

## POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment License Agreement (“Agreement”), effective upon full execution, is made by and between Public Utility District No. 2 of Grant County, Washington (hereinafter referred to as “District”), a municipal corporation of the State of Washington, and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter referred to as “Licensee”).

### Recitals:

Whereas, Licensee proposes to install and maintain Communications Facilities and associated communications equipment on District Poles to provide Communications Services to the public;

Whereas, the District has adopted Joint Use Standards applicable to the attachment of Communication Facilities to Utility Facilities;

Whereas, the District is willing, when it may lawfully do so, 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

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:

### 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 be given their 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:** all applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around electric Utility Facilities and includes the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), the regulations of the

Occupational Safety and Health Administration (“OSHA”), the Washington Industrial Safety and Health Act (“WISHA”), as well as the engineering and safety standards established by the District, each of which is incorporated by reference in this Agreement, and/or other reasonable District-provided safety and engineering requirements, or other federal, state or local authority with jurisdiction over District Facilities.

- 1.3 Assigned Space:** space on 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 communication worker safety zone is not considered Assigned Space.
- 1.4 Attaching Entity:** any public or private entity, other than District or Licensee, who, pursuant to a license agreement with District, places an Attachment on a Pole to provide Communications Service.
- 1.5 Attachment(s):** Licensee’s Communications Facilities that are placed directly on Poles, but does not include a Riser, a service drop, or support and safety attachments attached to a single Pole where Licensee has an existing Attachment on such Pole. This definition of Attachment shall exclude Overlashes, which are addressed in Article 2.12.
- 1.6 Capacity:** the ability of a Pole to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.
- 1.7 Climbing Space:** that portion of a Pole’s surface and surrounding space that is free from encumbrances to enable District employees and contractors to safely climb, access and work on District Facilities and equipment.
- 1.8 Common Space:** space on Poles that is not used for the placement of wires or cables but which jointly benefits all users of the Poles by supporting the underlying structure and/or providing safety clearance between Attaching Entities and electric Utility Facilities.
- 1.9 Communications Facilities:** wire or cable facilities including but not limited to fiber optic, copper and/or coaxial cables or wires utilized to provide Communications Service including any and all associated equipment. Unless otherwise specified by the parties, the term “Communications Facilities” does not include pole mounted wireless antennas, receivers or transceivers. Strand-mounted wireless equipment that does not restrict Climbing Space shall be considered Communications Facilities.
- 1.10 Communications Service:** the transmission or receipt of voice, video, data, Internet or other forms of digital or analog signals over Communications Facilities.
- 1.11 Licensee:** \_\_\_\_\_, its authorized successors and assignees.

- 1.12 Make-Ready Work:** all work, as reasonably determined by the District, required to accommodate Licensee's Communications Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, Pre-Construction Survey, rearrangement and/or transfer of District Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes) or pole replacement and construction.
- 1.13 Occupancy:** the use or specific reservation of Assigned Space for Attachments on the same District Pole.
- 1.14 Overlash:** to place an additional wire or cable Communications Facility onto an existing Attachment owned by Licensee.
- 1.15 Pedestals/Vaults/Enclosures:** above- or below-ground housings that are used to enclose power supplies, amplifiers, passive devices and/or provide a service connection point and that shall not be attached to District Poles.
- 1.16 Permit:** written or electronic authorization of District for Licensee to make or maintain Attachments to specific District Poles pursuant to the requirements of this Agreement.
- 1.17 Pole:** a pole or any type of structure owned by the District used for the distribution of electricity and/or Communications Service that is capable of supporting Attachments for Communications Facilities. Communications Facilities are not allowed on distribution Poles with switches.
- 1.18 Pole Attachment Fee:** a payment by Licensee to District to compensate the District for Licensee's use of Utility Facilities.
- 1.19 Pre-Construction Survey:** all work or operations required by Applicable Standards and/or District to determine the potential Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole. Such work includes, but is not limited to, field inspection. The Pre-Construction Survey shall be coordinated with the District and include Licensee's representative. The Pre-Construction Survey shall be provided to the District electronically as a completed SPIDA®Calc file.
- 1.20 Reserved Capacity:** capacity or space on a Pole that District has identified and reserved for its own electric Utility requirements, pursuant to a reasonable projected need or business plan.
- 1.21 Riser:** metallic or plastic encasement materials placed vertically on the Pole to guide and protect communications wires and cables.

- 1.22 **Tag:** to place distinct markers on wires and cables, coded by color or other means specified by the District and/or applicable federal, state, or local regulations that will readily identify, from the ground, its owner and cable type.
- 1.23 **Utility Facilities:** all personal property and real property owned or controlled by the District, including Poles and anchors.

