

## JOINT USE LICENSE AGREEMENT

This JOINT USE LICENSE AGREEMENT (“Agreement”) is made and entered into this day of \_\_\_\_\_, (“Effective Date”) by and between Garkane Energy Cooperative, Inc., a rural electric cooperative (“Licensor”), and \_\_\_\_\_ (“Licensee”). Licensor and Licensee may be referred to hereafter individually as a “Party” and collectively as the “Parties.” The attached Terms and Conditions and all associated Exhibits are incorporated herein and made a part hereof by this reference.

**Notices.** The addresses, facsimile numbers and electronic mail addresses of the Parties to which any notice, request, consent, demand, designation, approval or statement required to be made to either Party by the other are as follows:

**LICENSOR:**

Garkane Energy Cooperative  
1802 S Highway 89A  
Kanab, Utah 84741  
Phone: (435) 644-5026  
Fax: (435) 644-8120  
Email: [fsr@garkane.com](mailto:fsr@garkane.com)

**LICENSEE:**

Company:  
Street Address:  
City/State/Zip:  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**Term of Agreement.** The term of this Agreement is from the Effective Date until five (5) years from the Effective Date Above (if not lawfully terminated sooner), and thereafter from year to year, unless terminated by either Party by giving notice of its intention to terminate at least six months prior to the end of any period.

**Applicable Law.** This Agreement is deemed executed in the States of Utah/Arizona and shall be construed under the laws of the States of Utah/Arizona, without regard to its conflict of laws principles. Any legal action regarding enforcement of this Agreement shall be commenced and heard in the District Court of Wayne County, Utah (“Court”), and the Parties consent and submit to the jurisdiction and venue of the Court.

**Fees.** Refer to Rate Schedule (Exhibit 1.5).

## JOINT USE LICENSE AGREEMENT

IN WITNESS WHEREOF, the Parties, each in consideration of the mutual covenants contained herein, and for other good and valuable consideration, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date first above-written; provided, however, that this Agreement shall not become effective as to either Party until executed by both Parties.

### LICENSOR

Print Name:

Title:

Signature:

Date:

### LICENSEE

Print Name:

Title:

Signature:

Date:

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# TERMS AND CONDITIONS

This Joint Use License Agreement (“Agreement”) is made and entered into on this DAY of MONTH, YEAR by and between Garkane Energy, Inc., a non-profit electric cooperative with its principal Utah/Arizona office in Loa, Utah, (Licensor) and COMPANY NAME (Licensee).

WHEREAS Licensor owns, operates and maintains Distribution Poles to provide electric service to customers in its service territory;

WHEREAS Licensee desires to attach certain facilities owned by the Licensee to certain Distribution Poles owned by Licensor described in Exhibit 1.2 attached hereto and incorporated herein,

WHEREAS, Licensor is willing to permit Licensee, to place its Attachments on the Poles located in the area shown on Exhibit 1.2, hereto, pursuant to the terms and conditions of this Agreement, provided that based upon the sole judgment of Licensor, such Attachments and transmission of signals do not interfere with the furnishing of electric service to the Licensor’s members, or adversely affect safety or reliance of its electric distribution system; and,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the parties hereto, for themselves and their successors and assigns, do hereby covenant and agree as follows:

## 1. DEFINITIONS

The following definitions shall apply to this Agreement. Capitalized terms not defined herein shall have the meaning otherwise set forth in the Agreement. Unless otherwise required by the context, in this Agreement (i) “including/include” means “including/include but not limited to” the specifically enumerated things, states, or actions; (ii) “or” means “one or the other or all” of the specifically enumerated things, states, or actions; and (iii) “shall” means that the listed obligations or actions are mandatory.

- 1.1. Annual Pole Attachment License Fee. The annual amount per Attachment that Licensee must pay to Licensor pursuant to this Agreement in order to affix each Attachment to Licensor’s Distribution Poles.
- 1.2. Application. The *Pole Attachment Application Form* attached hereto at Exhibit 1.1 that must be completed by Licensee and approved by Licensor in writing before Licensee may attach to or make use of any of Licensor’s Distribution Poles under this Agreement.
- 1.3. Application Processing Fee. The fee that Licensee must pay to reimburse Licensor for the administrative and other costs incurred by Licensor in processing Licensee’s Application.
- 1.4. Attached Pole. A Distribution Pole owned or maintained by Licensor that contains at least one attachment by an entity other than Licensor.



- 1.5. Attachment. Each affixation of Licensee's cables, strands, wires and associated apparatus to Licensor's Distribution Poles.
- 1.6. Authorization. Licensor's grant of authority to Licensee to affix Attachments to Licensor's Distribution Poles in accordance with the terms of this Agreement.
- 1.7. Business Day. All days except Saturday, Sunday and officially recognized Federal legal holidays.
- 1.8. Control. With respect to any entity, the possession, directly or indirectly, of: (a) 50% or more of its ownership interests; or (b) the power to direct or cause the direction of management and policy, whether through the ownership of voting securities, partnership interests, by contract or otherwise.
- 1.9. Default. When either Party: (i) fails to perform any of its covenants or obligations set forth in this Agreement, (ii) makes any representation or warranty in this Agreement that is untrue or incorrect, (iii) files a bankruptcy petition in any bankruptcy court proceeding, or (iv) admits in writing its inability to pay its debts when due or its intention not to comply with any requirement of this Agreement.
- 1.10. Distribution Pole. A pole bearing electric distribution lines and having a voltage rating of or below 34.5 kV.
- 1.11. Drop/Lift Pole. An ancillary pole necessary to extend service from a Distribution Pole to an individual customer(s).
- 1.12. Effective Date. The date Licensor and Licensee enter into this Agreement.
- 1.13. Licensor's Service Area. The area in which Licensee may provide its Services, as shown on Exhibit 1.2 attached hereto.
- 1.14. Licensor Practices. Licensor's rules and practices for Attachments as set forth in Exhibit 1.1 attached hereto.
- 1.15. Make Ready Costs. All costs necessary for Licensor to prepare its Distribution Poles for Licensee's Attachments, including the costs of materials, labor, engineering, supervision, overhead, and a share of Tree Trimming costs (as calculated in Section 6.5). Engineering includes design, proper conductor spacing and bonding, calculations to determine proper ground clearances and pole down guy and anchor strength requirements for horizontal and transverse loading, and compliance with all applicable requirements in Section 4.4 hereto. Also included among "Make Ready Costs" are the costs of installing or changing out primary poles, secondary poles and Drop/Lift Poles, including the cost of installation and/or removal of guys, anchors, stub poles, materials and equipment, temporary construction and all other construction in accordance with the technical requirements and specifications of Section 4.4.
- 1.16. Make Ready Estimate. The estimate prepared by Licensor for all Make Ready Work that may be required by Licensor to accommodate Licensor's Distribution Poles for attachment by Licensee, in the form set forth in Exhibit 1.3.

- 1.17. Make Ready Work. All work required by Licensor to accommodate Licensor's Distribution Poles for attachment by Licensee.
- 1.18. Other Licensee/Joint User. Companies, entities, or persons who have licenses or agreements with the Licensor to attach to the Licensor's Poles other than Licensee herein.
- 1.19. Overlashing. The practice whereby a service provider physically ties or otherwise attaches new wiring to wiring that already has been affixed to a Distribution Pole.
- 1.20. Required Authorizations. All legally required authorizations that Licensee must obtain from federal, state, county or municipal authorities, public or private landowners, or other third parties, to erect, operate and maintain its Attachments, and to provide the Services, including all required franchises, consents, easements, and certificates of convenience and necessity.
- 1.21. Security Instrument. A performance bond or its equivalent (*e.g.*, irrevocable letter of credit) to be used by Licensee to guarantee Licensee's payment in full of all Annual Pole Attachment License Fees and other amounts payable to Licensor under this Agreement.
- 1.22. Services. Cable television, telecommunications, Internet, data transmission or other similar services or combination of services provided by Licensee.
- 1.23. Term. The period during which this Agreement remains in effect.
- 1.24. Tree Trimming. Any clearing or reclearing of existing rights-of-way or easements and any tree or brush trimming necessary for the establishment and maintenance of Attachments, as determined by Licensor in its sole judgment.
- 1.25. Unauthorized Attachment. Any affixation of any Licensee facility of any nature to any property of Licensor, including Distribution Poles, which has not been authorized by Licensor as required by this Agreement. Unauthorized Attachments may include facilities affixed to Licensor's property prior to the Effective Date of this Agreement.
- 1.26. Unauthorized Attachment Fee. The fee to be paid by Licensee for each Unauthorized Attachment.

