

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: February 8, 2021

AGENDA ITEM:	
Snohomish County PUD No. 1 Pole Attachment License Agreement for Municipal Entities	
PREPARED BY:	DIRECTOR APPROVAL:
Karen Latimer, Utility Manager	KE for KN
DEPARTMENT:	
Public Works	
ATTACHMENTS:	
Pole Attachment License Agreement for Municipal Entities	
BUDGET CODE:	AMOUNT:
N/A	N/A
SUMMARY:	

On December 12, 2008 the City entered into a Pole Attachment License Agreement for Municipal Entities (PALA) with PUD No. 1 of Snohomish County (PUD) that allowed the City to attach communication facilities, associated equipment and appurtenances to utility poles owned by PUD. The primary purpose for entering into this agreement was to install City-owned automated meter reading equipment on PUD utility poles. On June 19, 2020, the PUD sent a Notice of Termination of the PALA effective January 1, 2021, with a commitment to provide a new replacement PALA for execution in advance of the termination date. City staff participated in a joint process the past few months to review and comment on the proposed replacement PALA, including providing comments from the City's Legal and Risk/Emergency Management departments. The City received the new replacement PALA on December 22, 2020.

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor to sign and execute the Pole Attachment License Agreement for Municipal Entities with Snohomish County PUD No. 1.

RECOMMENDED MOTION:

I move to authorize the Mayor to sign and execute the Pole Attachment License Agreement with Snohomish County PUD No. 1.

POLE ATTACHMENT LICENSE AGREEMENT FOR MUNICIPAL ENTITIES

This is a Pole Attachment License Agreement (“Agreement”) between the Public Utility District No. 1 of Snohomish County, a Washington State Municipal Corporation (“Licensor”), and City of Marysville, a Washington State Municipal Corporation}, (“Licensee”). Licensor and Licensee are also referred to herein individually as “Party” and collectively as “Parties”.

WHEREAS, Licensee desires to attach various communications facilities and equipment including cables, wires and appliances, strand mounted equipment (including amplifiers, and devices that may be operated without an individual license from the Federal Communications Commission (“FCC”)) together with associated cable messengers, anchors, power supplies, and other appurtenances (collectively and individually referred to herein as “Equipment”) to the utility poles of the Licensor in its Distribution Area

WHEREAS, subject to the terms and conditions hereof, Licensor is willing to permit, to the extent it may lawfully do so, the Licensee to attach its Equipment upon the poles of the Licensor where, in the judgment and opinion of Licensor such attachment will not interfere with the service requirements of the Licensor or other Licensor authorized joint users, including considerations of economy and safety.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties agree as follows:

I. GENERAL AGREEMENT

1.01 Permits - In General

Subject to the terms, conditions and limitations set forth in this Agreement, Licensor agrees that it will issue specific permits to Licensee to permit the Licensee to attach its Equipment to specific points of contact on specific poles of Licensor within the distribution area defined in Section 1.03.

However, under certain circumstances, and in the sole judgment and opinion of the Licensor, Licensor may refuse to grant a specific permit for a particular pole. Circumstances which may justify Licensor’s refusal include, but are not limited to, the following:

- (a) There is insufficient capacity for Licensee’s Equipment on the pole; and
- (b) For reasons of safety, reliability, and/or the inability to meet generally applicable engineering standards and practices.

In the event a specific permit has been granted by the Licensor for a particular pole but the Licensee has not made its attachment to that pole within one hundred twenty (120)

days from the date the permit was issued, Licensor shall have the right to cancel and revoke such permit on twenty (20) days' written notice subject to Licensee having the right to maintain said permit should it make its attachment to said pole within the first ten (10) days of said twenty (20) day period. Nothing contained in this Agreement, or any permit issued pursuant to this Agreement, shall be construed to compel the Licensor to maintain any of its poles for a period longer than is necessary for Licensor's service requirements. In the event that Licensor elects to discontinue use of any pole or poles for which a specific permit has been granted to Licensee, Licensor will send a written notice to that effect to Licensee, and Licensee agrees to remove its Equipment from such pole or poles within thirty (30) days of the date of such notice in accordance with Section 6.05.

1.02 Specific Permits Required

The Licensee shall have no right pursuant to this Agreement to attach to any pole of the Licensor until a specific permit has been granted as to that pole for each attachment.

1.03 Distribution Area

The Distribution Area covered by this Agreement shall be that portion of Snohomish County and Camano Island as served by the Licensor.

1.04 Joint Ownership

It is understood that some of the poles for which permits are sought from the Licensor under this Agreement will not be owned solely and entirely by this Licensor and that such poles may be owned, in part, jointly with others. Accordingly, all references herein to "Licensor's poles" or "its poles" shall mean all poles in which the Licensor has an ownership interest including poles solely owned by the Licensor and poles owned by the Licensor jointly with others. The Licensor does not, by granting of a permit for any poles to which it does not have complete or full ownership, in any manner warrant or grant or convey any permit or permitting rights on behalf of any other joint owner(s) of such poles and Licensor hereby specifically states that it has no rights to bargain for or permit for or on behalf of any other joint owner of any pole. As to jointly owned poles, the Licensee specifically understands and agrees that it will be required to make appropriate agreements for permits, licenses, or other written consent for Licensees' use of a jointly owned pole with all other joint owners of such poles; provided, further, that Licensee hereby agrees to be responsible for obtaining the appropriate permission from all joint owners and Licensee further agrees to hold harmless and indemnify the Licensor herein from any claims or damages alleged against Licensor by reason of the failure of Licensee to secure or obtain the appropriate permission, license, or permit from any other joint owners of such poles.

