

Wi-Fi ANTENNA ATTACHMENT AGREEMENT

April 11, 2011

Northern Wasco County PUD

and

City of The Dalles

Wi-Fi ANTENNA ATTACHMENT LICENSE AGREEMENT

DATE: April 11, 2011

PARTIES: City of The Dalles
("Licensee")

313 Court Street
The Dalles, OR 97058

AND

Northern Wasco County People's Utility District
("District")

An Oregon People's Utility District
2345 River Road
The Dalles, OR 97058

RECITALS

- A. The purpose of this agreement is to allow the City of The Dalles to attach Wi-Fi antenna to District owned street light and distribution poles for a downtown high speed wireless network.
- B. District is willing to license under certain conditions, on a revocable, non-exclusive license basis, to the extent it may lawfully do so, the placement of Licensee's antennae on District's facilities where reasonably available in its distribution area.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do mutually covenant and agree as follows:

1. DEFINITIONS

Definitions in General

Except as the context otherwise requires, the terms in this License Agreement shall, as used herein, have the meanings set forth in Section 1.1 through 1.17

1.1 Attachment

The term "Attachment" means any wire or cable for the transmission of intelligence by telegraph, telephone or television (including cable television), light waves or to the phenomena, or for the transmission of electric power, and any related device, apparatus, or auxiliary equipment, installed individually upon any portion of a pole owned or controlled, in whole or in part, by the District.

1.2 Bootleg

The term “Bootleg” refers to the occupancy of a Wi-Fi attachment point on a pole or joint pole without a valid permit for a Wi-Fi Antenna.

1.3 Facilities

The term “Facility” and “Facilities” refer to any property or equipment utilized in the provision of services by Licensee or District.

1.4 Foreign Joint Pole

The term “Foreign Joint Pole” refers to a utility pole owned and maintained by a utility other than the District, which may be occupied with District attachments.

1.5 Joint Pole

The term “Joint Pole” refers to a utility pole owned by the District and occupied with attachments or Wi-Fi attachments of other electric and telephone utilities, cable television companies, fiber optic companies, government agencies, or other private companies and individuals.

1.6 Licensee’s Equipment

The term “Licensee’s Equipment” refers to the auxiliary equipment directly attached to a joint pole such as Power Supplies or Junction Boxes.

1.7 Make-Ready

The term “Make-Ready” refers to engineering and/or construction work required to modify or replace existing pole or joint pole to render it suitable for an additional attachment or modified attachment or occupancy.

1.8 NESC

The term “NESC” refers to the National Electric Safety Code.

1.9 NJUNS

The term “NJUNS” refers to the National Joint Utilities Notification System, an electronic internet program (www.njuns.com) for Wi-Fi attachment permit application to a pole or joint pole, Wi-Fi attachment removal from a joint pole, Wi-Fi attachment relocation on a joint pole and Wi-Fi attachment transfer to a replacement pole.

1.10 Pole

The term “Pole” refers to a utility pole owned, maintained and occupied by the District.

1.11 Senior Attachment

The term "Senior Attachment" refers to the attachment or Wi-Fi attachment of a joint pole with earliest current valid permit date.

1.12 Transmission Pole

The term "Transmission Pole" refers to a utility pole owned, maintained, and occupied by the District with transmission electrical circuit with line to line voltage of 69 or 115 kV.

1.13 Transmission/Distribution Pole

The term "Transmission/Distribution Pole" refers to a utility pole owned, maintained, and occupied by the District with a transmission electrical circuit with line to line voltage of 69 or 115 kV and one or more distribution electrical circuits with line to line voltage of 12.47 kV or less.

1.14 Wi-Fi Antenna

The term "Wi-Fi Antenna" refers to a device that will allow Wi-Fi enabled devices access to the Internet.

1.15 Wi-Fi Attachment

The term "Wi-Fi Attachment" means any Wi-Fi Antenna installed individually upon any portion of a pole owned or controlled, in whole or in part, by the District

1.16 Wi-Fi Attachment Project

The term "Wi-Fi Attachment Project" refers to any Wi-Fi attachment that materially changes the clearance, mechanical, structural, or electrical characteristics of the joint use pole.

1.17 Wi-Fi Attachment Maintenance Project

The term "Wi-Fi Attachment Maintenance Project" refers to the replacement or maintenance of existing Wi-Fi attachments that do not modify the Wi-Fi attachment mounting style or location, change pole loading characteristics or clearances, or affect other joint-pole users.

2. GENERAL AGREEMENT

2.1 Permit

Subject to the terms and conditions set forth in this License Agreement, District shall issue to Licensee one or more permits authorizing Licensee to make Wi-Fi attachments to specified poles owned or controlled by District. District may deny a Wi-Fi attachment if District determines in its reasonable judgment that there is insufficient capacity, or for reasons of safety, reliability and generally applicable engineering standards. Nothing

contained in this Agreement shall be construed to compel District to maintain any of its poles for a period longer than is necessary for District's service requirements.

2.2 Specific Permits Required

Except for Wi-Fi Attachment Maintenance Projects as defined in Section 1.3, the Licensee shall have no right pursuant to this Agreement to attach to or work on any pole of the District until a specific permit has been granted as to that pole for each Wi-Fi attachment. ***Licensee shall be subject to a sanction of 100 times the annual pole occupancy fee for any Wi-Fi attachment by Licensee to a pole owned by the District without a permit.***

2.3 Distribution Area

The distribution area covered by this Agreement shall be those portions of Wasco County, State of Oregon, served by the District.

