RESOLUTION NO. 911

A RESOLUTION OF THE CITY OF UNIVERSITY PLACE, WASHINGTON AUTHORIZING THE CITY MANAGER TO EXECUTE A POLE ATTACHMENT AGREEMENT WITH TACOMA PUBLIC UTILITIES

WHEREAS, in February 1997, the City executed an interlocal agreement with Tacoma Public Utilities (TPU) to attach streetlights to poles owned by TPU; and

WHEREAS, this Agreement was for a 20-year term, which has since expired; and

WHEREAS, the City has approximately 500 streetlights still attached to TPU poles. In order to keep these streetlights on the poles, it is necessary to enter into a new Pole Attachment Agreement; and

WHEREAS, the TPU Board has approved a "boilerplate" agreement which runs for ten (10) years, and in which the City is billed at the initial rate of \$10.18 per attachment plus related charges; and

WHEREAS, Council has determined that it is in the best interests of the residents of the City of University Place to enter into the proposed Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AS FOLLOWS:

Section 1. <u>City Manager Authorized to Execute Agreement.</u> The City Council hereby authorizes the City Manager to execute the Pole Attachment Agreement with Tacoma Public Utilities substantially in the form attached to this Resolution.

Section 2. <u>Completion of Transaction</u>. The City Manager or designee is authorized to take and execute any additional measures or documents that may be necessary to complete this transaction and to implement the Pole Attachment Agreement, which are consistent with the executed Pole Attachment Agreement and the terms of this Resolution.

Section 3. <u>Retroactive Ratification of Actions Taken</u>. Any and all actions taken by the City Manager or City staff related to this Pole Attachment Agreement that occurred prior to the authorization provided in this Resolution are hereby ratified and approved.

Section 4. Effective Date. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL ON FEBRUARY 18, 2020.

Caroline Belleci, Mayor

ATTEST:

APPROVED AS TO FORM:

Matthew S. Kaser, City Attorney

Streetlight Attachment Agreement

Between

City of Tacoma **Department of Public Utilities Light Division**

And

Licensee

And
Licensee
This Streetlight Attachment Agreement ("Agreement") is executed in duplicate this the Day of, 20, ("Effective Date") by and between the City of
acoma, Department of Public Utilities, Light Division, a municipal corporation of the
State of Washington (d/b/a and hereinafter referred to as "Tacoma Power") and the
[insert licensee name here] (hereinafter referred to as "Licensee").
acoma Power and the Licensee are sometimes referenced in this Agreement individually
s "Party" and collectively as "Parties."

BACKGROUND

- A. Tacoma Power is authorized under Washington law to engage in the production, acquisition, distribution, and sale of electric power.
- B. Tacoma Power plans, designs, constructs, operates, and maintains infrastructure to distribute electric power.
- C. Private, governmental, or other entities desire to attach streetlights and other related equipment onto the Tacoma Power's Distribution System.
- D. Tacoma Power is willing to allow the use of its Distribution System for said streetlights and Tacoma Power opts to provide, when it may lawfully do so. access to its Distribution System for the purpose of attaching streetlights and related equipment pursuant to the terms and conditions of this Agreement.

THEREFORE, in consideration of the mutual covenants, terms, and conditions set out below the Parties agree as follows:

I. TERM

- A. Initial Term. The Term of this Agreement shall commence on the Effective Date and shall continue in effect for a period of ten (10) years thereafter ("Term").
- B. Termination. This Agreement may be terminated by either Party at any time upon ninety (90) days written notice thereof provided to the other Party.
- C. Attachment Removal. Upon termination of the Agreement, the Licensee shall remove all Attachments from the Pole(s) and surrender all facilities

within ninety (90) days. If the Licensee fails to remove its Attachments within ninety (90) days, Tacoma Power may remove the Licensee's Attachments or hire a contractor to remove the Attachments at the Licensee's expense.

- **D. Post Termination Use.** Nothing in this Agreement or associated Permits shall be construed to require Tacoma Power to allow Licensee to use Tacoma Power's Poles after termination of this Agreement.
- **E. Payment Obligations Preserved.** All payment obligations incurred under this Agreement shall be preserved until satisfied.

II. DEFINITIONS:

When used with initial capitalization, the following terms shall have the meaning set forth below:

- **A. Application**: means the written application, substantially in the form of **Appendix A**, <u>Pole Attachment Application</u>, the Licensee submits to Tacoma Power for placement or removal of Attachments.
- **B.** Applicable Standards: has the meaning as defined in Section XV.
- C. Attachment: means street lights and associated hardware, owned or controlled by Licensee placed in the Communication Worker Safety Zone, below the Communication Space, or as allowed by Standard C-OH-9005, on a Pole owned or controlled by Tacoma Power as a part of its Distribution System
- **D. Billing Periods**: means the two six-month billing periods, spanning January 1st through June 30th and July 1st through December 31st, respectively.
- **E.** Capacity: means the ability of a Pole to accommodate an additional Attachment or Attachments based on Applicable Standards.
- **F. Distribution System**: means the Poles, lines, and equipment, and includes under-build on transmission structures, owned or controlled by Tacoma Power for the distribution of electrical power below 14.4 kV.
- **G.** Effective Date: means the date first written above.
- **H.** Emergency: means a situation exists which, in the reasonable discretion of the Licensee or Tacoma Power, if not remedied immediately, will result in a threat to public safety, a hazardous condition, damage to property or a service outage.
- I. Force Majeure: has the meaning ascribed to this term in Section XIII.
- **J. Nonfunctional Attachment:** means an Attachment that is unusable, unfit or no longer used by the Licensee.
- **K. Permit**: means a written acknowledgment by Tacoma Power of approved pole attachments per Pole Attachment Application.

- **L. Pole**: means structures, usually wood, used to support the lines and other equipment of the Distribution System and other Attachments.
- M. Reserved Capacity: means capacity or space on a Pole that Tacoma Power has identified and reserved for its own future utility requirements at the time of the Permit grant, including the installation of communications circuits for operation of Tacoma Power's electric system.
- N. Tacoma Power Make-Ready Work: means Work performed by Tacoma Power or its contractors that is necessary to provide and prepare space on Tacoma Power's Poles for placement of Attachments. Tacoma Power Make-Ready Work does not include moving, removing, or adjusting any third party attachments to Tacoma Power poles including any third party wires, cable, fiber optic cable, and/or coaxial cable and associated hardware.
- O. Third Party Make-Ready Work: means Work performed by a third party or parties, or third party contractors that is necessary to provide and prepare space on Tacoma Power's Poles for placement of Attachments. Third Party Make-Ready Work includes, but is not limited to, removing secondary conductors and racks, raising power conductors, installing line attachment equipment, and moving, replacing, and/or relocating attachments. Third Party Make-Ready Work does not include Tacoma Power Make-Ready Work.
- P. Unauthorized Attachments: means (1) Attachments for which the Licensee fails to submit an Application (see Section IV of this Agreement) or (2) approved Attachments for which Licensee fails to declare in its inventories (see Section IX of this Agreement)), (3) Attachments not in accordance with Applicable Standards and codes (see Section VII. E.) (4) Attachments that the Company fails to timely transfer, abandon or remove as required by Section VII. D.
- **Q. Unauthorized Attachments Fee**: has the meaning ascribed to this term in Section X.E.
- **R. Work**: when used in the Agreement means work and shall be understood to include all supervision, materials, labor, transportation, and equipment. When referencing the Licensee, "Work" shall refer to everything agreed to be done and furnished by the Licensee, including the Attachments, maintenance, repair, relocation and/or removal of its Attachments; and/or any other labor performed in connection with this Agreement.

