

PUBLIC UTILITIES COMMISSION

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April 2, 2004

Advice Letter 2476-E

Ms Anita Smith, Rate Analyst
Pacific Gas and Electric Company
77 Beale Street, Mail Code 10B
San Francisco, CA 94177

Subject: Informational advice letter – master pole and underground facilities license and lease agreements

Dear Ms Smith:

Advice Letter 2476-E is effective April 3, 2004. A copy of the advice letter is returned herewith for your records.

Sincerely,

A handwritten signature in cursive script that reads "Paul Clanon".

Paul Clanon, Director
Energy Division



**Pacific Gas and
Electric Company**

February 23, 2004

ADVICE 2476-E

(Pacific Gas and Electric Company ID U39E)

Karen A. Tomcala
Vice President
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**Subject: Informational Advice Filing - Master Pole and Underground
Facilities License and Lease Agreements**

Public Utilities Commission of the State of California

Pacific Gas and Electric Company ("Company" or "PG&E") hereby submits for informational purposes in accordance with Decision (D.) 98-10-058, dated October 22, 1998, Rule VI, (at Appendix A), 1998 Cal. PUC LEXIS 879, and D.00-03-055, *Order Modifying D. 98-10-058 and Denying Rehearing*, dated March 16, 2000, 2000 Cal. PUC LEXIS 228, copies of the Master Pole and Underground Facilities License and Lease Agreements between the Company and: (1) Electric Lightwave, Inc. ("ELI"); (2) Global West Network, Inc. ("Global West"); and (3) Metromedia Fiber Network Services, Inc. ("MFNS") for access by these telecommunications companies to PG&E's wood utility poles and underground electric conduit in PG&E's existing utility rights of way.

Each agreement is exclusively a revocable license to use PG&E's wood utility poles and conduit pursuant to the explicit provisions of General Order (G.O.) 69-C.¹ Although the agreements include the word "lease" in the title, the Commission, in D.02-12-018, determined that these agreements do not create lease interests and are properly G.O. 69-C licenses. (D.02-12-018, Conclusion of Law No. 6, 2002 Cal. PUC LEXIS 864, *21.) As such, the Commission concluded that these agreements do not require Commission approval under Section 851 of the Public Utilities Code. (*Id.*, Conclusion of Law No. 7.) A true and correct copy of each agreement is attached hereto as Exhibits 1, 2, and 3.

¹ General Order 69-C provides in pertinent part: "all public utilities covered by the provisions of Section 851 are hereby authorized to grant easements, licenses or permits for use of occupancy on, over, or under any portion of the operative property of said utilities for rights of way, private roads, agricultural purposes, or other limited uses of their several properties without further special authorization by this Commission whenever it shall appear that the exercise of such easement, license or permit will not interfere with the operations, practices and services of such public utilities to and from their several patrons or consumers." As D.00-03-055 observes, at *mimeo*, p. 28, "General Order 69C gives blanket Section 851 authorization for easements on utility property."



Background

Each of the telecommunications companies represents that it is a utility regulated by this Commission (Section 1.4 of the Agreements) and holds a Certificate of Public Convenience and Necessity ("CPCN") for telecommunications services. Each of these companies has further agreed that the Agreement "applies to Permittee's activities only to the extent such activities are covered by its CPCN." (Emphasis added.)

The Commission granted ELI various CPCNs to: (1) construct fiber optic cable facilities and to provide high-speed digital private line communications (D.94-03-073, 1994 Cal. PUC LEXIS 233); (2) provide low-speed provide line service and resell intrastate service (D.95-09-115, 1995 Cal. PUC LEXIS 784); (3) operate as a facilities-based local exchange carrier (D.95-12-057, 1995 Cal. PUC LEXIS 967); and (4) resell local exchange service (D.96-02-072, 1996 Cal. PUC LEXIS 123).

The Commission granted Global West a CPCN to provide InterLATA and IntraLATA telecommunications services in D.99-06-076, 1999 Cal. PUC LEXIS 551. In D.00-11-037, 2000 Cal. PUC LEXIS 949, as modified by D.01-05-027, 2001 Cal. PUC LEXIS 689, the Commission authorized Global West to modify its CPCN to permit construction of specific telecommunications facilities as part of a telecommunications system that would link major cities along the California coast from San Francisco to San Diego.

The Commission issued MFNS a CPCN in D.98-07-108, 1998 Cal. PUC LEXIS 890. In D.00-09-039, 2000 Cal. PUC LEXIS 711, the Commission approved MFNS's Mitigated Negative Declaration prepared pursuant to the California Environmental Quality Act ("CEQA") and authorized MFNS to resume work on a fiber optic cable and conduit installation project in the San Francisco Bay Area and the Los Angeles Basin.

All of these agreements are only for pole and conduit attachments within PG&E's existing utility right of way.

Critical to each agreement is the telecommunications company's acknowledgement that its rights under the Agreement are subject to G.O. 69-C. Section 2.1 of each agreement provides as follows:

- a) This Agreement as a License is given pursuant to the authority of, and upon, and subject to, the conditions prescribed by CPUC General order ("G.O.") No. 69-C dated and effective July 10, 1985, which G.O. No. 69-C by this reference is incorporated herein. This License is effective the date it is signed by PG&E, and will terminate based on any of the terms



and conditions set forth in this Agreement, or when it becomes a lease as set forth in Section 2.2.

- b) Pursuant to G.O. 69-C this License is conditioned upon the right of PG&E, either upon order of the CPUC, or upon PG&E's own decision to commence or resume the use of the property in question whenever, in the interest of PG&E's service to its patrons or customers, it shall appear necessary or desirable to do so. PG&E will use commercially reasonable efforts to accommodate relocations, rearrangements and replacements under sections 7.2, 7.4, and 7.8.
- 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.

Moreover, in the termination provisions, as set forth in Section 10.1(b)(4) of each agreement, each telecommunications company specifically acknowledges the Company's right to terminate the Agreement under General Order 69-C: "in accordance with the provisions of Section 2.1, if PG&E or the CPUC invoke the provisions of G.O. 69-C."

The annual attachment fee for poles and for conduit in the Agreement is based on the formula in D.98-10-058 and is set forth in each agreement's Exhibit B; unit costs for make-ready and rearrangement work, and the mapping and engineering fees set forth in each agreement's Exhibit C.

In Section 4.1 of each agreement, the attaching parties agree to be bound by all provisions of applicable law. Section 4.1 states in pertinent part,

- 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 PG&E in its sole, good faith discretion. All Pole Attachments must adhere to the clearance, separation, windloading and dead-end tensions and other requirements of G.O. No. 95 or any successor.

Permittee's installation in Underground Facilities must comply with G.O. 128, including but not limited to mechanically and electrically protecting Permittee's cable within any PG&E splice box, vault, or enclosure. Permittee shall not locate splices, coils of cable, or other equipment



within a PG&E splice box, vault, or enclosure. If it is practical and feasible, Permittee shall place its own enclosure adjacent to the PG&E enclosure for splices, coils of cable or other equipment. Neither the requirement that Permittee follow these practices, applicable laws, rules and regulations or special instructions given by PG&E nor the adherence to them by Permittee shall relieve Permittee for the sole responsibility to maintain safe and efficient working and operating conditions.

- b) The Permittee shall be solely responsible for the Attachments and shall take all necessary precautions during installation, and maintenance on or near PG&E Facilities and PG&E Right-of-way so as to protect all persons and the property of PG&E and others from injury and damage.

Effective Date

PG&E requests that this advice filing become effective on regular notice, **April 3, 2004**, which is 40 days after the date of filing.

Notice

In accordance with General Order 96-A, Section III, Paragraph G, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list, and via U.S. mail to the parties on the service list for R. 95-04-043. Address changes should be directed to Sandra Ciach at (415) 973-7572. Advice letter filings can also be accessed electronically at: <http://www.pge.com/tariffs>

Karen A. Tomcala/sr

Vice President - Regulatory Relations

Attachments

cc: Electric Lightwave, Inc.
Global West Network, Inc.
Metromedia Fiber Network Services, Inc.
Service List - R. 95-04-043

ADVICE 2476-E

EXHIBIT 1

**AGREEMENT WITH PG&E AND ELECTRIC LIGHTWAVE, INC.
("ELI")**

MASTER POLE, AND UNDERGROUND FACILITIES LICENSE AND LEASE AGREEMENT

This Pole, *Conduit and Underground Facilities License and Lease Agreement* ("Agreement") is entered into by and between **Pacific Gas and Electric Company** ("PG&E"), a California corporation, its successors in interest or assigns and **Electric Lightwave, a Delaware corporation** ("Permittee") (together, 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 PERMIT. PG&E gives Permittee permission, on the terms and conditions stated herein, to install and maintain telecommunications cables and related equipment (hereinafter sometimes collectively referred to as "Pole Attachments" or "Attachments") (i) in the space below that space assigned for use by supply circuits as set forth in California General Order 95 on distribution poles, anchors and streetlights solely owned or jointly owned by PG&E (collectively "PG&E Pole(s) or Pole(s)") and (ii) in *conduit, inner ducts and associated manholes, boxes and handholes collectively, the "PG&E Underground Facilities"*. The *Poles and Underground Facilities* are located on distribution rights-of-way ("PG&E Right-of-Way") solely or jointly owned or otherwise held and maintained by PG&E. The *Poles and Underground Facilities* are identified by Permittee and attached to the Contact Permit form Exhibit A. *The PG&E Poles and the PG&E Underground Facilities are referred to as the "Facilities"*.

The term "Attachment" shall mean, *with respect to Poles*, a single contact on a Pole to accommodate or to support a single cable or piece of equipment and, *with respect to Underground Facilities*, the installation of one cable within a conduit or inner duct. Additional contacts required for a second cable, overflashing, or a piece of equipment will be considered a second Attachment. The installation of risers, amplifiers, and power supplies on PG&E Poles and use of PG&E anchors shall be considered additional Attachments and are within this Agreement.

The electric usage by power supplies shall be covered by electric tariffs and are not within this Agreement. If any Attachments include unmetered electrical equipment, Permittee shall notify PG&E in writing to arrange for electric service and appropriate billing prior to using the Attachment.

Use of jointly owned Poles is permitted when PG&E is not otherwise precluded from offering such use. PG&E does not warrant that its permission alone is sufficient to allow contacts on jointly owned poles.

This Agreement is for Poles and Underground Facilities with no supply circuits in excess of 50 kV.

1.2 **PG&E DISCLAIMER.** Permittee expressly acknowledges that PG&E does not represent and warrant that the PG&E Right-of-Way, whether by easement, franchise, or other form of permission, is broad enough to permit Permittee's Attachments on PG&E *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 PG&E *Facilities* and PG&E Right-of-Way as may be necessary. Permittee shall obtain any such necessary rights from Granting Authorities before installing Attachments. "Granting Authority(ies)" mean those persons or entities from whom PG&E has received the PG&E 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 PG&E *Facilities*, and Permittee agrees to never claim such interest.

1.3 **ASSIGNMENT AND SUBLEASE.** This Agreement and the rights granted 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 in whole or in part without the prior written consent of PG&E, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, this Agreement may be assigned in whole or in part with prior written notice to PG&E to any entity that is an affiliate or a majority-owned direct subsidiary of Permittee, provided that such assignment shall not relieve Permittee of any of its obligations under this Agreement. Any assignment which does not comply with the provisions of this section 1.3 shall be null and void, and the putative assignee shall have no right to attach to PG&E's *Facilities*.

Permittee shall not sublease any PG&E space.

1.4 **CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.** Permittee warrants it is a public utility regulated by the California Public Utilities Commission (CPUC) and the Federal Communications Commission (FCC) and possesses certificates of public convenience and necessity (CPCN) from the CPUC to provide intrastate telecommunications services in the State of California and from the FCC to provide interstate and international telecommunications services. This Agreement applies to Permittee's activities only to the extent such activities are covered by its CPCN. Permittee warrants that its CPCN authorizes it to use governmental Right-of-Ways for the purposes of this Agreement. Permittee represents that it is a "telephone corporation" under California Public Utilities Code section 7901 and such section authorizes telephone corporations to build their lines along or across the public roads, highways and waterways of the state.

ARTICLE II
EFFECTIVE DATES OF AGREEMENT AS LICENSE OR LEASE

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 CPUC General Order ("G.O.") No. 69-C dated and effective July 10, 1985, which General Order No. 69-C by this reference is incorporated herein. This License is effective the date it is signed by PG&E, and will terminate based on any of the terms and conditions set forth in this Agreement or when it becomes a lease as set forth in section 2.2.

(b) Pursuant to G.O. 69-C this License is conditioned upon the right of PG&E, either upon order of the CPUC, or upon PG&E's own decision to commence or resume the use of the property in question whenever, in the interest of PG&E's service to its patrons or customers, it shall appear necessary or desirable to do so. PG&E will use commercially reasonable efforts to accommodate relocations, rearrangements and replacements under sections 7.2, 7.4, and 7.8.

(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 LEASE. This Agreement as a Lease is given pursuant to the regulatory laws of the State of California, including but not limited to, Public Utility Code, sections 767 and 851. The Lease is not effective until (i) this Agreement is approved by the CPUC pursuant to sections 767 and 851, (ii) without conditions unacceptable to either Party, and (iii) is final and is no longer subject to judicial review. Conversion from a License to a Lease shall be evidenced by a written notice from PG&E to Permittee of such conversion and specifying the date of conversion. Thereafter, Permittee's use of the *Facilities* shall continue to be pursuant to this Agreement.

2.3 APPLICATION TO THE CPUC. PG&E shall apply to the CPUC, under, but not limited to, Public Utility Code sections 767 and 851, for an order authorizing it to grant Permittee a Lease for Permittee's Attachments on Facilities in which PG&E holds an ownership interest. PG&E shall exercise its best efforts to secure such an order from the CPUC. However, PG&E makes no representation or warranty concerning its ability to secure said order or how long the application process will take.

2.4 CHALLENGE TO AGREEMENT. If a Granting Authority, in any forum, in any way challenges, disputes, or makes a claim against PG&E's authority to grant this license and/or lease, PG&E reserves the right in its sole discretion to require Permittee to remove its Attachments from the *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 PG&E. Permittee shall, upon such notice, relinquish use

of PG&E's *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 PG&E's authority to grant this License or Lease, which order allows Permittee to remain attached to PG&E's *Facilities*, Permittee shall be allowed to remain on PG&E's *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 PG&E 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.

2.5 TERM AND RENEWAL. This Agreement as a license, lease or combination of the two is for a period of five years from the date it is signed by PG&E . Permittee shall have the option to renew this Agreement for one additional term of five years under the same terms and conditions of this Agreement as the Lease and excepting License provisions of Section 2.1 ("Renewal Term"). If notice of nonrenewal is not given pursuant to section 2.6 below, Agreement will automatically renew for a second five year term.

2.6 NON RENEWAL. If Permittee decides not to renew this Agreement, it shall notify PG&E in writing not later than one hundred twenty (120) days prior to the end of the then current term.

ARTICLE III PLACING ATTACHMENTS

3.1 PROCESS FOR ATTACHING TO PG&E'S FACILITIES.

A. Request For Information

A Permittee should submit a request for information inquiry about the availability of space on PG&E's *Facilities* by filling out Part 1 of the Contact Permit Form, Exhibit A. The request for information must include the proposed route.

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

B. Request For Access

If Permittee desires to use PG&E's *Facilities* it must submit a request for access which attaches the following information to the Contact Permit Form.

- **For Pole Attachments** - grade and size of attachment, size of cable, average span length, wind loading of their equipment, vertical loading, and bending moments.
- **For Underground Facilities** - the size of the proposed fiber optic cable and inner duct.

Using this data PG&E will do total pole loading calculations and engineering to determine rearrangement, (including replacement, if necessary) or modifications of the Facility to accommodate the attachment.

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

Alternatively, Permittee may at its expense do the total pole loading calculations to determine and identify the required make ready work.

C. Make Ready Work

Make Ready work is the process of completing rearrangements on or in Facilities to create space for attachments.

