

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 9, 2019

Agenda ID #17726
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 18-10-004:

This is the proposed decision of Administrative Law Judge Miles. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's October 10, 2019, Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.2(c)(4)(B).

/s/ ANNE E. SIMON

Anne E. Simon
Chief Administrative Law Judge

AES:jt2

Attachment

Decision **PROPOSED DECISION OF ALJ MILES** (Mailed 9/6/2019)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Crown Castle NG West LLC (U6745C), pursuant to Decision 98-10-058 for Arbitration of Dispute over Denial by Pacific Gas and Electric Company (U39E) of Access to Utility Support Structures.

Application 18-10-004

**DECISION AFFIRMING FINAL ARBITRATOR'S REPORT
AND
ORDER THAT PARTIES ADOPT REVISED LICENSE AGREEMENT**

Summary

On August 15, 2019, the Commission vacated its Decision (D.) 19-03-004, a March 4, 2019 proposed decision affirming the Final Arbitrator's report, finding that the proposed decision should not have been adopted without allowing for comment and reply pursuant to the Commission's Rules of Practice and Procedure 14.3(a) and (d). The Commission's D.19-08-038 granted rehearing to provide a public review and comment period in accordance with Public Utilities Code Section 311(g) and ordered the assigned Arbitrator-ALJ to serve a revised proposed decision (which includes comment and reply comment periods) upon the parties.

Background

In the Final Arbitrator's Report filed January 31, 2019 (see Attachment 1), the arbitrator ordered the parties to craft an arbitrated License Agreement

reflecting mutually agreeable terms for leasing space on PG&E's poles. The parties inexplicably failed to submit such an agreement.

Instead, PG&E submitted its template form Overhead Facilities License Agreement (License Agreement) containing blanks (but no mention of Crown Castle)¹ and Crown Castle submitted PG&E's template form License Agreement in which it had revised Sections 3.1(b), 3.2, 7.4(b) and 7.4(c) to specify terms desirable to Crown Castle (Revised License Agreement).²

Because PG&E submitted its standard form License Agreement, with no revisions to reflect terms it had reached with Crown Castle for leasing space on its poles as ordered by the arbitrator, D.19-03-004 adopted the Revised License Agreement as the arbitrated License Agreement of the parties finding that it substantively incorporated PG&E's License Agreement.

Because PG&E submitted a standard form License Agreement without any mention of Crown Castle, D.19-03-004 included a Finding of Fact 9, that "PG&E has not objected to Crown Castle's revisions to its License Agreement."

In its Application for Rehearing, PG&E noted that, because there was no comment period on the proposed decision, in actuality, PG&E had no opportunity to object to the Revised License Agreement.

Affirming Final Arbitrator's Report

This decision affirms the Final Arbitrator's report filed January 31, 2019, determining that PG&E satisfies its responsibility under D.98-10-058, to grant nondiscriminatory access to Crown Castle NG West LLC (Crown Castle), a

¹ PG&E's template License Agreement is Attachment 2 to this Decision.

² Crown Castle's Revised License Agreement is Attachment 3 to this Decision.

competitive local carrier (CLC),³ by offering Crown Castle the opportunity to lease space on its poles pursuant to PG&E's License Agreement, which the Commission has accepted as nondiscriminatory.⁴ We incorporate by reference herein the January 31, 2019 Final Arbitrator's Report.

We agree with the arbitrator's conclusion that the License Agreement must serve as the basis for an arbitrated agreement.⁵ However, upon the basis of the License Agreement, the parties have discretion to craft whatever terms they deem appropriate to their individual situations (as long as they do not reflect anticompetitive discrimination among similarly situated carriers).⁶ The Revised License Agreement substantively incorporates PG&E's License Agreement. Accordingly, if PG&E fails to agree upon lease terms with Crown Castle as directed by the arbitrator, it is within the arbitrator's authority to craft appropriate terms. It follows then, that the arbitrator may choose to recommend that the Commission adopt Crown Castle's Revised License Agreement as the arbitrated license agreement, if in the arbitrator's opinion, those terms are appropriate.

³ Crown Castle NG West LLC (U-6745-C) and Sunesys, LLC (U-6991-C) assets were consolidated into Crown Castle Fiber LLC (U-6190-C), by Advice Letter dated February 5, 2019. Crown Castle Fiber is authorized to provide telecommunications services in California effective January 9, 2019. For purposes of this Decision and Order, Crown Castle Fiber and Crown Castle NG West LLC are referred to as Crown Castle.

⁴ See Advice Letter 2982-E, filed by PG&E on February 13, 2017 at <https://www.pge.com/notes/rates/tariffs/2007-e.shtml>.

⁵ See Attachment 1 at 15.

⁶ *Id.*

Comments on Proposed Decision

This proposed decision, affirming the Final Arbitrator's report of January 31, 2019, shall be served in accordance with Section 311 of the Public Utilities Code. Comments shall be allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. The parties may file comments within 20 days of the date of service and reply comments must be filed within 5 days of the comment deadline.

Assignment of Proceeding

Marybel Batjer is the assigned Commissioner and Patricia B. Miles is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. A key principle of D.98-10-058 (ROW Decision) is that CLCs should have rights to obtain access to utility poles and support structures at reasonable terms and prices which do not impose a barrier to competition.
2. One objective of the ROW Decision is to set forth a general set of rules governing ROW access which would give parties discretion to tailor specific terms to the demands of their individual situations.
3. The Commission notes in the ROW Decision that differences are acceptable as long as they do not merely reflect anticompetitive discrimination among similarly situated carriers.
4. This arbitration proceeding involves two regulated parties subject to the Commission's jurisdiction.
5. Under the ROW Decision, parties may craft whatever terms they might agree upon within the broad concerns of nondiscriminatory access, because their agreement is ultimately subject to Commission approval.

6. The Final Arbitrator's Report ordered the parties to submit an arbitrated License Agreement.

7. In lieu of submission of an arbitrated License Agreement by the parties, the arbitrator may craft appropriate terms.

8. PG&E's License Agreement complies with the ROW Decision's nondiscriminatory access requirements and must provide the basis for the arbitrated agreement.

9. The Revised License Agreement by Crown Castle substantively incorporates PG&E's License Agreement.

Conclusions of Law

1. The Revised License Agreement by Crown Castle substantively incorporates PG&E's License Agreement, therefore, it also does comply with the ROW Decision's nondiscriminatory access requirements.

2. The Revised License Agreement complies with the Arbitrator's Orders because it: (1) will not constrain Crown Castle's goals to rapidly deploy broadband; (2) it will permit Crown Castle to continue to provide reliable service for its customers; and (3) it will enable Crown Castle to fulfill its goal to compete within the highly competitive California marketplace.

3. The Revised License Agreement preserves Crown Castle's right to obtain access to utility poles and support structures at reasonable terms and prices which do not impose a barrier to competition.

4. The Revised License Agreement is acceptable as the arbitrated agreement that the Final Arbitrator's Report requires.

O R D E R

IT IS ORDERED that PG&E's License Agreement is revised as follows::

1. The paragraph immediately following the bullet point bold heading

- **For Underground Facilities** – [Intentionally omitted]

in Section 3.1(b) of the License Agreement is revised by changing the last sentence to read:

Permittee shall not install any Attachments on or in the Company Facilities without first securing the Company's written authorization, **unless 45 days have run from the time of request of access and Company has provided no response.**

2. The first sentence of Section 3.2 of the License Agreement is revised to read:

Permittee shall not install any additional Attachments on or in the Company Facilities without first securing the Company's written authorization, **unless 45 days have run from the time of request to install and Company has provided no response.**

3. Section 7.4(b) New Permittees is revised to add the following language to the end of that section, and to add a second paragraph so that it reads:

When rearrangement and/or larger or additional pole(s) or anchors are necessitated by the installation of an Attachment by a new Company permittee, the larger pole and relocation of the Company's and its permittee's attachments shall be installed and/or transferred at the expense of the new permittee to the extent allowed by law. **However, Company is not authorized to undertake any rearrangement or relocation work on any pole occupied by Permittee without written approval by Permittee.**

When a new Company permittee or other attacher requests access to a pole on which Permittee is attached, Company is required to provide Exhibit A or similar request for access, without

identifying Company permittee, to Permittee within 30 days of the Company receiving Exhibit A or similar request for access.

4. A new paragraph is added to Section 7.4(c) Other Causes of Rearrangement/Replacement to read:

Replacement may be made at the written request of Permittee, and adjustment as to sales, salvage, pulling, transportation, and transfer costs shall be at current prices as per date of replacement. Company will execute replacement within sixty (60) days of Permittee's advance written request or less if circumstances require.

5. The parties shall execute the Revised License Agreement (Attachment 3) to this Decision and return a copy of the duly executed agreement to the Commission's Director of Communications Division within 14 days.

6. Application 18-10-004 is closed.

Dated August ___, 2019, at San Francisco, California.

ATTACHMENT 1



PM6/jt2

FINAL ARBITRATOR'S REPORT FILED01/31/19
09:05 AM**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Crown Castle NG West LLC (U6745C), pursuant to Decision 98-10-058 for Arbitration of Dispute over Denial by Pacific Gas and Electric Company (U39E) of Access to Utility Support Structures.

Application 18-10-004

FINAL ARBITRATOR'S REPORT

This report determines that Pacific Gas & Electric Company (PG&E) does not violate the Commission's¹ Decision (D.) 98-10-058,² by declining to grant Crown Castle NG West LLC (Crown Castle) joint ownership on its solely owned poles. PG&E satisfies its responsibility under D.98-10-058, to grant nondiscriminatory access to Crown Castle, a competitive local carrier,³ by offering Crown Castle the opportunity to lease space on its poles pursuant to PG&E's Overhead Facilities License Agreement, which the Commission has accepted as nondiscriminatory.⁴

¹ Commission refers to the California Public Utilities Commission.

² See D.98-10-058 dated October 22, 1998 in Rulemaking 95-04-043 (ROW Decision).

³ Competitive local carriers are described as those competing within the service territories of the large and mid-sized incumbent local exchange carriers (ILECs).

⁴ See Advice Letter 2982-E, filed by PG&E on February 13, 2017 at <https://www.pge.com/notes/rates/tariffs/2007-e.shtml>.

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We additionally determine that, although PG&E and Crown Castle voluntarily participate in the Northern California Joint Pole Association (NCJPA),⁵ we are not required to give deference to the provisions of agreements, policies or procedures of that association. Transactions concerning the sale or lease of utility property (such as the transaction at issue between PG&E and Crown Castle here), are already within the Commission's jurisdiction under Public Utilities Code Section (Pub. Util. Code §) 851.⁶

Crown Castle's proposed agreement, setting forth terms of sale of communications zone space on poles owned by PG&E, is rejected as presently written.

1. Procedural Background

Crown Castle NG West LLC (Crown Castle)⁷ filed an application on October 10, 2018,⁸ to request arbitration under the expedited dispute resolution

⁵ NCJPA is comprised of municipalities, irrigation districts, electric utilities, telephone companies, wireless companies and cable providers, some of which are entities regulated by the Commission, and some of which are nonregulated entities. The stated purpose of the NCJPA is to share expenses regarding the ownership, maintenance, use, setting, replacement, dismantling, abandonment or removal of jointly owned poles. However, the NCJPA Agreement and the NCJPA Operations Handbook go beyond accounting for expenses and deal with many terms and conditions of joint pole transfer and usage.

⁶ Pub. Util. Code § 851 requires Commission approval for the sale, lease, assignment, mortgage, or any encumbrance of property of a public utility.

⁷ Crown Castle is a competitive local exchange carrier (CLEC). Crown Castle (then named NextG Networks of California, Inc.) received authorization to provide limited facilities-based services as a non-dominant interexchange carrier in D.03-01-061 and was granted authority as a full facility-based carrier in D.07-04-045.

⁸ Crown Castle's application included an Exhibit 1-Testimony of Scott Scandalis, Asset Manager, Small Cell Solutions for Crown Castle.

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procedures established by Decision (D.) 98-10-058 (Application).⁹ In the right of way (ROW) decision, the Commission adopted rules to ensure that large and midsized incumbent local exchange carriers (ILECs), investor-owned electric utilities¹⁰ and local governments grant competitive local carriers (CLCs) such as Crown Castle, nondiscriminatory access to poles, ducts, conduits and ROW.¹¹

PG&E filed its Response to the Application for Arbitration (Response) on October 25, 2018.¹² The parties filed a joint revised arbitration statement on October 29, 2018.¹³ As provided in ALJ-174, an initial arbitration meeting was held on October 30, 2018, and an arbitration hearing was held on November 28 and-29, 2018. The Scoping Ruling of the assigned Commissioner was filed on December 10, 2018. The parties filed post-arbitration briefing on December 11, 2018.

2. The Dispute

Crown Castle and PG&E are members of the Northern California Joint Pole Association (NCJPA). Crown Castle has purchased pole space from PG&E

⁹ The ROW Decision provides that arbitration disputes there under shall generally follow arbitration rules adopted as Rule 3 of Resolution ALJ-174.

¹⁰ Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company and Southern California Edison Company are the major investor-owned electric utilities in California.

¹¹ In D.16-01-046, the Commission extended ROW Rules to provide commercial mobile radio service carriers with the same nondiscriminatory access to utility ROW as competitive local exchange carriers (CLECs). D.18-04-007 dated April 26, 2018 further amended the ROW rules to wireless telecommunications facilities installed by CLECs.

¹² PG&E's Response included Rebuttal Testimony of Tinamarie De Teresa, Manager of PG&E's Joint Pole/Joint Utilities group.

¹³ See Joint Statement of Crown and PG&E on Unresolved Issues dated October 29, 2018. The ROW decision requires a revised arbitration statement, which is referred to as a Revised Statement of Unresolved Issues in ALJ 174-Rule 3.8.

(and other member entities) by submitting a joint pole authorization form (JPA) to the NCJPA pole owner.¹⁴ Crown Castle contends that although PG&E has, in the past accepted its JPAs and permitted it to purchase a portion of the communications zone on PG&E owned poles, PG&E has begun denying JPAs from Crown Castle (and instead offers to lease the space on its poles to Crown Castle).¹⁵ Crown Castle contends that pole ownership is an integral part of its network expansion,¹⁶ and that time constraints related to the lease of space makes joint ownership on the poles preferable to leasing from PG&E. Crown Castle contends that PG&E's refusal to sell space on its poles violates nondiscriminatory access requirements set forth in the Commission's ROW Decision, and that PG&E may only impose conditions on attachment to its poles which are "necessary to endure the safety and engineering reliability of its facilities."¹⁷

¹⁴ Pursuant to NCJPA rules, upon submission of a JPA, pole owners may reply and modify the JPA or, if there is no reply, the JPA is deemed approved after 45 days and the applicant may then install its facilities.

¹⁵ PG&E has also implemented a policy requiring purchasers of space on its poles to agree to become a joint owner of the entire communications zone, and to manage tenants within the communications space.

¹⁶ See Application at 4-5. Crown Castle contends that it has utilized NCJPA agreed processes to acquire space on approximately 20,000 poles in Northern California and approximately 140,000 poles in Southern California.

¹⁷ Application at 7 citing Row Decision, 1998 Cal. PUC LEXIS at 114-115.

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PG&E acknowledges that it has begun declining JPAs to permit Crown Castle to purchase space on its poles. PG&E says it wants joint owners who are willing and able to purchase the entire communications zone and to assume the responsibilities to manage attachments by other tenants within the communications zone, which Crown Castle is unwilling to undertake.¹⁸ PG&E contends that the ROW Decision does not compel it to sell space on its poles to Crown Castle, and that, leasing space to Crown Castle under PG&E's License Agreement, complies with the ROW Decision's nondiscriminatory access requirements.

3. Discussion

The aspect of the parties' dispute that they have requested the Commission to arbitrate falls squarely within the ROW Decision, in which the Commission acknowledges that there is a need to balance opposing interests of incumbent utilities and CLCs,¹⁹ and discusses why it is important that electric utilities and the midsized and large ILECs implement ROW rules in an evenhanded manner

¹⁸ In its Application, Crown Castle objects that PG&E sought, as a condition of joint ownership, to require Crown Castle to assume tenant management responsibility for the communications zone on its poles (which PG&E requires of AT&T). During the arbitration, the parties agreed that the Commission does not require a CLC such as Crown Castle to assume tenant management responsibilities. In its post-arbitration briefing, PG&E additionally contends that its concern about nondiscriminatory access contributes to its decision to no longer offer CLCs any terms of sale unless and until the Commission requires all CLCs to provide tenants on jointly owned poles the same nondiscriminatory access required of electric utilities and ILECs.

¹⁹ See ROW Decision at 82. "On the one hand, incumbent utilities need to be able to exercise reasonable control over access to their facilities in order to meet their obligation to provide reliable service to their customers over time and plan for capacity needs to accommodate future customer growth. On the other hand, CLCs need to be able to gain access to the ROW and support structures of the incumbent utilities in order to provide local exchange service on a nondiscriminatory basis."

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to ensure nondiscriminatory access. The Commission observes that, by virtue of their incumbent status and control over essential ROW and bottleneck facilities, ILECs and incumbent electric utilities have a significant bargaining advantage in comparison to CLCs.²⁰ Therefore, a key principle of the ROW Decision is that CLCs should have rights to obtain access to utility poles and support structures at reasonable terms and prices which do not impose a barrier to competition. However, while the Commission explains that nondiscriminatory access requires incumbent utilities to permit access to the ROW and support structures under impartially applied terms and conditions, the Commission also states that nondiscriminatory access does not mean that the incumbent utility is divested of the benefits and obligations of ownership.²¹

During this arbitration proceeding, Crown Castle has made a cogent argument about the benefits of pole ownership, noting that it is a significant part of its network expansion strategy. It is understandable that Crown Castle would like to benefit from joint pole ownership with PG&E to the same degree as AT&T, the ILEC that jointly owns the majority of PG&E poles in northern California. Yet, Crown Castle argues in its application and briefing,²² that the

²⁰ The ROW Decision addresses these concerns by noting that an incumbent utility may not deny access simply to impede development of a competitive market or to retain its competitive advantage over new entrants (at 20); reciprocity of rights of way (at 41); with respect to pricing (at 50-51); with respect to avoiding unreasonable delays when connecting CLCs (at 61), and with respect to reserving capacity on poles and allowing new capacity (at 82-87 and 90-91).

²¹ See ROW Decision at 20.

²² Application at 8, citing ROW Decision, 1998 Cal. PUC LEXIS at 38. Also see Crown Castle Post Hearing Brief dated December 11, 2018 (Crown Castle Post Hearing Brief) at 15. "In the ROW Decision, the Commission decided that only incumbent utilities should be obligated to make space on poles available to competing providers, and specifically decided not to extend that obligation to competitive providers."

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ROW Decision expressly relieves it, as a CLC, of the obligation to give access to or manage subsequent providers who attach to the communications space it purchases.

The portion of the ROW Decision that Crown Castle cites seems to concede only that the Commission's authority does not extend to cable companies, which the Commission acknowledges are (in some cases) CLCs.²³ It is not at all clear that a telecommunications CLC, such as Crown Castle, is relieved of its obligation to extend access to other non-cable company CLCs.

