

## **LICENSING AGREEMENT**

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, a municipal corporation (hereinafter referred to as "Chelan"), and PUBLIC UTILITY DISTRICT NO. 1 of DOUGLAS COUNTY (hereinafter referred to as "Douglas"), separately own utility poles. Chelan and Douglas wish to cooperate in the joint use of their respective poles, erected or to be erected within the areas in which both parties render service in the State of Washington when such joint use is compatible with their respective needs.

The owner of the pole(s) shall be referred to throughout this Licensing Agreement as "Licensor" and the entity using the pole owned by the other party shall be referred to "Licensee." This Licensing Agreement applies to all current uses of poles by either party and future installations.

In consideration of the mutual covenants herein and the benefits from the use of the other party's poles, both parties mutually agree that the following terms and conditions shall govern Licensee's use of Licensor's poles, as Licensor may, upon application as hereinafter provided, permit Licensee to use in the conduct of Licensee's business.

### **1. USE OF LICENSOR'S POLES**

- a. Licensee's use of Licensor's poles shall be confined to cables and wires together with associated cables, guys, and other appurtenances, all hereinafter called "equipment," which Licensor shall have given Licensee permission to install pursuant to the terms of this Licensing Agreement. Said equipment shall be used by Licensee for any lawful business of Licensee.
- b. Licensor may permit Licensee to attach equipment to such poles owned by Licensor upon the condition that such contacts shall be restricted in location on such poles to space assigned by the Licensor. Licensor shall collect and retain all amounts payable by Licensee under the provisions hereof for the privilege of placing and maintaining equipment upon said jointly used poles. Licensor shall have the right, but not the obligation, to supervise attachments made by Licensee.
- c. Nothing in this Licensing Agreement shall be construed to obligate Licensor

to grant Licensee permission to use any particular pole or poles. Permission to use any pole shall be at the sole discretion of Licensor.

- d. Douglas currently has equipment attached to Chelan's poles located in Douglas County pursuant to a letter agreement dated April 10, 1972, as amended. The attachments referred to in that letter agreement and amendments thereto shall be governed by that prior agreement and shall not be included in the scope of this Licensing Agreement.

2. INVENTORY OF FACILITIES. Licensee may have equipment attached to Licensor's poles pursuant to a previous Licensing Agreement. Licensor has made an inventory of the poles to which equipment is attached and this inventory was provided to Licensee prior to the execution of this Licensing Agreement. Licensee has had the opportunity to review and verify the accuracy of the inventory. This inventory shall be the basis for the pole contact fees to be charged hereunder. This inventory shall also be used for all purposes hereunder, including establishing the number and location of contacts approved by Licensor as of the execution of this Licensing Agreement. Any contacts or use of poles not identified on the inventory shall be subject to Section 5 hereof.

The parties shall jointly cooperate to conduct an inventory of all poles jointly used by the parties at such times as the parties agree. Such joint inventory shall be conducted at least once every five (5) years at each party's own expense.

Further, Licensee shall submit annually to Licensor an inventory which lists the new pole contacts made during the preceding year (number and location). This inventory shall be submitted to Licensor no later than December 1 of each year.

3. APPLICATION FOR USE OF LICENSOR'S POLES. Except as provided herein, when Licensee desires to place equipment upon any of Licensor's poles (new attachments or equipment not listed in the inventory as described in Section 2 above), Licensee shall first make written application for permission to do so in duplicate on the form attached as Exhibit A (or as the form is changed by Licensor). Licensee shall not attach any of said equipment until Licensor has permitted the same. Permission must be in writing and shall be granted by Licensor signing one copy of the application and returning the same to Licensee. The pole contact rate in effect at the time of the installation for any such equipment shall apply to any new contacts.

Licensee shall complete the installation of the equipment upon the poles covered by an approved application with such reasonable time limits as the Licensor shall designate on the application for such installation. In the event Licensee should fail to complete the installation within the prescribed time limit, the permission granted by Licensor shall thereupon be revoked and Licensee shall not have the right to place the equipment upon the poles without first reapplying for and receiving written permission to do so.

Licensee may install service drops from a pole to a customer's residence or business prior to receiving the written permission of Licensor. However, Licensee must provide Licensor with reasonable advance oral notice of such installation and provide a completed application after completion of such service drop.

