

~~UTAH~~ POLE ATTACHMENT AGREEMENT

Between

\_\_\_\_\_

And

\_\_\_\_\_

~~This Pole Attachment Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ and qualified to do business in the State of Utah, hereinafter “\_\_\_\_\_,” 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, hereinafter “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. Both parties to the Agreement may be referred to as “Pole Owner,” “Licensee,” “Party” or “Parties.”~~

WITNESSETH

BETWEEN

ROCKY MOUNTAIN POWER

AND

{LICENSEE COMPANY NAME}

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THIS POLE ATTACHMENT AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 20\_\_\_\_, is entered into by and between PACIFICORP, an Oregon Corporation, doing business in Utah as ROCKY MOUNTAIN POWER, hereinafter "Rocky Mountain Power," and {LICENSEE COMPANY NAME} "Licensee", a(n) {State} Corporation.

WHEREAS, ~~the Parties are PacifiCorp is~~ engaged in the business of providing electric 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~~ Licensee conducts its {Company Description e.g. "telecommunications"} business in a number of the same areas within Utah; 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;~~

WHEREAS, Licensee desires to attach its {Type of Equipment to be Attached e.g. "Telephone Service"} Equipment to Poles owned by Rocky Mountain Power within the state of Utah and Rocky Mountain Power desires to grant Licensee access to such Poles in accordance with the terms and conditions of this Agreement.

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

## **ARTICLE I. DEFINITIONS**

~~"Agreement" means this Utah Pole Attachment Agreement.~~

The following terms, when used herein with initial capitalization, whether in the singular or in the plural, shall have the meanings specified in this Article I:

"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, Rocky Mountain Power analyzes the data, updates its records, and responds to Licensee at least once per Application, regarding its approval or acknowledgement of the Application.

"Attachment(s)" means Pole Attachment(s) as defined in R746-345-2-~~C-E~~ of the Utah Administrative Rules- ("UAR"), except for antennas or other non-power utility equipment placed on a pole above any power conductors ("Pole-Top Attachment(s))."

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~~“Audit” means a periodic examination of Pole Owner’s poles occupied by Licensee and any of Licensee’s Attachments or Equipment attached to such poles for the purpose of i) verifying the presence or location of all Attachments and any other pole mounted Equipment of Licensee, or ii) determining whether Licensee is in compliance with the requirements and specifications of Section 3.04 of this Agreement or any other obligation of Licensee under this Agreement~~  
“Attachment Space” shall have the meaning set forth in UAR R746-345-2-B.

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

~~“Commission” means the~~ State of Utah Public Service Commission of Utah.

~~“Cost Estimate” means a cost estimate prepared by Rocky Mountain Power, 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). Rocky Mountain Power 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 Rocky Mountain Power in its reasonable judgment.~~

~~“Distribution Construction Standards” means the current Rocky Mountain Power Distribution Construction Standards attached hereto as Exhibit C, and any subsequent revisions thereof.~~

~~“Electronic Notification System” or “ENS” means the electronic system, or combination of electronic systems that may be approved by the Commission and adopted in Utah. When adopted, the Parties must~~ designated by Rocky Mountain Power in its sole discretion, Licensee may utilize ENS to submit Applications for permission to attach, relocate, or remove its Equipment, and complete any other notifications as required under the terms of this Agreement, and to respond to requests for work to be performed.

~~“Equipment” means all devices, articles or structures necessary to operate the business of the Parties including, but not limited to, antennas, 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 Rocky Mountain Power prior to, as of the date of Licensee’s execution of this Agreement.~~

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“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 UAR R746-345-3.A. ~~of the Utah Administrative Rules.~~

“~~Licensee~~Inspection” means examination by Rocky Mountain Power of its Poles and all proposed or existing Attachments for the Party that has been granted access to purpose of verifying the number and location of all Attachments and any other Pole Owner's poles pursuant to mounted Equipment of Licensee, or determining whether Licensee is in compliance with the terms of this Agreement or who is seeking or has obtained permission to place Equipment upon Pole Owner's poles as, 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 in Article III of to Rocky Mountain Power showing that the work is completed and in compliance with this Agreement.
3. Special Inspection: Rocky Mountain Power'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 Rocky Mountain Power of all or any number of Poles that may have Licensee Attachments.
5. Periodic Safety Inspection: Any Inspection done by Rocky Mountain Power 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, Rocky Mountain Power reserves the right to charge Post Construction Inspection Fees for a complete re-inspection of the reported corrections.

“Make-ready Work” means all engineering, Inspection, design, planning, construction, or other work ~~reasonably~~ necessary, in Rocky Mountain Power's reasonable judgment, to prepare Rocky Mountain Power's 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 Rocky Mountain Power's ability to remove the Attachments or to have access to its Poles.

“National Electrical Safety Code” or “NESC” means the current edition, ~~and any supplements thereto and revisions or replacements thereof, of the publication, so named,~~ published by the Institute of Electrical and Electronics Engineers, Inc., as may be amended or supplemented from time to time.

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“Party” means Rocky Mountain Power or Licensee, as the context requires; “Parties” means Rocky Mountain Power and Licensee.

“Pole” means any pole owned by Rocky Mountain Power that is designed to carry distribution as defined in R746-345-2.C of the Utah Administrative Rules.

“Security” means a bond, cash escrow, letter of credit or parental guaranty, acceptable in form to Rocky Mountain Power in its sole and reasonable discretion, to assure performance by Licensee of its obligations hereunder, which shall be in an amount sufficient to pay Rocky Mountain Power for the purpose of safeguarding persons and property during the installation, operation, or maintenance of electric supplycost to remove and communication lines dispose of Licensee Attachments and associatedrelated equipment, plus two years’ of rental payment obligations under this Agreement. The calculation of the initial amount of Security shall be Rocky Mountain Power’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.

“Non-recurring Charges” means legally authorized and identifiable amounts payable by Licensee under this Agreement other than rental charges.

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

“Unused Equipment” means any Equipment situated on Pole Owner’s poles, that Licensee has ceased operating or utilizing in the normal course of furthering the purposes of its business.

“UAR” means the Utah Administrative Rules.

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

#### **Section 11.01 Section 2.01 Poles Grant of License; 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 to the use of the Parties’ poles only. The use of electric transmission facilities, other than transmission poles, is expressly excluded from coverage under this Agreement. Any requests for permission to use excluded transmission towers, conduits, and other structures, will be considered individually and, if granted, shall be covered by a separate agreement.

In accordance with the terms and conditions of this Agreement, Rocky Mountain Power hereby grants Licensee the non-exclusive right to attach its Equipment pertaining directly to its business

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purpose as defined in Section 2.02. Licensee Attachments hereunder shall be limited to Rocky Mountain Power's Poles within the state of Utah.

Attachments shall not be permitted by Rocky Mountain Power on Poles which are not designed to accommodate distribution. Nothing in this Agreement shall be construed to obligate Rocky Mountain Power to grant Licensee permission to use any particular Pole or Poles.

### Section 11.02 Section 2.02 Attachments; Purpose

Each Party's Licensee's use of the other Party's Poles shall be confined to the Attachments which Pole Owner has given Rocky Mountain Power may give Licensee prior written permission to install or as otherwise provided pursuant to for the terms and conditions sole purpose of providing: (the "Permitted Purpose") service. This Agreement does not apply to Pole-Top Attachments.

Section 2.03—In the event Licensee intends to expand or modify its Permitted Purpose, Licensee shall provide at least ninety (90) days advance written notice to Rocky Mountain Power. Following receipt of such notice, Rocky Mountain Power 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.

### Section 11.03 Section 2.03 Reservation of Rights

Pole Owner may reserve space on its poles if such reservation is consistent with a development plan that reasonably and specifically projects and identifies a need for that space in 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. Pole Owner shall permit use of its reserved space until such time as Pole Owner has an actual need for that space, 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.