## 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 Poles.
- 2.2 **Parties Bound by Agreement.** Licensee and District agree to be bound by all provisions of this Agreement and by any subsequent law.
- 2.3 **Permit Issuance Conditions.** District will issue a Permit(s) to Licensee only when 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 requirements, and (iii) Licensee meets all generally applicable engineering standards and practices.
- 2.4 **Reserved Capacity.** At the District's discretion, access to Assigned Space on District Poles may be made available to Licensee with the understanding that such access is to District's Reserved Capacity only. On giving Licensee at least 60 calendar days prior notice, the District may reclaim such Reserved Capacity anytime during the period following the installation of Licensee's Attachment in which this Agreement is effective if required for District's future electric service use. The District shall give Licensee the option to remove its Attachment(s) from the affected Pole(s), or to pay for the cost of any Make-Ready Work needed to expand Capacity so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 9.
- 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 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 Communications Facilities to any specific Pole.
- 2.7 District's Rights over Poles.** The parties agree that this Agreement does not in any way limit District's right to locate, operate, maintain or remove its Poles in the manner that will best enable it to fulfill its statutory service requirements.
- 2.8 Expansion of Capacity.** The District will take reasonable steps to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require the District to install, retain, extend or maintain any Pole for use when such Pole is not needed for District service requirements.
- 2.9 Incorporation by Reference.** The District's Joint Use Standards are incorporated herein by reference. See also Article 23, *infra*.
- 2.10 Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit the District from fulfilling any pre-existing or future agreement or arrangement regarding Poles, with others not party to this Agreement.
- 2.11 Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals above and no other use shall be allowed without the District's express written consent to such use. Nothing in this Agreement shall be construed to require the District to allow Licensee to use Poles after the termination of this Agreement, subject to the provisions of Article 12 and Article 21 of this Agreement.
- 2.12 Overlash.** The following provisions will apply to Overlashes:
- 2.12.1** A Permit shall be obtained for each Overlash pursuant to Article 6. Absent such authorization, an Overlash constitutes an unauthorized Attachment and is subject to the Unauthorized Attachment Fee specified in Appendix A. No Unauthorized Attachment fees shall apply to any pre-existing Attachments until the parties have completed an audit to establish a baseline number of Attachments.
- 2.12.2** If Licensee demonstrates that the Overlash of Licensee's Attachment(s) is required to accommodate Licensee's Communications Facilities, the District shall not withhold Permits for such Overlash if it can be done consistent with Article 2.3. An Overlash performed pursuant to this Article 2.12.2 shall not increase the Pole Attachment Fee paid by Licensee pursuant to Article 3. Licensee, however, shall be responsible for all Make-Ready Work and other charges associated with the Overlash but shall not be required to pay a separate Pole Attachment Fee for such Overlash Attachment.

**2.12.3** If an Overlash is required to accommodate facilities of a third party, such third party must enter into a license agreement with District and obtain permits and must pay a separate Pole Attachment Fee as well as the costs of all necessary Make-Ready Work required to accommodate the Overlash. No such permits to third parties may be granted by District allowing Overlash of Licensee's Communications Facilities unless Licensee has consented in writing to such Overlash. Any Overlash performed under this Article 2.12.3 shall not increase the fees and charges paid by Licensee pursuant to Article 3. Nothing in this Agreement shall prevent Licensee from seeking a contribution from a third party that proposes an Overlash to defray fees and charges paid by Licensee.

**2.12.4** Make-Ready Work procedures set forth in Article 7 shall apply, as necessary, to all Overlashes.

**2.13** **Enclosures.** Neither party shall place Pedestals, Vaults and/or other Enclosures on or within four feet of any Pole or other facility belonging to the other party without the other party's prior written permission. If permission is requested to place a Pedestal, Vault and/or other Enclosure within four feet of the other party's facilities, such permission shall not be unreasonably withheld.

### **Article 3—Fees and Charges**

**3.1** **Payment of Fees and Charges.** Licensee shall pay to District the fees and charges specified in Appendix A, Fees and Charges, and shall comply with the terms and conditions specified herein. Unless otherwise expressly provided, Licensee shall pay any invoice it receives from District pursuant to this Agreement within 30 calendar days of the billing date of the invoice.

**3.2** **Billing of Pole Attachment Fee.** District shall invoice Licensee no later than March 31<sup>st</sup> of each year for the Pole Attachment Fees for the prior calendar year. The invoice shall set forth the total number of Poles on which Licensee was issued and/or holds a Permit(s) for Attachments during such billing period, including any previously authorized and valid Permits.

**3.3** **Refunds.** No fees and charges specified in Article 3 shall be refunded on account of any surrender of a Permit granted hereunder. Nor shall any refund be owed if District abandons a Pole.

**3.4** **Late Charge.** If District does not receive payment for any fee or other amount owed within 30 calendar days of the billing date, Licensee, upon receipt of written notice, shall pay, within 15 days, interest on the amount due to District, at the maximum rate allowed by Washington State law.

- 3.5 Payment for Work Performed by the District.** Licensee will be responsible for payment of all estimated costs to District for all work District and District's contractors perform pursuant to this Agreement to accommodate Licensee's Communications Facilities. Such costs shall include all estimated material, labor, engineering, and applicable overhead costs associated with Make-Ready Work.
- 3.6 Advance Payment.** At the discretion of the District, Licensee may be required to pay in advance all estimated costs, including but not limited to design, construction, inspections and all other Make-Ready Work expenses including preparation of the Make-Ready Work estimate, in connection with the initial installation or rearrangement of Licensee's Communications Facilities pursuant to the procedures set forth in Articles 6 and 7 below.
- 3.7 Contractors.** Wherever this Agreement requires District to perform any work, Licensee acknowledges and agrees that 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 90 days shall constitute a material default of this Agreement in accordance with Article 21.

#### **Article 4—Specifications**

- 4.1** All Attachments shall meet the most current edition of the National Electric Safety Code (NESC) that is effective at the time of installation or modification. District requires Licensee's adherence to the NESC for safeguarding of persons from hazards arising from the installation, operation, or maintenance of electric supply and communication lines and equipment.
- 4.2** All Attachments to Poles shall be designed and constructed to Grade C, except where NESC dictates Grade B construction.
- 4.3** All of Licensee's Communications Facilities must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. 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) or prior editions of the National Electrical Code (NEC).
- 4.4 Tags.** Licensee shall Tag all of its Attachments, at each Pole and each duct face, at the time of installation in accordance with the District's Joint Use Standards. For pre-existing

Attachments, the District and Licensee shall work together on a timeframe and specifications for Tags of Licensee's pre-existing Attachments within 60 days of full execution of this Agreement. Failure to provide proper Tags thereafter will be considered a violation of the Applicable Standards.