1.05 Licensor/Licensee Relationship

No use, however extended, of the Licensor's poles under this Agreement shall create or vest in Licensee any ownership or property right in said poles. It is expressly understood and agreed that the privileges of Licensee shall be and shall remain the privileges of a mere Licensee. Moreover, Licensee specifically understands and agrees that the permit privileges granted herein and the specific permits granted pursuant to this Agreement are

non-exclusive, and Licensor may grant attachment privileges to other Parties for the use of the same poles for which Licensee has specific attachment permits; provided, however, that pole attachment privileges subsequently granted by Licensor to other parties pursuant to licenses, permits and/or rental agreements shall not limit or interfere with any prior attachment privileges granted to Licensee hereunder or result in further rearrangement or make-ready costs to Licensee.

1.06 Other Users

It is specifically understood and agreed that the permits granted pursuant to this Agreement are non-exclusive and that other parties including utility companies, municipalities, and private parties have attachment privileges on Licensor's poles and, further, Licensor may continue to grant attachment privileges to other parties after Licensee has attached its facilities to a particular pole. Nothing in this Agreement or elsewhere shall give the Licensee any exclusive privilege to the use of the Licensor's poles for any purpose, and the Licensor shall be free at any time, if Licensor so desires, to grant attachment privileges to other users. Nothing herein contained shall be construed as affecting the privileges previously conferred by the Licensor, by contract or otherwise, to Licensor's continuing right to extend attachment privileges to other users. The attachment privileges granted by the Licensor to Licensee shall be at all times subject to any contracts, agreements, and arrangements made by Licensor and such other users. However, pole attachment privileges subsequently granted by Licensor to other parties pursuant to licenses, permits and/or rental agreements shall not limit or interfere with any prior attachment privileges or uses granted to Licensee hereunder or result in further rearrangement or make-ready costs to Licensee.

1.07 Primary Use of Poles

The Licensee expressly recognizes and agrees that the Licensor's poles are used and are to continue to be used primarily for the Licensor's purposes and for the purpose of joint users and, accordingly, the Licensee's use will be a secondary use and that this Agreement is made and all permits granted hereunder are granted as an accommodation to the Licensee. Therefore, Licensee specifically agrees that it will pay, in addition to the charges specified in Article III below, all costs incurred by Licensor in connection with any work performed by the Licensor pursuant to this Agreement in order to provide or maintain space on any poles for the Licensee's Equipment, and any other costs incurred by the Licensor arising out of this Agreement, as hereinafter provided. Licensee further agrees to be responsible for any consents, permits, taxes, licenses or other requirements that may be imposed upon Licensor by reason of this Agreement and to pay all such taxes, fees, charges, and expenses as may be imposed upon Licensor as a result of this Agreement.

1.08 Prohibited Equipment

Pole mounted or strand mounted FCC licensed radios are not be permitted under this Agreement. Attachment of FCC licensed radios may be permitted under a separate Master License Agreement (MLA) or Small Cell Master License Agreement (SCMLA) with Licensor. Additionally and in the event that Licensee desires to attach other equipment or facilities to Licensee's pole(s) that are neither Equipment as that term is defined in this

Agreement or FCC licensed radios, Licensee will need to enter into a separate agreement with Licensor containing terms and conditions for said attachments.

1.09 Administrators

Each Party to this Agreement shall designate an individual (“Administrator”), which may be designated by title or position, to oversee and administer such Party’s participation in this Agreement. The Parties’ initial Administrators shall be the following individuals:

Licensor’s Initial Administrator:

Beth A. Haskin
Joint Use & Permits Administrator
Snohomish Co PUD #1
1802 75th St SW, MS-O3
Everett, WA 98203-6264
425-783-4315

Licensee’s Initial Administrator:

Karen Latimer
Utility Manager
City of Marysville
80 Columbia Avenue
Marysville, WA 98270
(360) 363-8161

Either Party may change its Administrator at any time by delivering written notice of such Party’s new Administrator to the other Party.

II. PROCEDURES AND COSTS

2.01 Application Permit Form

The Licensee is required to obtain a permit to attach its Equipment to any of the Licensor’s poles. Licensee shall make a written application therefor on the application form provided by Licensor, a copy of the current version of which is attached to this Agreement as Exhibit “A”, and which application form may be revised from time to time in the sole discretion of Licensor. The Licensee shall provide all information listed on Exhibit “C”. Notwithstanding the foregoing, no permit shall be required for the installation of a service drop from one of Licensor’s poles (for which Licensee has already obtained a permit from Licensor for attachment of its Equipment) to a structure of Licensee’s customer.

2.02 Application Fee

Each application shall be accompanied by an application fee (“Application Fee”) in the amount set forth in the Licensor’s Joint Use Schedule, as amended from time to time. Such Application Fee shall cover the average costs of the preliminary administrative and engineering review described in Section 2.03 and audit of the completed attachment. Licensor may annually review the Application Fee amount and provide at least six (6) months written notice to Licensee of any increase or decrease in such Application Fee and the Joint Use Schedule shall be amended accordingly.

2.03 Administrative and Engineering Review of Application

Upon receipt of the complete application, the Licensor agrees to review the pole(s) in question to determine among other things:

- (a) Whether such poles are available for the Licensee's Equipment;
- (b) Whether, in order to accommodate the attachment of Equipment of Licensee, any rearrangements or other changes are necessary to the facilities of the Licensor or the facilities of other joint users of the poles in question;
- (c) Whether any poles in question require strengthening (guying and anchoring) in order to support the attachment of Licensee's Equipment;
- (d) Whether any poles require replacement by taller or stronger poles in order to support the attachment of Licensee's Equipment; and
- (e) Whether any vegetation management and/or tree trimming is required.

