or Removal of District Facilities

- 8.1 **Notice of Abandonment or Removal of District Facilities.** If the District desires at any time to abandon, remove or underground any District Facilities to which Licensee's Attachments are attached, it shall give Licensee notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such District's Facilities, or any mutually agreed date which District will accommodate in good faith based on showing of need related to third-party approvals pending (e.g.: notice of removal) or similar circumstances. If, following the expiration of the notice period, Licensee has not yet removed and/or transferred all of its Attachments therefrom, the District shall have the right, subject to any applicable laws and regulations, to have Licensee's Attachments removed and/or transferred from the Pole at Licensee's expense. The District shall give Licensee prior written notice of any such removal or transfer of Licensee's Attachments. Licensee may be subject to any applicable provisions detailed in this Agreement and the Applicable Standards.

Article 9—Removal of Licensee’s Facilities

9.1 **Removal on Expiration/Termination.** At the expiration or other termination of this License Agreement or individual Permit(s), Licensee shall remove its Attachments from the affected Poles at its own expense, within sixty (60) calendar days of expiration or termination or some greater period if mutually agreed by the District, which agreement shall not be unreasonably withheld.

Article 10—Termination of Permit

10.1 **Automatic Termination of Permit.** Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Attachments at the location of the particular Pole(s) covered by the Permit. Notwithstanding the foregoing, to the extent Licensee is pursuing a challenge of the revocation of any such permission, Licensee may remain on the particular Pole(s) until such time as all appeals and remedies are exhausted.

10.2 **Notification and Process.** The District will notify Licensee in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition(s) serving as basis for exercise of termination pursuant to Section 10.1. Licensee shall take immediate corrective action to eliminate any such condition(s) within sixty (60) calendar days of such notice, or such longer period mutually agreed to by the parties, and shall confirm in writing to the District that the cited condition(s) has (have) ceased or been corrected. If Licensee fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, the District may proceed to terminate this Agreement or any Permit(s). In the event of termination of this Agreement or any of Licensee’s rights, privileges or authorizations hereunder, the District may require removal of Licensee’s Attachments. Licensee shall be liable for and pay all rates, fees and charges pursuant to terms of this Agreement to the District until such time as Licensee’s Attachments are removed.

10.3 **Surrender of Permit.** Licensee may at any time surrender any Permit for Attachment and remove its Attachments from the affected Pole(s). All work is subject to the insurance requirements set forth in this Agreement. No refund of any rates, fees or charges will be made upon removal. If Licensee surrenders any Permit pursuant to the provisions of this Article, but fails to remove its Attachments from the District’s Facilities within the time frame set forth in the

approved plan above, the District shall have the right to remove Licensee's Attachments at Licensee's expense.

- 10.4 Validity of Permit.** The issuance or granting of a Permit shall not be construed to be a Permit for, or an approval of, any violation of the provisions of this Agreement, the Applicable Standards, or any other regulations or laws. Permits presuming to give authority to violate or cancel any term of this Agreement, the Applicable Standards, or any other regulation or law shall not be valid. The issuance of a permit based upon construction document or other data shall not prevent the District from requiring the correction of any violations.

Article 11—Inspection of Licensee's Facilities

- 11.1 Inspections.** The District may conduct an inventory and inspection of Attachments at any time. Licensee shall correct all Attachments that are not found to be in compliance with this Agreement or the Applicable Standards within sixty (60) calendar days of notification, or earlier as explicitly provided in this Agreement. If the nature of the noncompliance is such that correction of the noncompliance cannot reasonably be completed within sixty (60) days, the District and Licensee may agree that the Licensee shall commence corrective action within the sixty (60) day period, and complete all corrective action pursuant to a schedule approved by the District. Except as otherwise explicitly provided in this Agreement, if it is found that Licensee has made an Attachment without a Permit, Licensee shall pay an Unauthorized Attachment Inspection Fee as specified in the Joint Use Rules and Regulations in addition to applicable Make-Ready charges.
- 11.2 No Liability.** Inspections performed under this Article, or the failure to do so, shall not operate to impose upon the District any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.
- 11.3 Attachment Records.** Notwithstanding the above inspection provisions, within eighteen (18) months following the date of execution of this Agreement, Licensee is obligated to furnish the District an up-to-date map/data depicting the locations of its Attachments in an electronic format approved by the District. This will facilitate District billing that will issue in July of each year. If a map is not available, the Licensee will provide a list in an electronic format approved by the District. Licensee shall then provide an updated list by April 1 of the fifth year following the effective date of this Agreement, and by April 1 of every fifth year thereafter should this Agreement term be extended.