PG&E will perform the make ready work at Permittee's expense, or PG&E will in its discretion allow Permittee to perform the make ready work at Permittee's expense. If PG&E perform the work the Permittee must pay PG&E in advance. The cost is reconciled based on actual cost at the end of the project. PG&E's estimated unit costs are set forth in Exhibit C.

3.2 ADDITIONAL ATTACHMENTS. Permittee shall not install any additional Attachments on or in the PG&E Facilities without first securing PG&E's written approval. The Contact Permit form attached as Exhibit A is to be used for all requests for attachments to PG&E's Facilities. The Contact Permit form may be converted to an electronic on-line document in the future which will be deemed an equivalent means of providing notification and coordination. PG&E will request in its section 851 filing with the CPUC permission that PG&E need not make any other filings with the CPUC to allow Permittee to make additional contacts under this Agreement as a Lease on the terms and conditions specified in this Agreement or as amended.

3.3 NO THIRD-PARTY ATTACHMENT. Permittee shall not, without the prior consent in writing of PG&E, assign, transfer, sublet or permit any other person or entity to overlash or to make any physical contact or attachment to any of Permittee's facilities

which are supported by or placed in or on PG&E's-Facilities Any attempted assignment in contravention of this paragraph shall be null and void and shall be grounds for PG&E to terminate this Agreement. Subject to the foregoing, and section 1.3, 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 PG&E makes a demand for additional compensation or indicates its intent to reopen, renegotiate or terminate PG&E's franchise, easement, license or other agreement establishing PG&E's rights in the Right-of-Way as a result of the existence of this Agreement, PG&E shall promptly notify Permittee. After conferring with PG&E and allowing PG&E 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 PG&E shall be in the sole discretion of PG&E, and any subsequent litigation, whether brought by PG&E at Permittee's request or by such third party Granting Authority, shall be conducted at Permittee's expense, but under PG&E's direction and control with respect to any issues materially affecting PG&E's rights in the 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 PG&E, Permittee shall reimburse PG&E for the amount of such additional consideration, to the extent such amount is due to Permittee's presence on or in PG&E's Facilities. If the dispute is resolved through litigation in accordance with the foregoing and the judgment resulting therefrom requires the payment of additional consideration by PG&E, Permittee shall reimburse PG&E for the amount of such additional consideration to the extent such amount is due to Permittee's presence on or in PG&E's Facilities. If Permittee possesses the power of eminent domain within the relevant jurisdiction, Permittee shall have the right, in its sole discretion, independently of PG&E 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 PG&E for the amounts of additional compensation due to Granting Authorities shall survive this Agreement.

(b) Notwithstanding the foregoing, PG&E after conferring with Permittee at any time and in PG&E'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 PG&E notwithstanding, Permittee may still continue to attempt to resolve such issues independently of PG&E, by litigation or otherwise, so long as PG&E 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 INNERDUCT INSTALLATION It shall be an express condition to Permittee's use of PG&E Conduit that Permittee at the sole cost of Permittee shall install innerducts within such PG&E Conduit . The type, Color and number of innerducts to be installed in each PG&E Conduit shall be specified by PG&E. Permittee shall give to PG&E the remaining innerducts not utilized by Permittee. PG&E shall also have the right to license or lease any unutilized innerducts to third parties.

Color Coding : The color of the sub-duct used by the Permittee shall be blue or colors other than bright orange.

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 PG&E in its sole, good faith discretion. All Pole Attachments must adhere to the clearance, separation, wind loading and dead-end tensions and other requirements of General Order No. 95 or any successor.

Permittee's installation in Underground Facilities must comply with G.O. 128, including but not limited to mechanically and electrically protecting Permittee's cable within any PG&E splice box, vault, or enclosure. Permittee shall not locate splices, coils of cable, or other equipment within a PG&E splice box, vault, or enclosure . If it is practical and feasible, Permittee shall place it's own enclosure adjacent to the PG&E enclosure for splices, coils of cable or other equipment. Neither the requirement that Permittee follow these practices, applicable laws, rules and regulations or special instructions given by PG&E nor the adherence to them by Permittee shall relieve Permittee for the sole responsibility to maintain safe and efficient working and operating conditions.

(b) The Permittee shall be solely responsible for the Attachments and shall take all necessary precautions during installation, and maintenance on or near PG&E Facilities and PG&E Right-of-Way so as to protect all persons and the property of PG&E and others from injury and damage. Without limiting the foregoing and without assuming any obligation to maintain or monitor the Attachments, if PG&E believes that Permittee's Attachments are in any way endangering any person or property, or are in noncompliance with any requirement referenced in Section 4.1(a) above (a "Hazardous

Condition”), PG&E may, in its sole discretion, take any steps it deems advisable to remedy the Hazardous Condition; in which case Permittee shall be required to reimburse PG&E for its costs. In addition, if PG&E notifies Permittee of any Hazardous Condition, Permittee shall remedy such condition promptly and in no case later than ten days after receipt of such notice.

4.2 WORK ON POLES . Permittee and its duly authorized contractors, agents and employees (“Permittee’s Workers”) shall avoid directly climbing PG&E Poles and, if possible, use a ladder or bucket truck to perform work on the 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 POWER SPACE ON THE PG&E POLES.** All work on PG&E 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.

4.3 ACCESS TO PG&E UNDERGROUND FACILITIES Access to PG&E Underground Facilities used for electrical equipment and cable shall be undertaken subject to the following conditions: (I) Access shall be in accordance with CPUC General Order No. 128. (II) Any access by Permittee, whether for initial installation or maintenance shall be by using “qualified” personnel, as such term is defined in the California Code of Regulations Title VIII, division 4, Chapter 4, under the supervision of a qualified electrical worker licensed in the State of California and whose qualifications are verified in advance by PG&E. (III) Permittee shall not make any physical contact with PG&E’s cables or other elements of PG&E’s electrical distribution system (IV) Permittee’s employee’s, agents, or contractors will be permitted to enter or work in PG&E’s Underground Facilities only when an authorized employee or agent of PG&E is present and Permittee agrees to pay PG&E for PG&E’s employee based upon PG&E’s then current fully loaded labor rate. PG&E’s authorized employee or agent shall have the authority, without subjecting PG&E to any liability, to suspend Permittee’s work operations in and around PG&E’s Underground Facilities if, in the sole discretion of that employee or agent, any hazardous conditions arise or any unsafe practices (including unsafe practices which may threaten the integrity of PG&E’s facilities) are being followed by Permittee’s employees, agents or contractors. The presence of PG&E’s authorized employee or agent shall not relieve Permittee of its responsibility to conduct all of its work and operations in and around PG&E’s Underground Facilities in a safe and workmanlike manner. (v) Permittee shall notify PG&E two (2) days in advance by calling PG&E’s designated construction representative before any routine repair or maintenance of its facilities.

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 PG&E or its authorized agents on or near PG&E Facilities or PG&E Right-of-Way. PG&E and its authorized agents shall have priority to access the PG&E Facilities and PG&E Right-of-Ways at any time and Permittee's workers must adhere to any requests made by PG&E 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 PG&E determines that Permittee is not in compliance with any of these requirements, PG&E shall inform Permittee in writing and such Hazardous Conditions shall be remedied per Section 4.1(b).

4.6 **SERVICE CONNECTION/DISCONNECTION.** Any electrical service connection or disconnection of Permittee's Attachments to or from PG&E's overhead or underground electric system shall only be performed by PG&E and in accordance with PG&E's rates and applicable tariffs.

4.7 **IDENTIFICATION TAGS.** Permittee shall identify its Attachments using weather and corrosive resistant tags (capable of lasting the life of the cable), attached to every pole and every cable located in each of PG&E's Underground Facilities. The tags shall include Permittee's corporate name legible from the ground, a 24-hour emergency contact number and identify PG&E as the licensor. The tag shall be attached in the zone on the pole where Permittee's cable and equipment are located and in Underground Facilities the tag shall be attached to Permittee's cable.

4.8 **POLE PROTECTION.** 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 Attachment in mid-span, the cross arm, bolt or lashing attaching the Attachment to the Pole will fail before the Pole fails. Permittee may, with PG&E's written consent, use alternative designs capable of accomplishing equivalent results to preserve the Pole. Regardless of the presence of breakaway fasteners or a PG&E 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 construction standards.

4.9 **POLE TREATMENT.** Permittee shall treat with a chemical solution of copper naphthenate or a PG&E 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 and regardless of the negligence of either Party or any rule of law imposing strict liability 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 of a pole 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 paragraph a, 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 PG&E, its officers, directors, partners, agents, and employees (collectively, the "PG&E 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 therefrom (but only to the extent of customers' claims, not those of PG&E), with the exception of claims, demands, losses, damages, expenses, and legal liability arising solely from the gross negligence or willful misconduct of PG&E or PG&E's agents, employees or independent contractors who are directly responsible to PG&E; (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 a PG&E Indemnitee 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 Facilities or remove any Attachments as may be required by PG&E pursuant to Article X Termination. Regardless of fault on behalf of Permittee, PG&E shall exercise reasonable commercial effort toward restoring PG&E's service to its customers in accordance with PG&E's customary procedures and priorities, to enable Permittee to restore Permittee's attachments on PG&E's 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 11.12 "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; 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 PG&E with respect to the PG&E 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, PG&E 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 PG&E would otherwise pay. Within thirty (30) days Permittee shall pay or reimburse PG&E for such amounts. Permittee may make such reimbursements or

payments under protest, in which event Permittee and PG&E 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 PG&E's facilities or PG&E 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 PG&E 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 PG&E has notice of such potential double taxation, PG&E 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. Permittee shall, on PG&E's request, defend any suit asserting one or more claims covered by the indemnities set forth in sections 5.1 and 5.2. Permittee shall pay any costs that may be incurred by PG&E in enforcing this indemnity, including reasonable attorney's fees.

5.4 LIMITATION OF LIABILITY. IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF PG&E, ARISING OUT OF OR IN CONNECTION WITH THE USE OF PG&E FACILITIES OR RELATING TO THIS AGREEMENT, EXCEED THE SUM OF THE ATTACHMENT FEES RECEIVED, AND FORECASTED TO BE RECEIVED, BY PG&E 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 PG&E.

5.5 NO WARRANTIES. EXCEPT AS SPECIFICALLY AND EXPRESSLY PROVIDED HEREIN, PG&E MAKES NO WARRANTY, EXPRESS OR IMPLIED WITH RESPECT TO THE FACILITIES OR THE USE OF THE FACILITIES BY PERMITTEE. THE PG&E FACILITIES ARE "AS IS." PG&E 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

Until Permittee has demonstrated to PG&E'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

6.1.1 Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, where Permittee uses any Attachments.

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

6.2 COMMERCIAL GENERAL LIABILITY

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

6.2.2 The limit shall not be less than \$10,000,000 each occurrence for bodily injury, property damage and personal injury.

6.2.3 Coverage shall: (a) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of the work performed by or for the Permittee, or if the Permittee shall, at all times, be able to and shall keep PG&E in the same position as if PG&E were an "Additional Insured" under a policy of primary coverage; (b) be endorsed to specify that the Permittee's insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it.

6.3 BUSINESS AUTO

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

6.3.2 The limit shall not be less than \$10,000,000 each accident for bodily injury and property damage.

6.4 ADDITIONAL INSURANCE PROVISIONS

6.4.1 Before commencing use of any Attachments, Permittee shall furnish PG&E with certificates of insurance and Additional Insured endorsement of all required insurance for Permittee.

6.4.2 The certificate shall state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to PG&E.

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

Pacific Gas and Electric Company
Insurance Department—B24H
Post Office Box 770000
San Francisco, CA 94177

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

6.4.4 PG&E may require Permittee to furnish to PG&E certificates of insurance or other evidence thereof attesting that the insurance required by Article VI is in effect.

6.4.5 Upon request, Permittee shall furnish PG&E the same evidence of insurance for its contractors and subcontractors as PG&E requires of Permittee.

6.4.6. 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 PG&E 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, PG&E shall be entitled at any time to discontinue PG&E's use of PG&E Facilities located on the PG&E Right-of-Way, and Permittee shall immediately remove its Attachments. In the

event of any such discontinuation, PG&E shall give Permittee advance written notice as soon as reasonably practicable, and PG&E may propose alternative Facilities to meet the needs of the Permittee. PG&E will allow Permittee to buy PG&E's interest in the discontinued Facilities at PG&E'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 per section 7.4, PG&E at any time may relocate all or any portion of its Facilities to other locations. In the event of any such relocation, PG&E may in its discretion allow Attachments at such alternate location(s) in accordance with this Agreement, and PG&E shall give Permittee sixty (60) days advance written notice (or electronic notice as may be available in the future) 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 Attachments, PG&E may either: (a) require Permittee at its cost to move its Attachments to the alternate location, or (b) with mutual consent move the Permittee's Attachments with reimbursement from Permittee for the reasonable costs and expenses of moving the Attachments. To the extent PG&E can obtain reimbursement for PG&E's and Permittee's cost of relocation, it will do so. If PG&E cannot obtain such reimbursement, then Permittee and other permittees shall be responsible for a proportional share of those costs. When the relocation is necessitated by the installation of an Attachment by a new PG&E permittee, the relocation of PG&E's and its Permittee's Attachments shall be at the expense of the new permittee to the extent allowed by law.

7.3 REMOVALS. If the existing equipment on the Pole or anchor (including Permittee's equipment) cannot be relocated in accordance with section 7.2 or rearranged in accordance with section 7.4 to create the required space or capacity for PG&E's use and the attachment and (i) PG&E needs the space or capacity occupied by the Permittee's equipment for its own use, or (ii) should any Pole to which Permittee has attached an Attachment be taken by the power of eminent domain, then on being given at least ninety (90) days' written notice by PG&E to do so, or in cases of emergency on such notice less than ninety (90) days as the circumstances reasonably permit (which emergency circumstances may include no notice), the Permittee shall remove its Attachments from the PG&E Poles as PG&E shall designate and at the expiration of the time specified in the notice all rights and privileges of the Permittee in and to the PG&E Poles designated shall terminate. To the extent PG&E can obtain reimbursement for its and its Permittee's cost of relocation, it will do so. If PG&E cannot obtain such reimbursement, then Permittee and other permittees shall be responsible for a proportional share of those costs if PG&E performs the removal. 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 Right-of-Way itself.

7.4 REARRANGEMENT/REPLACEMENT POLES OR ANCHORS. PG&E shall give Permittee sixty (60) days advance written notice (or electronic notice as may be available in the future) or less if circumstances required for subparagraphs (a) through (c) below.

(a) When rearrangement and/or larger or additional Pole(s) or anchors are necessitated by the addition of PG&E 's equipment to the Pole(s) or anchors and the rearrangement and/or larger or additional Pole(s) or anchors would not be required in the absence of the Attachment(s), Permittee and other permittees shall pay an equal share of all costs, as allowed in other agreements, to rearrange and/or install larger or additional Poles or anchors wherever such rearrangement and/or larger or additional Poles or anchors are necessitated by reason of the existence of the Attachment(s). The costs include, but are not limited to, the costs to rearrange and/or to install larger or additional Poles or anchors which are installed or rearranged subsequent to the installation of the Attachment.

(b) When rearrangement and/or larger or additional Pole(s) or anchors are necessitated by the installation of an Attachment by a new PG&E permittee, the larger Pole and relocation of PG&E'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) When a Pole replacement is required due to any other reason outside of the control of PG&E, including but not limited to, accidents, storms, bird, pest, or fungal infestation, excessive checking and splits, earthquake, tornadoes, street widening or other 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. Permittee will 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, PG&E shall at Permittee's discretion request such additional space.

7.6 INCOME TAXES. As set forth in PG&E's Electric Rules, Preliminary Statement, paragraph J, and as amended, the costs to be paid by Permittee to PG&E as set forth in section 7.4 above shall include a gross-up amount for potential income tax liability of PG&E 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 PG&E's current filed electric tariffs.