III. ATTACHMENTS

A. Purpose. In accordance with the provisions of this Agreement and subject to the issuance of individual Permits, Tacoma Power agrees that the Licensee may make use of Poles owned or controlled by Tacoma Power as part of its Distribution System, for Attachments in furtherance of lawful street lighting, and for no other purpose.

- **B.** Agreement Governs All Attachments. This non-exclusive Agreement governs all Attachments by the Licensee, now or hereafter made to Tacoma Power's Distribution System.
- C. Attachments Must Comply with Agreement and Applicable Standards. All Attachments shall be installed and maintained in accordance with the requirements and specifications of this Agreement. Attachments and Licensee's performance of any work must comply with all Applicable Standard of the industry, good engineering practices and those of Tacoma Power specifically.
- D. Tacoma Power's Paramount Rights.
 - 1. Tacoma Power Discretion. Tacoma Power shall have sole discretion to determine any question regarding the right to attach, construction compliance, and shared use of available space on poles.
 - 2. Withdrawal of Permission. Permission to make attachments to Tacoma Power poles may be withdrawn for violation of Applicable Standards, regulations or Tacoma Power policies, breach of this Agreement (including, but not limited to, failure to provide proof of required insurance and/or permits), or for any other reason associated with Tacoma Power's requirements for use of its poles.
 - 3. **Immediate Removal of Attachments.** At its sole expense, Licensee shall immediately remove any of its Attachments that:
 - a. <u>Fails to conform to Applicable Law</u> which may include, but is in no way limited to the potential or actual loss of Tacoma Power's franchise rights and/or utility in good standing status based on presence of Attachment and/or failure to relocate Attachment in violation of applicable franchise and/or Pole permitting authority requirements;
 - b. Interferes with the electric utility and/or telecommunication operations of Tacoma Power or the City of Tacoma which may include, but is in no way limited to:
 - Potential or actual forfeiture of Tacoma Power's right to occupy the property upon which the Attachment to its Distribution System is located.
 - Is a Nonfunctional Attachment, as designated by Tacoma Power in its sole discretion.
 - Failure to remove any Attachments as required in this paragraph shall constitute an Unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Schedule 1.
- **4. Reserved Capacity**. Access to space on Tacoma Power Poles will be made available to Licensee with the understanding that certain Poles may be subject to Reserve Capacity for future electric service use. At the time of Permit issuance,

Tacoma Power shall notify Licensee if capacity on particular poles is being reserved for reasonably foreseeable future utility or electric use. For Attachments made with notice of such a Reservation of Capacity, on giving Licensee at least sixty (60) calendar days prior notice, Tacoma Power may reclaim such Reserved Capacity at any time following the installation of Licensee's Attachment if required for Tacoma Power's future utility service. If reclaimed for Tacoma Power's use, Tacoma Power may at such time also install associated facilities, including the attachment of communications lines for internal Tacoma Power operational or governmental communications requirements. Tacoma Power shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Tacoma Power Make-Ready Work needed to expand Capacity for core utility service requirements, so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Tacoma Power Make-Ready Work, (including the transfer, rearrangement, or relocation of third party Attachment(s) shall be determined in accordance with Section V. Licensee shall be responsible for coordinating and arranging for any Third Party Make-Ready Work and for the costs of rearranging or replacing the attachments of a third party if such rearranging or replacing is required as a result of Licensee seeking additional Attachments, modification of one of its existing Attachments, or due to clearance requirements as defined by code (See Section VII.E.). Licensee shall not be required to bear any of the costs for rearranging or replacing its Attachment(s), if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity.

- 5. Agreement Does Not Limit Tacoma Power's Operations. This Agreement does not in any way limit Tacoma Power's right to locate, operate, maintain, or remove its Poles in the manner that will best enable it to fulfill its service requirements or to comply with any federal, state, or local legal requirement.
- E. Licensee Attachment Removal. Licensee may at any time remove its Attachments from the affected Poles. No refund of any fees or costs will be made upon removal.
- **F.** Pole Replacement and Relocation Notification. Whenever it is necessary to replace, move, reset, or relocate a Pole, Tacoma Power shall give notice to relocate to Licensee via telephone or email.
- **G. Subcontractor Authorization.** Licensee must provide to Tacoma Power written notification granting Subcontractor the authority to apply for Permits and perform work on Licensee's behalf. Notification must be on file with Tacoma Power prior to submittal of Permit Application.

IV. REQUESTS FOR ATTACHMENTS

A. Application. If Licensee desires to place or remove Attachments on any Pole, the Licensee must submit to Tacoma Power an Application substantially in the form of Appendix A, Pole Attachment Application. Each Pole Attachment Application is limited to fifty (50) poles or less. Licensee shall not place an Attachment on any Pole without completing such Application and obtaining Tacoma Power's prior written consent in the form of a Permit therefor. Permits will not be issued if Licensee has Unauthorized Attachments. Tacoma Power may refuse to issue Permits if Licensee fails to respond to communications from Tacoma Power within two (2) weeks.

- **B. Application Contents.** Each Application shall contain the following information:
 - 1. The Pole(s) affected by the Licensee's Attachment, by identifying the number of Poles and their location. The information shall be mailed to Tacoma Power in Excel spreadsheet format or provided electronically upon request.
 - A description of the Licensee's Attachments that will contact Tacoma Power Poles, including a description of how the Licensee intends to implement its Attachments.
 - 3. What action the Licensee proposes to take to accommodate any additional strain that will be imposed upon the affected Poles by the Licensee's Attachments.
- C. Incomplete Applications. Incomplete applications will be returned for corrections. The deadline for returning corrected Applications is two weeks. If Licensee fails to meet the deadline, the Application will expire and a new Application and corresponding fees will be required.
- D. Records and Maps. Each Application shall also include map(s) which correctly identify each Pole the Licensee will contact, including an attachment height block indicating the height of all current/requested attachments and any other information the Tacoma Power may request. Tacoma Power will make pole records and maps reasonably available, subject to reasonable compensation for staff time and materials.