- 4.5 Interference.** Licensee shall not allow its Communications Facilities to impair the ability of District or any third party to use Poles, nor shall Licensee allow its Communications Facilities to interfere with the operation of any Utility Facilities. The attachment rights subsequently granted by District to other Attaching Entities pursuant to licenses, permits, or rental agreements shall not limit nor interfere with any prior attachment rights granted to the Licensee hereunder or result in further rearrangement or Make-Ready Work without reimbursement to Licensee.
- 4.6 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 Communications Facilities in the event of a contact with the supply conductor, as specified in Applicable Standards. Except as provided in Article 15.1, District shall not be liable for any actual or consequential damages to Licensee's Communications Facilities or Licensee's customers' facilities.
- 4.7 Violation of Specifications.** If Licensee's Communications Facilities, or any part thereof, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within 60 calendar days from receipt of written notice of the violation(s) from District, District at its option, may correct such conditions. If Licensee violations exceed more than 15 of the District poles, then within 30 days following the date of the notice of violation from the District, the parties shall work together on a mutual timeframe for Licensee to correct said violations. After said 60 days of notice to Licensee, the District may correct Licensee's violations and will attempt to notify Licensee in writing prior to performing such work whenever practicable. When District reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of District's service obligations or pose an immediate threat to the physical integrity of District Facilities, District may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable thereafter, District will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and documented costs incurred by District in taking action pursuant to this Paragraph.
- 4.8 Restoration of District Service.** District's service restoration requirements shall take precedence over any and all work operations of Licensee on Poles.



- 4.9 Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within 90 calendar days of the effective date of such right and any extension thereof, District may use the space scheduled for Licensee's Attachment(s) for its own needs or other Attaching Entities. In such instances, 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.
- 4.10 Interference Test Equipment.** To the extent Licensee furnishes cable television service it shall maintain test equipment to identify signal interference to its customers, and shall not identify District as the source of such interference absent a test report verifying the source.
- 4.11 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 Article 4.11. 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 Fee specified in Appendix A. Except as otherwise provided in this Agreement, Licensee upon notice from the District shall remove Nonfunctional Attachments that Licensee has deemed Nonfunctional within 60 days. If Licensee identifies any Nonfunctional Attachments, it shall give the District notice as provided in Article 24.

## **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 Communications Facilities on public and/or private property before it occupies any portion of 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 District for all loss and expense, including reasonable attorney's fees, that 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 Communications Facilities on Poles.
- 5.2 Lawful Purpose and Use.** Licensee's Communications Facilities must at all times serve a lawful purpose, and the use of such Communications 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 Communications Facilities would result in a forfeiture of District's rights. Any Permit, which, on its face, would cover Attachments that would result in forfeiture of District's rights is invalid. Further, if any of Licensee's existing Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Communication Facilities upon receipt of written notice from District. District will perform such removal at Licensee's expense not sooner than the expiration of 60 calendar days from District's issuance of the written notice.
- 5.4 Effect of Consent to Construction/Maintenance.** Consent by 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—Permit Application Procedures**

- 6.1 Permit Required.** Licensee shall not install any Attachments on any Pole without first applying for and obtaining a Permit. See Appendix B for the Application for Permit.
- 6.1.1 Pre-existing Attachments.** Unless otherwise notified, pre-existing Attachment(s) of Licensee as of the effective date of this Agreement shall be grandfathered with respect to Permitting, but shall be subject to the fees and charges specified in Article 3 in future billing periods. Licensee shall provide District with a list of all known pre-existing Attachments within six months of the effective date of this Agreement. All such pre-existing Attachments shall comply with the terms of this Agreement. Attachments to or rights to occupy Utility Facilities not covered by this Agreement must be separately negotiated.
- 6.1.2 Service Drops.** The Licensee will notify the District within 30 days of the attachment of a service drop where an existing permitted Attachment exists. In the event that a service drop constitutes the initial Attachment to a given pole, Licensee will be required to follow the permitting process set forth in Article 6.
- 6.2 Permits for Overlashes.** As set out in Article 2.12, except as provided for in Article 2.12.2, Permits are required for any Overlash 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 Overlash. Such Overlash shall not be subject to additional Pole Attachment Fees.
- 6.3 Professional Certification.** As part of the Permit application process and at Licensee's sole expense, a qualified, licensed and experienced professional engineer in the State of

Washington, must participate in the Pre-Construction Survey. The professional engineer's qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems.

- 6.4 District Review of Permit Application.** Upon receipt of a properly executed completed Application for Permit (Appendix B), which shall include the Pre-Construction Survey, certified per Article 6.3 above, and detailed plans and maps for the proposed Attachments, the District will, within 60 days, review the Permit Application, discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application, and notify the Licensee whether the application has been accepted or rejected, providing reasons in the event of rejection. In extraordinary circumstances, and with approval of the Licensee, the District may extend this 60 day timeline. District acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis.
- 6.5 Authorization to Attach.** After receipt of payment for any necessary Make-Ready Work, District will sign and return the Permit Application. Licensee shall be authorized to make its Attachment(s) upon receipt of written notification from the District that the Make-Ready work has been completed and completion of a pre-construction meeting with the District.
- 6.6 Post-Construction Inspection.** Immediately following installation, the Licensee shall notify the District and participate in a post-construction meeting with the District to verify Attachments have been made in accordance with Applicable Standards and the applicable permit.

