

# COMMUNICATIONS FACILITIES

## POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment Licensing Agreement (the “Agreement”) dated this \_\_\_\_ day of \_\_\_\_, 20\_\_, is made by and between PUD #1 of Kittitas County (hereinafter referred to as “District”), a public utility of the State of Washington, and \_\_\_\_\_ (hereinafter referred to as “Licensee”). District and Licensee are sometimes hereinafter referred to collectively as (“Parties”)

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### Recitals

- A. Whereas, Licensee proposes to install and maintain Attachments and associated communications equipment on District Poles to provide Communications Services; and
- B. Whereas, District is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee’s Attachments on District Poles, provided the District may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, inability to meet generally applicable engineering standards and practices, and/or any other Applicable Standard; 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:

## AGREEMENT

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### Article 1—Definitions

For the purposes of this Agreement, including all appendices, the following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within a specific article or paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 **Affiliate**: when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
- 1.2 **Applicable Standards**: means all applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around District Facilities and includes the most current versions of National Electrical Safety Code (“NESC”), the National Electrical Code (“NEC”), and the regulations of the Occupational Safety and Health Administration (“OSHA”), the Washington Industrial Safety and Health Act (“WISHA”), each of which is incorporated by reference in this Agreement, as such standards, regulations and codes may be revised from time to time, and other safety and engineering requirements of the District as may be adopted by the District’s Board of Commissioners from time to time, and any other current or future rules of any federal, state or local authority with jurisdiction over District Facilities.
- 1.3 **Assigned Space**: means space on District Poles or within District Conduit System 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. The Assigned Space on joint-use structures is below the Communication Worker Safety Zone and above the vertical space for meeting ground clearance requirements under the National Electrical Safety Code. The Assigned Space is also sometimes referred to herein as the “Communications Space.”
- 1.4 **Attaching Entity**: means any public or private entity, other than the District, who places an Attachment on a District Pole or within the District Conduit System to provide Communications Service.
- 1.5 **Attachment(s)**: 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, any other related device, apparatus, or auxiliary equipment placed upon any District Pole or over-lashed onto an existing Attachment or within the District Conduit System, but does not include either a Riser or a Service Drop attached to a single Pole where Licensee has an existing Attachment on such Pole.

- 1.6 **Capacity**: means the ability of a Pole or Conduit System segment to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.
- 1.7 **Climbing Space**: means that portion of a Pole's surface and surrounding space free from encumbrances to enable District employees and contractors to safely climb, access and work on District Facilities and equipment.
- 1.8 **Common Space**: means space on District Poles not used for the placement of wires or cables but which jointly benefits all users of the Poles by supporting the underlying structure and/or providing safety clearance between Attaching Entities and District Facilities.
- 1.9 **Communication Worker Safety Zone**: That space as defined in the National Electrical Safety Code (NESC). This zone generally originates at the lowest point of the Supply Space and above the highest point of the Communications Space. This space is intended to maintain a physical separation between supply and Attachments. The minimum dimensions of this space shall at no time be violated.
- 1.10 **Communications Service**: means the transmission or receipt of voice, video, data, internet or other forms of digital or analog signals over Attachments.
- 1.11 **Conduit System**: means District's conduits, inner-duct, manholes, vaults, Risers, pull-boxes and trenches.
- 1.12 **District Facilities**: means all personal property and real property owned or controlled by the District, including Poles and Conduit System.
- 1.13 **Innerduct**: means flexible conduit installed inside a larger rigid conduit for the placement of wire or cable.
- 1.14 **Licensee**: means Licensee identified on page one, its authorized successors and assignees.
- 1.15 **Make-Ready Work**: means all work, as reasonably determined by the District, required to prepare District Facilities to accommodate Licensee's Attachments and/or to comply with all Applicable Standards. Such work includes, but is not limited to, Pre-Construction Survey, rearrangement and/or transfer of District Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), Pole replacement and construction, or Conduit System clearing.

- 1.16 **Nonfunctional Attachment**: means a cable, wire, or other physical material attached to a Pole or with a span of the Conduit System that is no longer used or no longer fit for service by Licensee. This definition of Nonfunctional Attachment shall exclude Service Drops.
- 1.17 **Occupancy**: means the use or specific reservation of Assigned Space for Attachments on a Pole or a portion of the Conduit System.
- 1.18 **Overlash**: means to place an additional wire or cable onto an existing Attachment.
- 1.19 **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 that shall not be attached to District Poles (see Appendix D—Specifications).
- 1.20 **Permit**: means written or electronic authorization (see Appendix C) of District for Licensee to make or maintain Attachments to specific Poles or spans of the Conduit System pursuant to the requirements of this Agreement.
- 1.21 **Pole**: means a pole owned by District used for the distribution of electricity and/or Communications Service that is capable of supporting Attachments.
- 1.22 **Pole-Mounted Wireless Equipment**: includes antennas, receivers, transceivers, repeaters, and other wireless communications equipment that is attached to a Pole. Pole-Mounted Wireless Equipment is not considered an Attachment as governed or authorized under this Agreement.
- 1.23 **Post-Construction Inspection**: means the inspection required by District to determine and verify Attachments have been made in accordance with Applicable Standards and the Permit.
- 1.24 **Pre-Construction Survey**: means all work or operations required by Applicable Standards as applied by the District to determine the potential Make-Ready Work necessary to accommodate Licensee’s Attachments on a Pole or within a span of the Conduit System. Such work includes, but is not limited to, field inspection and administrative processing. The Pre-Construction Survey shall be coordinated with the District and include Licensee’s professional engineer.