V. MAKE-READY WORK

A. Procedure. Tacoma Power Make-Ready Work shall be performed by Tacoma Power. The cost of Tacoma Power Make-Ready Work shall be reimbursed by the Licensee pursuant to Section VII of this Agreement.

The Licensee's proposed route may require Tacoma Power to perform Tacoma Power Make-Ready Work in order to provide space on Pole(s) for the Licensee's use. At the Licensee's expense, Tacoma Power shall survey the proposed route and prepare an estimate of Tacoma Power's cost to perform Tacoma Power Make-Ready Work, if any. Tacoma Power will submit said estimate to the Licensee for their review prior to start of any Tacoma Power Make-Ready Work. Upon receipt of Tacoma Power's estimate, Licensee shall have forty-five (45) days to approve the estimate and provide payment in accordance with this Agreement and the specifications of the estimate. If Licensee fails to respond within forty-five days, the permit will expire.

Nothing in this Section V shall prohibit the Licensee from proposing alternate poles for Attachments to avoid Tacoma Power Make-Ready Work.

Upon completion of Tacoma Power Make-Ready Work, Tacoma Power shall invoice Licensee for Tacoma Power's actual cost of such Tacoma Power Make-Ready Work. Alternatively, Tacoma Power, at its discretion, may require payment in advance for Tacoma Power Make-Ready Work based upon the estimated cost of such work. In such case, upon completion, Licensee shall pay Tacoma Power's actual cost of Tacoma Power Make-Ready Work.

- B. Scheduling of Tacoma Power Make-Ready Work. In performing all Tacoma Power Make-Ready Work, to accommodate Licensee's Attachments, Licensee will endeavor to include such work in its normal work schedule. If Licensee requests that the Tacoma Power Make-Ready Work be performed on a priority basis or outside of Tacoma Power's normal work hours, Licensee will pay any resulting increased costs. Nothing in this Agreement shall be construed to require Tacoma Power to perform Licensee's work before other scheduled work or Tacoma Power service restoration.
- C. Written Approval of Installation Plans Required. Before making any Attachments to Tacoma Power's Poles, Licensee must obtain Tacoma Power's written approval of detailed plans for the Attachments. Such detailed plans shall accompany a Permit application as required under Section IV.
- D. Licensee's Installation/Removal/Maintenance Work. All of Licensee's installation, removal and maintenance work, by either Licensee's employees or authorized contractors, shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of Tacoma Power's Poles or other attaching entities facilities or equipment. All such work is subject to the insurance requirements of Section XIV.

All of Licensee's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all applicable regulations specified in Section VII. Licensee shall assure that any person installing, maintaining, or removing its Attachments is fully qualified and familiar with all Applicable Standards indicated in Section XV.

Tacoma Power will complete Tacoma Power Make-Ready Work on Tacoma Power Poles within ninety (90) days of receipt of payment. If there are extenuating circumstances that make the necessary Tacoma Power Make-Ready Work more complicated or time-consuming, including, but not limited to, the number of Poles, seasonal weather conditions, Tacoma Power shall identify those factors in the Tacoma Power Make-Ready Work estimate and the parties shall agree upon a reasonable timeframe for completion.

E. Restrictions / Who May Perform Tacoma Power Make-Ready Work. Tacoma Power Make-Ready Work shall be performed only by Tacoma Power or its contractor. If Tacoma Power cannot perform the Tacoma Power Make-Ready Work to accommodate Licensee's Attachments within ninety (90) calendar days of

Licensee's approval of Tacoma Power Make-Ready Work estimate, Licensee may request the ability to use a qualified contractor to perform such work and shall specify when such work would be performed. In all instance, qualified contractor, if allowed, must be pre-approved by Tacoma Power.

Tacoma Power will not replace Poles to provide space for Attachments except under the following conditions:

- 1. The Pole in Question does not meet current standards for height.
- 2. If the Pole in question must be replaced due to poor conditions, then replacement with a standard height pole will be at Tacoma Power's expense. If the condition of the Pole does not warrant replacement, then replacement with a standard height Pole will be at the Licensee's expense.
- 3. Tacoma Power may replace the Pole in question with a taller Pole to allow space for Company's Attachment(s) if Company pays for and accepts responsibility for all costs for the new Pole and all costs associated with Pole replacement.
- **4.** Tacoma Power shall have sole responsibility and authority for determining height standards and condition of Poles.
- F. Third Party Make-Ready Work. Company shall coordinate and arrange for any Third Party Make Ready Work required in order to provide space on Tacoma Power's poles for Company's Attachments. Tacoma Power shall not be responsible, be liable, or have any obligation for arranging, coordinating, or costs for Third Party Make Ready Work. Third Party Make Ready Work must comply with all Applicable Standards and the third party's Master Pole Attachment Agreement and Permits with Tacoma Power.

VI. APPROVAL

- **A. Application Review and Approval.** Upon submission of a complete Application, Tacoma Power will review and within sixty (60) days approve or deny the Application, as appropriate and pursuant to the intent of this Agreement.
- B. Tacoma Power's Approval Limitations. Tacoma Power's review and approval for the proposed attachments is not intended as a comprehensive engineering review/analysis of the request and all associated implications. It shall remain the sole responsibility of the Licensee to ensure the installation meets all code and permitting requirements. Further, consent by Tacoma Power to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization, or acknowledgment that Licensee has obtained all required authorizations with respect to such Attachment or that the proposed plans, construction, or maintenance are correct, meet professional or engineering standards, are sufficient, or are fit for a particular purpose.
- **C. Discretion to Refuse or Withhold Approval.** Tacoma Power may refuse to approve an Application where, in Tacoma Power's sole opinion, there is

insufficient Capacity on a Pole for the Licensee's Attachment, or for reasons relating to safety, reliability, generally applicable engineering purposes, and/or any other Applicable Standards. Further, Tacoma Power may refuse to approve an Application where any of Licensee's other Attachments are not in compliance with the applicable Permit or this Agreement or where Licensee is out compliance with the terms and obligations of this Agreement. Licensee must bring other Attachments into compliance and otherwise be in Compliance with this Agreement before Tacoma Power shall approve additional Attachments.

