

JOINT USE OF FACILITIES AGREEMENT

BETWEEN

PACIFICORP, doing business as
PACIFIC POWER and UTAH POWER

AND

This Joint Use of Facilities Agreement is made and entered into this ____ day of _____, 20____, between PACIFICORP, an Oregon Corporation, d.b.a. PACIFIC POWER and UTAH POWER, hereinafter "PacifiCorp," and _____, a _____ organized and existing under the laws of the State of _____, hereinafter "Telco," mutually agree that the terms and conditions of this Joint Use of Facilities Agreement, hereinafter "Agreement," shall govern the Parties' non-exclusive Joint Use of such poles owned by each Party and located in the State of Oregon as each may, upon application, permit the other to use.

WITNESSETH

WHEREAS, PacifiCorp is engaged in the business of providing electric service to customers in certain areas within the state of Oregon; and

WHEREAS, Telco conducts its communication business in a number of the same areas within those states; and

WHEREAS, Telco and PacifiCorp 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 facilities used in their respective businesses; and

WHEREAS, the Parties desire to cooperate in establishing Joint Use of their respective poles when and where Joint Use of their poles shall be of mutual advantage; and

WHEREAS, the desirability of Joint Use of particular poles is dependent upon the service requirements of each Party, including considerations of safety and economy, and each Party should determine, in its sole judgment, whether or not such service requirements can properly be met by the Joint Use of particular poles.

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

ARTICLE I. DEFINITIONS

“Agreement” means this Joint Use of Facilities Agreement entered into between PacifiCorp and Telco.

“Attachment” means each individual piece of Equipment that Owner has specifically permitted Licensee to install or overlash upon Owner's poles under the terms of this Agreement.

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

“Commission” means the State of Oregon Public Utility Commission.

“Distribution Construction Standards” means the current PacifiCorp distribution construction standards attached hereto as Exhibit D, and any subsequent revisions thereof.

“Electronic Notification System” or “ENS” means the electronic system or combination of electronic systems, designated by Owner in its sole discretion, that Licensee will utilize to submit applications for permission to attach, relocate, or remove Equipment under the terms of this Agreement, and to respond to Owner upon a request for work to be performed by Licensee.

“Equipment” means cables, wires, conductors, fiber optics, insulators, connectors, fasteners, transformers, capacitors, switches, batteries, amplifiers, 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.

“Fee Schedule” means the fees set forth in Exhibit C attached hereto.

“Inspection” means Owner's examination of Owner's pole or poles occupied by Licensee and any of Licensee's Attachments or Equipment situated upon or in the vicinity of such poles for the purpose of i) verifying the number and 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 or any other obligations of Licensee under the terms of this Agreement.

“Joint Use” means attachment by one party to a pole owned by another party under the terms of this Agreement.

“Licensee” means the Party seeking permission to place Equipment upon the Owner's poles as provided in Article III, or the Party who has already obtained permission to place Equipment upon Owner's poles.

“Make-ready Work” means all engineering, inspection, design, planning, construction, or other work necessary, in Owner's reasonable judgement, to prepare Owner'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 the addition of new poles or Equipment.

"Material Adverse Change" means disclosed information which would adversely impact the Party's ability to meet its obligations under the Agreement. Such an event would include, but not be limited to significant financial losses; inability to make scheduled debt payments; disclosure of a possible bankruptcy; foreclosure of assets or sale of assets by secured creditors to fulfill secured debt obligations.

"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., for the purpose of safeguarding persons and property during the installation, operation, or maintenance of electric supply and communication lines and associated equipment.

"Non-recurring Charges" means amounts payable by Licensee under this Agreement other than rental charges and includes without limitation: application fees, charges to correct nonconforming equipment, charges for Make-ready Work, costs of mitigating interference with Owner's equipment, pole replacements or installation for Licensee's benefit, anchors and guys, and removal or relocation of Attachments or other Equipment, liability for damage to Equipment, the cost of Inspections and Occupancy Surveys, certain tax liabilities, late payment charges, and any other costs incurred by Owner that are caused by or attributable to Licensee's Equipment.

"Occupancy Survey" means an Inspection by Owner of all or any number of poles occupied by Licensee in the area covered by this Agreement.

"Owner" means the Party which owns the relevant pole or poles.

"Parties" means PacifiCorp and Telco.

"Party" means PacifiCorp or Telco, as the context requires.

"Unusable Equipment" means Equipment that is unsafe, imprudent, impracticable, or uneconomic to use in place because of damage, wear and tear, obsolescence, change of circumstances, or otherwise.

"Unused Equipment" means any Equipment situated on or around Owner's poles, other than Unusable Equipment, that Licensee has ceased operating or utilizing in the normal course of furthering the purposes of its communications business.

ARTICLE II. SCOPE OF AGREEMENT

Section 2.01 Poles; Geographic Scope

This Agreement shall apply to all areas served by the Parties in the State of Oregon and shall cover all poles of each of the Parties within said states which are presently jointly 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' wood poles only. Any requests for permission to use PacifiCorp's transmission towers, conduits, and other structures, will be considered individually and, if granted, shall be covered by a separate agreement.