This said, PG&E now contends that offering Crown Castle terms of sale which differ substantially from its terms with AT&T, would itself be discriminatory,²⁴ presumably because it agrees that it is not clear whether telecommunications CLCs, such as Crown Castle are obligated to assume tenant management responsibility of the communications zone. This arbitrator agrees that ambiguity in this portion of the ROW Decision may explain why PG&E would to prefer to lease rather than to sell additional space to Crown Castle within the communications zone. In the absence of clear guidance from the Commission on this point, it is not appropriate for an arbitrator to clarify

²³ The Commission states, at page 38 of the Row Decision: "This Commission's jurisdiction is limited to the regulation of public utilities. Since cable companies are not public utilities, they are not subject to this Commission's jurisdiction with respect to the rates or terms of service which they offer. Therefore, we shall not impose upon cable companies the obligations to provide access to telecommunications carriers. Similarly, we shall not require CLCs to provide access to cable companies."

²⁴ See Response at 3. Also see PG&E Post Hearing Brief dated December 11, 2018 (PG&E Post Hearing Brief) at 5. PG&E states that it does not intend to offer CLCs with any terms of sale unless and until the Commission requires all CLCs to provide tenants on its poles the same nondiscriminatory access that electric utilities and ILECs are required to provide.

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Commission policy in this context. This issue should be addressed in the ongoing pole access proceeding R.17-06-028.²⁵

Ironically, at the outset of its ROW Decision, the Commission acknowledges that the diversity of ROW access needs makes it infeasible to craft a uniform set of rules or tariffs which address every conceivable situation which may arise.²⁶ The Commission states that one objective of the ROW Decision is to set forth a general set of rules governing ROW access which would give parties discretion to tailor specific terms to the demands of their individual situations. The Commission notes that differences are acceptable as long as they do not merely reflect anticompetitive discrimination among similarly situated carriers.²⁷ Thus, in this dispute between two regulated entities subject to the Commission's jurisdiction, the parties arguably would have considerable latitude to craft whatever terms they might agree upon within the broad concerns of nondiscriminatory access, because their agreement would ultimately be subject to Commission approval under Pub. Util. Code § 851.

Instead, the parties here have somewhat reached a stalemate as to their respective rights and obligations, because the NCJPA, through its member Agreement and Operations Handbook, sets terms and conditions, as well as procedures related to utility pole transfer and sale. Crown Castle asserts that these terms and conditions support its contention that it is entitled to purchase, not merely lease, space on PG&E poles.

²⁵ R.17-06-028 is an Order Instituting Rulemaking (OIR) into Access by Competitive Communications Providers to California Utility Poles and Conduit, Consistent with the Commission's Safety Regulations.

²⁶ ROW Decision at 12.

²⁷ *Id.*

There can be no doubt that disputes such as the present one will arise again. For this reason, if NCJPA is going to continue to facilitate sale and purchase transactions pertaining to public utility poles among its member entities, the Commission should require NCJPA to submit (before implementation) for Commission review and approval under Pub. Util. Code § 851, its agreements, forms, procedures and handbooks which concern the transfer, sale, lease, assignment, mortgage, or encumbrance of public utility poles. Such transactions, which are being handled by NCJPA on behalf of its members, are clearly within the Commission's jurisdiction.

In the meantime, in this proceeding, the parties' failure to put forth an arbitrated agreement for purchase, which is acceptable to both, leaves Crown Castle with only one option - leasing under PG&E's approved License Agreement.

4. Comments on Draft Arbitrator's Report

The Draft Arbitrator's Report in this matter was mailed on December 19, 2018 to allow comments by the parties and interested members of the public as provided by Rule 3.18 of Resolution ALJ-174. Comments were filed by the parties, by California Municipal Utilities Association (CMUA)²⁸, and by Extenet Systems (ExteNet)²⁹.

²⁸ CMUA is a statewide organization of public agencies that provide water and electricity service to California consumers. The publicly owned electric utilities which belong to CMUA provide approximately 25 percent of the electricity load in California. CMUA takes no position on the dispute, but emphasizes that the Commission's authority over pole agreements between NCJPA members should be limited to such agreements between entities regulated by the Commission.

²⁹ ExteNet is a CLC providing wholesale non-switched point-to-point virtual circuit transport services to other carriers via small cell and distributed antenna system

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Crown Castle asserts that the arbitrator's conclusion that she should not require PG&E to sell additional space on its poles to Crown Castle, absent clear guidance from the Commission, is arbitrary and capricious, amounts to a failure to exercise jurisdiction to ensure competitive access on PG&E poles, and devalues the expedited dispute resolution process set forth in the ROW decision. Crown Castle contends that, PG&E's refusal to continue selling this space to Crown Castle is unduly discriminatory and anticompetitive. It says that although "the Draft Arbitrator's Report appropriately recognizes that the Commission has the jurisdiction to ensure Crown Castle is able to purchase the space it needs (typically one foot) to attach its equipment on PG&E poles," the arbitrator sends the wrong message – i.e., that the Commission will not intervene to ensure competitive pole access.³⁰

Crown Castle mischaracterizes the conclusion of the Draft Arbitrator's Report.

It is correct that the arbitrator notes that transactions concerning the sale or lease of utility property are within the Commission's jurisdiction. However, the arbitrator expressly notes that the ROW Decision does **not** compel PG&E to sell space on its poles to Crown Castle, and that, leasing space to Crown Castle under PG&E's License Agreement, which **does comply** with the ROW Decision's nondiscriminatory access requirements, is the only option that PG&E can be compelled to extend to Crown Castle due to the parties' failure to put forth a mutually acceptable agreement for purchase. As the arbitrator noted, the ROW

networks, and dark and lit fiber services to enterprise end user customers. It places fiber optic cable, wireless antennas and radios on utility poles throughout northern and southern California.

³⁰ See Comments of Crown Castle dated January 7 at 2, "I. - Summary."

Decision gives the parties considerable discretion, and had the parties been able to agree, they could have put forth an arbitrated agreement for purchase, that was acceptable to both.

Crown Castle contends that if the Commission would require PG&E to sell to it “only the space requested to attach equipment,” this would enable Crown Castle to continue to provide superior reliable service for its customers and would support Crown Castle’s goal to deploy broadband rapidly and compete in highly competitive markets (which are goals in line with goals that Commission is mandated to follow). Unfortunately, Crown Castle does not demonstrate that leasing the space it requires from PG&E would hinder it in meeting its goals.³¹

Crown Castle argues that PG&E presents a “false dilemma” in contending that selling less space to Crown Castle than it sells to ILECs is unreasonably discriminatory, because such differential treatment is grounded in deep practical, historical, legal and policy reasons.³² We acknowledge that these same reasons are those that led the Commission to require ILECs to grant access to CLCs within the zone that an ILEC – such as AT&T – might purchase.

But, given Crown Castle’s burgeoning network expansion (see footnote 16) and its contention that pole ownership will be an integral part of its future plans, it is Crown Castle that presents a “false dilemma.” Crown Castle has not provided support for its contention that the ROW Decision (as presently written) obligates an incumbent utility to sell space on its poles to a CLC.

³¹ During arbitration, Crown Castle expressed concerns about the lengthy time required under PG&E’s lease process. However, the parties may remedy this issue by agreeing to more favorable time deadlines for any lease arrangement they may enter.

³² See Comments of Crown Castle at 3.

Additionally, Crown Castle has not cited any language in the ROW Decision which demonstrates that the Commission considers leased access to poles to be adverse to competition or that leasing is an impediment to rapid deployment of broadband.

The fact that PG&E has sold portions of space on its poles to Crown Castle and other CLCs utilizing NCJPA protocols/procedures (without Commission scrutiny or oversight), does not mean that the ROW Decision requires PG&E to continue to do so. To the contrary of Crown Castle's argument, it is precisely because of Crown Castle's intention to continue increasing joint pole ownership as an integral part of its future network expansion strategy, that clear guidance from the Commission is desirable. As D.98-10-058 is presently written, there is not clear guidance about whether an incumbent utility has any obligation to permit acquisition of ownership on its poles by CLCs. There is also inadequate explanation about whether CLCs have any obligation to provide nondiscriminatory access to other CLCs.³³

Crown Castle notes that the Draft Arbitrator's Decision alludes to ambiguity in the ROW Decision about whether it is discriminatory for PG&E to

³³ In ExteNet's January 7, 2019 Comments on the Draft Arbitrator's Report, there is concern that the result set forth in the Draft Arbitrator's Report will "necessarily alter the rights and obligations set forth in D.98-10-058." But, this is not the case. The point of the conclusion reached here is that, contrary to what Crown Castle requests, the arbitrator determines that it is not appropriate to create rights and obligations with regard to pole ownership that were not addressed by the Commission in D.98-10-058. ExteNet also expresses concern that, should parties subject to regulation by the Commission be required to submit their pole agreements to the Commission for review and approval under Pub. Util. Code § 851, this will substantially delay the expeditious deployment of broadband facilities. The Commission has authority to put in place a procedure that will ensure expeditious handling of such agreements, just as it has provided this expedited arbitration process under D.98-10-058.

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sell space to Crown Castle on different terms than its sale to ILECs, and Crown Castle contends that the arbitrator's decision to decline to interpret and resolve the ambiguity, is a "retreat from the ambiguity." Crown Castle claims that "this retreat undermines the expedited dispute resolution process and the framework established in the ROW Decision, which contemplates the need to look at pole access arrangements on a case-by-case basis."³⁴

However, this analysis by Crown Castle again misinterprets the goal of the ROW Decision. As the arbitrator notes, the objective of the ROW Decision is to set forth a general set of rules governing ROW access, which leave the **parties** considerable latitude and discretion to craft whatever terms **they** might agree upon. That is why the parties are expected to arrive to the arbitration with a draft "arbitrated agreement" with areas of disagreement highlighted. The arbitrator is clearly anticipated to assist the parties with resolution of their disagreements within the parameters of the ROW Decision.

In contrast, Crown Castle's comments essentially argue that the **arbitrator** should craft Crown Castle's and PG&E's respective rights and obligations, premised upon one of the parties' interpretation of what the Commission should allow the parties to do, based on the parties' past practice under protocols developed outside of Commission review (by NCJPA). This is not a retreat from ambiguity by the arbitrator. The ROW Decisions places upon the parties the responsibility to craft an agreement.

The parties' inability to do so here, is due to a fundamental disagreement between them (which the arbitrator suggests stems from lack of clarity in the ROW Decision) about their respective rights and obligations in respect to

³⁴ See Comments of Crown Castle at 5.

ownership of utility pole space. Accordingly, the arbitrator urges that, within its pending OIR proceeding R.17-06-028, the Commission should clarify its intent regarding rights of CLCs to acquire ownership on utility poles and should delineate what the corresponding obligations will be upon CLCs (which choose ownership) to grant nondiscriminatory access to others.

5. Agreement Reflecting Arbitrator's Report

As previously noted, the expedited dispute resolution procedures under the ROW Decision require the parties to put forth an arbitrated agreement reflecting the Final Arbitrator's Report. For this purpose, unless the parties can somehow reach agreement on purchase terms, the applicable agreement which will serve as the basis for the arbitrated agreement, must be PG&E's License Agreement.

The parties are ordered to craft an arbitrated License Agreement reflecting mutually agreeable terms for leasing space on PG&E's poles. In crafting the arbitrated License Agreement, PG&E must negotiate terms with Crown Castle that: 1) will not constrain Crown Castle's goals to rapidly deploy broadband; 2) will permit Crown Castle to continue to provide reliable service for its customers, and 3) will enable Crown Castle fulfill its goal to compete within the highly competitive markets which comprise the state of California.

ATTACHMENT 2



*Pacific Gas and
Electric Company*TM

**Overhead Facilities
License Agreement**

between

Pacific Gas and Electric Company

and

**ABCDEFGHIJ KLMNOPQRSTUVWXYZ
ABCDEFGHIJK Cable Company**

Agreement No. 2016-xx-xxx

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TABLE OF EXHIBITS

- Exhibit A** – APPLICATION FOR POLE AND CONDUIT ATTACHMENT
TELCO CONTACT PERMIT
- Exhibit B** – POLE AND CONDUIT ATTACHMENT FEE
- Exhibit C** – OVERHEAD FACILITIES ESTIMATED UNIT COST
MAKE READY AND REARRANGEMENT COST
- Exhibit D** – [INTENTIONALLY OMITTED]
- Exhibit E** – NOTIFICATION OF TELCO CONTACT REMOVAL
- Exhibit F** – NOTIFICATION OF COMPANY FACILITIES CHANGES

These Exhibits are all single page documents that are part of this Agreement and are attached separately. The exhibits referenced within this Agreement may be revised or converted to an electronic on-line application in the future, which will be deemed an equivalent means of requesting access, providing notification and coordination of the attachments. The Permittee shall use the latest issued exhibits identified by the Company when requesting access, providing notification and coordination of their activities.

OVERHEAD FACILITIES LICENSE AGREEMENT

This Overhead Facilities License Agreement (“**Agreement**”) is entered into by and between **Pacific Gas and Electric Company** (“**Company**”), a California corporation and **ABCDEFGHIJKL MNOPQRSTUVWXYZ ABCDEFGHIJK Cable Company** a California corporation (“**Permittee**”) (together, the Company and Permittee shall be referred to as the “**Parties**”), and in consideration of the mutual promises and agreements set forth herein, the Parties hereby agree as follows:

ARTICLE I SCOPE OF AGREEMENT

1.1 SCOPE OF LICENSE

The Company gives Permittee permission, on the terms and conditions stated herein, to install and maintain communications cables and related equipment (hereinafter sometimes collectively referred to as “**Pole Attachment(s)**” or “**Attachment(s)**”) in the space below that space assigned for use by electric supply circuits as set forth in General Order (G.O.) 95 of the California Public Utilities Commission (CPUC) on (i) distribution and transmission poles and anchors solely owned or jointly owned by the Company (collectively referred to as “the **Company Pole(s), Overhead Facilities, or the Company Facilities**”) The Company Overhead Facilities are located on rights-of-way (“the **Company Right-Of-Way**”) solely owned or jointly owned or otherwise held and maintained by the Company.

The Company Facilities to be accessed shall be identified by Permittee and submitted to the Company for authorization in the form set forth in Exhibit A.

The term “**Attachment**” shall mean, with respect to the Company Pole(s), a contact on a pole to accommodate or to support a single messenger /strand with single or multiple cables (with the associated guy wire) or piece of equipment (amplifier, power supply, switch and related communication equipment) utilizing one foot (1’-0”) or less of vertical pole space. Every additional foot of vertical pole space utilized by cable(s) or a piece of equipment will be considered an additional Attachment. The installation of a single guy wire attached to anchors associated with the Company Poles shall be considered an additional Attachment and is within this Agreement. The installation of risers (irrespective of length) shall be treated as one Attachment and subject to all provisions of this Agreement, except that risers shall not be subject to any attachment fees under Section 8.1.

The electric connection for power supplies shall be governed by the Company’s electric tariff and not by this Agreement. If any Attachments include metered or unmetered electrical equipment, Permittee shall notify the Company in writing to arrange for electric service and appropriate billing prior to using the Attachment.

1.2 EXHIBITS

The Exhibits referenced within this Agreement, including the Company's estimated unit cost, may be updated or revised as to format and content, or converted to an electronic on-line application in the future by the Company upon a sixty (60) day notice to the Permittee, in a manner not inconsistent with the CPUC Decision 98-10-058, dated October 22, 1998. The Permittee shall use the latest version of the Exhibits provided by the Company to meet the requirements of this Agreement.

1.3 THE COMPANY DISCLAIMER.

Permittee expressly acknowledges that the Company does not represent and warrant that the Company Right-of-Way, whether by easement, franchise, or other form of permission, is broad enough to permit Permittee's Attachments on the Company Facilities or for the exercise by Permittee of any other rights set forth in this Agreement. It shall be the sole responsibility and obligation of Permittee to secure any such further rights or permission for the placement and use of the Permittee's Attachments on the Company Facilities and the Company Right-of-Way as may be necessary, including obtaining any permits required by an authorized permitting agency under the California Environmental Quality Act. Permittee shall obtain any such necessary rights from Granting Authorities. "Granting Authority(ies)" means those persons or entities from whom the Company has received the Company Right-of-Way and includes both governmental and non-governmental entities and persons. This Agreement does not include a conveyance of any interest in real property or the Company Facilities, and Permittee agrees to never claim such interest.

1.4 ASSIGNMENT AND SUBLEASE.

This Agreement and the rights, interests and obligations hereunder are being granted in reliance on the financial standing and technical experience of Permittee and are thus granted personally to Permittee and shall not be assigned or delegated, in whole or in part without the prior written consent of the Company, consent of which shall not be unreasonably withheld. Any attempt to assign or delegate without such consent shall be void. Notwithstanding the foregoing, this Agreement may be assigned or delegated in whole or in part by the Company or Permittee without the Other Party's consent for (i) assignments in connection with interests that arise by reason of any deed of trust, mortgage, indenture or security agreement granted or executed by such Party, (ii) assignments to Affiliates, where, in the absence of the other Party's consent thereto the assigning Party retains responsibility for the payment and performance of all of its obligations and liabilities hereunder, (iii) assignments by operation of law in connection with any merger or consolidation of a Party with or into any Person, whether or not the Party is the surviving or resulting Person, or (iv) assignments to a purchaser of all of the outstanding equity securities of, or substantially all of the assets of, either Party. Any assignment that does not comply with the provisions of this Section 1.4 shall be null and void, and the putative assignee shall have no right to attach to the Company Facilities.

Permittee shall not sublease any of the Company Facilities.

1.5 CERTIFICATION OF PERMITEE.

Permittee warrants it is either (a) a Cable TV company that provides cable service as defined in the Public Utility Code; and/or (b) a telecommunications carrier that has been granted certificates of public convenience and necessity (CPCN) from the CPUC. Permittee warrants that its certificate(s) authorizes it to use governmental Rights-of-Way for the purposes of this Agreement.

The Permittee also represents that it is an entity which is governed by CPUC Decision 98-10-058 and subsequent rulings applying to this decision, and as such has the right-of-way for nondiscriminatory access to the Company Facilities.

1.6 COMMERCIAL MOBILE RADIO SERVICE (CMRS)

Permittee further warrants that it is not entering into this Agreement for the purpose of providing a commercial mobile radio service (CMRS) as defined in the Federal Telecommunications Act of 1996. Permittee further warrants that it shall not install or maintain any Attachments (e.g., antennas or similar equipment) to Company Facilities used in connection as a CMRS provider. For purposes of this Agreement, the term CMRS includes the term "wireless" and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communication service, or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communication service, specialized mobile radio service, or a network radio access line.

**ARTICLE II
EFFECTIVE DATES OF AGREEMENT AS LICENSE**

2.1 LICENSE

a) This Agreement as a license is given pursuant to the authority of, and upon, and subject to, the conditions prescribed by G.O. 69-C of the CPUC, dated and effective July 10, 1985, which by this reference is incorporated herein. This license is effective the date it is signed and delivered by the Company, and will terminate based on any of the terms and conditions set forth in this Agreement. The Company Attachment rates will be calculated on a year-to-year basis, under the terms of Section 8.1. No Permittee use of any Company Facilities shall create or vest in Permittee any ownership or property rights herein; Permittee's rights hereunder shall be and remain a mere license, but subject to CPUC Decision 98-10-058 dated October 22, 1998, as amended as of the effective date of this Agreement.

b) Pursuant to G.O. 69-C this license is conditioned upon the right of the Company, either upon order of the CPUC, or upon the Company's own decision to commence or resume the use of the property in question whenever, in the interest of the Company's core utility service to its patrons or customers, it shall appear necessary or

desirable to do so. The Company will use commercially reasonable efforts to accommodate relocations, rearrangements and replacements under Sections 7.2 and 7.4.

c) Notwithstanding anything in this Agreement to the contrary, including Article IX (“Dispute Resolution”), interpretation of the meaning and effect of G.O. 69-C in this Agreement shall be in the exclusive jurisdiction of the CPUC.

