

**POLE ATTACHMENT LICENSE AGREEMENT  
SKAMANIA COUNTY PUD**

**PARTIES:**

PUBLIC UTILITY DISTRICT No. 1 of SKAMANIA COUNTY, WASHINGTON, a Washington municipal corporation, hereinafter called “PUD”, and

\_\_\_\_\_ [Name]  
a \_\_\_\_\_ [State of Organization] \_\_\_\_\_ [Type of Entity]  
hereinafter called “Licensee”,

**RECITALS:**

1. PUD is a Washington Public Utility District operating under RCW Ch. 54 and maintains utility poles throughout its district.
2. Licensee is a utility provider duly authorized to do business in Skamania County, Washington.
3. Licensee wishes to attach its equipment to PUD’s poles and PUD is willing to grant a limited license as provided in RCW 54.04.045.

**AGREEMENT:**

The parties mutually agree that the following terms and conditions shall govern Licensee’s use of PUD’s contact on such poles located in and identified on Skamania County PUD No. 1’s service area, in the State of Washington, upon a PUD approved application as hereinafter provided.

Section 1. Permitted Use of Poles. PUD hereby grants to Licensee a non-exclusive site-specific limited license to attach equipment approved by PUD either in written form or electronically, according to the License Application by this reference fully incorporated herein, (hereinafter “equipment”). Licensee’s use of such poles shall be for the purpose of attaching its equipment, and such equipment shall be used by Licensee only.

Section 2. Non-Exclusive Use; Indemnification. PUD may permit Licensee to attach such equipment to poles identified in PUD’s system which are jointly used by PUD and other utilities in which case Licensee shall be responsible to the other utilities to the same extent as though its equipment were the property of PUD, and Licensee shall indemnify the other utilities and the PUD against and hold them harmless from any and all damage and liability incident to the installation, presence, maintenance or use of Licensee’s equipment upon such jointly used poles. PUD shall not act as an arbiter in any disputes between Licensee and other pole users. PUD shall collect and retain all amounts payable by Licensee under the provisions of Section 14 hereof for the privilege of placing and maintaining said equipment upon said jointly used poles.

Section 3. Application Required. Whenever licensee shall desire to place equipment upon any of such poles, Licensee shall make written application for permission to do so, along with the non-refundable PUD application fee, in a form as may from time to time be prescribed by PUD either in written form or electronically at the PUD's discretion. PUD shall notify Licensee within forty-five (45) days from receipt of Licensee's application whether the application is complete, or that the application is incomplete and provide Licensee a statement of what information is needed to make the application complete. Once Licensee has submitted a complete application as determined by PUD, PUD shall have sixty (60) days to notify Licensee whether the application is granted or denied, and if denied, the reason or reasons for the denial. In extraordinary circumstances, and with the applicant's approval, the PUD may extend the sixty-day timeline. If such application is approved, permission to place the equipment described in such application upon the poles or poles therein identified shall be granted by PUD by signing physical or electronically, at the PUD's discretion, the application in the place provided thereon for that purpose and returning such signed copy to Licensee.

Section 4. Notice to PUD Prior to Installation. Upon receiving the approved copy of such application, but not before, Licensee shall have, in the manner described in this Agreement, the right to install, maintain, and use its equipment described in the application upon the pole or poles identified therein; provided, however, that before commencing any such installation Licensee shall notify PUD of the time when it proposes to do such work and, in no case less than 10 business days before such work, so that PUD may arrange to have its representative present when such work is performed.

Section 5. Liquidated Damages for Unauthorized Attachment; Trespass Declared. In the event Licensee shall contact any pole without a specific permit from PUD for such attachment, or in a manner contrary to an existing permit, either of which shall constitute an "unauthorized attachment or contact," Licensee understands and agrees that it shall pay liquidated damages of \$50.00 per day for each unauthorized pole contact. Licensee shall pay said penalty to PUD within thirty (30) days of the date PUD notifies Licensee of the unauthorized pole contact. Should unauthorized pole contacts be done to the extent that an "inventory" of PUD's poles is necessitated to determine the number of unauthorized contacts in the PUD's sole discretion, the Licensee shall pay the total cost of conducting such inventory, including PUD labor, materials, consultant, legal, and any other related costs, and such payments shall be paid within thirty (30) days of the date PUD notifies Licensee of the inventory cost. This payment by Licensee shall be without prejudice to PUD's right to maintain a trespass action against Licensee and to seek other relief in law or equity including injunctive relief.