- 1.25 **Reserved Capacity:** means Capacity or space on a Pole or within a portion of the Conduit System the District has identified and reserved for its own utility requirements, including the installation of communications circuits for operation of District’s electric system, pursuant to a reasonable projected need or business plan.
- 1.26 **Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect communications wires and cables.
- 1.27 **Service Drop(s):** means a wire or cable of Licensee which provides Communications Service to a single customer as an extension of Licensee’s backbone or distribution network.
- 1.28 **Span-Mounted Wireless Equipment:** includes antennas, receivers, transceivers, repeaters, and other wireless communications equipment that is suspended from a span attached to a Pole. Span-Mounted Wireless Equipment is prohibited.
- 1.29 **Supply Space:** The space on joint-use Poles where supply facilities are separated from the Communication Space by the Communication Worker Safety Zone. This space is above the Communication Worker Safety Zone.

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## Article 2—Scope of Agreement

- 2.1 **Grant of License.** Subject to the provisions of this Agreement, District hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain permitted Attachments to District Poles and spans of the Conduit System 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 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.** District will issue a Permit(s) to Licensee only when District determines, in its sole judgment, which shall not be unreasonably withheld, that (i) it has sufficient Capacity within the Assigned Space to accommodate the requested Attachment(s), (ii) permitting the Attachment(s) is consistent with safety and reliability, (iii) all requirements set forth in this Agreement are met, (iv) such Permit(s) comply with all Applicable Standards, and (v) Licensee is current in all of its obligations owed to the District.

- 2.4 **Assigned Space.** Access to Assigned Space on District Poles will be made available to Licensee with the understanding that such access will not be within District's Reserved Capacity. On giving Licensee at least sixty (60) calendar days prior notice, District may reclaim such Assigned Space anytime during the period following the installation of Licensee's Attachment in which this Agreement is effective if required for District's future use, including the attachment of communications lines for internal District operational or governmental communications requirements. District shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 9.
- 2.5 **No Interest in Property.** No use, however lengthy, of any District Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of 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.** Nothing in this Agreement, other than a Permit issued pursuant to Article 6, shall be construed as granting Licensee any right to attach Licensee's Attachments to any specific Pole or within any specific portion of the Conduit System.
- 2.7 **District's Rights over Poles.** The Parties agree that this Agreement does not in any way limit District's right to locate, operate, maintain or remove its Poles or Conduit System in the manner that will best enable it to fulfill its service requirements.
- 2.8 **Expansion of Capacity.** District will take reasonable steps to expand, at Licensee's sole expense, its Pole/Conduit System Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require District to install, retain, extend or maintain any Pole or portion of the Conduit System for use when such Pole/Conduit System is not needed for District's service requirements.

- 2.9 Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit District from fulfilling any agreement or arrangement regarding Poles into which District has previously entered, or may enter in the future, with others not party to this Agreement.
- 2.10 Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals stated above and no other use shall be allowed without District's express written consent to such use. Nothing in this Agreement shall be construed to require District to allow Licensee to use the District's Poles or portions of the District's Conduit System after the termination of this Agreement, subject to the provisions of Article 11 and Article 23 of this Agreement.
- 2.11 Overlashing.** The following provisions will apply to Overlashing:
- 2.11.1** A Permit shall be obtained for each Overlashing pursuant to Article 6. Absent such authorization, Overlashing constitutes an unauthorized attachment and is subject to the unauthorized attachment fee specified in Appendix A, Item 3.
- 2.11.2** If Licensee demonstrates that the Overlashing of Licensee's existing Attachment(s) is required to accommodate additional Attachments of Licensee, District shall not withhold Permits for such Overlashing if it can be done consistent with Paragraph 2.3. Overlashing performed pursuant to this Paragraph 2.11.2 shall not increase the annual attachment fee paid by Licensee pursuant to Appendix A, Item 1. 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 attachment fee for such Overlashed Attachment.
- 2.11.3** If Overlashing is required to accommodate facilities of a third party, such third party must enter into a license agreement with District and obtain Permits and must pay a separate attachment fee (Appendix A, Item 1) 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 District allowing overlashing of Licensee's Attachments unless Licensee has consented in writing to such Overlashing. Overlashing performed under this Paragraph 2.11.3 shall not increase the fees and charges paid by Licensee pursuant to Appendix A, Item 1. Nothing in this Agreement shall prevent Licensee from seeking a

contribution from an Overlapping third party to defray fees and charges paid by Licensee.

- 2.11.4 Make-Ready Work procedures set forth in Article 7 shall apply, as necessary, to all Overlapping.
- 2.12 **Enclosures.** Licensee shall not place Pedestals, Vaults and/or other Enclosures on or within four (4) feet of any Pole or other District Facilities without District's prior written permission. If permission is granted, all such installations shall be per the specifications and drawings in Appendix D of this Agreement and charges as provided in Appendix A. Such permission shall not be unreasonably withheld.