2.2 CHALLENGE TO AGREEMENT

If a Granting Authority, in any forum, in any way challenges, disputes, or makes a claim against the Company’s authority to grant this license, the Company shall give Permittee reasonable notice of same. The Company reserves the right in its sole discretion to require Permittee to remove its Attachments from the Company Facilities which are the subject of the challenge, dispute or claim, within thirty (30) days or less (as required by the Granting Authority or statute) of written notice from the Company. Permittee shall, upon such notice, relinquish use of the Company Facilities, and remove any Attachments promptly prior to the last date specified in the notice. Notwithstanding the above, if within the period described above, Permittee obtains an order from a court or regulatory agency with jurisdiction over the challenge, dispute or claim against the Company’s authority to grant this license, which order allows Permittee to remain attached to the Company Facilities, Permittee shall be allowed to remain on the Company Facilities under the terms of that order, until a final decision or judgment is made at the highest level desired by Permittee. In the event of such contest, Permittee shall indemnify and hold the Company harmless from any expense, legal action, or cost, including reasonable attorneys’ fees, resulting from the exercise of Permittee’s right to contest under this section at Permittee’s sole expense.

2.3 TERM OF AGREEMENT

This Agreement is for a term of **five (5) years** from the date it is signed by the Company. The Company Attachment rates will be calculated on a year-to-year basis, under the terms of Section 8.1.

ARTICLE III PLACING ATTACHMENTS

3.1 PROCESS FOR ATTACHING TO THE COMPANY FACILITIES.

a) Request For Information

Permittee may, from time to time, submit a written request for information about the availability of space on the Company Facilities. The request for information must include the proposed route. Permittee agrees to pay in advance all of the Company’s estimated unit costs currently in effect to respond to the request for information. The total cost for providing the information is reconciled based on actual cost at the end of the project. The Company’s estimated unit costs are set forth in Exhibit C.

b) Request For Access

If Permittee desires to add new facilities, rebuild existing facilities or overlash to existing cables on the Company Facilities, it must submit a request for access using Exhibit A and include the following information for the identified facilities:

- **For Company Pole Attachments** - grade and size of attachment(s), size of cable bundle, average span length, wind loading of their equipment, vertical loading, and bending moments.
- **For Underground Facilities** – [Intentionally omitted.]

Using this data the Company will do engineering evaluations to determine rearrangement, (including replacement, if necessary) or modifications of the Company Facilities to accommodate the attachment. Permittee shall not install any Attachments on or in the Company Facilities without first securing the Company's written authorization.

Permittee agrees to pay in advance all of the Company's estimated unit costs to respond to the request for access. The cost is reconciled based on actual cost at the end of the project. The Company's estimated unit costs are set forth in Exhibit C.

Alternatively, if the Permittee meets the qualifications established by the Company guidelines, it may at its expense do the engineering evaluations to determine and identify the required make ready work. The Company reserves the right to check the accuracy of the Permittee's engineering evaluations and if relevant errors are found, the Permittee shall be notified and advised to resubmit its request with accurate information. If relevant errors result in a request for access that results in an infraction of the applicable codes and standards, Permittee agrees to reimburse the Company for the actual cost of checking the Permittee's initial and resubmitted engineering evaluation.

c) Make Ready Work

Make Ready work is the process of completing rearrangements on or in Company Facilities to create space for the Permittee's attachments, or replacing the existing facilities.

Permittee agrees to pay in advance all of the Company's estimated unit costs to respond to and perform the make ready work at Permittee's expense. The Company cost is reconciled based on actual cost at the end of the project. The Company's estimated unit costs are set forth in Exhibit C. Alternatively, the Company will at its discretion allow Permittee to perform the make ready work at Permittee's expense.

3.2 ADDITIONAL ATTACHMENTS

Permittee shall not install any additional Attachments on or in the Company Facilities without first securing the Company's written authorization. The Application for Pole and

Conduit Attachment Contact Permit attached as Exhibit A shall be used for all requests for attachments to the Company Facilities.

Notwithstanding this, for service drop attachments, the Permittee may attach a single cable to provide service to a customer on the closest available service/clearance pole without prior written authorization by the Company. Within ten (10) days of any such installation, the Permittee shall submit an application to the Company using the Pole and Conduit Attachment Contact Permit attached as Exhibit A with Parts 1 & 3 completed and the installation date noted. Each application for service/clearance pole(s) shall include supporting documentation certifying that the Permittee has evaluated each attachment(s) prior to installation and concluded that the attachment conforms with all applicable codes and standards. Upon review, in the event that the Company determines the attachment(s) is noncompliant, the Permittee shall take any actions necessary to correct the condition and that Permittee agrees to be bound by the terms of the License Agreement.

3.3 NO THIRD-PARTY ATTACHMENT

Permittee shall not, without the prior consent in writing of the Company, assign, transfer, sublet or permit any other person or entity to over lash or to make any physical contact or attachment to any of Permittee's facilities which are supported by or placed in or on the Company Facilities. Any attempted assignment in contravention of this section shall be null and void and shall be grounds for the Company to terminate this Agreement. Subject to the foregoing, and Section 1.4, Assignment, this Agreement shall inure to the benefit of and be binding upon the respective heirs, administrators, executors, successors and assigns of the parties hereto.

3.4 INCREMENTAL PROPERTY RIGHTS, AND COSTS:

a) If any time during this Agreement a Granting Authority of the Company makes a demand for additional compensation or indicates its intent to reopen, renegotiate or terminate the Company's franchise, easement, license or other agreement establishing the Company's rights in the Company Right-of-Way as a direct result of the existence of this Agreement, the Company shall promptly notify Permittee. After conferring with the Company and allowing the Company an opportunity to resolve the issue, Permittee may attempt at Permittee's expense to resolve the issue with the Granting Authority through negotiation or settlement. Any decision to commence litigation on behalf of or in the name of the Company shall be in the sole discretion of the Company, and any subsequent litigation, whether brought by the Company at Permittee's request or by such third party Granting Authority, shall be conducted at Permittee's expense, but under the Company's direction and control with respect to any issues materially affecting the Company's rights in the Company Right-of-Way. If the dispute is resolved through negotiation or settlement approved by Permittee (which approval will not be unreasonably withheld), and such resolution requires the payment of additional consideration by the Company, Permittee shall reimburse the Company for the amount of such additional consideration, to the extent such amount is due to Permittee's presence on or in the Company Facilities. If the dispute is resolved through litigation in accordance with the foregoing and the judgment resulting there from requires the payment of additional consideration by the Company, Permittee shall reimburse the

Company for the amount of such additional consideration to the extent such amount is due to Permittee's presence on or in the Company Facilities. If Permittee possesses the power of eminent domain within the relevant jurisdiction, Permittee shall have the right, in its sole discretion, independently of the Company to seek resolution of such a dispute by exercising such power of eminent domain, provided that Permittee shall pay all costs of such exercise. Permittee's obligation to reimburse the Company for the amounts of additional compensation due to Granting Authorities shall survive this Agreement.

b) Notwithstanding the foregoing, the Company after conferring with Permittee at any time and in the Company's sole discretion, may require that Permittee discontinue such attempts to resolve issues with a particular governmental Granting Authority by litigation or otherwise; provided that, such requirement of the Company notwithstanding, Permittee may still continue to attempt to resolve such issues independently of the Company, by litigation or otherwise, so long as the Company is not named, joined or otherwise included as a party or principal in any such litigation or other attempt; and provided further that the foregoing shall not be deemed to prohibit Permittee from exercising any eminent domain rights that Permittee is authorized to pursue within the relevant jurisdiction.

3.5 INNER DUCT INSTALLATION

[Intentionally omitted.]

ARTICLE IV COMPLIANCE WITH LAW AND SAFETY REQUIREMENTS

4.1 APPLICABLE LAW AND REQUIREMENTS.

(a) The Permittee shall install and maintain the Attachments in conformity with all applicable laws, rules, and regulations of state and federal governments, agencies, and other governmental authorities, including, but not limited to, the rules, regulations, and orders of the CPUC, and in conformity with any safety standards or requirements as may be required or specified by the Company in its sole, good faith discretion, and including obtaining any permits required by an authorized permitting agency under the California Environmental Quality Act. All Company Pole Attachments must adhere to the clearance, separation, wind loading and dead-end tensions and other requirements of G.O. 95 of the CPUC or any successor and standards or requirements as may be specified by the Company.

(b) [Intentionally omitted.]

(c) The Permittee shall be solely responsible for the Attachments and shall take all necessary precautions during installation, and maintenance on or near the Company Facilities and the Company Right-of-Way so as to protect all persons and the property of the Company and others from injury and damage. Without limiting the foregoing and without assuming any obligation to maintain or monitor the Attachments, if the Company believes

that Permittee's Attachments are in any way endangering any person or property, or are in noncompliance with any requirement referenced in Sections 4.1(a) or (b) above (a "**Hazardous Condition**"), the Company may, in its sole discretion, take any steps it deems necessary to remedy the Hazardous Condition; in which case Permittee shall be required to reimburse the Company for its actual costs. Notwithstanding the above, the Company shall take reasonable action to notify Permittee of any Hazardous Condition that does not require immediate attention, and where feasible, allow Permittee to correct the Hazardous Condition prior to any corrective action taken by the Company. In addition, if the Company notifies Permittee of any Hazardous Condition, Permittee shall remedy such condition promptly and in no case later than ten (10) days after receipt of such notice.

4.2 WORK ON COMPANY POLES

Permittee and its duly authorized contractors, agents and employees ("**Permittee's Workers**") shall avoid directly climbing the Company Poles and, if possible, use a ladder or bucket truck to perform work on the Company Pole Attachments. If the use of a ladder or bucket truck is not feasible, Permittee's workers shall exercise best efforts to make certain that the poles or structures are strong enough to safely sustain the workers' weight or the change in applied stress before climbing any poles or structures. **HOWEVER, IN NO EVENT SHALL PERMITTEE'S WORKERS CLIMB OR MAKE CONTACT WITH ANY PORTION OF THE ELECTRIC SUPPLY SPACE ON THE COMPANY POLES, INCLUDING WITHOUT LIMITATION THE WIRES, CABLES, RISERS, CONDUIT, CROSS ARMS AND OTHER APPLIANCES OR OTHER ELEMENTS OF THE COMPANY'S ELECTRICAL SUPPLY SYSTEM.** All work on the Company Poles, or under this Agreement to be performed in the proximity of energized electrical conductors shall only be performed by qualified electrical workers in accordance with Title 8 -- State of California High Voltage Safety Orders as amended. Permittee shall provide the Company forty-eight (48) hours advance notice by calling the Company's designated representative before any work is performed on the Company Overhead Facilities when an electric service shutdown is not required. If an electric service shutdown is required, the Permittee shall arrange a specific schedule with the Company prior to performing any work on the Company Overhead Facilities. The Company reserves the right to an authorized employee or agent of the Company being present when the Permittee's employee's, agents, or contractors will be permitted to work in secured areas where safety or system reliability of the Company Overhead Facilities are an issue. Permittee agrees to pay the Company for such Company's employee based upon the Company's then current fully loaded labor rate.

4.3 ACCESS TO THE COMPANY UNDERGROUND FACILITIES

[Intentionally omitted.]

4.4 WORK PRIORITY

Permittee's workers shall conduct its work so as not to interfere or delay any other work performed or scheduled to be performed by the Company or its authorized agents on or near the Company Facilities or the Company Right-of-Way. The Company and its authorized agents shall have priority to access the Company Facilities and the Company Rights-of-Way

at any time and Permittee's workers must adhere to any requests made by the Company to modify or interrupt the work of Permittee's workers.

4.5 MAINTENANCE OF ATTACHMENTS.

Permittee shall, at its sole expense, keep in good repair and maintain its Attachments. Permittee shall also operate and maintain its Attachments in conformity to CPUC General Orders, the National Electrical Safety Code, the National Electrical Code and all other applicable ordinances, statutes, regulations and laws. If the Company determines that Permittee is not in compliance with any of these applicable requirements, the Company shall inform Permittee in writing and such Hazardous Conditions shall be remedied per Sections 4.1(a) or (b). Permittee shall notify the Company forty-eight (48) hours in advance by calling the Company's designated representative before any routine repair or maintenance of its facilities is performed on the Company Facilities when an electric service shutdown is not required. If an electric service shutdown is required, the Permittee shall arrange a specific schedule with the Company prior to performing any work on the Company Facilities. Emergency restoration of service and maintenance shall be performed per Section 7.7.

4.6 SERVICE CONNECTION/DISCONNECTION

Any electrical service connection or disconnection to the Permittee's Attachments from the Company's overhead or underground electric supply system shall only be performed by the Company in accordance with the Company's rates, applicable tariffs, and CPUC Rules and Regulations.

4.7 IDENTIFICATION TAGS

Permittee shall identify its Attachments to the Company Facilities using weather and corrosive resistant tags (capable of lasting the life of the attachment). The tags shall include Permittee's corporate name legible from the ground, a 24-hour emergency contact number and identify the Company as the licensor. The tag shall be attached in the zone on the pole where Permittee's cable and equipment are located. If adequate identification of all Attachments are not added by the Permittee pursuant to this Agreement, the Company may identify Permittee's facilities and all incurred cost shall be reimbursed by the Permittee.

4.8 POLE PROTECTION

For new construction, replacements, rebuilds and upgrades of the Permittee's facilities, the Permittee shall use, in areas where there is potential for trees to damage poles and to the extent where reasonably available, at the time of attachment to a pole, break-away fasteners or cross arms designed such that in the event a falling tree or other foreign object comes in contact with Permittee's cable in mid-span, the cross arm, bolt or lashing attaching the cable to the pole will fail before the pole fails. Permittee may, with the Company's written consent, use alternative designs capable of accomplishing equivalent results to preserve the pole. Regardless of the presence of breakaway fasteners or the Company-approved alternative design, Permittee shall be responsible for all costs associated with replacing a pole that failed due to Permittee's Attachments. Permittee will comply with any CPUC orders and revisions regarding design and construction standards.

4.9 POLE TREATMENT

Permittee shall treat with a chemical solution of copper naphthenate or the Company approved equivalent all cuts created on new and existing poles by Permittee to accommodate an Attachment, including but not limited to, gains and through holes.

ARTICLE V INDEMNIFICATION AND LIABILITY

5.1 INDEMNIFICATION.

(a) The Parties agree to bear any and all “Losses” (defined below) which arise out of or are in any way connected with the performance of this Agreement as set forth in this section. All losses, fines, penalties, claims, demands, legal liability, damages, attorneys’ fees, costs of investigation and litigation, expenses, settlements, verdicts, awards or judgments (collectively, “Losses”) connected with or resulting from injury to or death of any person (including employees of the Parties), damage to or destruction of any property (including property of the Parties), damage to the environment or any natural resources, or violation of any local, state or federal law, rule or regulation, including but not limited to environmental laws and regulations, however caused on either Party shall be borne as follows:

- (1) Any Losses arising from injury to or death of an employee, contractor, subcontractor, or agent of a Party or arising from damage to or destruction of any property of a Party shall be borne by such Party, and such Party shall defend, indemnify and hold harmless the other Party and each of its officers, directors, partners, employees, and agents (“**Indemnitees**”) against such Losses, excepting only Losses as may be caused by the sole negligence or willful misconduct of the Indemnitees.
- (2) Excepting Losses arising from injury to or death of an employee, contractor, subcontractor, an agent of a Party or arising from damage to or destruction of any property of a Party, any Losses caused by the joint or concurrent negligence of the Parties or their respective contractors or agents, or by the failure of the Parties to observe or perform any obligation hereunder, shall be borne by the Parties according to their degree of fault.
- (3) Any Loss caused by the climbing or entering the Company Facilities by the employee, agent, contractor or subcontractor of a Party shall be borne solely by such Party.
- 4) Any Loss caused by the sole act or omission of a Party shall be the responsibility of that Party.

If either Party, as the result of any claim for Losses, should be compelled to pay damages to a greater extent than specified in this section, such Party shall have, to the extent of the excess so paid by it, the right of contribution from the other Party.

(b) Notwithstanding the foregoing, Permittee shall indemnify, defend and hold harmless the Company, its officers, directors, partners, agents, and employees (collectively, “the **Company Indemnitees**”) from and against all claims, demands, losses, damages, expenses, and legal liability connected with or resulting from (i) interruption, discontinuance or interference with Permittee’s service to any of its customers or economic and any economic or commercial loss of Permittee’s customers, resulting there from (but only to the extent of Permittee’s customers’ claims, not those of the Company), with the exception of claims, demands, losses, damages, expenses, and legal liability arising solely from the gross negligence or willful misconduct of the Company or the Company’s agents, employees or independent contractors who are directly responsible to the Company; (ii) Permittee’s failure to comply with applicable rules, regulations or safety standards; and (iii) any and all claims or assessments of any kind or nature, including increased franchise fees, right-of-way or easement fees, made or asserted against the Company Indemnitees by any third party, including any Granting Authority, franchise authority, governmental authority or other property owner as a result of Permittee’s use of, or failure to relinquish use of the Company Facilities or remove any Attachments as may be required by the Company pursuant to Article X Termination. Regardless of fault on behalf of Permittee, the Company shall exercise reasonable commercial effort toward restoring the Company’s service to its customers in accordance with the Company’s customary procedures and priorities, to enable Permittee to restore Permittee’s Attachments on the Company Facilities and to resume service to Permittee’s customers so as to minimize any and all losses once an interruption, discontinuance or interference with a Party’s service to its customers occurs. Nothing in this Article V or Section 5.1 shall affect the application of the provisions of Section 12.14 “No Third Party Beneficiaries”. Under no circumstance shall either Party have the authority to admit any liability on behalf of the other.

(c) Any Party seeking indemnification hereunder (“**Indemnitee**”) shall notify the other party (“**Indemnitor**”) of the nature and amount of such claim and the method and means proposed by the Indemnitee for defending or satisfying such claim within a reasonable time after the Indemnitee receives written notification of the claim. The Indemnitee shall consult with the Indemnitor respecting the defense and satisfaction of such claim, and the Indemnitee shall not pay or settle any such claim without the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld or delayed; provided, however, that the Indemnitee’s failure to give such notice shall not impair or otherwise affect the Indemnitor’s obligation to indemnify against such Claim except to the extent that the Indemnitor demonstrates actual damage caused by such failure.

5.2 AD VALOREM INDEMNITY

If the ad valorem property taxes, special assessments, local improvement district levies, or other levies or taxes (collectively, “**Ad Valorem Taxes**”) or bases for ad valorem taxation payable by the Company with respect to the Company Facilities increase as a result of the

Permittee's Attachments, or the Ad Valorem Taxes increase or change due to any construction, installation or improvements provided pursuant to this Agreement, the Company shall deliver to Permittee copies of the relevant tax bills and supporting materials along with a detailed calculation of such taxes to be paid by Permittee only to the extent such Ad Valorem Tax exceeds the amount which the Company would otherwise pay. Within thirty (30) days Permittee shall pay or reimburse the Company for such amounts. Permittee may make such reimbursements or payments under protest, in which event Permittee and the Company shall attempt to agree upon a calculation of the amount payable by Permittee. If agreement cannot be reached, either party may refer the dispute to mediation in accordance with the provisions of Article IX. Permittee also shall be responsible for timely payment of any Ad Valorem Taxes or other taxes and fees levied against the Permittee's Attachments or other of Permittee's property or equipment located on the Company Facilities or the Company Right-of-Way that are billed directly to Permittee by the taxing authority. However, in the event the same property or interests are assessed an Ad Valorem Tax or sales or use tax in the same year to both the Company and Permittee, each party agrees to promptly notify the other upon becoming aware thereof to cooperate with the other in seeking appropriate redress from the authority or authorities assessing the property or imposing the tax; and, provided the Company has notice of such potential double taxation, the Company agrees at Permittee's request, not to pay such tax and seek reimbursement from Permittee without having first protested, at Permittee's expense, the assessment at the appropriate administrative level.