2.4 District/Licensee Relationship

No use, however extended, of any of the poles under this Agreement shall create or vest in Licensee any ownership or property rights herein, 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 by the District pursuant to Section 10.3. Licensee understands and agrees that the permit rights granted herein and the specific permits granted pursuant to this Agreement are non-exclusive and revocable, and that District may grant attachment rights to other parties for the use of the same poles for which Licensee has specific Wi-Fi attachment; provided, however, that pole attachment rights subsequently granted by District to other private parties pursuant to licenses, permits and/or rental agreements shall not limit or interfere with any prior attachment rights granted to Licensee hereunder. In all cases, the Senior Attachment shall have priority over subsequent attachments.

2.5 Primary Use of Poles

Licensee understands and agrees that the District's poles are used and are to continue to be used primarily for the District's purposes; therefore, the Licensee's use will be a secondary use and that this Agreement is made and all authorizations granted hereunder are granted as an accommodation to the Licensee, subject to District's legal obligation. Wi-Fi Attachment requests to District Transmission/Distribution Poles shall be governed by this Agreement with the exception that all engineering, inspections and

make-ready work shall be charged by actual cost. Wi-Fi Attachment requests to District Transmission Poles shall be at the sole discretion of the District.

3. PROCEDURES AND COSTS

3.1 Application Forms

To apply for a permit under this Agreement, Licensee shall submit to District a signed copy of an Application for Pole Wi-Fi Attachment, a copy of which is attached as Exhibit "A", or an electronic application using NJUNS. Licensee shall also submit to District a copy of the Inspection and Engineering Data Sheet, a copy of which is attached as Exhibit "A-1". The Inspection and Engineering Data Sheet may be submitted via US mail, fax or e-mail. The Application for Pole Attachment and Inspection and Engineering Data Sheet may be revised from time to time in the reasonable discretion of the District. Licensee may cancel a permit under this Agreement pursuant to Section 10.3.1.

3.1.1 Required Information

Each application for a permit under this Agreement shall specify the District's pole number, and/or the physical location description with accompanying map of the pole or poles on which Licensee desires to make a Wi-Fi attachment, and other identifying pole information such as Licensee's pole number; a description of Licensee's equipment which will be attached to each pole, installation diagram of equipment placement in relation to District's facilities, power consumption, and existing Licensee's attachment if any. Incomplete applications will be denied.

3.1.2 Attachments per Application

Each initial application for a permit under this Agreement shall have a maximum of ten (10) attachments located on one (1) to ten (10) poles.

3.2 Preliminary Survey

Upon receipt of a written or electronic NJUNS application, the Inspection and Engineering Information Data Sheet, application fee and location map (if District pole site location numbers were not available), the District shall conduct a preliminary survey of the pole(s) in question and, if the Licensee requests, with representatives of the Licensee. The preliminary survey shall determine:

- a. Whether such poles are available for the Licensee's Wi-Fi attachments;
- b. Whether any rearrangement or other changes are necessary in the facilities of the District or of other joint users of the pole or joint use pole in question to accommodate Licensee's proposed Wi-Fi attachments;
- c. Whether any pole or joint use pole in question requires strengthening, including guying, anchoring, and/or stubbing;
- d. Whether any pole or joint use pole requires replacement by a taller or higher strength class pole; and
- e. Provide a cost for any pole or joint use pole that requires make-ready that will be charged to the Licensee.

3.3 Completion of Preliminary Survey

The District shall make reasonable effort to complete the preliminary survey and send an electronic notification using NJUNS, to the Licensee within thirty (30) days after receipt of the completed Wi-Fi attachment application, engineering data information form, for Wi-Fi attachment projects not determined to be large Wi-Fi attachment projects.

3.3.1 Issue of Permit on Preliminary Survey

District shall identify to Licensee which of the pole(s) or joint pole(s) in the application are available for Licensee's proposed Wi-Fi attachment, including the location on the pole or joint pole available for Licensee's proposed Wi-Fi attachments.

3.3.2 Rejection of Wi-Fi Attachment on Preliminary Survey

District shall identify to Licensee as to which of the pole(s) or joint pole(s) in the application are not available for Licensee's proposed Wi-Fi attachment. A make-ready cost if required will be noted for the rejected poles.

3.4 Make-Ready Work

District final engineering for make-ready work will commence upon receipt of Licensee's electronic notification accepting the estimated make-ready cost and receipt of the estimated make ready costs from the Licensee.

3.4.1 Licensee's Engineering Review

Upon Licensee's request, the District shall permit the Licensee to review the proposed work prints, together with available supporting cost details, in order for

the Licensee to satisfy itself as to the make-ready work proposed and the costs estimated by the District. The District may consider any reasonable objections or comments by the Licensee; provided, however, that the District's decision regarding the necessity and cost for any make-ready work remains in the District's reasonable discretion.

3.4.2 Costing

The District shall determine the estimated costs of make-ready work. The engineering and/or construction work required to modify, or replace an existing pole or joint pole rendering it suitable for an additional or modified Wi-Fi attachment or occupancy shall include those items described in Sections 3.2(b), 3.2(c), and 3.2(d). The estimated costs of make-ready work may include, but not be limited to labor and equipment costs to transport, set and remove a pole, labor cost to strengthen pole or other such costs necessitated by the Licensee's Wi-Fi attachment. Make-ready costs may also include the specialized engineering and construction labor costs, including overtime, and board and lodging where necessary to meet the Licensee's requirements.

3.4.3 Confirmation by Licensee

Within thirty (30) days after the District notifies the Licensee of the estimated make-ready work cost, Licensee shall confirm with an electronic notice using NJUNS its decision to proceed with the make-ready work. In the event Licensee does not confirm with an electronic notice using NJUNS within thirty (30) days, its application pursuant to Section 3.1 shall be deemed withdrawn and the application fee provided in Section 3.1.4 will not be refunded.