## **2. PURPOSE**

The purpose of this Agreement is to allow Licensee to install and maintain Attachments on Licensor's electric Distribution Poles in Licensee's Service Area for the limited purpose of providing Licensee's Services.

## **3. SCOPE OF LICENSE AGREEMENT**

- 3.1. Non-Exclusive License. Subject to the terms and conditions of this Agreement, and throughout the Term of this Agreement, Licensor hereby issues to Licensee a revocable, non-exclusive license authorizing Licensee's Attachments to be located on those Attached Poles that exist as of the date of this Agreement and are located within the Service Territory area shown in Exhibit 1.2, attached hereto. Except as expressly

provided herein, nothing in this Agreement shall convey to or constitute a license to the Licensee or any right of the Licensee to use any anchors, guy wires, underground or other conduits, facilities or property of the Licensor.

3.2. Access to Distribution Poles; Easements. Each Party shall be responsible for obtaining its own rights-of-way and easements. LICENSOR DOES NOT REPRESENT OR WARRANT THAT ANY OF ITS RIGHTS-OF-WAY OR EASEMENTS ENTITLE LICENSEE TO ACCESS REAL PROPERTY UNDERLYING LICENSOR'S DISTRIBUTION POLES. Licensor shall not be liable should Licensee at any time be prevented from placing or maintaining its Attachments on Licensor's Distribution Poles because Licensee failed to obtain appropriate rights-of-way or easements. Licensor may require Licensee to demonstrate that it has secured its own rights-of-way or easements prior to authorizing any Attachments. If such a requirement is imposed, the time for Licensor to respond to Licensee's Application shall be tolled pending Licensee's response. Consistent with the terms and conditions of this Agreement, Licensor shall permit Licensee non-exclusive access to Licensor's Distribution Poles and related overhead and other easements. Further, Licensee's non-exclusive use of the overhead or other easements is contingent on, and may be prevented or otherwise constrained by, the extent to which such use is permissible under applicable contracts and instruments between Licensor and other entities, and under federal, state and local laws and regulations. THIS AGREEMENT APPLIES ONLY TO DISTRIBUTION POLES, AND DOES NOT PERMIT ACCESS OR AFFIXING OF ATTACHMENTS TO TRANSMISSION TOWERS OR OTHER PROPERTY OF LICENSOR. A separate license agreement would be needed for transmission poles.

3.3 No Vested Rights  
Nothing in this Agreement shall create or vest in Licensee any ownership or property rights in any Poles or facilities of Licensor. Licensee shall at all times be and remain the owner of its Attachments and related facilities. Neither this Agreement nor any license granted hereunder shall constitute an assignment of any of the Licensor's rights to use the public or private property upon which the Licensor's Poles are located. Nothing contained in this Agreement shall be construed to obligate the Licensor to construct, install, retain, extend, place or maintain any Pole or other facilities.

Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against the Licensor with respect to any agreement or arrangement which the Licensor has heretofore entered into or may in the future enter into with others not parties to this Agreement. The rights of Licensee shall at all times be subordinate and subject to any such agreement or arrangement.

#### **4. LICENSEE OBLIGATIONS**

4.1. Use of Attachments. Licensee agrees that it shall not make, maintain or use in any manner any Attachment which will conflict or interfere with the operations of the Poles, lines, equipment and facilities of the Licensor or any Other Licensee/Joint User. Licensee agrees to pay the Licensor, and any Other Licensee/Joint User all costs incurred, at the discretion of the Licensor or Other Licensee/Joint User, necessary to provide required clearance for Licensee's facilities. Licensee further agrees that all work in regard to the rearrangement, construction and installation of the Licensee's facilities shall be done in accordance with applicable laws, rules and regulations and in a safe and workmanlike

manner. All equipment used in connection with Licensee's facilities shall be at all times maintained in good and safe condition so as not to endanger the employees, members or property of the Licensor, any Other Licensee/Joint User or third persons. No Attachment changes shall be made or new Attachments placed by Licensee prior to obtaining additional written consent from the Licensor.

- 4.2. Licensor Service Area. Licensee shall submit applications to Licensor for any Attachments planned within the Licensor's Service Area found in Exhibit 1.2.
- 4.3. Compliance with Applicable Rules. Licensee shall install, operate, maintain, access, and remove Attachments in compliance with applicable federal, state, and local rules, regulations, and ordinances and in accordance with industry practice, technical requirements and specifications included in Section 4.4 and required by Licensor in accordance with this Agreement.
- 4.4. Technical Requirements and Specifications.
  - (a) At its own expense, Licensee shall erect, install, access, operate, and maintain its Attachments in a manner that does not interfere with Licensor's Facilities and in safe condition and good repair in accordance with all applicable requirements and specifications, including, but not limited to:
    - (i) requirements and specifications of the National Electrical Safety Code ("NESC"), the National Electrical Code ("NEC"), the Occupational Safety and Health Act ("OSHA") and Rural Utilities Service ("RUS"), and to the extent such requirements or specifications may conflict, then the most stringent of the NESC, NEC, OSHA or RUS requirements and specifications;
    - (ii) any amendments or revisions of, or successor(s) to, the requirements and specifications of the NESC, NEC, OSHA, and RUS;
    - (iii) the Licensor Practices set forth in Exhibit 1.1; and
    - (iv) any current or future rules or orders of any federal, state or local authority having Jurisdiction.
  - (b) Licensee shall bring into conformity as soon as practical following notice by Licensor, and no later than sixty (60) days or any reasonable date set by Licensor, any existing Attachments of Licensee that do not conform to the technical requirements and specifications listed in this section or that interfere with Licensor's access to or operation of Licensor's facilities. In the event that Licensee fails to comply with this requirement, Licensor in its sole discretion may remove such Attachments or undertake work to bring such Attachments into compliance and Licensee shall reimburse Licensor for all costs related thereto. Failure by Licensor to inspect Licensee's conformance to the technical requirements and specifications listed in this section or to take action on its own to bring such Attachments into compliance shall not cause Licensor to be liable for any loss or injury resulting from such failure of conformance and shall not relieve Licensee of its obligations of indemnification hereunder.
  - (c) The Licensor Practices may be amended from time to time by Licensor as necessary in its sole discretion to promote the safe and efficient operation of its electric distribution system, including the Distribution Poles, without resort to the provisions of Section 21 (Modifications), and Licensee agrees to be bound by any such amendment. In the event that Licensor amends the Licensor Practices set forth in Exhibit 1.1, Licensee shall make

all required modifications within thirty (30) days after receipt of notice thereof from Licensor.

- 4.5. Assumption of Risk. Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, agents, contractors or subcontractors. Licensee assumes all risks related to the construction, operation and maintenance of its Attachments, except as to those that may be caused by the gross negligence or willful misconduct of Licensor.
- 4.6. Safety Precautions. Licensee shall take all steps necessary to protect persons and property against injury or damage that may result from the presence, installation, use, maintenance or operation of Licensee's Attachments, and to avoid interference with Licensor's safe and efficient operation of its electric distribution system or other Attachments. Should any such injury, damage or interference occur despite such steps, Licensee shall promptly notify Licensor of such injury, damage or interference. At Licensor's option, Licensee shall promptly, and in no event longer than thirty (30) days, either (i) repair such damage and/or resolve such interference, or (ii) compensate Licensor for the cost of repairing any such damage and/or resolving such interference, and shall indemnify Licensor as provided in Section 14.1.
- 4.7. Qualifications of Employees, Agents and Contractors. Licensee shall ensure that all employees, agents and contractors of Licensee used to install or maintain the Attachments either (i) have been certified or trained by an entity acceptable to Licensor to work in the vicinity of electric Distribution Poles or (ii) have received training with respect to work on electric Distribution Poles that is in Licensor's sole judgment at least as extensive as the training received by Licensor's employees performing similar work. Licensee shall produce proof of such certification or training upon Licensor's request.
- 4.8. Identification Markers.
  - (a) Licensee shall place and maintain permanent identification markers on each of its Attachments prior to affixing it to Licensor's Distribution Poles. All identification markers must be located at or near the point where such Attachments are affixed to each Distribution Pole, and must:
    - (i) be non-metallic;
    - (ii) be of a distinctive and uniform design;
    - (iii) include an alphanumeric code as specified by Licensor;
    - (iv) be legible, clearly visible and recognizable from the ground by a person having normal vision; and
    - (v) not show Licensee's name or insignia, unless prior consent of Licensor is obtained and it is made clear that Licensee is not the owner of the pole.
  - (b) Licensee shall be responsible for periodically inspecting its Attachments to ensure they have permanent identification markers. Should Licensor encounter any of Licensee's Attachments without permanent identification markers, Licensor may notify Licensee provided that Licensor can identify the Attachments as belonging to Licensee. Licensee shall have thirty (30) days from the date of notice to place such permanent identification markers on those Attachments. If the markers are not placed within thirty (30) days, then Licensor may remove such Attachments without incurring any liability to Licensee, and Licensee shall reimburse Licensor for the cost of such removal.