5.3 DEFENSE OF CLAIMS

Both parties shall, on request, defend any suit asserting one or more claims covered by the indemnities set forth in Sections 5.1(a). Permittee shall, on the Company's request, defend any suit asserting one or more claims covered by the indemnities set forth in Sections 5.1(b) and 5.2. The indemnifying party shall pay any costs that may be incurred by the Indemnitees in enforcing such indemnity provisions, including reasonable attorney's fees.

5.4 LIMITATION OF LIABILITY

In no event shall the total cumulative liability of the Company, arising out of or in connection with the use of the Company Facilities or relating to this Agreement, exceed the sum of the attachment fees received, and forecasted to be received, by the Company under the current Agreement with Permittee, whether based on contract, tort, including negligence, or otherwise. The above limitations of liability shall not apply to any willful misconduct on the part of the Company.

5.5 NO WARRANTIES

Except as specifically and expressly provided herein, the Company makes no warranty, express or implied with respect to the Company Facilities or the use of the Company Facilities by Permittee. The Company Facilities are "as is." The Company disclaims all warranties express or implied including the warranties of merchantability and fitness for particular purposes.

5.6 CONSEQUENTIAL DAMAGES

Notwithstanding anything in this Agreement to the contrary, neither Party nor its contractors or subcontractors shall be liable to the other Party for the other Party's own special, consequential or indirect damages, including without limitation, loss of use, loss of profits or revenue, loss of capital or increased operating costs, arising out of this transaction or from breach of this Agreement, even if either Party is negligent, grossly negligent or willful.

ARTICLE VI INSURANCE

With the written consent of the Company, and until Permittee has demonstrated to the Company's satisfaction adequate financial strength to support self-insurance, Permittee shall maintain the following insurance coverage or self-insurance and be responsible for its contractors and subcontractors maintaining sufficient limits of the same insurance coverage.

6.1 WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

(a) Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, where Permittee performs any work on the Company Facilities.

(b) Employers' Liability insurance shall not be less than \$1,000,000 for injury or death each accident.

6.2 COMMERCIAL GENERAL LIABILITY

(a) Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions.

(b) The limit shall not be less than \$10,000,000 each occurrence for bodily injury, property damage, personal injury, completed operations and endorsed to include mobile equipment.

(c) Coverage shall: (1) by "Additional Insured" endorsement add as additional insured the Company, its directors, officers, agents and employees with respect to liability arising out of the work performed by or for the Permittee for ongoing operations as well as completed operations. If the Permittee has been approved to self-insure, Permittee shall, at all times, extend coverage to the Company in the same position as if the Company were an "Additional Insured" under a policy; (2) be endorsed to specify the Permittee's insurance is primary and that any insurance or self-insurance maintained by the Company shall not contribute with it.

6.3 BUSINESS AUTO

(a) Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 1 "any auto."

(b) The limit shall not be less \$1,000,000 each accident for bodily injury and property damage

6.4 POLLUTION LIABILITY

(a) Coverage for bodily injury, property damage, including clean up costs and defense costs resulting from sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water.

(b) The limit shall not be less than \$1,000,000 each occurrence for bodily injury and property damage.

(c) The Company shall be named as additional insured.

6.5 ADDITIONAL INSURANCE PROVISIONS

(a) Before commencing any work on the Company Facilities, Permittee shall furnish the Company with certificates of insurance and Additional Insured endorsement of all required insurance for Permittee.

(b) The certificate shall state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to the Company.

(c) The certificate must be signed by a person authorized by that insurer to bind coverage on its behalf and shall be submitted to:

PG&E

Insurance Department, Suite
2400
One Market, Spear Tower
San Francisco, CA 94105

A copy of all such insurance certificates and the Additional Insured endorsement shall be sent to the Company's Contract Negotiator and/or Contract Administrator.

(d) The Company may require Permittee to furnish to the Company certificates of insurance or other evidence thereof attesting that the insurance required by Article VI is in effect.

(e) Upon request, Permittee shall furnish the Company the same evidence of insurance for its contractors and subcontractors, as the Company requires of Permittee.

(f) If Permittee claims to self-insure then this section applies. Notwithstanding any provisions in this Article to the contrary, Permittee represents that its customary practice, as of the date of this Agreement, is to self-insure for all or a portion of the insurance required of it under this Agreement. Accordingly the parties agree that such self-insurance shall constitute compliance with all or some of the requirements of this Article for as long as Permittee generally continues such practice of corporate self-insurance with respect to its regular conduct of business. Permittee covenants to advise the Company when it ceases generally to self-insure with respect to its regular conduct of business.

ARTICLE VII REMOVALS AND EMERGENCY CONDITIONS

7.1 DISCONTINUATION

Notwithstanding any provision to the contrary, the Company shall be entitled at any time to discontinue the Company's use of the Company Facilities located on the Company Right-of-Way, and Permittee shall immediately remove its Attachments. In the event of any such discontinuation, the Company shall give Permittee advance written notice (Exhibit F or equivalent) as soon as reasonably practicable, and the Company may propose alternative facilities to meet the needs of the Permittee in which case Permittee shall be entitled to a credit of the remaining rental fees paid in advance for future use, towards the use of the alternate facilities. If no alternate facilities are available or acceptable, Permittee shall be entitled to a refund, if a refund is requested by Permittee and if the value exceeds \$1,000.00. The Company may allow Permittee to buy the Company's interest in the discontinued facilities at the Company's replacement cost new minus depreciation. Permittee's costs of relocating to other poles or facilities shall be governed by the provisions of Section 7.2 below.

7.2 RELOCATION

Notwithstanding poles rearranged or replaced pursuant to Section 7.4, the Company at any time may relocate all or any portion of its poles to other locations. In the event of any such relocation, the Company may in its discretion allow Pole Attachments at such alternate location(s) in accordance with this Agreement, and the Company shall give Permittee sixty (60) days advance written notice (Exhibit F or equivalent) or less if circumstances require, of its intended relocation and of the particulars of the alternate location(s). In the case of a relocation of the Pole Attachments, the Company may either: (a) require Permittee at its cost to move its Pole Attachments to the alternate location, or (b) with mutual consent move the Permittee's Pole Attachments with reimbursement from Permittee for the actual costs of moving the Pole Attachments. In the event that Permittee is unable to transfer its facilities on the day the pole is scheduled to be removed, the Permittee shall pay all costs incurred by the Company to make an additional field trip to remove the pole. To the extent the Company can reasonably obtain reimbursement from a third party for any work performed by the Company, Permittee's share of the Company cost will be included in the reimbursement. If the Company cannot reasonably obtain such reimbursement, then Permittee and other

permittees shall be responsible for a proportional share of those costs. When a pole relocation is necessitated by the installation of a Pole Attachment by a new permittee, the relocation of the Company's and its Permittee's Pole Attachments shall be at the expense of the new permittee to the extent allowed by law.

7.3 REMOVALS

(a) If the existing equipment on the pole or anchor (including Permittee's equipment) cannot be relocated in accordance with Section 7.4 or rearranged in accordance with Section 7.4 to create the required space or capacity for the Company's use and

(1) the Company needs the space or capacity occupied by the Permittee's equipment for its use to serve core utility customers, or

(2) should any pole to which Permittee has attached an Attachment be taken by the power of eminent domain,

then on being given at least sixty (60) days written notice (Exhibit F or equivalent) by the Company to do so, or in cases of emergency on such notice less than sixty (60) days as the circumstances reasonably permit (some emergency circumstances may include no notice), the Permittee shall remove its Attachments from the Company Poles as the Company shall designate and at the expiration of the time specified in the notice all rights and privileges of the Permittee in and to the Company Poles designated shall terminate.

(b) Permittee shall not be entitled to any compensation paid as a result of a taking by the power of eminent domain, except for compensation paid expressly for the taking or relocating of Permittee's Attachment. In no event shall Permittee be entitled to any compensation for the taking of the Company Right-of-Way itself.

(c) The Permittee may on its own remove its equipment from the Company Facilities and provide the Company within sixty (60) days a written notice (Exhibit E or equivalent).

(d) In the event of a removal as provided in this section, Permittee shall be entitled to a rental refund if a refund is requested by Permittee and if the rental value exceeds \$1,000.00.

7.4 REARRANGEMENT/REPLACEMENT POLES OR ANCHORS

The Company shall give Permittee sixty (60) days advance written notice (Exhibit F or equivalent) or less if circumstances required for Sections 7.4 (a) through (c) below.

(a) Capacity for the Company:

When the Company needs space or capacity for its core utility service, and without the Permittee's Attachment there would be adequate space or capacity, then the Permittee shall

either pay for expansion of the pole to provide adequate space or capacity for the Company, or remove its Attachments.

If more than one Company Permittee is on the pole and all Permittees cumulatively occupy the space or capacity needed by the Company, and the removal of the last authorized Permittee will provide adequate space or capacity, then the last authorized Permittee will pay the cost of providing additional space or capacity for the Company, or remove its Attachments.

If more than one Company Permittee is on the pole and all Permittees cumulatively occupied the space or capacity needed by the Company, then all Permittees will share equally the cost of providing additional space or capacity on the pole, or remove their Attachments.

If the Company is unable to determine which Permittee is the last authorized Permittee on the pole then the Permittees will share equally the cost of providing additional space or capacity on the pole, or removes their Attachments.

(b) New Permittees:

When rearrangement and/or larger or additional pole(s) or anchors are necessitated by the installation of an Attachment by a new Company permittee, the larger pole and relocation of the Company's and its permittee's attachments shall be installed and/or transferred at the expense of the new permittee to the extent allowed by law.

(c) Other Causes of Rearrangement/Replacement:

When a pole replacement is required due to any other reason outside of the control of the Company, including but not limited to, accidents, storms, bird, pest, or fungal infestation, excessive checking and splits, earthquake, tornadoes, street widening or Granting Authority action, Permittee shall not be responsible for cost of the replacement pole, unless the failure was due to fasteners which did not comply with the requirements of Section 4.8 or if the Permittee did not meet the requirements of Section 4.1. Permittee shall be responsible for relocation of its Attachment under the terms of Section 7.2.

7.5 ADDITIONAL POLE SPACE

Whenever any discontinuation, rearrangement, relocation, removal or substitution of a larger pole would be necessary under this Article and there is additional space available on the pole under the control of another party, the Company shall at Permittee's discretion request such additional space.

7.6 INCOME TAXES

As set forth in the Company's Electric Rules, Preliminary Statement, Paragraph J, and as amended, the costs to be paid by Permittee to the Company as set forth in Section 7.4 above shall include a gross-up amount for potential income tax liability of the Company for contributions in aid of construction (as used in Internal Revenue Code § 118(b) and similar

state legislation) arising from the acquisition and installation of new or replacement poles and/or anchors, which gross-up amount shall be equal to the gross-up percentage for such contributions set forth in the Company's current filed electric tariffs.

7.7 RESTORATION OF SERVICE

In the case of any incident whereby both the Company's electrical service capacity and Permittee's telecommunications capacity are adversely affected, restoration of Permittee's Attachments and /or Permittee's capacity shall at all times be subordinate to restoration of the Company's electrical service capacity, unless otherwise agreed in advance by both Parties. Nonetheless, the Company shall permit Permittee to make repairs to restore its Attachments and/or its capacity, as long as such restoration efforts do not interfere with the Company's restoration activities.

7.8 RECLAMATION OF THE COMPANY UNDERGROUND FACILITIES

[Intentionally omitted.]

ARTICLE VIII ATTACHMENT FEES

8.1 ANNUAL ATTACHMENT FEES

Prior to attaching to the Company Overhead Facilities, Permittee shall pay to the Company an Attachment fee(s) at the applicable rate set forth in Exhibit B to this Agreement for each Attachment authorized under Exhibit A. Subject to the Company's reservations stated in this section, Attachment fees will be calculated annually using the formula set forth in **Exhibit B**. Permittee shall pay that fee for each Attachment initially installed, regardless of size, attachment type or duration. The parties agree in good faith to meet and confer to modify these Attachment fees if any rules, regulations or orders of the CPUC, or a court of law, modify the fee structure imposed by Rule VI and the definition of "*annual cost of ownership*" in Rule II, Section I. of CPUC Decision 98-10-058, dated October 22, 1998 ("**fee restraints**"). Modification of these Attachment fees pursuant to this section shall be effective beginning with the most recent annual period preceding the date when the Company is allowed to charge Attachment fees greater than the fee restraints.

8.2 UNAUTHORIZED ATTACHMENTS

Upon request of the Company, Permittee shall provide written evidence of Attachment authorization for any Company Facilities on or in which the Permittee has installed an Attachment. If Permittee cannot provide such evidence of Attachment authorization, Permittee shall pay to the Company a penalty of Five Hundred Dollars (\$500.00) or as may be allowed under any applicable regulations in effect at that time, for each unauthorized Attachment made after October 22, 1998, unless the Company determines in its sole and absolute discretion that any such unauthorized Attachments were made accidentally by Permittee in good faith. The amount of the penalty authorized in this Agreement shall be subject to such additional penalties as may be authorized under any applicable regulations in effect at the time of the installation. Any unauthorized attachments made prior to October

22, 1998 shall be subject to such penalties authorized under any applicable regulations and/or agreements in effect at the time of the installation. However, in no event will Permittee be relieved from the obligation of paying Attachment fees to the Company from the date of Permittee's original attachment. The unauthorized Attachment(s) shall then be subject to all the terms of this Agreement. If payment is not received within thirty (30) days of invoice date, the Company may invoke rights under Article X, Termination, and remove Permittee's Attachments from the Company Facilities.

All attachments on service/clearance poles that the Permittee has not obtained written authorization in accordance with Section 3.2 of this Agreement shall be treated as an unauthorized attachment. All new facilities, rebuild of existing facilities or overlash to existing cables on the Company Facilities that the Permittee has not obtained written authorization in accordance with Section 3.1.b of this Agreement shall be treated as an unauthorized attachment.

ARTICLE IX DISPUTE RESOLUTION

9.1 MEDIATION

The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between a representative designated by the Company Vice President empowered to resolve the dispute and an executive of similar authority of the Permittee. Either Party may give the other Party written notice of any dispute. Within twenty (20) days after delivery of the notice, the executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) of the first meeting, either Party may initiate a mediation of the controversy in accordance with the Commercial Mediation Rules of the American Arbitration Association.

All negotiations and any mediation conducted pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and which is incorporated herein by reference.

Each Party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.

9.2 INJUNCTION

Notwithstanding the foregoing provisions, a Party may seek a preliminary injunction or other provisional judicial remedy if in its judgment such action is necessary to avoid irreparable damage.

ARTICLE X TERMINATION

10.1 TERMINATING

(a) Subject to the time frames set forth in Section 12.1, if Permittee **(i)** fails to make any payment due within the time frame specified or otherwise comply with any material term or condition of this Agreement; or **(ii)** fails to obtain or maintain the appropriate CPCN from the CPUC; or **(iii)** installs or maintains any Attachments to Company Facilities used in connection as a CMRS provider **(iv)** fails to take reasonable steps to resolve any issue arising under Section 3.3 of this Agreement; **(v)** fails to maintain the insurance and bond requirements in compliance with Articles VI and XI of this Agreement; or **(vi)** fails to comply with the material requirements of this Agreement, the Company, at its sole discretion, upon thirty (30) days written notice to Permittee (or such shorter period of time as may be determined by the Company in order to comply with a notice from a Granting Authority or under law, if applicable), may terminate this Agreement without further liability any permission granted to Permittee as to all or any portion of those facilities which are the subjects of (i) through (vi) above, and Permittee shall immediately relinquish use of the Company Facilities and remove its Attachments from the Company Facilities in accordance with this Agreement prior to the effective date of termination. Notwithstanding the above, if within the period described above, Permittee obtains an order from a court or regulatory agency with jurisdiction over the challenge, dispute or claim against the Company's authority to grant this license, which order allows Permittee to remain attached to the Company Facilities, Permittee shall be allowed to remain on or in the Company Facilities under the term of that order, until a final decision or judgment is made at the highest level desired by Permittee. In the event of such contest, Permittee shall indemnify and hold the Company harmless from any expense, legal action, or cost, including reasonable attorneys' fees, resulting from the exercise of Permittee's right to contest the actions of a Granting Authority under this Section 10.1.

(b) This Agreement shall also terminate in whole or in part, upon the happening of any of the following events:

- (1) at the option of either Party, upon the termination or abandonment by Permittee of the use of all of the Permittee's Attachments. If less than all of Permittee's attachments are abandoned or terminated, the Company shall have the option of terminating its permission under this Agreement for only the Attachments abandoned or terminated;
- (2) at the option of the non-defaulting Party and without limiting the rights or remedies of the non-defaulting party, upon a breach or default by the other party of any material obligation hereunder and the continuance thereof following the expiration of the applicable remedy period;

- (3) upon the written mutual agreement of the Parties; or
- (4) in accordance with the provisions of Section 2.1, if the Company or the CPUC invoke the provisions of G.O. 69-C.

(c) Upon termination of this Agreement for all or any portion of the Company Facilities, which are used by Permittee, Permittee shall immediately relinquish use of those Company Facilities and promptly remove its facilities or the Company may remove Permittee's Attachments from the Company Facilities at Permittee's expenses.

ARTICLE XI FAITHFUL PERFORMANCE BOND

11.1 SURETY PERFORMANCE BOND; LETTER OF CREDIT

To cover the faithful performance by Permittee of its obligations under this Agreement, Permittee shall be required to furnish (i) a valid performance bond or (ii) an unconditional irrevocable letter of credit issued by a financial institution acceptable to the Company. Said bond or letter of credit shall be in such form approved in writing by the Company and in such amount as the Company shall specify from time to time based on the financial exposure caused by the Permittee's Attachment to the Company to be maintained in full force and effect throughout the term of this Agreement. The amount of said bond or letter of credit shall be initially set at Fifty Thousand Dollars (\$50,000). Permittee shall furnish such performance bond or letter of credit on or before the effective date of this Agreement, and remain in full force thereafter for a period of one year. Said bond or letter of credit shall provide ninety (90) days advance written notice to the Company of expiration, cancellation or material change thereof. Said bond or letter of credit will automatically extend for additional one-year periods from the expiration date, or any future expiration date, unless the surety or financial institution provides to the Company, not less than ninety (90) days' advance written notice, of its intent not to renew such bond or letter of credit. The liability of the surety under said bond or the financial institution under said letter of credit shall not be cumulative and shall in no event exceed the amount as set forth in this bond or letter of credit, in any additions, riders, or endorsements properly issued by the surety or the financial institution as supplements thereto. Failure of Permittee to obtain a bond or letter of credit as specified will be cause to terminate this Agreement.