7.7 RESTORATION OF SERVICE. In the case of any incident whereby both PG&E'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 PG&E's electrical service capacity, unless otherwise agreed in advance by both Parties. Nonetheless, PG&E shall permit Permittee to make repairs to restore its Attachments and/or its capacity, as long as such restoration efforts do not interfere with PG&E's restoration activities.

7.8 RECLAMATION OF PG&E UNDERGROUND FACILITIES. If PG&E determines that the PG&E Underground Facilities through which Permittee's cable is installed is necessary to provide electric service, PG&E shall have the right to terminate Permittee's Attachments with respect to PG&E Underground Facilities in which Permittee's cable is installed, upon not less than sixty (60) days prior written notice. Each such notice shall specify the portion, if less than all, of the PG&E Underground Facilities to which such notice relates. Upon expiration of such notice period, Permittee shall remove its Attachments from the PG&E Underground Facilities specified in the notice and all rights and privileges of Permittee in and to the PG&E Underground Facilities shall terminate. In the event of reclamation pursuant to section 7.8 PG&E shall make a good faith effort to assist Permittee in finding alternative routes owned or controlled by PG&E and to the extent available, within, upon or through which any affected Permittee installed cable may be relocated.

ARTICLE VIII ATTACHMENT FEES

8.1 POLE ATTACHMENT FEES. Prior to attaching to the Pole, Permittee shall pay to PG&E an Attachment Fee(s) at the applicable rate set forth in Exhibit B to this Agreement for each Pole Attachment to each Pole and anchor authorized under the Contact Permit form, Exhibit A. Permittee shall pay that Fee for each Pole and anchor initially installed, regardless of size, attachment type or duration. PG&E will charge multiple contact fees if the attachment occupies more than one foot of space on the Pole.

PG&E reserves the right to modify these Attachment Fees if any rules, regulations or orders of the CPUC, or a court of law, allow PG&E to charge a fee greater than the restraints 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 paragraph shall be effective beginning with the most recent annual period preceding the date when PG&E is allowed to charge Attachment fees greater than the fee restraints.

8.2 UNAUTHORIZED POLE ATTACHMENTS. Upon request of PG&E, Permittee shall provide written evidence of Attachment authorization for any Pole on which Permittee has an Attachment. If Permittee cannot provide such evidence of Attachment

authorization, Permittee shall pay to PG&E a fee for the unauthorized attachment of \$500.00 for each unauthorized attachment.. The unauthorized Attachments shall then be subject to all the terms of this Agreement. If payment is not received within 30 days of invoice date, PG&E may invoke rights under Article X, Termination and remove Permittee's Attachments from PG&E's Facilities.

8.3 UNDERGROUND FACILITIES ATTACHMENT FEES. Prior to placing Permittee's cable in PG&E's Underground Facilities, Permittee shall pay to PG&E an Attachment Fee (s) at the applicable rate set forth in Exhibit B to this Agreement per linear foot for each cable installed and shown on the attached map. Additional cables may be installed in the future only with PG&E's written approval of the route.

8.4 "UNAUTHORIZED CONDUIT ATTACHMENTS. Upon request of PG&E, Permittee shall provide written evidence of Attachment authorization for any conduit in which Permittee has an Attachment. If Permittee cannot provide such evidence of Attachment authorization, Permittee shall pay to PG&E \$500 per foot per cable as an unauthorized attachment fee. The unauthorized Attachments shall then be subject to all the terms of this Agreement. If payment is not received within 30 days of invoice date, PG&E may invoke rights under Article X, Termination."

8.5 SECTION 851 APPLICATION FEE. Permittee shall pay PG&E a one-time fee of \$10,000 to prepare and to file a Public Utilities Code Section 851 application with, and to obtain a final decision from, the CPUC. In the event that the CPUC does not approve PG&E's request under section 3.2 that PG&E need not make any other filings with the CPUC to allow Permittee to make additional contacts under this Agreement, then Permittee shall pay PG&E a filing fee of \$5,000 for each such subsequent filing.

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 a PG&E vice president and an executive of similar authority of Permittee. Either Party may give the other Party written notice of any dispute. Within 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 30 days 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 Contract pending final resolution of any dispute arising out of or relating to this Contract.”

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 11.1, if Permittee fails to (i) make any payment due within the time frame specified or otherwise comply with any material term or condition of this Agreement; or (ii) obtain or maintain the appropriate CPCN from the CPUC; or (iii) take reasonable steps to resolve any issue arising under section 3.3; or (iv) comply with the requirements of section 2.4, PG&E, at its sole discretion upon thirty days written notice to Permittee (or such shorter period of time as may be determined by PG&E in order to comply with a notice from a Granting Authority or under law, if applicable), may terminate without further liability any permission granted to Permittee as to all or any portion of those Facilities which are the subjects of (i) through (iv) above, and Permittee shall immediately relinquish use of those PG&E Facilities and remove its Attachments from those PG&E 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 PG&E's authority to grant this License or Lease, which order allows Permittee to remain attached to PG&E's Facilities, Permittee shall be allowed to remain on or in PG&E's 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 PG&E 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.

(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 any or all of the Permittee's Attachments. If less than all of Permittee's attachments are abandoned or terminated, PG&E 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; and

(4) in accordance with the provisions of section 2.1, if PG&E or the CPUC invoke the provisions of G.O. 69-C.

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

ARTICLE XI MISCELLANEOUS

11.1 **BREACH.** Permittee and PG&E 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 PG&E's ability to provide utility service, and fewer than thirty days are required. This section does not supersede the rights and obligations of the Parties under section 4.1(b) for "Hazardous Conditions." If a Party claims that more than thirty 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.

11.2 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 PG&E:

For U.S. mail and express mail:

Director, Pole Asset Management
2850 Shadelands Dr.
Walnut Creek, CA 94598
FAX: (925) 974-4186

If delivered to Permittee:

Billing/Accounts receivable
Electric Lightwave, Inc.
c/o Norris, Beggs & Simpson
Tracey Gedlich
121 SW Morrison, Suite 200
Portland, OR 97204
Phone: 503.273.0318
Fax: 503.273.0256

Contract Administration / Legal
Electric Lightwave, Inc.
Attn: Director Network Management &
Development with copy to legal
4400 NE 77th Ave.
Vancouver, Washington 98662

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

For routine notice changes, proof of delivery is not required. By mutual agreement facsimile notices may be used for routine notice changes.

11.3 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.

11.4 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.

11.5 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, and restraint from rules or people, 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. If PG&E 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 Poles shall be deemed to be discontinued and the provisions of Section 7.1 of this Agreement shall apply.

11.6 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.

11.7 REMOVAL OF ATTACHMENTS. Upon any expiration or termination, Permittee shall relinquish use of PG&E's Facilities and remove its Attachments from PG&E 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 PG&E within the time period designated by notice pursuant to Article VII or otherwise required by this Agreement, PG&E shall be entitled to consider Permittee's Attachments abandoned as set forth in Section 11.8 below.

11.8 ABANDONMENT. If Permittee fails to use its Attachments for any period of 180 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, PG&E shall have the right, on giving Permittee 30 days written notice of its intention to do so, to remove the Attachments at Permittee's

sole risk and expense and retain them as PG&E's own, and Permittee agrees to reimburse PG&E for its expense. Abandonment shall not relieve Permittee of any obligation, whether of indemnity or otherwise, accruing prior to completion of such removal by PG&E or which arises out of an occurrence happening prior thereto.

11.9 ADDITION OF NEW POLES. Except for any Poles added under the conditions of Article VII, PG&E 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 PG&E for the full cost of the new Facilities.

11.10 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 PG&E executed prior to this Agreement.

11.11 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.

11.12 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.

11.13 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." PG&E 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. PG&E shall provide Permittee with a copy of a Materials Safety Data Sheet for every Hazardous Chemical to the extent required by 29 CFR Part 1910 et al., on the Right-of-Way.

11.14 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.

11.15 MARK AND LOCATE RESPONSIBILITY Permittees which use 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.

11.16 **PAYMENTS.** Unless otherwise specified in this Agreement, Permittee shall make all payments to PG&E within thirty (30) days of receipt of the invoice.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and it 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.

Electric Lightwave

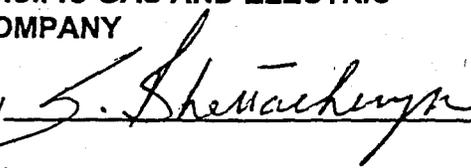
By 
(Name -Officer of Electric Lightwave)

Title Vice President

Date 12-21-00

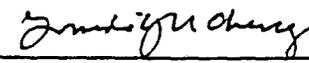
Attest: 

**PACIFIC GAS AND ELECTRIC
COMPANY**

By 

Title VP Engineering & Planning

Date 1/8/01

Attest: 

Linda Y.H. Cheng
Senior Assistant Corporate
Secretary



EXHIBIT A
APPLICATION FOR POLE & CONDUIT ATTACHMENT
INSTALLATION PERMIT FORM

PART 1 **REQUEST FOR ACCESS**
 (To PG&E)

Application Number _____
 Date _____
 TO PG&E: _____ Agreement Number _____
 Street _____ Applicant Job Number _____
 City _____

In accordance with that certain agreement between us and PG&E (Licensor) signed by PG&E on _____, we hereby request for information and access to poles, conduits, and right of way located _____ all as more particularly described on the attached drawings.

Permittee _____
 Project Engineer Name: _____ Company name: _____
 Address: _____ Phone # _____

Signed _____ Title _____

Total number of attachments under this application:
 # of Poles contacted (new) _____ # of PG&E Anchors Attached _____ # of Risers installed _____
 # of poles cable Rebuild _____ # of poles overlashed _____ Max size of cable (diameter in inch) _____
 Total used vertical feet of pole for Telco equip. (Boxes) _____ Total feet of Underground conduit attached _____

PART 2 **FINAL AUTHORIZATION**
 (to Permittee)

You are hereby authorized for installation. PG&E Job / notification # _____

PG&E: _____ Date _____

Signed _____ Title _____

PART 3 **NOTICE OF COMPLETION**
 (To PG&E)

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

Permittee _____ Date _____
 Signed _____ Title _____

NOTE: _____

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 modification of existing facilities.
4. At PG&E request, Permittee shall be able to submit the authorization application forms for all attachment

EXHIBIT B
Pole & Conduit Attachment Fee

Pacific Gas & Electric Company

Year of Attachment ¹	Years in 1 st & 2 nd Terms	Annual Rate ⁵ PU 767.5	
		<u>2</u> <u>3</u> <u>4</u> \$/Pole Attachment	Conduit \$/ft Attachment
2000		11.07	1.38
2001	5	11.79	1.62
2002	4	12.52	1.86
2003	3	13.24	2.10
2004	2	13.96	2.34
2005	1	14.69	2.58
2006	5	15.41	2.82
2007	4	16.13	3.06
2008	3	16.68	3.30
2009	2	17.58	3.54
2010	1	18.30	3.78

1. All rental rates are for a period of one year from January 1 through December 31, billable and payable in advance in January of each year.
2. Rates for 2000 to year 2010 are forecasted based on historical costs.
3. Pole attachment rate is for One (1) foot of space per attachment.
4. Multiple pole contact rate will apply for attachments requiring more than One (1) foot of space on the pole.
5. PG&E reserves the right to modify these Attachment Fees if any rules, regulations or orders of the CPUC, or a court of law, allow PG&E to charge a fee greater than the restraints 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 paragraph shall be effective beginning with the most recent annual period preceding the date when PG&E is allowed to charge Attachment fees greater than the fee restraints.

EXHIBIT C
Standard cost
UNIT COST FOR MAKE READY & REARRANGEMENT WORK
(OVERHEAD)
Pacific Gas & Electric Company

Map Fees

Year	1999	2000	2001	2002	2003
First Map Copy	\$1.00	\$1.04	\$1.08	\$1.12	\$1.16
Mapping Hourly Rate	\$58.00	\$60.32	\$62.73	\$65.24	\$67.85

Engineering Fees

Year	1999	2000	2001	2002	2003
Engineering Hourly Rate	\$75	\$78	\$81	\$84	\$87
Pole loading calc/pole	\$80	\$83	\$86	\$89	\$93
Pole Replacement W/O Pole Loading/pole	\$400	\$416	\$433	\$450	\$468
Pole Replacement With Pole Loading/pole	\$480	\$499	\$519	\$539	\$561

Construction Facility Rearrangements Cost \$/Crew day

Year	1999	2000	2001	2002	2003
4 man Construction Crew	\$2,400	\$2,496	\$2596	\$2,700	\$2,808

1999 rate is based on PG&E's actual standard construction labor cost.

Figures are based on 8hr. Work day

Construction Pole Replacement \$/pole

Year	1999	2000	2001	2002	2003
City and County of San Francisco	\$13,706	\$14,254	\$14,824	\$15,417	\$16,034
Bay Area (Alameda, Contra Costa, Marin, San Mateo, Santa Clara Counties)	\$7,002	\$7,282	\$7,573	\$7,876	\$8,191
Outside Bay Area	\$5,205	\$5,413	\$5,630	\$5,855	\$6,089

1999 rate is based on PGE's 1998 actual system average pole replacement cost.

Constructions figures do not include engineering.

Consent To Assignment (CTA) \$/Assignment

Year	1999	2000	2001	2002	2003
request for CTA	\$245	\$254	\$265	\$275	\$286

All dollar figures are based on 1998 system averages.

2000 - 2003 rate is forecasted including 4% escalation rate.

EXHIBIT C
Standard cost
UNIT COST FOR MAKE READY & REARRANGEMENT WORK
(UNDERGROUND)
Pacific Gas & Electric Company

Map Fees

Year	1999	2000	2001	2002	2003
First Map Copy	\$1.00	\$1.04	\$1.08	\$1.12	\$1.16
Mapping Hourly Rate	\$58.00	\$60.32	\$62.73	\$65.24	\$67.85

Estimator Engineering Fees

Year	1999	2000	2001	2002	2003
Electric Hourly Rate	\$75	\$78	\$81	\$84	\$87
Gas Hourly Rate	\$75	\$78	\$81	\$84	\$87

Inspector / Standby

Year	1999	2000	2001	2002	2003
Gas Hourly Rate	\$70	\$73	\$76	\$79	\$82
Electric Hourly Rate	\$75	\$78	\$81	\$84	\$87

Construction Facility Rearrangements Cost \$/Crew day

Year	1999	2000	2001	2002	2003
2 Man Gas Crew	\$1,120	\$1,165	\$1,212	\$1,260	\$1,310
3 Man Gas Crew	\$1,680	\$1,747	\$1,817	\$1,890	\$1,966
3 Man Electric Crew	\$1,800	\$1,872	\$1,947	\$2,025	\$2,106
4 Man Electric Crew	\$2,400	\$2,496	\$2,596	\$2,700	\$2,808

Figures are based on 8 hr. work day.

Electric/Gas Planner

Year	1999	2000	2001	2002	2003
Hourly Rate	\$75	\$78	\$81	\$84	\$87

Consent To Assignment (CTA) \$/Assignment

Year	1999	2000	2001	2002	2003
Request for CTA	\$245	\$254	\$265	\$275	\$286

Cost of Materials are the responsibility of outside party.

All 1999 dollar figures are based on PG&E's actual standard construction labor cost derived from 1998 system averages.

2000 - 2003 rate is forecasted including 4% escalation rate.

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ADVICE 2476-E

EXHIBIT 2

**AGREEMENT WITH PG&E AND GLOBAL WEST NETWORK, INC.
("GLOBAL WEST")**

MASTER POLE, AND UNDERGROUND FACILITIES LICENSE AND LEASE AGREEMENT

This Pole, Conduit and Underground Facilities License and Lease Agreement ("Agreement") is entered into by and between **Pacific Gas and Electric Company ("PG&E")**, a California corporation, its successors in interest or assigns and **Global West Network, Inc., a Delaware corporation ("Permittee")** (together, 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 PERMIT. PG&E gives Permittee permission, on the terms and conditions stated herein, to install and maintain telecommunications cables and related equipment (hereinafter sometimes collectively referred to as "Pole Attachments" or "Attachments") (i) in the space below that space assigned for use by supply circuits as set forth in California General Order 95 on distribution poles, anchors and streetlights solely owned or jointly owned by PG&E (collectively "PG&E Pole(s) or Pole(s)") and (ii) in conduit, inner ducts and associated manholes, boxes and handholes collectively, the "PG&E Underground Facilities"). The Poles and Underground Facilities are located on distribution rights-of-way ("PG&E Right-of-Way") solely or jointly owned or otherwise held and maintained by PG&E. The Poles and Underground Facilities are identified by Permittee and attached to the Contact Permit form Exhibit A. The PG&E Poles and the PG&E Underground Facilities are referred to as the "Facilities".

