

UTAH RECIPROCAL POLE ATTACHMENT AGREEMENT

BETWEEN

PACIFICORP d.b.a. ROCKY MOUNTAIN POWER,

AND

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This Pole Attachment Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between PacifiCorp, an Oregon corporation, dba Rocky Mountain Power hereinafter “Rocky Mountain Power,” and \_\_\_\_\_ a \_\_\_\_\_ organized and existing under the laws of the state of \_\_\_\_\_, and qualified to do business in the state of Utah, hereinafter “\_\_\_\_\_,” (collectively the “Parties”). The Parties mutually agree that the terms and conditions of this Pole Attachment Agreement (“Agreement”), and applicable law shall govern the Parties' non-exclusive use of such Poles owned by each Party and located in the state of Utah as each may, upon application, permit the other to use. The Party owning such pole will be referred to as “Pole Owner,” while the Party attaching will be referred to as “Licensee.” Both Parties to the Agreement may be referred to as “Pole Owner,” “Licensee,” “Party,” or “Parties.”

#### WITNESSETH

WHEREAS, the Parties are engaged in the business of providing service to customers in certain areas within the state of Utah; and

WHEREAS, the Parties sometimes place and maintain Poles or Pole lines upon or along the same highways, streets or alleys and other public or private places for the purpose of supporting the wires and associated facilities used in their respective businesses; and

WHEREAS, the Parties desire to cooperate in establishing the common use of Poles consistent with and in furtherance of and compliance with the rules and policies of the Public Service Commission of Utah; and

WHEREAS, access to Poles is dependent upon considerations of safety, reliability, capacity, and generally applicable engineering standards.

NOW, THEREFORE, in consideration of the mutual covenants and agreements made and contained herein, the Parties hereby agree as follows:

#### **ARTICLE I. DEFINITIONS**

“Agreement” means this Utah Pole Attachment Agreement.

“Application” is an action where Licensee requests permission to add or modify its Attachment(s), or sends notification of its removal of previous Attachment(s). For each Application received, the Pole Owner analyzes the data, updates its records, and responds to Licensee at least once per Application, regarding its approval or acknowledgement of the Application. Refer to Exhibit B for the fees associated with Applications.

“Attachment” means Pole Attachment as defined in R746-345-2.E of the Utah Administrative Rules.

“Business Days” means days other than a Saturday, Sunday, or state or federal holiday when banks in Utah are authorized to be closed.

“Commission” means the Public Service Commission of Utah.

“Cost Estimate” means an estimate prepared by Pole Owner, based either on anticipated actual costs on each individual piece of work or flat rates for Make-Ready Work when included in the Fee Schedule (Exhibit B). Pole Owner reserves the right to determine when flat rates are applicable according to the specific situation.

“Credit Requirements” means the most recently published senior, unsecured long-term debt rating (or corporate rating if such debt rating is not available) of (a) “BBB-“or greater from S&P, or (b) “Baa3” or greater from Moody’s, or such other indicia of creditworthiness acceptable to Pole Owner in its reasonable judgment.

“Distribution Construction Standards” means Pole Owner’s current published distribution construction standards, when attached hereto as Exhibit C.

“Electronic Notification System” or “ENS” means the electronic system or combination of electronic systems that may be designated by Pole Owner or mandated by the Commission. When an ENS is available, the Parties must utilize ENS to submit Applications for permission to attach, relocate, or remove Equipment under the terms of this Agreement, and to respond to requests for work to be performed.

“Engineering Handbook” means the Pole Owner’s current published engineering handbook relating to wireless Attachments attached hereto as Exhibit D.

“Equipment” means cables, wires, antennas, wireless communication devices, conductors, fiber optics, insulators, connectors, fasteners, transformers, capacitors, switches, batteries, amplifiers, power supplies, devices, structures, materials, machines, appurtenances, articles, or apparatus of any sort, whether electrical or physical in nature, or otherwise, including without limitation all support equipment such as guy wires, anchors, anchor rods, grounds, and other accessories. This definition specifically excludes Licensee Pole-Top Attachments.

“Estimated Attachments” means the number of Attachments which Licensee, as of the date of this Agreement, estimates will be installed by Licensee pursuant to this Agreement, which estimate shall be provided to Pole Owner prior to, as of the date of Licensee’s execution of this Agreement.

“Fee Schedule” means the fees and charges set forth in Exhibit B attached hereto as may be amended from time to time in accordance with R746-345-3.A. of the Utah Administrative Rules.

“Inspection” means examination by Pole Owner of its Poles and all proposed or existing Attachments for the purpose of verifying the number and location of all Attachments and any other Pole-mounted Equipment of Licensee, or determining whether Licensee is in compliance with the terms of this Agreement, which includes the following five (5) types of Inspections:

1. Pre-Construction Inspection: Performed when Applications by Licensee are submitted for new Attachment.

2. Post Construction Inspection: Performed when Licensee completes its construction of new, modified, or transferred Attachment(s). Also performed for verification of Licensee's Attachment removal. Licensee may avoid a Post Construction Inspection fee on transfer and removals of Attachments if an electronic photograph is provided to Pole Owner showing that the work is completed and in compliance with this Agreement.
3. Special Inspection: Pole Owner's field visit made at the request of Licensee for all non-periodic Inspections. A Special Inspection does not include Pre-Construction Inspections or Post Construction Inspection.
4. Audit: A periodic effort to collect information through examination by Pole Owner of all or any number of Poles that may have Licensee Attachments.
5. Periodic Safety Inspection: Any Inspection done by Pole Owner to review the safety and integrity of its Poles. If, upon inspecting a percentage of Licensee's reported corrections from a Periodic Safety Inspection that consists of a representative random sample and it is discovered that there is a failure rate of 15% or more, Pole Owner reserves the right to charge Post Construction Inspection Fees for a complete re-inspection of the reported corrections.

"Licensee" means the Party that has been granted access to Pole Owner's Poles pursuant to this Agreement or who is seeking or has obtained permission to place Equipment upon Pole Owner's Poles as provided in Article 4 of this Agreement.

"Make-ready Work" means all engineering, Inspections, design, planning, construction, or other work reasonably necessary to prepare Poles for the installation of Licensee's Attachments, including without limitation, work related to transfers, rearrangements and replacements of existing Poles or Equipment, and/or the addition of new Poles or Equipment.

"Material Adverse Change" means the occurrence of any event of default under any material agreement to which Licensee is a party and of any other development, financial or otherwise, which would have a material adverse effect on Licensee, or on Pole Owner's ability to remove the Attachments or to have access to its Poles.

"National Electrical Safety Code" or "NESC" means the current edition at the time of installation, and any supplements thereto and revisions or replacements thereof, of the publication, so named, published by the Institute of Electrical and Electronics Engineers, Inc., for the purpose of safeguarding persons and property during the installation, operation, or maintenance of electric supply and communication lines and associated Equipment.

"Pole" means any pole owned by Pole Owner that is designed to carry distribution as defined in R746-345-2.C of the Utah Administrative Rules.

"Pole Owner" means a public utility having ownership or control of Poles used, in whole or in part, for any electric or telecommunications service.

"Rental Rate" means the annual rent amount for each Attachment payable to Pole Owner by Licensee at the respective rates set forth on Exhibit A.

“Security” means a bond, cash escrow, letter of credit or parental guaranty, acceptable in form to Pole Owner in its sole and reasonable discretion, to assure performance by Licensee of its obligations hereunder, which shall be in an amount sufficient to pay Pole Owner for the cost to remove and dispose of Licensee Attachments and related equipment, plus two years’ of rental payment obligations under this Agreement. The calculation of the initial amount of Security shall be Pole Owner’s current hourly wage rate of a two-person crew multiplied by the number of Estimated Attachments, plus the current rental rate multiplied by the number of Estimated Attachments; *provided, however*, that if at any time the number of Attachments exceeds one hundred twenty percent (120%) of the Estimated Attachments, the calculation of Security shall be based on the number of actual Attachments rather than the number of Estimated Attachments.

“UAR” means the Utah Administrative Rules.

## **ARTICLE II. SCOPE OF AGREEMENT**

### **Section 2.01 Poles; Geographic Scope**

This Agreement shall apply to all areas served by the Parties in the State of Utah and shall cover all Poles of each of the Parties within Utah which are presently commonly used, as well as Poles which are now existing or which shall hereafter be erected in areas mutually served when such Poles are included within the scope of this Agreement in accordance with its terms.

This Agreement applies only to the use of the Parties’ Poles which support, or are designed to support distribution lines, which includes Poles that carry both distribution and transmissions lines.

### **Section 2.02 Attachments; Purpose and Use**

Licensee’s use of Poles shall be confined to the Attachments which Pole Owner may give Licensee prior written permission to install for the sole purpose of providing: \_\_\_\_\_ (the “Permitted Purpose”) service. This Agreement does not apply to Pole-Top Attachments.