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## Article 3—Fees and Charges

- 3.1 **Payment of Fees and Charges.** Licensee shall pay to District the fees and charges specified in Appendix A and shall comply with the terms and conditions specified herein. The Parties agree that the District's Board of Commissioners may replace, revise, amend or add to Appendix A from time to time during the term of this Agreement; provided, that District shall provide Licensee no less than seven (7) calendar days notice prior to any meeting where District's Board of Commissioners is to consider the adoption of any such changes. Upon adoption, any such changes to Appendix A shall be implemented for the then next upcoming annual rental period under this Agreement.
- 3.2 **Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from District pursuant to this Agreement within thirty (30) calendar days after District issues the invoice.
- 3.3 **Billing of Attachment Fee.** District shall invoice Licensee for the per-pole attachment fee annually. District will submit to Licensee an invoice for the annual rental period no later than June 30 of each year. The initial annual rental period shall commence upon the execution of this Agreement and conclude on May 31 of the next year, and each subsequent annual rental period shall commence on the following June 1 and conclude on May 31 of the subsequent year. Attachment fees for the initial rental period will be billed on a pro-rata basis and, if applicable, attachment fees collected under a previous contract for this same initial rental period will be credited toward this billing on the same pro-rata basis. The invoice shall set forth the total number of District Poles 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. Attachment fees for



Permits issued during a rental period shall be pro-rated for the remainder of the then current rental period commencing on the date of the Permit approval and invoiced separately.

- 3.4 Refunds.** No fees and charges specified in Appendix A shall be refunded on account of any surrender of a Permit granted hereunder. Nor shall any refund be owed if a Pole or portion of is abandoned by District.
- 3.5 Late Charge.** If District does not receive payment for any fee or other amount owed under this Agreement on or before the date it becomes due, Licensee, upon receipt of fifteen (15) calendar days written notice, shall pay interest on the amount due to District at the rate of 1.5% 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 reasonable costs to District for all work District or District's contractors perform pursuant to this Agreement and any associated Permits to accommodate Licensee's Attachments.
- 3.7 Advance Payment.** At the discretion of District, Licensee may be required to pay in advance all reasonable costs, including but not limited to administrative, construction, inspections and Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Attachments pursuant to the procedures set forth in Articles 6 and 7 below.
- 3.8 True Up.** Wherever District, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of the activity exceeds the advance payment of estimated expenses, Licensee agrees to pay District for the difference in cost. To the extent the actual cost of the activity is less than the estimated cost, District agrees to refund to Licensee the difference in cost.
- 3.9 Determination of Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by District, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overhead costs. District shall bill its services based upon estimated costs, and such costs will be determined in accordance with District's line extension policy and/or cost accounting systems 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, persons employed and materials used and cost of materials. When calculating labor costs, it will be the greater of the loaded costs of District's labor

or that of the current “Union scale.” If Licensee was required to perform work and fails to perform such work necessitating its completion by District, District may either charge an additional ten percent (10%) to its costs, or assess the penalty specified in Appendix A, Item 4, whichever is the greater amount.

- 3.10 Work Performed by District.** Wherever this Agreement requires District to perform any work, Licensee acknowledges and agrees that District, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work.
- 3.11 Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond sixty (60) days shall constitute a material default of this Agreement.

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## 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, including but not limited to Appendix D, and all 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 Attachments pre-existing as of the Effective Date of this Agreement where not required to do so by the terms and conditions of this or prior Agreements, prior editions of the NESC, prior editions of the NEC, or other applicable regulation applicable at the time of the existing Attachment installation, unless otherwise required by law or regulation. Provided, however, all pre-existing Attachments shall be tagged in accordance with Section E.5 of Appendix D within three (3) years of the execution of this Agreement.
- 4.2 Interference.** Licensee shall not allow its Attachments to impair the ability of District or any third party to use District Poles or the Conduit System, nor shall Licensee allow its Attachments to interfere with the operation of any District Facilities.
- 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 provided in Paragraph 16.1, 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, and Licensee has not corrected the violation(s) within thirty (30) calendar days from receipt of written notice of the violation(s) from District, District at its option, may correct such conditions. District will attempt to notify Licensee in writing prior to performing such work whenever practicable. When District believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of District's service obligations or pose an immediate threat to the physical integrity of District Facilities, District may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable thereafter, District will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all costs incurred by District in taking action pursuant to this Paragraph.
- 4.5 Restoration of District Service.** District's service restoration requirements shall take precedence over any and all work operations of Licensee on District Poles or within the Conduit System.
- 4.6 Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days of the effective date of such right and any extension thereof, District may use the space scheduled for Licensee's Attachment(s) for its own needs or other Attaching Entities. In such instances, District shall endeavor to make other space available to Licensee, upon written application per Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions.
- 4.7 Interference Test Equipment.** To the extent Licensee furnishes cable television service it shall maintain test equipment to identify signal interference to its customers, and shall not identify District as the source of such interference absent a test report verifying the source.
- 4.8 Removal of Nonfunctional Attachments.** At its sole expense, Licensee shall remove any of its Nonfunctional Attachments. A Nonfunctional Attachment that Licensee has failed to remove as required in this Paragraph shall constitute an

unauthorized attachment and is subject to the unauthorized attachment fee specified in Appendix A, Item 3. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written notice from District that removal is necessary to accommodate District's or another Attaching Entity's use of the affected Pole(s) or portion of the Conduit System, in which case Licensee shall remove the Nonfunctional Attachment within sixty (60) days of receiving the notice. Where Licensee has received a Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until District notifies Licensee that removal is necessary to accommodate District's or another Attaching Entity's use of the affected Pole(s). Licensee shall give District notice of any Nonfunctional Attachments as provided in Article 15.

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## **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 District Poles or the Conduit System. District retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. 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 reimburse District for all loss and expense, including reasonable attorney's fees, that District may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Attachments on District Poles or within its Conduit System.
- 5.2 Lawful Purpose and Use.** Licensee's Attachments must at all times serve a lawful purpose, and the use of such Attachments 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 or within any portion of the Conduit System on/in which the attachment of Licensee's Attachments would result in a forfeiture of District's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of District's rights, is invalid. Further, if any of Licensee's existing

Attachments, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Attachments upon receipt of written notice from District. District will perform such removal at Licensee's expense not sooner than the expiration of thirty (30) calendar days from District's issuance of the written notice.