The term "Attachment" shall mean, with respect to Poles, a single contact on a Pole to accommodate or to support a single cable or piece of equipment and related equipment and, with respect to Underground Facilities, the installation of one cable within a conduit or inner duct and related equipment. Additional contacts required for a second cable, overlash, or a piece of equipment will be considered a second Attachment. The installation of risers, amplifiers, and power supplies on PG&E Poles and use of PG&E anchors shall be considered additional Attachments and are within this Agreement.

The electric usage by power supplies shall be covered by electric tariffs and are not within this Agreement. If any Attachments include unmetered electrical equipment, Permittee shall notify PG&E in writing to arrange for electric service and appropriate billing prior to using the Attachment.

Use of jointly owned Poles is permitted when PG&E is not otherwise precluded from offering such use. PG&E does not warrant that its permission alone is sufficient to allow contacts on jointly owned poles.

This Agreement is for Poles and Underground Facilities with no supply circuits in excess of 50 kV.

1.2 **PG&E DISCLAIMER.** Permittee expressly acknowledges that PG&E does not represent and warrant that the PG&E Right-of-Way, whether by easement, franchise, or other form of permission, is broad enough to permit Permittee's Attachments on PG&E *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 PG&E *Facilities* and PG&E Right-of-Way as may be necessary, including all California Environmental Quality Act ("CEQA") permits required by an authorized permitting entity. Permittee shall obtain any such necessary rights from Granting Authorities before installing Attachments. "Granting Authority(ies)" mean those persons or entities from whom PG&E has received the PG&E 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 PG&E *Facilities*, and Permittee agrees to never claim such interest.

1.3 **ASSIGNMENT AND SUBLEASE.** This Agreement and the rights granted 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 in whole or in part without the prior written consent of PG&E, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, this Agreement may be assigned in whole or in part with prior written notice to PG&E to any entity that is an affiliate or a majority-owned direct subsidiary of Permittee, provided that such assignment shall not relieve Permittee of any of its obligations under this Agreement. Any assignment which does not comply with the provisions of this section 1.3 shall be null and void, and the putative assignee shall have no right to attach to PG&E's *Facilities*.

Permittee may lease its dark fiber to third parties, and shall not sublease any PG&E space.

1.4 **CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.** Permittee warrants it is a public utility regulated by the California Public Utilities Commission (CPUC) and the Federal Communications Commission (FCC) and possesses certificates of public convenience and necessity (CPCN) from the CPUC to provide intrastate telecommunications services in the State of California and any necessary authorizations from the FCC to provide interstate and international telecommunications services, if required for the services Permittee will offer to the public. This Agreement applies to Permittee's activities only to the extent such activities are covered by its CPCN. Permittee warrants that its CPCN authorizes it to use public and utility Rights-of-Way for the purposes of this Agreement. Permittee represents that it is a "telephone corporation" under California Public Utilities Code section 7901 and such section authorizes telephone corporations to build their lines along or across the public roads, highways and waterways of the state.

ARTICLE II

EFFECTIVE DATES OF AGREEMENT AS LICENSE OR LEASE

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 CPUC General Order ("G.O.") No. 69-C dated and effective July 10, 1985, which General Order No. 69-C by this reference is incorporated herein. This License is effective the date it is signed by PG&E, and will terminate based on any of the terms and conditions set forth in this Agreement or when it becomes a lease as set forth in section 2.2.

(b) Pursuant to G.O. 69-C this License is conditioned upon the right of PG&E, either upon order of the CPUC, or upon PG&E's own reasonable decision to commence or resume the use of the property in question whenever, in the interest of PG&E's service to its patrons or customers, it shall appear necessary or desirable to do so. PG&E will use commercially reasonable efforts to accommodate relocations, rearrangements and replacements under sections 7.2, 7.4, and 7.8.

(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 LEASE. This Agreement as a Lease is given pursuant to the regulatory laws of the State of California, including but not limited to, Public Utility Code, sections 767 and 851. The Lease is not effective until (i) this Agreement is approved by the CPUC pursuant to sections 767 and 851, (ii) without conditions unacceptable to either Party, and (iii) is final and is no longer subject to judicial review. Conversion from a License to a Lease shall be evidenced by a written notice from PG&E to Permittee of such conversion and specifying the date of conversion. After PG&E notifies Permittee of such conversion, Permittee's use of the Facilities shall continue pursuant to the terms of this Agreement.

2.3 APPLICATION TO THE CPUC. PG&E shall apply to the CPUC, under, but not limited to, Public Utility Code sections 767 and 851, for an order authorizing it to grant Permittee a Lease for Permittee's Attachments on Facilities in which PG&E holds an ownership interest. PG&E shall exercise its best efforts to secure such an order from the CPUC. However, PG&E makes no representation or warranty concerning its ability to secure said order or how long the application process will take. The Agreement shall remain in full force and effect as a license during the application process.

2.4 CHALLENGE TO AGREEMENT. If a Granting Authority, in any forum, in any way challenges, disputes, or makes a claim against PG&E's authority to grant this license and/or lease, PG&E reserves the right in its sole discretion to require Permittee to remove its Attachments from the 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 PG&E. Permittee shall, upon such notice, relinquish use

of PG&E's 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 PG&E's authority to grant this License or Lease, which order allows Permittee to remain attached to PG&E's Facilities, Permittee shall be allowed to remain on PG&E's 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 PG&E 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.

2.5 TERM AND RENEWAL. This Agreement as a license, lease or combination of the two is for a period of five years from the date it is signed by PG&E . Permittee shall have the option to renew this Agreement for one additional term of five years under the same terms and conditions of this Agreement as the Lease and excepting License provisions of Section 2.1 ("Renewal Term"). If notice of nonrenewal is not given pursuant to section 2.6 below, Agreement will automatically renew for a second five year term.

2.6 NON RENEWAL. If Permittee decides not to renew this Agreement, it shall notify PG&E in writing not later than one year prior to the end of the then current term.

**ARTICLE III
PLACING ATTACHMENTS**

3.1 PROCESS FOR ATTACHING TO PG&E'S FACILITIES.

A. Request For Information

A Permittee should submit a request for information inquiry about the availability of space on PG&E's Facilities by filling out Part 1 of the Contact Permit Form, Exhibit A. The request for information must include the proposed route.

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

B. Request For Access

If Permittee desires to use PG&E's Facilities it must submit a request for access which attaches the following information to the Contact Permit Form.

- **For Pole Attachments** - grade and size of attachment, size of cable, average span length, wind loading of their equipment, vertical loading, and bending moments.
- **For Underground Facilities** - the size of the proposed fiber optic cable and inner duct.

Using this data PG&E will do total pole loading calculations and engineering to determine rearrangement, (including replacement, if necessary) or modifications of the Facility to accommodate the attachment.

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

Alternatively, Permittee may at its expense do the total pole loading calculations to determine and identify the required make ready work.

C. Make Ready Work

Make Ready work is the process of completing rearrangements on or in Facilities to create space for attachments.

PG&E will perform the make ready work at Permittee's expense, or PG&E will in its discretion allow Permittee to perform the make ready work at Permittee's expense. If

PG&E perform the work the Permittee must pay PG&E in advance. The cost is reconciled based on actual cost at the end of the project. PG&E's estimated unit costs are set forth in Exhibit C.

3.2 **ADDITIONAL ATTACHMENTS.** Permittee shall not install any additional Attachments on or in the PG&E Facilities without first securing PG&E's written approval. The Contact Permit form attached as Exhibit A is to be used for all additional requests for Attachments to PG&E's Facilities. The Contact Permit form may be converted to an electronic on-line document in the future which will be deemed an equivalent means of providing notification and coordination. PG&E will request in its section 851 filing with the CPUC permission that PG&E need not make any other further filings with the CPUC to allow Permittee to make additional contacts under this Agreement as a Lease on the terms and conditions specified in this Agreement or as amended.

3.3 **NO THIRD-PARTY ATTACHMENT.** Permittee shall not, without the prior consent in writing of PG&E, assign, transfer, sublet or permit any other person or entity to overlash or to make any physical contact or attachment to any of Permittee's facilities which are supported by or placed in or on PG&E's Facilities. Any attempted assignment in contravention of this paragraph shall be null and void and shall be grounds for PG&E to terminate this Agreement. Subject to the foregoing, and section 1.3, 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 PG&E makes a demand for additional compensation or indicates its intent to reopen, renegotiate or terminate PG&E's franchise, easement, license or other agreement establishing PG&E's rights in the Right-of-Way as a result of the existence of this Agreement and Permittee's placement of Attachments according to the terms and conditions of this Agreement, PG&E shall promptly notify Permittee. After conferring with PG&E and allowing PG&E 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 PG&E shall be in the sole discretion of PG&E, and any subsequent litigation, whether brought by PG&E at Permittee's request or by such third party Granting Authority, shall be conducted at Permittee's expense, but under PG&E's direction and control with respect to any issues materially affecting PG&E's rights in the 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 PG&E, Permittee shall reimburse PG&E for the amount of such additional consideration, to the extent such amount is due to Permittee's presence on or in PG&E's Facilities. If the dispute is resolved through litigation in accordance with the foregoing and the judgment resulting therefrom requires the payment of additional consideration by PG&E, Permittee shall reimburse PG&E for the amount of

such additional consideration to the extent such amount is due to Permittee's presence on or in PG&E's Facilities. If Permittee possesses the power of eminent domain within the relevant jurisdiction, Permittee shall have the right, in its sole discretion, independently of PG&E 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 PG&E for the amounts of additional compensation due to Granting Authorities shall survive this Agreement.

(b) Notwithstanding the foregoing, PG&E after conferring with Permittee at any time and in PG&E'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 PG&E notwithstanding, Permittee may still continue to attempt to resolve such issues independently of PG&E, by litigation or otherwise, so long as PG&E 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 INNERDUCT INSTALLATION It shall be an express condition to Permittee's use of the Company Conduit that Permittee at the sole cost of Permittee shall install innerducts within such Company Conduit. The type and number of innerducts to be installed in each Company Conduit shall be specified by Permittee and as agreed to by the Company but in no event shall PG&E require Permittee to install additional innerducts beyond what is required for Permittee to provide its own telecommunications services. In the event that Permittee at its option installs excess innerducts, Permittee may give to PG&E the excess innerducts not utilized by Permittee and Permittee shall be excused from paying rent or other charges or fees of any description with respect to such excess innerducts, so long as Permittee does not use the innerducts. If Permittee uses the excess innerducts, it shall pay rent in accordance with this Agreement. Permittee shall not sublease space in the excess innerducts. The Company shall also have the right to license or lease the excess innerducts to third parties. If Permittee chooses not to install innerducts to fill up the excess capacity of the Conduit, Permittee shall have no claim against the Company for damages to Permittee's innerduct or cable during installation of future facilities.

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 the FCC, and in conformity with any safety standards or requirements as may be required or specified by PG&E in its sole, good faith discretion

and including obtaining any permits required by a permitting agency under the California Environmental Quality Act ("CEQA"). All Pole Attachments must adhere to the clearance, separation, wind loading and dead-end tensions and other requirements of General Order No. 95 or any successor.

Permittee's installation in Underground Facilities must comply with G.O. 128, including but not limited to mechanically and electrically protecting Permittee's cable within any PG&E splice box, vault, or enclosure. Permittee shall not locate splices, coils of cable, or other equipment within a PG&E splice box, vault, or enclosure. If it is practical and feasible, Permittee shall place its own enclosure adjacent to the PG&E enclosure for splices, coils of cable or other equipment. Neither the requirement that Permittee follow these practices, applicable laws, rules and regulations or special instructions given by PG&E nor the adherence to them by Permittee shall relieve Permittee for the sole responsibility to maintain safe and efficient working and operating conditions.

(b) The Permittee shall be solely responsible for the Attachments and shall take all necessary precautions during installation, and maintenance on or near PG&E Facilities and PG&E Right-of-Way so as to protect all persons and the property of PG&E and others from injury and damage. Without limiting the foregoing and without assuming any obligation to maintain or monitor the Attachments, if PG&E believes that Permittee's Attachments are in any way endangering any person or property, or are in noncompliance with any requirement referenced in Section 4.1(a) above (a "Hazardous Condition"), PG&E may, in its sole discretion, take any reasonable steps it deems advisable to remedy the Hazardous Condition; in which case Permittee shall be required to reimburse PG&E for its costs. In addition, if PG&E 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 POLES. Permittee and its duly authorized contractors, agents and employees ("Permittee's Workers") shall avoid directly climbing PG&E Poles and, if possible, use a ladder or bucket truck to perform work on the 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 POWER SPACE ON THE PG&E POLES.** All work on PG&E 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, issued by the Director of Industrial Relations, as amended.

4.3 ACCESS TO PG&E UNDERGROUND FACILITIES Access to PG&E Underground Facilities used for electrical equipment and cable shall be undertaken subject to the following conditions: (i) Access shall be in accordance with CPUC

General Order No. 128, (ii) Any access by Permittee, whether for initial installation or maintenance shall be by using "qualified" personnel, as such term is defined in the California Code of Regulations Title VIII, division 4, Chapter 4, under the supervision of a qualified electrical worker licensed in the State of California and whose qualifications are verified in advance by PG&E, (iii) Permittee shall not make any physical contact with PG&E's cables or other elements of PG&E's electrical distribution system (iv), Permittee's employee's, agents, or contractors will be permitted to enter or work in PG&E's Underground Facilities only when an authorized employee or agent of PG&E is present and Permittee agrees to pay PG&E for PG&E's employee based upon PG&E's then current fully loaded labor rate. PG&E's authorized employee or agent shall have the authority, without subjecting PG&E to any liability, to suspend Permittee's work operations in and around PG&E's Underground Facilities if, in the reasonable discretion of that employee or agent, any hazardous conditions arise or any unsafe practices (including unsafe practices which may threaten the integrity of PG&E's facilities) are being followed by Permittee's employees, agents or contractors. The presence of PG&E's authorized employee or agent shall not relieve Permittee of its responsibility to conduct all of its work and operations in and around PG&E's Underground Facilities in a safe and workmanlike manner. Permittee shall notify PG&E two (2) days in advance by calling PG&E's designated construction representative before any routine repair or maintenance of its facilities.

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 PG&E or its authorized agents on or near PG&E Facilities or PG&E Right-of-Way. PG&E and its authorized agents shall have priority to access the PG&E Facilities and PG&E Rights-of-Way at any time and Permittee's workers must adhere to any requests made by PG&E 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 PG&E reasonably determines that Permittee is not in compliance with any of these requirements, PG&E shall inform Permittee in writing and such Hazardous Conditions shall be remedied per Section 4.1(b).

4.6 SERVICE CONNECTION/DISCONNECTION. Any electrical service connection or disconnection of Permittee's Attachments to or from PG&E's overhead or underground electric system shall only be performed by PG&E and in accordance with PG&E's rates and applicable electric tariffs.

4.7 IDENTIFICATION TAGS. Permittee shall identify its Attachments using weather and corrosive resistant tags (capable of lasting the life of the cable), attached to every pole and every cable located in each of PG&E's Underground Facilities. The tags shall include Permittee's corporate name, a 24-hour emergency contact number and identify PG&E as the licensor. The tag shall be attached in the zone on the pole where

Permittee's cable and equipment are located and in Underground Facilities the tag shall be attached to Permittee's cable.