In the event Licensee intends to expand or modify its Permitted Purpose, Licensee shall provide at least ninety (90) days advance written notice to Pole Owner. Following receipt of such notice, Pole Owner shall determine in its sole discretion, whether to permit the modification or expansion and if permitted, whether this Agreement shall be amended accordingly or whether Licensee shall be required to enter into a new agreement.

Each Party’s use of the other Party’s Poles shall be confined to the Attachments which Pole Owner may give Licensee written permission to install. Licensee shall have the right, subject to the terms of this Agreement, to install, maintain, and use the Equipment only as specified in the approved Application, upon the Pole(s) identified therein.

### **Section 2.03 Reservation of Rights**

Pole Owner may reserve space on its Poles for the provision of its core utility service. In granting permission to use a Pole or Poles upon which space has been reserved, Pole Owner shall inform Licensee of the space reservation at the time the permit is granted. Pole Owner shall

permit use of its reserved space until such time as Pole Owner has a need for that space as determined by Pole Owner in its reasonable discretion, when Pole Owner may recover the reserved space for its own use. Pole Owner shall give the displaced Licensee commercially reasonable notice of the reclamation of space as well as the opportunity to make alternate arrangements, if available, including but not limited to allowing Licensee to pay for any reasonable modifications needed to continue to accommodate the Attachments that would otherwise be displaced.

#### Section 2.04 Pole Owner's Rights to Use Poles

Pole Owner reserves to itself the right to maintain the Poles and to operate its Equipment thereon in such manner as will best enable it to fulfill its own core service requirements, and Pole Owner shall not be liable to Licensee or Licensee's customers 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, maintenance, and repair of the Poles and the Equipment thereon or from the removal of Attachments or other Equipment from the Poles by Pole Owner or its agents in accordance with the provisions of this Agreement, except for Pole Owner's negligence or willful misconduct, or the negligence or willful misconduct of Pole Owner's agents. Pole Owner shall, however, except in cases of emergency, use reasonable efforts to contact Licensee prior to making changes that may affect Licensee's Attachments, but in any event shall contact Licensee as soon as practicable thereafter.

#### Section 2.05 Third-party Consents, Permits, Licenses, Easements, Rights-of-way or Grants

The right of access to Pole Owner's Poles granted by this Agreement does not include any right of access to the land upon which the Pole is situated nor does it include any right to cross the land from Pole-to-Pole with Licensee's Equipment and such access rights are specifically disclaimed. Licensee is solely responsible for obtaining from public authorities and private owners of real property and maintaining in effect any and all consents, permits, licenses, easements, rights-of-way or grants that are necessary for the lawful exercise by Licensee of the permission granted by Pole Owner in response to any Application approved hereunder. Licensee agrees to indemnify, defend and hold harmless Pole Owner against and from any and all third party claims, demands, lawsuits, losses, costs and damages, including attorney's fees, to the extent arising from Licensee's failure, or alleged failure to have the requisite authority. Pole Owner may, at any time, require Licensee to provide written evidence that it has obtained all such necessary consents, permits, licenses, and grants.

#### Section 2.06 Limitations on Licensee's Rights to Use Poles; Termination

No use, of any sort or duration, of any Poles under this Agreement shall create or vest in Licensee any ownership or property rights therein; nor shall any such use constitute the dedication of Pole Owner's Poles or Equipment to the public or to Licensee, subject to the UAR and other applicable laws and statutes. Nothing contained herein shall be construed to compel Pole Owner to maintain any particular Pole or Poles for a period longer than demanded by Pole Owner's own service requirements.

#### Section 2.07 Contract Term

Unless terminated sooner as provided for herein, this Agreement shall remain in full force and effect unless and until it is terminated by either Party upon ninety (90) days written notice by



certified mail to the other Party. Each Party shall remove its Equipment from Pole Owner's Poles within three-hundred sixty-five (365) days of receipt of said notice unless parties are in negotiations of a new contract. Should either Party fail to remove its Equipment within said three-hundred sixty-five (365) day period, Pole Owner may remove and dispose of Licensee's Equipment at Licensee's sole risk and expense. On the date of termination specified in such notice, all rights and privileges of both Parties hereunder shall cease. In the event that either Party successfully petitions the Commission for an order to amend the rates, terms or conditions specified in this Agreement, the Parties agree to execute an addendum to this Agreement, giving effect to the Commission's order, within thirty (30) days of the release of the Commission's order or within such other period of time as the Commission may prescribe.

### **ARTICLE III. BILLING/PAYMENT**

#### **Section 3.01 Rental Amount**

Licensee shall pay to Pole Owner, annually in advance, rent computed in accordance with UAR R746-345-5.A., as set forth in Exhibit A, on a billing cycle beginning July 1 of each year. Licensee shall pay said amounts upon receipt of an invoice from Pole Owner. The rent for each year shall be based on Pole Owner's tabulation of Licensee's Attachments situated upon Pole Owner's Poles and based upon Pole Owner's current records using the Pole Owner's Rental Rate shown on Exhibit A. Rent for each Attachment shall be effective when the Application is approved under Section 4.01.

Consistent with the terms of this provision, the methodology employed to calculate the carrying charge and the Rental Rate shall comply with UAR R746-345-5.A. and may not be changed, modified or replaced except as allowed by and in accordance with UAR R746-345-3.A.1., and as otherwise approved by the Commission. Parties recognize that Rental Rate on Exhibit A shall change when such changes are approved by the Commission.

The Rental Rate does not include the costs incurred by Pole Owner for Make-Ready Work or any fee shown on Exhibit B. Unless otherwise addressed as a flat fee, charges for activities not included in the Rental Rate shall be based on Pole Owner's actual costs, including administrative costs, and such charges shall be payable by Licensee in addition to the Rental Rate.

#### **Section 3.02 Attachment Space**

Each permitted Attachment on a Pole shall constitute one Attachment Space for the calculation of annual contact rental (Exhibit A). If additional Attachments are placed within the same Attachment Space as a previously permitted Attachment, and are compliant with all requirements of this Agreement, no additional annual contact rental is applicable. If additional Attachments are permitted which are placed in the usable space of the Pole, but outside of the previously permitted Attachment Space, then an additional Attachment Space shall be added for calculation of annual contact rental. Permitted Attachments placed outside of the usable space on a Pole shall be excluded from the calculation of annual contact rental, including overlashed Attachments. Attachments, for the purpose of permitting, shall be limited to those wires, cables, wireless antennas, or rigid risers affixed to the Pole, including overlashed Attachments, and do not include related devices, apparatus, or auxiliary equipment, such as non-rigid risers, fasteners, or brackets.

**Section 3.03 Unauthorized Attachments**

Licensee shall not make Attachments to Pole Owner's Poles without obtaining Pole Owner's written permission as provided for in this Agreement. Pole Owner may charge Licensee the amounts contained in the Fee Schedule attached hereto as Exhibit B upon the discovery of unauthorized Attachments belonging to Licensee. The imposition of such charges shall be without prejudice to Pole Owner's right to utilize additional other remedies, including, but not limited to, the remedies available for default under Article VI of this Agreement and any remedies available under Commission rules.

Licensee may avoid unauthorized attachment fees, except back rent, if it self-discloses unpermitted Attachments and provides an Application for said attachment permits. This shall not be construed to include newly installed Attachments.

**Section 3.04 Billing and Payments**

Pole Owner shall send invoices to Licensee via regular U.S. Mail at the address(es) provided by Licensee in writing. Licensee shall provide its accounts payable address(es) upon ratification of this agreement and any future changes to the address(es) in writing sixty (60) days prior to the date of the change. All invoice types shall be sent to the address applicable to the geographical area of the invoiced items, if separate addresses are provided by Licensee. Copies of individual invoices may be requested in writing to be forwarded to an alternate address upon each written request.

Invoices for all non-recurring charges, unauthorized Attachment charges, and other amounts due under this Agreement other than rental charges shall be sent at Pole Owner's discretion within a reasonable time. Invoices for non-recurring charges shall provide specific identifying information pertaining to each charge. Invoices for rental charges shall provide summary information only. Invoices shall conform to generally accepted accounting practices, subject to change by Pole Owner, in Pole Owner's reasonable discretion. Licensee may obtain additional information pertaining to charges upon written request to Pole Owner.

Except as otherwise provided in this Agreement or agreed to by the Parties, Licensee shall pay all undisputed charges within forty five (45) days from the invoice date. Licensee shall pay disputed amounts within ninety (90) days from the invoice date, unless the disputing party has commenced an action consistent with UAR 746-345-6. Upon resolution of any such dispute, Pole Owner shall refund any amounts owed, with interest accruing at the rate specified in Section 10.03 from the later of the date Licensee paid the disputed portion, or the date upon which Licensee provided Pole Owner notice of the amount in dispute. Late charges and interest shall be imposed on any delinquent amounts. All bills shall be paid to the address designated from time to time in writing by Pole Owner.