Article 12—Unauthorized Occupancy or Access

- 12.1 **Unauthorized Attachment Inspection Fee.** If any of Licensee’s Attachments are found occupying any Pole for which no Permit has been issued, and said Attachment is not grandfathered under Section 6.1 (Permit Application Procedures) of this Agreement, then the District, without prejudice to its other rights or remedies under this Agreement, may charge an Unauthorized Attachment Inspection Fee as specified in the Joint Use Rules and Regulations. Licensee may dispute such an Unauthorized Attachment Inspection fee in good faith by following the Appeal process provided in the Applicable Standards – Joint Use Rules and Regulations.
- 12.2 **No Ratification of Unlicensed Use.** No act or failure to act by the District with regard to any unlicensed use shall be deemed as ratification of the unlicensed use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by the District of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement and the Applicable Standards in regards to the unauthorized use from its inception.

Article 13—Liability and Indemnification

- 13.1 **Liability.** The District reserves to itself the right to maintain and operate its Poles in such manner as will best enable it to fulfill its statutory service requirements. Licensee agrees to use the District’s Poles at Licensee’s sole risk. Notwithstanding the foregoing, the District shall exercise reasonable precaution to avoid damaging Licensee’s Attachments and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to Paragraph 13.5 (Municipal Liability Limits), the District agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of such facilities damaged by the negligence or willful misconduct of the District.

NEITHER PARTY, ITS AFFILIATES ARE LIABLE FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF

NEGLIGENCE OF A THE PARITY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW OR (B) DAMAGES OF ANY KIND IN AN AMOUNT GREATER THAN THE AMOUNT OF ACTUAL, DIRECT.

13.2 Indemnification. The Parties, and any agent, contractor or subcontractor of the Parties, shall defend, indemnify and hold harmless the other Party and its officials, officers, board members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by the indemnified Party under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of the indemnified Party and all other costs and expenses of litigation) ("Covered Claims") arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by the Parties, or by the Parties' officers, directors, employees, agents or contractors, of Licensee's Attachments, except to the extent of the other's negligence or willful misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

13.2.1 Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;

13.2.2 Cost of work performed by the Party that was necessitated by the other Party's failure, or the failure of that Party's officers, directors, employees, agents or contractors, to install, maintain, use, transfer or remove the Party's Attachments in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes the Party to perform on that Party's behalf;

13.2.3 Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by the Parties, or the Parties' officers, directors, employees, agents or contractors, pursuant to this Agreement;

13.2.4 Liabilities incurred as a result of either Party's violation, or a violation by either Party's officers, directors, employees, agents or contractors, of any law, rule, or regulation of the United States, State of Washington or any other governmental entity or administrative agency, as any of the same may pertain to this Agreement.

13.3 Procedure for Indemnification.

13.3.1 The Party seeking indemnification shall give prompt notice to the indemnitor of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against the indemnitee, the indemnitee shall give the notice to indemnitor no later than ten (10) calendar days after the indemnitee receives written notice of the action, suit or proceeding.

13.3.2 The indemnitee's failure to give the required notice will not relieve the indemnitor from its obligation to indemnify the indemnitee unless indemnitor is materially prejudiced by such failure.

13.3.3 Indemnitor will have the right at any time, by notice to the indemnitee, to participate in or assume control of the defense of the claim with counsel of its choice. The indemnitee agrees to cooperate fully with the indemnitor. If the indemnitor so assumes control of the defense of any third-party claim, the indemnitee shall have the right to participate in the defense at its own expense. If the indemnitor does not so assume control or otherwise participate in the defense of any third-party claim, indemnitor shall be bound by the results obtained by the indemnitee with respect to the claim.