## **Article 7—Make-Ready Work/Installation**

- 7.1 Estimate for Make-Ready Work.** In the event District determines that it can accommodate Licensee's request for Attachment(s), it will advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment in accordance with Article 3.5 and 6.4.
- 7.2 Who May Perform Make-Ready Work.** Make-Ready Work shall be performed only by District and/or a contractor authorized by District to perform such work.
- 7.3 Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Licensee's Communications Facilities, District will endeavor to include such work in its normal work schedule. Within 30 days following the District's acceptance of Licensee's application, the parties shall mutually agree upon a completion schedule. In the event Licensee requests the Make-Ready Work be performed on a priority basis or outside of District's normal work hours, upon approval from Licensee, Licensee agrees to pay any

resulting increased costs. Nothing herein shall be construed to require performance of Licensee's work before other scheduled work or District service restoration.

**7.4 Written Approval of Installation Plans Required.** Before making any Attachments to the Poles, including Overlashes of existing Attachments, the Licensee must obtain the District's written approval of detailed plans for the Attachments. Such detailed plans shall accompany a Permit application as required under Article 6.

**7.5 Licensee's Installation/Removal/Maintenance Work.**

**7.5.1** All of Licensee's installation, removal and maintenance work shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of Poles or other Utility Facilities or other Attaching Entity's facilities or equipment attached thereto. All such work is subject to the insurance requirements of Article 17.

**7.5.2** All of Licensee's installation, removal and maintenance work performed on Poles or in the vicinity of other Utility Facilities, either by its employees or contractors, shall be in compliance with all Applicable Standards specified in Article 4.1. Licensee shall assure that any person installing, maintaining, or removing its Communications Facilities is fully qualified and familiar with all Applicable Standards and the provisions of Article 16.

## **Article 8—Transfers**

**8.1 Required Transfers of Licensee's Communications Facilities.** If District reasonably determines that a transfer to other Utility Facilities of Licensee's Communications Facilities is necessary, Licensee agrees to allow such transfer. In such instances, District will, at its option, either perform the transfer using its personnel, and/or contractors and/or require Licensee to perform such transfer at its own expense within 30 calendar days after receiving notice from District. If Licensee fails to transfer its Communication Facilities within 30 calendar days after receiving such notice from District, District shall have the right to transfer Licensee's Facilities using its personnel and/or contractors at Licensee's expense. District shall not be liable for damage to Licensee's Communication Facilities except to the extent provided in Article 15.1. The written advance notification requirement of this paragraph shall not apply to emergency situations, in which case District shall provide such advance notice as is practical given the urgency of the particular situation. District shall then provide written notice of any such actions taken within 10 days of the occurrence. Irrespective of who owns them, Licensee is responsible for the transfer of Utility Facilities that Overlash on to Licensee's Attachments. At the option of Licensee, District can be contracted to perform all such transfer work as part of the normal

course of business. District will bill Licensee at District's cost. If Licensee chooses this option, a separate agreement must be executed with the District.

- 8.2 Billing for Transfers Performed by District.** If District performs the transfer(s), District will invoice Licensee for the estimated costs per Article 3.5. Licensee shall reimburse District within 30 calendar days of the billing date of the invoice.

## **Article 9—Pole Additions, Modifications, and/or Replacements**

- 9.1 Licensee's Action Requiring Modification/Replacement.** In the event that any Pole to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional Communication Facilities in accordance with all Applicable Standards, District will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including but not limited to replacement of the Pole, rearrangement or transfer of Utility Facilities and rearrangement or transfer of the Communications Facilities of any existing Attaching Entities already on the Pole. If Licensee elects to go forward with the necessary changes, Licensee shall pay to District and any other Attaching Entities the estimated cost of the Make-Ready Work, performed by District per Article 3.5 or performed by the other Attaching Entities to accommodate Licensee's new Attachments. District and Attaching Entities, at their discretion, will require advance payment.
- 9.2 Treatment of Multiple Requests for Same Pole.** If District receives applications for Permit for the same Pole from two or more prospective Attaching Entities within 60 calendar days of the initial request, and accommodating their respective requests would require modification or replacement of the Pole, District will allocate among such entities the applicable costs associated with such modification or replacement.
- 9.3 Allocation of Costs.** The costs for any rearrangement or transfer of Licensee's Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of District's cables or wires that is not under the normal maintenance of poles) shall be allocated to District and/or Licensee and/or other Attaching Entity on the following basis:
- 9.3.1** If District intends to add, modify, or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the addition, modification, or replacement of the Pole. Licensee, however, shall be responsible for all costs associated with the rearrangement or transfer of Licensee's Communications Facilities as well as the Pole Attachment Fees for any additional Pole(s). Licensee shall not, however, be responsible for rearrangement or transfer costs necessary to accommodate the District's own Communication Facilities. Prior to making any such addition, modification, or replacement the District shall provide Licensee written notification of its intent

in order to allow Licensee a reasonable opportunity to elect to modify or add to its existing Attachment(s). Should Licensee so elect, it must seek the District's written permission per this Agreement. The notification requirement of this Article 9.3.1 shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Communications Facilities, Licensee shall bear the total incremental costs incurred by District in making the space on the Poles accessible to Licensee.

- 9.3.2** If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than District or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring Licensee's Communications Facilities. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's facilities.
- 9.3.3** If a Pole must be modified or replaced for other reasons unrelated to the use of the Pole by Attaching Entities (*e.g.*, storm, accident, deterioration), the District shall pay the costs of such modification or replacement; provided, however, that Licensee shall be responsible for the costs of rearranging or transferring its Communications Facilities.
- 9.3.4** If the modification or replacement of a Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Pole and for the costs associated with the transfer or rearrangement of any other Attaching Entity's Communications Facilities. Licensee shall submit to District evidence, in writing, that it has made arrangements to reimburse all affected Attaching Entities for the cost to transfer or rearrange such Entities' Facilities at the time Licensee submits a Permit Application to District. District shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Facilities pursuant to this Article 9.3.4.
- 9.4** **District Not Required to Relocate.** No provision of this Agreement shall be construed to require District to relocate its Attachments or modify/replace its Poles for the benefit of Licensee, provided, however, any denial by District for modification of a Pole is based on nondiscriminatory standards of general applicability.