4. NOTICE PRIOR TO INSTALLATION OF NEW EQUIPMENT. Licensee, upon receiving Licensor's written approval, may install, maintain and use the equipment identified in the application for use. Licensee shall notify Licensor three (3) working days prior to any work being done so that Licensor may arrange to have its representative present when the work is performed.

With respect to a service drop from a pole to a customer's home or business, Licensee shall provide reasonable advance oral notice prior to such installation.

5. NON-PERMITTED EQUIPMENT OF LICENSEE AND COSTS OF INVENTORY. Licensee shall not have the right to place, nor shall it place, any equipment (including cables) upon any pole owned by Licensor without first receiving permission for such use as provided in Section 3 above. Any installations or attachments found which are not identified in Licensor's inventory nor in the written applications for use, shall be charged at three (3) times the rental rate in effect during the period that the attachment is found.

In addition, in the event that Licensee fails to timely submit an annual inventory of new pole contacts during the previous year pursuant to Section 2 above, the Licensee shall reimburse Licensor for all reasonable costs associated with performing an annual inventory of poles being used by Licensee.

6. MAINTENANCE OF POLES, DAMAGE TO POLES BY THIRD PARTIES. The Licensor shall maintain poles in a safe and serviceable condition. The pole owner shall be solely responsible for collection for damages for poles broken or damaged by a third party. The

Licensee shall be responsible for collecting damages caused by a third party to its equipment on the pole(s).

7. PLACEMENT AND MAINTENANCE OF LICENSEE'S EQUIPMENT. Licensee shall, at its own sole risk and expense, place and maintain its equipment upon such pole or poles: (a) in a safe condition and in good repair, (b) in a manner suitable to Licensor and so as not to conflict or interfere with the working use of such poles owned by Licensor, (c) in conformity with Exhibit B attached hereto and with such other requirements and specifications as Licensor shall from time to time prescribe, and (d) in conformity with all laws and the regulations, orders and decrees of all lawfully constituted bodies and tribunals, pertaining to pole line construction, including without limiting the scope of the foregoing, the National Electrical Safety Code and National Fire Code.

8. TRANSFER, REARRANGEMENT AND REMOVAL OF LICENSEE'S EQUIPMENT

- a. New facilities of Licensee. If in the judgment of Licensor, the accommodation of any of Licensee's equipment included in an application for a new installation would necessitate the rearrangement of facilities on an existing pole or the replacement of an existing pole to provide adequate pole facilities, Licensor will indicate on such application the necessary changes and the estimated cost thereof and return it to Licensee. If Licensee desires to use such pole after receiving such information, Licensee shall return the application noting acceptance of the costs and changes. Licensor will provide new pole facilities, if required, and Licensor and any other utility owning facilities attached to Licensor's poles shall make such transfers or rearrangements of existing facilities as may be required. The work to add new pole facilities or to rearrange facilities shall be done at the sole expense of Licensee. Licensee, on demand, will reimburse Licensor for all reasonable expenses thereby incurred, or will, upon request by Licensor, pay in advance the estimated expense to be incurred in providing such new poles and/or making such transfers or rearrangements.

- b. Existing facilities of Licensee and others. If in Licensor's judgment, Licensee's existing equipment on any pole interferes with or would make substantially more difficult or expensive the placing thereon of any additional facilities of Licensor and, if such additional facility could be placed upon such pole by removing Licensee's equipment therefrom, or by rearranging the existing facilities thereon, Licensor may notify Licensee of the rearrangements of facilities or pole replacement and transfers of facilities required in order to continue the accommodation of Licensee's equipment, together with an estimate of the cost of making any such changes. Licensor shall provide other users of the pole with similar notice. Licensee and others shall share in the costs of such removal, rearrangement or pole replacement on a pro rata basis as determined by Licensor. If a new pole is required, Licensor will consider the salvage value of the existing pole, if any, in determining the costs to be paid by licensee and others. If Licensee desires to continue to maintain its equipment on such pole and so notifies Licensor in writing, Licensor shall make such pole replacement, if required, and Licensee shall make such rearrangements or transfers. If Licensee does not notify Licensor of its continued desire to use the pole, Licensee shall be allowed thirty (30) days from the original notification by Licensor to remove its equipment from such pole, provided, however, that Licensor in any emergency, may require the Licensee to remove its equipment in the time required by such emergency. If Licensee's equipment is not removed from the pole at the end of the thirty (30) day period, or in emergencies when required by Licensor, Licensor may remove Licensee's equipment and Licensee shall pay the reasonable expense incurred by Licensor in the removing and reattaching (if appropriate) of the Licensee's equipment.
- c. Undergrounding facilities. If the Licensor elects to remove existing overhead pole lines and replace them with underground facilities, the Licensor agrees that it will provide the Licensee thirty (30) days notice of such action in writing. Licensee may place its facilities underground or may make other

arrangements for its facilities at Licensee's sole cost and expense.