4.9. Notification of Attachments. Licensor reserves the right to require Licensee to provide a full inventory of precise locations and total number of Licensee's Attachments within Licensor's service territory in the form of a shapefile or kmz file. If such an inventory is required, thirty (30) days notice will be given to Licensee.

4.10. Hazardous Substances

Licensee agrees it will not use, generate, store or dispose of any Hazardous Materials on, under, about or within the area of the Distribution Pole in violation of any law or regulation. "Hazardous Material" shall mean any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation including petroleum and asbestos.

## 5. MUTUAL OBLIGATIONS

Each Party shall take all precautions as are reasonably necessary to avoid damaging the facilities of the other.

## 6. ESTABLISHING ATTACHMENT TO POLES

6.1. Pole Attachment Application. Before Licensee may affix any attachments to or make use of any of Licensor's Distribution Poles under this Agreement, Licensee shall (a) submit a completed Application including maps, plans, technical information, and pole attachment location data specified in the Joint Use Attachment Application requesting Licensor's permission to attach to or make use of each such pole; (b) receive written approval from Licensor authorizing the attachment to or use of each such pole; and (c) comply with all procedures set forth in this section, Licensor's construction requirements, and applicable local law. Licensee's failure to request and receive Licensor's permission as described herein will subject each Unauthorized Attachment to an Unauthorized Attachment Fee.

6.2. Application Processing Fee. To cover costs incurred by Licensor in processing Licensee's Application, including but not limited to the cost of performing all engineering, administrative and other activities necessary to prepare the Make Ready Estimate, Licensee shall pay to Licensor the Application Processing Fee.

6.3. Decision Regarding Application.

(a) Licensor will review the completed Joint Use Attachment Application and respond within ninety (90) days or provide estimated timeline by which Licensor will issue a decision to approve or reject the Application. An Application is not complete until Licensee has provided all information to Licensor. Licensor, in its sole discretion, may reject an Application that is incomplete. An Application is not approved if Licensor does not provide a timely response in accordance with this subsection 6.3(a).

(b) If in the sole judgment of Licensor attachment to Licensor's Distribution Poles as proposed in the Application is unsafe, undesirable, or impracticable based on the technical requirements and specifications of Section 4.4, or because of other capacity, safety, reliability or engineering concerns, Licensor may reject all or part of the

Application or limit the number and character of Attachments on any Distribution Pole.

6.4. Make Ready Estimate.

- (a) Licensor shall, on the basis of the completed Application and associated construction plans and drawings, submit to Licensee within ninety (90) days of receipt of Licensee's completed Application a Make Ready Estimate (based on Licensor's method of computing costs, which shall follow generally accepted accounting principles) for all Make Ready Work which may be required for each Distribution Pole, including an estimated completion date for such Make Ready Work.
- (b) Upon notice pursuant to Exhibit 1.3 attached hereto that the Make Ready Estimate has been accepted by Licensee, Licensor shall proceed with the Make Ready Work covered by the Make Ready Estimate. Licensor shall undertake commercially reasonable efforts to complete this work by the estimated completion date but does not guarantee completion by such date. Nothing shall preclude the Parties from making other mutually agreeable arrangements for contracting for or otherwise accomplishing the necessary Make Ready Work.
- (c) Licensor may, in its sole discretion, require Licensee to submit a deposit up to the amount identified in the Make Ready Estimate prior to performing any Make Ready Work.
- (d) Upon completion of the Make Ready Work and payment of the Make Ready Costs, Licensee shall obtain Authorization to use the Distribution Poles and to make Attachments in accordance with the terms of this Agreement.

6.5. Tree Trimming. The Licensee is responsible to maintain attachments and keep lines clear of trees and other vegetation. Trees shall be trimmed in a professional and visually appealing manner so as to maintain NESC code required clearances. In the event the Licensee, in the sole judgement of the Licensor, fails to maintain adequate clearances the Licensor may, but is not required to, cause the trees to be trimmed. The cost of such trimming, including associated administrative costs, shall be paid as an additional expense by the Licensee to the Licensor.

6.6. Overlashing.

- (a) Any proposed Overlashing by Licensee shall constitute a separate Attachment subject to the Application process and all other provisions of this Agreement.
- (b) Licensee shall not allow third party Overlashing without Licensor's prior approval.
- (c) Licensee shall notify Licensor of proposed installation or removal of Overlashing using the *Pole Attachment Application* in Exhibit 1.1 or the *Joint Use Removal* form in Exhibit 1.4.

## 7. PAYMENT PROVISIONS

7.1. Annual Pole Attachment License Fee. The annual license period covered by this Agreement shall be the twelve-month period beginning on the Effective Date and continuing for each twelve-month period thereafter. Licensor shall invoice Licensee for the Pole Attachment License Fee at the beginning of the annual license period. The Pole Attachment License Fee for each period shall be based on the number of Attachments on

Licensor's Distribution Poles as of the day preceding the annual license period. Licensor may invoice Licensee for Attachments authorized during the annual license period at any time after the Application for such Attachments is approved. The Annual Pole Attachment License Fee shall be non-refundable and will be pro-rated if Effective Date begins in a month other than January.

- 7.2. Payment Period. All amounts payable under this Agreement shall be due within thirty (30) days of the date of invoice. Interest shall be charged at the rate of One and One-Half Percent per month or fraction thereof (1.5%) or the maximum amount allowed by law on the unpaid balance of delinquent bills for each month or part thereof that any bill remains unpaid.
- 7.3. Increases. Licensor in its sole discretion may increase any fee amount identified in Exhibit 1.5. Licensor shall provide at least thirty (30) days notice to Licensee before implementing any such increase in fees.
- 7.4. Security. Licensee shall furnish a Security Instrument at Licensee's expense and in the amount identified above, with terms and conditions and from a financial institution acceptable to Licensor, in order to guarantee Licensee's payment in full of all Annual Pole Attachment License Fees and other amounts payable to Licensor under this Agreement. No Authorization for any Attachments will be granted to Licensee until the Security Instrument required by this section is received by Licensor.

## 8. INSPECTIONS

- 8.1. Right to Conduct Inspections. Licensor may, but does not have to the duty, to conduct inspections of Licensee's Attachments from time to time as necessary in Licensor's sole judgment to determine whether Licensee's Attachments meet the technical requirements and specifications listed in Section 4.4. Such inspections may be conducted no more frequently than once every year, unless Licensor determines that more frequent inspections are necessary for reasons involving safety of persons or protection of property. Licensee shall reimburse Licensor for all costs and expenses of conducting inspections to the extent such expenses are attributable to Licensee's Attachments.
- 8.2. Safety Violations. If during inspection or otherwise Licensor determines that any of Licensee's Attachments do not conform with the technical requirements and specifications listed in Section 4.4 or that Licensee's attachments interfere with Licensor's access to or operation of Licensor's facilities, Licensee shall, upon notice by Licensor, pay a Safety Violation Fee for each such violation, and shall correct such nonconformance within thirty (30) days of notification of such nonconformance, unless in Licensor's sole judgment safety considerations require Licensee to take corrective action within a shorter period. Should Licensee fail to take all steps necessary to comply with this requirement, or if safety considerations so require, Licensor may elect to do such work itself, and Licensee shall reimburse Licensor for all costs incurred by Licensor. Licensor shall not be liable for any loss or damage to Licensee's facilities which may result, and Licensee shall be responsible for any additional damages resulting from its failure to act in a timely manner in accordance with these requirements.