4.8 **POLE PROTECTION.** 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 Attachment in mid-span, the cross arm, bolt or lashing attaching the Attachment to the Pole will fail before the Pole fails. Permittee may, with PG&E's written consent, use alternative designs capable of accomplishing equivalent results to preserve the Pole. Regardless of the presence of breakaway fasteners or a PG&E 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 construction standards.

4.9 **POLE TREATMENT.** Permittee shall treat with a chemical solution of copper naphthenate or a PG&E 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 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 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 of a pole 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 paragraph a, 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 PG&E, its officers, directors, partners, agents, and employees (collectively, the "PG&E 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 therefrom (but only to the extent of customers' claims, not those of PG&E), with the exception of claims, demands, losses, damages, expenses, and legal liability arising solely from the gross negligence or willful misconduct of PG&E or PG&E's agents, employees or independent contractors who are directly responsible to PG&E; (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 a PG&E Indemnitee 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 Facilities or remove any Attachments as may be required by PG&E pursuant to Article X Termination.

(c) Regardless of fault on behalf of Permittee, PG&E shall exercise reasonable commercial effort toward restoring PG&E's service to its customers in accordance with PG&E's customary procedures and priorities, to enable Permittee to restore Permittee's attachments on PG&E's 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.

(d) 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; 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.

(e) Nothing in this Article V or Section 5.1 shall affect the application of the provisions of Section 11.12 "No Third Party Beneficiaries". Under no circumstance shall either Party have the authority to admit any liability on behalf of the other.

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 PG&E with respect to the PG&E 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, PG&E 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 PG&E would otherwise pay. Within thirty (30) days Permittee shall pay or reimburse PG&E for such amounts. Permittee may make such reimbursements or payments under protest, in which event Permittee and PG&E 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 arbitration 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 PG&E's facilities or PG&E 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 PG&E 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 PG&E has notice of such potential double taxation, PG&E 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. Permittee shall, on PG&E's request, defend any suit asserting one or more claims covered by the indemnities set forth in sections 5.1 and 5.2. Permittee shall pay any costs that may be incurred by PG&E in enforcing this indemnity, including reasonable attorney's fees.

5.4 LIMITATION OF LIABILITY. IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF PG&E TO PERMITTEE ARISING OUT OF OR IN CONNECTION WITH THE USE OF PG&E FACILITIES OR RELATING TO THIS AGREEMENT, EXCEED THE SUM OF THE ATTACHMENT FEES RECEIVED, AND FORECASTED TO BE RECEIVED, BY PG&E 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 LOSSES OR DAMAGES CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF PG&E, ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS.

5.5 **NO WARRANTIES.** EXCEPT AS SPECIFICALLY AND EXPRESSLY PROVIDED HEREIN, PG&E MAKES NO WARRANTY, EXPRESS OR IMPLIED WITH RESPECT TO THE FACILITIES OR THE USE OF THE FACILITIES BY PERMITTEE. THE PG&E FACILITIES ARE "AS IS." PG&E 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

Until Permittee has demonstrated to PG&E'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**

6.1.1 Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, where Permittee uses any Attachments.

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

6.2 **COMMERCIAL GENERAL LIABILITY**

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

6.2.2 The limit shall not be less than \$10,000,000 each occurrence for bodily injury, property damage and personal injury.

6.2.3 Coverage shall: (a) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of the work performed by or for the Permittee, or if the Permittee shall, at all times, be able to and shall keep PG&E in the same position as if PG&E were an "Additional Insured" under a policy of primary coverage; (b) be endorsed to specify that the Permittee's insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it.

6.3 BUSINESS AUTO

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

6.3.2 The limit shall not be less than \$10,000,000 each accident for bodily injury and property damage.

6.4 ADDITIONAL INSURANCE PROVISIONS

6.4.1 Before commencing use of any Attachments, Permittee shall furnish PG&E with certificates of insurance and Additional Insured endorsement of all required insurance for Permittee.

6.4.2 The certificate shall state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to PG&E.

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

Pacific Gas and Electric Company
Insurance Department—B24H
Post Office Box 770000
San Francisco, CA 94177

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

6.4.4 PG&E may require Permittee to furnish to PG&E certificates of insurance or other evidence thereof attesting that the insurance required by Article VI is in effect.

6.4.5 Upon request, Permittee shall furnish PG&E the same evidence of insurance for its contractors and subcontractors as PG&E requires of Permittee.

6.4.6. 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 PG&E 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, PG&E shall be entitled at any time to discontinue PG&E's use of PG&E Facilities located on the PG&E Right-of-Way, and Permittee shall immediately remove its Attachments. In the event of any such discontinuation, PG&E shall give Permittee advance written notice as soon as reasonably practicable, and PG&E shall propose alternative Facilities to meet the needs of the Permittee. PG&E will allow Permittee to buy PG&E's interest in the discontinued Facilities at PG&E's original cost or replacement cost, minus depreciation, whichever is lower. 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 per section 7.4, PG&E at any time may relocate all or any portion of its Facilities to other locations. In the event of any such relocation, PG&E may in its discretion allow Attachments at such alternate location(s) in accordance with this Agreement, and PG&E shall give Permittee sixty (60) days advance written notice (or electronic notice as may be available in the future) 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 Attachments, PG&E may either: (a) require Permittee at its cost to move its Attachments to the alternate location, or (b) with mutual consent move the Permittee's Attachments with reimbursement from Permittee for the reasonable costs and expenses of moving the Attachments. To the extent PG&E can obtain reimbursement for PG&E's and Permittee's cost of relocation, it will do so. If PG&E cannot obtain such reimbursement, then Permittee and other permittees shall be responsible for a proportional share of those costs. When the relocation is necessitated by the installation of an Attachment by a new PG&E permittee, the relocation of PG&E's and its Permittee's Attachments shall be at the expense of the new permittee to the extent allowed by law.

7.3 **REMOVALS**. If the existing equipment on the Pole or anchor (including Permittee's equipment) cannot be located in accordance with section 7.2 or rearranged in accordance with section 7.4 to create the required space or capacity for PG&E's use and the attachment and (i) PG&E needs the space or capacity occupied by the Permittee's equipment for its own use, or (ii) should any Pole to which Permittee has attached an Attachment be taken by the power of eminent domain, then on being given at least ninety (90) days' written notice by PG&E to do so, or in cases of emergency on such notice less than ninety (90) days as the circumstances reasonably permit (which

emergency circumstances may include no notice), the Permittee shall remove its Attachments from the PG&E Poles as PG&E shall designate and at the expiration of the time specified in the notice all rights and privileges of the Permittee in and to the PG&E Poles designated shall terminate. To the extent PG&E can obtain reimbursement for its and its Permittee's cost of relocation, it will do so. If PG&E cannot obtain such reimbursement, then Permittee and other permittees shall be responsible for a proportional share of those costs if PG&E performs the removal, if permitted by the Applicable Law. 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 Right-of-Way itself.

7.4 REARRANGEMENT/REPLACEMENT POLES OR ANCHORS PG&E shall give Permittee sixty (60) days advance written notice (or electronic notice as may be available in the future) or less if circumstances required for subparagraphs (a) through (c) below.

(a) When rearrangement and/or larger or additional Pole(s) or anchors are necessitated by the addition of PG&E 's equipment to the Pole(s) or anchors and the rearrangement and/or larger or additional Pole(s) or anchors would not be required in the absence of the Attachment(s), Permittee and other permittees shall pay an equal share of all costs, as allowed in other agreements to rearrange and/or install larger or additional Poles or anchors wherever such rearrangement and/or larger or additional Poles or anchors are necessitated by reason of the existence of the Attachment(s). The costs include, but are not limited to, the costs to rearrange and/or to install larger or additional Poles or anchors which are installed or rearranged subsequent to the installation of the Attachment.

(b) When rearrangement and/or larger or additional Pole(s) or anchors are necessitated by the installation of an Attachment by a new PG&E permittee, the larger Pole and relocation of PG&E'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) When a Pole replacement is required due to any other reason outside of the control of PG&E, including but not limited to, accidents, storms, bird, pest, or fungal infestation, excessive checking and splits, earthquake, tornadoes, street widening or other 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. Permittee will 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, PG&E shall at the request of Permittee request such additional space.

7.6 **INCOME TAXES.** As set forth in PG&E's Electric Rules, Preliminary Statement, paragraph J, and as amended, the costs to be paid by Permittee to PG&E as set forth in section 7.4 above shall include a gross-up amount for potential estimated income tax liability of PG&E 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 PG&E's current filed electric tariffs.

7.7 **RESTORATION OF SERVICE.** In the case of any incident whereby both PG&E'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 PG&E's electrical service capacity, unless otherwise agreed in advance by both Parties. Nonetheless, PG&E shall permit Permittee to make repairs to restore its Attachments and/or its capacity, as long as such restoration efforts do not interfere with PG&E's restoration activities.

7.8 **RECLAMATION OF PG&E UNDERGROUND FACILITIES.** If PG&E determines that the PG&E Underground Facilities through which Permittee's cable is installed is necessary to provide core electric service, PG&E shall have the right to terminate Permittee's Attachments with respect to PG&E Underground Facilities in which Permittee's cable is installed, upon not less than sixty (60 days) prior written notice. Each such notice shall specify the portion, if less than all, of the PG&E Underground Facilities to which such notice relates. Upon expiration of such notice period, Permittee shall remove its Attachments from the PG&E Underground Facilities specified in the notice and all rights and privileges of Permittee in and to the PG&E Underground Facilities shall terminate.

ARTICLE VIII ATTACHMENT FEES

8.1 **POLE ATTACHMENT FEES.** Prior to attaching to the Pole, Permittee shall pay to PG&E an Attachment Fee(s) at the applicable rate set forth in Exhibit B to this Agreement for each Pole Attachment to each Pole and anchor authorized under the Contact Permit form, Exhibit A. Permittee shall pay that Fee for each Pole and anchor initially installed, regardless of size, attachment type or duration. PG&E will charge multiple contact fees if the attachment occupies more than one linear foot of space on the Pole.

PG&E reserves the right to modify these Attachment Fees if any rules, regulations or orders of the CPUC, or a court of law, allow PG&E to charge a fee greater than the restraints 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 paragraph shall be effective beginning with the annual period that includes the date when PG&E is allowed to charge Attachment fees greater than the fee restraints.

8.2 UNAUTHORIZED POLE ATTACHMENTS. Upon request of PG&E, Permittee shall provide written evidence of Attachment authorization in the form of a completed Contact Permit Form or other similar documentation for any Pole on which Permittee has an Attachment. If Permittee cannot provide such evidence of Attachment authorization, Permittee shall pay to PG&E a fee for the unauthorized attachment of \$500.00 for each unauthorized attachment. The unauthorized Attachments shall then be subject to all the terms of this Agreement. If payment is not received within 30 days of invoice date, PG&E may invoke rights under Article X, Termination and remove Permittee's Attachments from PG&E's Facilities.

8.3 UNDERGROUND FACILITIES ATTACHMENT FEES. Prior to placing Permittee's cable in PG&E's Underground Facilities, Permittee shall pay to PG&E an Attachment Fee(s) at the applicable rate set forth in Exhibit B to this Agreement per linear foot for each cable installed and shown on the attached map. Additional cables may be installed in the future only with PG&E's written approval of the route.

8.4 UNAUTHORIZED CONDUIT ATTACHMENTS. Upon request of PG&E, Permittee shall provide written evidence of Attachment authorization in the form of a completed Contact Permit Form or other similar documentation for any conduit in which Permittee has an Attachment. If Permittee cannot provide such evidence of Attachment authorization, Permittee shall pay to PG&E \$500 per foot per cable as an unauthorized attachment fee. The unauthorized Attachments shall then be subject to all the terms of this Agreement. If payment is not received within 30 days of invoice date, PG&E may invoke rights under Article X, Termination."

8.5 SECTION 851 APPLICATION FEE. Permittee shall pay PG&E a one-time fee of \$10,000 to prepare and to file a Public Utilities Code Section 851 application with, and to obtain a final decision from, the CPUC. In the event that the CPUC does not approve PG&E's request under section 3.2 that PG&E need not make any other filings with the CPUC to allow Permittee to make additional contacts under this Agreement, then Permittee shall pay PG&E a filing fee of \$5,000 for each such filing.

ARTICLE IX DISPUTE RESOLUTION

9.1. ARBITRATION 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 a PG&E vice president and an executive of similar authority of Permittee. Either Party may give the other Party written notice of any dispute. Within 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 30 days of the first meeting, either Party may initiate an arbitration of the controversy in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

All negotiations 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 Contract pending final resolution of any dispute arising out of or relating to this Contract.

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 TERMINATION.

(a) Subject to the time frames set forth in section 11.1, if Permittee fails to (i) make any payment due within the time frame specified or otherwise comply with any material term or condition of this Agreement; or (ii) obtain or maintain the appropriate CPCN from the CPUC; or (iii) take reasonable steps to resolve any issue arising under section 3.3; or (iv) comply with the requirements of section 2.4, PG&E, at its sole discretion upon thirty (30) days written notice to Permittee (or such shorter period of time as may be determined by PG&E in order to comply with a notice from a Granting Authority or under law, if applicable), may terminate without further liability any permission granted to Permittee as to all or any portion of those Facilities which are the subjects of (i) through (iv) above, and Permittee shall immediately relinquish use of those PG&E Facilities and remove its Attachments from those PG&E 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 PG&E's authority to grant this License or Lease, which order allows Permittee to remain attached to PG&E's Facilities, Permittee shall be allowed to remain on or in PG&E's 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 PG&E 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.

(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 any or all of the Permittee's Attachments. If less than all of Permittee's attachments are abandoned or terminated, PG&E 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; and

(4) in accordance with the provisions of section 2.1, if PG&E or the CPUC invoke the provisions of G.O. 69-C.

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

ARTICLE XI MISCELLANEOUS

11.1 **BREACH.** Permittee and PG&E agree that neither shall proceed against the other for breach or default under this Agreement by arbitration 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 PG&E's ability to provide utility service, and fewer than thirty (30) days are required. This section does not supersede the rights and obligations of the Parties under section 4.1(b) 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.

11.2 **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 PG&E:

For U.S. mail and express mail:

Director, Pole Asset Management
2850 Shadelands Drive, Room 100
Walnut Creek, CA 94598
FAX: (925) 974-4186

If delivered to Permittee:

(name or title)
Global West Network Inc.
600 W. Broadway, Suite 1200
San Diego, CA 92101
FAX: (619) 744-4056

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

For routine notice changes, proof of delivery is not required. By mutual agreement facsimile notices may be used for routine notice changes.

11.3 **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.

11.4 **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, in which case the receiving party shall seek to file the confidential and proprietary information under seal, as permitted by law, 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.

11.5 **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, and restraint from rules or people, 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 during the Force Majeure event and until PG&E has remedied the damage caused by the Force Majeure event and Permittee may resume use of the Attachment. If PG&E 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 Poles shall be deemed to be discontinued and the provisions of Section 7.1 of this Agreement shall apply.

11.6 **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.

11.7 **REMOVAL OF ATTACHMENTS**. Upon any expiration or termination, Permittee shall relinquish use of PG&E's Facilities and remove its Attachments from PG&E 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 PG&E within the time period designated by notice pursuant to Article VII or otherwise required by this Agreement, PG&E shall be entitled to consider Permittee's Attachments abandoned as set forth in Section 11.8 below.

11.8 **ABANDONMENT**. If Permittee fails to use its Attachments for any period of one hundred and eighty (180) 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, PG&E shall have the right, on giving Permittee thirty (30) days written notice of its intention to do so, to remove the Attachments at Permittee's sole risk and expense and retain them as PG&E's own, and Permittee agrees to reimburse PG&E for its expense. Abandonment shall not relieve Permittee of any obligation, whether of indemnity or otherwise, accruing prior to completion of such removal by PG&E or which arises out of an occurrence happening prior thereto.

11.9 **ADDITION OF NEW POLES**. Except for any Poles added under the conditions of Article VII, PG&E 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 PG&E for the full cost of the new Facilities.

11.10 **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 PG&E executed prior to this Agreement.

11.11 **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.

11.12 **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.