**Article 10—Abandonment or Removal of District Facilities**

- 10.1 Notice of Abandonment or Removal of District Facilities.** If District desires at any time to abandon, remove or underground any Utility Facilities to which Licensee's Communications Facilities are attached, it shall give Licensee notice in writing to that effect at least 90 calendar days prior to the date on which it intends to abandon or remove such Utility Facilities. Notice may be limited to 60 calendar days if District is required to remove or abandon its District Facilities as the result of the action of a third party and the greater notice period is not practical. Such notice shall indicate whether District is offering Licensee an option to purchase the Pole(s). If, following the expiration of the notice period, Licensee has not yet removed and/or transferred all of its Communications Facilities therefrom and has not entered into an agreement to purchase Utility Facilities pursuant to Article 10.2, the parties shall work together to come up with mutually agreed upon timeframe for Licensee to remove its Facilities. If the removal of Licensee's Facilities requires reimbursement from another entity, then the Licensee may have the right to remain on the Pole until Licensee receives the reimbursement. Licensee's time to transfer shall be tolled or the Pole(s) abandoned to the Licensee until all other attachers above Licensee has transferred or removed its Communication Facilities.
- 10.2 Option to Purchase Abandoned Poles.** Should District desire to abandon any Pole, District, in its sole discretion, may grant Licensee the option of purchasing such Pole at a rate, which is the value in place, at that time, of such abandoned Pole. Licensee must notify District in writing within 30 calendar days of the date of District's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within 45 calendar days. Should Licensee fail to secure the necessary governmental approvals, or should District and Licensee fail to enter into an agreement for Licensee to purchase the Pole prior to the end of the 45 calendar days, Licensee must remove its Attachments as required under Article 10.1. District is under no obligation to sell Licensee Poles that it intends to remove or abandon.
- 10.3 Underground Relocation.** If District moves any portion of its aerial system underground, Licensee shall remove its Communications Facilities from any affected Poles within 90 calendar days of receipt of notice from District and either relocate its affected Communication Facilities underground with District or find other means to accommodate its Communication Facilities. Licensee's time shall be tolled or the Pole(s) abandoned to the Licensee if Licensee is unable to remove its Facilities as stated in Article 10.1.

## Article 11—Removal of Licensee’s Facilities

**Removal on Expiration/Termination.** At the expiration or other termination of this Agreement or individual Permit(s), Licensee shall remove its Communications Facilities from the affected Poles at its own expense. If Licensee fails to remove such facilities within 60 calendar days of expiration or termination or some greater period as allowed by District, District shall have the right to have such facilities removed at Licensee’s expense.

## Article 12—Termination of Permit

**12.1 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 Communications Facilities on public or private property 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.

**12.2 Surrender of Permit.** Licensee may at any time surrender any Permit for Attachment and remove its Communications Facilities from the affected Pole(s) provided, however, that before commencing any such removal, Licensee must provide the District with 30 days prior written notice, which shall include the name of the party performing such work and the proposed date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 17. No refund of any fees or costs will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from District’s Facilities within the time frame specified in the notice provided above, District shall have the right to remove Licensee’s Attachments at Licensee’s expense, provided the District notifies the Licensee 30 days prior to removal of Licensee’s Attachments.

## Article 13—Inspection of Licensee’s Facilities

**13.1 Inspections.** 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 Applicable Standards within 60 calendar days of notification. If the number of Licensee violations exceeds 15 poles, then within 30 days following the date of the notice of violation from the District, the parties shall work together to come up with a mutual agreed upon timeframe. Except as provided for in Article 6.1, if it is found that Licensee has made an Attachment without a Permit, Licensee shall pay a fee as specified in Article 3 in addition to applicable Permit and Make-Ready Work charges. If it is found that 5% or more of Licensee’s Attachments are either in non-compliance or not permitted, Licensee shall pay its *pro-rata* share of the costs of the inspection for those poles in violation.



- 13.2 Notice.** District will provide 90 calendar days' notice of such inspections to the Licensee, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until notice has been received. When notified, Licensee will notify District if it wishes to participate in the inspection.
- 13.3 No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon District any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability, whether assumed under this Agreement or otherwise existing.
- 13.4 Attachment Records.** Notwithstanding the above inspection provisions, Licensee is obligated to furnish District on an annual basis (by December 31<sup>st</sup> each year) an up-to-date map, in an electronic format, depicting the locations of its Attachments, preferably .shp files; however, as an alternative, the District will accept .kmz files. If a map is not available, the Licensee will provide a list in an electronic format to be agreed upon by parties. Attachment Records shall be sent to [PoleAttachments@gcpud.org](mailto:PoleAttachments@gcpud.org).

#### **Article 14—Unauthorized Occupancy or Access**

- 14.1 Unauthorized Occupancy or Access Fee.** If any of Licensee's Attachments are found occupying any Pole for which no Permit has been issued, District, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Attachment Fee as specified in Appendix A. Licensee must pay such Fee within 30 calendar days of the billing date of the invoice. In the event Licensee fails to pay such Fee, the District has the right to remove such Communications Facilities at Licensee's expense.
- 14.2 No Ratification of Unlicensed Use.** No act or failure to act by 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 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 in regards to the unauthorized use from its inception.