## 9. AUDITS

- 9.1. Right to Conduct Audits. Licensor may conduct an audit of Licensee's Attachments to verify the number of Licensee's Attachments. Any such audit may be conducted no more frequently than once every year, unless Licensor in good faith believes that Licensee's reported number of Attachments is inaccurate, in which case Licensor may audit as frequently as is necessary in its sole discretion. Licensee shall make whatever records, maps, invoices, and other information resulting from the audit available to Licensor upon Licensor's request. Licensee shall reimburse Licensor for all costs and expenses of conducting audits.

Licensor reserves the right to require Licensee to provide a full inventory of precise locations and total number of Licensee's Attachments within Licensor's service territory in the form of a shapefile or kmz file. If such an inventory is required, thirty (30) days notice will be given to Licensee.

- 9.2. Review of Records in Lieu of Audit. Licensor and Licensee may mutually agree that in lieu of audits, the number of Attachments maintained by Licensee shall be determined from existing maps and attachment records. If both Parties agree to use this method, each Party shall make all relevant maps and records available to the other Party, and the number of Attachments maintained by Licensee shall be cooperatively determined. The accuracy of such maps and records must be verified by the Party proposing to use them.

## 10. UNAUTHORIZED ATTACHMENTS

- 10.1. Unauthorized Attachment Fee. Licensee shall pay to Licensor an Unauthorized Attachment Fee, identified in Exhibit 1.5, within thirty (30) days of notification of each Unauthorized Attachment. Licensor may require that such Unauthorized Attachment be removed by Licensee, or Licensor itself may remove the Unauthorized Attachment without liability, at Licensee's expense. The Unauthorized Attachment Fee shall be in addition to any and all other applicable fees, including without limitation, Annual Pole Attachment License Fees due and payable for the current year and all prior years in which the Unauthorized Attachment existed. Nothing herein shall act to limit any other remedies, including a remedy for trespass, which may be available to Licensor as a result of any Unauthorized Attachment.
- 10.2. Licensor Failure to Act. No act or failure to act by Licensor with regard to any Unauthorized Attachment shall be deemed to ratify or license the Unauthorized Attachment. If an Application for such attachment is subsequently approved, such approval shall not operate retroactively to constitute a waiver by Licensor of any of its rights under this Agreement regarding the Unauthorized Attachment, and Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement from its inception with regard to any such Unauthorized Attachment.

**11. MAINTENANCE, REPLACEMENT AND RELOCATION OF POLES;  
REARRANGEMENT OF FACILITIES**

- 11.1. Maintenance Schedule. At its own expense, Licensor shall maintain the Attached Poles, and replace, reinforce or repair such poles as Licensor becomes aware that they are defective, in Licensor's sole judgment.
- 11.2. Interruption of Service. Licensor reserves to itself, its successors and assigns the right to maintain its system, Poles and property and to operate its facilities and system and business thereon in such manner as will best enable it to fulfill its own service requirements. Licensee shall have no claim against Licensor, and Licensor shall not be liable to Licensee, for any interference with or interruption of, the operation of Licensee's facilities on Attached Poles, for any consequential damages suffered by the Licensee of any kind caused by wires, fixtures, attachments and facilities of the Licensor or any other licensee or the activity of the Licensor's agents, employees, contractors, successors or assigns, except if such interruption or interference is caused by Licensor's willful misconduct or gross negligence.
- 11.3. Pole Climbing. The Licensee shall not climb Licensor's Poles using hooks while performing any construction or maintenance on its facilities. All construction or maintenance performed on Attached Poles by the Licensee shall be accomplished by the use of bucket trucks or ladders. Licensee (including its agents) expressly assumes the risk and responsibility for performing due diligence in determining the condition of all Poles to be accessed or climbed by its employees, contractors, or employees of contractors or subcontractors and shall be responsible for damage to Licensor's Poles. Licensor makes no and disclaims any warranty or representation regarding the condition and safety of the Poles of the Licensor and none is made.
- 11.4. Replacement or Relocation of Poles. Licensor reserves the right, in its sole discretion, to remove, reconstruct, alter, reconfigure, or relocate any Distribution Pole. Except in an emergency involving safety of persons or protection of property, as determined by Licensor in its sole judgment, Licensor shall provide five (5) days notice to Licensee whenever Licensor intends to remove, replace or relocate an Attached Pole, specifying the poles involved and the time of such proposed replacement, relocation or removal. Licensor shall not be responsible for relocation or removal of Licensee's Attachments. Should Licensee fail to remove or relocate its Attachments at the time specified by Licensor, Licensor may elect to remove or relocate Licensee's Attachments. Licensee shall reimburse Licensor for all costs of such removal or relocation, and Licensor shall not be liable for any loss or damage to Licensee's facilities which may result. Licensee shall be responsible for any additional damages resulting from its failure to transfer its Attachments. If Licensor has removed its attachments and Licensee's Attachment(s) remain on the original pole, Licensee shall become liable for the original pole, if it still exists, as provided in Section 12.1.
- 11.5. Replacement and Relocation Costs. Licensor, in its sole discretion, shall replace or relocate Distribution Poles. If Licensor in good faith determines that a Distribution Pole needs replacement or modification in order to accommodate Licensee's Attachments, then Licensor may do so with Licensee's consent and Licensee will bear the expense of such replacement.

- 11.6. Vacating Pole Space. In the event it becomes necessary for Licensor, Licensor's subsidiary or affiliate or any other entity in which Licensor holds an interest, or another utility or local government authority with whom Licensor has a prior agreement for pole attachments, to use the space on a Distribution Pole occupied or to be occupied by Licensee's Attachments, Licensee shall, upon receipt of sixty (60) days notice, either (a) vacate the space by removing its Attachments at its own expense, or (b) if Licensor decides to replace the pole with a larger pole that can accommodate Licensee's Attachments, bear the expense of such replacement and transfer its Attachments to the new pole. Licensee shall be solely responsible for all costs of installation, removal or transfer of its Attachments on, from or to Licensor's Distribution Poles.
- 11.7. Costs for Rearrangement of Other Facilities. In any case where the facilities of Licensor or another attacher(s) are required to be rearranged on the poles of Licensor in order to accommodate Licensee's Attachments, Licensee shall reimburse Licensor and the other attacher(s) the total reasonable costs incurred by Licensor or the other attacher(s) in rearranging such facilities to accommodate Licensee's Attachments.

## **12. ABANDONMENT OR REMOVAL OF ATTACHED POLES; COMPLIANCE WITH GOVERNMENT DIRECTIVES**

- 12.1. Right to Abandon or Remove; Licensee Obligations. Upon sixty (60) days notice to Licensee, Licensor may in its sole discretion abandon or remove any Attached Pole. Within this 60-day period, Licensee shall remove its Attachments and may place its facilities underground if authorized to place its facilities underground, transfer its facilities to the nearest facilities owned by Licensor if authorized by Licensor, or take other action not inconsistent with this Agreement. If, at the expiration of the 60-day period, Licensor shall have no attachments on such pole but Licensee shall not have removed all of its Attachments, such pole may be sold to and become the property of Licensee at the sole option of Licensor. If Licensor elects to sell such pole, Licensor shall provide Licensee with a properly authorized bill of sale reflecting the fair market value of the pole. Licensee shall receive the pole "as is," and shall indemnify, defend and hold harmless Licensor from all obligation, liability, cost, claim, damage, expense or charge related thereto or raised thereafter. Should Licensor elect to sell such pole, Licensee shall take title to the pole for all purposes. Because poles and related items may contain various hazardous chemicals or properties, Licensee shall comply with the terms and directions of the appropriate material safety data sheet and with state and federal law regarding the maintenance, replacement, and/or disposal of the pole. Licensor does not warrant, guarantee, or imply that such pole possesses sufficient mechanical strength as required by or for any use of Licensee. Licensor makes no representations or guarantees concerning any right to occupy the premises where the pole is currently located upon the removal of Licensor's facilities.
- 12.2. Governmental Requirement to Remove. In the event that the use of any Distribution Pole is or becomes lawfully forbidden by federal, state, county or municipal authorities or by owners of private property, Licensor shall provide sixty (60) days notice to Licensee that the Authorization covering the use of such pole will be terminated, and that the Attachment(s) of Licensee must be removed from the affected pole at Licensee's expense. Notwithstanding the foregoing, if the federal, state, county or municipal

authority, or private landowner requires discontinuance of the pole in less than sixty (60) days, the notice provided by Licensor shall be reduced accordingly.