Section 6. Pole Attachment Standards. Licensee shall, at its own sole risk and expense, place and maintain its equipment upon such pole or poles (a) in a safe condition and in thorough repair, (b) in a manner suitable to PUD and so as not to conflict or interfere with the working use of such poles by PUD or others using such poles, or with the working use of facilities of PUD or others upon or from time to time placed upon such poles, and (c) in conformity with such requirements and specifications as PUD shall from time to time prescribe upon sixty (60) days prior written notice, and with all laws, and the regulations, orders and decrees of all lawfully constituted bodies and tribunals, pertaining to pole line construction,

including without limiting the scope of the foregoing, the National Electric Code, National Electrical Safety Code, the State of Washington Construction Code, Occupational Safety and Health Act, and the Washington Industrial Safety and Health Act.

(a) If in the judgment of PUD, the accommodation of any of Licensee's new equipment would necessitate the rearrangement of facilities on an existing pole or the replacement of any existing pole to provide adequate pole facilities, PUD will indicate on such application the necessary changes and the estimated cost thereof and return it to Licensee within forty-five (45) days of Licensee's request; and if Licensee still desires to use such pole and returns the application marked so to indicate, PUD will provide new pole facilities if required in its sole judgment, and PUD and any other Utility owning said facilities shall make such transfers or rearrangements of existing facilities as may be required, all to be done at the sole risk and expense of Licensee, and Licensee, on demand, will pay up front to the PUD the actual costs incurred for work performed due to the request of Licensee.

(b) If in PUD's sole judgment, Licensee's existing equipment on any pole interferes with or would make substantially more difficult or expensive the placing thereon of any additional facilities required by PUD and if such additional facilities could be placed upon such pole by rearranging the existing facilities (excluding rearrangement of Licensee's equipment alone) thereon, PUD may notify Licensee of the rearrangements of facilities required in order to continue the accommodation of Licensee's equipment, the Licensee shall rearrange its facilities as the sole expense of Licensee.

Section 7. Permit Denial. Nothing in this agreement shall be construed to obligate PUD to grant Licensee permission to use any particular pole or poles, except as may be required in RCW 54.04.045(6). If such permission is refused, Licensee may make any other lawful arrangement it may wish to provide for its equipment at the location in question, provided such facilities of Licensee shall at all times conform to the requirements of the National Electrical Safety Code except where the lawful requirements of public authorities may be more stringent, in which case the latter shall govern.

Section 8. Anchoring and Guying Facilities.

(a) Licensee must at a minimum comply with PUD anchorage and guying requirements as indicated in the application for attachment permit. The PUD at its discretion may amend said requirements if, in its sole judgment, such is necessary to protect the facilities and attachments of the PUD and any Licensees, for public safety, or to comply with applicable legal requirements or best practices. If anchorage and guying requirements are amended, Licensee will pay, on demand by the PUD, its proportionate share of any associated cost or, if the PUD determines that additional requirements are solely attributable to Licensee, it will be responsible for the entire cost of any additional requirements.

(b) Any additional guying facilities, or any deviation from PUD requirements, must be approved in writing by the PUD, and any private property owners whose property is used for such facilities. The PUD will have unfettered access to all anchorage and guying facilities in order to determine whether its requirements are being met.

(c) Upon termination of this Agreement, the PUD at its discretion may request removal of any guying facilities attributable to Licensee or may require such facilities remain in place indefinitely. Licensee will defend and indemnify the PUD against any and all claims arising out of its failure to comply with PUD anchorage and guying requirements. Licensee's duty to defend and indemnify shall survive the termination of this Agreement.