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

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## **Article 6—Permit Application Procedures**

- 6.1 Permit Required.** Licensee shall not install any Attachments on any Pole or within any District Conduit System without first applying for and obtaining a Permit pursuant to the applicable requirements of Appendix B. Unless otherwise notified, pre-existing authorized Attachment(s) of Licensee as of the effective date of this Agreement shall be grandfathered with respect to permitting, but shall be subject to the attachment fees under this Agreement. Licensee shall provide District with a list of all such pre-existing Attachments within six (6) months of the effective date of this Agreement. Attachments to or rights to occupy District Facilities not covered by this Agreement must be separately negotiated.

- 6.1.1 Service Drops.** Licensee will notify District within thirty (30) days of the attachment of a Service Drop where an existing permitted Attachment exists. In the event that a Service Drop constitutes the initial Attachment to a given Pole, Licensee will be required to follow the permitting process set forth in Paragraph 6.1. In such case, Licensee will be allowed thirty (30) days after the Attachment is made to complete the permitting process.

- 6.2 Permits for Modifications or Overlashing.** Permits are required for any modifications to permitted Attachments allowed under this Agreement, including Overlashing, as set out in Paragraph 2.11. Licensee, Licensee's Affiliate or other third party, as applicable, shall pay any necessary Make-Ready Work costs to accommodate such Overlashing.

- 6.3 Professional Certification.** Unless otherwise waived in writing by District, 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, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee's Attachments can be and were installed on the identified Poles or within specified portions of the Conduit System in compliance with the standards in Paragraph 4.1 and in accordance with the Permit. Said person's qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems.

District, at its discretion, may waive the requirements of this Paragraph 6.3, with respect to Service Drops.

- 6.4 District Review of Permit Application.** Upon receipt of a properly executed application for Permit (Appendix C), which shall include the Pre-Construction Survey, certified per Paragraph 6.3 above, detailed plans for the proposed Attachments in the form specified in Appendix D, and the information specified in Appendix E, District will review the Permit application as promptly as possible, and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit application. District acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis.
- 6.5 Permit as Authorization to Attach.** Upon completion of review and finding that the Permit application satisfies review criteria, and after receipt of payment of all costs and fees required under this Agreement, District will sign and return the permit application, which shall serve as issuance of the Permit and authorization for Licensee to make its Attachment(s).
- 6.6 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 documents or other data shall not prevent the District from requiring the correction of any violations.

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

- 7.1 Estimate for Make-Ready Work.** In the event District determines that it can accommodate Licensee’s request for Attachment(s), including Overlapping of an existing Attachment, it will, upon request, advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment.
- 7.2 Payment of Make-Ready Work.** Upon completion of the Make-Ready Work, District shall invoice Licensee for District’s actual cost of such Make-Ready Work. Alternatively, District, at its discretion, may require payment in advance for Make-Ready Work based upon the estimated cost of such work. In such case, upon completion Licensee shall pay District’s actual cost of Make-Ready Work. The costs of the work shall be itemized as per Paragraph 3.9 and trued up as per Paragraph 3.8.
- 7.3 Who May Perform Make-Ready Work.** Make-Ready Work shall be performed only by District and/or a contractor authorized by District to perform such work. If District cannot perform the Make-Ready Work to accommodate Licensee’s Attachments within forty-five (45) calendar days of Licensee’s request for Attachments, Licensee may seek permission from District for Licensee to employ a qualified contractor to perform such work.
- 7.4 Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Licensee’s Attachments, 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, Licensee agrees to pay any resulting increased costs. Nothing herein shall be construed to require performance of Licensee’s work before other scheduled work or District service restoration.
- 7.5 Written Approval of Installation Plans Required.** Before making any Attachments to District Poles or Conduit System, including Overlapping of existing Attachments, the applicant must obtain District’s written approval of detailed plans for the Attachments. Such detailed plans shall accompany a Permit application as required under Paragraph 6.4.
- 7.6 Licensee’s Installation/Removal/Maintenance Work.**
- 7.6.1** All of Licensee’s installation, removal and maintenance work shall be performed at Licensee’s sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of the

District's Poles, Conduit System or other District Facilities or other Attaching Entity's facilities or equipment attached thereto. All such work is subject to the insurance requirements of Article 18.

- 7.6.2 All of Licensee's installation, removal and maintenance work performed on District Poles or within its Conduit System or in the vicinity of other District Facilities, either by its employees or contractors, shall be in compliance with all applicable regulations specified in Paragraph 4.1. Licensee shall assure that any person installing, maintaining, or removing its Attachments is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the minimum design specifications contained in Appendix D and Appendix E.