- 12.3. Governmental Requirement to Shorten Pole. If a governmental authority requires Licensor to replace or modify a Distribution Pole such that the continued presence of Licensee's Attachments would not comply with the requirements of this Agreement, then the Authorization covering Licensee's Attachments to the pole shall immediately terminate upon notice from Licensor, and Licensee shall remove its Attachments from the affected pole at its own expense by the date specified by Licensor.
- 12.4. Removal of Attachments. Licensee may at any time and in its sole discretion remove any of its Attachments from Licensor's Distribution Poles but shall provide at least thirty (30) business days notice of such removal to Licensor. Such notice shall be made using the *Joint Use Removal* form and must include spatial data and details specified in the form that fully identify, by pole number and location, the poles from which such Attachments are being removed and the hardware being removed. No refund of any license fee will be due on account of such removal unless that removal is triggered by a Default of this Agreement by Licensor. **Licensee shall immediately treat all affected poles with an industry-acceptable wood preservative, plug all holes left by such Attachments, and repair such facilities as reasonable and appropriate in Licensor's judgment.**

### 13. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 13.1. Common Representations. Each Party represents and warrants that: (a) it has full authority to enter into and perform this Agreement; (b) this Agreement does not conflict with any other document or agreement to which it is a party or is bound, and this Agreement is fully enforceable in accordance with its terms; (c) it is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was formed; (d) the execution and delivery of this Agreement and performance hereunder will not conflict with or violate or constitute a breach or default under its formation documents and will not violate any law, rule or regulation applicable to it; and (e) no consents need be obtained from any governmental agency or regulatory authority to allow it to execute, deliver and perform its obligations under this Agreement
- 13.2. Required Authorizations. Licensee represents and warrants that it has obtained all Required Authorizations, and covenants that it will maintain and comply with the Required Authorizations throughout the Term.
- 13.3. LIMITATIONS ON WARRANTIES. THERE ARE NO WARRANTIES UNDER THIS AGREEMENT EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH HEREIN. THE PARTIES SPECIFICALLY DISCLAIM AND EXCLUDE ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSOR SPECIFICALLY DISCLAIMS ANY WARRANTY OR REPRESENTATION REGARDING THE CONDITION AND SAFETY OF LICENSOR'S DISTRIBUTION POLES.

## 14. INDEMNIFICATION

- 14.1. Licensee Indemnification. Licensee shall indemnify, defend, protect, hold harmless Licensor, its officers, directors, employees ("Licensor Party"), from and against any and all claims, expenses damages, judgments, defense costs and liability of any kind or nature, including actions brought against Licensor by the employees of Licensee and their dependents, heirs, assigns, or survivors, or actions brought against Licensor by Licensee's agents, representatives, customers, contractors, or subcontractors for any reason except for actions as have been determined by a court of competent jurisdiction to have arisen out of the negligence of the Licensor. Licensee shall defend, protect, and hold harmless Licensor from and against demands for, or litigation with respect to, service interruptions, damages to property and for injury or death to persons, including payments made under any Worker's Compensation Law or under any plan for employee disability and death benefits and including all expenses incurred in defending against any such claims or demands, or other damages which may arise out of or be caused by Licensee or its agents, employees, contractors or subcontractors with respect to the erection, operation, maintenance, presence, use, repair, rearrangement or removal of Licensee's Attachments or Unauthorized Attachments or the proximity of Licensee, its agents and employees on or in the vicinity of Licensor's Distribution Poles.
- 14.2. Licensor Indemnification. Licensor shall indemnify, protect, save harmless and insure Licensee from and against any and all claims and demands for, or litigation with respect to, damages to property, and for injury or death to persons, including payments made under any Worker's Compensation Law or under any plan for employee disability and death benefits and including all expenses incurred in defending against any such claims or demands, which may arise out of or be caused by any gross negligence or willful misconduct of Licensor or its agents or employees.
- 14.3. Notice. In the event of any claim, demand or litigation specified in this section, the Party to be indemnified (the "Indemnified Party") shall give prompt notice to the other Party (the "Indemnifying Party") of such claim, demand or litigation. The Indemnifying Party shall have sole control of the defense of any action or litigation on such a claim or demand (including the selection of appropriate counsel) and all negotiations for the settlement or compromise of the same, except that the Indemnifying Party may not make any non-monetary settlement or compromise without the Indemnified Party's consent, which consent shall not be unreasonably withheld. The Indemnified Party shall cooperate with the Indemnifying Party in the defense and/or settlement of any claim, demand or litigation. Nothing herein shall be deemed to prevent the Indemnified Party from participating in the defense and/or settlement of any claim, demand or litigation by the Indemnified Party's own counsel at the Indemnified Party's own expense.

## 15. LIMITATIONS ON DAMAGES

UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, LICENSOR SHALL NOT BE LIABLE TO LICENSEE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY LICENSEE OR BY ANY SUBSCRIBER, CUSTOMER OR PURCHASER OF LICENSEE FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY PROVISION OF INDEMNITY, OR OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY UPON WHICH ANY SUCH CLAIM MAY BE BASED.

## 16. INSURANCE

- 16.1. Insurance Requirement. Licensee shall carry insurance in such form and issued by such companies as are reasonably satisfactory to Licensor to protect the Parties from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature which may arise or result directly or indirectly from or by reason of any loss, injury, death or damage involving any Attachment. Throughout the Term of this Agreement, Licensee shall take out and maintain, and shall ensure that its agents, contractors and subcontractors take out and maintain, insurance that, at a minimum, conforms with the RUS insurance requirements of 7 CFR §1788.11, as it may be amended, which currently requires:
- (a) Workers' compensation and employer's liability insurance, as required by law, covering all employees who perform any of Licensee's obligations under this Agreement. If workers' compensation or employer's liability insurance is not required by law in the state in which the poles subject to this Agreement are located, then insurance shall be obtained by Licensee that is equivalent to what would be applicable if workers' compensation and employer's liability laws were in effect.
  - (b) Public liability insurance covering all of Licensee's operations under the Agreement with limits for bodily injury or death of not less than \$2 million each occurrence, limits for property damage of not less than \$2 million each occurrence, and \$2 million aggregate for accidents during the policy period. A single limit of \$2 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.
  - (c) Automobile liability insurance on all motor vehicles used in connection with the Agreement, whether owned, non-owned, or hired, with limits for bodily injury or death of not less than \$2 million per person and \$2 million per occurrence, and property damage limits of \$2 million for each occurrence. This required insurance may also be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.
- 16.2. Certificate of Insurance. Within thirty (30) days of the Effective Date, Licensee shall furnish to Licensor a certificate evidencing compliance with the above insurance requirements. This certificate shall list Licensor as additional insured and shall note specific cancellation language, as follows: "In the event of cancellation or material change of said policies, the insuring company shall give the Party to whom this certificate is issued thirty (30) days prior notice of such cancellation or material change." If Licensee fails to renew adequate insurance, Licensor may terminate this Agreement pursuant to Section 17.
- 16.3. Responsibility for Contractors. Licensee shall bear full responsibility for ensuring that its agents, contractors and subcontractors are in full compliance with the requirements of this section before they perform any work for Licensee in connection with this Agreement.
- 16.4. No Limitation on Indemnities. The purchase of the insurance required by this section shall not relieve Licensee of its liability or obligations under this Agreement or otherwise limit Licensee's liability under Sections 14.1 and 14.3.

## 17. DEFAULTS

- 17.1. Licensee Default. If Licensee is in Default under this Agreement and fails to correct such Default within the cure period specified below, Licensor may, at its option, and without further notice:
- (a) declare this Agreement to be terminated in its entirety;
  - (b) terminate the Authorization covering the Distribution Pole(s) with respect to which such Default shall have occurred;
  - (c) decline to authorize additional Attachments under this Agreement until such Defaults are cured;
  - (d) suspend Licensee's access to or work on any or all of Licensor's Distribution Poles;
  - (e) correct such Default and charge Licensee as provided in this Agreement; and/or
  - (f) seek specific performance of the terms of this Agreement through a court of competent jurisdiction.
- 17.2. Licensee Cure Period. For a period of thirty (30) days following receipt of notice from Licensor, Licensee shall be entitled to cure any Defaults. The 30-day notice and cure period does not apply to any Default by Licensee of its payment obligations under this Agreement.
- 17.3. Termination Because of Licensee Default. If Licensor terminates this Agreement because of Licensee's Default, Licensee shall not be entitled to any refund of any Annual Pole Attachment License Fees.
- 17.4. Reimbursement for Licensor Work. If Licensee fails to cure a Default with respect to the performance of any work that Licensee is obligated to perform under this Agreement, Licensor may elect to perform such work, and Licensee shall reimburse Licensor for all costs related thereto.
- 17.5. Attorney Fees and Court Costs. If either Party fails to cure a Default with respect to any of its obligations under this Agreement and it becomes necessary for the other Party to obtain the services of an attorney, who is not a salaried employee of that Party, to enforce its rights under this Agreement, the defaulting Party agrees to pay all reasonable attorney fees and court costs of litigation associated with such enforcement, if the other Party is successful.