Rocky Mountain Power reserves the right, in its sole judgment, to reject Applications for Attachments to its Poles for the following reasons:

- a. Insufficient capacity - once all reasonable potential accommodations have been considered by Rocky Mountain Power and communicated to Licensee.
- b. The Poles are necessary for Rocky Mountain Power's own sole use or the Attachments would threaten Rocky Mountain Power's system reliability.
- c. The proposed Attachment is considered to be unsafe according to the NESC, Rocky Mountain Power's Distribution Construction Standards (Exhibit C) or Commission safety rules.
- d. Unreasonable interference with Rocky Mountain Power's or a third party's Equipment.
- e. Licensee's account with Rocky Mountain Power is not current (i.e. all undisputed invoices are not paid on time).
- f. Licensee is in default of this Agreement.

~~Article XII~~ **ARTICLE III. LICENSEE'S USE OF POLES**

~~Section 12.01~~ **Section 3.01 Application for Permission to Install Attachment**

With the exception of ~~customer~~ service drops, ~~before Licensee places an~~ as addressed in Section 3.03, Licensee shall not have the right to place, nor shall it place, any Equipment upon Poles without first making Application and receiving permission to do so; nor shall Licensee modify the position of any Attachment upon any of Pole Owner's poles, Poles without first making Application and receiving permission to do so.

Licensee shall ~~request~~ apply for prior permission from Pole Owner Rocky Mountain Power to place any Equipment upon any Poles, or overlash its Equipment to any existing Attachments or other Equipment already attached to Poles, in writing and or via the Electronic Notification System (ENS). The Application shall include, without limitation: all location information with Rocky Mountain Power's Pole numbers; description of Equipment to be attached; engineering information for the calculation of Pole loading, clearances and viability of each Pole to accept the Attachment; indication of required Make-ready Work as outlined in Section 3.02; and all applicable contact information for Licensee or Licensee's qualified contractor. Rocky Mountain Power will either approve or deny Applications in writing in accordance with the requirements of UAR R746-345-3.

Licensee shall promptly submit payment for all applicable fees, applicable to the assessment of proposed Attachments pursuant to the Fee Schedule (attached as Exhibit ~~—~~) and B) upon receipt of an invoice from Rocky Mountain Power. Rental charges for each approved Attachment shall commence as of the date of Rocky Mountain Power's approval of the Application pursuant to the Rental Rate Schedule (attached as Exhibit ~~—~~) upon receipt of an invoice from Pole Owner. Rental Fees shall not apply until the 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 3.02 Make-ready Work**

Licensee shall identify in its Applications any Make-ready Work necessary to accommodate its Attachments. If in the sole judgment of Rocky Mountain Power, the accommodation of any of Licensee's Attachments necessitates Make-ready Work, Rocky Mountain Power shall provide the Cost Estimate for the Make-ready Work in its response to Licensee's Application within the applicable Application processing time period identified on the application is physically in place. in UAR R746-345-3. Licensee shall indicate whether it accepts or rejects the Cost Estimate by returning Rocky Mountain Power's Make-ready Work notice, signed by an authorized Licensee representative, within thirty (30) days of Rocky Mountain Power's Cost Estimate notice. 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, Rocky Mountain Power may perform such Make-ready Work, and Licensee shall reimburse Rocky Mountain Power for the entire expense thereby actually incurred, without regard to whether Licensee elects not to use the Pole

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or Poles after Make-ready Work has commenced. Licensee shall be obligated to pay Rocky Mountain Power 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 Rocky Mountain Power, Licensee shall submit pre-payment for the estimated Make-ready Work in accordance with UAR 746-345-3.C.7.

~~Licensee shall make its written application to Pole Owner at the address set forth in Article XI. The written application form is attached hereto as Exhibit \_\_\_ and may be revised from time to time as approved by the Commission. The application shall contain all required information including: the specific Equipment to be installed, the map number (to the extent that it is identifiable or provided by Pole Owner and part of the pole number), both party's pole numbers (to the extent that the pole numbers are on the pole and identifiable as the party's pole number), street address of nearest physical location identifier of the poles in question, the space desired on each pole, and any additional information requested by Owner as reasonably necessary to properly review the request for attachment. Pole Owner shall not unreasonably request such additional information. Licensee shall not unreasonably refuse to provide such additional information.~~

~~Additional permitting applications for overlashing are not required for a Licensee in its existing pole space. The Licensee will provide a 14 day prior notice to the Pole Owner of the proposed overlashing, providing information (e.g., pole identification numbers for poles to be overlashed, identification of the type or specifications for the Equipment that is to be installed, etc.) needed by the Pole Owner to monitor and maintain its pole facilities~~

~~Third Party overlashing is not permitted without the third party submitting, to the Pole Owner, its own application for its attachments and paying any applicable fees and appropriate rental payments for its attachments to the Pole Owner.~~

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

### ~~Section 1.01—Licensee's Right to Install Equipment~~

~~The Pole Owner shall process permit applications and provide estimates of the costs of make-ready work in accordance with R746-345-3(C) of the Utah Administrative Rules.~~

~~If the Pole Owner rejects the application, the Pole Owner must state the specific reasons for doing so. Applicants may appeal to the Commission if they do not agree that the Pole Owners stated reasons are sufficient grounds for rejection.~~

~~If notice is not received from Pole Owner within the above mentioned time frames, Licensee must check back with the Pole Owner before proceeding with installing the Attachment and can appeal to the Commission for permission to proceed.~~

~~After processing, Pole Owner shall inform Licensee that the application has been approved or denied by returning the application with an appropriate notation to the Licensee at the address set~~

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~~forth in Article XII. Any denial of an application by the Pole Owner must 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.~~

~~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. Rocky Mountain Power shall provide Licensee an estimated completion date for any Make-ready Work, taking into account the timeframes set by UAR 746-345-3, 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 Rocky Mountain Power shall negotiate solutions in good faith when the estimated time to perform the Make-ready Work does not meet Licensee's project requirements. At Licensee's option and upon approval from Rocky Mountain Power, Licensee may request either assistance with the work by Licensee or by qualified contractors hired by Licensee, payment of premium rates for Rocky Mountain Power's employees to be dedicated to perform work solely on Licensee's project, or similar measures designed to augment Rocky Mountain Power's capabilities. If Licensee chooses to employ self-build option as provided in UAR 746-345-3 C to complete the Make-ready Work, to ensure safety and reliability, the qualified contractor and the schedule must be approved by Rocky Mountain Power.~~

~~Rocky Mountain Power shall perform such Make-ready Work as may be required and Licensee shall pay Rocky Mountain Power for the Make-ready Work in accordance with the procedures outlined in UAR 746-345-3. Licensee shall pay the costs of all Make-ready Work undertaken by Rocky Mountain Power 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, Rocky Mountain Power shall provide Licensee a statement of the actual material, hours, equipment costs, and any other associated costs for payment of Make-ready Work.~~

### Section 3.02.01 Pole Replacement for Licensee's Benefit

~~Where an existing Pole is prematurely replaced by a new Pole for the benefit of Licensee, Licensee shall reimburse Rocky Mountain Power for all costs, including, but not limited to, the cost to replace the Pole, transfer and any required replacement of existing Rocky Mountain Power equipment, lower and haul of the existing Pole, and topping of the existing Pole when performed either as an accommodation to Licensee or as required by the NESC. Rocky Mountain Power shall remove and may retain or dispose of such Pole as the sole owner thereof. Any payments for Poles made by Licensee shall not entitle Licensee to ownership of any part of said Poles.~~

### Section 3.02.02 Mid-span Poles

~~Any Poles erected by Licensee shall not interfere with, or be in-line with Rocky Mountain Power's Poles, and shall not create a structure conflict as defined in the NESC. If Licensee requires placement of a Pole in-line with any existing Poles ("i.e., a mid-span Pole"), Licensee shall notify Rocky Mountain Power of its need and Rocky Mountain Power shall determine the feasibility of such request and the request shall not be unreasonably denied. Licensee shall pay Rocky Mountain Power for all costs incurred by Rocky Mountain Power in installing such additional Poles. Rocky Mountain Power shall~~

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have sole ownership of the mid-span Pole and Licensee shall pay rental fees to Rocky Mountain Power in accordance with Article IArticle IV.