- d. Temporary relocation or removal. Upon notice from Licensor, Licensee shall relocate, replace or remove Licensee's equipment or transfer it to substituted poles or temporarily relocate such equipment in order to provide increased clearance, or perform any other work in connection with such equipment that may be required by Licensor. In cases of emergency, Licensor may, at Licensee's sole expense, relocate, replace or remove such equipment, transfer it to substituted poles or perform any other work in connection with such equipment that may be required in the maintenance, replacement, removal or relocation of such poles or the facilities thereon or which may be placed thereon, or for the service needs of Licensor. Licensee, on demand, will reimburse Licensor for the entire expense thereby incurred or will upon request by Licensor, pay in advance the estimated expense to be incurred in making such changes, transfers or rearrangements.
- e. Permanent removal by Licensee. Licensee may at any time remove its equipment from any poles and, in each such case, Licensee shall give Licensor thirty (30) days written notice, in duplicate, of such removal on the form attached hereto as Exhibit A or in such form as may be from time to time prescribed by Licensor. Removal of such equipment from any pole shall constitute a termination of Licensee's right to use such pole.

9. ANCHOR AND GUYING FACILITIES

- a. In those cases where Licensee's anchorage requirements are not coincident with those of Licensor, Licensor may elect to place, own and maintain such guys and anchors as are required to hold the strains of Licensee's equipment upon said poles, and Licensee, on demand, will reimburse Licensor for the entire expense thereby incurred or will upon request by Licensor pay in advance the estimated expense to be incurred by the Licensor in providing such new anchors and guys. If the Licensor is unable to place such guys and anchors, Licensee shall, at its own sole risk and expense, place such guys and anchors.

- b. In general, in those cases where the anchorage requirements of Licensee and Licensor are coincident, the strains of Licensee's equipment and of Licensor's facilities on said poles shall be held by the same guys and anchors. When in Licensor's judgment such procedure is desirable, Licensee, at its own sole risk and expense, shall provide separate guys and anchors, or both, to hold the strains of its equipment upon said poles.
- c. In those cases where Licensee's contacts put additional strain on Licensor's poles and separate guying facilities are not desired by Licensor, or if guying facilities being used by Licensee are inadequate to hold additional strains, Licensor shall require Licensee to provide proper guying facilities and that such work shall be done at the sole expense of the Licensee. Licensee, on demand will reimburse Licensor for the entire expense thereby incurred, or will upon request by Licensor pay in advance the estimated expense to be incurred by the Licensor in providing such new anchors and guys.

10. USE OF FACILITIES BY LICENSOR AND OTHERS. Licensor reserves (a) to itself the right to maintain its poles and its equipment on said poles; and (b) to each Licensee the right to operate its facilities in a manner that will enable Licensee to fulfill its own service requirements to the extent that such use does not interfere with Licensor's equipment or facilities.

11. PERMITS, LICENSES AND GRANTS. Licensee will obtain from public authorities and private owners of real property any and all franchises, permits, licenses or grants necessary for the lawful exercise of the permission granted by any application approved hereunder. Licensee shall submit to Licensor evidence of compliance with the foregoing requirements prior to or at the time of making application for permission to place such equipment upon such pole or poles.

12. PAYMENT BY LICENSEE - ADJUSTMENT OF CHARGES. For the privilege of placing and maintaining equipment on Licensor's poles, Licensee will pay to Licensor annually in advance, amounts to be billed on or before the first day of January of each calendar year during the existence of this agreement in accordance with the following formula:

$A \times B$  = Total amount of annual payment

A = Total number of poles used by Licensee on the date of computation

B = Current pole Contact Rate

Billing is to be in accordance with the formula without regard to fractional periods of time. There shall be no abatement or reduction in fees for equipment in place for less than a full one year period. Payment shall be made within thirty (30) days of receipt of the billing and shall constitute payment in advance for the following year.

Licensor reserves the right to revise such rates upon giving Licensee one hundred eighty (180) days prior to the next billing period notice of its intention to revise the rates. Licensor's rates shall be in conformance with RCW 54.04.045.