The administrative and engineering review shall include an engineering estimate of the costs of performing those items described in subsections (b), (c), and (d) of this Section. Such engineering estimates shall constitute "make-ready work" within the meaning of Section 2.04.

Licensor shall review each application submitted by Licensee for completeness and shall notify Licensee whether said application is complete or incomplete within forty-five (45) days of receipt of the application. If incomplete, the notice shall describe what information is needed to make the application complete. Licensee shall have forty-five (45) days (or longer as determined by Licensor) to submit any missing information and complete any action(s) described in the notice of incompleteness. If Licensee fails to provide such information or complete such action(s) within the required time period, Licensor may reject the application and retain the Application Fee.

Within sixty (60) days of an application being deemed complete, Licensor shall notify the applicant as to whether the permit application has been accepted or rejected. In extraordinary circumstances, and with the approval of the applicant, the Licensor may extend the sixty (60) day timeline. If the application is rejected, the Licensor shall provide Licensee with the reasons for the rejection and such reasons shall be in accordance with this Agreement and applicable state and federal law.

2.04 Make Ready Work

The phrase "make-ready work" shall include those items described in subsections 2.03(b), (c), (d), and (e) above.

(a) Make Ready Assessment. Upon completion of the review under Section 2.03, Licensor agrees to notify Licensee as to which of the poles in question are available for the Licensee's Equipment, including the exact location on the poles available or which will be available for attachment of Licensee's Equipment. Licensor further agrees to notify Licensee as to the make-ready work which will be required in order to accommodate

attachment of the Licensee's Equipment, including an estimate of the costs of such make-ready work. The Licensor agrees to consider any reasonable objections or comments made by the Licensee; provided, however, that the final decision as to the necessity for any make-ready work and the cost of such make-ready work shall be made by the Licensor. Upon execution of a Customer Service Contract (described in Section 2.05) receipt of the advance payment of the estimated make-ready costs (described in subsection 2.04(b)), the Licensor shall proceed with such make-ready work, subject to the availability of the necessary materials, equipment and labor, and subject to the further requirement that such work not interfere with the service requirements of the Licensor.

(b) Cost Accounting. The Licensor shall determine the costs of make-ready work and such costs shall include but not be limited to the following:

- Materials and supplies;
- Engineering services;
- Labor costs, including but not limited to regular rates of pay, overtime rate of pay, and any other applicable premium rate of pay;
- Supervision;
- Transportation of Licensor personnel;
- Any applicable taxes;
- General overhead, including appropriate loadings for such items as pension accruals, social security taxes, vacations, holidays, sickness, workman's compensation; and
- Any other accounts under the uniform system of accounts applicable to Licensor as prescribed by the Federal Energy Regulatory Commission.

(c) Pole Replacement Costs. With respect to the replacement of any pole, the costs shall be determined by the Licensor and shall include the total costs of the new pole, and removal of the old pole, of all transferring of the Licensor's Equipment from the old to the new pole, and such other costs, if any, necessitated by the Licensee's requirements, all as defined above, less the total of salvage, if any, and the costs of such portion of the new pole, if any, which represents space reserved for the use of the Licensor and any joint users, greater than that provided for on the old pole.

2.05 Advance Payment of Estimated Costs and Customer Service Contract

Within ninety (90) days after the Licensor notifies the Licensee of the contemplated make-ready work and the estimated make-ready cost, the Licensee shall enter into a separate Customer Service Contract with the Licensor for the work to be performed by the Licensor and shall pay the Licensor the estimated costs for doing such work (as determined by the Licensor) at the time the Customer Service Contract is executed. Licensee shall not commence any construction or attempt to attach its Equipment to the Licensor's poles until Licensee has paid to Licensor the costs of all make-ready work and Licensor has authorized Licensee in writing to proceed. In the event Licensee does not enter into a Customer Service Contract with Licensor and pay the estimated costs within said ninety (90) days period, the application may be deemed withdrawn at the discretion of the Licensor. In such event, the Application Fee provided by the Licensee shall be retained by the Licensor.

2.06 Required Modifications of Licensee's Attachments

(a) If, in the Licensor's judgment, after the granting of any permit to the Licensee, the service needs of the Licensor, or any hazardous conditions, requires the moving and/or modification of the Licensee's Equipment, the Licensee agrees to make such changes at its own expense within thirty (30) days after the Licensor sends a notice to such effect, or within such shorter period as is feasible in the case of any hazardous condition.

(b) In the event of the Licensee's failure to comply with any request made by the Licensor under this Section, the Licensor shall have the right to exercise any one or more of the following options:

(i) Provide Licensee with written notice that Licensee has fifteen (15) days (or longer as determined by Licensor) to cure/address/resolve identified issue to the satisfaction of Licensor or permit may be cancelled and Licensee be required to remove its Equipment from subject pole(s) in accordance with Section 6.05;

(ii) Cancel Licensee's permit on fifteen (15) days' written notice with respect to any subject pole(s) and require Licensee to remove its Equipment from subject pole(s) in accordance with Section 6.05.

(c) The granting of attachment privileges to any other party(ies) and the addition of the equipment of any such third party(ies) to a pole or poles then occupied by Licensee shall not result in any further rearrangement expense or cost of additional make-ready work to Licensee, and any such costs or expense shall, pursuant to agreement between Licensor and such other party(ies), be the exclusive responsibility of such other party(ies).