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## Article 8—Transfers

- 8.1 **Required Transfers of Licensee's Attachments.** If District reasonably determines that a transfer of Licensee's Attachments is necessary, Licensee agrees to allow such transfer. In such instances, District will, at its option, either perform the transfer using its personnel, and/or contractors and/or require Licensee to perform such transfer at its own expense within thirty (30) calendar days after receiving notice from District. If Licensee fails to transfer its facilities within thirty (30) calendar days after receiving such notice from District, District shall have the right to transfer Licensee's Attachments using its personnel and/or contractors at Licensee's expense as specified in Paragraph 3.9. District shall not be liable for damage to Licensee's Attachments except to the extent provided in Paragraph 16.1. The written advance notification requirement of this Paragraph shall not apply to emergency situations, in which case District shall provide such advance notice as is practical given the urgency of the particular situation. District shall then provide written notice of any such actions taken within ten (10) days of the occurrence. Irrespective of who owns them, Licensee is responsible for the transfer of Attachments that are Overlashed on to Licensee's Attachments.
- 8.2 **Billing for Transfers Performed by District.** If District performs the transfer(s), District will bill Licensee for actual costs per Paragraph 3.9. Licensee shall reimburse District within thirty (30) calendar days of the receipt of the invoice.



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## Article 9—Pole Modifications And/Or Replacements

- 9.1 **Licensee’s Action Requiring Modification/Replacement.** In the event that any Pole to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional facilities in accordance with all Applicable Standards, District will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including but not limited to replacement of the Pole and rearrangement or transfer of District Facilities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities’ existing Attachments. If Licensee elects to go forward with the necessary changes, Licensee shall pay to District the actual cost of the Make-Ready Work performed by District, per Paragraph 3.9. District, at its discretion, may require advance payment. Licensee shall also be responsible for obtaining, and furnishing to District before the commencement of any Make-Ready Work agreements between Licensee and the other Attaching Entities (including overlashers) concerning the relocation or rearrangement of their Attachments and the costs involved.
- 9.2 **Treatment of Multiple Requests for Same Pole.** If 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, District will equitably allocate among such licensees the applicable costs associated with such modification or replacement. Such allocation applies only to those Attachments involving cable/wire and not Risers and/or other equipment.
- 9.3 **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 District as specified in Appendix D. Licensee **shall not** attach its guy wires to District’s anchors without prior written permission of District. If permission is granted, charges may apply.
- 9.4 **Allocation 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 required to clear the new location of District’s cables or wires) shall be allocated to District and/or Licensee and/or other Attaching Entity on the following basis:

- 9.4.1** If 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 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 District's written permission per this Agreement. The notification requirement of this Paragraph 9.4.1 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 District in making the space on the Poles accessible to Licensee.
- 9.4.2** If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than District or Licensee, the Attaching Entity requesting the additional or modified attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring Licensee's Attachments. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's Attachments.
- 9.4.3** 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), 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.
- 9.4.4** If the modification or replacement of a Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Pole and for the costs associated with the transfer or rearrangement of any other Attaching Entity's Attachments. Licensee shall submit to District evidence, in writing, that it has made arrangements to reimburse all affected Attaching Entities for the cost to transfer or rearrange such entities' facilities at the time Licensee submits a permit application to District. District shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's facilities pursuant to this Paragraph 9.4.4.

- 9.5 **District Not Required to Relocate.** No provision of this Agreement shall be construed to require District to relocate its Attachments or modify/replace its Poles for the benefit of Licensee, provided, however, any denial by District for modification of the Pole is based on nondiscriminatory standards of general applicability.

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

- 10.1 **Notice of Abandonment or Removal of District Facilities.** If District desires at any time to abandon, remove or underground any District Facilities to which Licensee’s Attachments are attached, it shall give Licensee notice in writing to that effect at least ninety (90) calendar days prior to the date on which it intends to abandon or remove such District Facilities. Notice may be limited to thirty (30) calendar days if District is required to remove or abandon its District Facilities as the result of the action of a third party and the greater notice period is not practical. Such notice shall indicate whether District is offering Licensee an option to purchase the Pole(s). If, following the expiration of the notice period, Licensee has not yet removed and/or transferred all of its Attachments therefrom and has not entered into an agreement to purchase District Facilities pursuant to Paragraph 10.2, 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 as specified in Paragraph 3.9. District shall give Licensee prior written notice of any such removal or transfer of Licensee’s Attachments.
- 10.2 **Option to Purchase Abandoned Poles.** Should District desire to abandon any Pole, District, in its sole discretion, may grant Licensee the option of purchasing such Pole at a rate and under such terms negotiated with District. Licensee must notify District in writing within thirty (30) calendar days of the date of District’s notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should District and Licensee fail to enter into an agreement for Licensee to purchase the Pole prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 10.1. District is under no obligation to sell Licensee Poles that it intends to remove or abandon. Any purchase by Licensee of Poles in accordance

with this Article 10 shall be subject to the release and hold harmless provisions of Paragraph 16.5.

**10.3 Underground Relocation.** If District moves any portion of its aerial system underground, and Licensee's purchase of the Poles under Paragraph 10.2 is not an option, Licensee shall remove its Attachments from any affected Poles within sixty (60) calendar days of receipt of notice from District and either relocate its affected Attachments underground with District or find other means to accommodate its Attachments. If, following the expiration of the notice period, Licensee has not yet removed all of its Attachments, District shall have the right, subject to any applicable laws and regulations, to remove Licensee's Attachments at Licensee's expense as specified under Paragraph 3.9.

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## **Article 11—Removal of Licensee's Attachments**

**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 or portions of the Conduit System at its own expense; provided, however, that before commencing any such removal Licensee must obtain District's written approval of Licensee's plans for removal, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18. No refund of any fees or costs will be made upon removal. If Licensee fails to remove such Attachments within sixty (60) calendar days of expiration or termination or some greater period as allowed by District, District shall have the right to have such facilities removed at Licensee's expense as specified under Paragraph 3.9. Licensee shall also be liable for and pay to District all rates, fees and charges pursuant to the terms of this Agreement until such times as Licensee's Attachments are removed.