3.4.4 Advance Payment of Estimated Costs

In the event Licensee confirms its willingness to have District proceed with the make ready work, Licensee shall pay to District in advance the full amount of the make-ready work costs as estimated by the District unless other written arrangements have been made with District. In the event Licensee fails to make advance payment or other written arrangements for payment within Thirty (30) days of confirmation pursuant to Section 3.4.3, the District shall be under no further obligation to perform or continue any make-ready work. In no event shall Licensee commence any construction or attempt to attach its facilities to the District's poles until District has notified Licensee using NJUNS that Licensee can proceed.

3.4.5 Issuance of Permit

When Licensee's application for a pole Wi-Fi attachment is approved, and all required make-ready work completed, District will execute and return a permit to Licensee, as appropriate, authorizing Licensee to attach or place the specified facilities on District's poles.

3.5 Subsequent Modifications of Licensee's Wi-Fi Attachments

Licensee acknowledges that, from time to time, it may be necessary or desirable for District to change out poles, relocate, reconstruct, or rearrange facilities contained therein or connected thereto and that such change may be necessitated by District's business needs and that it is clear the beneficiary of such rearrangements is District. In these instances, Licensee agrees that Licensee will, upon District's request, and at Licensee's expense, participate with District (and other Licensees) in the relocation, reconstruction, or modification of District's poles or facilities rearrangement. Licensee shall make all rearrangements of its facilities within such a period of time as is jointly deemed reasonable by the parties based on the amount of rearrangements necessary.

If Licensee fails to make the required rearrangements within the time requested and prescribed or within such extended periods of time as may be granted by District in writing, District may perform such rearrangements with written notice to Licensee, and Licensee shall reimburse District for actual costs and expenses incurred by District in connection with the rearrangement of Licensee's facilities.

3.6 Emergency Repairs and Pole Replacements

In general, Licensee shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices that will enable it to make such emergency repairs. District shall be under no obligation to perform any repair or service restoration work of any kind with respect to Licensee's facilities. District may, at its option, correct any emergency Wi-Fi attachment deficiencies and charge the Licensee for its actual costs.

3.7 Unauthorized Pole Attachment – Penalty

In the event Licensee occupies a District pole with a Wi-Fi attachment without a specific attachment permit for such attachment, ***Licensee shall be subject to a sanction of 100 times the annual pole occupancy fee.***

3.8 Cost Allocation among Multiple Applications

When applications to occupy the same pole have been received from two or more prospective Licensees, make-ready costs, if any, shall be pro-rated equitably among such simultaneously attaching occupants.

4. RENTALS, CHARGES, AND RATES

4.1 Pole Occupancy and Power Usage

Each permit issued pursuant to this Agreement shall be subject to monthly billing as set forth in Section 4.3

4.2 Rendering and Payment

Rendering and payment of bills shall be in accordance with the District's Customer Service Policy.

4.3 Monthly Rental Method of Computation

The amount of monthly payment due determined by the District will be based upon the annual power consumption of each installation, Annual Wi-Fi Attachment Rental Fee, and a portion of the facilities charge divided by 12. The portion of the facilities charge will include Total Customer Assistance & Sales Expenses and Total Customer Accounts & Collections Expenses less Meter Reading. This result will be multiplied by the ratio of Single Phase Customers to Total Customers and divided by the Total Number of Customers. This amount will be adjusted annually based upon the changes in the factors that contribute to this rate. See Exhibit C

5. OPERATIONS AND MAINTENANCE

5.1 Permission from Other Authority

Licensee shall be responsible for obtaining any building licenses, permits, authorizations or certificates from governmental authorities necessary to construct, operate, maintain and remove its facilities on public or private property. Licensee shall not attach or place its facilities to or on District's poles located on any property for which Licensee has not first obtained all required authorizations. District shall have the right to request evidence that all appropriate authorizations have been obtained. All facilities owned by Licensee on District's poles, anchors, or guys must serve a lawful purpose and the uses made of Licensee's facilities must comply with all applicable federal, state, and local laws and

with all federal, state, and local regulatory rules, regulations, and requirements. In this regard, Licensee shall not utilize any facilities occupying or attached to District's poles for the purpose of providing any services which it is not authorized by law to provide or for the purpose of enabling any other person or entity to provide any such services.

5.1.1 Existing Easements

Licensee understands that District's existing easements may not include the facilities and Wi-Fi attachments of Licensee. Licensee shall secure the necessary easements for the facilities and Wi-Fi attachments of the Licensee.

5.1.2 Future Easements

In the event District elects to procure easement rights for its poles and facilities, District shall only seek the rights that cover District's poles and facilities.

5.2 Construction, Attaching, and Placing Facilities

Licensee shall be responsible for constructing its own facilities and attaching those facilities to District's poles at Licensee's sole cost and expense. Licensee shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods and services in connection with the construction and placement of Licensee's facilities and for directing the activities of all persons acting on Licensee's behalf while they are physically present on District's pole, or in the vicinity of District's poles. Licensee shall not permit any mechanic's lien, material man's lien, or any other lien, claim, or security interest to attach or encumber any of District's real or personal property at any time.

5.3 Specifications and Standards

Licensee shall construct, attach, place and maintain its facilities in compliance with all requirements and specifications set forth in this Agreement, the statutes of the State of Oregon, the current NESC and its amendments.

5.4 Maintenance Duties

Licensee shall maintain its facilities in accordance with the provisions of this Agreement at Licensee's sole cost and expense. When maintaining the facilities, the provisions of Sections 5.2 and 5.3 shall apply.