If the surety on the bond or financial institution issuing the letter of credit should give notice of the termination of said bond or letter of credit and if Permittee does not reinstate the bond or letter of credit or obtain a bond or letter of credit from another surety of financial institution that meets the requirements of this Section 11.1 within fifteen (15) days after written notice from the Company, the Company may by written notice to Permittee, terminate this Agreement and/or revoke permission to use the Company Facilities covered by any or all applications submitted by Permittee hereunder, and Permittee shall remove its

Attachments from the Company Facilities to which said termination applies within thirty (30) days from such notification.

ARTICLE XII MISCELLANEOUS

12.1 BREACH

Permittee and the Company agree that neither shall proceed against the other for breach or default under this Agreement by mediation or otherwise before the offending Party has had notice of and a reasonable time and opportunity to respond to and/or cure any breach or default. For purposes of this Agreement, a reasonable time to cure any breach or default shall be deemed to be thirty (30) days after notice, unless for safety, or legal reasons or Permittee's use interferes with the Company's ability to serve core utility customers, and fewer than thirty days are required. This section does not supersede the rights and obligations of the Parties under Section 4.1 (c) for "Hazardous Conditions." If a Party claims that more than thirty (30) days are reasonable to cure a breach, that Party shall have the burden of proving the reasonableness of the claim for more than thirty days. If such breach or default cannot be cured within such thirty day period, and the defaulting party has promptly proceeded to cure the same and to prosecute such cure with due diligence, the time for curing the breach shall be extended for such period of time as may be reasonably necessary to complete such cure.

12.2 BANKRUPTCY OF PERMITTEE

(a) The occurrence of any of the following shall constitute a default which may be a basis for termination of this Agreement:

- (1) Permittee files for protection under the Bankruptcy Code of the United States or any similar provision under the laws of the State of California; or
- (2) Permittee has a receiver, trustee, custodian or other similar official appointed for all or substantially all of its business or assets; or
- (3) Permittee makes an assignment for the benefit of its creditors.

(b) Assignment of Agreement

Any person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Agreement on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the Company an instrument confirming such assumption.

12.3 NOTICES

Any notice given pursuant to this Agreement given by a Party to the other, shall be in writing and given (with proof of delivery or proof of refusal of receipt) by letter mailed, hand or personal delivery, or overnight courier to the following:

If delivered to the Company by U.S. mail and express mail:

Manager, Electric Distribution Maintenance
Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105-1814

If delivered to Permittee by U.S. mail and express mail:

ABCDEFGHIJKL MNOPQRSTUVWXYZ ABCDEFGHIJK Cable Company
123. Main Street,
Anycity, CA 90000

or to such other addresses as either Party may, from time to time, designate in writing for that purpose.

Notices shall be deemed given **(i)** when received in the case of hand or personal delivery, **(ii)** three days after mailing by United States mail as provided above, or **(iii)** the next business day in the case of reliable overnight courier. For routine notice changes, proof of delivery is not required. By mutual agreement facsimile notices may be used for routine notice changes.

12.4 APPLICABLE LAW

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California, exclusive of conflicts of laws provisions.

12.5 CONFIDENTIAL INFORMATION

If either Party provides confidential information to the other, it shall be in writing and clearly marked as confidential. The receiving Party shall protect the confidential information from disclosure to third parties with the same degree of care afforded its own confidential and proprietary information, except that neither Party shall be required to hold confidential any information which becomes publicly available other than through the recipient, which is required to be disclosed by a governmental or judicial order, which is independently developed by the receiving Party, or which becomes available to the receiving Party without restriction from a third party. These obligations shall survive expiration or termination of this Agreement for a period of two (2) years.

12.6 FORCE MAJEURE

Neither Party shall be liable for any failure to perform this Agreement when such failure is due to "force majeure." The term "force majeure" means acts of God, strikes, lockouts, civil

disturbances, interruptions by government or court orders, present and future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, inability to secure or delay in securing labor or materials (including delay in securing or inability to secure materials by reason of allocations promulgated by authorized governmental agencies), landslides, lightning, earthquakes, fire, storm, floods, washouts, or any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the Party claiming "force majeure." The "force majeure" shall, so far as possible, be remedied with all reasonable dispatch. The settlement of strikes or lockouts or industrial disputes or disturbances shall be entirely within the discretion of the Party having the difficulty. The Party claiming any failure to perform due to "force majeure" shall provide verbal notification thereof to the other Party as soon as practicable after the occurrence of the "force majeure" event. Force Majeure shall not excuse Permittee's obligation to make payment for its Attachments except that if the event of force majeure remains uncured for a period of thirty (30) days and renders the Attachments unusable, then Permittee shall be excused from its rental payment obligation as to the affected Attachments throughout the duration of the event of force majeure. If the Company is the party claiming force majeure and the event of force majeure prevents restoration of Permittee's previously authorized attachments within six (6) months of the force majeure event, then the facilities shall be deemed to be discontinued and the provisions of Section 7.1 of this Agreement shall apply.

12.7 SEVERABILITY

The invalidity of one or more clauses, sentences, sections or articles of this Agreement shall not affect the validity of the remaining portions of the Agreement so long as the material purposes of this Agreement can be determined and effected.

12.8 REMOVAL OF ATTACHMENTS

Upon any expiration or termination, Permittee shall relinquish use of the Company Facilities and remove its Attachments from the Company Facilities in accordance with this Agreement prior to the effective date of expiration or termination at Permittee's sole expense. If Permittee fails to remove the Attachments by the expiration of this Agreement or as may be required by the Company within the time period designated by notice pursuant to Article VII or otherwise required by this Agreement, the Company shall be entitled to consider Permittee's Attachments abandoned as set forth in Section 12.9 below.

12.9 ABANDONMENT

If Permittee fails to use its Attachments for any period of one hundred and eighty (180) days, the Company shall provide Permittee written notice of its intent to treat such Attachments as abandoned and remove the Attachments at Permittee's sole risk and expense. If Permittee identifies such Attachments as abandoned or fails to respond to such notice within thirty (30) days, Permittee shall be deemed to have abandoned such Attachments which abandonment shall terminate all rights of Permittee as to the abandoned Attachment. Upon abandonment by Permittee, the Company shall have the right to retain such Attachments as the Company's own, and Permittee agrees to reimburse the Company for its expense. This provision excludes service drops that comply with the requirements of Section 4.1. Abandonment shall not relieve Permittee of any obligation, whether of indemnity or otherwise, accruing prior to

completion of such removal by the Company or which arises out of an occurrence happening prior thereto.

12.10 ADDITION OF NEW POLES

Except for any poles added under the conditions of Article VII, the Company will not add new poles to existing distribution facilities or build new distribution facilities for the sole purpose of accommodating an Attachment unless the Permittee agrees to reimburse the Company for the full cost of the new Company Facilities.

12.11 LIENS

Permittee and its contractors shall keep the Company Facilities free from any statutory or common law lien arising out of any work performed, materials furnished or obligations incurred by Permittee, its agents or contractors. Permittee agrees to defend, indemnify and hold the Company harmless from and against any such liens, claims or actions, together with costs of suit, and reasonable attorneys' fees incurred by the Company in connection with any such claim or action. In the event that there shall be recorded against said Company Facilities any claim of lien arising out of any such work performed, materials furnished or obligations incurred by Permittee or its contractors and such claim of liens not removed within ten (10) days after notice is given by the Company to Permittee to do so, the Company shall have the right to pay and discharge said lien without regard to whether such lien shall be lawful, valid or correct.

12.12 JOINT USE AGREEMENT

This Agreement shall be subject to rights which may be exercised by other companies under joint use or joint ownership agreements which the Company executed prior to this Agreement.

12.13 SURVIVABILITY

Any expiration or termination of Permittee's rights and privileges shall not relieve the Permittee of any obligation, whether indemnity or otherwise, which has accrued prior to such termination or completion of removal of Permittee's Attachments.

12.14 NO THIRD PARTY BENEFICIARIES

All of the terms, conditions, rights and duties provided for in this Agreement are and shall always be, solely for the benefit of the Parties. It is the intent of the Parties that no third party (including customers of either Party) shall ever be the intended beneficiary of any performance, duty or right created or required pursuant to the terms and conditions of this Agreement.

12.15 HAZARDOUS MATERIALS

The California Health and Safety Code requires businesses to provide warnings prior to exposing individuals to material listed by the Governor as chemicals "known to the State of California to cause cancer, birth defects or reproductive harm." The Company uses chemicals on the Governor's list at many of its facilities and locations. Accordingly, in

performing the work or services contemplated in this Agreement, Permittee, its employees, agents and subcontractors may be exposed to chemicals on the Governor's list. Permittee is responsible for notifying its employees, agents and subcontractors that work performed hereunder may result in exposures to chemicals on the Governor's list. The Company will provide Permittee upon request with a copy of a Materials Safety Data Sheet for every Hazardous Chemical on the Company Right-of-Way.

12.16 WAIVER

The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain in full force and effect.

12.17 MARK AND LOCATE RESPONSIBILITY

Permittee using the Company Underground Facilities, shall be responsible for marking and locating their equipment in accordance with State of California Government Code Section 4216 and shall become a member U.S.A (Underground Service Alert) and shall maintain membership for the duration of this Agreement.

12.18 PAYMENTS

Unless otherwise specified in this Agreement, Permittee shall make all payments to the Company within thirty (30) days of receipt of the invoice to;

For U.S. mail and express mail:

Pacific Gas & Electric Company
P.O. Box 997300
Sacramento, CA 95899-7300

12.19 DEFINITIONS

Capitalized terms used are defined in this Agreement shall have the meanings set forth herein.

12.20 TITLES AND HEADINGS

The table of contents, titles and headings of Articles and Sections of this Agreement are inserted for the convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

12.21 NO STRICT CONSTRUCTION

The Parties have participated jointly in the negotiation and execution of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement or any of the documents delivered pursuant hereto, this Agreement and such documents shall be construed as if jointly agreed upon by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement or such documents.

12.22 ENTIRE AGREEMENT

This Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments or understanding with respect to the subject matter hereof and may be amended only by a writing signed by both Parties.

**ABCDEFGHIJK
LMNOPQRSTUVWXYZ
ABCDEFGHIJK Cable
Company**

**PACIFIC GAS AND
ELECTRIC
COMPANY**

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPLICATION FOR POLE & CONDUIT ATTACHMENT
TELCO CONTACT PERMIT



WM Notification No. _____

PART 1 REQUEST FOR ACCESS BY APPLICANT (To PG&E)

PG&E – Joint Utilities Department
850 Stillwater Rd
West Sacramento, CA 95605

Date _____
Overhead License Agreement _____
Prior Agreement Number _____
Application Number _____
Applicant Job Number _____

Permittee Company _____

In accordance with the executed agreement between the Permittee and PG&E, we hereby request access to poles and/or conduits/ducts, located at _____ in the City of _____, as described in the attached drawings.

Requestor Company _____ Phone _____

Address _____

Requestor Authorization Signature _____

Requestor Authorization Name _____ Title _____

ATTACHMENTS APPLIED FOR UNDER THIS APPLICATION

No. of Poles Contacted7 (new) _____ No. of Anchors Contacted (new) _____

No. of Risers Installed (new) _____ No. of Poles Cable Rebuild7 (exist6) _____

No. of Poles Overlashed7 (exist6) _____ Cable size over 2” (diameter in inch) _____

Total vertical feet of Pole used for Telco equipment (Power Supply) ____ Total feet of Underground Conduit used ____

PART 2 FINAL AUTHORIZATION BY PG&E (To Permittee)

You are hereby authorized for installation.

PG&E Authorization Signature _____ Date _____

PG&E Authorization Name _____ Title TELCO PROJECT MANAGER

PG&E Job No(s) _____ Contact Permit No. _____

PART 3 NOTICE OF COMPLETION BY APPLICANT (To PG&E Area Telco Project Manager with 10 days after completion)

We hereby notify you that the work authorized above has been completed and is ready for your inspection.

Permittee Authorization Signature _____ Date _____

Permittee Authorization Name _____ Title _____

Notes: _____

- 1. PART (1) & (3) to be completed by applicant, part (2) to be completed by PG&E.
2. PG&E’s authorization must be secured before the Permittee’s facilities are attached.
3. This application shall be submitted to PG&E for all new attachments and rebuilds, overlap or modification of all existing facilities.
4. At PG&E request, Permittee shall be able to provide the authorized Telco Contact Permit (this form) for all attachment.
5. The Permittee shall exercise the access rights to the pole(s) and/or conduit(s) within 90 days of the authorization in Part 2.
6. Applicant to provide Contact Permit Number for existing facilities (see Note 4).
7. A maximum of 25 poles can be applied for on a singular Exhibit A Application.



EXHIBIT B POLE AND CONDUIT ATTACHMENT FEE

I. POLE ATTACHMENT RATE CALCULATION MODEL

The pole attachment rates are calculated based on the depreciation accrual rate schedule submitted to the CPUC, Energy Division annually. The previous year's submittal is used to calculate the pole attachment rate for the following year (i.e. 2003 schedule submitted in 2004 determines rental rate for 2005).

A. Historical Net Cost of a Bare Pole (Account 364 Only, Previous Year):

$$\frac{\text{Account 364 - Deprn Reserve - Accum Def Income Taxes - 15\% of Net Pole Investment}}{\text{Number of Equivalent Poles}}$$

B. Depreciation Expense (Account 364 Only, Previous Year) % :

$$\text{Deprn. Rate for Gross pole Invest.} \times \frac{\text{Gross Pole Invest}}{(\text{Net Pole Invest} - \text{Def. Inc. Tax})}$$

C. Administrative Expense % (Total Electric, Previous 5 Year Average):

$$\frac{\text{Electric A \& G Expenses}}{\text{Gross Plant - Depr Reserve - Accum Def. Income Taxes}}$$

D. Maintenance & Operating Expenses % (Electric, Previous 5 Year Average):

$$\frac{[\text{Account 593}] (\text{Electric Overhead Only})}{[\text{Invest} - \text{Depr Reserve} - \text{Accum Def Income Taxes}] (\text{Electric Overhead \& Underground})}$$

E. Normalized Taxes % (Company Total, Previous 5 Year Average):

$$\frac{\text{Accounts } (408.1 + 409.1 + 410.1 + 411.4) - 411.1}{\text{Gross Plant - Depr Reserve - Def Income Taxes}}$$

F. Total Operating Cost for Poles:

$$F = A * [B + C + D + E]$$

G. Annual Rental Rate per foot (or one attachment):

$$G = 7.4\% \text{ of Total Operating Cost for Poles } (F) = 0.0740 * F$$

II. CONDUIT ATTACHMENT RATE CALCULATION MODEL

[Intentionally Omitted]

EXHIBIT C

**OVERHEAD FACILITIES
ESTIMATED UNIT COST
MAKE READY & REARRANGEMENT WORK**

Process Fees (per Application Package)

Year	2018	2019	2020	2021	2022
Process Fees	\$ 231	\$ 240	\$ 250	\$ 260	\$ 270

Engineering Fees (estimate) actual costs will be billed

Year	2018	2019	2020	2021	2022
Engineering Hourly Rate	\$ 208	\$ 216	\$ 225	\$ 234	\$ 243
Pole loading Calc/Pole	\$ 312	\$ 325	\$ 338	\$ 351	\$ 365
Pole Replacement Estimating/Pole	\$ 1,665	\$ 1,732	\$ 1,801	\$ 1,873	\$ 1,948

Construction Facility Rearrangements Cost \$/Crew day

Year	2018	2019	2020	2021	2022
4-man Construction Crew	\$ 7,488	\$ 7,788	\$ 8,099	\$ 8,423	\$ 8,760

Construction figures do not include engineering. Connection fee for OH svc 1 employee, up to 1 hour travel time.

4-man crew figures are based on 8-hour work day.

Construction Pole Replacement \$/pole (estimate) actual costs will be billed

Year	2018	2019	2020	2021	2022
City and County of San Francisco (Area 1)	\$ 23,748	\$ 24,698	\$ 25,686	\$ 26,713	\$ 27,782
Bay Area/Peninsula (San Mateo and Santa Clara Counties) (Areas 1, 3)	\$ 23,300	\$ 24,232	\$ 25,201	\$ 26,209	\$ 27,258
Bay Area/East Bay (Alameda, Contra Costa and Marin Counties) (Areas 2, 7)	\$ 20,300	\$ 21,112	\$ 21,956	\$ 22,835	\$ 23,748
Outside Bay Area (Area 3 South, Areas 4, 5, 7)	\$ 16,500	\$ 17,160	\$ 17,846	\$ 18,560	\$ 19,303
Transmission Poles (All Areas)	\$ 25,000	\$ 26,000	\$ 27,040	\$ 28,122	\$ 29,246

Rates are based on PG&E's actual system average pole replacement cost. In heavy vegetation areas, expect significant increase.

Project Management

Year	2018	2019	2020	2021	2022
Project Management Hourly Rate	\$ 208	\$ 216	\$ 225	\$ 234	\$ 243

All dollar figures are based on PG&E's actual standard labor cost.

2019-2022 rate is forecasted to include 4% escalation rate.

EXHIBIT E
NOTIFICATION OF TELCO CONTACT REMOVAL

Pacific Gas & Electric Company
 Area _____, _____ Division

Attention: _____

The attachments on the PG&E facilities designated below, as covered by the referenced Telco Contact Permit No issued in accordance with the terms and condition of the Contract Agreement Number _____ between _____ (Permittee) and Pacific Gas & Electric Company has been removed or the Permittee has become the Tenant of the Joint Owner as indicated below.

Telco Contact Permit No.:			
Location of Structure(s) as identified in the attached drawing(s):			
Total Contacts Removed:		Date Removed:	
<input type="checkbox"/> Permittee has become the Tenant of the Joint Owner as indicated below:			
Name of Joint Owner:			
Total Contacts:		Effective Date:	

Permittee's Authorized Representative:

Signature: _____ Date: _____
 Name: _____ Title: _____
 Company: _____ Phone: _____

TELCO CONTACT REMOVAL ACKNOWLEDGED

- PG&E has verified that the Permittee has removed their facilities from the above-identified structure(s) and accordingly updated the applicable records.
- PG&E has received confirmation that the Permittee has become the Tenant of the Joint Owner for the above-identified structure(s) and accordingly updated the applicable records.

PG&E's Authorized Representative:

Signature: _____ Date: _____
 Name: _____ Title: _____
 Department: _____ Phone: _____

cc: Permittee
 Electric Distribution Maintenance – Joint Utility Group
 Joint Owner _____ (if applicable)

EXHIBIT F NOTIFICATION OF COMPANY FACILITY CHANGES

Permittee: _____ PG&E Contact Permit No.: _____
 Representative: _____ Company: _____
 Street: _____ Original Application No.: _____
 City: _____ Agreement Number: _____

PART 1 *Notification of Discontinuation of PG&E Structures*

In accordance with Section 7.1 of the above referenced agreement, you are hereby notified that PG&E on or after _____ will discontinue the use of the structures located at _____

Your facilities are identified to be on these structures. Please contact us by _____, so we can arrange for transfer of your facilities or if you are interested in purchasing of PG&E's discontinued structures.

PART 2 *Notification of Relocation of PG&E Structures*

In accordance with Section 7.2 of the above referenced agreement, you are hereby notified that PG&E on or after _____ will relocate its structures from _____ to _____

Your facilities are identified to be on these structures. Please contact us by _____, so we can arrange for transfer of your facilities to the relocated PG&E structures.