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## **Article 12—Termination of Permit**

**12.1 Automatic Termination of Permit.** Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Attachments on public or private property at the location of the particular Pole(s)/portion of the Conduit System covered by the Permit.

**12.2 Surrender of Permit.** Licensee may at any time surrender any Permit for attachment and remove its Attachments from the affected Pole(s) or segment of the Conduit System, provided, however, that before commencing any such removal Licensee must obtain District's written approval of Licensee's plans for removal, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18. No refund of any fees or costs will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from District Facilities within thirty (30) calendar days thereafter, District shall have the right to remove Licensee's Attachments at Licensee's expense as specified under Paragraph 3.9. Licensee shall also be liable for and pay to District all rates, fees and charges pursuant to the terms of this Agreement until such times as Licensee's Attachments are removed.

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## **Article 13—Inspection of Licensee's Facilities**

- 13.1 Inspections.** District may conduct an inventory and inspection of Attachments at any time. Licensee shall correct all Attachments that are not found to be in compliance with this Agreement or the Applicable Standards within thirty (30) calendar days of notification. If it is found that Licensee has made an Attachment without a Permit, Licensee shall pay a fee as specified in Appendix A, Item 3 in addition to applicable Permit and Make-Ready charges. If it is found that five percent (5%) or more of Licensee's Attachments are either in non-compliance or not permitted, Licensee shall pay its *pro-rata* share of the costs of the entire inspection.
- 13.2 Notice.** District will give Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received. When notified, Licensee will notify District if it wishes to participate in the inspection.
- 13.3 No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon District any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.
- 13.4 Attachment Records.** Notwithstanding the above inspection provisions, Licensee is obligated to furnish District on an annual basis an up-to-date map depicting the

locations of its Attachments in an electronic format specified by District. If a map is not available, the Licensee will provide a list in an electronic format specified by the District.

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

- 14.1 Penalty Fee.** If any of Licensee’s Attachments are found occupying any Pole or segment of the Conduit System for which no Permit has been issued, District, without prejudice to its other rights or remedies under this Agreement, may assess an unauthorized access penalty fee as specified in Appendix A, Item 3. In the event Licensee fails to pay such fee within thirty (30) calendar days of the billing date of the invoice, District has the right to remove such Attachments at Licensee’s expense as specified under Paragraph 3.9.
- 14.2 No Ratification of Unlicensed Use.** No act or failure to act by District with regard to any unlicensed or unpermitted use shall be deemed as ratification of the such use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by District of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to the unauthorized use from its inception.

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## **Article 15—Reporting Requirements**

Concurrently with Licensee’s attachment fee payment and using the reporting form contained in Appendix G, Licensee shall report the following to District:

- 15.1** The Poles on which Licensee has installed, since previous report, Risers and Service Drops, where no Permit was required.
- 15.2** All Attachments which have become nonfunctional since previous report. The report shall identify the Pole on which the nonfunctional Attachment is located, describe the nonfunctional equipment, and indicate the approximate date the Attachment became nonfunctional.

- 15.3 Any equipment Licensee has removed from Poles since previous report. The report shall identify the Pole from which the equipment was removed, describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Licensee is surrendering a Permit pursuant to Paragraph 12.2.

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## Article 16—Liability and Indemnification

- 16.1 **Liability.** District reserves to itself the right to maintain and operate its Poles and Conduit System in such manner as will best enable it to fulfill its service requirements. Licensee agrees to use District Poles and the Conduit System at Licensee’s sole risk. Notwithstanding the foregoing, 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 16.5, District agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of such facilities damaged by the negligence or willful misconduct of District.

**16.1.1** DISTRICT SHALL NOT BE LIABLE FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING FROM THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF NEGLIGENCE OF DISTRICT 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 COSTS INCURRED BY LICENSEE.

- 16.2 **Indemnification.** Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless District and its officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors (collectively, “(District’s Indemnified Parties”) against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by District under any Workers’ Compensation Laws or under any plan for employees’ disability and death benefits), and expenses (including reasonable attorney’s fees of District and all other costs and expenses of litigation) (collectively “Covered Claims”) arising in any way, including any act, omission, failure, negligence or willful misconduct,

in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents or contractors, of Licensee's Attachments, except to the extent of District's negligence or willful misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

- 16.2.1** Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;
- 16.2.2** Cost of work performed by District that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents or contractors, to install, maintain, use, transfer or remove Licensee's Attachments in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes District to perform on Licensee's behalf;
- 16.2.3** Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents or contractors, pursuant to this Agreement or claims arising out of the presence or use of a Pole no longer used by the District; and
- 16.2.4** Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents or contractors, of any law, rule, or regulation of the United States, State of Washington or any other governmental entity or administrative agency.