5.5 Modifications – District Permission Required

Permits are for the specific equipment, facilities and location specified in the original application. Any subsequent material modification in the nature or location of the attachment specified on the permit shall require the Licensee to request modification to the existing permit or to apply for a separate permit for such additional attachment. Unauthorized material modifications in the nature or location of attachments shall be considered a bootleg attachment and subject to the provisions of Sections 3.7.

5.6 Inspection

The District shall have the right to make periodic inspections of any part of Licensee's facilities attached to District's poles no more than once every two (2) years, or spot inspections at any time of any part of Licensee's facilities attached to District's poles for the limited purpose of determining whether Licensee's facilities are in compliance with the terms of this Agreement and permits hereunder; provided, that such inspections are non-invasive. Such inspections shall be conducted at Licensee's expense as set forth in Exhibit "C". Neither the act of inspection by District of Licensee's facilities nor any failure to inspect such facilities shall operate to impose on District any liability of any kind whatsoever or to relieve Licensee of any responsibility, obligations, or liability under this Agreement.

5.7 Maintenance Rights

District reserves the right to maintain its poles and to operate its facilities thereon in such manner as will best enable them to fulfill its public service requirements.

5.8 Time for Removal

Whenever Licensee is required to remove its attachments from any poles, such removal shall be made in accordance with Section 10.4.

5.9 Transfer of Attachments

District, in the course of replacement or removal of joint poles shall notify Licensee, in writing or electronically using NJUNS or email, of the District's anticipated schedule of work fourteen (14) calendar days prior to the performance of the work. Licensee, upon receipt of the anticipated work schedule, may elect to contact District and attempt to coordinate the work or to approve the District to transfer the Licensee's facilities and charge Licensee a transfer fee as set forth in Exhibit "C". District is not required to

provide exact time schedules, but to the extent such information is available to the District, shall make reasonable efforts to provide the Licensee with information regarding construction schedules and dates if Licensee contacts District on individual transfer notifications. The District reserves the right to change such schedules, and will make a reasonable attempt to notify Licensee of such changes. District is under no obligation to coordinate such work with Licensee with the exception of work sites that require all entities involved to coordinate the work for the purpose of safety of the crews and public. In the event the Licensee is able to coordinate the transfer of Licensee's facilities during the course of the work simultaneously being performed by the District, Licensee shall perform such work in a time and manner so as to permit District to remove original pole(s) during the course of District's work.

5.9.1 Set Pole Notification

District shall provide electronic notification using NJUNS or email to the Licensee when District has set a new pole that requires Licensee transfer work. Licensee shall have thirty (30) days following such notice by District in which to transfer its Wi-Fi attachments. District, in the event of a bona fide emergency situation requiring prompt action, shall have the option to transfer Licensee's Wi-Fi attachments at its sole discretion and charge Licensee a transfer fee as set forth in Exhibit "C".

5.9.2 Failure to Transfer

In the event Licensee fails to transfer its Wi-Fi attachment or attachments to the new pole by the required transfer date or thirty (30) days following set pole notification, and has not notified the District in writing or electronically using NJUNS or email with an acceptable transfer date, Licensee shall be in noncompliance with this Agreement and the Wi-Fi attachment permit for the pole will be terminated. Licensee will be subject to sanctions and actual cost accrued by District as set forth in Exhibit "C".

5.11 Loading Method

Licensee's facilities shall be constructed to NESC Medium Loading District Grade "C" specifications unless, at District's sole discretion, special conditions or locations require Grade "B", Grade "C", or Extreme Wind loadings. District pole(s) or joint pole(s) will be analyzed using Licensee's Wi-Fi attachment loading data or by data recorded in a field inspection.

5.12 Identification Tagging

Licensee shall provide a system for the identification of its facilities on District poles from the ground.

6. SAFETY, NESC, OPUC

6.1 New Installation

District shall have the right to inspect each new installation of Licensee's Wi-Fi attachments or re-inspect if a Licensee's installation was found in noncompliance from a previous inspection. District reserves the right to charge Licensee for the expense of any field inspections during installation of Licensee's Wi-Fi attachments, inspections after construction or re-inspections after corrective action by Licensee on its facilities to a noncompliance sanction. Any inspections performed shall in no way relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement.

6.2 Licensee Practices

Licensee shall have written standard practices that address construction standards and communication protocols to be followed in attaching to District's poles pursuant to the requirements in Section 5.3. The standards shall specify any obligations that exceed NESC regulations, address communication methods, and contain contacts for notifications, project plans, authorizations and compliance certifications. These standards shall be made readily available to District upon twenty (20) days written notice to Licensee.

6.3 Safety Violation

District shall provide Licensee an electronic notice of any violation of the Oregon Public Utility Commission's safety rules. Upon notice of a safety violation, Licensee shall either correct the violation within sixty (60) days or submit a plan of correction within thirty (30) days of its receipt of notice. District may, at its option, correct any emergency attachment deficiencies and charge the Licensee for its costs.

7. INDEMNITY; REPRESENTATIONS AND WARRANTIES

7.1 Indemnification – Acts of Licensee

Except for District's sole acts, Licensee shall indemnify, protect, reimburse and hold harmless District, its directors, officers, employees and agents, District's other Licensees, and Joint User(s) from and against any and all claims, demands, causes of action, damages, and costs, including reasonable attorney's fees through appeals incurred by District, District's other Licensee and joint user(s) as a result of acts by the Licensee, its employees, agents or contractors, including but not limited to the cost of relocating pole(s), anchor(s), guy(s), or conduit system(s) resulting from a loss of right-of-way or property owner consents and/or the cost of defending those rights and/or consents.