2.07 Unauthorized Pole Attachments - Penalty

In the event Licensee shall attach Equipment to any pole of Licensor without specific permit for such attachment, in addition to the Application Fees, make-ready costs, and permit fees set forth herein, Licensee also understands and agrees that it shall pay a penalty for each unauthorized pole attachment in the amount set forth in the Licensor's Joint Use Schedule; provided that such amount may be increased from time to time upon at least six (6) months written notice to the Licensee. In addition to said penalty, Licensee also understands and agrees to pay an Application Fee for such poles as described in Section 2.02, and pole attachment fees as described in Section 3.01. In addition, Licensee shall pay accrued attachment fees as determined in accordance with Section 3.01 calculated from the date of such unauthorized attachment. In the event the Licensee cannot provide Licensor with satisfactory documentation (as solely determined by Licensor) as to the actual date of such unauthorized attachment, the Licensee shall be liable to Licensor for accrued charges for such attachment for a period of five (5) years preceding the date of discovery by the Licensor of such unauthorized attachment. The amount calculated for such accrued charges will be based on the current attachment fee(s) in effect for a wholly-owned Licensor pole on the date of discovery by the Licensor of such unauthorized attachment. Said penalty, Application Fee, and accrued attachment fees shall be paid by

Licensee within thirty (30) days of the date Licensor notifies Licensee of the unauthorized pole attachment.

2.08 Overlapping

The following permit application process will be utilized for proposed overlap construction.

(a) Licensee will submit application form and Application Fee in accordance with Sections 2.01 and 2.02.

(b) Licensor shall review the application in accordance with Section 2.03 and will identify and record any existing NESC violations. If during the review, Licensor identifies any defects and/or violations that would constitute a critical safety hazard (as solely determined by Licensor), then Licensor will correct the defect/violation to eliminate safety hazard prior to allowing Licensee to proceed with overlap construction.

(c) Subject to review and correction of any identified critical safety hazards per Section 2.08(b), if the proposed overlap construction does not create an NESC violation or worsen an existing violation, Licensor will approve the application and allow Licensee to proceed with overlap construction.

(d) Upon completion of overlap construction, Licensee will complete/close out the National Joint Use Notification System ("NJUNS") ticket generated by Licensor when the permit for the overlap construction was issued by Licensor and Licensor may review completed overlap construction.

(e) There shall be no annual attachment fee associated with such approved overlap permits.

III. FEES

3.01 Amount

(a) Annual Attachment Fee. The Licensee agrees to pay to the Licensor for each attachment per pole, as consideration for the permits to place its Equipment on Licensor's poles as described herein, the annual attachment fee(s) set forth in the Licensor's Joint Use Schedule to this Agreement. Such annual charges shall be paid within thirty (30) days of Licensee's receipt of Licensor's pole count and pole attachment identified itemized invoices in semi-annual installments. In the event Licensor does not receive payment within said thirty (30) day period, a late penalty of one percent (1.0 %) per month may be added on the unpaid amount past due.

(b) Method of Computation. The amount of semi-annual payment due for each six (6) month period shall be determined by Licensor based upon the total number of attachments on poles permitted as of December 15 for the January 1 to June 30 period and as of June 15 for the following July 1 to December 31 period.

(c) Interim Fees. The amounts set forth in the Joint Use Schedule shall be prorated per attachment per pole per month or fraction of a month from the dates of the granting of the permit for each attachment to the beginning of the next semi-annual billing period. Said interim charges shall be payable in advance at the time the permit application is filed for the remainder of the current six (6) month period.

3.02 Licensors' Right to Change Amount

Licensors may from time to time increase or decrease the attachment fees set forth in the Licensors' Joint Use Schedule hereto upon at least six (6) months written notice to Licensee and in accordance with applicable state and federal law. Such increase or decrease in fees shall take effect on the date specified in such notice or such other later time as determined by the District Board of Commissioners. Licensee shall have ninety (90) days from the date of the written notice to provide written comments to the District concerning any proposed fee increase or decrease. If such changes are not acceptable to Licensee, Licensee may terminate this Agreement as hereinafter provided.

3.03 Refund

In the event the Licensor cancels any permit or permits for reason other than the Licensee's default, the Licensee shall be entitled to a refund for each full month remaining in the period for which rental has been paid.

IV. PERMIT ATTACHMENTS

4.01 Permission from Other Authority

Before attaching any Equipment to the Licensor's poles, Licensee shall secure any necessary licenses, franchises, permissions or consents from federal, state or municipal authorities and shall secure any necessary easements from the owners of any property required for the construction and maintenance of Licensee's Equipment at the locations of the poles of the Licensor to which it desires to attach. Upon request from Licensor, Licensee shall provide a copy of any such license, franchise, permit, consent and/or easement.

(a) Existing Easements. Licensee understands that Licensor's existing easements rights may not include the rights necessary for Licensee to attach its Equipment at the locations of the poles of the Licensor to which it desires to attach. In that event, it shall be the responsibility of Licensee to secure the necessary rights for Licensee to attach its Equipment to said poles.

(b) Future Easements. In the event Licensor elects to procure easement rights for its poles and facilities, Licensor will seek rights which cover the poles and facilities of Licensor only.

4.02 Specifications and Standards

The Licensee at its own cost and expense shall construct, maintain and replace its Equipment on Licensor's poles in accordance with applicable local, state and/or federal law and the requirements and specifications of the current National Electrical Safety Code and any amendments or revisions thereof. In addition, all attachments shall be made by the Licensee in accordance with the Construction Standards attached hereto and made a part hereof, which may be revised from time to time by the Licensor. Licensor shall notify Licensee in writing of any such revisions to the Construction Standards applicable to Licensee's attachments.

4.03 Maintenance Duties

The Licensee shall, at its own cost and expense, operate and maintain all of its Equipment on the Licensor's poles in a safe manner and condition.