11.13 **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." PG&E 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. PG&E shall provide Permittee with a copy of a Materials Safety Data Sheet for every Hazardous Chemical to the extent required by 29 CFR Part 1910 et al., on the Right-of-Way.

11.14 **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.

11.15 **MARK AND LOCATE RESPONSIBILITY** Permittees which use 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.

11.16 **PAYMENTS.** Unless otherwise specified in this Agreement, Permittee shall make all payments to PG&E within thirty (30) days of receipt of the invoice to:

Director, Pole Asset Management
2850 Shadelands Drive, Room 100
Walnut Creek, CA 94598

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and it 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.

IN WITNESS WHEREOF, PG&E and Permittee have each caused this Agreement to be signed and delivered by its duly authorized officer, all as of the date set forth below.

Global West Network

By *Samuel Z. Starnitz*
(Name - Officer of Global West Network)

Title President/CEO

Date January 4, 2001

Attest: *Sam Fai*

**PACIFIC GAS AND ELECTRIC
COMPANY**

By *S. Shuacheng*

Title V.P. Engineering & Planning

Date 2/7/01

Attest: *Linda Y.H. Cheng*

Linda Y.H. Cheng
Senior Assistant Corporate Secretary



**EXHIBIT A
APPLICATION FOR POLE & CONDUIT ATTACHMENT
INSTALLATION PERMIT FORM**

PART 1 REQUEST FOR ACCESS

(To PG&E Telco group)

Application Number _____
 TO PG&E: _____ Date _____
 Street _____ Agreement Number _____
 City _____ Applicant Job Number _____

In accordance with that certain agreement between us and PG&E (Licensor) signed by PG&E on _____, we hereby request for information and access to poles, conduits, and right of way located _____, all as more particularly described on the attached drawings.

Permittee _____
 Project Engineer Name: _____ Company name: _____
 Address: _____ Phone # _____

Signed _____ Title _____

Total number of attachments under this application:

of Poles contacted (new) _____ # of PG&E Anchors Attached _____ # of Risers installed _____
 # of poles cable Rebuild _____ # of poles overlashed _____ Max size of cable (diameter in inch) _____
 Total used vertical feet of pole for Telco equip. (Boxes) _____ Total feet of Underground conduit attached _____

PART 2 FINAL AUTHORIZATION

(to Permittee)

You are hereby authorized for installation. PG&E Job / notification # _____

PG&E: _____ Date _____

Signed _____ Title _____

PART 3 NOTICE OF COMPLETION

(To PG&E Area Telco Project Manager)

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

Permittee _____ Date _____
 Signed _____ Title _____

NOTE: _____

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 modification of existing facilities.
4. At PG&E request. Permittee shall be able to submit the authorized application forms for all attachment.

EXHIBIT B
Pole & Conduit Attachment Fee

Pacific Gas & Electric Company

Year of Attachment ¹	Years in 1 st & 2 nd Terms	Annual Rate <u>5</u> PU 767.5	
		<u>2 3 4</u> \$/Pole Attachment	Conduit \$/ft Attachment
1999	5	11.26	1.25
2000	4	11.91	1.36
2001	3	12.56	1.47
2002	2	13.21	1.58
2003	1	13.86	1.69
2004	5	14.51	1.80
2005	4	15.16	1.91
2006	3	15.80	2.02
2007	2	16.45	2.13
2008	1	17.10	2.24

1. All rental rates are for a period of one year from January 1 through December 31, billable and payable in advance in January of each year .
2. **1997 - 1999 rates calculated based on historical utilities cost of ownership according to P.U. 767.5, and the rates for 2000 to year 2008 are forecasted based on historical costs.**
3. Pole attachment rate is for One (1) foot of space per attachment.
4. Multiple pole contact rate will apply for attachments requiring more than One (1) foot of space on the pole.
5. PG&E reserves the right to modify these Attachment Fees if any rules, regulations or orders of the CPUC, or a court of law, allow PG&E to charge a fee greater than the restraints 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 paragraph shall be effective beginning with the most recent annual period preceding the date when PG&E is allowed to charge Attachment fees greater than the fee restraints.

EXHIBIT C
Standard cost
UNIT COST FOR MAKE READY & REARRANGEMENT WORK
(OVERHEAD)
Pacific Gas & Electric Company

Map Fees

Year	1999	2000	2001	2002	2003
First Map Copy	\$1.00	\$1.04	\$1.08	\$1.12	\$1.16
Mapping Hourly Rate	\$58.00	\$60.32	\$62.73	\$65.24	\$67.85

Engineering Fees

Year	1999	2000	2001	2002	2003
Engineering Hourly Rate	\$75	\$78	\$81	\$84	\$87
Pole loading calc/pole	\$80	\$83	\$86	\$89	\$93
Pole Replacement W/O Pole Loading/pole	\$400	\$416	\$433	\$450	\$468
Pole Replacement With Pole Loading/pole	\$480	\$499	\$519	\$539	\$561

Construction Facility Rearrangements Cost \$/Crew day

Year	1999	2000	2001	2002	2003
4 man Construction Crew	\$2,400	\$2,496	\$2596	\$2,700	\$2,808

1999 rate is based on PG&E's actual standard construction labor cost.

Figures are based on 8hr. Work day

Construction Pole Replacement \$/pole

Year	1999	2000	2001	2002	2003
City and County of San Francisco	\$13,706	\$14,254	\$14,824	\$15,417	\$16,034
Bay Area (Alameda, Contra Costa, Marin, San Mateo, Santa Clara Counties)	\$7,002	\$7,282	\$7,573	\$7,876	\$8,191
Outside Bay Area	\$5,205	\$5,413	\$5,630	\$5,855	\$6,089

1999 rate is based on PGE's 1998 actual system average pole replacement cost.

Constructions figures do not include engineering.

Consent To Assignment (CTA) \$/Assignment

Year	1999	2000	2001	2002	2003
request for CTA	\$245	\$254	\$265	\$275	\$286

All dollar figures are based on 1998 system averages.

2000 - 2003 rate is forecasted including 4% escalation rate.

EXHIBIT C
Standard cost
UNIT COST FOR MAKE READY & REARRANGEMENT WORK
(UNDERGROUND)
Pacific Gas & Electric Company

Map Fees

Year	1999	2000	2001	2002	2003
First Map Copy	\$1.00	\$1.04	\$1.08	\$1.12	\$1.16
Mapping Hourly Rate	\$58.00	\$60.32	\$62.73	\$65.24	\$67.85

Estimator Engineering Fees

Year	1999	2000	2001	2002	2003
Electric Hourly Rate	\$75	\$78	\$81	\$84	\$87
Gas Hourly Rate	\$75	\$78	\$81	\$84	\$87

Inspector / Standby

Year	1999	2000	2001	2002	2003
Gas Hourly Rate	\$70	\$73	\$76	\$79	\$82
Electric Hourly Rate	\$75	\$78	\$81	\$84	\$87

Construction Facility Rearrangements Cost \$/Crew day

Year	1999	2000	2001	2002	2003
2 Man Gas Crew	\$1,120	\$1,165	\$1,212	\$1,260	\$1,310
3 Man Gas Crew	\$1,680	\$1,747	\$1,817	\$1,890	\$1,966
3 Man Electric Crew	\$1,800	\$1,872	\$1,947	\$2,025	\$2,106
4 Man Electric Crew	\$2,400	\$2,496	\$2,596	\$2,700	\$2,808

Figures are based on 8 hr. work day.

Electric/Gas Planner

Year	1999	2000	2001	2002	2003
Hourly Rate	\$75	\$78	\$81	\$84	\$87

Consent To Assignment (CTA) \$/Assignment

Year	1999	2000	2001	2002	2003
Request for CTA	\$245	\$254	\$265	\$275	\$286

Cost of Materials are the responsibility of outside party.

All 1999 dollar figures are based on PG&E's actual standard construction labor cost derived from 1998 system averages.

2000 - 2003 rate is forecasted including 4% escalation rate.

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1.1 **SCOPE OF PERMIT** Error! Bookmark not defined.

1.2 **PG&E DISCLAIMER** 2

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ADVICE 2476-E

EXHIBIT 3

**AGREEMENT WITH PG&E AND METROMEDIA FIBER NETWORK
SERVICES INC. ("MFNS")**

MASTER POLE, AND UNDERGROUND FACILITIES LICENSE AND LEASE AGREEMENT

This Pole, *Conduit and Underground Facilities License and Lease Agreement* ("Agreement") is entered into by and between **Pacific Gas and Electric Company** ("PG&E"), a California corporation, its successors in interest or assigns and **Metromedia Fiber Network Services, Inc.**, a Delaware corporation, ("Permittee") (together, 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 PERMIT. PG&E gives Permittee permission, on the terms and conditions stated herein, to install and maintain telecommunications cables and related equipment (hereinafter sometimes collectively referred to as "Pole Attachments" or "Attachments") (i) in the space below that space assigned for use by supply circuits as set forth in California General Order 95 on distribution poles, anchors and streetlights solely owned or jointly owned by PG&E (collectively "PG&E Pole(s) or Pole(s)") and (ii) in *conduit, inner ducts and associated manholes, boxes and handholes collectively, the "PG&E Underground Facilities"*. The Poles and *Underground Facilities* are located on distribution rights-of-way ("PG&E Right-of-Way") solely or jointly owned or otherwise held and maintained by PG&E. The Poles and *Underground Facilities* are identified by Permittee and attached to the Contact Permit form Exhibit A. *The PG&E Poles and the PG&E Underground Facilities are referred to as the "Facilities"*.

The term "Attachment" shall mean, *with respect to Poles*, a single contact on a Pole to accommodate or to support a single cable or piece of equipment and, *with respect to Underground Facilities*, *the installation of one cable within a conduit or inner duct*. Additional contacts required for a second cable, overlashing, or a piece of equipment will be considered a second Attachment. The installation of risers, amplifiers, and power supplies on PG&E Poles and use of PG&E anchors shall be considered additional Attachments and are within this Agreement.

The electric usage by power supplies shall be covered by electric tariffs and are not within this Agreement. If any Attachments include unmetered electrical equipment, Permittee shall notify PG&E in writing to arrange for electric service and appropriate billing prior to using the Attachment.

Use of jointly owned Poles is permitted when PG&E is not otherwise precluded from offering such use. PG&E does not warrant that its permission alone is sufficient to allow contacts on jointly owned poles.

This Agreement is for Poles and Underground Facilities with no supply circuits in excess of 50 kV.

1.2 **PG&E DISCLAIMER.** Permittee expressly acknowledges that PG&E does not represent and warrant that the PG&E Right-of-Way, whether by easement, franchise, or other form of permission, is broad enough to permit Permittee's Attachments on PG&E *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 PG&E *Facilities* and PG&E Right-of-Way as may be necessary. Permittee shall obtain any such necessary rights from Granting Authorities before installing Attachments. "Granting Authority(ies)" mean those persons or entities from whom PG&E has received the PG&E 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 PG&E *Facilities*, and Permittee agrees to never claim such interest.

1.3 **ASSIGNMENT AND SUBLEASE.** This Agreement and the rights granted 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 in whole or in part without the prior written consent of PG&E, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, this Agreement may be assigned in whole or in part with prior written notice to PG&E to any entity that is an affiliate or a majority-owned direct subsidiary of Permittee, provided that such assignment shall not relieve Permittee of any of its obligations under this Agreement. Any assignment which does not comply with the provisions of this section 1.3 shall be null and void, and the putative assignee shall have no right to attach to PG&E's *Facilities*.

Permittee shall not sublease any PG&E space.

1.4 **CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.** Permittee warrants it is a public utility regulated by the California Public Utilities Commission (CPUC) and the Federal Communications Commission (FCC) and possesses certificates of public convenience and necessity (CPCN) from the CPUC to provide intrastate telecommunications services in the State of California and from the FCC to provide interstate and international telecommunications services. This Agreement applies to Permittee's activities only to the extent such activities are covered by its CPCN. Permittee warrants that its CPCN authorizes it to use governmental Right-of-Ways for the purposes of this Agreement. Permittee represents that it is a "telephone corporation" under California Public Utilities Code section 7901 and such section authorizes telephone corporations to build their lines along or across the public roads, highways and waterways of the state.

ARTICLE II
EFFECTIVE DATES OF AGREEMENT AS LICENSE OR LEASE

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 CPUC General Order ("G.O.") No. 69-C dated and effective July 10, 1985, which General Order No. 69-C by this reference is incorporated herein. This License is effective the date it is signed by PG&E, and will terminate based on any of the terms and conditions set forth in this Agreement or when it becomes a lease as set forth in section 2.2.

(b) Pursuant to G.O. 69-C this License is conditioned upon the right of PG&E, either upon order of the CPUC, or upon PG&E's own decision to commence or resume the use of the property in question whenever, in the interest of PG&E's service to its patrons or customers, it shall appear necessary or desirable to do so. PG&E will use commercially reasonable efforts to accommodate relocations, rearrangements and replacements under sections 7.2, 7.4, and 7.8.

(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 LEASE. This Agreement as a Lease is given pursuant to the regulatory laws of the State of California, including but not limited to, Public Utility Code, sections 767 and 851. The Lease is not effective until (i) this Agreement is approved by the CPUC pursuant to sections 767 and 851, (ii) without conditions unacceptable to either Party, and (iii) is final and is no longer subject to judicial review. Conversion from a License to a Lease shall be evidenced by a written notice from PG&E to Permittee of such conversion and specifying the date of conversion. Thereafter, Permittee's use of the *Facilities* shall continue to be pursuant to this Agreement.

2.3 APPLICATION TO THE CPUC. PG&E shall apply to the CPUC, under, but not limited to, Public Utility Code sections 767 and 851, for an order authorizing it to grant Permittee a Lease for Permittee's Attachments on Facilities in which PG&E holds an ownership interest. PG&E shall exercise its best efforts to secure such an order from the CPUC. However, PG&E makes no representation or warranty concerning its ability to secure said order or how long the application process will take.

2.4 CHALLENGE TO AGREEMENT. If a Granting Authority, in any forum, in any way challenges, disputes, or makes a claim against PG&E's authority to grant this license and/or lease, PG&E reserves the right in its sole discretion to require Permittee to remove its Attachments from the *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 PG&E. Permittee shall, upon such notice, relinquish use of PG&E's *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 PG&E's authority to grant this License or Lease, which order allows Permittee to remain attached to PG&E's Facilities, Permittee shall be allowed to remain on PG&E's 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 PG&E 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.

2.5 **TERM AND RENEWAL**. This Agreement as a license, lease or combination of the two is for a period of **five years** from the date it is signed by PG&E. Permittee shall have the option to renew this Agreement for one additional term of **five years** under the same terms and conditions of this Agreement as the Lease and excepting License provisions of Section 2.1 ("Renewal Term"). If notice of nonrenewal is not given pursuant to section 2.6 below, Agreement will automatically renew for a **second five year term**.

2.6 **NON RENEWAL**. If Permittee decides not to renew this Agreement, it shall notify PG&E in writing not later than one year prior to the end of the then current term.

ARTICLE III PLACING ATTACHMENTS

3.1 **PROCESS FOR ATTACHING TO PG&E'S FACILITIES**.

A. **Request For Information**

A Permittee should submit a request for information inquiry about the availability of space on PG&E's Facilities by filling out Part 1 of the Contact Permit Form, Exhibit A. The request for information must include the proposed route.

Permittee agrees to pay in advance all of PG&E's fully loaded costs to respond to the request for information. PG&E's costs are set forth in Exhibit C.

B. **Request For Access**

If Permittee desires to use PG&E's Facilities it must submit a request for access which attaches the following information to the Contact Permit Form.

- **For Pole Attachments** - grade and size of attachment, size of cable, average span length, wind loading of their equipment, vertical loading, and bending moments.

- **For Underground Facilities** - the size of the proposed fiber optic cable and inner duct.

Using this data PG&E will do total pole loading calculations and engineering to determine rearrangement, (including replacement, if necessary) or modifications of the Facility to accommodate the attachment.