13.3.4 If the indemnitee assumes the defense of a third-party claim as described above, then in no event will the indemnitor admit any liability with respect to, or settle, compromise or discharge, any third-party claim without the indemnitee's prior written consent, and the indemnitor will agree to any settlement, compromise or discharge of any third-party claim which indemnitee may recommend which releases the indemnitor completely from such claim.

13.4 Hazardous Substances. Licensee represents and warrants that its use of the District's Poles will not generate any Hazardous Substances, that it will not store or dispose on or about the District's Poles or transport to the District's Poles any Hazardous Substances and that Licensee's Attachments will not constitute or contain and will not generate any Hazardous Substance in violation of federal, state or local law now or hereafter in effect including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments. Licensee further represents and

warrants that in the event of breakage, leakage, incineration or other disaster, its Attachment(s) would not release any Hazardous Substances. Licensee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless the District and its respective officials, officers, board members, commissioners, representatives, employees, agents and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage or discovery of any Hazardous Substances on, under or adjacent to the District's facilities attributable to Licensee's use of the District's facilities.

Should the District's Poles be declared to contain Hazardous Substances, the District, shall be responsible for the disposal of its Poles. Provided, however, if the source or presence of the Hazardous Substance is solely attributable to particular parties, such costs shall be borne solely by those parties.

Notwithstanding the above, the District agrees to defend, indemnify and hold harmless Licensee for any claims against Licensee related to Hazardous Substances or Conditions to the extent caused or created by the District.

13.5 Municipal Liability Limits. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the District of any applicable State limits on municipal liability. No indemnification provision contained in this Agreement under which Licensee indemnifies the District shall be construed in any way to limit any other indemnification provision contained in this Agreement.

13.6 Attorney's Fees. Should either Party bring an action in a court of competent jurisdiction to enforce a term found in this Agreement, the substantially prevailing Party shall be awarded reasonable attorney's fees and costs.

Article 14—Duties, Responsibilities, And Exculpation

14.1 Duty to Inspect. Licensee acknowledges and agrees that the District does not warrant the condition or safety of the District's Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect the District's Poles and/or premises surrounding the Poles, prior to commencing any work on the District's Poles or entering the premises surrounding such Poles. Licensee's responsibility is limited only to the extent necessary to perform Licensee's work. Any obligation of the District with respect to the condition or safety of its facilities separate from this Agreement shall remain solely the obligation of the District.

- 14.2 Knowledge of Work Conditions.** By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties and restrictions attending the execution of such work.
- 14.3 DISCLAIMER. DISTRICT MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO DISTRICT'S POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND DISTRICT MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. DISTRICT EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 14.4 Duty of Competent Supervision and Performance.** The parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, employees, contractors and subcontractors will work near electrically energized lines, transformers or other District Facilities, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except in an emergency endangering life, or threatening personal injury or property damage. Licensee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of the District and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of the District's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.
- 14.5 Interruption of Service.** In the event that either Party causes an interruption of service by damaging or interfering with the services or facilities of the other Party, the at fault Party, at its expense, shall immediately do all things reasonable to avoid injury and damages, direct and incidental, resulting therefrom, and shall notify the other Party immediately.
- 14.6 Duty to Inform.** Licensee further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on the

District's Poles by Licensee's employees, agents, contractors or subcontractors, and accepts as its duty and sole responsibility to notify and inform Licensee's employees, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

Article 15—Insurance

15.1 Policies Required. At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:

15.1.1 Workers' Compensation and Employers' Liability Insurance. Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Washington State law at the time of the application of this provision for each accident. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

15.1.2 Commercial General Liability Insurance. Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage property damage, independent contractor's coverage with Limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence.

15.1.3 Automobile Liability Insurance. Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles used in connection with work under this Agreement. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.

15.1.4 Umbrella Liability Insurance. Coverage is to be in excess of the sum employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than \$4,000,000 each occurrence, \$4,000,000 aggregate. Overall limits of liability insurance may be met through any combination of primary and excess liability policies.