4.04 Damage to Facilities

The Licensee shall avoid damage to facilities of the Licensor or other joint users on ~~said~~ poles of Licensor, and hereby assumes all responsibility for any and all loss and damage to said poles—caused by the acts, omissions or facilities of the Licensee, its employees or agents. The Licensee shall make an immediate report to the Licensor of the occurrence of any damage and hereby agrees to reimburse the Licensor or other owners of the property damaged for the expense incurred in making repairs.

4.05 Modifications - Licensor Permission Required

Permits, when granted, are for the specific equipment, facilities and location specified in the original application. Any subsequent modification in the nature or location of the attachment specified on the permit shall require the Licensee to request modification to the existing permit or to apply for a separate permit for such additional attachment. Modifications performed by Licensee in the nature or location of attachments without such a modification to the existing permit or a separate permit are unauthorized under this Agreement and shall be subject to the penalties specified in Section 2.07 (relating to unauthorized pole attachments) and to the provisions set forth in Section 4.11 (requiring prompt removal of such modified attachments). Notwithstanding the foregoing, no permit modification or new permit shall be required for the installation of a service drop from one of Licensor's pole (for which Licensee has already obtained a permit from Licensor for attachment of its Equipment) to a structure of Licensee's customer.

4.06 Inspection

The Licensor may inspect and audit each new installation of the Licensee on its poles and in the vicinity of its lines or facilities and may make periodic inspections of all attachments of the Licensee; and the Licensee shall reimburse the Licensor for the cost of such surveys, inspections and audits. Such inspections and audits shall not operate to relieve the Licensee of any responsibility, obligation or liability assumed under this Agreement.

4.07 Maintenance Rights

The Licensor reserves for itself, its successors and assigns, the right to maintain its poles and to operate its facilities thereon in such manner as will best enable it to fulfill its public service requirements.

4.08 Claims by Licensee and Licensee's Customers

(a) The Licensor shall not be liable to the Licensee or the Licensee's customers, and the Licensee shall indemnify, protect and save harmless the Licensor against any claims by the Licensee's customers, for any interruption to the service of the Licensee, or for interference with the operation of the cables, wires and appliances of the Licensee arising in any manner whatsoever, including, without limiting the generality of the foregoing, any such interruption or interference arising out of action taken by the Licensor pursuant to Section 6.05, or for any other damage suffered by the Licensee or its customers, except to the extent that any such interruption, interference or damage is caused by the negligence or misconduct of the Licensor or of other joint users or of agents or employees of the Licensor or other joint users.

(b) Licensor shall not be liable to the Licensee for any special, indirect, incidental, consequential, exemplary and/or punitive damages in connection with or otherwise arising out of this Agreement and Licensee expressly waives any claim for such damages.

(c) The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

4.09 Time for Removal

Whenever, pursuant to the provisions of this Agreement, Licensee is required to remove its Equipment from any poles, such removal shall be made in accordance with Section 6.05.

4.10 Transfer of Equipment

(a) The Licensor, in the course of replacement or removal of solely owned poles or jointly owned poles, shall provide the Licensee with notification prior to the performance of the work, via a Joint Pole Notification (JPN) or other written or electronic notice. Licensor is under no obligation to coordinate such work with Licensee with the exception of work sites which require all entities involved to coordinate the work for the purpose of safety of the crews and the public.

(b) Licensee, upon receipt of said notice, may elect to contact Licensor and attempt to coordinate the work. In the event Licensee is able to coordinate the transfer of Licensee's Equipment during the course of Licensor's work simultaneously with the work being performed by Licensor, Licensee shall perform such transfer of Equipment_work in a time and manner so as to permit Licensor to remove its obsolete and/or depreciated pole(s) during the course of Licensor's work. Licensor shall not be required to remain at a

work site longer than thirty (30) minutes to allow Licensee to complete its transfer of Equipment work such that removal of obsolete and/or depreciated poles can be performed by the Licensor.

(c) If the Licensee has not completed its transfer of Equipment work within said thirty (30) minutes, the Licensor shall provide written notification to the Licensee of its completion date of Licensor's work. Licensor agrees that Licensee shall have thirty (30) days following such notice by Licensor in which to transfer or overlash its Equipment; provided, however, that said time period may be shortened in the event of an emergency situation (as determined by the Licensor) requiring prompt action by Licensee.

(d) In the event multiple Licensees have facilities on Licensor's poles, the last Licensee removing its facilities shall assume complete responsibility for any obsolete and/or depreciated poles and their subsequent removal. Licensor shall maintain records of all Licensee's notification(s) made to the Licensor (including the date of all such removals or transfers of all Licensees' facilities). Copies of such records shall be provided to Licensee upon request. In the event a dispute arises as to which Licensee was the last to remove its facilities, Licensor may rely on such records to determine Licensee responsibility for such pole removal. In the event Licensee fails to arrange for such pole removal in the time specified above, then Licensor may remove such pole and charge all costs associated with such removal to Licensee. Notwithstanding the foregoing, if the Licensee is present at the worksite during the replacement or removal of Licensor's poles as set forth above and, due to operational or other reasons, the Licensor does not permit the Licensee to proceed with the removal of such facilities, the Licensor shall assume the obligation to remove such obsolete and/or depreciated poles.

4.11 Prompt Removal Required

Upon written notice from Licensor to Licensee that: (i) Licensee's use of any pole or poles is in violation of applicable local, state and/or federal law; (ii) Licensee's Equipment is attached to a pole without the permission of the underlying property owner if the property owner's permission is legally required; (iii) Licensor has notice of any misstatement or omission in the information provided by the Licensee in its application form; (iv) Licensee has modified its attachments without complying with Section 4.05; or Licensee failed to transfer its Equipment in accordance with Section 4.10, the Licensor shall have the right to exercise any one or more of the following options:

(a) Provide Licensee with written notice that Licensee has fifteen (15) days (or longer as determined by Licensor) to cure/address/resolve any identified issue(s) to the satisfaction of Licensor. In the event Licensee fails to cure/address/resolve any identified issue(s) within said time period to the satisfaction of Licensor, Licensor may cancel the permit for the Equipment on the pole(s) associated with the issue(s) and Licensee shall thereafter be required to remove its Equipment from said pole(s) in accordance with Section 6.05; or

(b) Cancel Licensee's permit on fifteen (15) days' written notice with respect to any subject pole(s) and require Licensee to remove its Equipment from subject pole(s) in accordance with 6.05.