The indemnity obligations under this Paragraph 16.2 specifically includes liability or alleged liability that may arise from injury or loss suffered by any employee of Licensee or any agent, contractor or subcontractor of Licensee regardless of any immunity provided by the Washington Insurance Act, Title 51 of the Revised Code of Washington, or any other applicable law. **THE TERMS OF THIS PARAGRAPH 16.2, SPECIFICALLY INCLUDING THE PRECEDING WAIVER OF IMMUNITY, SHALL BE DEEMED MUTUALLY NEGOTIATED TO THE FULLEST EXTENT ALLOWED BY THE LAWS OF WASHINGTON.**



**16.3 Procedure for Indemnification.**

- 16.3.1** District shall give prompt notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against District, District shall give the notice to Licensee no later than ten (10) calendar days after District receives written notice of the action, suit or proceeding.
- 16.3.2** District's failure to give the required notice will not relieve Licensee from its obligation to indemnify District unless Licensee is materially prejudiced by such failure.
- 16.3.3** Licensee will have the right at any time, by notice to District, to participate in or assume control of the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to District. District agrees to cooperate fully with Licensee. If Licensee so assumes control of the defense of any third-party claim, District shall have the right to participate in the defense at its own expense. If Licensee does not so assume control or otherwise participate in the defense of any third-party claim, Licensee shall be bound by the results obtained by District with respect to the claim.
- 16.3.4** If Licensee assumes the defense of a third-party claim as described above, then in no event will District admit any liability with respect to, or settle, compromise or discharge, any third-party claim without Licensee's prior written consent, and District will agree to any settlement, compromise or discharge of any third-party claim which Licensee may recommend which releases District completely from such claim. Notwithstanding the foregoing, the provisions set forth above shall not apply in the event that Licensee has not assumed responsibility to indemnify District in full and satisfied District of Licensee's financial capacity to satisfy Licensee's defense and indemnification obligations to District. In the event District deems itself at risk, it retains the right to settle the claim and to assert the negligence of Licensee, seek recovery against Licensee, and settle any claim on such terms as District deems proper.

- 16.4 Environmental Hazards.** Licensee represents and warrants that its use of District Poles and/or Conduit System will not generate any Hazardous Substances (as defined below), that it will not store or dispose on or about District

Poles/Conduit System or transport to District Poles/Conduit System 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 Attachments would not release any Hazardous Substances. Licensee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless District's Indemnified Parties 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 District Poles/Conduit system attributable to Licensee's use of District Poles or Conduit System.

Should District Poles be declared to contain Hazardous Substances, District shall be responsible for the disposal of its Poles and the remediation of any associated release of Hazardous Substances; provided, however, if the source or presence of the Hazardous Substance is solely attributable to Licensee and/or other parties, such costs shall be borne solely by Licensee and/or such other parties.

**16.5 Purchased Poles Release and Indemnification.** In the event Licensee exercises any option to purchase Poles abandoned or to be abandoned by District pursuant to Article 10, Licensee agrees to release, save, defend and hold District harmless from any Covered Claim (A) under any and all theories of recovery for personal injury, death or property damage arising out of the presence or use of any Pole(s) following Licensee's purchase of said Pole(s); and (B) arising from or due to the release, threatened release, storage or discovery of any Hazardous Substances on, under or adjacent to the Poles so purchased by Licensee from District including, but not limited, any such condition(s) existing as of or prior to the date Licensee purchased the Poles from District.

**16.6 Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by District of any applicable state limits on municipal liability. No indemnification provision contained in this

Agreement under which Licensee indemnifies District shall be construed in any way to limit any other indemnification provision contained in this Agreement.

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

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## **Article 17—Duties, Responsibilities, And Exculpation**

- 17.1 **Duty to Inspect.** Licensee acknowledges and agrees that District does not warrant the condition or safety of District's Facilities, or the premises surrounding the facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect District Poles or Conduit System and/or premises surrounding the Poles or Conduit System, prior to commencing any work on District Poles or within District's Conduit System or entering the premises surrounding such Poles or Conduit System.
- 17.2 **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.
- 17.3 **DISCLAIMER. DISTRICT MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO DISTRICT POLES OR CONDUIT SYSTEM, 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.**
- 17.4 **Duty of Competent Supervision and Performance.** The Parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, employees, contractors and subcontractors will work near electrically energized lines, transformers or other District Facilities, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except in an emergency endangering life, grave personal injury or property. Licensee shall ensure that its employees, agents, contractors and

subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of District and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of District's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

**17.5 Requests to De-energize.** In the event District de-energizes any equipment or line at Licensee's request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse District in full for all costs and expenses incurred, in accordance with Paragraph 3.9, in order to comply with Licensee's request. Before District de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Licensee's request. Notwithstanding the foregoing, de-energization shall be at District's sole discretion and District shall determine the schedule for de-energization.

**17.6 Interruption of Service.** In the event that Licensee causes an interruption of service by damaging or interfering with any equipment of District, Licensee at its expense shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify District immediately, and shall save, defend, indemnify and hold District harmless from claims arising from such damage and shall compensate District in full for its damages.

**17.7 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 District's Poles or within District's Conduit System 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.

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## **Article 18—Insurance**

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

- 18.1.1 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. This policy shall be endorsed to include a waiver of subrogation in favor of District. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
- 18.1.2 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, broad form 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.
- 18.1.3 Automobile Liability Insurance.** Business automobile policy covering all owned, hired and nonowned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.
- 18.1.4 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 \$5,000,000 each occurrence, \$5,000,000 aggregate.
- 18.1.5 Property Insurance.** Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and District structures, fencing or support systems that may be placed on, within or around District Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.
- 18.2 Qualification; Priority; Contractors' Coverage.** The insurer must be authorized to do business under the laws of the State of Washington state and have an "A" or better rating in Best's Guide. Such insurance will be primary. 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,

comprehensive general liability and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article 18 with the same limits.