- D. Permit Issuance. Tacoma Power may approve an Application if, in its sole judgment, exercised reasonably, Tacoma Power determines that it (1) has sufficient Capacity to accommodate the requested Attachments, (2) Licensee meets all the requirements set forth in this Agreement, and (3) the Attachment and Application complies with all Applicable Standards. Upon approval, Tacoma Power shall send Licensee an executed Permit substantially in the form of Appendix A, Pole Attachment Permit, consenting in whole or in part to the Attachments requested in the Application. This Agreement shall not in itself constitute any such consent.
- E. Necessary Authorizations. Before Licensee may occupy any Poles, Licensee shall obtain from the appropriate public or private authority, or from any property owner or other appropriate person, any required authorization to construct, operate, or maintain its Attachments on public or private property. Tacoma Power retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued. Licensee's obligations under this Section VI include, but are not limited to, its obligation to obtain and pay for all necessary approvals to occupy public/private rights-of-way and easements and all necessary licenses and authorizations to provide the services that it provides over its Attachments. Licensee shall defend, indemnify, and reimburse Tacoma Power for all losses, costs, and expenses, including reasonable attorney's fees that Tacoma Power may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Attachments on Tacoma Power's Poles or to provide particular services.
- F. Installation Deadline and Notice. Once Tacoma Power has approved the Licensee's Application, the Licensee must install its Attachments within one hundred and eighty (180) days of the Permit Effective Date stated on the subject Pole Attachment Permit, a sample form of which is attached hereto as Appendix A., If Licensee fails to install its Attachments within said one hundred and eighty (180) days it will relinquish its rights under the Permit and forfeit its Application fee. A one-time, thirty (30) day extension may be granted at Tacoma Power's discretion if requested prior to the permit expiration date. Licensee shall inform Tacoma Power's Joint-Use Coordinator, Business and Financial Management, by email, upon completing installation of approved Attachments. Failure to notify Tacoma Power within fifteen (15) days of completion of construction may result in the suspension or rejection of additional pole attachment permit applications.

- **G. Joint Pole Ownership.** The Agreement is intended to be applicable to poles owned in whole or part by Tacoma Power. The Licensee will need to obtain additional authorization from CenturyLink in order to attach to jointly owned poles. CenturyLink may require a pole attachment fee from the Licensee.
- H. Revocable Nonexclusive License. No use, regardless of duration, of any Pole owned by Tacoma Power, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Pole. Any permission or Permit to use Tacoma Power's Poles granted by Tacoma Power is a revocable, nonexclusive license to install and maintain Attachments to said Poles. Neither this Agreement nor any Permit granted pursuant to this Agreement, shall constitute an assignment of any Tacoma Power rights to its Poles or any other Tacoma Power owned facility. Notwithstanding anything to the contrary in this Agreement, Licensee shall remain, at all times, a licensee only.
- I. Permitted Uses. Use of Tacoma Power's Poles is limited to those uses specified in this Agreement and associated Permits. No other use shall be allowed without Tacoma Power's express written consent.
- J. No Forfeiture of Tacoma Power Rights. No Permit granted under this Agreement shall extend, or be deemed to extend, to any of Tacoma Power's Poles to the extent that the Licensee's Attachments would result in a forfeiture of Tacoma Power's rights. Any Permit that would result in forfeiture of Tacoma Power's rights shall be deemed invalid as of the date that Tacoma Power granted it. Further, if any of Licensee's existing Attachments, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Attachments upon receipt of written notice from Tacoma Power. If Licensee does not remove its Attachments in question within thirty (30) days of receiving written notice from Tacoma Power, Tacoma Power may at its option perform such removal at Licensee's expense. Notwithstanding the forgoing, Licensee shall have the right to contest any such forfeiture before any of its rights are terminated, provided that Licensee shall indemnify Tacoma Power for liability, costs, and expenses, including reasonable attorney's fees that may accrue during Licensee's challenge.

VII. REQUIREMENTS FOR ATTACHMENT

- A. Qualified Electrical Workers. The Licensee must employ or hire certified electricians as defined in WAC 296-45-035.
- **B.** Access / Climbing Space. The Licensee's Attachments shall not impede access to climbing space or in any way disturb or conflict with Tacoma Power's equipment or any other entity's equipment.
- C. Costs / Make-Ready Work. The Licensee is responsible for, and shall pay, all costs associated with its Attachments on Tacoma Power Poles including, but not limited to, Tacoma Power Make-Ready Work and maintenance of such Attachments. Section V Make-Ready Work, discusses requirements associated with Tacoma Power and Third Party Make-Ready Work that must be performed

to accommodate the Licensee's Attachments relative to Tacoma Power Poles and equipment. The Licensee shall pay and/or reimburse Tacoma Power for Tacoma Power Make-Ready Work performed, and for costs incurred, by Tacoma Power pursuant to this Section VII.

D. Abandonment, Relocation, Replacement, Rebuild, or Removal of Pole.

- 1. If at any time Tacoma Power desires or is required to abandon, relocate, replace, rebuild or remove any of its Poles on which Licensee Attachments are located, Tacoma Power shall provide Licensee thirty (30) day written notice prior to the date it intends to abandon, relocate, replace, rebuild or remove said Pole or Poles. The Licensee shall change the location of its Attachments as necessitated by Tacoma Power's abandonment, relocation, replacement, rebuild or removal of a Pole. All such Attachment changes shall be made at Licensee's sole cost and expense. If the Licensee fails to make or complete any changes required hereunder within thirty (30) days of notification, Tacoma Power, at its discretion, may perform such changes, at Licensee's sole risk, and invoice Licensee for reimbursement of all costs incurred.
- 2. For Poles located in unincorporated Pierce County, pursuant to Pierce County policy, utilities may receive a "Utility in Good Standing" designation if they maintain compliance with Pierce County policies and regulations relative to utility facilities in Pierce County right of ways. A utility that receives the "Utility in Good Standing" designation is not required to obtain permits for a certain defined class of work. This designation, therefore, provides a "Utility in Good Standing" with significant benefits in terms of avoided permit fees and avoided costs associated with time spent obtaining permits. Licensee's failure to remove Attachments as directed herein may result in Tacoma Power losing its status as a "Utility in Good Standing" within its service territory located in Pierce County. If Tacoma Power loses said status due to Licensee's failure to perform its removal obligation, then, Licensee shall reimburse Tacoma Power for the following costs until Tacoma Power's "Utility in Good Standing" status is reinstated:
 - a. The costs for all future Pierce County permits Tacoma Power would not have been required to obtain if it was a "Utility in Good Standing" and
 - b. Administrative costs incurred by Tacoma Power in obtaining said permits.
- E. Attachment Requirements. All Licensee Attachments shall be in accordance with requirements of Subsection XIV of this Agreement and all Applicable Standards, including the State of Washington Administrative Code (WAC) Chapter 296-45-045; National Electric Safety Code ("NESC"), and all franchises, Codes and Tacoma Power standards as now in force or as revised or amended in the future.