13. NATURE OF LICENSE. No use, however extended, of any such poles under this agreement shall create or vest in Licensee any ownership or property rights therein, but Licensee's rights therein shall be and remain a mere license, which as to any particular pole or poles may be terminated at any time pursuant to this agreement.

14. RESPONSIBILITY OF LICENSEE

- a. Licensee will exercise special precautions to avoid damage to the facilities of Licensor and others supported on Licensor's poles. Licensee will make an immediate written report of the occurrence of any such damage to the owner of the damaged facilities. Licensee will reimburse said owner for all necessary and reasonable expense incurred in making repairs and shall be responsible for all other costs, damages and liabilities pursuant to the indemnification provisions of this Licensing Agreement.
- b. In furtherance of the concerns of the parties and the rules and regulations relating to the security of communications and facilities, Licensee agrees as follows:
  - i. To provide suitable identification to each such employee, agent and contractor working on the facilities or poles of Licensor.
  - ii. To cause each such employee, agent and contractor to observe faithfully and to comply strictly with all general security rules which Licensor reasonably may find necessary or advisable in the premises.



- iii. Not to assign any work on or about such poles to any such employee, agent or contractor who, in the judgment of Licensor, is unqualified or otherwise unfit to perform the work in question.

15. LICENSEE'S PAYMENT OF TAXES OR CHARGES. Licensee will promptly pay any tax, fee or charge that may be levied or assessed against Licensor's poles or property resulting from or attributable to their use by Licensee. If Licensee shall fail to pay any such tax or assessment on or before such tax or assessment becomes delinquent, Licensor, at its option, may pay such tax on account of Licensee, in which case Licensee will promptly reimburse Licensor for the full amount of tax so paid.

16. LIABILITY, DAMAGES AND INDEMNIFICATION

- a. Douglas agrees to indemnify and hold harmless Chelan, its directors, commissioners, officers, employees and agents against and from any and all claims, demands, suits, losses, costs and damages, including attorneys' fees, for or on account of bodily or personal injury to, or death of, any person(s), including without limitation Douglas' employees, agents, representatives and subcontractors, or loss of or damage to any property of Douglas or any third party, to the extent resulting from any negligent act, omission, or fault of Douglas, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives, in the exercise, performance or nonperformance of Douglas' rights or obligations under this Agreement. Except for liability caused by the sole negligence of Chelan, Douglas shall also indemnify and hold harmless Chelan from and against any and all claims, demands, suits, losses, costs and damages, including attorneys' fees, arising from any interruption, discontinuance, or interference with Douglas' service to its customers which may be caused, or which may be claimed to have been caused, by any action of Chelan pursuant to or consistent with this Agreement.
- b. Chelan agrees to indemnify and hold harmless Douglas, its directors, officers, employees and agents against and from any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, for or

on account of bodily or personal injury to or death of, any person(s), including without limitation Chelan's employees, agents, representatives and subcontractors, or loss of or damage to any property of Chelan or any third party, to the extent resulting from any negligent act, omission, or fault of Chelan, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives, in the exercise, performance or non-performance of Chelan's rights or obligations under this Agreement. Except for liability caused by the sole negligence of Douglas, Chelan shall also indemnify and hold harmless Douglas from and against any and all claims, demands, suits, losses, costs and damages, including attorneys' fees, arising from any interruption, discontinuance, or interference with Chelan's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Douglas pursuant to or consistent with this Agreement.

- c. Both parties agree that in furtherance of the foregoing indemnity commitments, each hereby waives any immunity provided to it by the Washington State Industrial Insurance Act, Chapter 51 RCW or other applicable law.
- d. The indemnifying party shall have the right 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.
- e. THE TERMS OF THIS SECTION 16, SPECIFICALLY INCLUDING THE WAIVERS OF IMMUNITY PROVIDED BY THE WASHINGTON INDUSTRIAL INSURANCE ACT, ARE PART OF THE CONSIDERATION FOR THIS AGREEMENT AND SHALL BE

DEEMED MUTUALLY NEGOTIATED TO THE FULLEST EXTENT  
ALLOWED BY THE LAWS OF THE STATE OF WASHINGTON.

17. ATTORNEY'S FEES. In the event either party brings an action or a suit to enforce any provision of this contract, the substantially prevailing party shall be entitled to recover, in addition to any judgment or decree or costs, such sum as the court shall deem reasonable as attorneys' fees.