**18.3 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 District with a certificate of insurance (“Certificate”) and, upon request, certified copies of the required insurance policies. The Certificate shall reference this Agreement and workers’ compensation and property insurance waivers of subrogation required by this Agreement. District shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. District, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, “Additional Insureds”) shall be named as Additional Insureds under all of the policies, except workers’ compensation, which shall be so stated on the Certificate. All policies, other than workers’ compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed \$100,000, or such greater amount as expressly allowed in writing by District. Licensee shall defend, indemnify and hold harmless District and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall include all of its agents, contractors and their subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each. Agents, contractors and subcontractors must comply with all insurance requirements stated herein. Failure of agents, contractors and subcontractors to comply with insurance requirements does not limit Licensee’s liability or responsibility.

**18.4 Limits.** The limits of liability set out in this Article 18 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.

**18.5 Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Agreement with 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 District's employees or agents, 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.

- 18.6 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 by either itself or its contractors and/or subcontractors.

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## **Article 19—Authorization Not Exclusive**

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

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## **Article 20—Assignment**

- 20.1 Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of District, which consent shall not be unreasonably withheld. It shall be unreasonable for District to withhold consent without cause to an assignment of all of Licensee's interests in this Agreement to its Affiliate.
- 20.2 Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish District with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants or conditions of this Agreement without the express written consent to the release of Licensee by District.
- 20.3 Sub-licensing.** Without District's prior written consent, Licensee shall not sub-license or lease to any third party, including but not limited to allowing third parties to place Attachments on District Facilities, including Overlashing, or to place Attachments for the benefit of such third parties on District's Poles or within

District's Conduit System. 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 20.3.

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## **Article 21—Failure to Enforce**

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

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## **Article 22—Termination of Agreement**

- 22.1** Notwithstanding District's rights under Article 12, District shall have the right, pursuant to the procedure set out in Paragraph 22.2, to terminate this entire Agreement, or any Permit issued hereunder, whenever Licensee is in default of any term or condition of this Agreement, including but not limited to the following circumstances:
- 22.1.1** Construction, operation or maintenance of Licensee's Attachments in violation of law or in aid of any unlawful act or undertaking; or
  - 22.1.2** 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 or violation of any other agreement with District; or
  - 22.1.3** Construction, operation or maintenance of Licensee's Attachments without the insurance coverage required under Article 18.
- 22.2** District will notify Licensee in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition(s) applicable to Paragraph 22.1 above. Licensee shall take immediate corrective action to eliminate any such condition(s) within fifteen (15) calendar days, or such longer period mutually agreed to by the Parties, and shall confirm in writing to 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, District may immediately terminate this Agreement or any Permit(s). In the event



of termination of this Agreement or any of Licensee’s rights, privileges or authorizations hereunder, District may seek removal of Licensee’s Attachments pursuant to the terms of Article 11, provided, that Licensee shall be liable for and pay all fees and charges pursuant to terms of this Agreement to District until Licensee’s Attachments are actually removed.

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## **Article 23—Term of Agreement**

- 23.1** 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. Upon failure to give such notice, this Agreement shall automatically continue in force on a year to year basis until terminated by either party after one hundred eighty (180) calendar days written notice.
- 23.2** Licensee’s indemnity and other obligations under Article 16 shall survive and continue even after the termination of this Agreement.

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## **Article 24—Amending Agreement**

Except as otherwise provided under this 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.

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## **Article 25—Notices**

- 25.1** 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 personally delivered to, or when mailed by certified mail, return receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

If to District, at: 1400 Vantage Highway, Ellensburg, WA 98926

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

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

**25.2** Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where District can contact Licensee to report damage to Licensee’s facilities or other situations requiring immediate communications between the Parties. Such contact person shall be qualified and able to respond to District’s concerns and requests. Failure to maintain an emergency contact shall subject Licensee to a penalty of \$100 per incident, and shall eliminate District’s liability to Licensee for any actions that District deems reasonably necessary given the specific circumstances.

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## **Article 26—Entire Agreement**

This Agreement supersedes all previous agreements, whether written or oral, between District and Licensee for placement and maintenance of Licensee’s Attachments on District Poles or within the Conduit System within the geographical service area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein.

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## **Article 27—Severability**

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the Parties that this Agreement be administered as if not containing the invalid provision.

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## **Article 28—Governing Law**

The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Washington or any regulatory agency of competent jurisdiction. The sole and exclusive venue of any legal action in regard to this Agreement shall be in Superior Court of Kittitas County, Washington.

If litigation arises out of this Agreement, the substantially prevailing party shall be entitled to recover all reasonable legal expenses including, but not limited to, attorney’s fees, expert witness fees, and travel and lodging expenses at trial and at the appellate court level.

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## **Article 29—Incorporation of Recitals and Appendices**

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

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## **Article 30—Performance Bond**

On execution of this Agreement, Licensee shall provide to District a performance bond in an amount that is equal to Twenty Dollars (\$20) per Licensee Pole Attachment, and Twenty Dollars (\$20) per linear feet of Conduit System occupied, which amounts shall be adjusted accordingly on an annual basis to account for additions or reductions in the total number of Licensee’s Pole Attachments and use of Conduit System. The bond shall be with an entity and in a form acceptable to 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 and fees due to District which arise by reason of the construction, operation, maintenance or removal of Licensee’s Attachments on or about District’s Poles or within its Conduit System.

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## **Article 31—Force Majeure**

- 31.1** In the event that either District or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and any such party shall endeavor to remove or overcome such inability as soon as reasonably possible. Licensee shall not be responsible for any charges associated with District Facilities for any period(s) that such facilities are unusable.
- 31.2** District shall not impose any charges on Licensee stemming solely from Licensee’s inability to perform required acts during a period of unavoidable delay as described in Paragraph 31.1, provided that Licensee present District with a written description of such *force majeure* within a reasonable time after occurrence of the