7.2 Indemnification – Property Damage/Personnel Injury

Except for District's sole acts, Licensee shall indemnify, protect, reimburse and hold harmless District, its directors, officers, employees and agents, District's other Licensees, and joint user(s) from and against any and all claims, demands, causes of actions and costs, including reasonable attorney's fees through appeals for damages to property and injury or death to persons, including but not limited to payments under any Worker's Compensation Law or under any plan for employee's disability and death benefits, caused by, arising from, incident to, connected with or growing out of the erection, rearrangement, maintenance, presence, use of, removal of Licensee's attachments, or by their proximity to the attachments of all parties attached to a pole, anchor, and/or guy, or placed in a conduit system, or by any act or omission of the Licensee's employees, agents or contractors in the vicinity of District's pole(s), anchor(s), guy(s) or conduit system(s).

7.3 Indemnification – Construction and Operation

Except for District's sole acts, Licensee shall indemnify, protect, reimburse and hold harmless District, its directors, officers, employees and agents, District's other Licensees, and joint user(s) from and against any and all claims, demands, causes of actions and costs, including reasonable attorney's fees through appeals, which arise directly or indirectly from the construction and operation of Licensee's facilities, including but not limited to taxes, special charges by others, claims and demands for damages or loss from infringement of copyrights, for libel and slander, for unauthorized use of television or radio broadcast programs and other program material, and from infringement of patents with respect to the construction, maintenance, use and operation

of Licensee's facilities in combination with pole(s), anchor(s), conduit system(s) or otherwise.

7.4 Damage

Licensee shall exercise reasonable care to avoid damaging the facilities of District and of others attached to pole(s), anchor(s), or guy(s) and shall make an immediate report to the owner of the occurrence of any such damage caused by Licensee's employee, agents, or contractors. Licensee agrees to reimburse District for all reasonable costs incurred by District for the physical repair of such facilities damaged by Licensee

7.5 Service Interference

Except for District's sole acts, District shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's attachments, or for any special, indirect, or consequential damages arising in any manner, including District's negligence out of the use of pole(s), anchor(s), or guy(s) or District's actions or omissions in regard thereto and Licensee shall indemnify and save harmless District from and against any and all claims, demands, causes of action, costs, and reasonable attorney's fees with respect to such special, indirect or consequential damages.

7.6 Notice

Each party shall promptly advise the other of all claims relating to damage of property or injury to or death of persons, arising or alleged to have arisen in any manner, directly or indirectly, by the erection, maintenance, repair, replacement, presence, use or removal of the Licensee's facilities or otherwise arising under this Agreement. Each party shall promptly notify other party in writing of any suits or causes of action which may involve other party and upon the request of the other party, copies of all relevant accident reports and statements made to either party's insurer by a party or other shall be furnished promptly to the other party. Any notices required by the terms of this Agreement shall be sufficient if the writing is in a sealed envelope, deposited in the United States mail with postage prepaid and addressed to the other party at the party's last known address.

7.7 Warranties

Licensee acknowledges and agrees that District does not warrant the condition or safety of District's poles or the premises surrounding the same. Licensee hereby assumes all risks of any damage, injury or loss of any nature whatsoever caused by or in connection

with the use of the poles and associated attachments and equipment on, within or surrounding the same. District makes no express or implied warranties with regard to District poles or other facilities all of which are hereby disclaimed and expressly disclaims any implied warranties of merchantability or fitness for a particular purpose. Nothing contained in this Section is intended to limit District's responsibility for its sole acts under Sections 7.1, 7.2 and 7.3 herein.

7.8 Favored Nations Provision

In the event District contracts with one of District's other Licensees for a more beneficial (to Licensee) indemnification provision, District agrees to give Licensee the option to enter into the same or similar indemnification provision.

8. INSURANCE

8.1 Insurance

Licensee shall obtain and maintain insurance, including endorsements insuring the contractual liability and indemnification provisions of this Agreement, upon such reasonable terms and in such company or companies as District shall approve, to protect District, other authorized Licensees, and joint users from and against all claims, demands, causes of action, judgments, costs, including reasonable attorney's fees, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage as covered in this Agreement. Licensee will immediately deliver to District, Certificates of Liability Insurance thereof, evidencing the required coverage, and shall furnish evidence that the policies remain in force within thirty (30) days of renewal of such policies.

8.2 Insurance Limits

Licensee shall maintain the following amounts of insurance in compliance with Section 8.1 above:

8.2.1 Commercial General Liability Insurance

Including coverage for Contractual Liability and Products/Completed Operations Liability, with a limit of not less than \$2,000,000 combined single limit per occurrence for bodily injury, property damage and personal injury liability; and

8.2.2 Automobile Liability Insurance

Covering the ownership, maintenance or use of any owned, non-owned or hired automobile with a limit of not less than \$1,000,000 combined single limit per accident for bodily injury and property damage liability; and

8.2.3 Workers Compensation Insurance

As provided for under any Workers' Compensation or similar law in the jurisdiction where any work is performed; and

8.2.4 Umbrella/Excess Liability

With limits of not less than \$4,000,000 combined single limit in excess of the above referenced Commercial General Liability, Automobile Liability and Workers' Compensation Insurance.

8.3 Term of Insurance Required

Insurance shall remain in force until such time Licensee's Wi-Fi attachments have been removed from all such pole(s) and anchor(s). In the event that the Licensee shall fail to maintain the required insurance coverage, District may pay any premium thereon falling due, and the Licensee shall forthwith reimburse District for any such premium paid.