## 18. RIGHTS OF OTHER PARTIES

- 18.1. Licensor. Nothing herein shall be construed to limit the right of Licensor, by contract or otherwise, to confer upon others, not parties to this Agreement, rights or privileges to use the Attached Poles covered by this Agreement, except as provided in Sections 18.2 and 18.3, such parties' rights shall be subordinate to the rights and privileges conferred by Licensor upon Licensee under this Agreement.
- 18.2. Other Licensees and Third Parties. Nothing herein shall be construed to subordinate the rights or privileges of Other Licensee/Joint Users, not parties to this Agreement, who on the date of execution of this Agreement are already using an Attached Pole intended to be covered by this Agreement. Prior to making any Attachments to any Pole, the Licensee shall notify any other parties or Licensees using such Poles in writing of Licensee's

proposed use of such Pole, and Licensee's attachment privileges granted in this Agreement shall be subordinate to any rights or privileges conferred by Licensor before execution of this Agreement.

- 18.3. Public Safety Priority. Where any statute, ordinance, rule or regulation of any governmental authority having jurisdiction requires the Licensor to allow the use of its Poles for fire alarm, police or other like signal systems, such uses shall be permitted and given priority status over any rights granted to Licensee in this Agreement.

## **19. TERMINATION OF AGREEMENT**

Upon termination of this Agreement, Licensee shall remove all of its Attachments from all of Licensor's Distribution Poles within sixty (60) days. If any Attachments are not so removed within sixty (60) days following such termination, Licensor shall have the right to remove such Attachments, and to use, dispose of or sell same, at Licensee's sole expense and without any liability to Licensee. Licensee shall not be entitled to reimbursement of any fee upon termination of this Agreement.

## **20. WAIVER OF TERMS OR CONDITIONS**

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 such conditions and terms shall be and remain at all times in full force and effect.

## **21. MODIFICATIONS**

Except as otherwise specified in this Agreement, this Agreement may be amended or supplemented at any time only upon written agreement by the Parties hereto. Notwithstanding the foregoing, all Exhibits may be modified by Licensor upon thirty (30) days notice to Licensee. The names, addresses, facsimile numbers and electronic mail addresses to which notices must be sent may be modified by either Party upon notice to the other.

## **22. PAYMENT OF TAXES**

Each Party shall pay all taxes and assessments lawfully levied on its own property and services subject to this Agreement.

## **23. NOTICES**

Any notice, request, consent, demand, designation, approval or statement required to be made to either Party by the other shall be in writing and shall be delivered via personal delivery, Federal Express (or other equivalent, generally recognized overnight delivery service), facsimile or electronic mail transmission, or certified U.S. mail return receipt requested. Notice given by facsimile shall be deemed to have been received when transmitted, provided that the sender shall have received a transmission report indicating that all pages of the notice have been transmitted with the correct facsimile number. Notice given by electronic mail shall be deemed given when directed to an electronic mail address at which the recipient has consented to receive such notice. Notice given by personal delivery, overnight delivery, or



certified U.S. mail shall be effective upon receipt.

#### **24. CONFIDENTIALITY**

Neither Party shall at any time disclose, provide, demonstrate or otherwise make available to any third party any of the terms or conditions of this Agreement, except and only after obtaining the consent of the other Party, or as may be required by applicable law or governmental authorities. Notwithstanding the foregoing, nothing in this section shall prevent disclosure to a Party's authorized legal counsel who shall be subject to this confidentiality section, nor shall it preclude the use of this Agreement by the Parties to obtain financing, to make or report matters related to this Agreement in any securities statements, or to respond to any requests by governmental or judicial authorities; provided, however, that any such disclosure shall be limited to the extent necessary, and shall be made only after attempting to obtain confidentiality assurances. Notwithstanding the foregoing, prior to making any disclosure in response to a request of a governmental authority or legal process, the Party called upon to make such disclosure shall provide notice to the other Party of such proposed disclosure sufficient to provide the other with an opportunity to timely object to such disclosure.

#### **25. FORCE MAJEURE**

Except as may be expressly provided otherwise, neither Party shall be liable to the other for any failure of performance hereunder due to causes beyond its reasonable control, including but not limited to: (a) acts of God, fire, explosion, vandalism, storm, or other similar occurrences; (b) national emergencies, insurrections, riots, acts of terrorism, or wars; or (c) strikes, lockouts, work stoppage, or other labor difficulties. To the extent practicable, the Parties shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the force majeure event causing the failure or delay has ceased. Each Party shall promptly notify the other Party of any delay in performance under this section and its effect on performance required under this Agreement.

#### **26. CONSTRUCTION OF AGREEMENT**

This Agreement was reached by each Party after arms' length negotiations and upon the opportunity for advice of counsel and shall not in any way be construed against either Party on the basis of having drafted all or any part of this document. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "including" or "includes" do not limit the preceding words or terms.

#### **27. OWNERSHIP RIGHTS**

All Distribution Poles under this Agreement shall remain the property of Licensor, and Licensee's non-exclusive rights in Licensor's Distribution Poles shall be and remain a non-exclusive license subject to the terms and conditions of this Agreement. Nothing herein shall be construed to compel Licensor to maintain any of its poles for a longer period than is required by Licensor's own service requirements.

#### **28. THIRD PARTY BENEFICIARIES**

Except as otherwise provided in this Agreement, this Agreement is intended to benefit only the Parties

and may be enforced solely by the Parties, their successors in interest or permitted assigns. It is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, except as provided herein.

## **29. SEVERABILITY**

Nothing contained in this Agreement shall be construed to require the Licensor of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any law, such law shall prevail. In such event, however, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirement, and no other provisions of this Agreement shall be affected thereby and all such other provisions shall continue in full force and effect.

## **30. PRIOR AGREEMENTS SUPERSEDED**

This Agreement embodies the entire agreement between Licensor and Licensee with respect to the subject matter of this Agreement and supersedes and replaces any and all previous agreements entered into by and between Licensor and Licensee, written or unwritten, with respect to that subject matter.

## **31. ASSIGNMENT AND TRANSFER**

Licensee shall not assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior consent of Licensor. Licensor may condition such consent upon the assignee's or transferee's agreement to reasonable additional or modified terms or conditions. If there is a change of control of Licensee, then Licensor shall have the right, in its reasonable discretion, immediately to terminate this Agreement in its entirety without further liability. Licensor may assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior consent of Licensee.

## **32. FACSIMILE AND ELECTRONIC SIGNATURES; COUNTERPARTS**

This Agreement may be executed using facsimile or electronic signatures and such facsimile or electronic version of the Agreement shall have the same legally binding effect as an original paper version. This Agreement may be executed in counterparts, each of which shall be deemed an original.

## **33. SURVIVAL; LIMITATIONS ON ACTIONS**

Notwithstanding the termination of this Agreement for any reason, Sections 14, 15, 19, 22, 23, and 25 through 29 shall survive termination for the applicable statute of limitations. Notwithstanding any provisions to the contrary, all rights, remedies, or obligations which arose or accrued prior to the termination or expiration of the terms hereof shall survive and be fully enforceable.

**[END OF TERMS AND CONDITIONS]**

**Exhibit 1.1**

**JOINT USE POLE ATTACHMENT APPLICATION**

***(Includes Licensor Rules and Practices for Attachments and Minimum Design  
Criteria for Attached Poles)***

# JOINT USE ATTACHMENT APPLICATION

Date:

Name:

Company:

Email Address:

Phone Number:

In accordance with GKE and your company's Joint Use Agreement, this application is hereby made for \_\_\_\_\_ to make attachments to \_\_\_\_\_ distribution poles (no more than 20 per application) located in or near \_\_\_\_\_, in the County of \_\_\_\_\_ and the State of \_\_\_\_\_.