VIII. PERFORMANCE OF WORK

A. Work Requirements. The Licensee shall perform the Work in a skillful manner, in accordance with Section XV of this Agreement, and including WAC Chapter

296-45-045, NESC, and amendments or successor codes, standards, and all franchise requirements. The Licensee shall ensure that the Work and its equipment are in all respects (1i) safe, (2) of first-class quality, (3) free from all faults and defects in workmanship, material and design, and (4) in conformance with the requirements of this Agreement.

- B. Surveys and Inspections. Tacoma Power reserves the right to perform preliminary surveys prior to the actual installation of Licensee's Attachments, to inspect each new Attachment of Licensee after placement, and to make periodic inspections of Licensee's Attachments. Within thirty (30) days of receiving written notice from Tacoma Power, Licensee shall correct all Attachments that Tacoma Power identifies as being out of compliance with Applicable Standards. These surveys and inspections, or the absence of surveys and inspections, shall not operate to or in any manner impose any legal duty or liability on Tacoma Power or relieve the Licensee of any responsibility, obligation, duty or liability assumed under this Agreement or imposed by any Applicable Standard or applicable law, rule or regulation.
- C. Corrections. The Licensee shall, as soon as is practically possible, correct or replace any Work or equipment found to be defective or not in conformity with the requirements of this Agreement. If Licensee fails to perform any Work, corrections and/or replacements as required by this Agreement, Tacoma Power may perform such Work, corrections, and/or replacements at the Licensee's expense. Tacoma Power reserves the right to charge for the crew time used to inspect/re-inspect installations that do not meet the code standards.
- D. Debris. The Licensee shall, at all times, keep its work areas cleared of rubbish, refuse and other debris and in a neat, clean and safe condition. Upon completion of any portion of any of the Work, Licensee shall immediately remove all rubbish, refuse and other debris and all of its equipment and surplus materials associated or resulting from the Work. If Licensee fails to do so, Tacoma Power may perform such removal at the Licensee's expense.
- E. Notice of Street Light Installation. It shall be the Licensee's responsibility to notify the Tacoma Power Hybrid Fiber Coax (HFC) Construction Division when installation has been completed. It is the Licensee's responsibility to ensure that all Applicable Standards have been met.

IX. INVENTORY

A. The Licensee shall submit inventories in an electronic Excel spreadsheet format, flash drive or other format specified by Tacoma Power annually, on or before December 15th. Failure to provide inventories may result in Tacoma Power hiring a contractor to conduct said inventory at Licensee's expense. Inventory shall list all Attachments, contacting Pole numbers and addresses. The inventory may not be used in lieu of a Pole Attachment Application. The Licensee shall include with the inventories a listing of any Attachment the Licensee has removed from Poles since the last inventory. The Licensee shall identify the Pole from which the Attachment was removed, describe the removed Attachment, and indicate the approximate date of removal.

- **B.** Upon request, the Licensee shall furnish to Tacoma Power, as part of the inventories, an up-to-date electronic map depicting the locations of its Attachments.
- **C.** Notwithstanding Subsection A above, Tacoma Power reserves the right to conduct its own inventory of the Licensee's Attachments at any time, but not more than once per year, at the Licensee's expense.
- **D.** Attachments not previously applied for and listed in the inventory shall be deemed to be an Unauthorized Attachment and will be billed an Unauthorized Attachment Fee as provided in Section X. E. below.

X. FEES

- **A. Payment of Fees.** Licensee shall pay to Tacoma Power the fees specified in Schedule 1.
- **B.** Application Fee. The Licensee will submit a nonrefundable Application fee with each Application. Schedule 1, <u>Pole Attachment Agreement Fees</u>, contains the Application fee schedule.
- C. Security Deposit. Tacoma Power reserves the right to request a security deposit for Attachments hereunder as it may deem necessary. If required, and upon written notice by Tacoma Power, the Licensee will promptly pay a security deposit for Attachments. Upon termination of this Agreement, the security deposit will be returned to the Licensee, less any outstanding fees, penalties and/or other costs associated with the Licensee's Attachments per this Agreement. The applicable security deposit, as determined by Tacoma Power, is set forth in the attached Schedule 1, Pole Attachment Agreement Fees.
- D. Attachment Fees. The Licensee shall pay Tacoma Power fees for the Licensee's Attachments semiannually per the Attachment fee schedule, Schedule 1, "Pole Attachment Agreement Fees" which is attached to this Agreement. The Licensee's obligation to pay for its Attachments commences on the Permit effective date.
- E. Unauthorized Attachment Fees. Unauthorized Attachments shall be billed at five times the current fee for authorized Attachments ("Unauthorized Attachment Fee"). The Licensee's obligation to pay the Unauthorized Attachment Fee commences on the date Tacoma Power discovers any Unauthorized Attachments.
- F. Fee / Deposit Modification. Every April 1, Tacoma Power may review and modify, as appropriate, the Attachment fees, the Application fee, and/or security deposit, to account for changes in Tacoma Power's cost accounting methodology and policies, legal and/or regulatory changes, operation of Tacoma Power's system, or any other justifiable costs and/or reasons not delineated in this Agreement. Tacoma Power will provide written notice of the change. Changes in the fees will apply to all Attachments covered by this Agreement commencing

- with the subsequent July 1 to December 31 billing period. If an application is submitted after April 1, such rate shall apply.
- G. True-Up. Whenever Tacoma Power, in its discretion, requires advance payment of estimated cost to Tacoma Power Make-Ready Work prior to undertaking an activity on behalf of Licensee and the actual cost of the activity exceeds the advance payment of estimated expenses, Licensee agrees to pay Tacoma Power for the difference in cost, provided that Tacoma Power documents such costs with sufficient detail to enable Licensee to verify the charges. To the extent that Tacoma Power's actual cost of the activity is less than the estimated cost, Tacoma Power shall refund to Licensee the difference in cost.
- H. Make-Ready Fees. The Licensee shall pay and/or reimburse Tacoma Power for all costs associated with Tacoma Power Make-Ready Work completed by Tacoma Power and/or a Tacoma Power's contractor. The Company shall also be responsible for the costs of Third Party Make Ready Work if such Third Party Make Ready Work is caused by or necessitated by making room for Company's additional Attachments or modification of one of Company's existing Attachments or to comply with Standard/code clearance requirements.
- I. Failure to Timely Transfer, Abandon or Remove Facilities. Company will be charged an Unauthorized Attachment fee if the Company fails to change the location of its attachment within thirty (30) days of notification as set forth in VII. REQUIREMENTS FOR ATTACHMENT.
- J. Field Inspection Fee. The Licensee shall pay Tacoma Power for all costs associated with Inspections conducted outside of the Permit Application process.