Section 9. PUD Reservation of Rights. PUD reserves to itself and to each other owner of facilities upon such poles the right to maintain said poles and to operate their facilities thereon in such manner as will best enable it to fulfill its own service requirements, and neither PUD or any other such owner shall be liable to Licensee for any interruption to Licensee's service or for any interference with the operation of Licensee's equipment arising in any manner from the use of such poles and the facilities thereon by PUD and each such other owner. Licensee understands and agrees with the PUD Reservation of Rights and enters into this Agreement with full knowledge herein.

Section 10. Licensee to Obtain Permits and Approvals. Licensee will obtain from public authorities and private owners of real property any and all permits, licenses or grants necessary for the lawful exercise of the permission granted by any application approved hereunder; and Licensee shall submit to PUD evidence of compliance with the foregoing requirements prior to or at the time of making application for permission to place such equipment upon such pole or poles.

Section 11. Relocation of Equipment. Licensee shall at any time, at its own sole risk and expense, upon notice from PUD, relocate, replace or renew such equipment, or transfer it to permanent or temporary substituted poles, or temporarily relocate such equipment as may be required by PUD; provided, however, that in cases of emergency, PUD may, at Licensee's sole risk and expense, relocate, replace or renew such equipment as provided herein, and Licensee, on demand, will reimburse PUD for the entire expense thereby incurred. Any approved relocation shall act as a modification of Licensee's License Application, to the extent pole attachments change as a result.

In the event it is necessary to relocate Licensee's appurtenances to provide clearance for fire alarm, signal purposes, or public safety apparatus, the expense involved shall be borne by Licensee.

Section 12. Removal of Equipment. Licensee may at any time remove its equipment from any of such poles and, in each such case, Licensee shall immediately give PUD notice of such removal either in written form or electronically in the PUD's discretion, otherwise as may be from time to time prescribed by PUD. Removal of such equipment from any pole shall constitute a termination of Licensee's right to use such pole and reduction in rental charge accordingly the calendar year following removal of Licensee's equipment.

Section 13. Pole Attachment Rate. For the privilege of placing and maintaining such equipment upon such poles, Licensee will pay to PUD annually the amount to be computed according to RCW 54.04.045(3), on the first day of July of each calendar year during existence of this agreement, presently at the rate noted below:

**\$19.06 per year per pole contact for any and all contacts that existed during the previous calendar year. A “calendar year” is defined as the first day of July through the last day of the following June.**

By giving six (6) months’ notice to Licensee, PUD may, from time to time, or as required by law, change the rate specified in this Section effective as of the date on which the annual payment hereinabove provided for is to be computed next following the expiration of said twelve (12) months. If such changed rate is not acceptable to Licensee, Licensee may terminate this agreement as hereinafter provided.

Licensee shall promptly pay any taxes or fees levied against its property attached to or within PUD’s poles.

PUD reserves the right to conduct an annual system-wide audit and inventory or Licensee’s attachments. Licensee shall reimburse PUD for all reasonable expenses associated with this inventory and the cost will be equally shared by other joint pole users.

Section 14. No Property Right Created. No use, however extended, of any of such poles under this agreement shall create or vest in Licensee any ownership or property rights therein, but Licensee’s rights therein shall be and remain a mere license, which as to any particular pole or poles may be terminated at any time by PUD upon thirty (30) days written notice to Licensee, and Licensee shall remove its equipment from such pole or poles within thirty (30) days, provided, however, that in cases where PUD, for reasons beyond its control, cannot maintain a pole or poles in the existing location for such thirty (30) days Licensee will remove its equipment in the time required by PUD which is less than thirty (30) days. Nothing herein contained shall be construed to compel PUD to maintain any particular pole or poles for a period longer than demanded by its own service requirements. The PUD’s exercise of its right to terminate Licensee’s use of a particular pole or poles shall not be deemed a request to terminate this Agreement unless Notice to Terminate is given as provided in Section 22.

