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. 1 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) Overlashing (even if a common application form is used to facilitate review for both Attachments and Overlashing).

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 subject to the Joint Use- Rules and Regulations.

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 subject to the Joint Use- Rules and Regulations.

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 December 1 of each year. Each annual rental period shall be January 1 through December 31 of the same 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 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 submit a request for 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); and/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*); and/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 December 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 October 1 of the fifth year following the effective date of this Agreement, and by October 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 <u>Qualification; Priority; Contractors' Coverage</u>. 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 party 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 Overlashing, 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 Overlashing 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: **Mason County PUD No. 1**
Attn: General Manager
21971 N. Hwy 101
Shelton, WA 98584

Email: **jointuse@mason-pud1.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
_____,

L I C E N S E E

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
_____, _____

PUBLIC UTILITY DISTRICT NO. 1
OF MASON COUNTY, WASHINGTON

DRAFT JOINT USE – RULES AND REGULATIONS

The following Joint Use Rules and Regulations establish the expectations, standards, safety requirements, Application process, and rates for Licensees applying to locate communications facilities on utility Poles that are owned and operated by Mason County PUD No. 1 (DISTRICT).

These Joint Use Rules and Regulations are to be viewed in partnership with the District's Electric Service Rules & Regulations, and Applicable Standards as defined herein.

The Joint Use Rules and Regulations are organized by the following sections:

1. **GENERAL –** Information about adoption and authority of the Joint Use Rules and Regulations.

2. **DEFINITIONS –** Terms that will be consistently used when describing participants, performance requirements, facilities, time frames, and other important issues.

3. **RESERVED CAPACITY –** General concepts and requirements related to the District's reservation of capacity or space on a Pole as identified and reserved for District utility requirements.

4. **APPLICATION PROCESS –** The process and requirements to apply to attach communications facilities to District utility Poles.

5. **BILLING –** The conditions of billing and charges for Attachments. This section includes billing information and various charges (including Pole Attachment fees and rates, late charges, inspection fees, etc.) related to Attachments. This section also specifies the method of appeal and hearing regarding billing disputes. *(Exhibit A – Joint Use Rate/Fee Schedule.)*

6. **VIOLATIONS –** Description of remedies and associated processes that the District may elect to pursue in the event of violations of the Joint Use Rules and Regulations and/or Pole Attachment License Agreement and/or Permit provisions/conditions.

7. **GUYING –** General requirements for the installation and maintenance of guy wires.

8. **RELOCATION OF DISTRICT ATTACHMENTS –** Describes the policy of relocating the District's facilities.

9. **TRANSFERS AND RELOCATION OF LICENSEE ATTACHMENTS –** The process for transferring or relocating Licensee's Attachments if determined necessary by the District.

10. **UNDERGROUND RELOCATION –** The process and requirements for the Licensee to remove its Attachments if the District moves its aerial system underground.

11. **OVERLASHING –** The process, requirements and restrictions related to Overlashing.

12. **SERVICE DROPS –** General requirements for Service Drops.

13. **TAGGING –** The District's requirement for Tagging of Licensee's Attachments.

14. **INTERFERENCE TEST EQUIPMENT –** Explanation of Licensee's requirement to test and report for signal interference.

15. **ENCLOSURES –** The process and requirements to install Pedestals, Vaults and/or other Enclosures near District facilities.

16. **POLE TOP WIRELESS –** General requirements for the installation and maintenance of antennas and other wireless infrastructure on District owned facilities.

17. **SPAN MOUNT WIRELESS** – May be allowed with written permission from the District.

18. **MAKE-READY WORK –** At times, a Licensee may request to install communications facilities on a District utility Pole that does not have the appropriate clearance or available space. In some cases, Make-Ready Work can be performed to accommodate the request.

19. **PROFESSIONAL CERTIFICATION –** Describes the process for requiring a Professional Engineer or an employee or contractor of the Licensee who has been approved by the District to complete action related to the Permit Application.

20. **APPEAL PROCESS –** Describes the process for appealing any final Permit decision, action, or requirement; and describes the process for appealing any Notice of Correction, Notice of Violation, or Notice of Fee Imposed.

1. GENERAL

The following Joint Use Rules and Regulations have been adopted by Resolution No. 2024 dated June 11, 2019, and are the effective rules and regulations of Public Utility District No. 1 of Mason County, Washington.