#### **Article 15—Liability and Indemnification**

- 15.1 Liability.** 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 Poles at Licensee's sole risk. Notwithstanding the foregoing, District shall exercise reasonable precaution to avoid damaging Licensee's Communications Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to Article 15.5, 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 District, provided, however, that the

aggregate liability of District, to Licensee, in any fiscal year, shall not exceed the amount of the total Pole Attachment Fees paid by Licensee to District for that year as calculated based on the number of Attachments under Permit at the time of the damage per Article 3.

**15.2 Indemnification.** Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless District and its officials, officers, board members, council 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 District under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of District 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 Licensee, or by Licensee's officers, directors, employees, agents or contractors, of Licensee's Communications Facilities, except to the extent of District's negligence or willful misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

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

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

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

**15.2.4** Liabilities incurred as a result of Licensee's violation, or a violation by Licensee'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.

**15.3 Procedure for Indemnification.**

**15.3.1** District shall give prompt notice to Licensee 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 District, District shall give the notice to Licensee no later than 10 calendar days after District receives written notice of the action, suit or proceeding.

**15.3.2** District's failure to give the required notice will not relieve Licensee from its obligation to indemnify District unless Licensee is materially prejudiced by such failure.

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

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

**15.4 Environmental Hazards.** Licensee represents and warrants that its use of Poles will not generate any Hazardous Substances, that it will not store or dispose on or about Poles or transport to Poles any hazardous substances and that Licensee's Communications Facilities 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 Communications Facilities would not release any Hazardous Substances. Licensee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless District and its respective officials, officers, board members, council 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 Poles attributable to Licensee's use of Poles.

Should Poles be declared to contain Hazardous Substances, District, shall be responsible for the disposal of its pole. 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, 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 District.

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

**15.6 Attorney's Fees.** If District brings a successful action in a court of competent jurisdiction to enforce this Agreement, Licensee shall pay District's reasonable attorney's fees.

## **Article 16—Duties, Responsibilities, and Exculpation**

**16.1 Duty to Inspect.** Licensee acknowledges and agrees that District does not warrant the condition or safety of Utility Facilities, or the premises surrounding the Utility Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect Poles and/or premises surrounding the Poles prior to commencing any work on 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 District with respect to the condition or safety of its facilities separate from this Agreement shall remain solely the obligation of the District.

**16.2 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.

- 16.3 DISCLAIMER. THE DISTRICT MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND THE DISTRICT MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. THE DISTRICT EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 16.4 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, grave personal injury or property. 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 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 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.
- 16.5 Interruption of Service.** In the event that Licensee causes an interruption of service by damaging or interfering with any equipment of District, Licensee at its expense shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify District immediately.
- 16.6 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 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 17—Insurance**

- 17.1 Policies Required.** Prior to the commencement of any work, and at all times during the term of this Agreement, Licensee shall obtain and maintain continuously, at its own expense a policy, or policies of insurance with insurance companies rated A- VII or better by A.M. Best, as enumerated below. Any significant deductible, self-insured retention or coverage via captive must be disclosed and is subject to approval by District's Risk

Manager. The cost of any claim payments falling within the deductible or self-insured retention shall be the responsibility of the Licensee and not recoverable under any part of this Agreement.

**17.1.1 Commercial General Liability Insurance.** Commercial general liability insurance, covering all operations by or on behalf of Licensee against claims for bodily injury (including death) and property damage (including loss of use). Such insurance shall provide coverage for:

- a. Premises and Operations;
- b. Products and Completed Operations;
- c. Contractual Liability;
- d. Personal Injury Liability; and
- e. Such insurance shall not exclude coverage for action-over liability claims.

with the following **minimum limits**:

- f. \$1,000,000 Each Occurrence
- g. \$1,000,000 Personal Injury Liability
- h. \$2,000,000 General Aggregate (per project)
- i. \$2,000,000 Products and Completed Operations Aggregate

Commercial general liability insurance will include the District as additional insured on a primary and non-contributory basis for ongoing and completed operations. A waiver of subrogation will apply in favor of the District.

**17.1.2 Workers' Compensation and Stop Gap Employers' Liability Insurance.** Workers' Compensation Insurance as required by law for all employees. Employer's Liability Insurance, including Occupational Disease coverage, in the amount of \$1,000,000 for Each Accident, Each Employee, and Policy Limit. The Licensee expressly agrees to comply with all provisions of the Workers' Compensation Laws of the states or countries where the work is being performed, including the provisions of Title 51 of the Revised Code of Washington for all work occurring in the State of Washington.

**17.1.3 Automobile Liability Insurance.** Automobile Liability insurance against claims of bodily injury (including death) and property damage (including loss of use) covering all owned (if any), rented, leased, non-owned, and hired vehicles used in the performance of the work, with a **minimum limit of \$1,000,000 per accident** for bodily injury and property damage combined and containing appropriate uninsured motorist and No-Fault insurance provision, when applicable.

Automobile liability insurance will include the District as additional insured on a primary and non-contributory basis. A waiver of subrogation will apply in favor of the District.

- 17.1.4 Excess Insurance.** Excess (or Umbrella) Liability insurance with a **minimum limit of \$5,000,000 per occurrence and in the aggregate when combined with underlying primary limits.** This insurance shall provide coverage in excess of the underlying primary liability limits, terms, and conditions for each category of liability insurance in the foregoing subsections 1, 2, and 3. If this insurance is written on a claims-made policy form, then the policy shall be endorsed to include an automatic extended reporting period of at least five years.

Excess/umbrella liability insurance will include the District as additional insured on a primary and non-contributory basis. A waiver of subrogation will apply in favor of the District.

- 17.1.5 Property Insurance.** Each party will be responsible for maintaining property 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.