Permittee agrees to pay PG&E in advance PG&E's fully loaded costs to do this work. PG&E's costs are set forth in Exhibit C.

Alternatively, Permittee may at its expense do the total pole loading calculations, and engineering to determine rearrangements, (including replacement if necessary) or modifications, all in accordance with PG&E's standards and specifications.

C. Make Ready Work

Make Ready work is the process of completing rearrangements on or in Facilities to create space for attachments.

PG&E will perform the make ready work at Permittee's expense, or PG&E will in its discretion allow Permittee to perform the make ready work at Permittee's expense. If PG&E perform the work the Permittee must pay PG&E in advance. PG&E's costs are set forth in Exhibit C.

3.2 **ADDITIONAL ATTACHMENTS**. Permittee shall not install any additional Attachments on or in the PG&E Facilities without first securing PG&E's written approval. The Contact Permit form attached as Exhibit A is to be used for all requests for attachments to PG&E's Facilities. The Contact Permit form may be converted to an electronic on-line document in the future which will be deemed an equivalent means of providing notification and coordination. PG&E will request in its section 851 filing with the CPUC permission that PG&E need not make any other filings with the CPUC to allow Permittee to make additional contacts under this Agreement as a Lease on the terms and conditions specified in this Agreement or as amended.

3.3 **NO THIRD-PARTY ATTACHMENT**. Permittee shall not, without the prior consent in writing of PG&E, assign, transfer, sublet or permit any other person or entity to overlash or to make any physical contact or attachment to any of Permittee's facilities which are supported by or placed in or on PG&E's-Facilities. Any attempted assignment in contravention of this paragraph shall be null and void and shall be grounds for PG&E to terminate this Agreement. Subject to the foregoing, and section 1.3, 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 PG&E makes a demand for additional compensation or indicates its intent to reopen, renegotiate or terminate PG&E's franchise, easement, license or other agreement establishing PG&E's rights in the Right-of-Way as a result of the existence of this Agreement, PG&E shall promptly notify Permittee. After conferring with PG&E and allowing PG&E 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 PG&E shall be in the sole discretion of PG&E, and any subsequent litigation, whether brought by PG&E at Permittee's request or by such third party Granting Authority, shall be conducted at Permittee's expense, but under PG&E's direction and control with respect to any issues materially affecting PG&E's rights in the 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 PG&E, Permittee shall reimburse PG&E for the amount of such additional consideration, to the extent such amount is due to Permittee's presence on or in PG&E's Facilities. If the dispute is resolved through litigation in accordance with the foregoing and the judgment resulting therefrom requires the payment of additional consideration by PG&E, Permittee shall reimburse PG&E for the amount of such additional consideration to the extent such amount is due to Permittee's presence on or in PG&E's Facilities. If Permittee possesses the power of eminent domain within the relevant jurisdiction, Permittee shall have the right, in its sole discretion, independently of PG&E 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 PG&E for the amounts of additional compensation due to Granting Authorities shall survive this Agreement.

(b) Notwithstanding the foregoing, PG&E after conferring with Permittee at any time and in PG&E'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 PG&E notwithstanding, Permittee may still continue to attempt to resolve such issues independently of PG&E, by litigation or otherwise, so long as PG&E 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 **INNERDUCT INSTALLATION** It shall be an express condition to Permittee's use of PG&E Conduit that Permittee at the sole cost of Permittee shall install innerducts within such PG&E Conduit. The type, color and number of innerducts to be installed in each PG&E Conduit shall be specified by PG&E. Permittee shall give to PG&E the

remaining innerducts not utilized by Permittee. PG&E shall also have the right to license or lease any unutilized innerducts to third parties.

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 PG&E in its sole, good faith discretion. All Pole Attachments must adhere to the clearance, separation, windloading and dead-end tensions and other requirements of General Order No. 95 or any successor.

Permittee's installation in Underground Facilities must comply with G.O. 128, including but not limited to mechanically and electrically protecting Permittee's cable within any PG&E splice box, vault, or enclosure. Permittee shall not locate splices, coils of cable, or other equipment within a PG&E splice box, vault, or enclosure. If it is practical and feasible, Permittee shall place its own enclosure adjacent to the PG&E enclosure for splices, coils of cable or other equipment. Neither the requirement that Permittee follow these practices, applicable laws, rules and regulations or special instructions given by PG&E nor the adherence to them by Permittee shall relieve Permittee for the sole responsibility to maintain safe and efficient working and operating conditions.

(b) The Permittee shall be solely responsible for the Attachments and shall take all necessary precautions during installation, and maintenance on or near PG&E Facilities and PG&E Right-of-Way so as to protect all persons and the property of PG&E and others from injury and damage. Without limiting the foregoing and without assuming any obligation to maintain or monitor the Attachments, if PG&E believes that Permittee's Attachments are in any way endangering any person or property, or are in noncompliance with any requirement referenced in Section 4.1(a) above (a "Hazardous Condition"), PG&E may, in its sole discretion, take any steps it deems advisable to remedy the Hazardous Condition; in which case Permittee shall be required to reimburse PG&E for its costs. In addition, if PG&E notifies Permittee of any Hazardous Condition, Permittee shall remedy such condition promptly and in no case later than ten days after receipt of such notice.

4.2 WORK ON POLES. Permittee and its duly authorized contractors, agents and employees ("Permittee's Workers") shall avoid directly climbing PG&E Poles and, if possible, use a ladder or bucket truck to perform work on the 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 POWER SPACE ON THE PG&E POLES. All work on PG&E 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.

4.3 ACCESS TO PG&E UNDERGROUND FACILITIES Access to PG&E

Underground Facilities used for electrical equipment and cable shall be undertaken subject to the following conditions: (I) Access shall be in accordance with CPUC General Order No. 128. (II) Any access by Permittee, whether for initial installation or maintenance shall be by using "qualified" personnel, as such term is defined in the California Code of Regulations Title VIII, division 4, Chapter 4, under the supervision of a qualified electrical worker licensed in the State of California and whose qualifications are verified in advance by PG&E. (III) Permittee shall not make any physical contact with PG&E's cables or other elements of PG&E's electrical distribution system (IV) Permittee's employee's, agents, or contractors will be permitted to enter or work in PG&E's Underground Facilities only when an authorized employee or agent of PG&E is present and Permittee agrees to pay PG&E for PG&E's employee based upon PG&E's then current fully loaded labor rate. PG&E's authorized employee or agent shall have the authority, without subjecting PG&E to any liability, to suspend Permittee's work operations in and around PG&E's Underground Facilities if, in the sole discretion of that employee or agent, any hazardous conditions arise or any unsafe practices (including unsafe practices which may threaten the integrity of PG&E's facilities) are being followed by Permittee's employees, agents or contractors. The presence of PG&E's authorized employee or agent shall not relieve Permittee of its responsibility to conduct all of its work and operations in and around PG&E's Underground Facilities in a safe and workmanlike manner. (v) Permittee shall notify PG&E two (2) days in advance by calling PG&E's designated construction representative before any routine repair or maintenance of its facilities.

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 PG&E or its authorized agents on or near PG&E Facilities or PG&E Right-of-Way. PG&E and its authorized agents shall have priority to access the PG&E Facilities and PG&E Right-of-Ways at any time and Permittee's workers must adhere to any requests made by PG&E 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 PG&E determines that Permittee is not in compliance with any

of these requirements, PG&E shall inform Permittee in writing and such Hazardous Conditions shall be remedied per Section 4.1(b).

4.6 **SERVICE CONNECTION/DISCONNECTION.** Any electrical service connection or disconnection of Permittee's Attachments to or from PG&E's overhead or underground electric system shall only be performed by PG&E and in accordance with PG&E's rates and applicable tariffs.

4.7 **IDENTIFICATION TAGS.** Permittee shall identify its Attachments using weather and corrosive resistant tags (capable of lasting the life of the cable), attached to every pole and every cable located in each of PG&E's Underground Facilities. The tags shall include Permittee's corporate name legible from the ground, a 24-hour emergency contact number and identify PG&E as the licensor. The tag shall be attached in the zone on the pole where Permittee's cable and equipment are located and in Underground Facilities the tag shall be attached to Permittee's cable.

4.8 **POLE PROTECTION.** 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 Attachment in mid-span, the cross arm, bolt or lashing attaching the Attachment to the Pole will fail before the Pole fails. Permittee may, with PG&E's written consent, use alternative designs capable of accomplishing equivalent results to preserve the Pole. Regardless of the presence of breakaway fasteners or a PG&E 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 construction standards.

4.9 **POLE TREATMENT.** Permittee shall treat with a chemical solution of **Copper Napthenate** or a PG&E 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 and regardless of the negligence of either Party or any rule of law imposing strict liability 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 of a pole 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 paragraph a, 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 PG&E, its officers, directors, partners, agents, and employees (collectively, the "PG&E 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 therefrom (but only to the extent of customers' claims, not those of PG&E), with the exception of claims, demands, losses, damages, expenses, and legal liability arising solely from the gross negligence or willful misconduct of PG&E or PG&E's agents, employees or independent contractors who are directly responsible to PG&E; (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 a PG&E Indemnitee 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 Facilities or remove any Attachments as may be required

by PG&E pursuant to Article X Termination. Regardless of fault on behalf of Permittee, PG&E shall exercise reasonable commercial effort toward restoring PG&E's service to its customers in accordance with PG&E's customary procedures and priorities, to enable Permittee to restore Permittee's attachments on PG&E's 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 11.12 "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; 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 PG&E with respect to the PG&E 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, PG&E 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 PG&E would otherwise pay. Within thirty (30) days Permittee shall pay or reimburse PG&E for such amounts. Permittee may make such reimbursements or payments under protest, in which event Permittee and PG&E 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 PG&E's facilities or PG&E 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 PG&E 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 PG&E has notice of such potential double taxation, PG&E 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.** Permittee shall, on PG&E's request, defend any suit asserting one or more claims covered by the indemnities set forth in sections 5.1 and 5.2. Permittee shall pay any costs that may be incurred by PG&E in enforcing this indemnity, including reasonable attorney's fees.

5.4 **LIMITATION OF LIABILITY.** IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF PG&E, ARISING OUT OF OR IN CONNECTION WITH THE USE OF PG&E FACILITIES OR RELATING TO THIS AGREEMENT, EXCEED THE SUM OF THE ATTACHMENT FEES RECEIVED, AND FORECASTED TO BE RECEIVED, BY PG&E 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 PG&E.

5.5 **NO WARRANTIES.** EXCEPT AS SPECIFICALLY AND EXPRESSLY PROVIDED HEREIN, PG&E MAKES NO WARRANTY, EXPRESS OR IMPLIED WITH RESPECT TO THE FACILITIES OR THE USE OF THE FACILITIES BY PERMITTEE. THE PG&E FACILITIES ARE "AS IS." PG&E 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

Until Permittee has demonstrated to PG&E'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**

6.1.1 Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, where Permittee uses any Attachments.

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

6.2 COMMERCIAL GENERAL LIABILITY

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

6.2.2 The limit shall not be less than \$10,000,000, **including umbrella coverage** each occurrence for bodily injury, property damage and personal injury.

6.2.3 Coverage shall: (a) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of the work performed by or for the Permittee, or if the Permittee shall, at all times, be able to and shall keep PG&E in the same position as if PG&E were an "Additional Insured" under a policy of primary coverage; (b) be endorsed to specify that the Permittee's insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it.

6.3 BUSINESS AUTO

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

6.3.2 The limit shall not be less than \$10,000,000, **including umbrella coverage** each accident for bodily injury and property damage.

6.4 ADDITIONAL INSURANCE PROVISIONS

6.4.1 Before commencing use of any Attachments, Permittee shall furnish PG&E with certificates of insurance and Additional Insured endorsement of all required insurance for Permittee.

6.4.2 The certificate shall state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to PG&E.

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

Pacific Gas and Electric Company
Insurance Department—B24H
Post Office Box 770000
San Francisco, CA 94177

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

6.4.4 PG&E may require Permittee to furnish to PG&E certificates of insurance or other evidence thereof attesting that the insurance required by Article VI is in effect.

6.4.5 Upon request, Permittee shall furnish PG&E the same evidence of insurance for its contractors and subcontractors as PG&E requires of Permittee.

6.4.6. 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 PG&E 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, PG&E shall be entitled at any time to discontinue PG&E's use of PG&E Facilities located on the PG&E Right-of-Way, and Permittee shall immediately remove its Attachments. In the event of any such discontinuation, PG&E shall give Permittee advance written notice as soon as reasonably practicable, and PG&E may propose alternative Facilities to meet the needs of the Permittee. PG&E will allow Permittee to buy PG&E's interest in the discontinued Facilities at PG&E'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 per section 7.4, PG&E at any time may relocate all or any portion of its Facilities to other locations. In the event of any such relocation, PG&E may in its discretion allow Attachments at such alternate location(s) in accordance with this Agreement, and PG&E shall give Permittee thirty (30) days advance written notice (or electronic notice as may be available in the future) 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 Attachments, PG&E may either: (a) require Permittee at its cost to move its Attachments to the alternate location, or (b) with mutual consent move the Permittee's Attachments with reimbursement from Permittee for the reasonable costs and expenses of moving the Attachments. To the

extent PG&E can obtain reimbursement for PG&E's and Permittee's cost of relocation, it will do so. If PG&E cannot obtain such reimbursement, then Permittee and other permittees shall be responsible for a proportional share of those costs. When the relocation is necessitated by the installation of an Attachment by a new PG&E permittee, the relocation of PG&E's and its Permittee's Attachments shall be at the expense of the new permittee to the extent allowed by law.

7.3 REMOVALS. If the existing equipment on the Pole or anchor (including Permittee's equipment) cannot be relocated in accordance with section 7.2 or rearranged in accordance with section 7.4 to create the required space or capacity for PG&E's use and the attachment and (i) PG&E needs the space or capacity occupied by the Permittee's equipment for its own use, or (ii) should any Pole to which Permittee has attached an Attachment be taken by the power of eminent domain, then on being given at least ninety (90) days' written notice by PG&E to do so, or in cases of emergency on such notice less than ninety (90) days as the circumstances reasonably permit (which emergency circumstances may include no notice), the Permittee shall remove its Attachments from the PG&E Poles as PG&E shall designate and at the expiration of the time specified in the notice all rights and privileges of the Permittee in and to the PG&E Poles designated shall terminate. To the extent PG&E can obtain reimbursement for its and its Permittee's cost of relocation, it will do so. If PG&E cannot obtain such reimbursement, then Permittee and other permittees shall be responsible for a proportional share of those costs if PG&E performs the removal. 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 Right-of-Way itself.

7.4 REARRANGEMENT/REPLACEMENT POLES OR ANCHORS. PG&E shall give Permittee thirty (30) days advance written notice (or electronic notice as may be available in the future) or less if circumstances required for subparagraphs (a) through (c) below.

(a) When rearrangement and/or larger or additional Pole(s) or anchors are necessitated by the addition of PG&E's equipment to the Pole(s) or anchors and the rearrangement and/or larger or additional Pole(s) or anchors would not be required in the absence of the Attachment(s), Permittee and other permittees shall pay an equal share of all costs, as allowed in other agreements, to rearrange and/or install larger or additional Poles or anchors wherever such rearrangement and/or larger or additional Poles or anchors are necessitated by reason of the existence of the Attachment(s). The costs include, but are not limited to, the costs to rearrange and/or to install larger or additional Poles or anchors which are installed or rearranged subsequent to the installation of the Attachment.

(b) When rearrangement and/or larger or additional Pole(s) or anchors are necessitated by the installation of an Attachment by a new PG&E permittee, the larger

Pole and relocation of PG&E'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) When a Pole replacement is required due to any other reason outside of the control of PG&E, including but not limited to, accidents, storms, bird, pest, or fungal infestation, excessive checking and splits, earthquake, tornadoes, street widening or other 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. Permittee will 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, PG&E shall at Permittee's discretion request such additional space.

7.6 INCOME TAXES. As set forth in PG&E's Electric Rules, Preliminary Statement, paragraph J, and as amended, the costs to be paid by Permittee to PG&E as set forth in section 7.4 above shall include a gross-up amount for potential income tax liability of PG&E 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 PG&E's current filed electric tariffs.