No officer or employee of the District has any authority to waive, alter, or amend in any respect these rules and regulations or any part thereof, or make any agreement inconsistent therewith.

The rates, rules and regulations herein are subject to modification or abolition in the manner prescribed by law or by the Commissioners of the District or by any other legally authorized body having jurisdiction.

2. DEFINITIONS

a) 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 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"), Federal Communications Commission ("FCC"), Federal Aviation Administration ("FAA"), as well as the engineering and safety standards established by the District, and/or other reasonable District provided safety and engineering requirements or other federal, state, municipal, or local authority with jurisdiction over District facilities.

b) ATTACHING ENTITY means any public or private entity, other than the District, who places an Attachment on a Pole to provide communication service.

c) ATTACHMENT 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.

d) DISTRICT means Public Utility District No. 1 of Mason County, or Mason County PUD No. 1, or Mason PUD 1, or Mason 1, or PUD 1.

e) GUYING means guys and anchors that are installed at distribution line dead ends, line angles and at points of unbalanced conductor tensions. Unbalanced conductor tensions occur where the conductor size is changed or where there is an appreciable change in the ruling span. A guy and anchor assembly needs to be designed to hold the entire horizontal component of the load being applied on the structure in the opposite direction of the guy assembly.

f) MAKE-READY WORK means all work, as mutually agreed between the District and Licensee, to accommodate Licensee's Attachment and/or to comply with all Applicable Standards. As address in the Pre-Construction Meeting, such work includes, but is not limited to, rearrangement and/or transfer of District facilities or existing Attachments, inspections, engineering analysis and work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), or Pole replacement and construction.

g) OVERLASH means to place or lash or mechanically lash an additional wire or cable onto an existing Attachment owned by Licensee.

h) PEDESTALS / VAULTS / ENCLOSURES mean 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 that shall not be attached to District-owned Poles, unless otherwise authorized through a separate agreement. Installation must comply with Applicable Standards.

i) POLE means a Pole owned by the District used for the distribution of electricity and/or communication service that is capable of supporting Attachments.

j) POLE MOUNTED WIRELESS EQUIPMENT or POLE TOP WIRELESS EQUIPMENT includes antennas, receivers, transceivers, repeaters, Risers, and other wireless communications equipment which is mounted to the Pole.

k) 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 Application submittal.

l) PRE-CONSTRUCTION MEETING means all work or operations required by Applicable Standards and/or the District to determine the potential Make-Ready Work necessary to accommodate Licensee's Attachment on a Pole. The

Pre-Construction Meeting shall be coordinated with the District and may include Licensee's representative.

m) RESERVED CAPACITY means Capacity or space on a Pole that the District has identified and reserved for its own utility requirements.

n) RISER means metallic or plastic encasement materials placed vertically on the Pole mounted standoff bracket to guide and protect communications wires and cables.

o) 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.

p) 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.

q) 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 may be permitted with written permission from the District.

r) TAG means to place distinct markers on wires and cables, coded by color or other means approved by the District and/or applicable state or local regulations, that will readily identify, from the ground, its owner and cable type.

s) UNAUTHORIZED ATTACHMENT means any unpermitted Attachment to a District Pole.

3. 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). At the time of Permit issuance, the District shall make best efforts to notify Licensee if it is subject to Reserved Capacity.

Licensees will be asked to make their first Attachment at the third position (e.g. 64" from the neutral or power). If this will create a violation, Licensees will be asked to make their first Attachment at the second position (e.g. 52" from the neutral or power). If this will create a violation, Licensees will be permitted to make their first Attachment at the first position (e.g. 40" from the neutral or power) unless this creates a violation. In this case, Licensee will be solely responsible for all Make-Ready Work necessary to accommodate its Attachment.

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 violation. 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 these Joint Use Rules and Regulations.

4. APPLICATION PROCESS

Written Approval of Permit/Installation Plans Required. Except in cases of emergency or as otherwise authorized, before making any Attachments to the District's Poles, and before any Overlashing, an applicant must execute a Pole Attachment License Agreement with the District, must obtain the District's written approval of a Permit/detailed plans for all Attachments and/or Overlashing, and must fully comply with any and all conditions and requirements imposed in conjunction with each Permit approval. Permits shall comply with Applicable Standards as defined herein, and the District's Electric Service Rules & Regulations.