Attachments may be permitted by PacifiCorp on PacifiCorp's wood transmission poles only after obtaining written authorization from PacifiCorp, with the understanding that, should the characteristics of PacifiCorp's facilities change resulting in either PacifiCorp or Licensee deciding that Joint Use is no longer feasible, Licensee shall remove its Equipment with no cost or obligation to PacifiCorp.

Section 2.02 Attachments; Purpose

Each Party's use of the other Party's poles shall be confined to the Attachments which Owner may give Licensee written permission to install. This Agreement does not apply to wireless communications equipment. Licensee shall not sublet, assign or otherwise transfer, for any purpose, all or any part of its Attachments while situated upon Owner's poles, to any other person or persons without the prior written consent of Owner.

Section 2.03 Reservation of Rights

Each Party reserves the right to reject applications for the Joint Use of poles which, in its sole judgment as the Owner thereof, are necessary for its own sole use or are considered to be unsafe for Joint Use. Nothing in this Agreement shall be construed to obligate either Party to grant the other Party permission to use any particular pole or poles.

ARTICLE III. JOINT USE OF POLES

Section 3.01 Application for Permission to Install Attachment

Before Licensee places any Equipment upon any of Owner's poles, or overlashes its Equipment to any existing Attachments or other Equipment already attached to Owner's poles, including third-party Equipment, Licensee shall request permission from Owner to do so via the Electronic Notification System (ENS) and submit payment for all applicable fees pursuant to the Fee Schedule and the Rental Rate Schedule upon receipt of an invoice from Owner.

Until further notice, Owner hereby designates the National Joint Utility Notification System ("NJUNS") as the ENS. When Owner has designated NJUNS as the ENS, Licensee shall direct the application to the Owner's Member Code and the application shall contain the Owner's facility identification number, all required information set forth on the ENS permit, and any other pertinent information that Owner may from time to time prescribe, including without limitation, a plan and profile for each affected pole. Owner shall return the application to Licensee's Member Code via ENS.

In the event Owner designates an ENS other than NJUNS, Licensee will follow all procedures required by Owner and those required by such alternate ENS when submitting applications and using the ENS

as required by this Agreement. Owner reserves the right to design and operate its own proprietary ENS.

Licensee may also make written application, containing the same information required by the ENS, to Owner at the address set forth in Article XI. A copy of the written application can be found in Exhibit E, and may be revised from time to time by Owner, in Owner's reasonable discretion. A written application fee will be assessed for processing each application Owner receives from Licensee not via ENS, in accordance with Exhibit C.

Section 3.02 Licensee's Right to Install Equipment

Owner will either approve or deny applications within ~~forty-five~~thirty days of receipt of the application. Licensee shall have the right, subject to the terms of this Agreement, to install, maintain, and use the Equipment described in the application, upon the pole(s) identified therein, subsequent to approval of Licensee's application by Owner. With the exception of service drops, Licensee shall not have the right to place, nor shall it place, any Equipment upon Owner's poles without first making application and receiving permission to do so; nor shall Licensee change the position of any Attachment upon any of Owner's poles without first making application and receiving permission to do so.

Licensee shall have the right to install service drops prior to, but still subject to, approval by Owner. However, when Licensee installs service drops, Licensee must follow all procedures applicable to Attachments generally, except that the application pertaining to the service drop must be submitted to Owner no later than five Business Days after installation. Should Owner deny permission to install the service drop, Licensee shall remove the service drop immediately.

Unless agreed to by Owner, Licensee shall not allow any other person to overlash Equipment upon an existing Attachment owned by Licensee.

Section 3.03 Identification of Equipment

Telco will clearly mark each Attachment with suitable identification. ~~as determined in advance by PacifiCorp. Telco's identification must be visible from the ground and not interfere with other facility identification. PacifiCorp reserves the right to require Telco to conform to applicable Oregon Administrative Rules pertaining to facilities identification.~~ Telco shall mark any Attachments installed after the effective date of this Agreement immediately upon installation. For Attachments installed prior to the effective date of this Agreement, Telco shall mark a minimum of five ~~thousand~~ hundred (5,000) such Attachments per month until all such Attachments are marked, unless Telco sells or otherwise transfers ownership of any or all such Attachments, in which case Telco shall mark all such Attachments prior to such transfer.

Section 3.04 Conformance to Requirements and Specifications

Licensee shall, at its own sole risk and expense, place and maintain its Equipment upon the poles in conformity with the requirements and specifications of the NESC, ~~the Commission's "Safety Provisions for Joint use of Poles" and "Line Inspection Requirements for Utility Operators,"~~ and with such requirements and specifications as PacifiCorp and Licensee may agree upon ~~shall~~ from time to

time, ~~prescribe, including without limitation, PacifiCorp's Distribution Construction Standards. In the event of any conflict between any of the requirements and specifications of the NESC, of the Commission, and those prescribed by Owner, the more stringent requirements and specifications shall govern.~~ In the event there are changes in any such requirements or specifications, including but not limited to changes in required clearances, Licensee shall modify its Equipment to comply with such changes at its sole risk and expense. Each Party shall have in place a facility inspection program that meets or exceeds the agreed upon requirements, or those of the NESC, of the Commission's "Line Inspection Requirements for Utility Operators," and each Party shall provide the other Party with comprehensive documentation of its program upon executing this Agreement.