8.4 Certificates of Insurance

District shall be named as an additional insured on the policies described under Sections 8.2.1, 8.2.2, 8.2.3 and 8.2.4. Licensee shall submit to District certificates by each company insuring Licensee with respect to any insurance required hereunder, such certificate(s) to specify the coverage provided and that such company will not cancel or change any such policy of insurance issued to Licensee except after sixty (60) days written notice to District.

8.5 Notification of Claims

The Licensee shall promptly advise the District 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 or indirectly 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 the District in a timely manner.

9. SECURITY

9.1 Security

Sections 9.2 through 9.5 shall apply when Licensee has one hundred (100) or more Wi-Fi Attachments.

9.2 Security Requirement

District will require that the Licensee furnish security to the District for the performance of the Licensee's obligations under this Agreement to make any and all payments demanded by the District as due under this Agreement, including without limitation any pole contact fees with respect to permits, District's costs of modifying or removing Licensee's plant, and District's cost of enforcement under Section 10. Such security shall be maintained in full force and effect throughout the term of this Agreement, including any renewals thereof. At any time during the term of this Agreement, Licensee shall, upon District's request, furnish District with evidence that the security is in full force and effect. In the event of cancellation, termination, or alteration of the security District may, at its option, terminate this Agreement unless Licensee makes other arrangements satisfactory to District to guarantee the performance of its obligations under this Agreement.

9.3 Amount of Security

The amount of the security required shall be the amount as set forth in Exhibit "E". District shall annually review its Bonding Fee Schedule in Exhibit "E" and provide at least six (6) months written notice to Licensee of any increase or decrease in the amount of security requirements with a revised Exhibit "F". The letter of notification shall be incorporated in, and governed by terms and conditions of this Agreement.

9.4 Form of Security

The form of the security provided by Licensee may be one, or a combination of the following: cash deposit of money with District, a surety bond, a letter of credit, a personal guaranty, a corporate guaranty, or such other reasonable security as the Licensee may propose. The amount of the bond, letter of credit or other security shall not operate as a limitation upon the obligations of Licensee hereunder.

9.4.1 District's Approval Required

The form and sufficiency of security proposed by Licensee must be approved by District; provided, that District may require financial statements or other appropriate evidence as to the solvency and financial capability of the surety, guarantor, or financial institution.

9.4.2 Cash Deposits

If Licensee elects to provide a cash deposit, such deposit shall be held during the term of this Agreement as security for any and all amounts which are or may become due to the District under this Agreement. Said cash deposit shall be placed in an interest-bearing account and Licensee shall be entitled to a credit for the interest income on said cash deposit. If Licensee fails to pay any sum demanded by District as due under this Agreement, District shall have the right, without prior notice to Licensee, to apply immediately any or all amounts on deposit with District towards payment of the sums due District, whether or not Licensee contests the amount due or its liability to pay, and whether or not District exercises or has exercised any option it may have to terminate this Agreement. If Licensee contests its liability to pay any sum claimed by District, Licensee's sole remedy shall be an action at law to recover the amounts in dispute. In the event District shall apply some or all of the cash deposit towards payment of an amount due to District, Licensee must restore to its deposit the amount so applied within thirty (30) days after notice of such application irrespective of whether or not Licensee contests its liability or commences any legal proceedings to determine its liability. Failure to restore its cash deposit to the required security amount shall constitute a default under this Agreement.

9.4.3 Surety Bond

If the Licensee elects to provide a surety bond, a commercial bonding company selected by the Licensee and satisfactory to District shall issue such bond to District in a form satisfactory to District; shall not be subject to termination or

cancellation except upon three hundred sixty five (365) days prior written notice as stated in section 11.2, or replace with another surety bond from another bonding company selected by the Licensee and satisfactory to the District upon sixty (60) days prior written notice as stated in section 11.2; and shall be filed with and approved by the District prior to the installation of any Licensee's equipment on joint poles. The surety bond must contain a provision that the surety will pay to District subject to the dollar limits of the bond any unpaid sum demanded by District as due under this Agreement upon termination of the agreement whether or not Licensee contests its liability to pay such sum.

9.5 Security Obligations

The furnishing of security shall not relieve Licensee of any of its obligations under this Agreement, and the security shall not be released until all obligations under this Agreement have been discharged.

10. DEFAULT, TERMINATION AND REMEDIES

10.1 Events of Agreement Termination

This Agreement shall terminate upon the occurrence of any one of the following events:

- (a) Upon six (6) months written notice of termination.
- (b) Failure of Licensee to pay the amounts due pursuant to Section 4.2.
- (c) Failure of Licensee to obtain insurance in increased limits pursuant to Section 8.3.
- (d) Whenever Licensee violates, breaches or is in default of any term or condition of this Agreement or any permit including but not limited to the:
 - 1) Construction, operation or maintenance of Licensee's Wi-Fi attachment in violation of law or in aid of any lawful act or undertaking;
 - 2) Construction, operation or maintenance of Licensee's Wi-Fi attachment without the insurance or security coverage required under this Agreement.

Within thirty (30) days of notice from District, Licensee shall take immediate corrective action to eliminate any above mentioned condition or other violation of any term or condition of this Agreement within thirty (30) days and shall confirm in writing to District that the cited violations have been corrected. If Licensee fails to discontinue or correct these violations or fails to give the required confirmation, District may immediately terminate this Agreement and any of Licensee's rights hereunder without limiting or restricting any further rights or remedies District may have against Licensee.