15.1.5 Property Insurance. Each party will be responsible for maintaining property insurance or self-insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and District structures, fencing or support systems that may be placed on, within or around District

Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as “extended coverage” insurance or self-insure such exposures.

- 15.2 Qualification; Priority; Contractors’ Coverage.** The insurer must be authorized to do business under the laws of the State of Washington and have an “A” or A-VII” or better rating in Best’s Guide. Such liability insurance will be primary with respect to losses for which the insured party is responsible hereunder. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers’ compensation and employers’ liability, commercial general liability and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article with limits appropriate to the scope of such party’s work.
- 15.3 Certificate of Insurance; Other Requirements.** Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish the District with a certificate of insurance (“Certificate”). The Certificate shall reference this Agreement and any requirements of this Agreement. The certificates shall state that notice of cancellation will be given in accordance with policy provisions. The District, its board members, commissioners, agencies, officers, officials, employees and representatives (collectively, “Additional Insureds”) shall be named as Additional Insureds under the required Commercial General and Automobile Liability policies. Licensee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to the District upon request.
- 15.4 Limits.** The limits of liability set out in this Article may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Licensee’s exposure to risk.
- 15.5 Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors hereunder shall contain provisions (1) that exclude coverage of liability assumed by this Agreement with the District except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to the District’s employees or agents directly caused by the negligence of Licensee, or

(4) that exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

- 15.6 Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

Article 16—Authorization Not Exclusive

The District shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use District Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by this Agreement or by the specific Permits issued pursuant to this Agreement.

Article 17—Assignment

- 17.1 Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of the District, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Licensee shall have a right to assign or transfer this Agreement, in whole or in part and without consent to (i) any entity that controls, is controlled by, or is under common control with Licensee, and (ii) any entity that purchases all or substantially all of Licensee's assets located in Mason County, Washington. Licensee shall furnish the District with written notice of the transfer or assignment, together with the name and address of the transferee or assignee. No consent shall be required for an assignment of all of Licensee's interests in this Agreement to its Affiliate. However, Licensee shall provide notice to the District within thirty (30) calendar days thereafter.
- 17.2 Sub-licensing.** Without the District's prior written consent, Licensee shall not sub-license or lease to any third party, including but not limited to allowing third parties to place Attachments on District Facilities, including Overlapping, or to place Attachments for the benefit of such third parties on District's Poles. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Attachments by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlapping is not subject to this Paragraph.

Article 18—Failure to Enforce

Failure of the District or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

Article 19—Termination of Agreement

19.1 Right to Terminate. Notwithstanding the District’s rights under Article 10 (Termination of Permit), the District shall have the right, subject to compliance with 19.2 below, including the provision of written notice and the expiration of the cure period as set forth herein, to terminate this entire Agreement, and/or any Permit(s) issued hereunder, if Licensee fails to correct a material default of any material term or condition of this Agreement, including but not limited to the following circumstances:

- (a) Failure to remedy, as required by the terms of Notice issued by the District, any construction, operation or maintenance of Licensee’s Attachments in violation of any Applicable Standard or law or in aid of any unlawful act or undertaking, unless Licensee is contesting the lawfulness of such construction, operation, or maintenance in good faith in an appropriate forum and in compliance with applicable procedural requirements; or
- (b) Construction, operation or maintenance of Licensee’s Attachments after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority, including but not limited to fact pattern under Paragraphs 10.1 and 10.2 (Automatic Termination of Permit unless Licensee is contesting the lawfulness of such denial or revocation in good faith in an appropriate forum and in compliance with applicable procedural requirements; or
- (c) Construction, operation or maintenance of Licensee’s Attachments without the insurance coverage required under this Agreement; or
- (d) Failure to comply with terms of Notice of Violation, Notice of Correction, or Notice of Abandonment/Removal.