V. LIABILITY, DAMAGES AND INSURANCE

5.01 Indemnification and Hold Harmless Provision

(a) The Licensee shall indemnify, defend, hold harmless and release the Licensor and its commissioners, officers, employees and agents from and against any and all liabilities, losses, claims, damages, costs, demands, fines, judgments, penalties, obligations and payments, together with any reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses and reasonable costs and expenses of investigation) incurred in connection with any of the foregoing, to the extent they result from, relate to or arise out of or in connection with (i) any negligent failure of the Licensee, its employees and/or agents to perform or observe any term, provision, covenant, agreement or condition hereunder to be performed or observed by or on behalf of the Licensee or (ii) any negligence or intentional misconduct of the Licensee, its employees and/or agents.

(b) In the event that the Licensee and the Licensor are both negligent, then Licensee's liability for indemnification of the Licensor shall be limited to its contributory negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorneys' fees and disbursements) that can be apportioned to the Licensee, its employees, and/or agents.

(c) Solely and expressly for purposes of its duties to defend, indemnify and hold harmless Licensor as set forth above, the Licensee specifically waives any immunity it might have under the State Industrial Insurance law, RCW Title 51, or any similar worker's compensation act, in the event that a claim is made against the Licensor for an injury to any employee of Licensee. **THE LICENSEE ACKNOWLEDGES THAT THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.**

(d) The Licensor's inspection or acceptance of any of the Licensee's work and/or services when completed shall not be grounds to avoid any of these covenants of indemnification.

(e) Nothing contained in this Section shall be construed to create a liability or a right of indemnification in any third party.

(f) In the event that Licensee contracts/subcontracts with another party to perform work and/or services needed and/or required pursuant to this Agreement, the Licensee shall require and ensure that any such contract/subcontract contains an indemnification and hold harmless provision substantially similar to this Section 5.01.

(g) The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

5.02 Liability Insurance

The Licensee shall carry insurance, at its sole cost and expense to protect the Licensor and joint users in respect of the Licensee's liability for all claims and demands and from and against any and all actions, judgments, costs, expense and liabilities of every name and nature arising out of and/or resulting from use and occupancy of premises or by reason of the acts or omissions of the Licensee hereunder.

(a) Liability Limits. Commercial General Liability with a limit of \$2,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate including personal and advertising injury.

(b) Increase in Limits. Licensee understands that circumstances may change and that an increase in the limits of liability insurance may be necessary. Accordingly, Licensee agrees, upon sixty (60) days' prior written notice to Licensee that states proposed insurance limit increase, that Licensor may reasonably require an increase in the limits of liability insurance and Licensee further agrees to provide such insurance in increased amounts as a condition to Licensee's continued use of Licensor's poles. If Licensee is unwilling or unable to obtain insurance in such increased limits, Licensee shall be deemed to have terminated this Agreement and shall be required to remove its attachments and facilities from Licensor's poles in accordance with Section 4.10.

(c) Worker's Compensation. Licensee agrees to comply with the requirements of any applicable Worker's Compensation laws.

(d) Evidence of Insurance. Licensee agrees to provide a Certificate of Insurance and additional insured endorsement annually upon the anniversary date of this Agreement. All insurance required hereunder shall remain in force for the entire life of this Agreement. The company or companies issuing such insurance be rated A-, VII or better by AM Best or otherwise be reasonably acceptable to Licensor. The Licensor shall be included as an additional insured party as its interest may appear under this Agreement on the commercial general liability and commercial automobile-liability policies. Upon receipt of notice from insurer(s), Licensee shall provide Licensor with thirty (30) days prior written notice of cancellation of any required insurance coverage.

(e) Primary Coverage Required. The insurance shall provide primary coverage to Licensor and shall not be contributory with or excess to any other insurance maintained by Licensor.

5.03 Notification of Claims

To the extent known and when known, the Licensee shall promptly advise the Licensor of all claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner by, or directly or indirectly associated with, the erection, maintenance, presence, use or removal of the Licensee's Equipment located on Licensor's poles. After such an advisement, Licensee shall provide Licensor with copies of all accident or other reports made to any insurer.

5.04 Licensee's Responsibility

The insurance requirements contained herein shall not in any manner be deemed to limit, ~~or~~ qualify, or otherwise alter the liabilities or obligations assumed by Licensee under this Agreement.

5.05 Insurance Requirements for Contractors/Subcontractors

In the event that Licensee contracts/subcontracts with another party to perform work and/or services needed and/or required pursuant to this Agreement, the Licensee shall require and ensure that any such contract/subcontract contains insurance requirements substantially similar to this Section 5.02 through Section 5.04, including but not limited to type and amount of insurance coverage. The Licensee shall require any such contractor/subcontractor to furnish to the Licensee (and, upon request, the Licensor) a Certificate of Insurance showing evidence of such coverage.

VI. REMEDIES ON DEFAULT

6.01 Licensor's Termination Rights

(a) If Licensee fails to pay any sum due Licensor under this Agreement, or to provide and to maintain the security required in this Agreement, Licensor shall have the right to terminate this Agreement; provided, however, that Licensor shall give Licensee written notice of such default and Licensor's intent to terminate, and Licensee shall have thirty (30) days in which to cure such default.