10.2 Effect of Agreement Termination

Termination of this Agreement pursuant to Section 10.1 shall terminate all occupancy permits and their respective permit dates. Licensee shall have three hundred sixty five (365) days to remove all Wi-Fi attachments made upon District's poles and be liable for and pay all fees and charges pursuant to the terms of this Agreement to District until Licensee's Wi-Fi attachments are actually removed. Termination of this Agreement or any permits issued hereunder shall not affect Licensee's liabilities and obligations incurred hereunder prior to the effective date of such termination. Even after the termination of this Agreement or the cancellation of a permit pursuant to Section 10.3, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's Wi-Fi attachments under this Agreement.

10.3 Permit Cancellation

Licensee shall have the right to cancel and District the right to revoke authorization without terminating this Agreement as follows:

10.3.1 Licensee

Licensee may cancel a permit by removing its Wi-Fi attachments from the corresponding pole and by giving District written notice within ten (10) days of removal. Licensee shall remain liable for and pay to District all fees and charges pursuant to the provisions of this Agreement until said Wi-Fi attachments are physically removed from District's poles and all requirements have been completed.

10.3.2 District

District may revoke authorization for a Wi-Fi attachment to any specific pole or poles for cause or if District is required to remove a specific pole pursuant to a government, or other nondiscriminatory requirement, by giving thirty (30) days

written notice to Licensee specifying the reason for revocation. Upon receipt of notice, Licensee agrees to remove said Wi-Fi attachment within thirty (30) days unless District and Licensee agree otherwise. In the event District has granted authorization for the use of a pole, but Licensee has not made its Wi-Fi attachment to that pole within one hundred eighty (180) days of the permit issue date, District shall have the right to revoke authorization on five (5) days' notice.

10.4 Removal of Licensee's Wi-Fi Attachments

Licensee, at its expense, shall remove its Wi-Fi attachments from any of District's poles within sixty (60) days after notice of revocation of the permit, except in agreement termination as stated in section 10.2. If Licensee fails to remove its Wi-Fi attachments within sixty (60) days, District shall have the right to remove such attachments at Licensee's expense and without any liability on the part of District for damage or injury to Licensee's Wi-Fi attachment or equipment. Licensee releases District from any liability for any interruption, discontinuance or interference with Licensee's service to its customers caused by or resulting from such removal. In case of emergency or immediate service needs of District, District may perform such removal without notice to Licensee, provided District sends written notice of the action and the reasons for such action within a reasonable time.

11. MISCELLANEOUS

11.1 Assignment

Licensee shall not assign or transfer this Agreement or any License or any right or authorization granted under this Agreement and this Agreement shall not inure to the benefit of Licensee's successors or assigns, without the prior written consent of District. District shall not unreasonably withhold such or delay consent. In the event such consent or consents are granted by District, then the provisions of this Agreement shall apply to and bind the successors and assigns of the Licensee.

11.2 Notices

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, or delivered by a reputable overnight courier, with tracking capabilities, addressed to the parties as follows:

If to District:

Northern Wasco County

People's Utility District

2345 River Road

The Dalles, OR 97058

Attention: Dwight Langer

Title: General Manager

Phone: (541) 298-3300

Fax: (541) 298-3320

If to Licensee:

Phone:

Fax:

Any notice or other communication related to this Agreement shall be deemed to have been received if delivered in person, deposited in the mail, postage prepaid and properly addressed, delivered by telefax or sent by acknowledged delivery.

Notices or other communications shall be mailed to the last known address which may be changed from time to time by giving written notice to the other party as provided in this Section.

11.3 Attorney Fees

If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

11.4 Amendment

Except as reserved herein, this Agreement may be amended only by an instrument in writing executed by all the parties.

11.5 Headings

The headings used in this Agreement are solely for convenience of reference, are not part of this Agreement, and are not to be considered in construing or interpreting this Agreement.

11.6 Entire Agreement

Agreement (including the exhibits) sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

11.7 Counterparts

This Agreement may be executed by the parties in separate counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

11.8 Severability

If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

11.9 Waiver

A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

11.10 Department of Revenue; Oregon Public Utilities Commission (PUC)

In the event the Department of Revenue of the State of Oregon or the OPUC shall require the District to provide certain information concerning Licensee, Licensee agrees to cooperate with and assist District in providing information, data, or such other matters as may be required by said Department of Revenue or OPUC. Licensee specifically

agrees to provide District with appropriate data as determined or required by the Department of Revenue or OPUC concerning its Wi-Fi attachments in each taxing District and such other data as may hereafter be required by the Department of Revenue or OPUC.

11.11 Time of Essence

Time is of the essence for each and every provision of this Agreement.

11.12 Expenses

Each party shall bear its own expenses in connection with this Agreement and the transactions contemplated by this Agreement.

11.13 Governing Law

Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

11.14 Venue

This Agreement has been made entirely within the state of Oregon. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, venue shall be in the federal court of Oregon or state courts in Wasco County, Oregon.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate as of the day and year first above written.

NORTHERN WASCO COUNTY PEOPLE'S UTILITY DISTRICT

By: _____

Title: _____

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

By: _____

Title: _____

Attached Exhibits: A – Application Form
 A-1 – Inspection and Engineering Information Data Sheet
 B – Not used
 C – Fee Schedule
 D – Not Used
 E – Not Used
 F – Bonding Schedule

EXHIBIT A
APPLICATION FOR POLE Wi-Fi ATTACHMENT

This section to be completed by Licensee

Date: _____		Licensee: _____	
City or Location: _____		Address: _____	
Pole Number: _____ (submit additional forms as needed per pole)			
Data Form Included?	Please ✓	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Application Fee Included?	Please ✓	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Remarks: _____			
(Attach separate sheet(s) if necessary)			
Authorized Signature: _____			