Section 15. Care to Avoid Damage. Licensee will exercise special precautions to avoid damage to the facilities of PUD and others supported on such poles; and Licensee assumes all responsibility for any and all loss from such damage. Licensee will make an immediate report of the occurrence of any such damage to the owner of the damaged facilities and, on demand, will reimburse said owner for the entire expense incurred in making repairs.

Section 16. Security Provisions. In furtherance of the purposes of laws, rules, and regulations relating to the securities of communications, espionage, sabotage and subversive activities, Licensee agrees as follows:

(a) To file with the local manager of PUD a list of the names of all of Licensee’s employees, agents, and contractors who may have occasion to perform work on or about any of such poles under this agreement, and from time to time to file with said manager supplemental lists thereof to reflect changes in personnel.

(b) To provide suitable identification to each such employee, agent, and contractor.

(c) To cause each such employee, agent, and contractor to observe faithfully and to comply strictly with all general security rules which PUD reasonably may find necessary or advisable in the premises.

(d) Not to assign any work on or about such poles to any such employee, agent, or contractor who, in the judgment of PUD or any governmental authority having jurisdiction, is a security risk.

Section 17. Licensee to Indemnify PUD. In addition to all other indemnity and assumption of liability provisions herein contained, it is further expressly agreed that (a) Licensee shall compensate PUD for any and all damage to PUD's property resulting directly or indirectly from the installation, presence, use, maintenance, repair or removal of Licensee's equipment; (b) PUD shall not be liable for any damage to Licensee's equipment or for any interruption or disturbance of or interference with Licensee's service to any of its subscribers occasioned by any act or omission of PUD or by electricity used or transmitted by PUD; (c) The Licensee shall defend, indemnify and hold the PUD, its officers, officials, employees, agents, consultants, attorneys, and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of, or in connection with, the performance of this Agreement, except for injuries and damages caused by the sole negligence of the PUD. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Licensee and the PUD, its officers, officials, employees, and volunteers, the Licensee's liability hereunder shall be only to the extent of the Licensee's negligence. ***It is further specifically and expressly understood that the indemnification provided herein constitutes the Licensee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification.*** This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Section 18. Licensee to Maintain Insurance. Throughout the life of this agreement Licensee will maintain in full force and effect with a carrier or carriers selected by Licensee and satisfactory to PUD:

- (a) Compensation Insurance under and in compliance with all Workmen's Compensation Insurance and Safety Laws of the State of Washington and amendments thereto;
- (b) Bodily Injury Liability Insurance with limits of not less than \$2,000,000 as to each incident;
- (c) Property Damage Liability Insurance with limits of not less than \$2,000,000 as to each incident;
- (d) A bond in the sum of Ten Thousand Dollars (\$10,000.00) to guaranty Licensee's performance hereunder and payment of any sums due to PUD under this agreement. Such bond shall become immediately payable upon demand and reasonable justification. The District, at its sole discretion, may waive the requirement of a performance and payment 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. The District may waive the provisions of this Article for small governmental Licensees.

The insurance described in (b) and (c) above shall also provide contractual liability coverage satisfactory to PUD with respect to liability assumed by Licensee under the provisions

of Section 18. Written proof of compliance with the requirements of this section shall be provided to, and approved by, the PUD prior to the installation of any of Licensee's equipment upon PUD's poles and prior to the expiration of each policy year thereafter. The policy must provide that it may not be cancelled or changed except following thirty (30) days' notice to the PUD. PUD shall be provided with a copy of the certificate of insurance showing PUD as additionally insured. Failure to maintain the required insurance is a breach of this Agreement and entitles the PUD to immediately terminate this Agreement and require Licensee to remove all of its equipment at Licensee's expense and risk.

Section 19. Default. Licensee shall be in default of this agreement if it fails or refuses to meet any of its obligations under this agreement after thirty (30) days after written notice thereof, unless otherwise expressly provided in this Agreement. Licensee shall further be in default of this agreement if it files for Bankruptcy protection, whether in liquidation or reorganization. In that event, PUD shall have no notice requirement.