Pre-Application meeting. Prior to submitting an Application for Pole Attachment Permit ("Application"), a prospective applicant may submit a request for a Pre-Application meeting as defined in these Joint Use Rules and Regulations. A Pre-Application meeting may be scheduled at the District's discretion. The District does not charge for a Pre-Application Meeting.

The District has the following Permit Applications available for use:

a) Application for Pole Attachment Permit (*use for new Attachments and Overlash Attachments*);

b) Application for Service Drop (*see specific notice procedure related to Service Drops*); and

c) Notification of Attachment Removal.

Permit Submittal Requirements. An Application for Pole Attachment Permit ("Application" / "Permit") shall contain the following items, in addition to any other unique submittal requirements reasonably identified by the District:

a) Appropriate Application for the type of Attachment requested;

b) Map overview of general location;

c) Detail of all existing communication Attachment heights, lowest face of neutral bracket, lowest secondary drip loop, bottom of luminary support, lowest luminary drip loop, lowest energized equipment, top of secondary or primary Riser and proposed new Attachment height (12" spacing));

d) Detail of existing mid-span heights to include neutral and secondary;

e) Pole loading analysis for primary Poles (at District's discretion, must be prepared and stamped by Professional Engineer);

f) Pole loading analysis for anchor Attachment (at District's discretion, must be prepared and stamped by Professional Engineer);

g) Detailed Plans and associated Narrative - Brief written explanation of work proposed;

h) Schedule Pre-Construction Meeting (if requested by either party) either prior to Application submittal or to be held within the 45-day completeness review period from date of submittal (*Application will be deemed "incomplete" if the Pre-Construction Meeting is not completed within 45-days of date of Application.*)

Permit Review Process. 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 within 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 Permit Application, and may discuss any issues with the applicant, 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 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 applicant of full responsibility for any errors and/or omissions in the engineering analysis.

Changes / Modifications Requested After Permit Issuance. 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.

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 the actual, reasonable, and verifiable costs of any necessary 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).

Timing of Construction / Improvements. Licensee must complete all work/improvements authorized by the issued Permit as follows:

a) Within 120 days from Permit approval/issuance date (in event no Make-Ready Work is required); and/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.

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); and/or

b) Within 140 days of completion of Make-Ready work (120 days to complete work from date Make-Ready work completed, plus 120 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 at its option may pursue all remedies detailed in the Pole Attachment License Agreement or herein.

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

Notice of Correction. If 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 applicable due-date specified in this section (with all corrections to be detailed on updated as-built and any other required documentation submitted on or before the due-date) provides a basis for the District to revoke/rescind the issued Permit, and to require removal of work/improvements completed. In addition the District at its option, may pursue all remedies detailed in the Joint Use Rules and Regulations, including but not limited to remedies specified in the "Violations" section of the Joint Use Rules and Regulations.

Treatment of Multiple Requests for Same Pole. If the District receives Permit Applications for the same Pole from two or more prospective Licensees within sixty (60) calendar days of the initial request, and accommodating their respective requests would require modification or replacement of the Pole, the District will allocate among such Licensees the applicable costs associated with such modification or replacement.

Allocation of Costs. Make Ready Costs shall be allocated to the District and/or

Licensee and/or other Attaching Entity on the following basis:

a) If a Pole must be modified or replaced for reasons unrelated to the use of the Pole by Licensee (e.g., storm, vehicle accident, deterioration), the District shall pay the costs of such modification or replacement.

b) If the District intends to modify or replace a Pole solely for its own requirements, the District shall be responsible for the costs related to the modification/replacement of the Pole.

c) If the modification or replacement of a Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for the actual, reasonable and verifiable costs related to the modification or replacement of the Pole.

d) 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 the District or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement.

e) If there is a safety violation by one or more Licensees identified, those Licensees in violation will evenly share all costs associated with the Make Ready Work to bring the existing Attachments into compliance before costs are allocated to new or modifying Attaching Entity (as applicable) as described herein.

f) All costs associated with the transfer and/or relocation of District and Licensee Attachment are addressed herein.

5. BILLING

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 December 1 of each year. Each annual rental period shall be January 1 through December 31 of the same 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.