**ARTICLE IV. APPLICATION AND APPROVAL TO ATTACH**

**Section 4.01 Application for Permission to Install Attachment**

With the exception of customer service drops, before Licensee places any Equipment upon any of Pole Owner's Poles, Licensee shall request permission from Pole Owner in writing, and shall

submit payment for all applicable fees, pursuant to the Fee Schedule (attached as Exhibit B) upon invoice.

Licensee shall make its written or electronic Application to Pole Owner at the address set forth in Article XII. Licensee shall provide the following information including: the specific Equipment to be installed, street address of nearest physical location identifier of the Poles in question, the space desired on each Pole, and proposed Pole attachment placement in compliance with R746-345-3.D of the UAR. To the extent reasonably available, Licensee shall provide also provide the map number, Pole numbers (when identifiable as Pole Owner's Pole number), and any additional information requested by Pole Owner necessary to identify the Poles or otherwise review the request for Attachment.

After receipt of an Application, Pole Owner shall notify Licensee in writing that the Application has been accepted or rejected within fifteen (15) days of receipt at the address set forth in Section 11.02. Any rejection of an Application by Pole Owner shall specifically describe the reason for its rejection. If the Application is rejected due to insufficient or inaccurate information from Licensee, response timeframe of Application processing per UAR R746-345 is suspended until Licensee provides the required information to Pole Owner.

In the event the Commission approves an ENS, the Parties shall use the approved ENS to submit, approve and/or deny Applications for permission to attach, relocate, or remove Equipment and shall follow all procedures required by such ENS.

#### Section 4.02 Pole Owner's Approval Process

Pole Owner shall process permit Applications and provide Cost Estimates of the costs for Make-Ready Work in accordance with R746-345-3.C of the Utah Administrative Rules. If Licensee rejects the Cost Estimate, as discussed in R746-345-3.C., Licensee may, at its own expense and only as permitted by R746-345-3.C., exercise the self build option outlined in Section 4.06.

After processing an Attachment Application, Pole Owner shall inform Licensee that the Application has been approved or denied by returning the Application with an appropriate notation to Licensee at the address set forth in Article XI. Any denial of an Application by Pole Owner shall be in writing and describe with specificity the lack of Pole capacity, safety or reliability problems, or generally applicable engineering standards that led to the denial of the Application.

If notice of approval or denial of the Application is not received from Pole Owner within the time frames set forth in R746-345-3.C of the UAR, Licensee may appeal to the Commission for permission to proceed due to lack of response by Pole Owner; however, Licensee must receive permission from the Commission or written approval from Pole Owner before proceeding with the installation of the Attachments. Furthermore, Licensee may appeal to the Commission that Pole Owner's stated reasons are insufficient grounds for rejection as allowed by UAR R746-345-3.

Rental charges for each approved Attachment shall commence as of the date of Pole Owner's approval of the Application pursuant to the Rental Rate Schedule (Exhibit A) and the first charge for annual rent on the Attachment shall be due and payable at this time, with no abatement for the period of the current annual billing period prior to the Attachment approval. For illustrative purposes only, if the Attachment is approved in December and the current annual billing period is the prior July through the following June, for \$100 per Attachment, Licensee shall be charged \$100 in December for the new approved attachment and then \$100 for the Attachment the following July for the next annual billing period.

#### Section 4.03 Service Drops

Licensee shall have the right to install service drops without prior approval by Pole Owner. This includes service drops made from Poles on which the attaching entity may not originally have had an Attachment, as long as the Pole is adjacent to Poles on which the attaching entity does have authorized Attachments. Prior notification is not required for the attachment of service drops where Licensee has an existing Attachment. However, when Licensee installs service drops, Licensee must follow all procedures applicable to Attachments generally and Licensee shall submit Application for such Attachment to Pole Owner within five (5) Business Days from the installation date. Notwithstanding the above, no notification shall be required for service drops that are mid-span self-supporting wire or wires, and that do not require the use of messenger strand and a lashed cable. Required notifications of service drop installations shall contain information identifying the Pole to which the service drop was added and the amount of new space on the Pole, if any, being used. With the exception of the requirements waived in this paragraph, service drop Attachments are subject to all other terms and conditions of this Agreement. Should Pole Owner deny permission to install the service drop, Licensee shall re-route the service drop as soon as practicable.

#### Section 4.04 Time to Complete Installation

Except as otherwise agreed to by the Parties in writing, Licensee shall complete the installation of its Attachments upon the Pole(s) covered by each approved Application within one hundred eighty (180) days of approval by Pole Owner. Licensee shall provide written notice of its completion within ten (10) Business Days after installation. In the event Licensee should fail to complete the installation of its Attachments within the prescribed time limit, the permission granted by Pole Owner to place such Attachments upon Pole Owner's Pole or Poles shall terminate and Licensee shall not have the right to place such Attachments upon the Pole or Poles without first reapplying for and receiving permission to do so, all as prescribed in Section 4.01 as applicable to the initial Application. Any rental incurred during this time shall not be prorated or refunded.

#### Section 4.05 Make-ready Work Process

If in the reasonable judgment of Pole Owner the accommodation of any of Licensee's Attachments necessitates Make-ready Work, in the response to Licensee's Application Pole Owner shall indicate the Make-ready Work that is necessary to accommodate the Attachments requested and the Cost Estimate for the work within the Application processing time period identified in Section 4.01 and in accordance with Article VI of this Agreement. Pole Owner in its sole judgment, reserves the right to choose when flat rates are applicable to proposed Make-Ready Work.

If Licensee is willing to bear the cost of all Make-ready Work necessary, as determined by Pole Owner, Licensee shall provide written acceptance of the cost to Pole Owner within thirty (30) days of the date of Pole Owner's response to Licensee's initial Application. Failure to reject the Cost Estimate within said period shall be deemed acceptance thereof by Licensee. If Licensee accepts or fails to timely reject the Cost Estimate, Pole Owner may perform such Make-ready Work, and Licensee shall reimburse Pole Owner for the entire expense thereby actually incurred, without regard to whether Licensee elects not to use the Pole or Poles after Make-ready Work has commenced. Licensee shall be obligated to pay Pole Owner for its costs related to preparation of a Make-ready Work Cost Estimate, regardless of whether Licensee accepts or rejects the Cost Estimate. If requested by Pole Owner, Licensee shall submit pre-payment for the estimated Make-ready Work in accordance with UAR 746-345-3.C.7.

Pole Owner shall provide Licensee an estimated completion date for any Make-ready Work, taking into account the timeframes set by R746-345-3, the overall scope of Licensee's project, the volume of Applications received from other licensees, as well as the availability of crews to perform the work. Licensee and Pole Owner shall negotiate solutions in good faith when the estimated time to perform the Make-ready Work does not meet Licensee's project requirements.

Pole Owner shall perform such Make-ready Work as may be required and Licensee shall pay Pole Owner for the Make-ready Work, in accordance with the procedures outlined in R746-345-3 if required by Pole Owner. Licensee shall pay the costs of all Make-ready Work undertaken by Pole Owner, upon receipt of an invoice after the work is complete, where such work is initiated as a result of the proposed installation of Attachments on any Poles without regard to whether Licensee elects not to use the Pole or Poles after Make-ready Work has commenced. Upon request, Pole Owner shall provide Licensee a statement detailing the actual material, hours, equipment costs, and any other associated costs for the Make-ready Work.

#### Section 4.06 Self-Build Option

At Licensee's option, and upon approval from Pole Owner, Licensee may request either assistance with the work by Licensee or by qualified contractors hired by Licensee, payment of premium rates for Pole Owner's employees to be dedicated to perform work solely on Licensee's project, or similar measures designed to augment Pole Owner's capabilities. If Licensee chooses to employ a qualified contractor to complete the Make-ready Work, to ensure that safety, reliability, and Pole Owner's Distribution Construction Standards are met, the contractor and the proposed construction schedule must be approved by Pole Owner.

### **ARTICLE V. LICENSEE'S USE OF POLES**

#### Section 5.01 Safe Use of Electric Facilities

Licensee, its employees and its contractors, shall at all times exercise Licensee's rights and perform Licensee's responsibilities under the terms of this Agreement in a manner that treats all electric facilities as energized at all times. Licensee shall assume complete responsibility for its employees' or contractors' conduct and Licensee shall determine and provide the appropriate training and safety precautions to be taken by Licensee's employees and contractors. Licensee shall indemnify, defend, and hold Pole Owner harmless from any liability of any kind arising

from Licensee or Licensee's employees' or contractors' failure to abide by the terms of this section.