**The following information is required and attached as part of this application.** Please check each box to ensure application is complete: Licensee  Garkane

Construction plans and drawings detailing Licensee's build out plan

Maps indicating specific distribution poles of Licensor that Licensee proposes to use

Spatial data with pole locations and numbers (kmz or shp)

The number and character of the attachments to be placed on each pole

All equipment to be included in Licensee's attachments, including overlash & expectation of midspan installation

Drop/Lift Poles that Licensee intends to install

The total tension, weight, and transverse loading data for the wires, including multiplication by the applicable overload factors of the NESC

The size and type of messenger wire including weight/feet and design tension

The size and type of cable including weight/feet, design tension, and diameter

A drawing showing the type and manner of bolted attachments

A drawing showing installation specifications, rating, and guy and anchor requirements proposed to be used by Licensee

Any pedestal attachments

Any other information necessary, in Licensor's sole judgment, for Licensor to determine if the requirements of Section 4.4 (in *Joint Use License Agreement*) are met

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## Fees. Refer to Fee Schedule in Joint Use License Agreement (Exhibit 1.5).

*Application Processing Fee.* \$ 200.00 per Application or \$35.00 per Attachment whichever is greater.

*Pole Attachment Rental Fee.* \$15.00 per Attachment per year.

*Safety Violation Fee.* \$500.00 per safety violation.

*Unauthorized Attachment Fee.* \$1000.00 per Unauthorized Attachment.

## PROJECT DETAILS

Number of Poles in this application                      x \$35 per attachment =

Associated Licensee Project Number (optional):

Location Description:

*Include required information below, attaching additional pages or documents as needed.*

Attach KMZ or SHP file with pole locations and pole numbers associated with this application. **Application WILL NOT BE REVIEWED until spatial data are received.**

## LICENSOR RULES AND PRACTICES FOR ATTACHMENTS

- 1) Licensee shall install and maintain its Attachments at its own expense. Bucket trucks are preferred for installation and maintenance where access is available.
- 2) Any unbalanced loading of Licensor's Distribution Poles caused by the placement of Licensee's facilities shall be properly guyed and anchored by Licensee with a guy and anchor provided by Licensee, at no expense to Licensor. Licensee may not place new guy attachments on Licensor's anchors without Licensor's prior consent.
- 3) A preliminary "ride through" of the proposed route of Licensee's facilities shall be made by representatives of Licensor and Licensee upon request by Licensor.
- 4) Licensee shall check and verify the condition of any pole prior to climbing or performing work on it. If a pole is deemed unsafe, Licensee must immediately notify Licensor by telephone and in writing as soon as practicable.
- 5) All Attachments shall be located on the same side of each pole as any existing telephone or communications cable, or as otherwise designated by Licensor.
- 6) On Attached Poles where Licensor has secondary conductors, all Attachments shall be located on the same side of the pole as the secondary conductors, or as otherwise designated by Licensor.
- 7) Licensee shall cause all cabinets, enclosures, and messengers to be grounded by bonding to the existing pole ground with #6 solid, bare, soft drawn copper wire.
- 8) Licensee shall install no power supply on any of Licensor's poles on which underground electric services, capacitor banks, sectionalizing equipment or voltage regulators are already installed.
- 9) No electrical service connection to a communications power supply shall be made or installed by Licensee until after Licensor shall have completed inspection of an approved fused service disconnect switch or circuit breaker.
- 10) No bolt used by Licensee to attach its facilities shall extend or project more than one (1) inch beyond its nut.
- 11) All Attachments of Licensee shall have at least two inches clearance from unbonded hardware such as pedestals and any other enclosures containing equipment.
- 12) All of Licensee's Attachments shall comply with NESC clearance requirements and shall be located a minimum of forty (40) inches below Licensor's lowest attached facilities. All mid-span clearances between Licensee's facilities and Licensor's lowest conductors shall comply with NESC clearance requirements.
- 13) Licensee may, with prior approval of Licensor, install cross arms, alley arms, or cable extension arms for the support of any of its facilities. However, Licensee shall not use any cross arm or alley arm brace above the arm that it supports. **No new midspan taps or new cable TV risers are permitted.**
- 14) Licensee shall install and maintain any and all of its facilities in a neat and workmanlike manner consistent with the maintenance of the overall appearance of the jointly used pole, subject to the approval of Licensor in its sole discretion.
- 15) If any of Licensee's proposed attachments are to be installed upon poles already jointly used by Licensor and another party(ies), Licensee shall negotiate with such other party(ies) to determine clearances between its facilities and those of Licensor and such other party(ies), except that Licensee may not in any way modify the clearance requirements set forth in this Agreement.
- 16) Licensee shall provide to Licensor a statement summarizing the standards used by Licensee for its standard pole attachment installations. Such standards shall be signed and approved by a Professional Engineer representing Licensee, confirming that Licensee's standard installations conform with the NESC and good engineering design. With respect to non-standard Attachments, and submit such plans to Licensor with a statement that such non-standard Attachments comply with the NESC and good engineering design.
- 17) Attachment removal must be mapped and reported to Garkane in order to be removed from Licensee's tally. Removal shall be reported using the GKE Joint Use Removal form which shall be submitted with an accompanying KMZ or SHP file as well as a PDF map.
- 18) Licensee shall ensure that all employees, agents and contractors of Licensee used to install or maintain the Attachments have been certified and/or trained to work in the vicinity of electric distribution poles.
- 19) Annual bills for attachments will be sent each December/January for the upcoming year.

## Minimum Design Criteria for Attached Poles

*\*all references to tables and codes refer to the National Electrical Safety Code (NESC)*

- 1) Where conductors or equipment are added, altered, or replaced on an existing structure, the structure or the facilities on the structure need not be modified or replaced if the resulting installation will be in compliance with either (a) the rules that we in effect at the time of original installation, or (b) the rules in effect in a subsequent edition to which the installation has been previously brought into compliance, or (c) the rules of the current edition. If a structure must be changed out to meet the prior code requirements the new structure must meet the current code. (013B)
- 2) Maximum Design Conductor Temperature: 167dF for Distribution, 212dF for Transmission. Power Conductors shall be at Design Temperature, Non Power Conductors shall be at 60dF.
- 3) Zone Loading. Zone 1 – ½” ice, 4 lb wind, 0dF. Zone 2 – ¼” ice, 4 lb Wind, 15dF.
- 4) Extreme Wind – 90mph 3 second gust
- 5) Minimum Ground Clearance shall be at the maximum of 1, 2 or 3 above plus 2ft for construction tolerance and Table 232-1. Line 5 - subject to pedestrian traffic only must be physical restriction (no rider on horseback)
- 6) Structure strength must exceed Grade B strength requirements. (Table 242-1)
- 7) Design loads for additions for structures over 10 years old are limited to 80% of new structure. The NESC is not a design guide. It is minimum requirements.
- 8) Minimum Vertical Clearance between lowest Power conductor or equipment and highest Communications cable or equipment at the support shall be 40”. May be greater per Table 235-5 at higher voltages.
- 9) Minimum Vertical Clearance between Power and Communication in the span shall be 75% of value at Support. Upper conductor shall be at maximum loaded sag, lower conductor shall be at same ambient temperature per rule 235C2b(1). Or straight line test of 235C2b(3).
- 10) Power conduits running thru communications space must extend above highest point of attachment or communications equipment at least 4 feet.
- 11) All communications risers shall be on standoff brackets.
- 12) All conductor imbalances must be guyed. All guys must be bonded to pole ground with at least #6 Stranded Copper. All guys must be ‘conspicuously’ marked at ground line. (217C) Garkane does not charge a separate attachment fee for guys.
- 13) All structures shall be evaluated using O Calc Pro or PLS CADD for NESC loading, strength, and clearance compliance. Copies of data files that demonstrate compliance shall be provided with application.

\* \*

### Acceptance of Rules, Practices, and Design Criteria

The above rules, practices, and design criteria are accepted by Licensee.

Licenser will respond to this application within 90 days of receipt.