18. DEFAULT - REMEDIES

- a. If either party shall default in any of its obligations under this Agreement and such default continues thirty (30) days after 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: (a) refusal to grant any additional joint use to the other party until the default is cured; (b) termination, without further notice, of this Agreement as far as concerns the further granting of joint use; (c) litigation for injunctive relief; (d) litigation for damages and costs; (e) substitute performance as provided in section b hereof and (f) litigation to recover sums due.
- b. 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.
- c. Notwithstanding the aforementioned remedies, appropriate representatives of the parties shall meet promptly upon request and attempt in good faith to resolve disputes which arise concerning this Agreement.
- d. The failure of Licensor to enforce any provision of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

19. TIME FOR PAYMENT OF LICENSEE. All amounts payable by Licensee to Licensor or others under the provisions of this agreement shall, unless otherwise specified, be

payable within thirty (30) days after presentation of bills therefor. Nonpayment of any such amount, when due, shall constitute a material default by Licensee under this Agreement.

20. LICENSE NOT TO AFFECT RIGHTS OF THIRD PARTIES. Nothing herein contained shall be construed as affecting any rights or privileges previously conferred by Licensor or any other utility, by contract or otherwise, to others not parties to this Agreement to use poles covered by this Agreement; and Licensor and such other utility shall have the right to continue and extend such rights or privileges. The privileges herein granted to Licensee shall at all times be subject to any such existing contracts and arrangements.

Licensee shall not enter into any agreement with third parties for attachment to a pole owned by the other party. The owner of the pole may enter into attachment or licensing agreements with third parties and will administer all third party attachments to the poles.

21. TERM OF AGREEMENT - TERMINATION

- a. Unless sooner terminated under other provisions contained herein, this Agreement shall continue in effect from year to year, provided that either party hereto may terminate its participation hereunder in whole or in part by giving the other party or parties whose interest are thereby affected at least twelve (12) months written notice to that effect. At the expiration of such twelve (12) months, all rights and privileges of Licensee as to the poles affected by said notice shall forthwith terminate, and Licensee shall remove its equipment from such poles within twelve (12) months termination period.
- b. Any termination of this Agreement in whole or in part shall not release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, which may have accrued or which may be accruing or which arises out of any claim that may have accrued or may be accruing at the time of termination.

22. LICENSEE'S RIGHTS NON-ASSIGNABLE. Licensee shall not assign, transfer or sublet any privilege granted to it hereunder without the prior consent in writing of Licensor, but otherwise this Agreement shall inure to the benefit of and be binding upon the heirs or successors and assigns of the parties hereto. The prior written consent of Licensor to any

proposed assignment shall not be unreasonably withheld.

23. NOTIFICATION. Wherever in this Agreement notice is provided or required to be given by one party hereto to another, such notice shall be in writing and transmitted by United States mail or by personal delivery to Chelan at its office at 327 North Wenatchee Avenue, Wenatchee, Washington, and to Douglas at its office at 1151 Valley Mall Parkway, East Wenatchee, Washington 98802, or to such other address as the parties may, from time to time, designate for that purpose by written notice to the other party.

24. NO EXCLUSIVE RIGHTS OR PRIVILEGES GRANTED. It is understood and agreed that this Licensing Agreement extends to the Licensee no exclusive rights or privileges in any form whatsoever.

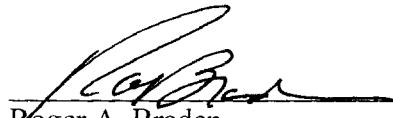
25. CHOICE OF LAW AND VENUE. In the event of any legal action to enforce any of the terms, conditions or covenants of this Licensing Agreement, the parties agree that this Agreement shall be interpreted in accordance with the laws of the State of Washington. Venue for any such action shall be in the Superior Court for Chelan or Douglas Counties, Washington.

26. ENTIRE AGREEMENT - MODIFICATIONS. All previous communications between the parties hereto, either verbal or written, with reference to the subject matter of this Agreement are hereby abrogated, and this Agreement duly accepted and approved, constitutes the entire agreement between the parties hereto, and no modifications of this Agreement shall be binding upon the parties or either of them unless such modifications shall be in writing, duly accepted by Licensee and executed by an authorized officer or employee of the Licensor.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals this 27 day of March, 2000.

Public Utility District No. 1 of Chelan County

By:

  
Roger A. Braden  
General Manager

Public Utility District No. 1 of Douglas County

By: W C Dobbins  
William Dobbins  
Manager