4.1 **Payment for Work.** Licensee will be responsible for payment of all reasonable, actual and verifiable costs to District for all work the District or

District's contractors perform pursuant to the Pole Attachment License Agreement to accommodate Licensee's communications facilities.

4.2 **Advance Payment.** At the discretion of the District, Licensee may be required to pay in advance all reasonable costs, including but not limited to construction, inspections and Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's communications facilities pursuant to the procedures set forth in these Joint Use Rules and Regulations.

4.3 **True Up.** Wherever the District, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of activity exceeds the advance payment of estimated expenses, Licensee agrees to pay the District for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, District agrees to refund to Licensee the difference in cost.

4.4 **Determination of Charges.** Wherever the Licensee is required to pay for work done or contracted by the District, the charge for such work shall include all reasonable actual and documented material, labor, engineering and applicable overhead costs. The District shall bill its services based upon actual costs, and such costs will be determined in accordance with generally accepted accounting principles (GAAP) as used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, number of persons employed by classification, materials used, cost of materials, and work completed. If Licensee was required to perform work and fails to perform such work necessitating its completion by the District, the District may charge Licensee for completion of such work, in accordance with the provisions enunciated above.

Billing for Transfers Performed by the District. If the District performs the transfer(s), the District will invoice the Licensee for actual, reasonable and documented costs. Licensee shall reimburse the District within forty-five (45) calendar days of the billing date of the invoice.

6. VIOLATIONS – NOTICE OF VIOLATION – NOTICE OF CORRECTION – NOTICE OF ABANDONMENT/REMOVAL

Any unauthorized Attachment or other violations herein, and any noncompliance with any Attachment License Agreement and/or Permit may, in the District's discretion, be required to be brought into compliance before any future Applications submitted by, or on behalf of the Licensee (*or submitted by any*

person or entity reasonably associated with the Licensee) will be processed by the District. In the event of violations or noncompliance with any term of any Attachment License Agreement or Permit, the District may elect, upon consideration of the nature and severity of the violations or noncompliance, to pursue remedies and/or reimbursement, including:

a) Unauthorized Attachment Inspection Fee assessment per group/site in amount per rate/fee schedule, separate from and in addition to the Pole Attachment Rate (see **Exhibit A**);

b) Suspension of review of any new Applications;

c) District removal of unauthorized Attachment(s) and reimbursement to District for all costs and staff time incurred;

d) Action taken by District to require removal of unauthorized Attachment and reimbursement to District for all fees, rates, and costs incurred, including but not limited to judicial action for injunctive relief / specific performance;

e) Revocation of any Permit issued pursuant to any Attachment License Agreement;

f) Termination of Attachment License Agreement;

Notice of Violation. If Licensee's Attachments, or any part thereof, are installed, used or maintained in violation of the License Agreement or Applicable Standards, Licensee shall correct the violation(s) within sixty (60) calendar days from the date of written notice of the violation(s) from the District or other 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 schedule approved by the District. The District will notify Licensee in writing prior to the District performing corrective work. However, when the District reasonably believes that violation(s) pose an immediate threat to the safety of any person or property, 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 and documented costs incurred by the District in taking action pursuant to this provision

including overtime rates incurred by the District.

Notice of Correction. With respect to a Notice of Correction issued based on the District's review of as-builts or other documentation of construction performed under a recently issued Permit, corrective action must be completed either within sixty (60) calendar days from the date of Notice of Correction, or other date as specified in the Notice.

Notice of Abandonment or Removal of District Facilities. With respect to District action to abandon, remove or underground any District facilities to which any third party Attachments are attached, the District will provide written Notice of Abandonment/Removal, and the action detailed in the Notice of Abandonment/Removal must, unless otherwise specified, be completed within sixty (60) calendar days of the date of notice, as specified in the notice.

7. GUYING

The use of Guying to accommodate Licensee's Attachments shall be provided by and at the expense of Licensee and to the satisfaction of the District. Licensee shall not attach its guy wires to District's anchors without prior written permission of District. If permission is granted, make-ready charges, engineering evaluation and similar charges may apply.

8. RELOCATION OF DISTRICT ATTACHMENTS

The District shall not relocate its Attachments or modify/replace its Poles for the benefit of Licensee, provided, however, any denial by the District for modification of the Pole is based on nondiscriminatory standards of general applicability.