### LICENSEE

Print Name:

Title:

Signature:

Date:

**PLEASE SUBMIT COMPLETED APPLICATION AND SPATIAL DATA TO: [fsr@garkane.com](mailto:fsr@garkane.com)**

Questions? Call Taleana Virostko at (435) 414-9610

Garkane Joint Use webpage: <https://garkaneenergy.com/content/joint-use>

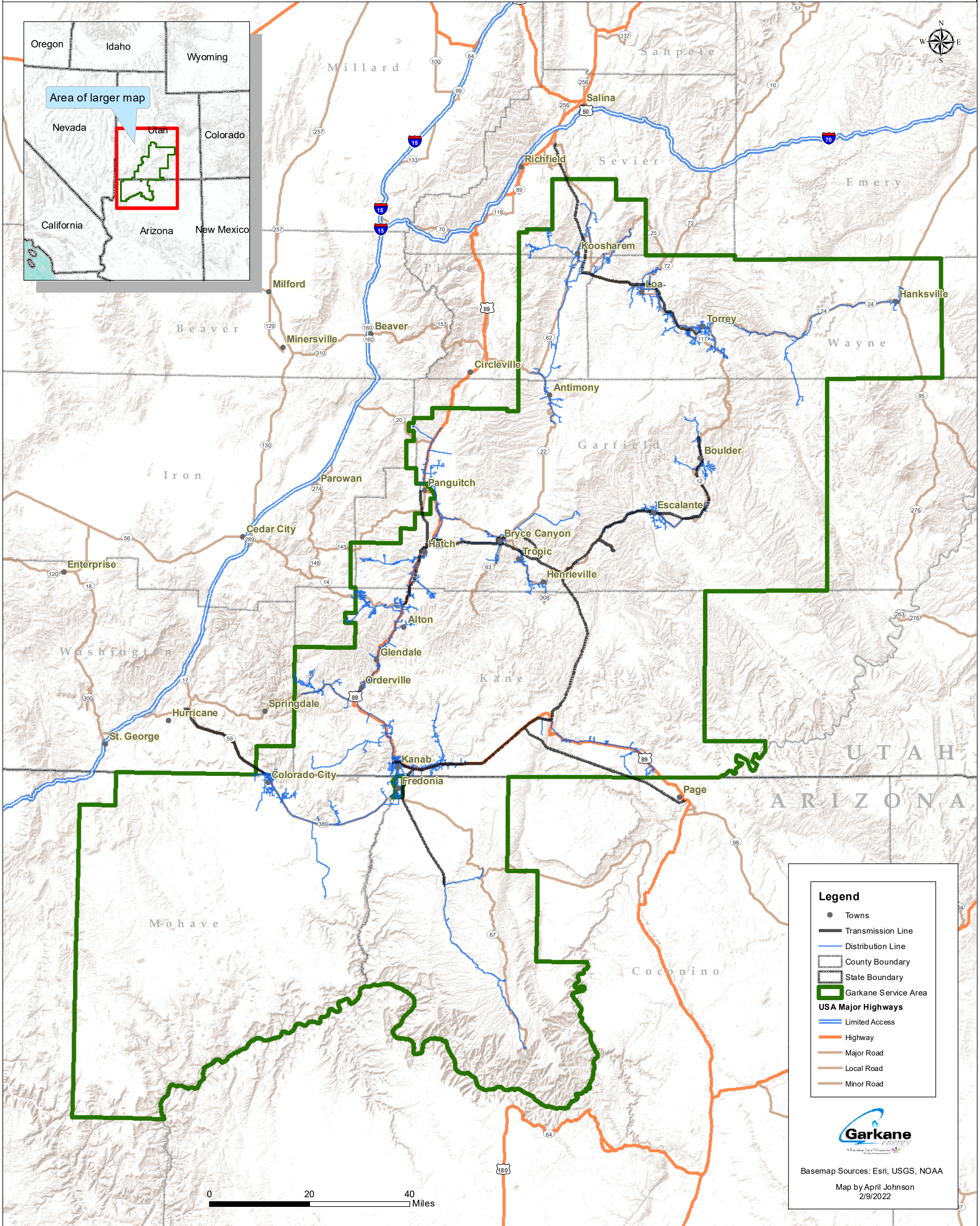
**Exhibit 1.2**

**LOCATION OF LICENSEE SERVICE AREA**

Attached hereto is a map or sketch graphically depicting Licensee's Service Area.



# Garkane Energy Cooperative Service Area



**Legend**

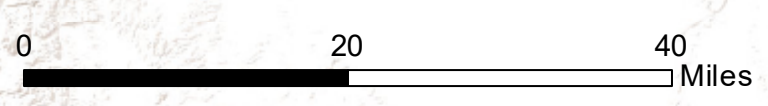
- Towns
- Transmission Line
- Distribution Line
- County Boundary
- State Boundary
- ▭ Garkane Service Area

**USA Major Highways**

- Limited Access
- Highway
- Major Road
- Local Road
- Minor Road



Basemap Sources: Esri, USGS, NOAA  
Map by April Johnson  
2/9/2022



**Exhibit 1.3**

**MAKE READY ESTIMATE**  
**AND ACCEPTANCE OF MAKE READY ESTIMATE**

## MAKE READY ESTIMATE AND ACCEPTANCE

(To be completed by Garkane Engineer after assessment of *Joint Use Attachment Application*)

Service Order Number:

Work Order Number:

### **Make Ready Estimate**

Licensor approves this application and installation of proposed attachments with the following conditions:

None – current Garkane poles will support attachments as proposed by Licensee in accordance with design specifications detailed in the Joint Use Agreement and Joint Use Attachment Application.

Minimal – current Garkane poles will support attachments proposed by Licensee in accordance with design specifications detailed in the Joint Use Agreement and Joint Use Attachment Application with the following additional instructions:

Make Ready work is needed. See attached estimate.

Licensor must perform the following Make Ready Work at an estimated cost to Licensee of \$ \_\_\_\_\_ after Licensee has signed and submitted this form and paid AID money.

### **LICENSOR (Garkane):**

Print Name:

Title:

Signature:

Date:

\* \* \*

### **Acceptance of Make Ready Estimate**

The above Make Ready Estimate is accepted by Licensee.

Licensee shall complete installation of its Attachment(s) within 90 days following Licensor's notice of completion of Make Ready Work. Licensee must sign and submit this Make Ready Acceptance form along with payment before work can be scheduled. Licensor will contact Licensee upon completion of work.

### **LICENSEE (Attaching Entity):**

Print Name:

Title:

Signature:

Date:

**PLEASE SUBMIT SIGNED FORM TO: [fsr@garkane.com](mailto:fsr@garkane.com)**

Questions? Call Taleana Virostko at (435) 414-9610

Garkane Joint Use webpage: <https://garkaneenergy.com/content/joint-use>

**Exhibit 1.4**

**JOINT USE REMOVAL FORM**

Download form first.  
Fill out, save, and submit.

## JOINT USE REMOVAL FORM

Garkane Use ONLY  
SO#:

Date:

Name:

Company:

Email Address:

Phone Number:

**Licensee/Applicant must email a KMZ or SHP file along with this form that details Garkane pole locations and pole numbers.** Failure to send spatial data will result in no adjustments to annual charges. Be aware that we will only assume one attachment per pole has been removed unless otherwise specified.

**Location Description:**

**Number of Poles Affected:**

**Number of Attachments Removed:**

### **Pole By Pole Modifications**

List the following for each pole:

- pole number
- number of attachments removed
- each attachment type (e.g. copper, fiber, overlash)
- whether a midspan, guy, or other equipment is also being removed
- any additional information

Map/screenshot & spatial data attached with exact locations of affected poles.

**PLEASE SUBMIT COMPLETED FORM & SPATIAL DATA TO: [fsr@garkane.com](mailto:fsr@garkane.com)**

Questions? Call Taleana Virostko at (435) 414-9610

Garkane Joint Use webpage: <https://garkaneenergy.com/content/joint-use>

**Exhibit 1.5**

**FEE SCHEDULE**

## **JOINT USE FEE SCHEDULE**

Application Processing Fee. \$200.00 per Application or \$35.00 per Attachment whichever is greater.

Pole Attachment License Fee. \$15.00 per Attachment per year.

Safety Violation Fee. \$500.00 per safety violation.

Unauthorized Attachment Fee. \$1000.00 per Unauthorized Attachment.

Amount of the Security Instrument. \$10,000. No deposit will be required as long as the total number of attachments is less than 50 and all fees and cost due under this agreement are promptly paid. At such time as the total number of attachments equals or exceeds 50 or payments are not made on time, a deposit may be required.

**Exhibit 1.6**

**EVIDENCE OF ADEQUATE INSURANCE**