- 17.2 Evidence of Insurance.** Prior to performing any work and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish District with a certificate of insurance (“Certificate”) showing the Insuring Companies, policy numbers, effective dates, limits of liability and deductibles with a copy of the endorsement naming the District as an Additional Insured for each policy where indicated in Article 17.1.

Failure of the District to demand such certificate or other evidence of compliance with these insurance requirements or failure of the District to identify a deficiency from the provided evidence shall not be construed as a waiver of the Licensee’s obligation to maintain such insurance. Acceptance by the District of any certificate or other evidence of compliance does not constitute approval or agreement by the District that the insurance requirements have been met or that the policies shown in the certificates or other evidence are in compliance with the requirements.

The District shall have the right but not the obligation of prohibiting the Licensee from attaching to Utility Facilities until such certificates or other evidence of insurance has been provided in full compliance with these requirements. If the Licensee fails to

maintain insurance as set forth above, the District may purchase such insurance at the Licensee's expense. The Licensee's failure to maintain the required insurance may result in termination of this Agreement at the District's option.

- 17.3 Subcontractors.** The Licensee shall ensure that any and all subcontractor(s) hired to install or perform maintenance on its Communication Facilities meets the applicable insurance requirements and specifications of this Agreement. All coverage for subcontractors shall be subject to all the requirements stated herein and applicable to their profession. Licensee shall furnish the District with copies of certificates of insurance evidencing coverage for each subcontractor upon request.
- 17.4 Cancellation of Insurance.** The Licensee shall not cause any insurance policy to be canceled or permit any policy to lapse. Insurance companies or Licensee shall provide 30 days advance written notice to the District for cancellation or any material change in coverage or condition, and 10 days' advance written notice for cancellation due to non-payment. Should the Licensee receive any notice of cancellation or notice of nonrenewal from its insurer(s), Licensee shall provide immediate notice to the District no later than two days following receipt of such notice from the insurer. Notice to the District shall be delivered by email in accordance with Article 24.
- 17.5 Prohibited Exclusions.** The general liability policy required to be obtained by Licensee shall not contain provisions: (1) that exclude coverage of liability assumed by this Agreement with District, subject to terms and conditions of the insurance policy; (2) that exclude coverage of liability arising from excavating, collapse, or underground work; (3) that exclude coverage for injuries to 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, subcontractors, the contractor's employees or the subcontractors' employees.

#### **Article 18—Authorization Not Exclusive**

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 Utility Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

#### **Article 19—Assignment**

- 19.1 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 District, which consent shall not be unreasonably withheld. Licensee shall furnish District with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. It shall be unreasonable for District to



withhold consent without cause to an assignment of all of Licensee's interests in this Agreement to its Affiliate.

**19.2 Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 19 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement.

**19.3 Sub-licensing.** Without 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's Facilities, including Overlashes, or to place Attachments for the benefit of such third parties on Poles. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Communications Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlash is not subject to this Article 19.3.

## **Article 20—Failure to Enforce**

Failure of 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 21—Termination of Agreement**

**21.1** Notwithstanding District's rights under Article 12, District shall have the right, pursuant to the procedure set out in Article 21.2, to terminate this entire Agreement, or any Permit issued hereunder, whenever Licensee is in default of any term or condition of this Agreement, including but not limited to the following circumstances:

**21.1.1** Construction, operation or maintenance of Licensee's Communications Facilities in violation of law or in aid of any unlawful act or undertaking; or

**21.1.2** Construction, operation or maintenance of Licensee's Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority, subject to Article 12.1; or violation of any other agreement with District; or

**21.1.3** Construction, operation or maintenance of Licensee's Communications Facilities without the insurance coverage required under Article 17.

**21.2** The District will notify Licensee in writing within 15 calendar days, or as soon as reasonably practicable, of any condition(s) applicable to Article 21.1 above. Licensee shall take immediate corrective action to eliminate any such condition(s) within 60

calendar days, 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 immediately 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 seek removal of Licensee's Communications Facilities pursuant to the terms of Article 11, provided, that Licensee shall be liable for and pay all fees and charges pursuant to terms of this Agreement to District until Licensee's Communications Facilities are actually removed.

## **Article 22—Term of Agreement**

- 22.1** 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 years. Either party may terminate this Agreement at the end of the initial five year term by giving to the other party written notice of an intention to terminate this Agreement at least 180 calendar days prior to the end of the term. Upon failure to give such notice, this Agreement shall automatically continue in force until terminated by either party after 180 calendar day's 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.
- 22.2** Even after the termination of this Agreement, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to this Agreement.

## **Article 23—Amending Agreement**

The District's Joint Use Standards are subject to change after 90 days advance written notice to Licensee.

Except as provided above, 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 24—Notices**

- 24.1** 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 mailed by email, certified mail, return receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

If to District, at: Public Utility District No. 2 of Grant County, Washington  
Attn: Joint Use Administrator, Moses Lake Local Office  
PO Box 878  
Ephrata, WA 98823  
Email: [PoleAttachments@gcpud.org](mailto:PoleAttachments@gcpud.org)

With a copy to:  
Public Utility District No. 2 of Grant County, Washington  
Attn: General Counsel  
PO Box 878  
Ephrata, WA 98823

If to Licensee, at: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Licensee shall maintain a staffed 24-hour emergency telephone number where 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 District’s concerns and requests.

**Article 25—Entire Agreement**

This Agreement supersedes all previous agreements, whether written or oral, between District and Licensee for placement and maintenance of Licensee’s Communications Facilities on Poles within the geographical service area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein. Except as provided for in Article 4.3, any Attachments existing under prior authorization shall continue in effect, provided they meet the terms of this Agreement.

**Article 26—Severability**

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, 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.