PART 3 *Notification of Removal of PG&E Structures*

In accordance with Section 7.3 of the above referenced agreement, you are hereby notified to remove your facilities from PG&E structures located at _____ by _____

Your existing facilities cannot be relocated or rearranged to create the required space or capacity necessary for PG&E's use.

PART 4 *Notification of Rearrangement/Replacement of PG&E Facilities*

In accordance with Section 7.4 of the above referenced agreement, you are hereby notified that PG&E on/during/after _____ (with future notice of peculiar date to be provided by PG&E Construction) will rearrange or replace its structures located at See attached map

Your facilities are identified to be on these structures. Please contact us by _____, so we can arrange for transfer of your facilities or rearrangement of your facilities on PG&E's structure.

PG&E Job Owner (Name): _____ Title: _____
 Address: _____ Phone: _____
 Authorization (Signature): _____ Date: _____

(End of Attachment 2)

ATTACHMENT 3



**Overhead Facilities
License Agreement**

between

Pacific Gas and Electric Company

and

Crown Castle Fiber LLC

Agreement No. 2016-xx-xxx

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- Exhibit B** – POLE AND CONDUIT ATTACHMENT FEE
- Exhibit C** – OVERHEAD FACILITIES ESTIMATED UNIT COST MAKE READY AND REARRANGEMENT COST
- Exhibit D** – [INTENTIONALLY OMITTED]
- Exhibit E** – NOTIFICATION OF TELCO CONTACT REMOVAL
- Exhibit F** – NOTIFICATION OF COMPANY FACILITIES CHANGES

These Exhibits are all single page documents that are part of this Agreement and are attached separately. The exhibits referenced within this Agreement may be revised or converted to an electronic on-line application in the future, which will be deemed an equivalent means of requesting access, providing notification and coordination of the attachments. The Permittee shall use the latest issued exhibits identified by the Company when requesting access, providing notification and coordination of their activities.

OVERHEAD FACILITIES LICENSE AGREEMENT

This Overhead Facilities License Agreement (“**Agreement**”) is entered into by and between Pacific Gas and Electric Company (“**Company**”), a California corporation and Crown Castle Fiber, LLC a New York corporation (“**Permittee**”) (together, the Company and Permittee shall be referred to as the “**Parties**”), and in consideration of the mutual promises and agreements set forth herein, the Parties hereby agree as follows:

ARTICLE I SCOPE OF AGREEMENT

1.1 SCOPE OF LICENSE

The Company gives Permittee permission, on the terms and conditions stated herein, to install and maintain communications cables and related equipment (hereinafter sometimes collectively referred to as “**Pole Attachment(s)**” or “**Attachment(s)**”) in the space below that space assigned for use by electric supply circuits as set forth in General Order (G.O.) 95 of the California Public Utilities Commission (CPUC) on (i) distribution and transmission poles and anchors solely owned or jointly owned by the Company (collectively referred to as “**the Company Pole(s), Overhead Facilities, or the Company Facilities**”) The Company Overhead Facilities are located on rights-of-way (“**the Company Right-Of-Way**”) solely owned or jointly owned or otherwise held and maintained by the Company.

The Company Facilities to be accessed shall be identified by Permittee and submitted to the Company for authorization in the form set forth in Exhibit A.

The term “**Attachment**” shall mean, with respect to the Company Pole(s), a contact on a pole to accommodate or to support a single messenger /strand with single or multiple cables (with the associated guy wire) or piece of equipment (amplifier, power supply, switch and related communication equipment) utilizing one foot (1’-0”) or less of vertical pole space. Every additional foot of vertical pole space utilized by cable(s) or a piece of equipment will be considered an additional Attachment. The installation of a single guy wire attached to anchors associated with the Company Poles shall be considered an additional Attachment and is within this Agreement. The installation of risers (irrespective of length) shall be treated as one Attachment and subject to all provisions of this Agreement, except that risers shall not be subject to any attachment fees under Section 8.1.

The electric connection for power supplies shall be governed by the Company’s electric tariff and not by this Agreement. If any Attachments include metered or unmetered electrical equipment, Permittee shall notify the Company in writing to arrange for electric service and appropriate billing prior to using the Attachment.

1.2 EXHIBITS

The Exhibits referenced within this Agreement, including the Company’s estimated unit cost, may be updated or revised as to format and content, or converted to an electronic on-line application in the future by the Company upon a sixty (60) day notice to the Permittee, in a manner not inconsistent with the CPUC Decision 98-10-058, dated October 22, 1998. The

Permittee shall use the latest version of the Exhibits provided by the Company to meet the requirements of this Agreement.

1.3 THE COMPANY DISCLAIMER.

Permittee expressly acknowledges that the Company does not represent and warrant that the Company Right-of-Way, whether by easement, franchise, or other form of permission, is broad enough to permit Permittee's Attachments on the Company Facilities or for the exercise by Permittee of any other rights set forth in this Agreement. It shall be the sole responsibility and obligation of Permittee to secure any such further rights or permission for the placement and use of the Permittee's Attachments on the Company Facilities and the Company Right-of-Way as may be necessary, including obtaining any permits required by an authorized permitting agency under the California Environmental Quality Act. Permittee shall obtain any such necessary rights from Granting Authorities. "Granting Authority(ies)" means those persons or entities from whom the Company has received the Company Right-of-Way and includes both governmental and non-governmental entities and persons. This Agreement does not include a conveyance of any interest in real property or the Company Facilities, and Permittee agrees to never claim such interest.

1.4 ASSIGNMENT AND SUBLEASE.

This Agreement and the rights, interests and obligations hereunder are being granted in reliance on the financial standing and technical experience of Permittee and are thus granted personally to Permittee and shall not be assigned or delegated, in whole or in part without the prior written consent of the Company, consent of which shall not be unreasonably withheld. Any attempt to assign or delegate without such consent shall be void. Notwithstanding the foregoing, this Agreement may be assigned or delegated in whole or in part by the Company or Permittee without the Other Party's consent for (i) assignments in connection with interests that arise by reason of any deed of trust, mortgage, indenture or security agreement granted or executed by such Party, (ii) assignments to Affiliates, where, in the absence of the other Party's consent thereto the assigning Party retains responsibility for the payment and performance of all of its obligations and liabilities hereunder, (iii) assignments by operation of law in connection with any merger or consolidation of a Party with or into any Person, whether or not the Party is the surviving or resulting Person, or (iv) assignments to a purchaser of all of the outstanding equity securities of, or substantially all of the assets of, either Party. Any assignment that does not comply with the provisions of this Section 1.4 shall be null and void, and the putative assignee shall have no right to attach to the Company Facilities.

Permittee shall not sublease any of the Company Facilities.

1.5 CERTIFICATION OF PERMITEE.

Permittee warrants it is either (a) a Cable TV company that provides cable service as defined in the Public Utility Code; and/or (b) a telecommunications carrier that has been granted certificates of public convenience and necessity (CPCN) from the CPUC. Permittee warrants that its certificate(s) authorizes it to use governmental Rights-of-Way for the purposes of this Agreement.

The Permittee also represents that it is an entity which is governed by CPUC Decision 98-10-058 and subsequent rulings applying to this decision, and as such has the right-of-way for nondiscriminatory access to the Company Facilities.

1.6 COMMERCIAL MOBILE RADIO SERVICE (CMRS)

Permittee further warrants that it is not entering into this Agreement for the purpose of providing a commercial mobile radio service (CMRS) as defined in the Federal Telecommunications Act of 1996. Permittee further warrants that it shall not install or maintain any Attachments (e.g., antennas or similar equipment) to Company Facilities used in connection as a CMRS provider. For purposes of this Agreement, the term CMRS includes the term “wireless” and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communication service, or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communication service, specialized mobile radio service, or a network radio access line.

ARTICLE II EFFECTIVE DATES OF AGREEMENT AS LICENSE

2.1 LICENSE

(a) This Agreement as a license is given pursuant to the authority of, and upon, and subject to, the conditions prescribed by G.O. 69-C of the CPUC, dated and effective July 10, 1985, which by this reference is incorporated herein. This license is effective the date it is signed and delivered by the Company, and will terminate based on any of the terms and conditions set forth in this Agreement. The Company Attachment rates will be calculated on a year-to-year basis, under the terms of Section 8.1. No Permittee use of any Company Facilities shall create or vest in Permittee any ownership or property rights herein; Permittee’s rights hereunder shall be and remain a mere license, but subject to CPUC Decision 98-10-058 dated October 22, 1998, as amended as of the effective date of this Agreement.

(b) Pursuant to G.O. 69-C this license is conditioned upon the right of the Company, either upon order of the CPUC, or upon the Company’s own decision to commence or resume the use of the property in question whenever, in the interest of the Company’s core utility service to its patrons or customers, it shall appear necessary or desirable to do so. The Company will use commercially reasonable efforts to accommodate relocations, rearrangements and replacements under Sections 7.2 and 7.4.

(c) Notwithstanding anything in this Agreement to the contrary, including Article IX (“Dispute Resolution”), interpretation of the meaning and effect of G.O. 69-C in this Agreement shall be in the exclusive jurisdiction of the CPUC.

2.2 CHALLENGE TO AGREEMENT

If a Granting Authority, in any forum, in any way challenges, disputes, or makes a claim against the Company’s authority to grant this license, the Company shall give Permittee reasonable notice of same. The Company reserves the right in its sole discretion to require Permittee to remove its Attachments from the Company Facilities which are the subject of the challenge,

dispute or claim, within thirty (30) days or less (as required by the Granting Authority or statute) of written notice from the Company. Permittee shall, upon such notice, relinquish use of the Company Facilities, and remove any Attachments promptly prior to the last date specified in the notice. Notwithstanding the above, if within the period described above, Permittee obtains an order from a court or regulatory agency with jurisdiction over the challenge, dispute or claim against the Company's authority to grant this license, which order allows Permittee to remain attached to the Company Facilities, Permittee shall be allowed to remain on the Company Facilities under the terms of that order, until a final decision or judgment is made at the highest level desired by Permittee. In the event of such contest, Permittee shall indemnify and hold the Company harmless from any expense, legal action, or cost, including reasonable attorneys' fees, resulting from the exercise of Permittee's right to contest under this Section at Permittee's sole expense.

2.3 TERM OF AGREEMENT

This Agreement is for a term of **five (5) years** from the date it is signed by the Company. The Company Attachment rates will be calculated on a year-to-year basis, under the terms of Section 8.1.

ARTICLE III PLACING ATTACHMENTS

3.1 PROCESS FOR ATTACHING TO THE COMPANY FACILITIES.

(a) Request For Information

Permittee may, from time to time, submit a written request for information about the availability of space on the Company Facilities. The request for information must include the proposed route. Permittee agrees to pay in advance all of the Company's estimated unit costs currently in effect to respond to the request for information. The total cost for providing the information is reconciled based on actual cost at the end of the project. The Company's estimated unit costs are set forth in Exhibit C.

(b) Request For Access

If Permittee desires to add new facilities, rebuild existing facilities or overlash to existing cables on the Company Facilities, it must submit a request for access using Exhibit A and include the following information for the identified facilities:

- **For Company Pole Attachments** – grade and size of attachment(s), size of cable bundle, average span length, wind loading of their equipment, vertical loading, and bending moments.
- **For Underground Facilities** – [Intentionally omitted.]

Using this data the Company will do engineering evaluations to determine rearrangement, (including replacement, if necessary) or modifications of the Company Facilities to accommodate the attachment. Permittee shall not install any Attachments on or in the Company

Facilities without first securing the Company's written authorization, unless 45 days have run from the time of request of access and Company has provided no response.

Permittee agrees to pay in advance all of the Company's estimated unit costs to respond to the request for access. The cost is reconciled based on actual cost at the end of the project. The Company's estimated unit costs are set forth in Exhibit C.

Alternatively, if the Permittee meets the qualifications established by the Company guidelines, it may at its expense do the engineering evaluations to determine and identify the required make ready work. The Company reserves the right to check the accuracy of the Permittee's engineering evaluations and if relevant errors are found, the Permittee shall be notified and advised to resubmit its request with accurate information. If relevant errors result in a request for access that results in an infraction of the applicable codes and standards, Permittee agrees to reimburse the Company for the actual cost of checking the Permittee's initial and resubmitted engineering evaluation.

(c) Make Ready Work

Make Ready work is the process of completing rearrangements on or in Company Facilities to create space for the Permittee's attachments, or replacing the existing facilities.

Permittee agrees to pay in advance all of the Company's estimated unit costs to respond to and perform the make ready work at Permittee's expense. The Company cost is reconciled based on actual cost at the end of the project. The Company's estimated unit costs are set forth in Exhibit C. Alternatively, the Company will at its discretion allow Permittee to perform the make ready work at Permittee's expense.

3.2 ADDITIONAL ATTACHMENTS

Permittee shall not install any additional Attachments on or in the Company Facilities without first securing the Company's written authorization, unless 45 days have run from the time of request to install and Company has provided no response. The Application for Pole and Conduit Attachment Contact Permit attached as Exhibit A shall be used for all requests for attachments to the Company Facilities.

Notwithstanding this, for service drop attachments, the Permittee may attach a single cable to provide service to a customer on the closest available service/clearance pole without prior written authorization by the Company. Within ten (10) days of any such installation, the Permittee shall submit an application to the Company using the Pole and Conduit Attachment Contact Permit attached as Exhibit A with Parts 1 & 3 completed and the installation date noted. Each application for service/clearance pole(s) shall include supporting documentation certifying that the Permittee has evaluated each attachment(s) prior to installation and concluded that the attachment conforms with all applicable codes and standards. Upon review, in the event that the Company determines the attachment(s) is noncompliant, the Permittee shall take any actions necessary to correct the condition and that Permittee agrees to be bound by the terms of the License Agreement.

3.3 NO THIRD-PARTY ATTACHMENT

Permittee shall not, without the prior consent in writing of the Company, assign, transfer, sublet or permit any other person or entity to over lash or to make any physical contact or attachment to any of Permittee's facilities which are supported by or placed in or on the Company Facilities. Any attempted assignment in contravention of this Section shall be null and void and shall be grounds for the Company to terminate this Agreement. Subject to the foregoing, and Section 1.4, Assignment, this Agreement shall inure to the benefit of and be binding upon the respective heirs, administrators, executors, successors and assigns of the parties hereto.

3.4 INCREMENTAL PROPERTY RIGHTS, AND COSTS:

(a) If any time during this Agreement a Granting Authority of the Company makes a demand for additional compensation or indicates its intent to reopen, renegotiate or terminate the Company's franchise, easement, license or other agreement establishing the Company's rights in the Company Right-of-Way as a direct result of the existence of this Agreement, the Company shall promptly notify Permittee. After conferring with the Company and allowing the Company an opportunity to resolve the issue, Permittee may attempt at Permittee's expense to resolve the issue with the Granting Authority through negotiation or settlement. Any decision to commence litigation on behalf of or in the name of the Company shall be in the sole discretion of the Company, and any subsequent litigation, whether brought by the Company at Permittee's request or by such third party Granting Authority, shall be conducted at Permittee's expense, but under the Company's direction and control with respect to any issues materially affecting the Company's rights in the Company Right-of-Way. If the dispute is resolved through negotiation or settlement approved by Permittee (which approval will not be unreasonably withheld), and such resolution requires the payment of additional consideration by the Company, Permittee shall reimburse the Company for the amount of such additional consideration, to the extent such amount is due to Permittee's presence on or in the Company Facilities. If the dispute is resolved through litigation in accordance with the foregoing and the judgment resulting there from requires the payment of additional consideration by the Company, Permittee shall reimburse the Company for the amount of such additional consideration to the extent such amount is due to Permittee's presence on or in the Company Facilities. If Permittee possesses the power of eminent domain within the relevant jurisdiction, Permittee shall have the right, in its sole discretion, independently of the Company to seek resolution of such a dispute by exercising such power of eminent domain, provided that Permittee shall pay all costs of such exercise. Permittee's obligation to reimburse the Company for the amounts of additional compensation due to Granting Authorities shall survive this Agreement.

(b) Notwithstanding the foregoing, the Company after conferring with Permittee at any time and in the Company's sole discretion, may require that Permittee discontinue such attempts to resolve issues with a particular governmental Granting Authority by litigation or otherwise; provided that, such requirement of the Company notwithstanding, Permittee may still continue to attempt to resolve such issues independently of the Company, by litigation or otherwise, so long as the Company is not named, joined or otherwise included as a party or principal in any such litigation or other attempt; and provided further that the foregoing shall not be deemed to prohibit Permittee from exercising any eminent domain rights that Permittee is authorized to pursue within the relevant jurisdiction.

3.5 INNER DUCT INSTALLATION

[Intentionally omitted.]

ARTICLE IV COMPLIANCE WITH LAW AND SAFETY REQUIREMENTS

4.1 APPLICABLE LAW AND REQUIREMENTS.

(a) The Permittee shall install and maintain the Attachments in conformity with all applicable laws, rules, and regulations of state and federal governments, agencies, and other governmental authorities, including, but not limited to, the rules, regulations, and orders of the CPUC, and in conformity with any safety standards or requirements as may be required or specified by the Company in its sole, good faith discretion, and including obtaining any permits required by an authorized permitting agency under the California Environmental Quality Act. All Company Pole Attachments must adhere to the clearance, separation, wind loading and dead-end tensions and other requirements of G.O. 95 of the CPUC or any successor and standards or requirements as may be specified by the Company.

(b) [Intentionally omitted.]

(c) The Permittee shall be solely responsible for the Attachments and shall take all necessary precautions during installation, and maintenance on or near the Company Facilities and the Company Right-of-Way so as to protect all persons and the property of the Company and others from injury and damage. Without limiting the foregoing and without assuming any obligation to maintain or monitor the Attachments, if the Company believes that Permittee's Attachments are in any way endangering any person or property, or are in noncompliance with any requirement referenced in Sections 4.1(a) or (b) above (a "**Hazardous Condition**"), the Company may, in its sole discretion, take any steps it deems necessary to remedy the Hazardous Condition; in which case Permittee shall be required to reimburse the Company for its actual costs. Notwithstanding the above, the Company shall take reasonable action to notify Permittee of any Hazardous Condition that does not require immediate attention, and where feasible, allow Permittee to correct the Hazardous Condition prior to any corrective action taken by the Company. In addition, if the Company notifies Permittee of any Hazardous Condition, Permittee shall remedy such condition promptly and in no case later than ten (10) days after receipt of such notice.

4.2 WORK ON COMPANY POLES

Permittee and its duly authorized contractors, agents and employees ("**Permittee's Workers**") shall avoid directly climbing the Company Poles and, if possible, use a ladder or bucket truck to perform work on the Company Pole Attachments. If the use of a ladder or bucket truck is not feasible, Permittee's workers shall exercise best efforts to make certain that the poles or structures are strong enough to safely sustain the workers' weight or the change in applied stress before climbing any poles or structures. **HOWEVER, IN NO EVENT SHALL PERMITTEE'S WORKERS CLIMB OR MAKE CONTACT WITH ANY PORTION OF THE ELECTRIC SUPPLY SPACE ON THE COMPANY POLES, INCLUDING WITHOUT LIMITATION THE WIRES, CABLES, RISERS, CONDUIT, CROSS ARMS**

AND OTHER APPLIANCES OR OTHER ELEMENTS OF THE COMPANY'S ELECTRICAL SUPPLY SYSTEM. All work on the Company Poles, or under this Agreement to be performed in the proximity of energized electrical conductors shall only be performed by qualified electrical workers in accordance with Title 8 -- State of California High Voltage Safety Orders as amended. Permittee shall provide the Company forty-eight (48) hours advance notice by calling the Company's designated representative before any work is performed on the Company Overhead Facilities when an electric service shutdown is not required. If an electric service shutdown is required, the Permittee shall arrange a specific schedule with the Company prior to performing any work on the Company Overhead Facilities. The Company reserves the right to an authorized employee or agent of the Company being present when the Permittee's employee's, agents, or contractors will be permitted to work in secured areas where safety or system reliability of the Company Overhead Facilities are an issue. Permittee agrees to pay the Company for such Company's employee based upon the Company's then current fully loaded labor rate.