Any work performed in the electric utility space for the non-utility Pole Owner must be performed by Rocky Mountain Power or a qualified utility contractor approved in advance by Rocky Mountain Power. If the work is performed by a Rocky Mountain Power approved utility contractor, the work must be coordinated directly with Rocky Mountain Power's local field operations management.

**Section 5.02 Expense of Situating Pole Attachments**

Licensee shall place, maintain, rearrange, transfer, and remove its own Attachments at its own expense, except as otherwise expressly provided in this Agreement.

**Section 5.03 Labeling of Poles and Attachments**

Pole Owner and Licensee shall conform to Utah Administrative Rule R746-345-4 pertaining to Pole and attachment labeling. When Pole Owner rennumbers a Pole, it shall provide written notice of the new Pole number and the cross-reference to the old Pole number and the Pole's location to Licensee within thirty (30) days. When Pole Owner sells a Pole or Poles to a third party, such sale shall be documented by a Bill of Sale or other legal document and Licensee shall be provided with the name and contact information for the new Pole Owner within thirty (30) days of the sale. Pole Owner shall also provide to Licensee a detailed list of Poles sold which includes Pole numbers and any other available information which may assist Licensee in identifying the specific Poles sold.

**Section 5.04 Conformance to Requirements and Specifications**

Licensee shall, at its sole risk and expense, place and maintain its Equipment upon the Pole in conformity with the requirements and specifications of the NESC, Utah Department of Transportation, and such requirements and specifications as Pole Owner shall from time to time prescribe, including without limitation, the current Pole Owner's Distribution Construction Standards (Exhibit C) and, as applicable, the current Pole Owner Engineering Handbook provisions (Exhibit D). In the event of any conflict between any of the requirements and specifications of the NESC, and those prescribed by Pole Owner, the more stringent requirements and specifications shall govern.

NON ELECTRIC POLE OWNER'S NAME (including its employees and contractors) shall not enter Rocky Mountain Power's electric utility space for any purpose including making connections to the Rocky Mountain Power neutral. If NON ELECTRIC POLE OWNER'S NAME requires grounding on an existing Pole where a grounding conductor does not exist, NON ELECTRIC POLE OWNER'S NAME shall request that Rocky Mountain Power install grounding at the sole expense of NON ELECTRIC POLE OWNER'S NAME. NON ELECTRIC POLE OWNER'S NAME, its employees and its contractors, shall at all times exercise NON ELECTRIC POLE OWNER'S NAME's rights and perform NON ELECTRIC POLE OWNER'S NAME's responsibilities under the terms of this Agreement in a manner that treats all electric facilities of Rocky Mountain Power as energized at all times. NON ELECTRIC POLE OWNER'S NAME shall indemnify, defend, and hold Rocky Mountain Power harmless from any liability of any sort derived from NON ELECTRIC POLE OWNER'S NAME or NON

ELECTRIC POLE OWNER'S NAME's employees' or contractors' failure to abide by the terms of this paragraph.

Licensee shall have in place a facility inspection program that ensures compliance with the requirements and specifications of this section, and Licensee shall provide Rocky Mountain Power with comprehensive documentation of Licensee's program upon request.

In the event that a streetlight photo-control socket is used to supply energy to NON ELECTRIC POLE OWNER'S NAME's Equipment, the installation of which shall be performed only by a Rocky Mountain Power-approved qualified worker, NON ELECTRIC POLE OWNER'S NAME shall: 1) assume responsibility for all costs associated with repair necessary due to such installation; 2) shall indemnify and hold Rocky Mountain Power harmless for any claims associated with a power outage caused by such installation; and 3) ensure that the light is working after installation, provided NON ELECTRIC POLE OWNER'S NAME didn't previously notify Rocky Mountain Power of a malfunctioning of the light within two (2) Business Days of discovery of such malfunction and prior to installation of NON ELECTRIC POLE OWNER'S NAME's Equipment.

NON ELECTRIC POLE OWNER'S NAME shall not permit the transmission of its radio frequency signals to cause interference with or degradation of the transmissions, licensed or unlicensed radio frequencies, Equipment or utility operations of Rocky Mountain Power, other attaching entities, or devices lawfully operated by the public or other third-parties. NON ELECTRIC POLE OWNER'S NAME shall, at its own expense, eliminate any such interference or degradation as soon as practicable after receipt of notice by Rocky Mountain Power or other third-parties, which notice may be made by telephone, facsimile or by notice.

#### Section 5.05 Nonconforming Equipment

If any Attachment is not placed and maintained in accordance with the requirements and specifications of this Agreement, upon notice by Pole Owner, Licensee shall timely perform all work necessary to correct conditions of Licensee's noncompliance. For purposes of this paragraph, compliance shall be deemed timely if performed during Licensee's regularly scheduled maintenance activities not to exceed one hundred eighty (180) days, or under a plan approved by Pole Owner, unless such noncompliance creates an immediate safety or other threat as described below. Pole Owner reserves the right to perform or authorize work necessary to bring Licensee's Attachments into compliance upon Licensee's failure to timely do so. Pole Owner shall attempt to notify Licensee electronically or in writing prior to performing such work whenever practical. Any such work shall be performed at Licensee's sole risk and expense.

However, if Pole Owner determines such conditions pose an immediate threat to the safety of utility workers or the public, interfere with the performance of Pole Owner's or other Pole attachers' service obligations, or pose an immediate threat to the integrity of Pole Owner's or other Pole attachers' Poles or Equipment, Pole Owner may perform or authorize such work and/or take such action that it deems necessary in sole discretion of Pole Owner without first giving written notice to Licensee and without subjecting itself to any liability, except to the extent of Pole Owner's negligence or willful misconduct. As soon as practicable thereafter, Pole Owner shall advise Licensee in writing of the work performed or the action taken and shall

endeavor to arrange for the accommodation of any affected Attachments. Licensee shall be responsible for paying Pole Owner or other Pole attachers, if applicable, upon invoice, for all costs incurred by Pole Owner or other Pole attachers for all work, action, and accommodation performed by Pole Owner or other Pole attachers under this Section.

**Section 5.06 Access to Electric Utility Space**

Unless Licensee is an electric utility or is using a qualified electrical contractor pre-approved by electric utility, Licensee shall not enter the electric utility space on Pole Owner's Poles for any purpose, except as provided for in this Agreement. The electric utility shall provide a list of qualified electric contractors. A Licensee may request an electric contractor be added to the list. The electric utility shall respond to such request within thirty (30) days. Installation work in the electric utility space to be performed by employees of Pole Owner shall be performed pursuant to a separate installation agreement.

**Section 5.07 Grounding**

If Licensee requires grounding on an existing Pole where grounding conductor does not exist, Licensee shall request Pole Owner to install grounding at the sole expense of Licensee. If Pole Owner is unable to install said grounding within thirty (30) days of the date requested, or sooner if necessary to meet the Commission's service quality requirements as set forth in R746-340, Licensee may have qualified electrical personnel perform this work under the same restrictions as self build for Make-ready work outlined in Section 4.06.

**Section 5.08 Removal of Attachments by Licensee**

Licensee may at any time remove its Attachments from any of the Poles; in each case, Licensee shall immediately give Pole Owner notice of such removal. Removal of all Attachments from any Pole shall constitute a termination of Licensee's right to use such Pole. Licensee shall not be entitled to a refund of any rental on account of any such removal. When Licensee removes Attachments, rental charges payable by Licensee shall be prospectively reduced in the annual billing cycle following Licensee's proper notice to Pole Owner of the removal.

When Licensee performs maintenance to or removes or replaces its Equipment on Pole Owner's Pole, Licensee must chemically treat all field-drilled holes and plug any unused holes caused by Licensee, including those resulting from removal of Equipment; if Licensee fails to adequately plug and treat such holes, Pole Owner may do so at Licensee's sole risk and expense.

**ARTICLE VI. WORKING TOGETHER; COST ALLOCATIONS**

**Section 6.01 Interference with Pole Owner's or other Licensees' Equipment**

If, in Pole Owner's reasonable judgment, Licensee's existing Attachments on any Pole interfere with Pole Owner's or other Pole attachers' existing Attachments or Equipment, or prevent the placing of any additional Equipment by Pole Owner required for its core utility service, Pole Owner shall notify Licensee of the rearrangements or transfers of Equipment or Pole replacements or other changes required in order to continue to accommodate Licensee's Attachments. If appropriate, the notice shall include a Cost Estimate of applicable costs. If Licensee desires to continue to maintain its Attachments on the Pole and so notifies Pole Owner in writing within thirty (30) days, Licensee may perform the necessary work (subject to Pole



Owner's approval based on safety issues), or Licensee shall authorize Pole Owner to perform the work. Should Licensee authorize Pole Owner to perform the work, Pole Owner shall make such changes as may be required, and Licensee, upon demand, shall reimburse Pole Owner for the entire expense thereby actually and reasonably incurred. If Licensee does not so notify Pole Owner of its intent to perform the necessary work or authorize Pole Owner to perform the work, Licensee shall remove its Attachments from the affected Pole or Poles within an additional ten (10) days from such original notification by Pole Owner for a total of forty (40) days; provided, however, that Pole Owner in any emergency may require Licensee to remove its Attachments within the time required by the emergency. Licensee shall provide written notice to Pole Owner within ten (10) business days of completion of removal. If Licensee has not removed its Attachments at the end of the forty (40) day period, or in the case of emergencies, within the period specified by Pole Owner, Pole Owner may remove Licensee's Equipment at Licensee's sole risk and expense, and Licensee shall pay Pole Owner, upon demand, for all costs thereby incurred by Pole Owner.