### Section 3.02.03 Pole Placement or Replacement for Joint Benefit of Rocky Mountain Power and Licensee

Where Rocky Mountain Power requires a new Pole for its utility purposes irrespective of Licensee's Attachment and Licensee requires a Pole with extra height or strength exceeding Rocky Mountain Power's requirements, Licensee shall pay to Rocky Mountain Power a sum equal to the difference between the cost, of erecting a Pole adequate to meet Rocky Mountain Power's needs, and the actual cost, of erecting a Pole adequate to meet both Parties' needs. Rocky Mountain Power shall bear the remainder of the cost of erecting such Pole. Each Party shall transfer its equipment at its own cost.

### Section 3.03 Licensee's Installation Responsibilities

Licensee shall complete the installation of its Attachments upon the Pole(s) identified therein covered by each approved Application within one hundred eighty (180) days following approval by Rocky Mountain Power. Licensee shall provide written notice to Rocky Mountain Power of its completion within five (5) Business Days of the actual installation.

In the event Licensee fails to complete installation of its Attachments within the prescribed time limit, the permission granted by Rocky Mountain Power to place Attachments upon the Pole or Poles shall automatically terminate and Licensee shall be required to reapply and receive permission to do so, all as prescribed in Section 3.01as applicable to the initial Application. Licensee's failure to actually install its Equipment, after it has received approval from Rocky Mountain Power, shall not constitute entitlement for any refund or reduction of fees or rental charges incurred for its proposed attachments.

Licensee shall have the right to install service drops ~~without prior to, but still subject to,~~ approval by Pole Owner. ~~This would include 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 the attacher has an existing pole attachment. Rocky Mountain Power.~~ However, when Licensee installs service drops, Licensee must follow all procedures applicable to Attachments generally, except ~~for filing applications and payment of fees, and shall submit notification to Pole Owner on a quarterly basis. Notwithstanding the above, no notification shall be required for service drops that are self-supporting wire or wires that do not require the use of messenger strand and a lashed cable. Required notifications of that the Application pertaining to the service drop installations shall contain information identifying the pole to which~~ must be submitted to Rocky Mountain Power no later than five (5) Business Days after installation. Should Rocky Mountain Power deny permission to install the service drop ~~was added,~~ Licensee shall remove the service drop immediately. If Licensee has not removed its Attachments or fails to contact Rocky Mountain Power requesting a reasonable extension within the five (5) Business Day period, or in the case of emergencies, within the period specified by Rocky Mountain Power, Rocky Mountain Power may remove Licensee's Equipment at

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Licensee's sole risk and expense, and Licensee shall pay, upon demand, for all costs thereby incurred by Rocky Mountain Power.

~~If the Licensee rejects the make-ready estimate as discussed in R746-345-3(C)8 the applicant may, at its own expense, use approved contractors to self-build the required make-ready work. Before proceeding with the make-ready work the Attacher must submit detailed plans to the Pole Owner for prior approval. The Pole Owner will have a 14 day turn-around time to approve or disapprove the plans.~~

### Section 1.02 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 renumbers a pole, it shall provide written notice of the new pole number and cross-reference to the old pole number and location to Licensee within thirty (30) days. When the 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 the 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 will assist Licensee in identifying the specific poles sold. Licensee need not submit Applications for additional Attachments within the permitted Attachment Space for mid-span service drops from permitted Pole Attachments, or service drop risers and associated equipment attached directly to the Pole.~~

### Section 3.04 Identification of Equipment

Licensee shall comply with UAR R746-345-4 regarding Attachment labeling, Licensee shall clearly mark Attachments with suitable identification visible from the ground that will not interfere with other facility identification, as mutually agreed to by both Parties.

### Section 12.02 Section 3.05 Conformance to Requirements and Specifications

~~Licensee shall, at its ~~own~~ sole risk and expense, place and maintain its Equipment upon the ~~poles~~Pole in conformity with the requirements and specifications of the NESC and ~~other~~ applicable law, as well as any additional construction standards approved by the Commission such requirements and attached specifications as Rocky Mountain Power shall from time to time prescribe, including without limitation, the current Rocky Mountain Power Distribution Construction Standards (Exhibit ~~\_\_\_~~. Licensee agrees that, consistent with Commission rules C) and industry practice, as applicable, the current Rocky Mountain Power Engineering Handbook provisions (Exhibit D). In the event of any conflict between any of the requirements and ~~in considerations~~ specifications of safety the NESC, and service concerns, twisted pair copper cable or wire should be the lowest Attachment on Pole Owner's poles. All other cable or wire Attachments should be placed above twisted pair copper cable those prescribed by Rocky Mountain Power, the more stringent requirements and specifications shall govern.~~

Licensee shall ensure that all overlashes conform with the construction (including its employees and other standards and terms set forth in this Agreement and Licensee shall be responsible for any nonconformance whether made by Licensee or by a third party overlasher.

## POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]

### Section 1.03—Access to Electric Utility Space

~~Unless Licensee is an electric utility or is using a qualified electrical contractor pre-approved by electric utility, Licensee (contractors) shall not enter the Rocky Mountain Power's electric utility space on Pole Owner's poles for any purpose. When the Equipment sought to be installed on a pole-bearing electric facilities is a wireless antenna, which is to be installed at the pole top or otherwise in or above the electric utility space, Licensee shall make special arrangements with the Pole Owner for installation of the wireless antenna by electric utility employees or qualified electric contractors approved by the electric utility. 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 30 days. Installation work in the electric utility space to be performed by employees of the Pole Owner shall be performed pursuant to a separate installation agreement.~~

### Section 1.04—Grounding

~~including making connections to the Rocky Mountain Power neutral. If Licensee requires grounding on an existing Pole where a grounding conductor does not exist, Licensee shall request the Pole Owner to that Rocky Mountain Power install grounding at the sole expense of Licensee. If the Pole Owner is unable to install said grounding within 30 days of the date requested, or sooner if necessary to meet the Commission's service quality requirements, Licensee may hire qualified electrical contractors to perform this work. 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 of the Pole Owner Rocky Mountain Power 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 Rocky Mountain Power harmless from any liability of any sort derived from Licensee or Licensee'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 Licensee's Equipment, the installation of which shall be performed only by a Rocky Mountain Power-approved qualified worker, Licensee 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 Licensee 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 Licensee's Equipment.~~

~~Licensee 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. Licensee shall, at its own expense, eliminate any such interference or~~

## POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]

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 3.06 Nonconforming Equipment

If any Attachment is not placed and maintained in accordance with the requirements and specifications of ~~Section 3.04, upon notice by Pole Owner, Licensee shall timely perform all work necessary to~~ Section 3.05, Rocky Mountain Power reserves the right to correct conditions of said condition upon Licensee's noncompliance. For purposes of this paragraph, ~~compliance failure to do so. Such work shall be deemed timely if performed during Licensee's regularly scheduled maintenance activities or under a plan approved by Pole Owner, unless such noncompliance creates an immediate safety or other threat as described below. Any such work will be performed at Licensee's sole risk and expense. 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 will attempt~~ Rocky Mountain Power shall make commercially reasonable efforts to notify Licensee ~~electronically or in writing~~ prior to performing such work ~~whenever practical.~~

~~. However, if Pole Owner~~ Rocky Mountain Power determines ~~such~~ the 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'~~ Rocky Mountain Power's service obligations, or pose an immediate threat to the integrity of ~~Pole Owner's or other pole attachers'~~ Rocky Mountain Power's Poles or Equipment, ~~Pole Owner~~ Rocky Mountain Power may perform ~~or authorize~~ such work ~~and/or take such action that it deems necessary, without first giving written or electronic prior notice to Licensee and without subjecting itself to any liability, except to, at the extent sole risk and expense of Pole Owner's negligence or willful misconduct.~~ Licensee. As soon as practicable thereafter, ~~Pole Owner will advise~~ Rocky Mountain Power shall notify Licensee in writing of the work performed ~~or the action taken and will endeavor to arrange for the accommodation of any affected Attachments. Licensee shall be responsible for paying Pole Owner or other pole attachers, if applicable pay, upon demand, for all costs thereby 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 3.07~~ Rocky Mountain Power.