XI. BILLING

A. Billing Procedure.

- 1. Tacoma Power will invoice Licensee for Attachment Fees semi-annually in January (for the period of January through June) and in July (for the period of July through December) of each year during the Term.
- Within thirty (30) calendar days of the date Tacoma Power discovers any Unauthorized Attachments, Tacoma Power may invoice the Licensee for Unauthorized Attachment Fees for the current Billing Period, provided however, Tacoma Power will prorate such fees as appropriate.
- 3. For the final invoice, (upon termination) within thirty (30) calendar days after the first day of January or July, as applicable, Tacoma Power shall invoice the Licensee for Attachment fees for the current Billing Period, provided however, Tacoma Power will prorate such fees as appropriate.
- **B. Payment.** The Licensee shall pay all invoices within thirty (30) days of receipt. All payments shall be made in immediately available funds payable to Tacoma Power, or by wire transfer to a bank named by Tacoma Power. If Tacoma Power does not receive payment for any fees or other amount owed within thirty (thirty)

calendar days after it becomes due, the Licensee shall pay interest to Tacoma Power at the rate of one percent (1%) per month, or the maximum interest allowed by law, on the amount due. Nonpayment of any undisputed amounts due under this Agreement beyond sixty (60) days shall constitute a material default of this Agreement. Payment must include invoice number on check.

- C. Interest on Unpaid Balances. Interest on any unpaid amounts (including amounts placed in escrow) will bear interest until paid at the rate of 1% per month. When payments are made by mail, bills shall be considered as having been paid on the date of receipt by Tacoma Power.
- D. Taxes. Licensee shall pay all applicable and lawful value-added, sales, use, excise, and other taxes, duties, imposts, fees or charges (collectively "Taxes") properly levied or imposed on it by a duly constituted and authorized taxing or other governmental authority with respect to the Licensee's use of the Poles whether or not such amounts are required to be collected Tacoma Power under applicable law. In addition, Tacoma Power will invoice and Licensee shall pay all state, local, and federal taxes and franchise, tariff, and agreement fees (if any), imposed upon Tacoma Power with respect to its activities contemplated under this Agreement. In the event that any authority with jurisdiction imposes a tax on any aspect of the transactions contemplated hereunder including but not limited to taxes imposed pursuant to Chapter 82.29A of the Revised Code of Washington, Licensee agrees to indemnify, defend, and save harmless Tacoma Power from and against such taxes or other Taxes and any penalties and interest thereon or costs associated with any attempts to collect the same.
- E. Billing Dispute. In the event of a billing dispute between Tacoma Power and the Licensee, Tacoma Power will continue to provide service under this Agreement as long as the Licensee continues to make all payments not in dispute, and pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Licensee fails to meet this requirement for continuation of service, then Tacoma Power may provide notice to the Licensee of its intention to terminate this Agreement and apply the security deposit to owed amounts.

XII. LIABILITY, INDEMNIFICATION, AND EXCULPATION

- A. Risk and Duty to Inspect. Licensee agrees to use Tacoma Power's Poles at Licensee's sole risk. Licensee acknowledges and agrees that it has an obligation to inspect the Poles and/or premises surrounding said Poles prior to commencing any work on said Poles.
- B. Indemnity / Hold Harmless. Unless caused by the sole negligence or willful misconduct of Tacoma Power its employees, contractors or agents, the Licensee releases and agrees to defend, indemnify and hold harmless Tacoma Power, its successors and assigns, and its respective directors, officers, employees and agents of Tacoma Power and its successors and assigns (collectively referred to as the "Indemnitees") from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to reasonable attorneys' fees) arising out of or in connection with any Attachments, Permits, the performance of any Work,

the operation of any equipment or the Licensee's system, or the acts or omissions of the Licensee or any of its suppliers or contractors of any tier, the respective successors and assigns of the Licensee or any such suppliers or contractors, the directors, officers, employees and agents of each of the foregoing, or anyone acting on the Licensee's behalf in connection with said Attachments, performance of Work or operation of equipment or the Licensee's system.

- C. Scope. Such indemnity, protection and hold harmless shall include any demand, claim, suit or judgment for damages to property or injury to or death of persons, including officers, agents and employees of either party hereto including payment made under or in connection with any Worker's Compensation Law or under any plan for employees' disability and death benefits, which may arise out of or be caused or contributed by the erection, maintenance, presence, use or removal of Licensee's Attachments or by the proximity of the respective cables, wires, apparatus and appliances of Licensee including any claims or demands of customers of the Licensee with respect thereto. The Licensee hereby acknowledges that it is waiving employer immunity under Title 51 RCW, the Industrial Insurance Law, and that this Agreement has been mutually negotiated.
- D. Service Interruption. Tacoma Power shall not be liable to the Licensee or to the Licensee's customers, and the Licensee hereby indemnifies, protects and saves harmless Tacoma Power against any and all such claims or demands, suit or judgment for loss, liability, damages and expense by the Licensee's customers, for an interruption to the service of the Licensee, or for interference with the operation of the Licensee's Attachments, and/or appliances of the Licensee, or for interference with the operation of the Licensee's Attachments, and/or wires and appliances of the Licensee.
- **E.** Third Parties. To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless shall apply to and for the benefit of the Indemnitees. This Section XII shall not be intended or interpreted to provide any person an independent claim or course of action based upon third party doctrine.
- **F. Consideration.** Tacoma Power is willing to permit Attachments for the fees described in Schedule 1 only in consideration of and in reliance upon such release, indemnity and hold harmless.
- G. DISCLAIMER. TACOMA POWER MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO TACOMA POWER'S POLES OR THE PREMISES SURROUNDING SAID POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND TACOMA POWER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. TACOMA POWER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- H. Environmental Hazards. Licensee represents and warrants that its use of Tacoma Power's Poles will not generate any Hazardous Substances, that it will not store or dispose on or about Tacoma Power's Poles or transport to Tacoma

Power's Poles any Hazardous Substances and that Licensee's Attachments will not constitute or contain and will not generate any Hazardous Substance in violation of federal, state, or local law now or hereafter in effect, including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal. state, or local laws, regulations or rules now or hereafter in effect, including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration, or other disaster its Attachments would not release any Hazardous Substances. Licensee and its agents, contractors, and subcontractors shall defend, indemnify, and hold harmless Tacoma Power and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, or expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage, or discovery of any Hazardous Substances on, under, or adjacent to Tacoma Power's Poles attributable to Licensee's use of Tacoma Power's Poles.