7.7 RESTORATION OF SERVICE. In the case of any incident whereby both PG&E'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 PG&E's electrical service capacity, unless otherwise agreed in advance by both Parties. Nonetheless, PG&E shall permit Permittee to make repairs to restore its Attachments and/or its capacity, as long as such restoration efforts do not interfere with PG&E's restoration activities.

7.8 RECLAMATION OF PG&E UNDERGROUND FACILITIES. If PG&E determines that the PG&E Underground Facilities through which Permittee's cable is installed is necessary to provide electric service, PG&E shall have the right to terminate Permittee's Attachments with respect to PG&E Underground Facilities in which Permittee's cable is installed, upon not less than (30 days) prior written notice. Each such notice shall specify the portion, if less than all, of the PG&E Underground Facilities to which such notice relates. Upon expiration of such notice period, Permittee shall remove its Attachments from the PG&E Underground Facilities specified in the notice and all rights and privileges of Permittee in and to the PG&E Underground Facilities shall terminate. In the event of reclamation pursuant to section 7.8 PG&E shall make a good faith effort to assist Permittee in finding alternative routes owned or controlled

by PG&E and to the extent available, within, upon or through which any affected Permittee installed cable may be relocated.

ARTICLE VIII ATTACHMENT FEES

8.1 **POLE ATTACHMENT FEES.** Prior to attaching to the Pole, Permittee shall pay to PG&E an Attachment Fee(s) at the applicable rate set forth in Exhibit B to this Agreement for each Pole Attachment to each Pole and anchor authorized under the Contact Permit form, Exhibit A. Permittee shall pay that Fee for each Pole and anchor initially installed, regardless of size, attachment type or duration. PG&E will charge multiple contact fees if the attachment occupies more than one foot of space on the Pole.

PG&E reserves the right to modify these Attachment Fees if any rules, regulations or orders of the CPUC, or a court of law, allow PG&E to charge a fee greater than the restraints 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 paragraph shall be effective beginning with the most recent annual period preceding the date when PG&E is allowed to charge Attachment fees greater than the fee restraints.

8.2 **UNAUTHORIZED POLE ATTACHMENTS.** Upon request of PG&E, Permittee shall provide written evidence of Attachment authorization for any Pole on which Permittee has an Attachment. If Permittee cannot provide such evidence of Attachment authorization, Permittee shall pay to PG&E a fee for the unauthorized attachment of \$500.00 for each unauthorized attachment.. The unauthorized Attachments shall then be subject to all the terms of this Agreement. If payment is not received within 30 days of invoice date, PG&E may invoke rights under Article X, Termination and remove Permittee's Attachments from PG&E's Facilities.

8.3 **UNDERGROUND FACILITIES ATTACHMENT FEES.** Prior to placing Permittee's cable in PG&E's Underground Facilities, Permittee shall pay to PG&E an Attachment Fee (s) at the applicable rate set forth in Exhibit B to this Agreement per linear foot for each cable installed and shown on the attached map. Additional cables may be installed in the future only with PG&E's written approval of the route.

8.4 **"UNAUTHORIZED CONDUIT ATTACHMENTS.** Upon request of PG&E, Permittee shall provide written evidence of Attachment authorization for any conduit in which Permittee has an Attachment. If Permittee cannot provide such evidence of Attachment authorization, Permittee shall pay to PG&E \$500 per foot per cable as an unauthorized attachment fee. The unauthorized Attachments shall then be subject to

all the terms of this Agreement. If payment is not received within 30 days of invoice date, PG&E may invoke rights under Article X, Termination."

8.5 **SECTION 851 APPLICATION FEE.** Permittee shall pay PG&E a one-time fee of \$10,000 to prepare and to file a Public Utilities Code Section 851 application with, and to obtain a final decision from, the CPUC. In the event that the CPUC does not approve PG&E's request under section 3.2 that PG&E need not make any other filings with the CPUC to allow Permittee to make additional contacts under this Agreement, then Permittee shall pay PG&E a filing fee of \$5,000 for each such subsequent filing.

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 a PG&E vice president and an executive of similar authority of Permittee. Either Party may give the other Party written notice of any dispute. Within 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 30 days 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 Contract pending final resolution of any dispute arising out of or relating to this Contract."

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 11.1, if Permittee fails to (i) make any payment due within the time frame specified or otherwise comply with any material term or condition of this Agreement; or (ii) obtain or maintain the appropriate CPCN from the CPUC; or (iii) take reasonable steps to resolve any issue arising under section 3.3; or (iv) comply with the requirements of section 2.4, PG&E, at its sole discretion upon thirty days written notice to Permittee (or such shorter period of time as may be determined by PG&E in order to comply with a notice from a Granting Authority or under law, if applicable), may terminate without further liability any permission granted to Permittee as to all or any portion of those Facilities which are the subjects of (i) through (iv) above, and Permittee shall immediately relinquish use of those PG&E Facilities and remove its Attachments from those PG&E 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 PG&E's authority to grant this License or Lease, which order allows Permittee to remain attached to PG&E's Facilities, Permittee shall be allowed to remain on or in PG&E's 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 PG&E 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.

(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 any or all of the Permittee's Attachments. If less than all of Permittee's attachments are abandoned or terminated, PG&E 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; and

(4) in accordance with the provisions of section 2.1, if PG&E or the CPUC invoke the provisions of G.O. 69-C.

(c) Upon termination of this Agreement for all or any portion of PG&E's Facilities which are used by Permittee, Permittee shall immediately relinquish use of

those Facilities and PG&E may remove Permittee's Attachments from PG&E's Facilities at Permittee's expenses.

ARTICLE XI MISCELLANEOUS

11.1 **BREACH.** Permittee and PG&E 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 PG&E's ability to provide utility service, and fewer than thirty days are required. This section does not supersede the rights and obligations of the Parties under section 4.1(b) for "Hazardous Conditions." If a Party claims that more than thirty 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.

11.2 **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 PG&E:

For U.S. mail and express mail:

Director, Pole Asset Management
1390 Willow Pass Road, Suite 260
Concord, CA 94520
FAX: (510) 692-5490

If delivered to Permittee:

For U.S. mail and express mail:

Contract Administrator / Accounts Payable
Metromedia Fiber Network services
One North Lexington Ave.
White Plains, NY 10601
Phone: (914)421-6700
Fax: (914)421-6777

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

For routine notice changes, proof of delivery is not required. By mutual agreement facsimile notices may be used for routine notice changes.

11.3 **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.

11.4 **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.

11.5 **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, and restraint from rules or people, 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. If PG&E is the party claiming force majeure and the event of force majeure prevents restoration of Permittee's previously authorized attachments within **three (3) months** of the force majeure event, then the Poles shall be deemed to be discontinued and the provisions of Section 7.1 of this Agreement shall apply.

11.6 **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.

11.7 **REMOVAL OF ATTACHMENTS**. Upon any expiration or termination, Permittee shall relinquish use of PG&E's Facilities and remove its Attachments from PG&E 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 PG&E within the time period designated by notice pursuant to Article VII or otherwise required by this Agreement, PG&E shall be entitled to consider Permittee's Attachments abandoned as set forth in Section 11.8 below.

11.8 **ABANDONMENT**. If Permittee fails to use its Attachments for any period of 180 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, PG&E shall have the right, on giving Permittee 30 days written notice of its intention to do so, to remove the Attachments at Permittee's sole risk and expense and retain them as PG&E's own, and Permittee agrees to reimburse PG&E for its expense. Abandonment shall not relieve Permittee of any obligation, whether of indemnity or otherwise, accruing prior to completion of such removal by PG&E or which arises out of an occurrence happening prior thereto.

11.9 **ADDITION OF NEW POLES**. Except for any Poles added under the conditions of Article VII, PG&E 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 PG&E for the full cost of the new Facilities.

11.10 **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 PG&E executed prior to this Agreement.

11.11 **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.

11.12 **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.

11.13 **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." PG&E 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. PG&E shall provide Permittee with a copy of a Materials Safety Data Sheet for every Hazardous Chemical to the extent required by 29 CFR Part 1910 et al., on the Right-of-Way.

11.14 **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.

11.15 **MARK AND LOCATE RESPONSIBILITY** Permittees which use 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.

11.16 **PAYMENTS.** Unless otherwise specified in this Agreement, Permittee shall make all payments to PG&E within thirty (30) days of receipt of the invoice.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and it 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.

**Metromedia Fiber Network
Services, Inc.**

**PACIFIC GAS AND ELECTRIC
COMPANY**

By Gerard Benedetto
(Name - Officer of Metromedia Fiber Network Services)

By Linda Y.H. Cheng

Title Vice President, CFO

Title Vice President, Engr'g & Plan'g

Date September 7, 1999

Date 9/27/99

Attest: [Signature]

Attest: [Signature]

Linda Y.H. Cheng
Senior Assistant Corporate Secretary

**EXHIBIT A
APPLICATION FOR POLE & CONDUIT ATTACHMENT
CONTACT PERMIT FORM**

PART 1 REQUEST FOR INFORMATION & ACCESS

TO PG&E: _____ Date _____
 Street _____ Application Number _____
 City _____ Applicant Job Number _____

In accordance with that certain agreement between us and PG&E (Licensor) signed by PG&E on _____ we hereby request for information and access to poles, conduits, and right of way located _____, all as more particularly described on the attached drawings.

Permittee _____ Date _____
 Signed _____ Title _____

PART 2 INFORMATION & ACCESS FEE

(to Permittee)

Request for information / access as described herein is contingent upon the following:

The cost of \$ _____ for this request is paid to this office within forty-five (45) days. Once the study is completed PG&E will notify you of the cost to perform any make ready work. Please return the original of this form with your request for information & access fee.

PG&E: _____ Date _____
 Signed _____ WMS Notification# _____
 Title _____

PART 3 MAKE READY WORK COST

(to Permittee)

PG&E's make ready cost for this request is \$ _____ which is payable to this office. Your payment is authorization for PG&E to perform the make ready work outlined in the accompanying attachments. When PG&E has completed the make ready work it will authorize you to install your attachments as identified above by signing below. Please return the original of this form with your make ready cost payment.

PG&E: _____ Date _____
 Signed _____ Title _____

PART 4 FINAL AUTHORIZATION

(to Permittee)

You are hereby authorized for installation.

PG&E: _____ Date _____
 Signed _____ Title _____

Under this application:
 # of Poles contacted _____ # of Risers _____ Total feet of conduit used _____
 Total used vertical feet of Telco equip. _____

1. PART (1) to be completed by applicant, Part (2), (3) & (4) 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 modification of existing facilities.
4. At PG&E request, Permittee shall be able to submit the authorized application forms for all attachments.

EXHIBIT B
Pole & Conduit Attachment Fee

Pacific Gas & Electric Company

Year of Attachment ¹	Years in 1st Term	Annual Rate ⁵ PU 767.5	
		<u>2 3 4</u> \$/Pole Attachment	Conduit \$/ft Attachment
1997		8.21	
1998		10.10	
1999	5	11.26	1.25
2000	4	11.91	1.36
2001	3	12.56	1.47
2002	2	13.21	1.58
2003	1	13.86	1.69

1. All pole rental rates are for a period of one year from January 1 through December 31, billable and payable in advance in January of each year .
2. **1997 - 1999 rates calculated based on historical utilities cost of ownership according to P.U. 767.5, and the rates for 2000 to year 2003 are forecasted based on historical costs.**
3. Pole attachment rate is for One (1) foot of space per attachment.
4. Multiple pole contact rate will apply for attachments requiring more than One (1) foot of space on the pole.
5. PG&E reserves the right to modify these Attachment Fees if any rules, regulations or orders of the CPUC, or a court of law, allow PG&E to charge a fee greater than the restraints 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 paragraph shall be effective beginning with the most recent annual period preceding the date when PG&E is allowed to charge Attachment fees greater than the fee restraints.

EXHIBIT C
Standard cost
UNIT COST FOR MAKE READY & REARRANGEMENT WORK
(OVERHEAD)
Pacific Gas & Electric Company

Map Fees

Year	1999	2000	2001	2002	2003
Map per copy	\$1.00	\$1.04	\$1.08	\$1.12	\$1.16
Mapping Hourly Rate	\$58.00	\$60.32	\$62.73	\$65.24	\$67.85

Engineering Fees

Year	1999	2000	2001	2002	2003
Engineering Hourly Rate	\$75	\$78	\$81	\$84	\$87
Pole loading calc/pole	\$80	\$83	\$86	\$89	\$93
Pole Replacement W/O Pole Loading/pole	\$400	\$416	\$433	\$450	\$468
Pole Replacement With Pole Loading/pole	\$480	\$499	\$519	\$539	\$561

Construction Facility Rearrangements Cost \$/Crew day

Year	1999	2000	2001	2002	2003
4 man Construction Crew	\$2,400	\$2,496	\$2,596	\$2,700	\$2,808

1999 rate is based on PG&E's actual standard construction labor cost.
 Figures are based on 8hr. Work day

Construction Pole Replacement \$/pole

Year	1999	2000	2001	2002	2003
City and County of San Francisco	\$13,706	\$14,254	\$14,824	\$15,417	\$16,034
Bay Area (Alameda, Contra Costa, Marin, San Mateo, Santa Clara Counties)	\$7,002	\$7,282	\$7,573	\$7,876	\$8,191
Outside Bay Area	\$5,205	\$5,413	\$5,630	\$5,855	\$6,089

1999 rate is based on PGE's 1998 actual system average pole replacement cost.
 Constructions figures do not include engineering.

Consent To Assignment (CTA) \$/Assignment

Year	1999	2000	2001	2002	2003
request for CTA	\$245	\$254	\$265	\$275	\$286

All dollar figures are based on 1998 system averages.
 2000 - 2003 rate is forecasted including 4% escalation rate.

EXHIBIT C
Standard cost
UNIT COST FOR MAKE READY & REARRANGEMENT WORK
(UNDERGROUND)
Pacific Gas & Electric Company

Map Fees

Year	1999	2000	2001	2002	2003
Map per copy	\$1.00	\$1.04	\$1.08	\$1.12	\$1.16
Mapping Hourly Rate	\$58.00	\$60.32	\$62.73	\$65.24	\$67.85

Estimator Engineering Fees

Year	1999	2000	2001	2002	2003
Electric Hourly Rate	\$75	\$78	\$81	\$84	\$87
Gas Hourly Rate	\$75	\$78	\$81	\$84	\$87

Inspector / Standby

Year	1999	2000	2001	2002	2003
Gas Hourly Rate	\$70	\$73	\$76	\$79	\$82
Electric Hourly Rate	\$75	\$78	\$81	\$84	\$87

Construction Facility Rearrangements Cost \$/Crew day

Year	1999	2000	2001	2002	2003
2 Man Gas Crew	\$1,120	\$1,165	\$1,212	\$1,260	\$1,310
3 Man Gas Crew	\$1,680	\$1,747	\$1,817	\$1,890	\$1,966
3 Man Electric Crew	\$1,800	\$1,872	\$1,947	\$2,025	\$2,106
4 Man Electric Crew	\$2,400	\$2,496	\$2,596	\$2,700	\$2,808

Figures are based on 8 hr. work day.

Electric/Gas Planner

Year	1999	2000	2001	2002	2003
Hourly Rate	\$75	\$78	\$81	\$84	\$87

Consent To Assignment (CTA) \$/Assignment

Year	1999	2000	2001	2002	2003
Request for CTA	\$245	\$254	\$265	\$275	\$286

Cost of Materials are the responsibility of outside party.

All 1999 dollar figures are based on PG&E's actual standard construction labor cost derived from 1998 system averages.

2000 - 2003 rate is forecasted including 4% escalation rate.

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**PG&E Electric Advice Filing List
General Order 96-A, Section III(G)**

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CPUC
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Crossborder Inc
CSC Energy Services
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Davis, Wright, Tremaine, LLP
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Dept of the Air Force
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DMM Customer Services
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