19.2 Process for Termination of Agreement. Upon the occurrence of an event or facts serving as the basis for termination of this Agreement, the District may terminate this Agreement upon the later of thirty (30) days' notice and opportunity to cure within the thirty (30) day period, or any other specifically applicable notification period provided herein. The District shall give Licensee thirty (30) days prior written notice of its intent to exercise any of its rights under this Article 19, identifying the reasons for such action, including the asserted default or violation. If Licensee removes or otherwise cures the asserted default or violation within the thirty (30) day notice period, or if cure is not reasonably possible within the thirty (30) day period and Licensee initiates good faith efforts within the thirty (30) day period to cure the asserted default or violation and the efforts continue in good faith, then the District shall not exercise its rights under this Article 19. If Licensee fails to remove or otherwise cure the asserted default or violation within the thirty (30) day notice period, or if the Licensee does not undertake and continue efforts satisfactory to the District to remedy the stated default or violation, then, upon written notice to Licensee, the District may exercise any of the remedies available under this Article 19.

Article 20—Term of Agreement

20.1 This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years. Either party may terminate this Agreement at the end of the initial five (5) year term by giving to the other party written notice of an intention to terminate this Agreement at least one hundred eighty (180) calendar days prior to the end of the term. If no such notice is given, this Agreement shall automatically be extended for an additional five (5) year term. Either party may terminate this Agreement at the end of the second five (5) year term by giving to the other party written notice of an intention to terminate this Agreement at least one hundred eighty (180) calendar days prior to the end of the second term. Upon failure to give such notice, this Agreement shall automatically continue in force until terminated by either party after one hundred eighty (180) calendar days written notice. To the extent that the parties are negotiating a new Pole agreement in good faith, Licensee's Attachments shall continue to be authorized and the parties shall continue to perform under the terms of this Agreement.

20.2 Even after the termination of this Agreement, the Parties' responsibility and indemnity obligations shall continue with respect to any claims or demands related to this Agreement, subject to applicable statutes of limitations.

Article 21—Amending Agreement

The terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.

Article 22—Notices

22.1 Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when sent by email or first class mail, except where specifically provided for elsewhere, and PROVIDED that notices pursuant to Article 19 shall be by certified mail, return receipt requested, or when deposited for overnight delivery with a nationally recognized overnight courier/express transportation company such as FedEx or equivalent. Notice by mail or overnight courier/express transportation delivery shall be properly addressed as follows:

If to District, at: **Public Utility District No. 3 of Mason County**
 PO Box 2148
 2621 E Johns Prairie Rd
 Shelton, WA 98584

Email: **jointuse@masonpud3.org**

If to Licensee, at: _____

Email: _____

With copy to: _____

Email: _____

or to such other address as either party, from time to time, may give the other party in writing.

22.2 Provide 24-hour Emergency Contact. Licensee shall maintain a staffed 24-hour emergency telephone number where the District can contact Licensee to report damage to Licensee’s facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to the District’s concerns and requests. Failure to maintain an emergency contact shall eliminate the District’s liability to Licensee for any actions that the District deems reasonably necessary given the specific circumstances.

The following contact phone number is designated by Licensee for this purpose, and shall remain effective until such time as Licensee provides Licensor with an alternative number in writing:

_____ **(insert phone number).**

Article 23—Entire Agreement

This Agreement supersedes all previous agreements, whether written or oral, between the District and Licensee for placement and maintenance of Licensee’s Attachments on District’s Poles; and there are no other provisions, terms or conditions to this Agreement except as expressed herein. Except as otherwise provided in this Agreement, any existing Attachments shall continue in effect, provided they meet the terms of this Agreement.

Article 24—Severability & Change in Law

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the parties that this Agreement be administered as if not containing the invalid provision.

The terms and conditions of this Agreement were composed in order to effectuate the legal requirements and/or parameters in effect at the time the Agreement was produced. In the event that any of the terms or conditions, or any of the laws or regulations that were the basis or rationale for such terms or conditions in this Agreement are invalidated, modified or stayed by any state or federal regulatory or legislative bodies or courts of competent jurisdiction, the Parties shall expend diligent efforts to arrive at a written amendment regarding the appropriate conforming modifications to the Agreement.

Article 25—Violations - Remedies

Upon violation of this Agreement, violation of any Permit issued pursuant to this Agreement, and/or violation of any Applicable Standards, either Party may pursue all legal and equitable remedies, and all remedies detailed in this Agreement and the Applicable Standards.