- I. Municipal Liability Limits. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by Tacoma Power of any applicable state limits on municipal liability or governmental immunity. No indemnification provision contained in this Agreement under which Licensee indemnifies Tacoma Power shall be construed in any way to limit any other indemnification provision contained in this Agreement.
- J. Attorney Fees. If Tacoma Power brings a successful action in a court of competent jurisdiction to enforce this Agreement, Licensee shall pay Tacoma Power's reasonable attorney's fees.

XIII. FORCE MAJEURE

An event of Force Majeure means any act of Nature, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control. Neither Party will be considered in default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Agreement is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Agreement.

XIV. WORKER'S COMPENSATION, INSURANCE AND BONDS

A. Workers Compensation and Employer's Liability. The Licensee shall ensure that, with respect to all persons performing the Work, (including Make-Ready Work) for or on its behalf, the Licensee or its suppliers or contractors maintain in

effect at all times during the term coverage or insurance in accordance with the applicable laws relating to worker's compensation and employer's liability (including, but not limited to, the Washington Industrial Insurance Act and the laws of the state in which any such person was hired), regardless of whether such coverage or insurance is mandatory or merely elective under the law. The Licensee shall furnish to Tacoma Power such assurance and evidence of such coverage or insurance (such as copies of certificates of insurance and Certificates of Compliance issued by the Washington State Department of Labor and Industries) as Tacoma Power may request. Tacoma Power reserves the right to accept self-insurance from the Licensee.

- B. Commercial General Liability. The Licensee shall obtain, and maintain continuously for the term of this Agreement, at its own expense, an ISO form, occurrence based (not "claims-made") Commercial General Liability insurance policy, with endorsements and/or other insurance necessary to provide coverage for the Work and other activities and services of this Agreement. The Commercial General Liability policy (CGL) shall have policy limits no less than \$2,000,000 combined single limit of liability each occurrence with general aggregate limit of no less than \$4,000,000. The insurance carrier issuing the policy must have an A.M. Best rating of at least A and be legally admitted and licensed to do business in the State of Washington. The City of Tacoma, Department of Public Utilities shall be named as an additional insured on said CGL policy and said policy shall be primary over and non-contributing to any insurance or self-insurance program of the City of Tacoma.
- C. Deductible / Self-Insurance. The insurance coverage required by this Section shall not be subject to a deductible or self-insured retained limit of liability, in excess of \$10,000 without the Licensee having first received the written consent from the City of Tacoma. Licensee agrees to indemnify and hold the City of Tacoma harmless from the obligation to pay the deductible or self-insured retained limit of liability as if the City of Tacoma were an additional insured without the self-insured retained limit or deductible.
- D. Cross Liability. Such insurance shall include a "cross liability," "severability of interests," or "separation of insured" clause indicating essentially that except with respect to the limits of insurance, and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom the claim is made or suit is brought.
- **E. Certificate of Insurance.** Prior to commencement of performance of any of the Work, including Third Party Make-Ready Work if performed by or on behalf of the Company, the Licensee shall provide Tacoma Power a certificate of insurance with its endorsements as evidence of coverage. The company or companies issuing such insurance and the policies issued shall be subject to approval by Tacoma Power.
- **F. Notice of Claims.** The Licensee shall promptly advise Tacoma Power of all claims relating to damage to property or injury to or death of persons arising or alleged to have arisen in any manner by, or directly associated with, the erection,

maintenance, presence, use or removal of the Licensee's equipment. Copies of all accident or other reports made to any insurer by the Licensee shall be furnished to Tacoma Power.

- G. Additional Assurances. The Licensee shall also furnish Tacoma Power with such additional assurance and evidence of such insurance (including, but not limited to: copies of insurance policies, declaration pages, and endorsements) as Tacoma Power may from time to time request to reasonably verify the insurance coverage types and limits required hereunder are in effect. Within thirty (30) days after any notice of termination, cancellation, expiration or alteration in any policy of insurance required under this Agreement, the Licensee shall deliver to Tacoma Power a Certificate of Insurance acceptable to Tacoma Power with respect to any replacement policy.
- H. Subrogation. The Licensee shall ensure that any policies of insurance that the Licensee or any of its suppliers or contractors of any tier carry as insurance against property damage or against liability for personal injury (including death) shall include a provision therein providing a waiver of the insurer's right to subrogation against the Indemnitees. To the extent permitted by its insurance policies Tacoma Power hereby waives all rights of subrogation for damages to its properties against the Licensee, its successors and assigned, and the respective directors, officers, employees and agents of the Licensee and its successors and assignees.
- I. Liabilities and Obligations. The requirements of this Agreement as to insurance and acceptability to Tacoma Power of insurers and insurance to be maintained by the Licensee are not intended to and shall not in any manner limit or qualify the liabilities and obligations of or assumed by the Licensee under this Agreement.
- **J. Bonds.** In addition, the Licensee shall furnish to Tacoma Power, at such times and in such forms as Tacoma Power may in writing request, surety bonds with performance, payment and maintenance clauses payable to Tacoma Power.

XV. COMPLIANCE WITH LAWS

- A. Applicable Standards. In connection with any Attachments, in the performance of the Work, and in the operation of equipment pursuant to this Agreement, the Licensee shall comply (and shall ensure that the equipment, the Work, and all of the Licensee's suppliers and contractors of any tier comply) with all Applicable Standards. Applicable Standards means:
 - All applicable laws, ordinances, rules, regulations, orders, licenses, permits, franchises and other requirements, now or hereafter in effect, of any governmental authority;
 - 2. All applicable engineering, industry, and safety standards and codes governing the installation, maintenance, and operation of electric utility facilities and the performance of all work in or around electric utility facilities and includes the most current versions of the National Electric Safety Code

("NESC"), the National Electric Code ("NEC"), and the regulations of the Occupational Safety and Health Administration ("OSHA"); and

3. Tacoma Power's construction standards, specifications, rules, and regulations which apply to Licensee's Work and/or Third Party Make-Ready Work and will be provided by Tacoma Power to the Licensee on request; in addition, Construction Standards are available on the Tacoma Power website:

http://www.mytpu.org/tacomapower/electrical-permitting/electrical-construction-standards.htm

- **4.** In the event any of the above Applicable Standards conflict with one another, the Licensee shall comply with the most stringent of the conflicting standards as determined by Tacoma Power.
- **B. Compliance.** The Licensee shall furnish such documents as may be required to effect or evidence compliance. All laws, regulations and orders required to be incorporated in agreements of this character are hereby incorporated herein by this reference. If Licensee's Attachments violate or are not in compliance with any applicable laws, ordinances, rules, regulations, orders, licenses, permits, franchises and other requirements, now or hereafter in effect, of any governmental authority or if said governmental authority requires any change to Licensee's Attachments then Licensee shall complete said changes and bring its Attachments into compliance.