### Section 3.07 Interference with Rocky Mountain Power's Equipment

If, in Rocky Mountain Power's judgment, Licensee's existing Attachments on any Pole interfere with Rocky Mountain Power's existing Equipment or prevent the placing of any additional Equipment by Rocky Mountain Power, Rocky Mountain Power shall notify Licensee in writing of rearrangements or transfers of Licensee's Attachment, Pole replacements or other changes required in order to continue to accommodate Licensee's Attachments. If appropriate, this notice shall include a Cost Estimate for any applicable Make-ready Work by Rocky Mountain Power to accommodate Licensee's continued attachment.

If Licensee desires to continue to maintain its Attachments on a Pole where a Cost Estimate has been provided for accommodation work to be completed by Rocky Mountain Power, it shall return Rocky Mountain Power's notice of the Cost Estimate, signed by an authorized Licensee representative, within thirty (30) days. If Licensee does not accept the cost to accommodate its

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

continued attachment, Licensee shall remove its Attachments from the affected Pole or Poles within thirty (30) days from such notification by Rocky Mountain Power; provided, however, that Rocky Mountain Power in any emergency may require Licensee to remove its Attachments within the time required by the emergency. Licensee shall notify Rocky Mountain Power of its removal within five (5) Business Days of completion of the removal.

If Licensee has not removed its Attachments at the end of the thirty (30) day period, or in the case of emergencies, within the period specified by Rocky Mountain Power, Rocky Mountain Power may remove Licensee's Equipment at Licensee's sole risk and expense, and Licensee shall pay, upon demand, for all costs thereby incurred by Rocky Mountain Power.

### Section 3.08 Expense of Situating Pole Attachments

~~Section 1.05—~~Licensee shall place, maintain, rearrange, transfer, and remove its own Attachments at its own expense except as otherwise expressly provided hereunder.~~Time to Complete Installation~~

~~Except as otherwise~~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 Rocky Mountain Power, without regard to third party cost recovery negotiations.

### Section 3.09 Vegetation Management

All vegetation management in connection with the initial placement of wires or other Attachment shall be undertaken entirely by the Party placing the wires or other Attachment at such Party's sole risk and expense. Unless agreed to by the Parties in good faith, Licensee shall complete the installation of its Attachments upon the pole(s) covered by otherwise, each approved application within ninety (90) days of approval by Pole Owner. In the event Licensee should fail to complete the installation of its Attachments within the prescribed time limit, the permission granted by Pole Owner Party shall be responsible for any and all vegetation management related to place such Attachments upon Pole Owner's pole or poles shall terminate and the wires or Attachment it owns. If Licensee shall not have the right to place such Attachments upon the pole or poles without first reapplying for and receiving permission fails to fulfill its obligations of this section, Rocky Mountain Power shall provide written notice to do so, all as prescribed in Section 3.01 as applicable to the initial application.

### ~~Section 1.06—~~Make ready Work

~~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 will indicate the Make ready Work that will be necessary to accommodate the Attachments requested and the estimated cost thereof within the application processing time period identified in Section 3.02. If Licensee is willing to bear the cost of all Make ready Work necessary, as determined by Pole Owner, Licensee shall so indicate via ENS or in writing that if the issue is not resolved within thirty (30) days of the date of Pole Owner's response to Licensee's initial application. Pole Owner will provide Licensee an estimated completion date for any Make ready Work, taking into account the overall scope of the Licensee's project, the volume of applications received from other licensees, as well as the availability of crews to~~

## POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]

~~perform the work. The Licensee and the Pole Owner shall negotiate solutions in good faith when the estimated time to perform the Make-ready Work does not meet the Licensee's project requirements. At Licensee's option, Licensee may request either assistance with the work by Licensee or by qualified contractors hired by the 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 the Pole Owner's capabilities.~~

~~Pole Owner will perform such Make-ready Work as may be required and Licensee will reimburse, upon demand, Pole Owner for the entire expense thereby actually and reasonably incurred. Licensee shall pay the costs of all Make-ready Work undertaken by Pole Owner 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. An itemized statement detailing the actual material, hours, equipment costs, and any other associated costs will be provided to Licensee for payment of Make-ready Work.~~

### ~~Section 1.07 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 in accordance with the provisions of this Agreement, except for Pole Owner's negligence or willful misconduct. Pole Owner will, however, except in cases of emergency, use reasonable efforts to contact Licensee prior to making changes that will affect Licensee's Attachments, but in any event will contact Licensee as soon as practicable thereafter. Rocky Mountain Power shall perform the required remedy at Licensee's sole risk and expense.~~

### ~~Section 12.04~~Section 3.10 ~~Third-party Consents, Permits, Licenses, Easements, Rights of way or Grants~~

The right of access to ~~Pole Owner's~~Rocky Mountain Power'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~~shall be 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~~Rocky Mountain Power hereunder. Licensee agrees to indemnify, defend and hold harmless ~~Pole Owner~~Rocky Mountain Power against and from any and all third-party claims, demands, law suits, losses, costs and damages, including attorney's fees, to the extent arising from ~~Licensee failure, or alleged failure to have the requisite authority. Licensee's failure, or alleged failure to have the requisite authority.~~ Rocky Mountain Power, at any time, may require Licensee to submit written documentation of compliance with this section. Upon notice from Rocky Mountain Power to Licensee that necessary permission for the use of any Pole or Poles has expired, or has not been secured from property owners or public authorities, any permission granted covering the use of such Pole or Poles shall immediately terminate and Licensee shall

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

remove its Equipment from the affected Pole or Poles within thirty (30) days of said notice, or within the period required by the property owners or public authorities, whichever is shorter. If Licensee has not removed its Equipment within said period, Rocky Mountain Power may remove Licensee's Equipment from such Poles without incurring any liability and Licensee shall, upon demand, pay Rocky Mountain Power all costs incurred by Rocky Mountain Power in the removal of Licensee's Equipment.

### Section 12.05 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 Equipment or prevent the placing of any additional Equipment by Pole Owner required for its core utility service and included in Pole Owner's development plan as described in Section 2.03, Pole Owner will 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 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, will 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. 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 will pay Pole Owner, upon demand, for all costs thereby incurred by Pole Owner.~~

### Section 12.07 Pole Replacement for the Pole Owner's Benefit

~~Where an existing pole is changed out solely for the Pole Owner's benefit, the Pole Owner will bear the total cost of the pole replacement including the labor for the lower and haul of the old pole but not including the cost to transfer Licensee's attachments to the new pole. 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 the Pole Owner indicating that the pole is ready Licensee to transfer its equipment (which time shall not begin until after the parties located above the Licensee on the pole have removed or moved their facilities).~~

### Section 12.09 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 sole benefit of the Licensee, the Licensee shall reimburse the Pole Owner for all costs, including, but not limited to the cost in replacing the new pole, the remaining life value of the existing pole, lower and haul of the existing pole (to the extent that this is performed by the Pole Owner), and topping of the existing pole when performed either as an accommodation to Licensee or as required by NESC. Pole Owner shall credit the Licensee~~

## POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]

~~for salvage value of the existing pole if it is not topped and it is less than ten years old. Pole Owner shall remove and may retain or dispose of such pole as the sole owner thereof. Any payments for poles made or work performed by the Licensee shall not entitle Licensee to ownership of any part of said poles. If pole replacement under this Section 3.14 benefits both Licensee and other pole attachers, the costs shall be pro-rated among all benefiting attachers.~~