4.3 ACCESS TO THE COMPANY UNDERGROUND FACILITIES

[Intentionally omitted.]

4.4 WORK PRIORITY

Permittee's workers shall conduct its work so as not to interfere or delay any other work performed or scheduled to be performed by the Company or its authorized agents on or near the Company Facilities or the Company Right-of-Way. The Company and its authorized agents shall have priority to access the Company Facilities and the Company Rights-of-Way at any time and Permittee's workers must adhere to any requests made by the Company to modify or interrupt the work of Permittee's workers.

4.5 MAINTENANCE OF ATTACHMENTS.

Permittee shall, at its sole expense, keep in good repair and maintain its Attachments. Permittee shall also operate and maintain its Attachments in conformity to CPUC General Orders, the National Electrical Safety Code, the National Electrical Code and all other applicable ordinances, statutes, regulations and laws. If the Company determines that Permittee is not in compliance with any of these applicable requirements, the Company shall inform Permittee in writing and such Hazardous Conditions shall be remedied per Sections 4.1(a) or (b). If an electric service shutdown is required, the Permittee shall arrange a specific schedule with the Company prior to performing any work on the Company Facilities. Emergency restoration of service and maintenance shall be performed per Section 7.7.

4.6 SERVICE CONNECTION/DISCONNECTION

Any electrical service connection or disconnection to the Permittee's Attachments from the Company's overhead or underground electric supply system shall only be performed by the Company in accordance with the Company's rates, applicable tariffs, and CPUC Rules and Regulations.

4.7 IDENTIFICATION TAGS

Permittee shall identify its Attachments to the Company Facilities using weather and corrosive resistant tags (capable of lasting the life of the attachment). The tags shall include Permittee's

corporate name legible from the ground, a 24-hour emergency contact number and identify the Company as the licensor. The tag shall be attached in the zone on the pole where Permittee's cable and equipment are located. If adequate identification of all Attachments are not added by the Permittee pursuant to this Agreement, the Company may identify Permittee's facilities and all incurred cost shall be reimbursed by the Permittee.

4.8 POLE PROTECTION

For new construction, replacements, rebuilds and upgrades of the Permittee's facilities, the Permittee shall use, in areas where there is potential for trees to damage poles and to the extent where reasonably available, at the time of attachment to a pole, break-away fasteners or cross arms designed such that in the event a falling tree or other foreign object comes in contact with Permittee's cable in mid-span, the cross arm, bolt or lashing attaching the cable to the pole will fail before the pole fails. Permittee may, with the Company's written consent, use alternative designs capable of accomplishing equivalent results to preserve the pole. Regardless of the presence of breakaway fasteners or the Company-approved alternative design, Permittee shall be responsible for all costs associated with replacing a pole that failed due to Permittee's Attachments. Permittee will comply with any CPUC orders and revisions regarding design and construction standards.

4.9 POLE TREATMENT

Permittee shall treat with a chemical solution of copper naphthenate or the Company approved equivalent all cuts created on new and existing poles by Permittee to accommodate an Attachment, including but not limited to, gains and through holes.

ARTICLE V INDEMNIFICATION AND LIABILITY

5.1 INDEMNIFICATION.

(a) The Parties agree to bear any and all "Losses" (defined below) which arise out of or are in any way connected with the performance of this Agreement as set forth in this section. All losses, fines, penalties, claims, demands, legal liability, damages, attorneys' fees, costs of investigation and litigation, expenses, settlements, verdicts, awards or judgments (collectively, "Losses") connected with or resulting from injury to or death of any person (including employees of the Parties), damage to or destruction of any property (including property of the Parties), damage to the environment or any natural resources, or violation of any local, state or federal law, rule or regulation, including but not limited to environmental laws and regulations, however caused on either Party shall be borne as follows:

(1) Any Losses arising from injury to or death of an employee, contractor, subcontractor, or agent of a Party or arising from damage to or destruction of any property of a Party shall be borne by such Party, and such Party shall defend, indemnify and hold harmless the other Party and each of its officers, directors, partners, employees, and agents ("**Indemnitees**") against such Losses, excepting only Losses as may be caused by the sole negligence or willful misconduct of the Indemnitees.

(2) Excepting Losses arising from injury to or death of an employee, contractor, subcontractor, an agent of a Party or arising from damage to or destruction of any property of a Party, any Losses caused by the joint or concurrent negligence of the Parties or their respective contractors or agents, or by the failure of the Parties to observe or perform any obligation hereunder, shall be borne by the Parties according to their degree of fault.

(3) Any Loss caused by the climbing or entering the Company Facilities by the employee, agent, contractor or subcontractor of a Party shall be borne solely by such Party.

(4) Any Loss caused by the sole act or omission of a Party shall be the responsibility of that Party.

If either Party, as the result of any claim for Losses, should be compelled to pay damages to a greater extent than specified in this section, such Party shall have, to the extent of the excess so paid by it, the right of contribution from the other Party.

(b) Notwithstanding the foregoing, Permittee shall indemnify, defend and hold harmless the Company, its officers, directors, partners, agents, and employees (collectively, “the **Company Indemnites**”) from and against all claims, demands, losses, damages, expenses, and legal liability connected with or resulting from (i) interruption, discontinuance or interference with Permittee’s service to any of its customers or economic and any economic or commercial loss of Permittee’s customers, resulting there from (but only to the extent of Permittee’s customers’ claims, not those of the Company), with the exception of claims, demands, losses, damages, expenses, and legal liability arising solely from the gross negligence or willful misconduct of the Company or the Company’s agents, employees or independent contractors who are directly responsible to the Company; (ii) Permittee’s failure to comply with applicable rules, regulations or safety standards; and (iii) any and all claims or assessments of any kind or nature, including increased franchise fees, right-of-way or easement fees, made or asserted against the Company Indemnites by any third party, including any Granting Authority, franchise authority, governmental authority or other property owner as a result of Permittee’s use of, or failure to relinquish use of the Company Facilities or remove any Attachments as may be required by the Company pursuant to Article X Termination. Regardless of fault on behalf of Permittee, the Company shall exercise reasonable commercial effort toward restoring the Company’s service to its customers in accordance with the Company’s customary procedures and priorities, to enable Permittee to restore Permittee’s Attachments on the Company Facilities and to resume service to Permittee’s customers so as to minimize any and all losses once an interruption, discontinuance or interference with a Party’s service to its customers occurs. Nothing in this Article V or Section 5.1 shall affect the application of the provisions of Section 12.14 “No Third Party Beneficiaries”. Under no circumstance shall either Party have the authority to admit any liability on behalf of the other.

(c) Any Party seeking indemnification hereunder (“**Indemnitee**”) shall notify the other party (“**Indemnitor**”) of the nature and amount of such claim and the method and means proposed by the Indemnitee for defending or satisfying such claim within a reasonable time after

the Indemnitees receives written notification of the claim. The Indemnitees shall consult with the Indemnitor respecting the defense and satisfaction of such claim, and the Indemnitee shall not pay or settle any such claim without the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld or delayed; provided, however, that the Indemnitee's failure to give such notice shall not impair or otherwise affect the Indemnitor's obligation to indemnify against such Claim except to the extent that the Indemnitor demonstrates actual damage caused by such failure.

5.2 AD VALOREM INDEMNITY

If the ad valorem property taxes, special assessments, local improvement district levies, or other levies or taxes (collectively, "**Ad Valorem Taxes**") or bases for ad valorem taxation payable by the Company with respect to the Company Facilities increase as a result of the Permittee's Attachments, or the Ad Valorem Taxes increase or change due to any construction, installation or improvements provided pursuant to this Agreement, the Company shall deliver to Permittee copies of the relevant tax bills and supporting materials along with a detailed calculation of such taxes to be paid by Permittee only to the extent such Ad Valorem Tax exceeds the amount which the Company would otherwise pay. Within thirty (30) days Permittee shall pay or reimburse the Company for such amounts. Permittee may make such reimbursements or payments under protest, in which event Permittee and the Company shall attempt to agree upon a calculation of the amount payable by Permittee. If agreement cannot be reached, either party may refer the dispute to mediation in accordance with the provisions of Article IX. Permittee also shall be responsible for timely payment of any Ad Valorem Taxes or other taxes and fees levied against the Permittee's Attachments or other of Permittee's property or equipment located on the Company Facilities or the Company Right-of-Way that are billed directly to Permittee by the taxing authority. However, in the event the same property or interests are assessed an Ad Valorem Tax or sales or use tax in the same year to both the Company and Permittee, each party agrees to promptly notify the other upon becoming aware thereof to cooperate with the other in seeking appropriate redress from the authority or authorities assessing the property or imposing the tax; and, provided the Company has notice of such potential double taxation, the Company agrees at Permittee's request, not to pay such tax and seek reimbursement from Permittee without having first protested, at Permittee's expense, the assessment at the appropriate administrative level.

5.3 DEFENSE OF CLAIMS

Both parties shall, on request, defend any suit asserting one or more claims covered by the indemnities set forth in Sections 5.1(a). Permittee shall, on the Company's request, defend any suit asserting one or more claims covered by the indemnities set forth in Sections 5.1(b) and 5.2. The indemnifying party shall pay any costs that may be incurred by the Indemnitees in enforcing such indemnity provisions, including reasonable attorney's fees.

5.4 LIMITATION OF LIABILITY

In no event shall the total cumulative liability of the Company, arising out of or in connection with the use of the Company Facilities or relating to this Agreement, exceed the sum of the attachment fees received, and forecasted to be received, by the Company under the current Agreement with Permittee, whether based on contract, tort, including negligence, or otherwise.

The above limitations of liability shall not apply to any willful misconduct on the part of the Company.

5.5 NO WARRANTIES

Except as specifically and expressly provided herein, the Company makes no warranty, express or implied with respect to the Company Facilities or the use of the Company Facilities by Permittee. The Company Facilities are “as is.” The Company disclaims all warranties express or implied including the warranties of merchantability and fitness for particular purposes.

5.6 CONSEQUENTIAL DAMAGES

Notwithstanding anything in this Agreement to the contrary, neither Party nor its contractors or subcontractors shall be liable to the other Party for the other Party’s own special, consequential or indirect damages, including without limitation, loss of use, loss of profits or revenue, loss of capital or increased operating costs, arising out of this transaction or from breach of this Agreement, even if either Party is negligent, grossly negligent or willful.

ARTICLE VI INSURANCE

With the written consent of the Company, and until Permittee has demonstrated to the Company’s satisfaction adequate financial strength to support self-insurance, Permittee shall maintain the following insurance coverage or self-insurance and be responsible for its contractors and subcontractors maintaining sufficient limits of the same insurance coverage.

6.1 WORKERS’ COMPENSATION AND EMPLOYERS’ LIABILITY

(a) Workers’ Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, where Permittee performs any work on the Company Facilities.

(b) Employers’ Liability insurance shall not be less than \$1,000,000 for injury or death each accident.

6.2 COMMERCIAL GENERAL LIABILITY

(a) Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage “occurrence” form, with no coverage deletions.

(b) The limit shall not be less than \$10,000,000 each occurrence for bodily injury, property damage, personal injury, completed operations and endorsed to include mobile equipment.

(c) Coverage shall: (1) by “Additional Insured” endorsement add as additional insured the Company, its directors, officers, agents and employees with respect to liability arising out of the work performed by or for the Permittee for ongoing operations as well as completed operations. If the Permittee has been approved to self-insure, Permittee shall, at all times, extend coverage to the Company in the same position as if the Company were an “Additional Insured” under a policy; (2) be endorsed to specify the Permittee’s insurance is

primary and that any insurance or self-insurance maintained by the Company shall not contribute with it.

6.3 BUSINESS AUTO

(a) Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 1 “any auto.”

(b) The limit shall not be less \$1,000,000 each accident for bodily injury and property damage

6.4 POLLUTION LIABILITY

(a) Coverage for bodily injury, property damage, including clean up costs and defense costs resulting from sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water.

(b) The limit shall not be less than \$1,000,000 each occurrence for bodily injury and property damage.

(c) The Company shall be named as additional insured.

6.5 ADDITIONAL INSURANCE PROVISIONS

(a) Before commencing any work on the Company Facilities, Permittee shall furnish the Company with certificates of insurance and Additional Insured endorsement of all required insurance for Permittee.

(b) The certificate shall state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to the Company.

(c) The certificate must be signed by a person authorized by that insurer to bind coverage on its behalf and shall be submitted to:

PG&E

Insurance Department, Suite
2400
One Market, Spear Tower
San Francisco, CA 94105

A copy of all such insurance certificates and the Additional Insured endorsement shall be sent to the Company’s Contract Negotiator and/or Contract Administrator.

(d) The Company may require Permittee to furnish to the Company certificates of insurance or other evidence thereof attesting that the insurance required by Article VI is in effect.

(e) Upon request, Permittee shall furnish the Company the same evidence of insurance for its contractors and subcontractors, as the Company requires of Permittee.

(f) If Permittee claims to self-insure then this Section applies. Notwithstanding any provisions in this Article to the contrary, Permittee represents that its customary practice, as of the date of this Agreement, is to self-insure for all or a portion of the insurance required of it under this Agreement. Accordingly the parties agree that such self-insurance shall constitute compliance with all or some of the requirements of this Article for as long as Permittee generally continues such practice of corporate self-insurance with respect to its regular conduct of business. Permittee covenants to advise the Company when it ceases generally to self-insure with respect to its regular conduct of business.

ARTICLE VII REMOVALS AND EMERGENCY CONDITIONS

7.1 DISCONTINUATION

Notwithstanding any provision to the contrary, the Company shall be entitled at any time to discontinue the Company's use of the Company Facilities located on the Company Right-of-Way, and Permittee shall immediately remove its Attachments. In the event of any such discontinuation, the Company shall give Permittee advance written notice (Exhibit F or equivalent) as soon as reasonably practicable, and the Company may propose alternative facilities to meet the needs of the Permittee in which case Permittee shall be entitled to a credit of the remaining rental fees paid in advance for future use, towards the use of the alternate facilities. If no alternate facilities are available or acceptable, Permittee shall be entitled to a refund, if a refund is requested by Permittee and if the value exceeds \$1,000.00. The Company may allow Permittee to buy the Company's interest in the discontinued facilities at the Company's replacement cost new minus depreciation. Permittee's costs of relocating to other poles or facilities shall be governed by the provisions of Section 7.2 below.

7.2 RELOCATION

Notwithstanding poles rearranged or replaced pursuant to Section 7.4, the Company at any time may relocate all or any portion of its poles to other locations. In the event of any such relocation, the Company may in its discretion allow Pole Attachments at such alternate location(s) in accordance with this Agreement, and the Company shall give Permittee sixty (60) days advance written notice (Exhibit F or equivalent) or less if circumstances require, of its intended relocation and of the particulars of the alternate location(s). In the case of a relocation of the Pole Attachments, the Company may either: (a) require Permittee at its cost to move its Pole Attachments to the alternate location, or (b) with mutual consent move the Permittee's Pole Attachments with reimbursement from Permittee for the actual costs of moving the Pole Attachments. In the event that Permittee is unable to transfer its facilities on the day the pole is scheduled to be removed, the Permittee shall pay all costs incurred by the Company to make an additional field trip to remove the pole. To the extent the Company can reasonably obtain reimbursement from a third party for any work performed by the Company, Permittee's share of the Company cost will be included in the reimbursement. If the Company cannot reasonably obtain such reimbursement, then Permittee and other permittees shall be responsible for a proportional share of those costs. When a pole relocation is necessitated by the installation of a

Pole Attachment by a new permittee, the relocation of the Company's and its Permittee's Pole Attachments shall be at the expense of the new permittee to the extent allowed by law.

7.3 REMOVALS

(a) If the existing equipment on the pole or anchor (including Permittee's equipment) cannot be relocated in accordance with Section 7.4 or rearranged in accordance with Section 7.4 to create the required space or capacity for the Company's use and

(1) the Company needs the space or capacity occupied by the Permittee's equipment for its use to serve core utility customers, or

(2) should any pole to which Permittee has attached an Attachment be taken by the power of eminent domain,

then on being given at least sixty (60) days written notice (Exhibit F or equivalent) by the Company to do so, or in cases of emergency on such notice less than sixty (60) days as the circumstances reasonably permit (some emergency circumstances may include no notice), the Permittee shall remove its Attachments from the Company Poles as the Company shall designate and at the expiration of the time specified in the notice all rights and privileges of the Permittee in and to the Company Poles designated shall terminate.

(b) Permittee shall not be entitled to any compensation paid as a result of a taking by the power of eminent domain, except for compensation paid expressly for the taking or relocating of Permittee's Attachment. In no event shall Permittee be entitled to any compensation for the taking of the Company Right-of-Way itself.

(c) The Permittee may on its own remove its equipment from the Company Facilities and provide the Company within sixty (60) days a written notice (Exhibit E or equivalent).

(d) In the event of a removal as provided in this section, Permittee shall be entitled to a rental refund if a refund is requested by Permittee and if the rental value exceeds \$1,000.00.

7.4 REARRANGEMENT/REPLACEMENT POLES OR ANCHORS

The Company shall give Permittee sixty (60) days advance written notice (Exhibit F or equivalent) or less if circumstances required for Sections 7.4 (a) through (c) below.

(a) Capacity for the Company:

When the Company needs space or capacity for its core utility service, and without the Permittee's Attachment there would be adequate space or capacity, then the Permittee shall either pay for expansion of the pole to provide adequate space or capacity for the Company, or remove its Attachments.

If more than one Company Permittee is on the pole and all Permittees cumulatively occupy the space or capacity needed by the Company, and the removal of the last authorized Permittee will provide adequate space or capacity, then the last authorized Permittee will pay the cost of providing additional space or capacity for the Company, or remove its Attachments.

If more than one Company Permittee is on the pole and all Permittees cumulatively occupied the space or capacity needed by the Company, then all Permittees will share equally the cost of providing additional space or capacity on the pole, or remove their Attachments.

If the Company is unable to determine which Permittee is the last authorized Permittee on the pole then the Permittees will share equally the cost of providing additional space or capacity on the pole, or removes their Attachments.

(b) New Permittees:

When rearrangement and/or larger or additional pole(s) or anchors are necessitated by the installation of an Attachment by a new Company permittee, the larger pole and relocation of the Company's and its permittee's attachments shall be installed and/or transferred at the expense of the new permittee to the extent allowed by law. However, Company is not authorized to undertake any rearrangement or relocation work on any pole occupied by Permittee without written approval by Permittee.

When a new Company permittee or other attacher requests access to a pole on which Permittee is attached, Company is required to provide Exhibit A or similar request for access, without identifying Company permittee, to Permittee within 30 days of the Company receiving Exhibit A or similar request for access.