9. TRANSFERS AND RELOCATION OF LICENSEE ATTACHMENTS

If the District reasonably determines that a transfer or relocation of Licensee's Attachment(s) is necessary, Licensee agrees to allow such transfer or relocation. The District is solely responsible for the transfer and/or relocation of its Attachments.

Distribution of Costs. The costs for any rearrangement or transfer of Licensee's Attachments or the replacement of a Pole (including any related costs for tree cutting or trimming) shall be allocated to the District and/or Licensee and/or other Attaching Entity on the following basis:

If the District intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Licensee, however, shall be responsible for all costs associated with the

rearrangement or transfer of Licensee's Attachments. Prior to making any such 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. Should Licensee so elect, it must seek the District's written permission per this Agreement. The notification requirement of this paragraph shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Attachments, Licensee shall bear the total incremental costs incurred by The District in making the space on the Poles accessible to Licensee.

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 the 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 Attachments. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's facilities.

If the 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 Attachments. 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 Attachments. The 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 Attachments pursuant to this paragraph.

Transfers or Relocations Performed by District. In such instances where a transfer or relocation is requested, the District will require Licensee to perform such transfer or relocation within sixty (60) calendar days after notice from the District. If Licensee fails to transfer or relocate its facilities within sixty (60) calendar days after such notice from the District, the District shall have the right to transfer or relocate Licensee's facilities and bill Licensee as Make-Ready Work.

The District shall not be liable for damage to Licensee's facilities except to the extent provided in the underlying Pole Attachment License Agreement. The sixty (60) day notification shall not apply to emergency situations, in which case the District shall provide such notice as is practical given the urgency of the particular situation. The District shall provide written notice of any actions taken by the

District in response to emergency situations within twenty (20) days of the occurrence.

Irrespective of who owns them, Licensee is responsible for the transfer or relocation of facilities that are Overlashed onto Licensee's Attachments. At the option of the Licensee, the District can be contracted to perform all such transfer or relocation work as part of the normal course of business. The District will bill Licensee at the District's cost. If Licensee chooses this option a separate agreement must be executed with the District.

Billing for Transfers or Relocations Performed by District. If the District performs the transfer(s) or relocation(s), the District will invoice the Licensee for actual costs. Licensee shall reimburse the District within forty-five (45) calendar days of the billing date of the invoice.

10. UNDERGROUND RELOCATION

If the District moves any portion of its aerial system underground, Licensee shall remove its Attachments from any affected Poles within sixty (60) calendar days of notice from the District, unless otherwise specified, and either relocate its affected Attachments underground with the District through a joint trench agreement or find other means to accommodate its Attachments. Licensee's failure to remove its Attachments shall be addressed pursuant to the violation section of these Joint Use Rules and Regulations.

11. OVERLASHING

A Permit shall be obtained for each Overlashing. Absent such authorization, Overlashing constitutes an unauthorized Attachment and is subject to the Unauthorized Attachment Inspection Fees as specified in these Joint Use Rules and Regulations.

In the event of an emergency or for general maintenance purposes, Licensee may Overlash its equipment without obtaining a Permit prior to Overlashing. Such Overlashed cable shall not constitute an unauthorized Attachment and shall not be subject to the Unauthorized Attachment Inspection Fees specified in these Joint Use Rules and Regulations. Such Overlashed cable shall not exceed four (4) span lengths per incident and shall be subject to all other terms and conditions of the Pole Attachment License Agreement including inspection by the District pursuant to Licensee Overlashing. Licensee shall provide written notice to the District of all such emergency or general maintenance Overlashing allowed by this paragraph within twenty (20) days of completion of work.

If Licensee demonstrates that the Overlashing of Licensee's Attachment(s) is required to accommodate Licensee's communications facilities, the District shall not withhold Permits for such Overlashing if it can be done consistent with the Permit issuance conditions as follows: 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. Overlashing performed pursuant to this paragraph shall not increase the annual Pole Attachment Rate and fees. Licensee, however, shall be responsible for all Make-Ready Work and other charges associated with the Overlashing but shall not be required to pay a separate annual Pole Attachment Rate and fees for such Overlashed Attachment.