Attachments by either Party on a pole of the other Party shall be made and maintained in accordance with a reasonable aesthetic criteria mutually agreed to by both Parties. Such aesthetic criteria shall apply without being limited to the type and design of the attachment, circuit arrangements, conductor or cable sags, and service drop arrangements.

Telco (including its employees and contractors) shall not enter the electric utility space for any purpose including making connections to the PacifiCorp neutral. ~~If Telco requires grounding on an existing pole where grounding conductor does not exist, Telco shall request PacifiCorp to install grounding at the sole expense of Telco.~~ Telco, its employees and its contractors, shall at all times exercise Telco's rights and perform Telco's responsibilities under the terms of this Agreement in a manner that treats all electric facilities of PacifiCorp as energized at all times. Telco shall assume complete responsibility for its employee's conduct and Telco shall determine and provide the appropriate training and safety precautions to be taken by Telco employees and contractors. Telco shall indemnify, defend, and hold PacifiCorp harmless from any liability of any sort derived from Telco or Telco's employees or contractors failure to abide by the terms of this paragraph.

Section 3.05 Nonconforming Equipment

~~If any Attachment is not placed and maintained in accordance with the Requirements and Specifications of Section 3.04, the sanctions set forth in Exhibit B shall apply. Upon notice by Telco, PacifiCorp shall perform all work necessary to correct conditions of PacifiCorp's noncompliance.~~ PacifiCorp reserves the right to perform work necessary to bring Telco's Attachments into compliance upon Telco's failure to timely do so. Any such work will be performed at Telco's sole risk and expense. PacifiCorp ~~will attempt to~~ shall notify Telco electronically or in writing prior to performing such work, ~~whenever practical.~~ However, if PacifiCorp determines such conditions pose an immediate threat to the safety of utility workers or the public, interfere with the performance of PacifiCorp's service obligations, or pose an immediate threat to the integrity of PacifiCorp's poles or Equipment, PacifiCorp may perform such work and/or take such action that it deems necessary without first giving written notice to Telco, ~~and without subjecting itself to any liability.~~ As soon as practicable thereafter, but in no event more than 5 days, PacifiCorp will advise Telco in writing of the work performed or the action taken and will endeavor to arrange for the accommodation of any affected Attachments. Telco shall be responsible for paying PacifiCorp, upon demand, for all reasonable costs incurred by PacifiCorp for all work, action, and accommodation performed by PacifiCorp under this Section 3.05.

Section 3.06 Time to Complete Installation

To the extent under its control, Licensee shall complete the installation of its Attachments upon the pole(s) covered by each approved application within ninety (90) days of approval by Owner. In the event Licensee should fail to complete the installation of its Attachments within the prescribed time limit, the permission granted by Owner to place Attachments upon Owner's pole or poles shall terminate and Licensee shall not have the right to place Attachments upon the pole or poles without first reapplying for and receiving permission to do so, all as prescribed in Section 3.01 as applicable to the initial application.

Section 3.07 Make-ready Work

Licensee shall request in its applications any Make-ready Work necessary to accommodate Licensee's Attachments. If in the reasonable judgment of Owner the accommodation of any of Licensee's Attachments necessitates Make-ready Work, in the response to Licensee's application Owner will indicate the Make-ready Work necessary to accommodate the Attachments requested and the estimated cost thereof and forward its response to Licensee. If Licensee has not already indicated Licensee's willingness to bear the cost of all Make-ready Work necessary, as determined by Owner, and Licensee still desires to use the pole and so indicates via ENS or in writing within thirty days of the date of Owner's response to Licensee's initial application, Owner will perform such Make-ready Work as may be required, but only to the extent allowed by applicable safety regulations, and Licensee will reimburse, upon demand, Owner for the entire expense thereby actually incurred. Licensee shall pay the costs of all Make-ready Work undertaken by Owner where such work is initiated as a result of the proposed installation of Attachments on any poles, including third-party-owned poles, without regard to whether Licensee elects not to use the pole or poles after Make-ready Work has commenced.