**Article 27—Governing Law**

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 of any action filed to enforce or interpret the provisions of this Agreement shall be exclusively in the Superior Court, County of Grant, State of Washington or the Federal District Court for the Eastern District of Washington at the District's sole option. In the event of litigation to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable legal fees in addition to any other relief allowed.

**Article 28—Incorporation of Recitals and Appendices**

The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.

**Article 29—Force Majeure**

- 29.1** In the event that either 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 Utility Facilities for any periods that such facilities are unusable.
- 29.2** 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 Article 29.1, provided that Licensee present 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 fees or charges due District under this Agreement.

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

Public Utility District No. 2  
of Grant County, Washington

Licensee

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

**APPENDIX A  
FEES AND CHARGES**

**1. Pole Attachment Fee**

\$17.55 per pole per year

This fee will be reviewed by the District as necessary and is subject to change by the District’s Board of Commissioners through an open public process and with 90 days advance written notice to Licensee, unless state laws and regulations otherwise modify these notice provisions.

**2. Non-Recurring Fees**

Permit Application Fee (up to 20 poles)	\$ 100.00 per Application
Permit Application Fee (21 or more poles)	\$ 250.00 per Application
Make-Ready Work Charges	See Article 3
Miscellaneous Charges	See Article 3
Inspection Fees	See Article 3

NOTE: Permit Application Fees may be adjusted periodically, but not more often than annually, to reflect increases in operating costs.

**3. Unauthorized Attachment Fee**

Three (3) times the annual Pole Attachment Fee, per Pole containing an Unauthorized Attachment.

**APPENDIX B**  
APPLICATION FOR PERMIT

<b>For District Use</b> - Permit No. _____ Superseded Permit No. _____
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Pole Attachment License Agreement No.:	
Licensee's Business Name:	
Application to:	<input type="checkbox"/> Attach to Utility Pole(s) - No. of Poles: _____ <input type="checkbox"/> Overlash - No. of Poles: _____ <input type="checkbox"/> Remove Attachment(s) - No. of Poles: _____
Description of Proposed Activity:	

The Permit Application Fee is enclosed in the amount of \$\_\_\_\_\_.

A Pre-Construction Survey, certified by a Professional Engineer in the State of Washington, has been submitted to the District in accordance with Articles 1.19 and 6.3.  Yes  No

If No, please provide additional information:

\_\_\_\_\_

A map clearly indicating the poles related to this Application is enclosed.  Yes  No

If No, please provide additional information:

\_\_\_\_\_

Licensee understands and acknowledges that Pole Attachments authorized under this Application are subject to the terms and conditions of the District's Joint Use Standards, which may be amended from time to time. Initial \_\_\_\_\_ Date \_\_\_\_\_

Licensee understands and acknowledges they are 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 Communications Facilities on public and/or private property before it occupies any portion of Poles in accordance with the Pole Attachment License Agreement referenced above. Copies of the required permits are attached. Initial \_\_\_\_\_ Date \_\_\_\_\_

Licensee hereby requests the District to process this Application and initiate the steps necessary to prepare a Make-Ready Estimate, should such work be necessary.

By: \_\_\_\_\_  
(Signature)

Print Name: \_\_\_\_\_

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

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

**Mail original Application, Permit Application Fee, and completed Design Worksheet for each Pole (Appendix C) to:**

Public Utility District No. 2 of Grant County, Washington  
Attn: Joint Use Administrator, Moses Lake Local Office  
PO Box 878  
Ephrata, WA 98823

**Email the Pre-Construction Survey to:** [PoleAttachments@gcpud.org](mailto:PoleAttachments@gcpud.org)

***For District Use –***

Permit Application Fee in the amount of \$\_\_\_\_\_ received.  Yes  No

Pre-Construction Survey approved?  Yes  No

Make Ready work required?  Yes  No

If Yes, the District has received Licensee’s payment for the Make-Ready Work:

Amount: \_\_\_\_\_ Date Received: \_\_\_\_\_

Permission is hereby granted to Licensee to attach and/or vacate poles specified in this Application.

Public Utility District No. 2 of Grant County, Washington

By: \_\_\_\_\_  
(Signature)

Print Name: \_\_\_\_\_

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

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



**APPENDIX C  
DESIGN WORKSHEET**

The Licensee shall provide the following information **for each Pole** with their Application for Permit:

**General:**

<b>Pole No.:</b> (if pole tag is missing, contact the District)	
<b>Pole Class</b> (existing – i.e., 4, 3, 2...):	
<b>Pole Size</b> (existing – i.e., 35, 40...):	
<b>Pole Type</b> (Western Red, Cedar...):	
<b>Pole fore span</b> (feet):	
<b>Pole back span</b> (feet):	
<b>Calculated bending moment at ground level</b> (ft-lbs):	

**Proposed Cables:**

Qty	Diameter	Feet Above Ground Line

The minimum vertical clearance under all loading conditions measured from the proposed cable to ground level on each conductor span shall be stated above. Variations in topography resulting in ground elevation changes shall be considered when stating the minimum vertical clearance within a given span.

Proposed loading data [provide similar data for each cable proposed]:

- Weight data (cable and messenger)
  - Vertical weight, bare = \_\_\_\_\_ [#/ft]
- Tension data (final tensions on messenger)
  - NESC maximum load for area of construction: \_\_\_\_\_ [lbs]
  - 60° F, NO wind: \_\_\_\_\_ [lbs]

Licensee shall provide for each transverse guy, or dead end to which guys and/or anchors are attached, the following information:

- Pole Number \_\_\_\_\_
- Calculated cable messenger tension under NESC maximum loading conditions \_\_\_\_\_ [lbs]