Article 26—Governing Law – Dispute Resolution

- 26.1 The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Washington. Venue for any dispute shall be in the Courts of Mason County, Washington, or federal court with jurisdiction.
- 26.2 In the event a dispute shall arise between the parties to this Agreement, the parties agree to participate in at least four hours of mediation in accordance with the mediation procedures of the Washington Arbitration & Mediation Service (WAMS). The parties agree to share equally in the costs of the mediation. The mediation shall be held in WAMS Tacoma offices.
- 26.3 Any controversy or claim arising out of or relating to this Agreement, or its breach, not settled by mediation, shall be settled by binding arbitration in accordance with Chapter 7.06 RCW and the Rules of Mandatory Arbitration for the Superior Court of the State of Washington. The Parties specifically agree that the arbitrator shall have equitable powers including mandamus, specific performance or injunctive relief and that the arbitrator's decision shall be final. The Parties hereby waive the right to request trial de novo. The prevailing party in any arbitration shall be entitled to recover their costs including reasonable attorney fees.
- 26.4 If Licensee does not wish to be bound by paragraph 26.3, Licensee must notify the District in writing within sixty (60) days of the date the District executed this agreement by mail. Licensee's written notice to the District must include the Licensee's name, address, the name and position of the person submitting the notification on behalf of Licensee as well as a clear statement that Licensee does not wish to resolve disputes with the District through Arbitration.
- 26.5 If litigation arises out of this Agreement, upon a final order of a court of competent authority granting such relief, the substantially prevailing party shall be entitled to recover all reasonable legal expenses and expert witness fees, as well as the actual court costs of filing the action.

Article 27—Incorporation of Recitals and Appendices

The recitals stated above and all terms and provisions contained in the Applicable Standards, as now existing or as hereafter amended, are hereby incorporated into and constitute part of this Agreement.

Article 28—Performance Bond

On execution of this Agreement, Licensee shall provide to the District a performance bond in an amount that is equal to Forty Dollars (\$40.00) per Licensee Pole Attachment or Ten Thousand Dollars (\$10,000.00), whichever is greater. The required bond amount may be adjusted periodically to account for additions or reductions in the total number of Licensee's Pole Attachments. The bond shall be with an entity and in a form acceptable to the District. The purpose of the bond is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties, rates, and fees due to the District which arise by reason of the construction, operation, maintenance or removal of Licensee's Attachments on or about District's Poles. The District at its sole discretion, may waive the requirement of a performance bond if the proposed Licensee, or its predecessor, is a regionally or nationally recognized communications provider having formally been in existence for a minimum of ten years and can demonstrate financial responsibility.

Article 29—Force Majeure

29.1 In the event that either the District or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and any such party shall endeavor to remove or overcome such inability as soon as reasonably possible. Licensee shall not be responsible for any charges associated with District’s Facilities for any periods that such facilities are unusable.

29.2 The District shall not impose any charges on Licensee stemming solely from Licensee’s inability to perform required acts during a period of unavoidable delay as described in Section 29.1, provided that Licensee present the District with a written description of such *force majeure* within a reasonable time after occurrence of the event or cause relied on, and further provided that this provision shall not operate to excuse Licensee from the timely payment of any rates, fees or charges due the District under this Agreement.

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

(DISTRICT)

(LICENSEE)

BY: _____

BY: _____

Title: _____

Title: _____

DISTRICT

STATE OF WASHINGTON

: ss

County of Mason

I, the undersigned, a Notary Public in and for the State of WASHINGTON hereby certify that on the ____ day of _____, 2____, personally appeared before me [NAME] _____, [TITLE] _____ to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

Notary Public in and for the
State of Washington residing at

LICENSEE

STATE OF _____

: ss

County of _____

I, the undersigned, a Notary Public in and for the State of _____, hereby certify that on the ____ day of _____, 2____, personally appeared before me [NAME] _____, [TITLE] _____ to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

Notary Public in and for the
State of _____, residing at

_____, _____