(c) Other Causes of Rearrangement/Replacement:

When a pole replacement is required due to any other reason outside of the control of the Company, including but not limited to, accidents, storms, bird, pest, or fungal infestation, excessive checking and splits, earthquake, tornadoes, street widening or Granting Authority action, Permittee shall not be responsible for cost of the replacement pole, unless the failure was due to fasteners which did not comply with the requirements of Section 4.8 or if the Permittee did not meet the requirements of Section 4.1. Permittee shall be responsible for relocation of its Attachment under the terms of Section 7.2.

Replacement may be made at the written request of Permittee, and adjustment as to sales, salvage, pulling, transportation, and transfer costs shall be at current prices as per date of replacement. Company will execute replacement within (60) days Permittee's advance written request or less if circumstances require.

7.5 ADDITIONAL POLE SPACE

Whenever any discontinuation, rearrangement, relocation, removal or substitution of a larger pole would be necessary under this Article and there is additional space available on the pole under the control of another party, the Company shall at Permittee's discretion request such additional space.

7.6 INCOME TAXES

As set forth in the Company's Electric Rules, Preliminary Statement, Paragraph J, and as amended, the costs to be paid by Permittee to the Company as set forth in Section 7.4 above shall include a gross-up amount for potential income tax liability of the Company for contributions in

aid of construction (as used in Internal Revenue Code § 118(b) and similar state legislation) arising from the acquisition and installation of new or replacement poles and/or anchors, which gross-up amount shall be equal to the gross-up percentage for such contributions set forth in the Company's current filed electric tariffs.

7.7 RESTORATION OF SERVICE

In the case of any incident whereby both the Company's electrical service capacity and Permittee's telecommunications capacity are adversely affected, restoration of Permittee's Attachments and /or Permittee's capacity shall at all times be subordinate to restoration of the Company's electrical service capacity, unless otherwise agreed in advance by both Parties. Nonetheless, the Company shall permit Permittee to make repairs to restore its Attachments and/or its capacity, as long as such restoration efforts do not interfere with the Company's restoration activities.

7.8 RECLAMATION OF THE COMPANY UNDERGROUND FACILITIES

[Intentionally omitted.]

ARTICLE VIII ATTACHMENT FEES

8.1 ANNUAL ATTACHMENT FEES

Prior to attaching to the Company Overhead Facilities, Permittee shall pay to the Company an Attachment fee(s) at the applicable rate set forth in Exhibit B to this Agreement for each Attachment authorized under Exhibit A. Subject to the Company's reservations stated in this section, Attachment fees will be calculated annually using the formula set forth in Exhibit B. Permittee shall pay that fee for each Attachment initially installed, regardless of size, attachment type or duration. The parties agree in good faith to meet and confer to modify these Attachment fees if any rules, regulations or orders of the CPUC, or a court of law, modify the fee structure imposed by Rule VI and the definition of "*annual cost of ownership*" in Rule II, Section I. of CPUC Decision 98-10-058, dated October 22, 1998 ("fee restraints"). Modification of these Attachment fees pursuant to this Section shall be effective beginning with the most recent annual period preceding the date when the Company is allowed to charge Attachment fees greater than the fee restraints.

8.2 UNAUTHORIZED ATTACHMENTS

Upon request of the Company, Permittee shall provide written evidence of Attachment authorization for any Company Facilities on or in which the Permittee has installed an Attachment. If Permittee cannot provide such evidence of Attachment authorization, Permittee shall pay to the Company a penalty of Five Hundred Dollars (\$500.00) or as may be allowed under any applicable regulations in effect at that time, for each unauthorized Attachment made after October 22, 1998, unless the Company determines in its sole and absolute discretion that any such unauthorized Attachments were made accidentally by Permittee in good faith. The amount of the penalty authorized in this Agreement shall be subject to such additional penalties as may be authorized under any applicable regulations in effect at the time of the installation. Any unauthorized attachments made prior to October 22, 1998 shall be subject to such penalties authorized under any applicable regulations and/or agreements in effect at the time of the

installation. However, in no event will Permittee be relieved from the obligation of paying Attachment fees to the Company from the date of Permittee's original attachment. The unauthorized Attachment(s) shall then be subject to all the terms of this Agreement. If payment is not received within thirty (30) days of invoice date, the Company may invoke rights under Article X, Termination, and remove Permittee's Attachments from the Company Facilities.

All attachments on service/clearance poles that the Permittee has not obtained written authorization in accordance with Section 3.2 of this Agreement shall be treated as an unauthorized attachment. All new facilities, rebuild of existing facilities or overlash to existing cables on the Company Facilities that the Permittee has not obtained written authorization in accordance with Section 3.1.b of this Agreement shall be treated as an unauthorized attachment.

ARTICLE IX DISPUTE RESOLUTION

9.1 MEDIATION

The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between a representative designated by the Company Vice President empowered to resolve the dispute and an executive of similar authority of the Permittee. Either Party may give the other Party written notice of any dispute. Within twenty (20) days after delivery of the notice, the executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) of the first meeting, either Party may initiate a mediation of the controversy in accordance with the Commercial Mediation Rules of the American Arbitration Association.

All negotiations and any mediation conducted pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and which is incorporated herein by reference.

Each Party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.

9.2 INJUNCTION

Notwithstanding the foregoing provisions, a Party may seek a preliminary injunction or other provisional judicial remedy if in its judgment such action is necessary to avoid irreparable damage.

ARTICLE X TERMINATION

10.1 TERMINATING

(a) Subject to the time frames set forth in Section 12.1, if Permittee **(i)** fails to make any payment due within the time frame specified or otherwise comply with any material term or condition of this Agreement; or **(ii)** fails to obtain or maintain the appropriate CPCN from the CPUC; or **(iii)** installs or maintains any Attachments to Company Facilities used in connection as a CMRS provider **(iv)** fails to take reasonable steps to resolve any issue arising under Section 3.3

of this Agreement; (v) fails to maintain the insurance and bond requirements in compliance with Articles VI and XI of this Agreement; or (vi) fails to comply with the material requirements of this Agreement, the Company, at its sole discretion, upon thirty (30) days written notice to Permittee (or such shorter period of time as may be determined by the Company in order to comply with a notice from a Granting Authority or under law, if applicable), may terminate this Agreement without further liability any permission granted to Permittee as to all or any portion of those facilities which are the subjects of (i) through (vi) above, and Permittee shall immediately relinquish use of the Company Facilities and remove its Attachments from the Company Facilities in accordance with this Agreement prior to the effective date of termination. Notwithstanding the above, if within the period described above, Permittee obtains an order from a court or regulatory agency with jurisdiction over the challenge, dispute or claim against the Company's authority to grant this license, which order allows Permittee to remain attached to the Company Facilities, Permittee shall be allowed to remain on or in the Company Facilities under the term of that order, until a final decision or judgment is made at the highest level desired by Permittee. In the event of such contest, Permittee shall indemnify and hold the Company harmless from any expense, legal action, or cost, including reasonable attorneys' fees, resulting from the exercise of Permittee's right to contest the actions of a Granting Authority under this Section 10.1.

(b) This Agreement shall also terminate in whole or in part, upon the happening of any of the following events:

- (1) at the option of either Party, upon the termination or abandonment by Permittee of the use of all of the Permittee's Attachments. If less than all of Permittee's attachments are abandoned or terminated, the Company shall have the option of terminating its permission under this Agreement for only the Attachments abandoned or terminated;
- (2) at the option of the non-defaulting Party and without limiting the rights or remedies of the non-defaulting party, upon a breach or default by the other party of any material obligation hereunder and the continuance thereof following the expiration of the applicable remedy period;
- (3) upon the written mutual agreement of the Parties; or
- (4) in accordance with the provisions of Section 2.1, if the Company or the CPUC invoke the provisions of G.O. 69-C.

(c) Upon termination of this Agreement for all or any portion of the Company Facilities, which are used by Permittee, Permittee shall immediately relinquish use of those Company Facilities and promptly remove its facilities or the Company may remove Permittee's Attachments from the Company Facilities at Permittee's expenses.

ARTICLE XI FAITHFUL PERFORMANCE BOND

11.1 SURETY PERFORMANCE BOND; LETTER OF CREDIT

To cover the faithful performance by Permittee of its obligations under this Agreement, Permittee shall be required to furnish (i) a valid performance bond or (ii) an unconditional irrevocable letter of credit issued by a financial institution acceptable to the Company. Said bond or letter of credit shall be in such form approved in writing by the Company and in such amount as the Company shall specify from time to time based on the financial exposure caused by the Permittee's Attachment to the Company to be maintained in full force and effect throughout the term of this Agreement. The amount of said bond or letter of credit shall be initially set at Fifty Thousand Dollars (\$50,000). Permittee shall furnish such performance bond or letter of credit on or before the effective date of this Agreement, and remain in full force thereafter for a period of one year. Said bond or letter of credit shall provide ninety (90) days advance written notice to the Company of expiration, cancellation or material change thereof. Said bond or letter of credit will automatically extend for additional one-year periods from the expiration date, or any future expiration date, unless the surety or financial institution provides to the Company, not less than ninety (90) days' advance written notice, of its intent not to renew such bond or letter of credit. The liability of the surety under said bond or the financial institution under said letter of credit shall not be cumulative and shall in no event exceed the amount as set forth in this bond or letter of credit, in any additions, riders, or endorsements properly issued by the surety or the financial institution as supplements thereto. Failure of Permittee to obtain a bond or letter of credit as specified will be cause to terminate this Agreement.

If the surety on the bond or financial institution issuing the letter of credit should give notice of the termination of said bond or letter of credit and if Permittee does not reinstate the bond or letter of credit or obtain a bond or letter of credit from another surety of financial institution that meets the requirements of this Section 11.1 within fifteen (15) days after written notice from the Company, the Company may by written notice to Permittee, terminate this Agreement and/or revoke permission to use the Company Facilities covered by any or all applications submitted by Permittee hereunder, and Permittee shall remove its Attachments from the Company Facilities to which said termination applies within thirty (30) days from such notification.

ARTICLE XII MISCELLANEOUS

12.1 BREACH

Permittee and the Company agree that neither shall proceed against the other for breach or default under this Agreement by mediation or otherwise before the offending Party has had notice of and a reasonable time and opportunity to respond to and/or cure any breach or default. For purposes of this Agreement, a reasonable time to cure any breach or default shall be deemed to be thirty (30) days after notice, unless for safety, or legal reasons or Permittee's use interferes with the Company's ability to serve core utility customers, and fewer than thirty days are required. This Section does not supersede the rights and obligations of the Parties under Section 4.1 (c) for "Hazardous Conditions." If a Party claims that more than thirty (30) days are reasonable to cure a breach, that Party shall have the burden of proving the reasonableness of the

claim for more than thirty days. If such breach or default cannot be cured within such thirty day period, and the defaulting party has promptly proceeded to cure the same and to prosecute such cure with due diligence, the time for curing the breach shall be extended for such period of time as may be reasonably necessary to complete such cure.

12.2 BANKRUPTCY OF PERMITTEE

(a) The occurrence of any of the following shall constitute a default which may be a basis for termination of this Agreement:

- (1) Permittee files for protection under the Bankruptcy Code of the United States or any similar provision under the laws of the State of California; or
- (2) Permittee has a receiver, trustee, custodian or other similar official appointed for all or substantially all of its business or assets; or
- (3) Permittee makes an assignment for the benefit of its creditors.

(b) Assignment of Agreement

Any person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Agreement on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the Company an instrument confirming such assumption.

12.3 NOTICES

Any notice given pursuant to this Agreement given by a Party to the other, shall be in writing and given (with proof of delivery or proof of refusal of receipt) by letter mailed, hand or personal delivery, or overnight courier to the following:

If delivered to the Company by U.S. mail and express mail:

Manager, Electric Distribution Maintenance
Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105-1814

If delivered to Permittee by U.S. mail and express mail:

ABCDEFGHIJ KLMNOPQRSTUVWXYZ ABCDEFGHIJK Cable Company
123. Main Street,
Anycity, CA 90000

or to such other addresses as either Party may, from time to time, designate in writing for that purpose.

Notices shall be deemed given **(i)** when received in the case of hand or personal delivery, **(ii)** three days after mailing by United States mail as provided above, or **(iii)** the next business day in the case of reliable overnight courier. For routine notice changes, proof of delivery is not required. By mutual agreement facsimile notices may be used for routine notice changes.

12.4 APPLICABLE LAW

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California, exclusive of conflicts of laws provisions.

12.5 CONFIDENTIAL INFORMATION

If either Party provides confidential information to the other, it shall be in writing and clearly marked as confidential. The receiving Party shall protect the confidential information from disclosure to third parties with the same degree of care afforded its own confidential and proprietary information, except that neither Party shall be required to hold confidential any information which becomes publicly available other than through the recipient, which is required to be disclosed by a governmental or judicial order, which is independently developed by the receiving Party, or which becomes available to the receiving Party without restriction from a third party. These obligations shall survive expiration or termination of this Agreement for a period of two (2) years.

12.6 FORCE MAJEURE

Neither Party shall be liable for any failure to perform this Agreement when such failure is due to “force majeure.” The term “force majeure” means acts of God, strikes, lockouts, civil disturbances, interruptions by government or court orders, present and future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, inability to secure or delay in securing labor or materials (including delay in securing or inability to secure materials by reason of allocations promulgated by authorized governmental agencies), landslides, lightning, earthquakes, fire, storm, floods, washouts, or any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the Party claiming “force majeure.” The “force majeure” shall, so far as possible, be remedied with all reasonable dispatch. The settlement of strikes or lockouts or industrial disputes or disturbances shall be entirely within the discretion of the Party having the difficulty. The Party claiming any failure to perform due to “force majeure” shall provide verbal notification thereof to the other Party as soon as practicable after the occurrence of the “force majeure” event. Force Majeure shall not excuse Permittee’s obligation to make payment for its Attachments except that if the event of force majeure remains uncured for a period of thirty (30) days and renders the Attachments unusable, then Permittee shall be excused from its rental payment obligation as to the affected Attachments throughout the duration of the event of force majeure. If the Company is the party claiming force majeure and the event of force majeure prevents restoration of Permittee’s previously authorized attachments within six (6) months of the force majeure event, then the facilities shall be deemed to be discontinued and the provisions of Section 7.1 of this Agreement shall apply.

12.7 SEVERABILITY

The invalidity of one or more clauses, sentences, sections or articles of this Agreement shall not affect the validity of the remaining portions of the Agreement so long as the material purposes of this Agreement can be determined and effected.

12.8 REMOVAL OF ATTACHMENTS

Upon any expiration or termination, Permittee shall relinquish use of the Company Facilities and remove its Attachments from the Company Facilities in accordance with this Agreement prior to the effective date of expiration or termination at Permittee's sole expense. If Permittee fails to remove the Attachments by the expiration of this Agreement or as may be required by the Company within the time period designated by notice pursuant to Article VII or otherwise required by this Agreement, the Company shall be entitled to consider Permittee's Attachments abandoned as set forth in Section 12.9 below.

12.9 ABANDONMENT

If Permittee fails to use its Attachments for any period of one hundred and eighty (180) days, the Company shall provide Permittee written notice of its intent to treat such Attachments as abandoned and remove the Attachments at Permittee's sole risk and expense. If Permittee identifies such Attachments as abandoned or fails to respond to such notice within thirty (30) days, Permittee shall be deemed to have abandoned such Attachments which abandonment shall terminate all rights of Permittee as to the abandoned Attachment. Upon abandonment by Permittee, the Company shall have the right to retain such Attachments as the Company's own, and Permittee agrees to reimburse the Company for its expense. This provision excludes service drops that comply with the requirements of Section 4.1. Abandonment shall not relieve Permittee of any obligation, whether of indemnity or otherwise, accruing prior to completion of such removal by the Company or which arises out of an occurrence happening prior thereto.

12.10 ADDITION OF NEW POLES

Except for any poles added under the conditions of Article VII, the Company will not add new poles to existing distribution facilities or build new distribution facilities for the sole purpose of accommodating an Attachment unless the Permittee agrees to reimburse the Company for the full cost of the new Company Facilities.

12.11 LIENS

Permittee and its contractors shall keep the Company Facilities free from any statutory or common law lien arising out of any work performed, materials furnished or obligations incurred by Permittee, its agents or contractors. Permittee agrees to defend, indemnify and hold the Company harmless from and against any such liens, claims or actions, together with costs of suit, and reasonable attorneys' fees incurred by the Company in connection with any such claim or action. In the event that there shall be recorded against said Company Facilities any claim of lien arising out of any such work performed, materials furnished or obligations incurred by Permittee or its contractors and such claim of liens not removed within ten (10) days after notice is given by the Company to Permittee to do so, the Company shall have the right to pay and discharge said lien without regard to whether such lien shall be lawful, valid or correct.

12.12 JOINT USE AGREEMENT

This Agreement shall be subject to rights which may be exercised by other companies under joint use or joint ownership agreements which the Company executed prior to this Agreement.

12.13 SURVIVABILITY

Any expiration or termination of Permittee's rights and privileges shall not relieve the Permittee of any obligation, whether indemnity or otherwise, which has accrued prior to such termination or completion of removal of Permittee's Attachments.

12.14 NO THIRD PARTY BENEFICIARIES

All of the terms, conditions, rights and duties provided for in this Agreement are and shall always be, solely for the benefit of the Parties. It is the intent of the Parties that no third party (including customers of either Party) shall ever be the intended beneficiary of any performance, duty or right created or required pursuant to the terms and conditions of this Agreement.

12.15 HAZARDOUS MATERIALS

The California Health and Safety Code requires businesses to provide warnings prior to exposing individuals to material listed by the Governor as chemicals "known to the State of California to cause cancer, birth defects or reproductive harm." The Company uses chemicals on the Governor's list at many of its facilities and locations. Accordingly, in performing the work or services contemplated in this Agreement, Permittee, its employees, agents and subcontractors may be exposed to chemicals on the Governor's list. Permittee is responsible for notifying its employees, agents and subcontractors that work performed hereunder may result in exposures to chemicals on the Governor's list. The Company will provide Permittee upon request with a copy of a Materials Safety Data Sheet for every Hazardous Chemical on the Company Right-of-Way.

12.16 WAIVER

The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain in full force and effect.

12.17 MARK AND LOCATE RESPONSIBILITY

Permittee using the Company Underground Facilities, shall be responsible for marking and locating their equipment in accordance with State of California Government Code Section 4216 and shall become a member U.S.A (Underground Service Alert) and shall maintain membership for the duration of this Agreement.

12.18 PAYMENTS

Unless otherwise specified in this Agreement, Permittee shall make all payments to the Company within thirty (30) days of receipt of the invoice to;

For U.S. mail and express mail:

Pacific Gas & Electric Company
P.O. Box 997300
Sacramento, CA 95899-7300

12.19 DEFINITIONS

Capitalized terms used are defined in this Agreement shall have the meanings set forth herein.

12.20 TITLES AND HEADINGS

The table of contents, titles and headings of Articles and Sections of this Agreement are inserted for the convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

12.21 NO STRICT CONSTRUCTION

The Parties have participated jointly in the negotiation and execution of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement or any of the documents delivered pursuant hereto, this Agreement and such documents shall be construed as if jointly agreed upon by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement or such documents.

12.22 ENTIRE AGREEMENT

This Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments or understanding with respect to the subject matter hereof and may be amended only by a writing signed by both Parties.

CROWN CASTLE FIBER LLC

**PACIFIC GAS AND ELECTRIC
COMPANY**

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

(End of Attachment 3)