(b) In addition to Licensor's right of termination set forth above, and Licensor's rights of termination set forth in other provisions of this Agreement, Licensor shall have the further right to terminate this Agreement or to cancel a particular permit or permits for specific pole attachments if the Licensee shall default in any manner in performing any action required under this Agreement; provided, however, that the Licensor shall give Licensee written notice of such default and Licensor's intent to terminate, and Licensee shall have thirty (30) days in which to cure such default.

(c) Licensee's rights under this Agreement shall remain subject to the express condition that Licensee continue to comply with all applicable laws, statutes, rules, and regulations now in effect or which may hereafter be issued by local, state and federal governmental entities. Accordingly, this Agreement is subject to termination by Licensor upon thirty (30) days' written notice (or longer period at the discretion of Licensor) to Licensee upon appropriate request or mandate issued by a governmental agency with requisite authority and claiming such failure to comply. Should Licensee thereafter comply within said thirty (30) day notice period (or longer period at the discretion of Licensor) with applicable laws, statutes, rules, and regulations now in effect or which may hereafter be issued by local, state and/or federal governmental entities to the satisfaction of said governmental agency, Licensor's right to terminate the Agreement shall cease with respect to said noncompliance.

(d) The Licensor may terminate this Agreement upon written notice in the event the Licensee has not applied for any permit within six (6) months from the date hereof;

provided, however, that Licensee shall have thirty (30) days from the date of the written notice to apply for a permit(s) and cure such default.

(e) The Licensor may terminate this Agreement upon written notice in the event that no permit has been granted hereunder within one (1) year from the date hereof; provided, however, that Licensee shall have thirty (30) days from the date of the written notice to remedy the reason why no permit has been granted if due to the fault or inaction of Licensee; provided additionally that Licensor may not terminate this Agreement under this subsection if Licensee has pending an application for a permit, and Licensor has failed to act thereon within such period due to no fault of Licensee.

(f) Any termination pursuant to this Section shall be effective immediately upon the Licensor's mailing the notice of termination to Licensee following the expiration of the thirty (30) day period to cure the default.

(g) Termination of this Agreement or any specific permit shall not release Licensee from any liability or obligations under this Agreement, including, without limiting the generality of the foregoing, the obligation to continue to pay pole attachment fees as provided in Article III of this Agreement for such time as Licensee's Equipment remain on Licensor's poles, Licensee's obligation to pay any costs and expenses incurred by Licensor for the removal of Licensee's Equipment, and financial penalties imposed by Licensor for failure of Licensee to remove its Equipment in accordance with the terms and conditions of this Agreement .

6.05 Licensee's Duty to Remove Equipment

Upon termination of this Agreement, or cancellation of any permit or permits issued pursuant to this Agreement, Licensee agrees to remove its attachments from any poles affected within thirty (30) days after the effective date of such termination or cancellation (or such other time period required by applicable local, state and/or federal law or within such shorter period as is feasible in the case of any hazardous condition).

(a) Licensee's Failure to Remove or Make Changes. After the expiration of any applicable notice and/or cure period, in the event that Licensee has failed to make any change in its Equipment required by Licensor, or failed to remove any Equipment upon cancellation of any specific permit or upon termination of this Agreement, Licensor shall have the right to make such changes or effect such removals subject to any applicable advance notice requirement under this Agreement.

(b) Emergency. In case of emergency or immediate service needs of Licensor, Licensor may perform such removal or change work without notice to Licensee or upon such notice as may be reasonable under the circumstances. If no notice is provided to Licensee prior to such removal or change work, Licensor will provide reasonable notice given the circumstances to Licensee after the removal or change work is performed.

(c) Costs of Licensor's Work. Licensee shall pay all costs and expenses of any Equipment removal or changes performed by Licensor in accordance with this Agreement. Said costs shall be determined in accordance with the provisions of Article II of this

Agreement. Licensee shall pay such costs within thirty (30) days of the date of Licensor's billing for such costs.

(d) Retention and Disposal of Licensee's Equipment. If Licensor removes any of Licensee's Equipment on Licensor's poles pursuant to this Section or any other Section of this Agreement, Licensor has the right to any one or combination of the following options with regard to the removed Equipment:

(i) Licensor may hold such Equipment as additional security for the payment of any sums due under this Agreement;

(ii), Licensor may sell such Equipment at a public or private sale without notice to Licensee;

(iii) If Licensor determines such Equipment is of little or no value, Licensor may dispose of the Equipment without notice to Licensee; and/or

(iv) Licensor may turn such Equipment over to Licensee.

In the event Licensor sells any of Licensee's Equipment, Licensor shall apply the proceeds to the payment of sums due under this Agreement and shall turn over the balance, if any, to Licensee.

(e) Liquidated Damages for Failure to Remove Equipment. In the event that Licensee fails to remove its Equipment within the required time period and in recognition of the difficulty in calculating the actual costs, expenses and other damages ("Loss") that Licensor will incur due to such failure, the Parties agree that, Licensor may impose liquidated damages upon Licensee of \$20 for each day per utility pole Licensee fails to remove its Equipment beyond the thirty (30) day timeline or other specified timeline. The Parties further agree that said daily amount represents a reasonable valuation of the Loss Licensor will incur due to Licensee's failure to remove its Equipment in a timely manner. Said liquidated damages shall be paid by Licensee to Licensor within thirty (30) days of the date of any liquidated damages notice issued pursuant to this subsection.

VII. DURATION OF AGREEMENT

7.01 Term of Agreement

The term of this Agreement shall commence upon full execution hereof and shall end midnight, March 31, 2030, subject to the rights of earlier termination of either Party as set forth herein.