#### Section 6.02 Pole Replacement for Pole Owner's Benefit

Where an existing Pole is changed out solely for Pole Owner's benefit, Pole Owner shall take all existing permitted Licensee Attachments meeting the requirements of this agreement its construction of all Pole Replacements. Pole Owner shall bear the cost of the Pole replacement, and the labor for the lower and haul of the old Pole, but shall not bear the cost associated with: 1) topping of the existing Pole to allow Licensee to transfer to the new Pole, if necessary; 2) transfer of Licensee's Attachments to the new Pole, if applicable per Section 6.05; and 3) the return trip to low and haul the old Pole after allowing Licensee time to transfer their Attachments, if applicable per Section 6.05. After Pole Owner has completed its work it shall notify Licensee, and Licensee shall, at its own expense, transfer its Attachments to the new Pole within thirty (30) days after the time specified in the notice given by Pole Owner indicating that the Pole is ready for Licensee to transfer its equipment (which time shall not begin until after the parties located above Licensee on the Pole have removed or moved their facilities). If Licensee is last to transfer from the replaced Pole, Licensee may lower and haul the Pole and dispose of the Pole and bill Pole Owner actual costs as defined in Section 7.06.

#### Section 6.03 Pole Replacement for Licensee's Benefit

Where an existing Pole is prematurely replaced (for reasons other than normal or abnormal decay) by a new Pole for the benefit of Licensee, Licensee shall reimburse Pole Owner for all costs, including, but not limited to the cost of replacing the Pole, lower and haul of the existing Pole (unless Licensee takes its own lower and haul action as defined in Section 7.06) and topping of the existing Pole when performed either as an accommodation to Licensee or as required by NESC. Otherwise, Pole Owner shall remove and may retain or dispose of such Pole as the sole owner thereof Pole. Any payments for Poles made or work performed by Licensee shall not entitle Licensee to ownership of any part of said Poles. If Pole replacement under this section benefits both Licensee and other Pole attachers, not including Pole Owner, the costs shall be prorated among all benefiting attachers, not including Pole Owner.

Section 6.04 Pole Placement or Replacement for Joint Benefit of Pole Owner and Licensee

When Pole Owner requires a new Pole for its utility purposes irrespective of Licensee's Attachment and Licensee requires a Pole with extra height or strength exceeding Pole Owner's requirements, Licensee shall pay to Pole Owner a sum equal to the difference between the cost, of erecting a Pole adequate to meet Pole Owner's needs, and the actual cost of erecting a Pole adequate to meet both Parties' needs. Pole Owner shall bear the remainder of the cost of erecting such Pole. Pole Owner and Licensee shall transfer their own facilities in accordance with Section 5.02. Licensee may remove and dispose of the replaced Pole according to Section 7.06 of this Agreement.

Section 6.05 Relocation of Licensee's Attachments

Licensee shall at any time, at its sole risk and reasonable expense, upon reasonable notice from Pole Owner, relocate, replace or repair Licensee's Attachments or transfer them to substituted Poles. Provided, however, that in cases of emergency or if Licensee fails to relocate as required by a Pole Owner's notice, Pole Owner may, without incurring any liability except for negligence or willful misconduct, relocate or replace Licensee's Attachments or Equipment, transfer them to substituted Poles, or perform any other work in connection with Licensee's Attachments or Equipment that may be required, or authorize a third party to perform such tasks, and Licensee shall, upon demand, reimburse Pole Owner or such third party for the entire expense thereby reasonably incurred.

When Licensee is required to relocate its facilities to accommodate a third party attaching to the Pole, upon written request Pole Owner shall disclose the third party's name and contact information to Licensee at the time the relocation or rearrangement is requested. Pole Owner shall coordinate the relocation of existing attachers' facilities to facilitate the new Attachments when necessary. Nothing in this Agreement shall prohibit Licensee from seeking reimbursement for costs it incurs from third party requests; however, all required work to be completed by Licensee must meet the timeframe prescribed by Pole Owner, without regard to third party cost recovery negotiations.

In the event Rocky Mountain Power is the Pole Owner and replaces a Pole where NON ELECTRIC POLE OWNER'S NAME is the last Licensee remaining on the replaced pole, NON ELECTRIC POLE OWNER'S NAME may request Rocky Mountain Power that Rocky Mountain Power transfer NON ELECTRIC POLE OWNER'S NAME's Attachments. If Rocky Mountain Power chooses to transfer NON ELECTRIC POLE OWNER'S NAME's Attachments, NON ELECTRIC POLE OWNER'S NAME shall pay the rate listed in the Fee Schedule (Exhibit B) or the actual cost of the transfer if a listed rate is not in place. If Equipment is needed for the transfer, NON ELECTRIC POLE OWNER'S NAME shall supply the Equipment.

Section 6.06 Relocation of Joint Poles

Whenever it is necessary to replace, move, reset, or relocate a jointly used Pole, the Owner thereof shall, before making such replacement, move, or relocation, give thirty (30) days notice thereof to Licensee (except in case of emergency, when oral notice shall be given and subsequently confirmed by ENS), specifying in such notice the work to be performed and the approximate time of such proposed replacement or relocation. Licensee may request that a pole be reset in the same location and Owner shall attempt to do so when feasible. Owner will make

reasonable efforts to consult and coordinate with Licensee in order to accommodate Licensee's reasonable request for the new location of the replaced or relocated pole. If the Parties are unable to agree upon a mutually beneficial location then the placement of the Pole for the needs of the Owner will prevail.

The relocation or replacement of a jointly used Pole including removal of the old Pole and restoration of the area shall be made by Owner except each Party shall bear the cost of transferring its own attachments to the new Pole. Owner agrees to provide notice to Licensee that it has completed its work to transfer its facilities to the replacement or relocated Pole within thirty (30) days of such completion. Upon receipt of said notice from Owner, the Licensee shall promptly arrange to transfer its Equipment to the new Pole and shall notify the Owner when such transfer has been completed and of its intent to lower and haul the old Pole as stated in Section 7.06. If Licensee fails to transfer its Attachments to the new or relocated Pole or to provide the notice that said transfer has been completed, within thirty (30) days after receiving Owner's notice that Owner's work is completed, Owner may elect to do such work and Licensee shall then be obligated to pay Owner for the cost of such work. Within ten business days of receiving notice from Owner, Licensee may request in writing that the thirty (30) day period be extended for the Licensee where Licensee must modify its facilities in order to relocate to the new Pole.

In the event that third-party joint Pole users not subject to this Agreement whose attachments are located above Licensee's shall have equipment attached to Owner's Poles, Licensee's thirty (30) day period to transfer its Attachments shall not commence until Licensee receives notice from Owner that the third-party attachments above Licensee's have been removed. Should the Owner perform any work for the Licensee, or the Licensee perform any work for the Owner to facilitate completion of the above work or in cases of emergency work, including without limitation transferring equipment, setting or removing Poles, digging holes, or disposing of Poles, the Party for whom work was performed shall pay to the other Party, upon receipt of an invoice, the cost of such work.

If Owner renumbers an existing Pole or assigns a number to a replacement or relocated Pole that is different from the number assigned to the original Pole, Owner shall promptly update its records to reflect that Licensee's permitted Attachments are now associated with the new Pole number and provide notice to Licensee of the new Pole number and the Pole number that it replaced so that Licensee may update its records.

If a Pole larger than that which is already installed is necessary, due to the requirements of (a) both Parties, (b) public authorities, or (c) property owners (other than requirements with regard to keeping the wires of one Party only clear of trees), and Owner requires a new Pole for its utility purposes irrespective of Licensee's Attachment and Licensee requires a Pole with extra height or strength exceeding Owner's requirements, Licensee shall pay to Owner a sum equal to the difference between the cost, of erecting a Pole adequate to meet Owner's needs, and the actual cost of erecting a Pole adequate to meet both Parties' needs. Owner shall bear the remainder of the cost of erecting such Pole. Owner and Licensee shall transfer their own facilities in accordance with Section 5.02. Licensee may remove and dispose of the replaced Pole according to Section 7.06 of this Agreement.