Section 3.08 Interference with Owner's Equipment

If, in Owner's reasonable judgment, Licensee's existing Attachments on any pole interfere with Owner's existing Equipment or prevent the placing of any additional Equipment by Owner, Owner will notify Licensee via ENS of the rearrangements or transfers of Equipment or pole replacements or other changes required in order to continue to accommodate Licensee's Attachments, together with an estimate of the cost of making any such changes, should Owner perform them and a determination as to whether Licensee may, based upon safety issues, perform the necessary work. If Licensee desires to continue to maintain its Attachments on the pole and so notifies Owner via ENS or in writing within thirty (30) days, Licensee may perform the necessary work (subject to Owner's approval based on safety issues), or Licensee may authorize Owner to perform the work. Should Licensee authorize Owner to perform the work, Owner shall make such changes as may be required, and Licensee, upon demand, will reimburse Owner for the entire expense thereby actually incurred. If Licensee does not so notify Owner, Licensee shall remove its Attachments from the affected pole or poles within thirty (30) days from such notification by Owner; provided, however, that Owner in any emergency may require Licensee to remove its Attachments within the time required by the emergency. If Telco 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 PacifiCorp, PacifiCorp may remove Telco's Equipment at Telco's sole risk and expense, and Telco will pay, upon demand, PacifiCorp for all costs thereby incurred by PacifiCorp.

Section 3.09 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 benefit of the Licensee, the Licensee shall reimburse the Owner for ~~all costs, including, but not limited to the cost in place of the new pole, the costs associated with the~~ remaining life value of the existing pole, lowering and hauling of the existing pole, and topping of the existing pole when performed either as an accommodation to Licensee or as required by NESC. Owner shall credit the Licensee for salvage value of the existing pole if it is not topped and it is less than ten years old. Owner shall remove and may retain or dispose of such pole as the sole owner thereof. Any payments for poles made by the Licensee shall not entitle Licensee to ownership of any part of said poles.

Section 3.10 Pole Replacement for Joint Benefit of Owner and Licensee

Where 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 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.

Section 3.12 Mid-span Poles

Any poles erected by Licensee shall not interfere with or be in-line with 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 3.13 Owner's Rights to Use Poles

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 service requirements, and Owner shall not be liable to Licensee for any interruption to Licensee's service or for any interference with the operation of Licensee's Equipment arising in any manner from the use, maintenance, and repair of the poles and the Equipment thereon by Owner or any other owners of Equipment upon Owner's poles, or from the removal of Attachments or other Equipment from the poles by Owner in accordance with the provisions of this Agreement. Owner will, however, except in cases of emergency, use reasonable efforts to contact Licensee prior to making changes that will affect Licensee's Attachments.

Section 3.14 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 to otherwise, each party shall be responsible for any and all additional tree trimming and brush cutting related to the wires or Equipment it owns.

Section 3.15 Third-party Consents, Permits, Licenses, or Grants

Licensee will be solely responsible for obtaining from public authorities and private owners of real property and maintaining in effect any and all consents, permits, licenses or grants necessary for the lawful exercise by Licensee of the permission granted by Owner in response to any application approved hereunder. Prior to or at the time of granting permission to install any Attachment and at any time thereafter, Owner may require Licensee to submit a written warranty to Owner that: (1) identifies the consents, permits, licenses or grants necessary for the lawful exercise of the permission granted by any application approved hereunder; and (2) specifies that Licensee has obtained all such approvals. Owner may, in addition, at any time, require Licensee to provide evidence that it has obtained all such necessary consents, permits, licenses and grants.

Licensee agrees not to install any Equipment upon Owner's poles until said written warranty and evidence of compliance has been submitted to Owner if Owner has required such submittal. The submission of the written warranty to Owner and Owner's request for, or failure to request, evidence of compliance shall in no manner relieve Licensee of its responsibility to obtain and maintain in effect all such necessary approvals.

Section 3.16 Relocation of Attachments at Owner's Option

Licensee shall at any time, at its own sole risk and expense, upon notice from Owner, relocate, replace or repair Licensee's Attachments or transfer them to substituted poles, or perform any other work in connection with the Attachments that may be required by Owner. Provided, however, that in cases of emergency, PacifiCorp may, ~~without incurring any liability~~, relocate or replace Telco's Attachments or Equipment, transfer them to substituted poles, or perform any other work in connection with the Telco's Attachments or Equipment that may be required, and Telco will, upon demand, reimburse PacifiCorp for ~~the entire reasonable~~ expenses thereby incurred.

Section 3.17 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 Owner electronic notice via ENS of such removal, ~~and submit payment of all applicable fees pursuant to the Fee Schedule upon receipt of an invoice from Owner. An additional written application fee will apply to all written notifications, in accordance with Exhibit C.~~ Removal of the Attachments from any pole shall constitute a termination of Licensee's right to use such pole. Licensee will not be entitled to a refund of any rental on account of any such removal. When Licensee removes Attachments, rental charges payable by Licensee will be prospectively reduced in the annual billing cycle following Licensee's proper notice to Owner of the removal. When Licensee performs maintenance to or removes or replaces its Equipment on Owner's pole, Licensee must chemically treat all field drilled holes and plug any unused holes, including those resulting from removal of Equipment; if Licensee fails to adequately plug and treat such holes, Owner may do so at Licensee's sole risk and expense.