In the event of Licensee's default, and in addition to other remedies that may apply herein, PUD may forthwith terminate its participation under this agreement or forthwith terminate any or all permits granted by it hereunder, in which event Licensee shall within thirty (30) days from notification thereof remove its equipment from the poles to which such termination applies. If Licensee fails to remove its equipment within that time, PUD may remove or contract for the removal of PUD's equipment, and Licensee shall repay PUD for all costs related to equipment removal, including, without limitation, wages, benefits, and administrative costs as reasonably calculated by PUD. PUD shall be entitled to all pole attachment fees through the date of termination plus any period required to remove Licensee's equipment. Licensee shall be responsible for full-year pole attachment fees without proration regardless of when the termination occurs.

If Licensee should default in the removal of its equipment from any pole within the time allowed for such removal or should default in the performance of any other work which it is obligated to do under this agreement, in addition to other remedies set forth herein, PUD may elect to do such work at Licensee's sole risk and expense, and Licensee, on demand, will reimburse PUD for the entire expense incurred.

The failure of PUD to enforce any provision of this agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

In the event PUD brings any action or suit against Licensee for breach of this agreement, PUD shall be entitled to recover, in addition to any judgment or decree for costs, such sum as the court shall judge reasonable as attorney's fees before trial, at trial and on appeal. Venue for any disputes shall be in Skamania County, Washington Superior Court. If an action or suit is required to be filed in federal court, venue shall be the United States District Court for the Western District of Washington, Tacoma, Washington.

Section 20. All amounts payable by Licensee to PUD or others under the provisions of this agreement shall, unless otherwise specified, be due and payable within thirty (30) days after mailing of bills therefore. Licensee's failure or refusal to pay of any invoice when due shall constitute a default by Licensee under this agreement with no additional notice period required.

Section 21. No Third-Party Beneficiary Rights. PUD has not and shall not grant an exclusive right, permit or privilege to Licensees and nothing herein contained shall be construed as affecting any rights or privileges previously conferred or which may be conferred hereafter by PUD, by contract or otherwise, to others not parties to this agreement to use any poles covered by this agreement; and PUD shall have the right to continue and extend such rights or privileges. The privileges herein granted to Licensee shall at all times be subject to any such existing contracts and arrangements and to any contracts and arrangements conferred from date hereof by PUD.

Section 22. Term. Unless earlier terminated as herein provided this agreement shall continue in effect from year to year, provided that at the expiration of one (1) year from the date hereof, or at any time thereafter either party hereto may terminate the agreement in whole or in part by giving the other party at least six (6) months written notice to that effect. At the expiration of such six (6) months, all rights and privileges of Licensee as to the poles affected by said notice shall forthwith terminate. Licensee shall remove its equipment from the poles within such six (6) months and if it fails to do so PUD may remove Licensee's equipment or have it removed at Licensee's risk and expense.

Any termination of this agreement in whole or in part shall not release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, which may have accrued or which may be accruing or which arises out of any claim that may have accrued or may be accruing at the time of termination.

Section 23. License Non-Transferable. Licensee shall not assign, transfer or sublet any privilege granted to it hereunder without the prior consent in writing of PUD, but otherwise this agreement shall inure to all the benefit of and be binding upon the heirs or successors and assigns of the parties hereto. Any attempted assignment made without PUD's prior written consent shall be null and void as to PUD.

Section 24. Delivery of Notices. Wherever in this agreement notice is provided or required to be given by one party hereto to another, such notice shall be in writing and transmitted by United States mail, certified mail, return receipt requested and postage fully prepaid, a delivery service such as Federal Express or United Parcel Service with delivery acknowledgment, or by personal delivery to PUD at its office at PO Box 500, Carson, Washington, 98610 and to Licensee at its offices at

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Dated at Carson, Washington, this \_\_\_\_\_ day of \_\_\_\_\_, 2017 .

LICENSEE:

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LICENSOR (PUD):

PUBLIC UTILITY DISTRICT NO. 1  
OF SKAMANIA COUNTY, WASHINGTON,  
A Washington Municipal Corporation

\_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

ITS: General Manager