**Section 6.07 Mid-span Poles**

Any Poles erected by Licensee shall not interfere with or be placed in-line with Pole Owner's Poles and shall not create a structure conflict as defined in the NESC. If either Party requires placement of a Pole in-line with any two existing Poles owned by the other party (“i.e., a mid-span Pole”), the Party requiring the mid-span Pole shall pay the cost of setting the Pole, including the cost of the Pole itself. Pole Owner of the Poles on either side of the mid-span Pole shall have sole ownership of the mid-span Pole and the Party requesting the Pole shall pay Pole rental fees to Pole Owner in accordance with this Agreement.

**Section 6.08 Audits of Existing Attachments**

Pole Owner may conduct an Audit of Attachments made to its Poles no more frequently than once every five (5) years. Pole Owner shall give Licensee at least ninety (90) days prior notice of an initial meeting to plan the next Audit. At such meeting, Pole Owner, Licensee and all other Pole attachers in attendance in person or by representative shall participate in, among other things, review of the predicted costs to perform an audit, the selection of an independent contractor for conducting the Audit, as well as the scheduling, scope, extent and reporting of the Audit results. Regardless of whether Licensee attends the Audit planning meeting or expresses an intention to participate in the Audit, Pole Owner shall notify Licensee at least sixty (60) days prior to the commencement of the Audit. Licensee shall advise Pole Owner if Licensee desires to participate in the Audit with Pole Owner not less than thirty (30) days prior to the scheduled date of such Audit. The cost of the Audit shall be included in the carrying charge for the Rental Rate pursuant to the methodology approved by the Commission for such purposes (Exhibit A). The data from the Audit shall be made available to Licensee and all other attachers on the Poles and used to update the Parties’ records. Any Party shall make any objections to the Audit results within ninety (90) days of receipt of the Audit report or such objections are waived.

**Section 6.09 Inspections**

In addition to audits as described above, Pole Owner shall have the right to perform an Inspection for each of Licensee's Attachments upon Poles at any time. Except for routine Periodic Safety Inspections, Pole Owner may charge Licensee for the expense of any such Inspections, including Inspections for Make-ready Work, Pre-Construction Inspections, Post Construction (including modifications or pole transfers) Inspections, and any other Inspections requested by Licensee or deemed reasonably necessary by Pole Owner, at the rates set forth in Exhibit B. The costs of Inspections charged under Exhibit B shall not be included in the carrying charge for the annual Rental Rate calculation in Exhibit A.

**Section 6.10 Tax Liability**

Licensee shall promptly pay any tax, fee, or charge that may be levied or assessed against Pole Owner’s Poles or property solely because of their use by Licensee. If Licensee should fail to pay any such tax or assessment on or before the date such tax or assessment becomes delinquent, Pole Owner, at its own option, may pay such tax on account of Licensee and Licensee shall, upon demand, reimburse Pole Owner for the full amount of tax and any penalties so paid. Nothing in this provision in any way limits either Party’s rights to challenge such tax assessments.

## **ARTICLE VII. MAINTENANCE OF POLES**

### **Section 7.01 Expense of Maintenance**

The expense of maintaining jointly used Poles shall be borne by Pole Owner thereof, and Pole Owner shall maintain its jointly used Poles in a safe and serviceable condition, and shall replace, reinforce, or repair such of those Poles as become defective. Pole Owner shall be solely responsible for collection of costs of damages for Poles broken or damaged by third parties. The Licensee shall be responsible for collecting damages to its own Equipment. If a Pole owned by one Party is replaced by the other Party because of auto damage, storm damage, or some other third party accident, Pole Owner shall pay the other Party for the actual costs of such Pole replacement.

### **Section 7.02 Relocation of Joint Poles Required for Maintenance Purposes**

Whenever it is necessary to replace, move, reset, or relocate a jointly used Pole for maintenance purposes, Pole Owner thereof shall, before making such replacement, move, or relocation, give written notice thereof to Licensee (except in case of emergency, when oral notice shall be given if practicable and subsequently confirmed in writing), specifying in such notice the work to be performed and the approximate time of such proposed replacement or relocation. Licensee may request that a Pole be reset in the same location and Pole Owner shall attempt to do so when feasible, provided that the incremental cost of accommodating this request shall be borne by Licensee.

The Licensee shall promptly arrange to transfer its Equipment to the new Pole and shall notify Pole Owner when such transfer has been completed. In the event such transfer is not completed within thirty (30) days after the time specified in the notice given by Pole Owner indicating that the Pole is ready for Licensee to transfer its Equipment (which time shall not begin until after the Parties located above Licensee on the Pole have removed or moved their facilities), Pole Owner may transfer Licensee's Equipment from the replaced Pole to the replacement Pole in a reasonable manner consistent with industry practices upon Licensee's failure to transfer its Equipment within the above mentioned thirty (30) days notice, and Licensee shall reimburse Pole Owner for all actual costs incurred.

After prior written approval of Pole Owner, if Licensee performs any work for Pole Owner to facilitate Pole Owner's responsibilities in completion of the above work or in cases of emergency work, including without limitation transferring other equipment, setting or lowering Poles, digging holes, or hauling Poles, Pole Owner shall pay to Licensee, upon receipt of an invoice, the reasonable cost of such work. When setting a Pole requires entering the electric utility space, the setting of the Pole must be performed by a qualified electric contractor approved by the electric utility pursuant to Section 3.05, or may be performed by a licensed electrical engineer employed by Licensee upon prior approval of the electric utility.

In the event Licensee desires to maintain its facilities on a Pole that Pole Owner plans to replace, move or relocate, Pole Owner and Licensee may agree to transfer title of the Pole upon agreeable terms and conditions. Upon receipt of a bill of sale or other legal transfer document, Licensee shall assume ownership of the original Pole and shall indemnify and hold harmless the former

Pole Owner of such Pole from all obligations, liabilities, damages, costs, expenses or charges incurred after the date of transfer.

Section 7.03 Abandonment of Jointly Used Poles

If Pole Owner of a jointly used Pole desires at any time to abandon the use thereof, Pole Owner shall give Licensee notice in writing to that effect at least thirty (30) days prior to the date upon which it intends to abandon such Pole. Pole Owner may transfer Licensee's Equipment from the replaced Pole to the replacement Pole in a reasonable manner consistent with industry practices upon Licensee's failure to transfer its Equipment within the above mentioned thirty (30) days notice, and Licensee shall reimburse Pole Owner for all actual costs incurred.

In the event Licensee desires to maintain its facilities on a Pole that Pole Owner plans to abandon, Pole Owner and Licensee may agree to transfer title of the Pole upon agreeable terms and conditions. Upon receipt of a bill of sale or other legal transfer document, Licensee shall assume ownership of the original Pole and shall indemnify and hold harmless the former Pole Owner of such Pole from all obligations, liabilities, damages, costs, expenses or charges incurred after the date of transfer.

Section 7.04 Wood Decay and NESC Violations

Licensee may, as an accommodation and by prior approval by Owner, by its own personnel or by a contractor selected by Licensee and agreed to by Owner, complete a Periodic Safety Inspection and/or treat for wood decay on Poles it does not own which support Licensee's facilities concurrently with Inspection and/or treatment of Licensee Owned Poles located in same geographic area; however, any such Inspection and/or treatment shall not be repeated more frequently than once every ten (10) years. Owner shall reimburse Licensee the cost of inspection and/or treatment in accordance with mutually agreed to flat rate charges.

Section 7.05 Tree Trimming and Brush Cutting

All tree trimming and brush cutting in connection with the initial placement of wires or other Equipment shall be borne entirely by the Party placing the wires or other Equipment. Unless agreed otherwise, each Party shall be responsible for any and all additional tree trimming and brush cutting related to the wires or Equipment it owns.

Section 7.06 Lower and Haul by Licensee

On a Pole that is being abandoned because of a Pole transfer or other reason and if all other attaching entities are off the Pole and Licensee has received written notification, Licensee may, in its sole discretion, lower and haul the abandoned Pole. Licensee must return the Pole to the Pole Owner's yard or dispose of it following the environmental regulations of the state. Licensee must also restore landscape to acceptable local standards. Licensee accepts all liability for the Pole and environment restoration. Licensee may charge the Pole Owner the reasonable actual cost of lower, haul, disposal, and restoration.

Licensee must provide written notification to Pole Owner of its intention to take this action within thirty (30) days of the Pole Owner's notice to transfer or remove. If Licensee elects not to take this action, licensee must provide written notification of its completion of transfer or removal within thirty (30) days of the Pole Owner's notification, the Pole Owner shall return to

lower and haul the old Pole and may charge Licensee for the cost of the return trip, but not the cost of lower and haul.