Section 3.18 Unused and Unusable Equipment

Except for seasonally used equipment, whenever Licensee has ceased using for a period of sixty-days any Equipment situated upon Owner's poles, Licensee will notify Owner via ENS, if practicable, or in writing otherwise. Licensee will repair or remove any Unusable Equipment from Owner's poles within 180 days of the date of last use, or upon such shorter time as required pursuant to Section 3.05 or

Section 3.08 or otherwise under the terms of this Agreement. Additionally, Licensee will remove any Unused Equipment from Owner's poles within 365 days of the date of last use unless Licensee demonstrates to Owner's reasonable satisfaction all of the following: (a) 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, (b) leaving Licensee's Unused Equipment in place will not preclude Owner or a third party from using the pole space occupied by Licensee's Unused Equipment for Owner's own purposes or the purposes of another pole user, where Owner's needs or the needs the other pole user cannot be satisfied by utilizing other existing, usable and available pole space, and (c) leaving Licensee's Unused Equipment in place does not contravene any other obligation of Licensee under this Agreement, including without limitation Section 3.04 and Section 3.08. In all cases, Licensee will incur rental charges under this Agreement for the pole space occupied or once-occupied by the Unused Equipment or Unusable Equipment until the billing cycle following the date upon which Licensee's Unused Equipment or Unusable Equipment is properly removed and notice of the removal is properly given to Owner under the terms of this Agreement.

Section 3.19 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 Owner's poles or Equipment to the public or to Licensee. Nothing contained herein shall be construed to compel Owner to maintain any particular pole or poles for a period longer than demanded by Owner's own service requirements.

Section 3.20 Damage to Equipment

Licensee shall exercise all necessary precautions to avoid causing damage to Owner's poles and Equipment and other pole users' Equipment; Licensee shall assume responsibility to third parties for any and all loss from any such damage and shall reimburse the Owner of the damaged poles or Equipment for the entire expense incurred in making repairs.

Section 3.21 Inspections and Occupancy Survey

Inspections. Owner shall have the right to perform an Inspection of each of Licensee's Attachments and other Equipment upon and in the vicinity of Owner's poles at any time. ~~Owner may charge Licensee for the expense of any such Inspections, including Inspections for make-ready work, pre-construction Inspections, Inspections during installation of Licensee's equipment, post-construction Inspections, and any other Inspections deemed necessary by Owner in Owner's reasonable discretion.~~ Such Inspections, whether made or not, shall in no manner relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement or arising otherwise.

Occupancy Survey. Owner may conduct an Occupancy Survey anytime after the effective date of this Agreement and not more often than every fifth year subsequent to each such Occupancy Survey. Owner shall give Licensee at least thirty (30) days prior notice of such Occupancy Survey. Licensee shall advise Owner if Licensee desires to be present during the inventory with Owner not less than fifteen (15) days prior to the scheduled date of such Occupancy Survey. ~~Licensee shall reimburse Owner for Owner's expenses incurred in making such Occupancy Survey, whether or not Licensee elects to be present.~~ Owner shall provide Licensee with a summary report of such Occupancy Survey within ~~a reasonable time~~ 30 days after its completion. The inventory data from Owner's Occupancy

Survey shall be used to update Owner's attachment billing records where applicable. Licensee shall make any objections to the inventory data within sixty (60) days of receipt of the summary report or such objections shall be waived. ~~Objections raised to inventory data from an Occupancy Survey shall not relieve Licensee of the obligation to pay disputed amounts when due, as set forth in Section 5.03 below.~~

Section 3.22 Tax Liability

Licensee shall promptly pay any tax, fee, or charge that may be levied or assessed against Owner's poles or property solely because of their use by Licensee. If Licensee should fail to pay any such tax or assessment on or before the date such tax or assessment becomes delinquent, Owner, at its own option, may pay such tax on account of Licensee and Licensee shall, upon demand, reimburse Owner for the full amount of tax and any penalties so paid.

ARTICLE IV. MAINTENANCE OF POLES

Section 4.01 Expense of Maintenance

The expense of maintaining jointly used poles shall be borne by the 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 4.02 Relocation of Joint Poles

Whenever it is necessary to replace, move, reset, or relocate a jointly used pole, the Owner thereof shall, before making such replacement, move, or relocation, give written notice thereof to Licensee (except in case of emergency, when oral notice shall be given and subsequently confirmed in writing), specifying in such notice the work to be performed and the approximate time of such proposed replacement or relocation. 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, the other Party shall assume ownership of the original pole for all purposes at the conclusion of such thirty (30) day period, shall indemnify and hold harmless the former Owner of such pole from all obligations, liabilities, damages, costs, expenses, or charges incurred in connection with such pole thereafter, and shall pay to the former pole Owner the salvage value of the pole, if any, less the cost of lower & haul upon delivery of a bill of sale. Should the pole Owner perform any work for the Licensee, or the Licensee perform any work for the pole Owner to facilitate completion of the above work or in cases of emergency work, including without limitation transferring equipment, setting or lowering poles, digging holes, or hauling poles, the Party for whom work was performed shall pay to the other Party, upon receipt of an invoice, the cost of such work.