If Overlashing is required to accommodate facilities of a third party, such third party must enter into a Pole Attachment License Agreement with the District and obtain Permits and must pay a separate Pole Attachment Rate and fees pursuant to the Joint Use Rules and Regulations as well as the costs of all necessary Make-Ready Work required to accommodate the Overlashing. No such Permits to third parties may be granted by the District allowing Overlashing of Licensee's communications facilities unless Licensee has consented in writing to such Overlashing. Overlashing performed under this paragraph shall not increase the Rate and fees and charges paid by Licensee. Nothing shall prevent Licensee from seeking a contribution from an Overlashing third party to defray Rate, fees and charges paid by Licensee.

Make-Ready Work procedures shall apply, as necessary, to all Overlashing.

12. SERVICE DROPS

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

Failure to comply with this section may result in action as provided in the Violation Section.

13. TAGGING

Licensee shall Tag all of its Attachments per the District's standards upon installation of such Attachments.

14. INTERFERENCE TEST EQUIPMENT

Licensee shall maintain test equipment to identify signal interference and shall not identify the District as the source of such interference absent a test report verifying

the source.

15. ENCLOSURES

Licensee shall not place Pedestals, Vaults and/or other Enclosures on or within six (6) feet of any Pole or other District facilities, unless lesser distance is required by other governing agencies.

If the District installs or relocates District facilities within six (6) feet from Licensee's existing Pedestal, Vault, and/or Enclosure, Licensee shall not be in violation of this section.

In some cases, equipment and/or enclosures may be authorized to be placed on District Poles through a separate agreement.

16. POLE TOP WIRELESS

General requirements for the installation and maintenance of antennas and other wireless infrastructure on District facilities.

16.1 **General Requirements.** All third-party commercial communication antenna/radio Attachments must adhere to these standards; be party to a District Pole Top Wireless License Agreement; and receive prior approval from the Joint Use Administrator.

All installations must meet all Applicable Standards and permitting requirements. Licensee is solely responsible for identifying and obtaining all permits and permissions at their sole expense.

It is the responsibility of the communication applicant to give prior notification to property and business owners and residents in the area who will be affected by the installation. It is the sole responsibility of the applicant to resolve any and all complaints resulting from the installation, including complaints related to the increased pole height, impaired views, visibility issues, or other operation of the equipment.

16.2 **Pole Top Wireless Standards.** The District does not allow antenna/radio installations in the Communication Zone or Communication Worker Safety Zone. All installations must be above the electric supply space on a Pole of sufficient height to allow for minimum vertical separation from antenna to electric conductors.

Pole Top Wireless and associated hardware must be located a minimum of nine feet (9') above the highest primary voltage (7.2 kV) or a minimum of five feet (5') above the highest secondary voltage (<600 V) electric Attachment or guy wire on the Pole.

Pole Top Wireless installations are not allowed on "Complex Poles." Complex Poles includes but are not limited to: Poles with reclosers, regulators, capacitors, three-phase or V-phase transformer banks, primary cable terminations, underground primary Risers, primary switches, primary metering, line-buck framing, multi-circuit framing, 115kV infrastructure, or other locations where adequate clearance is not available.

Poles with one single-phase transformer may be considered Complex Poles at the District's discretion. The District Joint Use Administrator will evaluate a Pole for allowable Attachment options.

In general, non-complex tangent Poles, guy-stub Poles, or wood light Poles are the preferred facility for Pole Top Wireless installations. Service Poles and/or streetlight-only Pole locations may be used if this is the only option available.

The Licensee is responsible to provide a Professional Engineer's certification of loading and guying requirements to ensure the Pole is properly anchored and stable to bear the proposed equipment.

The Licensee is responsible to pay the full cost of all necessary Make-Ready Work to prepare the Pole for the Pole Top Wireless equipment.

Pole Top Wireless installations must be on truck accessible Poles located within the public right of way ("ROW").

Only one wireless carrier is allowed per Pole.

All Electric service for the site shall be metered and meet all requirements of the District's Service Rules and Regulations. Metering gear, remote radio units (RRU) and associated equipment shall be pedestal or ground mounted and no closer than six (6') feet to a Pole and be situated to not interfere with down guys and anchors.