In the event of a Pole replacement where a third-party joint Pole attacher whose attachments are located above Licensee's Attachment, Licensee's thirty (30) day period to transfer its Attachments shall not commence until Licensee receives notice from Pole Owner that the third-party attachments above Licensee have been removed.

If there is no response from Licensee regarding its transfer or removal after thirty (30) days, and a second written notification is sent by the Pole Owner, after sixty (60) days from its original notification, the Pole Owner may complete the transfer of Licensee Equipment and lower and haul its Pole. Pole Owner may charge Licensee for the actual costs of transferring Licensee's facilities, associated return trip cost thereby incurred. Lower and haul costs and restoration costs shall be at the expense of Pole Owner.

## **ARTICLE VIII. LIABILITY AND REMEDIES**

### **Section 8.01 Remedies for Default**

If either Party shall remain in default in any of its obligations under this Agreement thirty (30) days after written notice thereof has been provided to the defaulting Party pursuant to Article XII, the Party not in default may exercise any of the remedies available to it. Provided however, in such cases where a default cannot be cured within the thirty (30) day period by the exercise of diligent, commercially reasonable effort, the defaulting Party shall have an additional sixty (60) days to cure the default for a total of ninety (90) days after the Party not in default provides its notice of default. Upon Commission approval and subject to Section 10.01 the remedies available to each Party shall include, without limitation: (i) refusal to grant permission for any additional Attachments to the other Party until the default is cured; (ii) termination of this Agreement; and (iii) injunctive relief.

### **Section 8.02 Limitation of Liability and Indemnification**

Licensee shall indemnify, defend, protect and hold harmless Pole Owner, its successors and assigns, from and against any and all claims, demands, causes of action, costs (including attorney's fees) or other liabilities for damages to property and injury or death to persons which may arise out of, or be connected with: (a) the erection, maintenance, presence, use or removal of Licensee's Equipment; (b) any act of Licensee on or in the vicinity of Pole Owner's Poles; or (c) other liabilities arising from any interruption, discontinuance, or interference with Licensee's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Pole Owner undertaken in furtherance of the purposes of this Agreement. This obligation shall not include such claims, costs, damages or expenses resulting from any claims or actions commenced which may be caused by the gross negligence or intentional misconduct of Pole Owner. Under no circumstances shall Pole Owner be liable for any economic losses, costs or damages, including but not limited to special, indirect, incidental, consequential, punitive, or exemplary damages.

In addition, Licensee shall, upon demand, and at its own sole risk and expense, defend any and

all suits, actions, or other legal proceedings which may be brought against Pole Owner, or its successors and assigns, on any claim, demand, or cause of action arising from any interruption, discontinuance, or interference with Pole Owner's service to Pole Owner's customers to the extent caused, or which may be claimed to have been caused, by any action of Licensee or its agents. To the extent Licensee or its agents shall be found to have caused such interruption, discontinuance, or interference, Licensee shall pay and satisfy any judgment or decree which may be rendered against Pole Owner, or its successors or assigns, in any such suit, action, or other legal proceeding; and further, Licensee shall reimburse Pole Owner for any and all legal expenses, including attorneys fees, incurred in connection therewith, including appeals thereof.

**Section 8.03 Notice, Defense, Cooperation, and Settlement**

The indemnifying Party shall have the right, but not the obligation, to defend the other regarding any claims, demands or causes of action indemnified against. Each Party shall give the other prompt notice of any claims, demands or causes of actions for which the other may be required to indemnify under this Agreement. Each Party shall fully cooperate with the other in the defense of any such claim, demand or cause of action. Neither shall settle any claim, demand or cause of action relating to a matter for which such party is indemnified without the written consent of the indemnitor.

**Section 8.04 Warranties of Pole Owner**

Pole Owner warrants that its work in constructing and maintaining the Poles covered by this Agreement shall be consistent with prudent utility practices. Pole Owner further warrants that its own Attachments to its Poles shall be constructed and maintained consistent with prudent utility practices. Pole Owner disclaims all other warranties, express or implied, including but not limited to the warranty of merchantability, fitness for particular purpose, and similar warranties. Pole Owner's liability to Licensee for any action arising out of its activities relating to this Agreement shall be limited to repair or replacement of any defective Poles. Under no circumstances shall Pole Owner be liable to Licensee for any economic losses, costs or damages, including but not limited to special, indirect, incidental, consequential, punitive, or exemplary damages.

**Section 8.05 Warranties of Licensee**

Licensee warrants to Pole Owner that its exercise of its rights and performance of its obligations under this Agreement shall be consistent with prudent utility practices. Under no circumstances shall Licensee be liable to Pole Owner for any economic losses, costs or damages, including but not limited to special, indirect, incidental, consequential, punitive, or exemplary damages.

**Section 8.06 Damage to Equipment**

The Parties shall exercise all reasonable and necessary precautions to avoid causing damage to the other Party's Poles and Equipment and other attachers' Equipment and shall assume responsibility to each other for any and all loss from any damage to the other Party's Poles or Equipment and reimburse the other Party for the entire expense incurred in making such repairs.



Section 8.07 Force Majeure

Neither Party shall be subject to any liability or damages for inability to perform its obligations under this Agreement, except for any obligation to pay amounts when due, to the extent that such failure shall be due to causes beyond the control of either Party, including, but not limited to, the following: (a) the operation and effect of any rules, regulations and orders promulgated by any commission, municipality, or governmental agency of the United States, or subdivision thereof (so long as the claiming party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); (b) restraining order, injunction or similar decree of any court; (c) war or act of terrorism; (d) flood; (e) earthquake; (f) act of God; (g) civil disturbance; (h) strikes or boycotts; or (i) equipment breakdown or failure. Provided, the party claiming Force Majeure shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible. Time periods for performance obligations of parties herein shall be extended for the period during which Force Majeure was in effect.

**ARTICLE IX. INSURANCE AND CREDIT REQUIREMENTS**

Section 9.01 Insurance

Without limiting any liabilities or any other obligations of Licensee, Licensee shall secure and continuously carry during the term of this agreement with insurers having an A.M. Best Insurance Reports rating of A-:VII or better the following insurance coverage:

- a. Workers' Compensation. Licensee shall comply with all applicable Workers' Compensation Laws and shall furnish proof thereof satisfactory to Pole Owner prior to commencing Work.

All Workers' Compensation policies shall contain provisions that the insurance companies will have no right of recovery or subrogation against Pole Owner, its parent, divisions, affiliates, subsidiary companies, co-lessees, or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the Parties that the insurance as effected shall protect all parties.

- b. Employers' Liability. Insurance with a minimum single limit of \$1,000,000 each accident, \$1,000,000 by disease-each employee, and \$1,000,000 by disease-policy limit.
- c. Commercial General Liability. Licensee shall maintain commercial general liability insurance on the most recently approved ISO policy, or its equivalent, written on an occurrence basis, with minimum limits of \$1,000,000 each occurrence/ \$2,000,000 general aggregate for bodily injury and property damage, including the following coverages:
  - a. Premises and operations coverage
  - b. Independent contractor's coverage
  - c. Contractual liability
  - d. Broad form property damage liability
  - e. Sudden and accidental pollution liability, if appropriate

- d. Business Automobile Liability. Licensee shall maintain business automobile liability insurance on the most recently approved ISO policy, or its equivalent, with a minimum combined single limit of \$1,000,000 for bodily injury and property damage with respect to Licensee's vehicles whether owned, hired or non-owned, assigned to or used in the performance of the Work.
- e. Umbrella Liability. Licensee shall maintain umbrella or excess liability insurance with minimum limits of \$5,000,000 each occurrence/\$5,000,000 aggregate where applicable, providing following form coverage in excess of the coverages and limits required in Employers' Liability insurance, Commercial General Liability insurance and Business Automobile Liability insurance above. Licensee shall notify Pole Owner, if at any time their full umbrella limit is not available during the term of this agreement, and will purchase additional limits, if requested by Pole Owner.

#### Section 9.02 Additional Insurance Requirements

The following additional requirements apply to coverage specified in Section 9.01:

Commercial general liability and business automobile insurance policies shall include provisions or endorsements that:

- i) name Pole Owner, its officers, directors, agents, and employees as additional insureds.
- ii) such insurance is primary insurance with respect to the interests of Pole Owner and that any other insurance maintained by Pole Owner is excess and not contributory insurance with the insurance required herein;
- iii) such insurance shall provide cross liability or a severability of interest clause.

All policies shall include provisions or endorsements that provide:

- i) limits of coverage in each of these required policies shall not be reduced without written notification to Pole Owner prior to the effective date of such change, and
- ii) no policy shall be cancelled without prior written notice to Pole Owner and to all other insured parties of no less than (a) ten (10) days if cancelled for nonpayment of premium, or (b) thirty (30) days if cancelled for any other reason.