PacifiCorp reserves the right to transfer Telco's Equipment from the replaced pole to the replacement pole in a reasonable manner consistent with industry practices upon Telco's failure to transfer its

Equipment within the above mentioned thirty (30) days notice, and Telco will reimburse PacifiCorp for all actual costs incurred.

Section 4.03 Abandonment Of Jointly Used Poles

If the Owner of a jointly used pole desires at any time to abandon the use thereof, 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. In the event that Licensee has not removed all of its attachments from such pole by the date specified in the notice, Licensee shall become the owner of the pole upon the date specified, and shall indemnify and hold harmless the former Owner of such pole from all obligation, liability, damages, costs, expenses, or charges incurred in connection with such pole thereafter, and upon receipt of an invoice and bill of sale therefor, Licensee shall pay to the former pole Owner the value, in place, at that time, of such abandoned pole, less cost of removal, but in no event less than fifty-dollars.

Section 4.04 Wood Decay and NESC Violations

PacifiCorp may, by its own personnel or by a contractor selected by PacifiCorp, inspect and/or treat for wood decay on Telco-owned jointly used poles supporting PacifiCorp conductors concurrently with inspection and/or treatment of PacifiCorp poles located in same geographic area; however, any such reinspection and/or treatment shall not be repeated more frequently than every ten (10) years. Telco shall reimburse PacifiCorp the cost of inspection and/or treatment in accordance with the mutually agreed to flat rate charges as shown in Attachment A hereto.

In the event that PacifiCorp, itself or by a contractor, performs such inspection and/or treatment, Telco hereby releases PacifiCorp from any responsibility for such services or liabilities arising out of the performance of such services, including but not limited to the negligent acts or omissions of PacifiCorp or its contractor in the performance thereof. Performance of any of the services under this paragraph shall be at the sole discretion of PacifiCorp.

ARTICLE V. RENTAL PAYMENTS

Section 5.01 Rental Amount

For authorized Attachments covered under this Agreement, Licensee shall pay to Owner, in advance, on an annual basis, a rental amount computed by Owner in accordance with Exhibit A, on a billing cycle beginning October 1 of each year. The rental amount for each year shall be based on: (a) Owner's tabulation of Licensee's Attachments situated upon Owner's poles as of the Owner's last Occupancy Survey, with additions made for Attachments the subject of applications granted during the previous year, and subtractions made for Attachments removed during the previous year where notice of removal is properly given under Section 3.17 and Owner's post-removal inspection reveals no violations by Licensee, or (b) prior to Owner's first Occupancy Survey, Owner's current records.

If Licensee is entitled to a rental reduction pursuant to Oregon Revised Statutes § 757.282(3) and Oregon Administrative Rules § 860-022-0230, the annual billing will reflect that discount as an adjustment to the pole attachment rate. If Licensee is not entitled to the discount, Owner will provide notice to that effect with the annual invoice mailed to Licensee's billing address.

The rental rates, the components of the rental rates, and the methodology employed to determine the rental rates specified in Exhibit A of this Agreement may be modified or replaced by Owner to be effective prospectively on each anniversary of the effective date of this Agreement, upon sixty (60) days written notice to Licensee and subject only to limitations imposed by applicable law.

Section 5.02 Sanctions

~~Owner may impose sanctions in the event Licensee should at any time: (a) fail to have a written contract with Owner that specifies general conditions for Attachments on the poles of Owner; (b) fail to have a permit issued by Owner permitting each piece of Licensee's Equipment situated upon each of Owner's poles; or (c) fail to install and maintain Equipment in compliance with this Agreement, any permits issued hereunder, or Commission safety rules. Available sanctions are set forth in Exhibit B.~~

~~Owner may impose sanctions without prejudice to Owner's right to utilize other remedies, including but not limited to the remedies available for default under Article VII of this Agreement and any remedies available under Commission rules, or otherwise.~~

Section 5.03 Billing and Payments

Owner 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. Invoices for all Non-recurring Charges, sanctions, and other obligations under this Agreement will be sent at Owner's discretion. Invoices for Non-recurring Charges will provide specific information pertaining to each charge. Invoices for rental charges will provide summary information only. Invoices will conform generally to the invoice template attached hereto as Exhibit F, subject to change by Owner, in Owner's reasonable discretion. Licensee may obtain additional information pertaining to charges upon written request to Owner and submission of all applicable fees pursuant to the Fee Schedule.

~~Licensee shall pay all charges within thirty (30) days of the invoice date, unless disputed. Licensee shall pay any disputed amounts within thirty (30) days of the invoice date. Upon resolution of any such dispute, 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 Owner notice of the amount in dispute. Late charges and interest shall be imposed on any delinquent amounts. All bills shall be paid by wire transfer to the account designated from time to time in writing by Owner.~~

PacifiCorp's billing address:

T&D Infrastructure Management _____
825 NE Multnomah Avenue
Portland, OR 97232

PacifiCorp's account for wire transfers:

Bank _____

Account Number _____

Telco's billing address:

Telco's account for wire transfers:

Bank _____

Account Number _____

Section 5.04 Third-Party Compensation

Compensation payable by third parties for the use of poles shall be collected and retained by the Owner.