### ~~Section 12.10 Pole Placement or Replacement for Joint Benefit of Pole Owner and Licensee~~

~~Where Pole Owner requires a new pole and Licensee requires extra height or strength exceeding a basic 40 foot Class 5 pole to accommodate its new or existing attachments, Licensee shall pay a sum equal to the difference between the total cost of installing a new pole adequate to accommodate Licensee's new and existing attachments and the total cost of a basic 40 foot Class 5 pole. The balance of the cost of installing the pole actually installed shall be borne by Pole Owner.~~

### Section 3.11 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 hereunder. Relocation of Licensee's Attachments at Rocky Mountain Power's Option

~~Licensee shall at any time, at its own sole risk and reasonable expense, upon reasonable notice from Pole Owner Rocky Mountain Power, relocate, replace or, repair Licensee's, or perform any other work in connection with the Attachments or transfer them that may be required by Rocky Mountain Power, within thirty (30) days unless another timeframe is specified in writing by Rocky Mountain Power. Licensee shall provide written notification to substituted poles. Rocky Mountain Power within five (5) Business Days of its completion. Provided, however, that in cases of emergency or if Licensee fails to relocate required by a Pole Owner's notice, Pole Owner does not complete required work by the end of the thirty (30) day period or other period specified by Rocky Mountain Power, Rocky Mountain Power may, without incurring any liability, except for Rocky Mountain Power's gross negligence, relocate or replace intentional misconduct, complete any work in connection with Licensee's Attachments that may be required, and Licensee shall reimburse Rocky Mountain Power for the entire expense thereby incurred.~~

Where Rocky Mountain Power replaces its Pole and cannot remove the replaced Pole due to Licensee's Attachment, Rocky Mountain Power shall remove the top of the Pole to allow Licensee to relocate its Attachment to the new Pole, and Rocky Mountain Power shall make a return trip to remove the replaced Pole. Licensee shall reimburse Rocky Mountain Power for the cost incurred for the topping and return trip.

At Rocky Mountain Power's option, Rocky Mountain Power shall transfer Licensee's Attachment(s) when possible, at the listed rate in the Fee Schedule (Exhibit B) or Equipment, for the actual cost of the transfer them to substituted poles, or perform any other work in connection with the Licensee's Attachments or Equipment that may be required, or authorize if a third party to perform such tasks, and Licensee will, upon demand, reimburse Pole Owner or such third party for the entire expense thereby incurred.

~~When the Licensee is required to relocate its facilities to accommodate a third party attaching to~~

## POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]

~~the pole, Pole Owner shall disclose the third party's name and contact information to the Licensee at the time the relocation or rearrangement listed rate is requested. Licensee shall be entitled to seek reimbursement from the third party attacher prior to relocating its facilities. not in place. If equipment is needed for the transfer, Licensee shall supply the equipment.~~

### ~~Section 12.13 Relocation of Joint Poles at Request of Land Owner~~

~~Where a jointly used pole is required to be replaced, moved or relocated due to a landowner request, Pole Owner shall provide notice to Licensee upon receipt of the land owner request and coordinate with Licensee and all other pole attachers to provide a coordinated response with respect to timelines and costs to land owner.~~

~~The Licensee shall promptly arrange to transfer its Equipment to the new pole and shall notify the 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 the 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 the 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 will reimburse Pole Owner for all actual costs incurred.~~

~~If the Licensee performs any work for the 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, the Pole Owner shall pay to Licensee, upon receipt of an invoice, the 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.~~

### ~~Section 12.19 Mid span Poles~~

~~Any poles erected by Licensee shall not interfere with or be 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. The owner of the poles on either side of the mid-span pole will have sole ownership of the mid-span pole and the Party requesting the pole will pay pole rental fees to the Pole Owner in accordance with Article V.~~

### ~~Section 12.21~~ Section 3.12 Removal of Attachments by Licensee

Licensee may at any time remove its Attachments from any of the Poles and, in each case, Licensee shall immediately give ~~Pole Owner~~ Rocky Mountain Power written notice of such removal: and removal shall occur within five (5) days of the notice. Application fees will apply to notices to remove attachments pursuant to the Fee Schedule (Exhibit B). Removal of ~~all the~~ Attachments from any Pole shall constitute a termination of Licensee's right to use such Pole. Licensee ~~will~~ shall not be entitled to a refund of any rental on account of any such ~~voluntary~~

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removal. When Licensee removes Attachments, ~~rental charges payable by Licensee will~~ the applicable Attachment count shall be ~~prospectively reduced in the next~~ annual billing cycle following Licensee's proper notice to ~~Pole Owner~~ Rocky Mountain Power of the removal. When Licensee performs maintenance to or removes or replaces its Attachment on a Rocky Mountain Power Pole, Licensee shall chemically treat all field drilled holes and plug any unused holes, including those resulting from removal of Attachment. If Licensee fails to adequately plug and treat such holes, Rocky Mountain Power may do so at Licensee's sole risk and expense.

~~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.~~

### ~~Section 1.08~~ Unused Equipment

~~Except for seasonally used equipment, whenever Licensee has ceased using any Equipment situated upon Pole Owner's poles with no intention of placing the Equipment back in service, Licensee will remove the Unused Equipment from Pole Owner's poles within 365 days of the date of last use. If Licensee demonstrates to Pole Owner's reasonable satisfaction that it is more likely than not that Licensee will resume using the Unused Equipment in the same location within a period of three years from the date of last use; and that leaving Licensee's Unused Equipment in place will not preclude Pole Owner or a third party from using the poles occupied by Licensee's Unused Equipment; and that leaving Licensee's Unused Equipment in place does not contravene any other obligation of Licensee under this Agreement, the Unused Equipment may remain in place, subject, in all cases to payment of the rental charges under this Agreement for the pole space occupied.~~

### ~~Section 1.09~~ 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 the 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.~~

If Licensee has not removed its Attachments within five (5) days of notice or fails to contact Rocky Mountain Power requesting a reasonable extension within five (5) Business Days, such Attachments(s) will be subject to unauthorized attachment in accordance with Fee Schedule (Exhibit B).

### ~~Section 12.22~~ Section 3.13 Damage to Equipment

~~The Parties~~ Licensee shall exercise all necessary precautions to avoid causing damage to ~~the other Party's~~ Rocky Mountain Power's Poles and Equipment and other Pole ~~attachers'~~ users' Equipment ~~and~~. Licensee shall assume responsibility ~~to each other~~ for any and all loss from any such damage ~~to the other Party's poles or Equipment and~~ and shall reimburse ~~the other Party~~ Rocky Mountain Power for the entire expense incurred in making such repairs. ~~Each Party shall assume responsibility to third parties for any and all loss from any damage caused to third~~

## POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]

~~party's Equipment by such Party and shall reimburse such third party for the entire expense incurred in making repairs.~~

### ~~Section 12.23~~Section 3.14 ~~Inspections and Audits of Existing Attachments~~

~~Pole Owner~~Inspections. Rocky Mountain Power shall have the right to perform an Inspection (other than Audits) for each of Licensee's Attachments upon Rocky Mountain Power Poles at any time. Except for routine Periodic Safety Inspections and Audits, Rocky Mountain Power may charge Licensee for the expense of any such Inspections, including Inspections for Make-ready Work, Pre-Construction Inspections, Post-Construction (including any modifications or Pole transfers) Inspections, and any other Inspections requested by Licensee or deemed necessary by Rocky Mountain Power.