All required insurance policies shall not contain any provisions prohibiting waivers of subrogation. Unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against Pole Owner, its parent, divisions, affiliates, subsidiary companies, co-lessees, or co-venturers, agents directors, officers, employees, servants, and insurers, it being the intention of the Parties that the insurance as effected shall protect all parties.

Prior to installation of Equipment as permitted under this Agreement, and prior to expiration of each policy throughout the term of this agreement, Licensee shall provide certificates of insurance evidencing current insurance coverage, and confirming compliance with the requirements stated in this article.

### Section 9.03 Security

Pole Owner may require Licensee to furnish Security if (a) the total number of Estimated Attachments is greater than fifty (50) and Licensee does not make the affirmation specified in Section 9.04 (f); (b) the total number of Licensee's actual Attachments at any time exceeds fifty (50) unless Licensee provides to Pole Owner an affirmation as set forth in Section 9.04 (f); or (c) Licensee experiences a Material Adverse Change. If Licensee is required to post Security pursuant to this Section 9.03, and at any time the number of Attachments exceeds one hundred twenty percent (120%) of the Estimated Attachments, Licensee shall continue to provide, no less frequently than annually, increased Security based on the number of actual Attachments. Pole Owner may draw upon such Security to satisfy Licensee's obligations under this Agreement, and Licensee shall replenish such Security within sixty (60) days.

### Section 9.04 Credit Requirements

Licensee need not post Security under Section 9.03 for the benefit of Pole Owner as long as Licensee warrants, and continues during the term of this Agreement, to comply with all of the following representations, warranties and obligations:

- a. Neither Licensee nor any of its principal equity owners is not or has not within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Licensee's performance under this Agreement;
- b. Licensee has not at any time defaulted in any of its payment obligations under any other agreement with Pole Owner;
- c. Licensee is not in material default under any of its other agreements and is current on all of its financial obligations;
- d. Licensee shall provide to Pole Owner and shall at all times maintain an official Certificate of Existence as issued by the Utah Secretary of State;
- e. Licensee shall provide to Pole Owner and shall at all times maintain a valid business license, issued by the proper local, state and/or Federal authority.
- f. Applicable only to a Licensee with Estimated Attachments greater than fifty (50) Licensee meets the Credit Requirements, and will, within thirty (30) days of a request by Pole Owner, provide copies of its most recent annual and quarterly financial statements.

Licensee hereby declares (Licensee initial one only):

\_\_\_\_\_ Licensee affirms and adopts all warranties in this Section 9.04, and therefore is not required to post the security specified in Section 9.03.

\_\_\_\_\_ Licensee does not affirm and adopt all warranties in this Section 9.04, and therefore Licensee elects to post the security specified in Section 9.03.

## **ARTICLE X. GENERAL PROVISIONS**

### Section 10.01 Dispute Resolution

Any dispute arising out of, or relating to, this Agreement shall be settled in accordance with UAR R746-345-6.

Section 10.02 Failure to Enforce Rights

The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement in any instance 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.

Section 10.03 Interest

All amounts payable under the provisions of this Agreement unless otherwise specified herein, shall be payable within forty-five (45) days of the invoice date. An interest charge at the rate of one and one-half percent (1.5%) per month shall be assessed against all late payments. Interest under this Agreement shall not exceed the interest allowable under applicable law.

Section 10.04 Relationship to Third-Parties

Nothing herein contained shall be construed as affecting, diminishing or interfering with any rights or privileges previously conferred by Pole Owner, by contract or otherwise, to others not parties to this Agreement to use any Poles covered by this Agreement and Pole Owner shall have the right to continue, modify, amend, or extend such rights or privileges. The privileges herein granted to Licensee shall, at all times, be subject to the rights of other entities with Attachments to Pole Owner's Poles under existing third-party contracts and arrangements. Further, nothing herein contained shall be construed as conferring or granting to Licensee the exclusive privilege or right to use any of the Poles or other facilities of Pole Owner. Nothing in this Agreement is intended to confer rights on any third-party, as a third-party beneficiary or otherwise.

Section 10.05 Assignment of Rights

Neither Party shall sublet, assign, transfer, or otherwise dispose of this Agreement or any of its rights, benefits or interests under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld; but otherwise, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. No assignment of this Agreement shall operate to discharge the assignor of any duty or obligation hereunder without the written consent of the other Party. Except that each Party may assign all its rights and obligations under this Agreement to its parent corporation, to its subsidiary corporation, to a subsidiary of its parent corporation, to its survivor in connection with a corporate reorganization, to any corporation acquiring all or substantially all of its property or to any corporation into which it is merged or consolidated upon providing 30 days prior written notice to the other Party along with an executed copy of the assignee's executed agreement assuming all obligations and a current inventory of all attachments affected by the assignment.

Section 10.06 Applicability of UAR

Licensee's use of Pole Owner's Poles shall be governed by applicable provisions of the UAR, and any applicable tariff, as may be amended and the terms of this Agreement not inconsistent with the UAR as amended. Such provisions and tariffs are incorporated herein by reference. Neither Party waives its right to petition the Commission for an order amending this Agreement consistent with any subsequent changes in the UAR.

Section 10.07 Applicable Law; Venue

The Parties agree that this Agreement shall be interpreted according to the laws of the state of Utah without consideration of the choice of law rules thereof. Judicial proceedings instituted pertaining to this Agreement shall be instituted only in the agency, state or federal courts located in the state of Utah.

Section 10.08 Survival of Liability or Obligations Upon Termination

Any termination of this Agreement shall not release either Party from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.

Section 10.09 Interpretation

References to Articles and Sections are references to the relevant portion of this Agreement. Headings are for convenience and shall not affect the construction of this Agreement. Exhibits A through D are attached hereto and made a part hereof.

Section 10.10 Severability

In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in full force and effect; provided, in any such case, the Parties shall negotiate in good faith to reform this Agreement in order to give effect to the original intention of the Parties.

Section 10.11 Prior Agreements; Amendments

This Agreement shall supersede all prior negotiations, agreements and representations, whether oral or written, between the Parties relating to the installation and maintenance of Licensee's Equipment on Pole Owner's Poles within the geographic area covered by this Agreement, as specified in Section 2.01. Any Equipment of Licensee attached to Pole Owner's Poles within the locality covered by this Agreement shall be subject to the terms and conditions and Rental Rates of this Agreement. This Agreement, including any exhibits attached and referenced herein, constitutes the entire Agreement between the Parties, and may not be amended or altered except by an amendment in writing executed by the Parties, or as specifically provided for herein. Provided, however, that (i) Equipment currently lawfully attached to Poles and/or pursuant to approvals granted by Pole Owner under prior agreements and Applications in progress for permits, shall continue in effect under or as otherwise provided pursuant to the terms and conditions of this Agreement; and (ii) nothing herein shall modify either Party's rights, obligations or liabilities that arose or were incurred during periods prior to the effective date of this Agreement, with respect to periods prior to the effective date of this Agreement.

**Section 10.12 Additional Representations and Warranties**

Each Party warrants and represents to the other that it possesses the necessary corporate, governmental and legal authority, right and power to enter into this Agreement and to perform each and every duty imposed. Each Party also warrants and represents to the other that each of its representatives executing this Agreement, or submitting or approving an Application made hereunder, is authorized to act on its behalf.

Each Party further warrants and represents that entering into and performing under this Agreement does not violate or conflict with its charter, by-laws or comparable constituent document, any law applicable to it, any order or judgment of any court or other agency of government applicable to it or any agreement to which it is a party and that this Agreement and any Application approved hereunder, constitute valid, legal, and binding obligations enforceable against such Party in accordance with their terms.

**Section 10.13 Relationship of the Parties**

Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise.

**ARTICLE XI. NOTICE**

**Section 11.01 Agreement Notice**

Except as otherwise provided herein, any notice regarding this Agreement hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by written notice, and shall be transmitted by United States mail, by regularly scheduled overnight delivery, or by personal delivery:

Rocky Mountain Power:  
Joint Use Administration  
825 NE Multnomah St., Suite 1700  
Portland, Oregon 97232

[OTHER ENTITY]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Section 11.02 Operational Notice

All notices regarding permitting and other communications regarding day-to-day operations shall be submitted by the Parties via e-mail at the addresses set forth below or at such other address as a Party may designate for itself from time to time by written notice.

Rocky Mountain Power:  
[tdcoordeastreg@pacificorp.com](mailto:tdcoordeastreg@pacificorp.com)

[OTHER ENTITY]  
\_\_\_\_\_

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first herein written.

PACIFICORP, an Oregon Corporation,  
dba ROCKY MOUNTAIN POWER

[OTHER ENTITY]

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

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

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

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

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

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