In some instances, at the discretion of the District, communications equipment associated with the antenna may be mounted in the

communications space on the pole, provided it does not require an electric revenue meter, weighs no more than 500 lbs., and does not over load the pole, nor impede the pole climbing space. All such electric services and associated equipment shall meet the requirements of the District Joint Use Standards, the District's Service Rules & Regulations, and is subject to rates and fees associated with unmetered electric service.

Installations shall not impede the climbing space on the Pole. All communication conductor must be installed in PVC conduit on standoff brackets. See the District's Joint Use Standards.

All metallic parts of the Pole Top Wireless equipment on the Pole shall be bonded together, and to the District's system neutral or pole ground. Bracket arm shall be bonded to pole ground. If no system neutral is present, a pole ground must be installed to a dedicated ground rod (electric service ground rod cannot be used).

16.3 **Safety Processes & Requirements.** All work associated with the construction and maintenance of any and all equipment above the Communication Space must be performed by a qualified electrical worker, adhere to all pertinent OSHA rules and regulations, and be performed at the sole expense of the Licensee.

A site safety plan must be approved by a District representative. A pre-work tailboard meeting must occur with a District representative from the Operations or Safety Departments before personnel approaches and passes through the Communication Worker Safety Zone. The District may elect to have an inspector on site while work is performed at the sole and exclusive expense of the Licensee.

All entry of personnel and materials into and through the Communication Worker Safety Zone must be clearly announced and acknowledged over the District's radio network. Work completion and the clearance of the Communication Worker Safety Zone must also be announced and acknowledged over the District's radio network. The upstream overcurrent electrical device (e.g. recloser, breaker) may be set to Hot Line Tag while work is being performed on site. Any and all safety-related system operations will be performed at the sole expense of the Licensee.

Licensee must install and maintain signage made of a non-corrosive and durable material, suitable for outdoor use and resistant to ultraviolet

radiation that indicates the name of the equipment owner and operator; 24-hour emergency contact information; potential for RF exposure including horizontal and vertical distance from the antenna at which it is safe to work continuously; a unique identified for the site; and emergency shut off details. All signage must be approved by the District's Joint Use Administrator and meet all applicable ANSI and FCC standards.

Licensee must install and maintain a clearly marked load-break (UL- listed) disconnect switch located on the communication pedestal or at a location on the Pole that is operable from the ground to de-energize the Pole Top Wireless antenna/RF emitter (operational and backup power) without notification and at the District's discretion, during situations where District personnel will be working on or around the Pole. The switch must be readily accessible and capable of being locked in either the open or closed position and include a standard District double hasp with lock from the Licensee (allowing operation of switch by either party). The disconnect switch blades, jaws, and air-gap between them shall all be clearly visible when the switch is in the open position.

17. MAKE-READY WORK

17.1 **Estimate for Make-Ready Work**. In the event the District determines that it can accommodate Licensee's request for Attachment(s), including Pole Top Wireless and/or Overlashing of an existing Attachment, it will advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment.

17.2 **Payment of Make-Ready Work**. Upon completion of the Make-Ready Work, the District may invoice Licensee for District's actual reasonable, and documented cost of such Make-Ready Work.

17.3 **Establishment of Deposits**. At the District's discretion, the District may require a Licensee to pay a deposit sufficient to cover the District's estimated Make-Ready Work. Upon completion, Licensee shall pay the District's actual, reasonable and documented cost of Make-Ready Work or the District will refund the difference if the deposit is more than the actual cost.

17.4 **Who May Perform Make-Ready Work**. Make-Ready Work shall be performed only by the District and/or a contractor authorized by the District to perform such work and will be done in the order the Permits are issued. If the District cannot perform the Make-Ready Work to accommodate

Licensee's communications facilities within forty-five (45) calendar days of the District signing the Permit Application, Licensee may request the District to contract out the Make-Ready Work to a qualified contractor. If the District agrees to contract out the Make-Ready Work, the District shall solicit bids from qualified contractors to perform the work. Upon receipt of bids, the Licensee shall be required to deposit in advance the estimated costs of Make-Ready Work based upon the bid amount plus District's anticipated administrative costs incurred in awarding the bid and administering the contract. In such case, upon completion of the work, Licensee shall pay District's actual cost of Make-Ready Work. If the actual cost of the work is less than the deposit, the balance will be refunded to the Licensee.