Audits. Rocky Mountain Power may conduct an Audit of Attachments made to its Poles no more frequently than once every five (5) years. ~~Pole Owner~~ Rocky Mountain Power shall give Licensee at least ninety (90) days prior notice of an initial meeting to plan the next Audit. At such meeting, ~~Pole Owner~~ Rocky Mountain Power, 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~~ Rocky Mountain Power shall notify Licensee at least sixty (60) days prior to the commencement of the Audit. Licensee shall advise ~~Pole Owner~~ Rocky Mountain Power if Licensee desires to participate in the Audit with ~~Pole Owner~~ Rocky Mountain Power not less than thirty (30) days prior to the scheduled date of such Audit. The cost of the Audit shall be included in the rental rate pursuant to the methodology approved by the Commission for such purposes. 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 12.24~~ Inspections

~~In addition to audits as described in Section 3.24, Pole Owner shall have the right to inspect each of Licensee's Attachments and other Equipment attached to Pole Owner's poles at any time.~~

### ~~Section 12.25~~Section 3.15 Tax Liability

Licensee shall promptly pay any tax, fee, or charge that may be levied or assessed against ~~Pole Owner's~~ Rocky Mountain Power's Poles or property ~~solely because of their~~ resulting from 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~~ Rocky Mountain Power, at its own option, may pay such tax on account of Licensee and Licensee shall, upon demand, reimburse ~~Pole Owner~~ Rocky Mountain Power 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 XIII. — MAINTENANCE OF POLES~~

~~Section 14.00 Expense of Maintenance~~

~~The expense of maintaining jointly used poles shall be borne by the Pole Owner thereof, and the 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. The 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 or storm damage, the Pole Owner shall pay the other Party for the actual costs of such pole replacement.~~

~~Section 16.00 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, the 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 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 the 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 the 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 the 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 will reimburse Pole Owner for all actual costs incurred.~~

~~If the Licensee performs any work for the 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, the Pole Owner shall pay to Licensee, upon receipt of an invoice, the 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.~~

## POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]

### ~~Section 24.00 Abandonment Of Jointly Used Poles~~

~~If the 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 will 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 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 28.00 Wood Decay~~

~~If the Parties hereto are both pole owners, Pole Owner may, as an accommodation and by prior written approval by Licensee, by its own personnel or by a contractor selected by Pole Owner and agreed to by Licensee, inspect and/or treat for wood decay on poles it does not own, but that support Pole Owner's facilities concurrently with inspection and/or treatment of Pole Owner's poles located in same geographic area; however, any such re-inspection and/or treatment shall not be repeated more frequently than every ten (10) years. Licensee shall reimburse Pole Owner the cost of inspection and/or treatment in accordance with the mutually agreed to charges.~~

### ~~Section 30.00 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.~~

## ~~Article XXXIII~~ ARTICLE IV. RENTAL PAYMENTS; FEES

### ~~Section 33.01~~ Section 4.01 Rental Amount

For authorized Attachments covered under this Agreement, Licensee shall pay to ~~Pole Owner~~ Rocky Mountain Power, in advance, on an annual ~~or semi-annual~~ basis, a rental amount computed in accordance with UAR R746-345-5.A ~~as set forth on and~~ Electric Service Schedule 4 (Exhibit ~~---~~A), on a billing cycle beginning ~~-----~~ July 1 of each year. The rental amount for each year shall be based on ~~Pole Owner's~~ Rocky Mountain Power's tabulation of Licensee's Attachments situated upon ~~Pole Owner's poles and Pole Owner's~~ Rocky Mountain Power's Poles and based upon Rocky Mountain Power's current records.

Consistent with the terms of this provision, the components of the rental rates, and the methodology employed to determine the rental rates are subject to UAR R746-345-5.A and may not be changed, modified or replaced except as allowed by ~~and in accordance with UAR R746-~~

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

~~345-3.A.1. Parties recognize that rates may change consistent with the methodology applicable law.~~

~~The rental rate does not include the costs of Application processing, Inspections (other than Audits and Periodic Safety Inspections), Make-Ready Work, and the costs related to unauthorized attachments as addressed in Section 4.03. Charges for activities not included in the rental rate will be based on actual costs, including administrative costs, or flat rates specified in Exhibit B, and will be charged in addition to the rental rate. Parties recognize that rates shall change consistent with approved changes to Electric Service Schedule 4 (Exhibit A) and Exhibit B.~~

### Section 4.02 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 does not include related devices, apparatus, or auxiliary equipment, such as non-rigid risers, fasteners, or brackets.~~

### Section 33.02Section 4.03 Unauthorized Attachments

~~Licensee shall not make Attachments to Pole Owner's Rocky Mountain Power's Poles without obtaining the Pole Owner's Rocky Mountain Power's written permission as provided for in this Agreement. Pole Owner Rocky Mountain Power may charge Licensee the amounts contained in the Fee Schedule attached hereto Licensee an unauthorized attachment fee as shown on Exhibit —B, upon the discovery of unauthorized Attachments belonging to Licensee. Back rent shall be charged for the lesser of 5 years or the period of unauthorized attachment. The imposition of such charges shall be without prejudice to Pole Owner's Rocky Mountain Power's right to utilize additional other remedies, including, but not limited, to, the remedies available for default under Article VI Article VII 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 prior to Rocky Mountain Power's discovery.~~

### Section 33.03Section 4.04 Billing and Payments

~~Pole Owner Rocky Mountain Power shall send invoices to Licensee via regular U.S. Mail at the address specified below, or at such other address as Licensee may designate from time to time. Invoices for rental charges will be sent annually or semi-annually. Invoices for all Non-recurring Charges, Unauthorized Attachment Charges, and other obligations amounts due under this Agreement other than rental charges will be sent at Pole Owner's discretion within a reasonable time. Invoices for Non-recurring Charges will provide specific identifying information pertaining~~

**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

~~to each charge. Invoices for rental charges will provide summary information only. Invoices will conform generally to the invoice template attached hereto as Exhibit \_\_\_, subject to change by Pole Owner, in Pole Owner’s reasonable discretion and Commission approval. Licensee may obtain additional information pertaining to charges upon written request to Pole Owner.~~

~~Except as otherwise (es) provided in this Agreement or agreed to by the Parties, by Licensee in writing. Licensee shall pay all undisputed charges within thirty (30)forty-five (45) days from of the invoice date. Licensee will have sixty (60) days from the invoice date to pay disputed amounts unless the disputing party has commenced an action consistent with UAR 746-345-6A.3. Upon resolution of any such dispute, Pole Owner will refund any amounts owed, with interest accruing at the rate specified in Section 8.03 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. as specified in Section 4.05.~~

~~Pole Owner’s Billing Address:~~

~~\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_~~

~~Licensee’s billing address:~~

~~\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_~~

~~Section 1.10 Third Party Compensation~~

~~If Licensee permits its Equipment to be overlashed by a third party for compensation, the total compensation payable from the third party shall be paid directly to the Pole Owner by the third party.~~

~~**Article II. BREACH AND REMEDIES**~~

~~Remedies for In the event Licensee disputes an invoice, Licensee shall provide written notice of the dispute to Rocky Mountain Power within forty-five (45) days of the date of the disputed invoice; otherwise Licensee shall forfeit its right to dispute the invoice, except as provided by Commission rule. Notice shall include an explanation of the basis for Licensee’s dispute. Rocky Mountain Power reserves the right to impose interest as specified in Section 4.05 in the event the dispute is unfounded.~~

~~Licensee shall provide its accounts payable address(es) upon execution of this agreement and any future changes to the address(es) in writing sixty (60) days prior to the date of the change.~~

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

Copies of individual invoices may be requested in writing to be forwarded to an alternate address upon each written request.

### Section 4.05 Interest on Late Payments

All amounts payable under the provisions of this Agreement shall, unless otherwise specified, be payable within forty-five (45) days of the invoice date. An interest charge at the lower of one and one-half percent (1.5%) per month or the maximum rate allowed by applicable law shall be assessed against all late payments.