ARTICLE VI. CREDITWORTHINESS

Section 6.01 Furnishing Information

Each Party shall, upon request by the other Party, submit its audited year-end financial statements and interim statements to the other Party, certified to be true and correct. Further, Licensee shall submit additional information as Owner may reasonably request from time to time in furtherance of the purposes of this Agreement.

Section 6.02 Adequate Performance Assurance

Upon the occurrence of a Material Adverse Change, Owner may require Licensee to provide to Owner, at Licensee's option (but subject to Owner's acceptance based upon reasonably exercised discretion), performance assurances in the form of either (a) the posting of a letter of credit, (b) a cash deposit, (c) the posting of other acceptable collateral or security by the Licensee, (d) a guarantee agreement executed by a creditworthy entity; or (e) some other mutually agreeable method of satisfying Owner. The magnitude of Licensee's obligations under this Section 6.02 shall be limited to a reasonable estimate of the sum of the rental charges and Non-recurring Charges due Owner for the next twelve-month period added to a reasonable estimate of the costs Owner would incur in removing Licensee's Equipment from Owner's poles.

If the Licensee fails to provide such reasonably satisfactory assurances of its ability to perform hereunder within three (3) Business Days of demand therefore, that failure will be an event of default under this Agreement and Owner shall have the right to exercise any of the remedies available under this Agreement or otherwise.

ARTICLE VII. BREACH AND REMEDIES

Section 7.01 Remedies for 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 remedies available to each Party shall include, without limitation: (i) refusal to grant any additional Joint Use to the other Party until the default is cured; (ii) termination, without further notice, of this Agreement as far as concerns the further granting of Joint Use; (iii) litigation for injunctive relief; (iv) litigation for damages and costs; (v) substitute performance; and (vi) litigation to recover sums due.

Section 7.02 Set-off

If either Party should default under any of its obligations under this Agreement, the non-defaulting Party shall be entitled, at its option and in its discretion without notice to the defaulting Party, to (a) set-off amounts due and owing to the non-defaulting Party by the defaulting Party under this Agreement, against any amounts due and owing by the non-defaulting Party or any of its affiliates, to the defaulting Party or any of its affiliates, under any agreements, instruments or undertakings between the non-defaulting Party or any of its affiliates, and the defaulting Party or any of its affiliates and/or (b) withhold payment of any amount due the defaulting Party or its affiliates, by the non-defaulting Party or its affiliates--such amount to be determined by the non-defaulting Party, in the non-defaulting Party's reasonable discretion, as sufficient to cover the defaulting Party's unliquidated obligations, once liquidated, to the extent that the defaulting Party's obligations under this Agreement are not yet liquidated. The remedy provided for in this Section 7.02 shall be (a) without prejudice to and in addition to any right of set-off, combination of accounts, lien or other right to which the non-defaulting Party is at any time otherwise entitled (whether by operation of law, contract or otherwise) and (b) exercisable against any trustee in bankruptcy, debtor in possession, assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor, notwithstanding the fact that such right of setoff shall not have been exercised by the non-defaulting Party prior to such default.

Section 7.03 Reimbursement for Work Performed

If either Party shall default in the performance of any work that it is obligated to do under this Agreement, the other Party may elect to do such work, and the party in default shall reimburse the other Party for the cost thereof within thirty (30) days after receipt of an invoice therefor.

ARTICLE VIII. GENERAL PROVISIONS

Section 8.01 Attorney's Fees

If either party should bring any suit, action, or other legal proceeding against the other party on account of any matter arising from this Agreement, the prevailing party shall be entitled to recover, in addition to any judgment or decree for costs, such reasonable attorney's fees as it may have incurred in such suit, action, or other legal proceeding, including appeals thereof.

Section 8.02 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 8.03 Interest

All amounts payable under the provisions 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 shall be assessed against all late payments.

Section 8.04 Relationship to Third-Parties

Nothing herein contained shall be construed as affecting any rights or privileges previously conferred by Owner, by contract or otherwise, to others not parties to this Agreement to use any poles covered by this Agreement and 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 limitations imposed by all such 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 Owner. Nothing in this Agreement is intended to confer rights on any third-party, as a third-party beneficiary or otherwise.

Section 8.05 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.

Section 8.06 Applicability of Oregon Administrative Rules

To the extent that the terms of this Agreement conflict with provisions of the Oregon Administrative Rules (OAR) governing attachments to utility poles and the terms of the OAR permit the Parties to agree to terms differing from those specified in the OAR, then the terms of this Agreement will govern. Otherwise, Licensee's use of Owner's utility poles will be governed by applicable provisions of the OAR and the terms of this Agreement not inconsistent with applicable OAR provisions. Applicable provisions include without limitation the provisions of OAR Section 860-022-0055 and OAR Sections 860-022-0110 through 860-022-0240.