17.5 **Scheduling of Make-Ready Work**. In performing all Make-Ready Work to accommodate Licensee's communications facilities, the District will endeavor to include such work in its normal work schedule. In the event Licensee requests that the Make-Ready work be performed on a priority basis or outside of District's normal work hours, and in the event the District is willing and able to so perform, Licensee agrees to pay any resulting increased actual, reasonable and documented costs. Nothing herein shall be construed to require performance of Licensee's work before other scheduled work or the District service restoration.

17.6 **Licensee's Installation/Removal/Maintenance Work**. 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 District's Poles or other facilities or other Attaching Entity's facilities or equipment attached thereto. All such work is subject to the insurance requirements of Pole Attachment License Agreement.

All of Licensee's installation, removal and maintenance work performed on District's Poles or in the vicinity of other the District facilities, either by its employees or contractors, shall be in compliance with all Applicable Standards. Licensee shall assure that any person installing, maintaining, or removing its Attachments is fully qualified and familiar with all Applicable Standards.

18. PROFESSIONAL CERTIFICATION

In the District's discretion, as part of the Permit Application process and at Licensee's sole expense, a qualified and experienced Professional Engineer, or an employee or contractor of Licensee who has been approved by District, may be required by the District to complete certain actions related to the Permit

Application or associated work (for example: participate in Pre-Construction Meeting; complete Pole loading analysis). The Professional Engineer's, (or approved employee/contractor as described above), qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems.

19. APPEAL PROCESS

Appeal of Permit Decision or Notice of Correction; Appeal of Notice of Violation; Appeal of Fee Imposed. An applicant, or recipient of any Notice of Correction, Notice of Violation, or Fee imposed may appeal a Permit decision or Notice of Correction, Notice of Violation, or Fee imposed to the District's hearing officer. The hearing officer is designated by the manager and approved by the Board of Commissioners. A notice of appeal shall be submitted in writing, received at the District's office, within twenty-one (21) calendar days of the Permit decision, Notice or Fee being appealed. The appeal shall clearly state: **a)** the name and contact information of the appealing party; **b)** the specific Permit decision, Notice or Fee at issue (including any Permit or Notice number or Invoice identification and date of action); **c)** a description of the basis for the appeal and desired manner of resolution; and **d)** any authority cited to support the appeal. A date for the appeal hearing shall be set to occur within sixty (60) calendar days of the day the appeal is received by the District, and notice of the appeal hearing shall be issued no less than ten (10) calendar days prior to the date of the appeal hearing, excluding the appeal hearing date. At the appeal hearing, the applicant shall have the right to present the appeal and whatever evidence is relevant to the appeal. District personnel shall present the District's position to the hearing officer. A decision will be issued by the hearing officer in writing, stating the information considered and basis for the decision. The applicant may submit a written request to have the District's Board of Commissioners review the hearing officer's decision. A date for Board consideration of the hearing officer decision shall be set to occur within sixty (60) calendar days of the day the written request is received by the District, and notice of the date for Board consideration shall be issued no less than ten (10) calendar days prior to the date of the Board consideration, excluding the Board consideration date. The Board, in its discretion, may affirm, modify or reverse the hearing officer's decision.

EXHIBIT A

Joint Use Rate/Fee Schedule

Rates and Fees

Pole Attachment Rate (per attachment* – billed annually)	$21.00
Unauthorized Attachment Inspection Fee:	
1-3 Immediately Adjacent Poles (flat fee – billed when work performed)	$110.00
4-6 Immediately Adjacent Poles (flat fee – billed when work performed)	$220.00
Greater than 6 Poles	*All costs and staff time at standard billable rate*
Make-Ready Work	*All costs and staff time at standard billable rate*
Attachment Transfers	*All costs and staff time at standard billable rate*
Pole Loading Analysis	*All costs and staff time at standard billable rate*
District Removal of Unauthorized Attachments	*All costs and staff time at standard billable rate*
Failure to Maintain Emergency Contact Fee	$100.00

*RCW 54.04.045(1)(a)

ALTERATIONS: This schedule may be revised, supplemented, or otherwise modified only by action of the Commission. In emergency situations, the manager of the District may make such reasonable modifications as they deem necessary provided, however, such modifications are reported to the Commission at its next official meeting.

Effective July 1, 2019