## **ARTICLE V. INDEMNIFICATION; LIMITATION OF LIABILITY; WARRANTIES**

### Section 5.01 Indemnification/Release

To the fullest extent permitted by law, Licensee shall indemnify, protect, and hold harmless Rocky Mountain Power, its successors and assigns, and its directors, officers, employees and agents (collectively, the “Rocky Mountain Power Indemnified Parties”) against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including attorneys’ fees and/or litigation expenses, brought or made against or incurred by the Rocky Mountain Power Indemnified Parties resulting from, arising out of, or in any way connected with any act, omission, fault or negligence of Licensee, its employees, agents, representatives or contractors, their employees, agents or representatives in the performance or nonperformance of Licensee’s obligations under this Agreement or in any way related to this Agreement except to the extent that such claim, demand, loss, cause of action, or costs arises from Rocky Mountain Power’s gross negligence or intentional misconduct. Licensee shall also indemnify and release, protect and hold harmless the Rocky Mountain Power Indemnified Parties from and against any and all claims, demands, causes of action, costs (including attorneys’ fees), or 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 Rocky Mountain Power undertaken in furtherance of the purposes of this Agreement, including damages caused by Rocky Mountain Power’s ordinary negligence. 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 Rocky Mountain Power Indemnified Parties, on any claim, demand, or cause of action arising from any interruption, discontinuance, or interference with Rocky Mountain Power’s service to Rocky Mountain Power’s customers which may be caused, or which may be claimed to have been caused, by any action of Licensee. To the extent Licensee 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 Rocky Mountain Power Indemnified Parties, in any such suit, action, or other legal proceeding; and further, Licensee shall reimburse Rocky Mountain Power for any and all legal expenses, including attorneys’ fees, incurred in connection therewith, including appeals thereof. Licensee hereby releases Rocky Mountain Power from any liability for damage to Equipment, or for any interruption, discontinuance or interference with Licensee’s service to its customers, caused by or resulting from Rocky Mountain Power’s actions or inaction, including damages caused by Rocky Mountain Power’s ordinary negligence.

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

### Section 5.02 Warranty

Rocky Mountain Power warrants that its work in constructing and maintaining the Poles covered by this Agreement shall be consistent with prudent utility practices. **ROCKY MOUNTAIN POWER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND SIMILAR WARRANTIES.** Under no circumstances shall Rocky Mountain Power be liable for economic losses, costs or damages, including but not limited to special, indirect, incidental, punitive, exemplary or consequential damages.

## **ARTICLE VI. INSURANCE, SECURITY AND CREDIT REQUIREMENTS**

### Section 6.01 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 Rocky Mountain Power prior to commencing Work.
- b. All Workers' Compensation policies shall contain provisions that the insurance companies will have no right of recovery or subrogation against Rocky Mountain Power, 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.

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.

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

- 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 Rocky Mountain Power, 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 Rocky Mountain Power.

### Section 6.02 Additional Insurance Requirements

The following additional requirements apply to coverage specified in Section 6.01:

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

- i) name Rocky Mountain Power, its officers, directors, agents, and employees as additional insureds.
- ii) such insurance is primary insurance with respect to the interests of Rocky Mountain Power and that any other insurance maintained by Rocky Mountain Power 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 Rocky Mountain Power prior to the effective date of such change, and
- ii) no policy shall be cancelled without prior written notice to Rocky Mountain Power 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 Rocky Mountain Power, 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 6.03 Security

Rocky Mountain Power 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 6.04 (f); (b) the total number of Licensee's actual Attachments at any time exceeds fifty (50) unless Licensee provides to Rocky Mountain Power an affirmation as set forth

**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

in Section 6.04(f); or (c) Licensee experiences a Material Adverse Change. If Licensee is required to post Security pursuant to this Section 6.03, 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. Rocky Mountain Power may draw upon such Security to satisfy Licensee's obligations under this Agreement, and Licensee shall replenish such Security within sixty (60) days.

Section 6.04 Credit Requirements

Licensee need not post Security under Section 6.03 for the benefit of Rocky Mountain Power 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 or has 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 Rocky Mountain Power;
- 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 Rocky Mountain Power and shall at all times maintain an official Certificate of Existence as issued by the Utah Secretary of State;
- e. Licensee shall provide to Rocky Mountain Power 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 Rocky Mountain Power, 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 6.04, and therefore is not required to post the security specified in Section 6.03.

\_\_\_\_\_ Licensee does not affirm and adopt all warranties in this Section 6.04, and therefore Licensee elects to post the security specified in Section 6.03.

**ARTICLE VII. TERM, DEFAULT AND TERMINATION**

Section 7.01 Term and Termination

Unless terminated sooner as provided 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 to the other Party. Licensee shall remove its Equipment from Poles within said ninety (90) day notice period. Should Licensee fail to remove its Equipment within such period, Rocky Mountain Power 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 Licensee hereunder shall cease; provided however that Licensee shall not be released from any liability hereunder, which may accrue or be accruing or which arises out of any claim that may have accrued or may be accruing at the time of termination.

Rocky Mountain Power reserves the right to terminate Licensee's permit to use any particular Pole or Poles at any time upon thirty (30) days written notice to Licensee and Licensee shall remove its Equipment from Rocky Mountain Power's Pole or Poles within the thirty (30) day period and provide written notice to Rocky Mountain Power upon its completion.

~~Section 33.04~~Section 7.02 Default

~~If either Party shall default in any of its obligations under this Agreement and such default continues thirty (30) days after written notice thereof has been provided to the defaulting Party, the Party not in default may exercise any of the remedies available to it. The following shall constitute a default hereunder if not cured as provided in Section 7.03: (a) any material breach of this Agreement, including, without limitation, the failure to comply with Section 6.03 and Section 6.04; (b) the appointment of a receiver to take possession of all of the assets of Licensee; (c) a general assignment for benefit of creditors; (d) any action taken or suffered by Licensee under any insolvency or bankruptcy act.~~

Section 7.03 Notice of Default/Cure Period

The non-defaulting Party shall provide written notice of the default to the other and the defaulting party shall have thirty (30) days from receipt of said notice to cure the default. 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 7.01, the remedies available to each Party shall include, without limitation: (i) refusal to grant any additional permission for Attachments to the other Party until the default is cured; (ii) termination of this Agreement; and (iii) injunctive relief.~~

Section 7.04 Remedies for Default

The non-defaulting Party may utilize any and all remedies available to it at law and in equity in the event the defaulting Party fails to cure a default within the time period set forth above. Such remedies may include, without limitation: (a) refusal to authorize any additional Attachments until the default is cured; (b) termination, in whole or in part, of this Agreement; (c) withhold amounts due to the defaulting Party from non-defaulting Party pursuant to this Agreement or

## POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]

another agreement; and (d) cure the default, if Licensee is the defaulting Party, at Licensee's sole cost and expense.

### ~~Article XXXIV~~ARTICLE VIII. GENERAL PROVISIONS

#### ~~Section 2.01~~ Dispute Resolution

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

#### ~~Section 2.02~~ 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 2.03~~ Interest

#### Section 8.01 All amounts payable-Entire Agreement

This Agreement constitutes the entire Agreement of the Parties and supersedes and terminates any prior agreements relating to the subject matter hereof. Any amendments hereto shall be in writing and signed by the Parties.

#### Section 8.02 Choice of Law/Venue

This Agreement and performance hereunder shall be construed, interpreted, regulated and enforced pursuant to the laws of Utah. The state and federal courts within Salt Lake County, Utah shall constitute the sole proper venue for resolution hereunder and the Parties agree to submit to such jurisdiction.

#### Section 8.03 Changes in Law

The parties agree to negotiate in good faith any changes to this Agreement necessitated to conform to applicable law.

#### Section 8.04 Severability

If any provision or part of this Agreement is or becomes invalid under the provisions any applicable statute, regulation, or law and such invalidity does not materially alter the essence of this Agreement shall, unless otherwise specified, be payable within thirty (30) days of the invoice date. An interest charge at the rate of one and one half percent (1.5%) per month with respect to either Party, the invalidity shall not render this entire Agreement unenforceable and such provision or part shall be assessed against deemed void.

#### Section 8.05 Encumbrances

Licensee shall prevent any and all liens or other encumbrances from attaching, as result of Licensee's activities hereunder, to Rocky Mountain Power's property.

## POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]

### Section 8.06 Headings and Exhibits

The captions and headings herein are for convenience in reference only and not for interpretation purposes. All exhibits referred to herein and recitals are incorporated by reference.

### Section 8.07 Force Majeure

~~Except for the late payments, Interest payment of monies due under this Agreement shall not exceed the interest allowable under applicable law.~~

### ~~Section 2.04 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 the Pole Owner. Nothing in this Agreement is intended to confer rights on any third party, as a third party beneficiary or otherwise.~~

### ~~Section 2.05 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. 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 prior written notice to the other Party.~~

### ~~Section 2.06 Applicability of UAR~~

~~Licensee's use of Pole Owner's utility poles will be governed by applicable provisions of the UAR, as may be amended and the terms of this Agreement not inconsistent with the UAR as amended. Neither Party waives its right to petition the Commission for an order amending this Agreement consistent with any subsequent changes in the UAR.~~

### ~~Section 2.07 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 state or federal courts located in the State of Utah.~~

## POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]

### ~~Section 2.08—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 2.09—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 F are attached hereto and made a part hereof.~~

### ~~Section 2.10—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 2.11—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 the 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 2.12—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~~

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

~~any application approved hereunder, constitute valid, legal, and binding obligations enforceable against such Party in accordance with their terms.~~

### ~~Section 2.13—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 III.——**CONTRACT TERM**~~

~~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 IV.——**LIABILITY AND DAMAGES; INDEMNIFICATION; WARRANTIES**~~

#### ~~Section 4.01—Limitation of Liability and Indemnification~~

~~Except for liability caused by the gross negligence or intentional misconduct of Pole Owner, Licensee shall indemnify, 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; or (b) any act of Licensee on or in the vicinity of Pole Owner's poles. Except for liability caused by the gross negligence or intentional misconduct of Pole Owner, Licensee shall also indemnify, 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 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. 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. To the extent Licensee 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~~

## POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]

~~Owner, or its successors or assigns, in any such suit, action, or other legal proceeding; and further, License shall reimburse Pole Owner for any and all legal expenses, including attorneys fees, incurred in connection therewith, including appeals thereof.~~

~~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.~~

### ~~Section 4.02—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 4.03—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.~~

## ~~Article V. ——— **INSURANCE AND BOND**~~

### ~~Section 5.01—Workers Compensation and Employer's Liability Acts~~

~~Licensee shall comply with all applicable worker's compensation and employer's liability acts and shall furnish proof thereof satisfactory to Pole Owner prior to placing Equipment on Pole Owner's poles.~~

### ~~Section 5.02—Maintenance of Insurance Coverage~~

~~Without limiting any liabilities or any other obligations of Licensee, Licensee shall, at its sole expense and prior to placing Equipment on Pole Owner's poles, secure and continuously carry with insurers acceptable to Pole Owner the following insurance coverage:~~

~~*Commercial General Liability insurance with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons, including Licensee's employees, Pole Owner's employees and all other third persons, or damage to property, including Pole Owner's property, Licensee's property and the property of all other third parties, based upon or arising out of Licensee's operations hereunder, including the operations of its contractors of any tier.*~~

## POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]

~~Business Automobile Liability insurance with a minimum 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 Licensee's operations hereunder.~~

~~The policies required herein shall include (a) provisions or endorsements naming Pole Owner, its directors, officers and employees as additional insured, and (b) a cross-liability and severability of interest clause.~~

~~The policies required herein shall include provisions that 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 under this Section 10.02 and provisions that such policies shall not be cancelled or their limits of liability reduced without thirty (30) days prior written notice to Pole Owner.~~

~~A certificate in a form satisfactory to Pole Owner certifying the issuance of such insurance, shall be furnished to Pole Owner by Licensee. Commercial general liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by Pole Owner, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to Pole Owner by Licensee.~~

~~Pole Owner shall be notified by Licensee of any commercial general liability policies maintained hereunder and written on a "claims-made" form. Such insurance policies written on a "claims-made" basis shall be maintained by Licensee for a minimum period of five (5) years after the termination of this Agreement and Pole Owner may, at its discretion, require Licensee, at Licensee's sole expense, to institute other measures to guarantee future coverage for claims related to Licensee's obligations under this Agreement.~~

### ~~Section 5.03—Bonding~~

~~Upon application to and approval by the Commission, Pole Owner may require Licensee to furnish a bond or other form of financial security instrument to cover the faithful, neither Party shall be deemed in default hereunder for any delay or failure in the performance by Licensee of its obligations hereunder. Terms and conditions of to the bond or other financial security shall be those approved by the Commission.~~

### ~~Article VI. — FORCE MAJEURE~~

~~Neither Party shall be subject to any liability or damages for extent that such 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 the Party seeking to invoke this provision, 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 claimant 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) earthquake, fire or flood; (e) ~~earthquake;~~ (f) act of God; (g)~~

## POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]

civil disturbance; ~~or (h)(g) strikes or boycotts. Provided;~~ or (h) major equipment breakdown or failure. Should any of the foregoing occur for a continuous duration lasting longer than one month, the contact rental rate shall be applied to only those Attachments where Rocky Mountain Power is able to provide Poles and to those Poles where Licensee is able to attach. The Party claiming Force Majeure under this provision shall provide prompt written notice to the other Party and shall make every reasonable attempt to mitigate or 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. In the event that a Force Majeure event occurs, and Licensee does not reinstall Attachments at pre-event levels within six (6) months of the beginning of the event, the Permit for each Attachment which is not reinstalled shall terminate.

### **Article VII. — NOTICE**

#### Section 8.08 Assignments

Licensee shall not voluntarily or involuntarily assign, transfer, sublease or sublet this Agreement, in whole or in part, or any right, privilege or obligation hereunder, without Rocky Mountain Power's prior written consent, at which time Rocky Mountain Power may require that the proposed assignee or successor enter into a new agreement or other reasonable conditions. Approval of assignment may require Application to remove from each Pole by the Assignor and an Application to attach to each Pole by Assignee, and payment of associated fees, if the record of attachments from either attaching party is inconsistent with Rocky Mountain Power's records.

#### Section 8.09 Waiver

Failure by either Party to enforce any of the terms or provisions of this Agreement shall not be construed as a waiver hereunder.

#### Section 8.10 Time is of Essence

Time is of essence with respect to every term and provision of this Agreement.

#### Section 8.11 No Partnership

Nothing herein shall be construed to create a partnership, trust, joint venture, or association between the Parties.

#### Section 8.12 No Third Party Beneficiaries

This Agreement shall not be construed for the benefit of any third party, including without limitation, customers of either Party.

#### Section 8.13 Attorneys' Fees

If either Party files any action or brings any court proceeding against the other arising from or related to this Agreement, the prevailing Party shall be entitled to recover, in addition to any judgment or decree for costs, such reasonable attorneys' fees as it may have incurred in such suit, action, or other legal proceeding, together with other reasonable litigation expenses.

**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

Section 8.14 Agreement Notices

Except as otherwise provided herein, any notice ~~required, permitted or contemplated~~ 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 ~~hereunder~~, and shall be transmitted by United States mail, by regularly scheduled overnight delivery, or by personal delivery:

To Pole Owner:

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To Licensee:

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

[OTHER ENTITY]  

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Section 8.15 Operational Notice

All notices regarding permitting and other communications regarding day-to-day operations shall be submitted by the Parties via an ENS if designated by Rocky Mountain Power, 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.



**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

**Exhibit A**

**Page 1 of 1** \_\_\_\_\_

**Contact Rental Rate Schedule**

**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

**Exhibit B**  
Page 1 of 2

Fee Schedule

**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

**Exhibit B**  
**Page 2 of 2**

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**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

**Exhibit C**

**Rocky Mountain Power's Distribution Construction Standards**

**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

**Exhibit D**

Rocky Mountain Power's Engineering Handbook