XVI. EMERGENCIES

A. In the event of an emergency, as defined in Section II, relating to the Attachment, Licensee shall immediately contact Tacoma Power at the emergency phone number below and take immediate action to correct any safety or use problems, including but not limited to the actions in Section VIII, "Performance of Work," even if the full repair cannot be made at the time, in order to protect persons and property or to allow use of the area on which the pole is located. The Parties' respective emergency phone numbers are as follows:

Tacoma Power: (253) 502-8602

Licensee:

B. In the event that Tacoma Power cannot reach Licensee at the emergency number listed above, Tacoma Power shall, in its sole judgment, repair Licensee's Attachment or associated equipment in order to protect persons and property, at the Licensee's sole expense.

XVII. NONWAIVER

The failure of Tacoma Power to insist upon or enforce strict performance by the Licensee of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

XVIII. ASSIGNMENT; SUCCESSORS AND ASSIGNS; SUB-LICENSING

- A. Assignment. The Licensee shall not assign, transfer or otherwise dispose of any of the privileges granted under this Agreement without prior written notice to, and the written consent of, Tacoma Power. Any assignment, transfer or disposition of such privileges without the prior written notice to and/or the written consent of Tacoma Power as required under this Article shall be deemed a material breach of this Agreement. In no event will an assignment or transfer permitted hereunder constitute or effect a release of Licensee with respect to any liabilities or any of Licensee's obligations under this Agreement unless such release is expressly granted by Tacoma Power in writing.
- B. Sub-Licenses or Leases. Without Tacoma Power's prior written consent, Licensee shall not sub-license or lease to any third party, including but not limited to, allowing third parties to place Attachments on Tacoma Power's Poles or to place Attachments for the benefit of such third parties on Tacoma Power's Poles. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Attachments by third parties that involves no additional Attachment is not subject to this Section XVIII.B.

XIX. ENTIRE AGREEMENT

- A. The terms and provisions contained in the Agreement, Schedule 1, and Appendix A to this Agreement, constitute the entire agreement between the Parties. This Agreement may be modified, extended or renewed only by written amendment, executed by the duly authorized representative of both Parties. The persons who have executed this Agreement represent and warrant that they are duly authorized to execute this Agreement in their representative capacity as indicated.
- **B.** This Agreement supersedes any and all prior agreements, with respect to Attachments.
- **C.** The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- **D.** The provisions of this Agreement, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Agreement, shall survive expiration or termination of this Agreement.

XX. APPLICABLE LAW

This Agreement shall be interpreted, governed by, and construed under the laws of the State of Washington. The Parties agree and stipulate that in the event any litigation should occur concerning or arising out of this Agreement, the sole venue of any legal action shall be the Pierce County Superior Court of the State of Washington. The substantially prevailing party in any litigation arising hereunder

shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

XXI. NOTICES AND OTHER COMMUNICATIONS

A. Notices. Any formal notice, request, approval, consent, instruction, direction or other communication given by either Party or to the other pursuant to this Agreement shall be in writing and shall be delivered by either (1) certified first class mail, return receipt requested, or (2) by reputable overnight courier service to the individuals denoted below, unless otherwise directed in writing, at the address provided:

TO: Tacoma Power: TO: Licensee

Tacoma Power Business and Financial Management

ATTN: Joint-Use Coordinator ATTN: 3628 S. 35th Street Tacoma, WA 98409

B. Invoices / Informal Notice. Billing invoices and informal notices, such as technical or routine business communications, may be transmitted by electronic mail. Either Party may from time to time change such address by giving the other Party written notice of such change in accordance with the provisions of this Section.

Licensee address for informal notices and billing purposes shall be as follows:

Licensee:

Attn:

Email Address:

Tacoma Power address for informal notices and billing questions shall be as follows:

Tacoma Power
Business and Financial Management
ATTN: Joint-Use Coordinator
3628 S. 35th Street
Tacoma WA 98409

Email Address: pwrjointutilities@cityoftacoma.org

C. Street Light Installation. It shall be the Licensee's responsibility to notify Tacoma Power Hybrid Fiber Coax Construction Division when installation is completed as indicated in Section VIII. E.

Tacoma Power- Hybrid Fiber Coax Construction Division: kmathes@cityoftacoma.org 253-502-8851

XXII. HEADINGS

The headings of sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections.

** Balance of Page Intentionally Left Blank **

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective as of the Effective Date.

LICENSEE Licensee				
Ву:		Date:		
Printed Name:				
Title:				
Tax ID No,:				
TACOMA POWER:				
By:Chris Robinson Power Superintendent/COO	Date:			
Approved:				
Andrew Cherullo, Finance Director				
Approved as to Form:				
Deputy City Attorney				

Schedule 1

Master Pole Attachment Agreement Fees

City of Tacoma Department of Public Utilities Tacoma Power

This Schedule sets forth the Fees for Attachment to Tacoma Power's Distribution System, together with applicable power supply and customer charges for Streetlight Attachments.

1. Attachment Fees:

Annual rate for Attachments: \$10.18

2. Application Fees:

Application Fee: \$175 per Application up to 15 Poles, plus additional \$5 per Pole thereafter

3. Security Deposit:

No security deposit is required as of the Effective Date of the Agreement, but Tacoma Power reserves the right, per Section IX. B. and at any time during the Term of the Agreement, to review its operational risks hereunder and require that Licensee provide a security deposit in an amount deemed necessary by Tacoma Power.

4. Pole Records and Maps:

Actual time and materials

5. Additional Charges For Electricity Supplied by Tacoma Power:

In addition to the annual Attachment Fees per Pole set forth above, the following monthly power cost and customer charges apply to, and shall be collected for, Attachments that require electricity supplied by Tacoma Power. The Licensee is responsible for and shall timely pay all such charges when invoiced by Tacoma Public Utilities:

- Energy and Delivery charges per the monthly rate specified in Tacoma Municipal Code Section 12.06.170 B. 1. and 2.
- **Customer charge** per the monthly rate specified in Tacoma Municipal Code Section 12.06.170 B. 3.

Note: All Fees and Charges specified in this Schedule 1 are subject to amendment by the City of Tacoma Public Utility Board and/or City Council. The Licensee shall be responsible for and shall pay the applicable annual Attachment fee(s) if and as adjusted per future Resolution(s) adopted by the Tacoma Public Utility Board, as well as all

Schedule B rates applicable to power cost and/or customer charges as the same may hereafter be revised per future Ordinance(s) adopted by the Tacoma City Council.



Appendix A

City of Tacoma
Department of Public Utilities
Tacoma Power

Master Pole Attachment Agreement SAMPLES

Pole Attachment Permit Conditions & Instructions

Application

Detail Pole/Attachment Data

Map Sample