This section to be completed by pole owner

<input type="checkbox"/> Attachment Accepted Date: _____ Permit # _____	
Permission is hereby granted to Licensee to place the equipment as described on the Inspection and Engineering Information Data Sheet for the above identified pole, subject to the terms and conditions as set forth in the Pole Occupancy License Agreement.	
<input type="checkbox"/> Attachment Rejected Reason: Please ✓ all that apply	
<input type="checkbox"/> Application Incomplete	<input type="checkbox"/> Preliminary Loading Analysis Failed
<input type="checkbox"/> Additional Engineering Required for Make-ready Costs	
<input type="checkbox"/> Other _____	
<input type="checkbox"/> Re-submit New Application	
Authorized Signature: _____	
Northern Wasco County People's Utility District	

EXHIBIT A-1

Inspection and Engineering Information Data Sheet

<u>NJUNS Serial #</u>	PA NJUNS ticket serial number. Blank if not using NJUNS.
<u>Step #</u>	Step row number from 1 to 10 found on the PA NJUNS ticket that the Wi-Fi attachment's load data is related to.
<u>Company</u>	Name of Company applying for a Wi-Fi attachment or attachments
<u>Date</u>	Date on NJUNS ticket or current date if not using NJUNS
<u>Contact Person</u>	Contact person of the requesting company who is familiar with the Wi-Fi attachment request and is able to answer technical questions about the Wi-Fi attachment request from the pole owner's technical staff.
<u>Phone#</u>	Phone number of the contact person.
<u>Pole/Span/Attachment Information</u> (Pole/Span/Attachment Information)	
<u>NWCPUD Pole#</u>	District's pole # is the unique nine digit pole number assigned to the pole by the District.
<u>Licensee's Pole#</u>	Licensee's Pole# is the pole number assigned to the pole by the licensee
<u>Other Pole#</u>	Other Pole# is the pole number found on the pole of other pole users.
<u>Wi-Fi Attachment Height</u>	Attachment height is the height of the requested attachment point on the pole measured from ground line to the top most attachment hardware mounting bolt or hook.
<u>Wi-Fi Attachment Location</u>	Attachment location is where the Wi-Fi attachment will be located (midpoint on arm, or on road or field side of period light or wood pole.
<u>Power</u>	Power is requested at this location
<u>Power Usage</u>	Power Consumption of the Wi-Fi Antenna that is on the manufacturer's nameplate data or specifications.
<u>Wi-Fi Equipment ID</u>	Wi-Fi Equipment ID is the number that the licensee uses to identify individual antennas.

Fee Schedule

Effective April 11, 2011

Definitions for Exhibit “C”

Wi-Fi Application Fee. The term “Wi-Fi Application Fee” refers to the charge by the District to process an application for a permit to place an attachment(s) on a pole(s) or joint pole(s). The fee for cable attachment(s) include the administrative costs to process the application, a preliminary survey, one (1) post construction inspection, along with the cost for discontinuance of the attachment to include one (1) removal verification inspection.

Annual Power Consumption. The term “Annual Power Consumption” is the amount of power consumed by the Wi-Fi installation for a period of one year in kWh.

Annual Wi-Fi Attachment Rental Fee. The term “Wi-Fi Annual Attachment Rental Fee” refers to the annual fee charged by the District for attaching Wi-Fi Antennas to a District owned pole.

Inspection Fee. An Inspection Fee may be charged when it is necessary for the District to inspect a Wi-Fi attachment that has been reported to be in non compliance with the NESC or the terms and conditions of this agreement. If the

Wi-Fi attachment is found to be in compliance with both NESC and this agreement, no fee will be charged.

Re-Inspection Fee. A Re-Inspection Fee consists of one (1) visit to a joint pole to verify that a Wi-Fi attachment previously found to be in non compliance with NESC or the terms and conditions of this agreement has been corrected.

Minimum Attachment Rental Space. The term “Minimum Attachment Rental Space” refers to one (1) vertical foot of pole space

Survey Audit Inspection Fee. A “Survey Audit Inspection Fee” is applied when the District or its contractor(s) performs an audit of an area to verify Wi-Fi attachment construction compliance with NESC and this agreement.

Transfer Rates for Not Listed Units. “Actual” costs will be billed for transferring equipment.

Annual Wi-Fi Attachment Rental Fees

Wi-Fi Antenna Attachment	\$	12.83
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Monthly Power Billing

The monthly payment will be based from the annual power consumption, Annual Wi-Fi Attachment Rental Fee, and portion of the Facilities Charge divided by 12. The portion of the facilities charge will include Total Customer Assistance & Sales Expense and Total Customer Accounts & Collections Expense less meter reading. This portion for the facility charge will then be divided by the Total Number of Customers. This amount will be adjusted annually based upon the changes in the factors that contribute to this rate.

$$(131 \text{ kWh} \times \$0.05864 + \$12.83 + \$58.01) / 12 = \$ 6.54$$

Application Fees

Wi-Fi Antenna Attachment	\$ 30.00
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Other Fees and Charges

Inspection or Re-inspection	\$ 25.00
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Survey Audit Inspection	Actual Cost
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Joint Pole Hole Drilling	\$ 30.00
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Construction Fees

Actual Cost

Transfer Unit Fees

Actual Cost

Decision to transfer will be made solely by District

Exhibit E
Bonding Fee Schedule

Number of Attachments	Bond Amount
1 - 50	\$2,500
51 - 100	\$5,000
101 - 250	\$12,500
251 - 500	\$25,000
501 - 1,000	\$50,000
1,001 - 1,500	\$75,000
1,501 - 2,000	\$100,000
2,001 - 2,500	\$125,000
2,501 - 3,000	\$150,000
3,001 - 3,500	\$175,000