Section 8.07 Applicable Law; Venue

In the event that legal action is required to enforce this Agreement or to obtain any remedy available hereunder, the Parties agree that this Agreement shall be interpreted according to the laws of the State of Oregon without consideration of the choice of law rules thereof. Any action at law or judicial

proceeding instituted pertaining to this Agreement shall be instituted only in the state or federal courts located in Multnomah County, Oregon.

Section 8.08 Survival of Liability or Obligations Upon Termination

Any termination of this Agreement shall not release Licensee 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 8.09 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 8.10 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 8.11 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 Owner's poles within the geographic area covered by this Agreement, as specified in Section 2.01. Any Equipment of Licensee attached to 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.

Section 8.12 Additional Representations and Warranties

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

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

Each Party also represents that it is solvent and that on each day of the term of this Agreement, this representation shall be deemed renewed unless and until notice to the contrary is given in writing to the other Party.

Section 8.13 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 IX. CONTRACT TERM

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 notice to the other Party. Each Party shall remove its Equipment from Owner's poles within three-hundred sixty-five (365) days of receipt of said notice. Should either Party fail to remove its Equipment within said three-hundred sixty-five (365) day period, 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.

ARTICLE X. LIABILITY AND DAMAGES; INDEMNIFICATION; WARRANTIES

Section 10.01 Telco's Limited Liability to and Indemnification of PacifiCorp

Except to the extent expressly stated herein, Telco's liability to PacifiCorp for any action arising out of its activities relating to this Agreement shall be limited to repair or replacement of any defective poles. Provided, Telco agrees to indemnify and hold harmless PacifiCorp, its directors, officers, employees, and agents against and from any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, on account of loss or damage to any property of PacifiCorp, or any third party, to the extent directly resulting from any act, omission, or fault of Telco, its employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives, in the exercise, performance or nonperformance of Telco's rights or obligations under this Agreement, except that Telco shall not indemnify or otherwise be liable to PacifiCorp for economic losses, costs or damages, including but not limited to special, indirect, incidental, punitive, exemplary or consequential damages sustained by PacifiCorp or any third parties. Provided further, Telco agrees to indemnify and hold harmless PacifiCorp, its directors, officers, employees, and agents against and from any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, brought against PacifiCorp by the injured party or the estate or surviving family of the deceased on account of bodily or personal injury to, or death of, any such injured or deceased party, to the extent directly resulting from any act, omission, or fault of Telco, its employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives, in the exercise, performance or nonperformance of Telco's rights or obligations under this Agreement.

Section 10.02 PacifiCorp's Limited Liability to and Indemnification of Telco

Except to the extent expressly stated herein, PacifiCorp's liability to Telco for any action arising out of its activities relating to this Agreement shall be limited to repair or replacement of any defective poles.

Provided, PacifiCorp agrees to indemnify and hold harmless Telco, its directors, officers, employees, and agents against and from any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, on account of loss or damage to any property of Telco, or any third party, to the extent directly resulting from any act, omission, or fault of PacifiCorp, its employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives, in the exercise, performance or nonperformance of PacifiCorp's rights or obligations under this Agreement, except that PacifiCorp shall not indemnify or otherwise be liable to Telco for economic losses, costs or damages, including but not limited to special, indirect, incidental, punitive, exemplary or consequential damages sustained by Telco or any third parties. Provided further, PacifiCorp agrees to indemnify and hold harmless Telco, its directors, officers, employees, and agents against and from any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, brought against Telco by the injured party or the estate or surviving family of the deceased on account of bodily or personal injury to, or death of, any such injured or deceased party, to the extent directly resulting from any act, omission, or fault of PacifiCorp, its employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives, in the exercise, performance or nonperformance of PacifiCorp's rights or obligations under this Agreement.

Section 10.03 Notice, Defense, Cooperation, and Settlement

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

Section 10.04 Warranties

Each Party warrants to the other that its exercise of its rights and performance of its obligations under this Agreement shall be consistent with prudent utility practices. **EACH PARTY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND SIMILAR WARRANTIES.**

ARTICLE XI. NOTICE

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

To PacifiCorp: PacifiCorp
 Joint Use of Facilities
 825 NE Multnomah Street
 Portland, Oregon 97232

To Telco: _____

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

TELCO

PACIFICORP, doing business as
PACIFIC POWER and UTAH POWER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
SCHEDULE 1
PAGE 1 OF 1

STATE OF OREGON
COMPUTATION OF ANNUAL POLE ATTACHMENT RENTAL RATE
PACIFICORP, d.b.a. PACIFIC POWER & UTAH POWER

STATE OF OREGON
COMPUTATION OF ANNUAL POLE ATTACHMENT RENTAL RATE
[TELCO]

Exhibit B

Sanctions

Exhibit C

Fee Schedule

Exhibit D

PacifiCorp's Distribution Construction Standards

Exhibit E

Written Application for Permission to Install, Modify, or Remove Attachments

Exhibit F

Form of Invoice (PacifiCorp and Telco)