7.02 Termination without Cause

Either Party shall have the right to terminate this Agreement without cause by giving six (6) months written notice of termination.

7.03 Cancellation of Specific Permits

(a) Licensee's Rights to Cancel Permits. The Licensee may cancel its permit or permits to any specific pole or poles by removing its Equipment therefrom and giving written notice of such removal to Licensor on a form provided by Licensor, a copy of which is attached to this Agreement as Exhibit "D". Licensees liability for pole attachment fees for such attachments shall terminate as of the end of the month in which such notice is given and after the Equipment has been removed. The amount of refund or credit shall be based upon the pole attachment charges set forth in Article III above, and as the same may from time to time be adjusted; provided, however, that in no event may the amount of refund exceed the amount actually paid by Licensee for the months in question.

(b) Licensor's Rights to Cancel Permits. In addition to permit cancellation rights provided elsewhere in this Agreement, Licensor may at any time cancel a permit to attach to any specific pole or poles by giving thirty (30) days' written notice to Licensee. Such written notice to specify the reason(s) for such revocation or cancellation and such reason(s) shall be consistent with applicable local, state and/or federal law. Licensee agrees to remove its Equipment from the pole or poles in question in accordance with Section 6.5. In such event, Licensee shall be entitled to a refund of prepaid pole attachment fees commencing on the date the Equipment is removed through the remaining period for which such charges have been paid.

VIII. GENERAL PROVISIONS

8.01 Assignment

The Licensee shall not in any way assign, transfer, sublet or encumber this Agreement, nor any of the privileges hereby granted to it, without the prior written consent of the Licensor. For the purpose of this Agreement, assignment and transfer shall be deemed to include (but not be limited to) the assignment and transfer of this Agreement to any joint venture of which the Licensee is a partner, to any subsidiary, parent or affiliated or controlled corporation, to any corporation with which Licensee may be merged or consolidated, or to any corporation to which Licensee may sell substantially all its assets. Licensor agrees that it will not unreasonably withhold, delay and/or condition approval of a written request by Licensee. However, Licensor reserves the right to require Licensee to provide appropriate information in order to properly evaluate the request including information pertaining to the financial stability and technical expertise of the proposed assignee, transferee, or sublicensee. Subject to the foregoing, however, this Agreement shall extend to and bind the successors and assigns of the Parties hereto.

8.02 Non-Waiver

Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

8.03 Entire Agreement, Amendments

This Agreement constitutes the entire Agreement between the Parties and supersedes and replaces all prior agreements concerning the subject matter of this Agreement. Any amendments to this Agreement or any SLA must be in writing and duly executed by both Parties.

8.04 Notices

All notices required to be given by either Party to the other Party under this Agreement shall be in writing and shall be delivered either in person, by United States mail, by nationally recognized overnight courier or by electronic mail (email) to the applicable Administrator or the Administrator's designee. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given three (3) days after the date the same is deposited in the United States mail, postage prepaid, and addressed to the Administrator, or their designee, at the addresses set forth in Section 1.9 of this Agreement. Notice delivered by overnight mail shall be deemed given as of the day after mailing. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

8.05 Fair Meaning

The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either Party hereto because of authorship. This Agreement shall be deemed to have been drafted by all Parties.

8.06 Severability

(a) If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the Parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

(b) If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict and shall be deemed modified to conform to such statutory provision.

8.07 Governing Law and Venue

This Agreement shall be governed by, and interpreted according to, the laws of the State of Washington (without regard to any conflicts of law principles applied in that State), with venue for any disputes in Snohomish County, Washington; provided that venue for any matter that is within the jurisdiction of the Federal Court shall be in the United States District Court for the Western District of Washington at Seattle, Washington. Each Party hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of proceedings in such courts.

8.08 Force Majeure

If a Party is delayed or hindered in, or prevented from performance required under this Agreement (other than any delay or failure relating to payment of money, including, without limitation, the Annual Fees and all reimbursable costs and expenses described elsewhere in this Agreement) by reason of earthquake, landslide, strike, lockout, labor trouble, failure of power, riot, insurrection, war, pandemic, acts of God or other reason of like nature not the fault of such Party, such Party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay.

8.09 Waiver of Jury Trial

The Licensor and Licensee each hereby waive any right to a trial by jury in any litigation arising out of this Agreement or out of the Licensee's use of space on the Licensor's poles.

8.10 Department of Revenue

In the event the Department of Revenue of the State of Washington shall require the Licensor to provide certain information concerning Licensee, Licensee agrees to cooperate with and assist Licensor in providing information, data, or such other matters as may be required by said Department of Revenue. Licensee specifically agrees to provide Licensor with appropriate data as determined or required by the State Department of Revenue concerning its pole attachments in each taxing district and such other data as may hereafter be required by said Department of Revenue.

8.11 Section Heading

The section headings used in this Agreement are merely for ease of reference by the Parties. The section headings are not intended to restrict or limit the applicability of the language within any specific section. In the event of a conflict between the text of a section and the section heading, the text shall control.

8.12 Survival

All provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Agreement shall survive the completion, termination or cancellation of this Agreement.

8.13 Authority to bind Parties and enter into Agreement

The undersigned represent that they have full authority to enter into this Agreement and to bind the Parties for and on behalf of the legal entities set forth below.

8.14 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

LICENSOR:

PUBLIC UTILITY DISTRICT NO. 1
OF SNOHOMISH COUNTY

By: _____

Guy Payne
Assistant General Manager

Date: _____

LICENSEE:

CITY OF MARYSVILLE

By: _____

Name: _____ Jon Nehring _____

Title: _____ Mayor _____

Date: _____