

RESOLUTION 2018-AA

**A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON,
AUTHORIZING THE EXECUTION OF A MASTER AGREEMENT
WITH NORTHWEST ONE-CALL FOR UNDERGROUND LOCATING
SERVICES**

WHEREAS, RCW 19.122.027 requires the Town of Eatonville to participate in a one-number locator service that provides a single statewide toll-free number to be used for locating underground utility services; and

WHEREAS, one-number locator services must be operated by nongovernmental agencies; and

WHEREAS, all facility operators within a one-number locator service must subscribe to the service; and

WHEREAS, failure to subscribe to a one-call number locator constitutes willful intent to avoid compliance; and

WHEREAS, the Operating Committee for the Northwest One-Call Subsurface Warning System has recommended changes to bring the agreement up to date with current practices; now, therefore,

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON,
HEREBY RESOLVES AS FOLLOWS:**

THAT: The Council of the Town of Eatonville has reviewed the changes to the Master Agreement with Northwest One-Call Subsurface Warning System and has no objections.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 10th day of September, 2018.

Mike Schaub, Mayor

ATTEST:

Kathy Linnemeyer, Town Clerk



8/15/2018

To the Members of the Northwest One-Call Subsurface Warning System (NWOC)
a.k.a. Utilities Underground Location Center (UULC), WA811, Call Before You Dig,
etc.

Dear Member,

It is vital that this letter and its contents be given to the individual in the company that understands and is responsible for the "Call Before You Dig" process and can sign, or recommend signing, to an authorized person of the company.

The Operating Committee for the NWOC has reviewed the Master Agreement held between the members (Utilities, Cities, Counties, WSDOT, etc) and the NWOC. The Committee has recommended changes to bring the agreement up to date with current practices. The agreement requires the suggested changes must be given to the members to provide 30 days for review, comment, objections, or a request for a hearing with the committee.

The Committee believes the proposed changes do not change the agreement or intent in aggregate, but are minor items such as addressing electronic communications and clarifies how the Operating Committee conducts business.

This following page contains a brief summary of the changes that are recommended. Within 30 days, you may submit:

Questions or comments to: Catherine Forrest at cforrest@awwd.com

Objections (include reason) to the agreement to: drevans3@washington811.com

No comments, questions, or objections? Simply do nothing. No response will be viewed as acceptance. Once approved, the agreement will be distributed to the members.

Sincerely,

Contract/Agreement Sub-Committee of the NWOC Operating Committee
Cheryl Paras, Dave Christensen, Don Evans, Catherine Forrest

SUMMARY OF CHANGES
(Grammatical changes not listed)

<u>Page</u>	<u>Change</u>
Cover:	Retain only the legal name from original master agreement in the title
3 & 4	1.1.8; Physical address of the vendor that produces locate tickets 1.1.10; Include electronic communications 1.1.13; Update term date
5	2.1; Include other trade names here and not on cover page for legal reasons
7	2.4(a); change specific listed equipment to "all equipment and software"
12	3.6; allows for teleconferencing to participate, but also requires that such member(s) must be able to hear and communicate as if "in the room" so all parties have an opportunity to hear and be heard
13 & 14	3.7; Quorum must be present as listed in 3.6 above. Voting takes majority of quorum, voting may be electronically transmitted by the members who were present at the meeting when the action was discussed. All members at the meeting when the action was discussed must vote, either in person or electronically. This does not substitute for items that require a two-thirds vote as listed in 3.7.4
16	4.2; Addresses timing of Operating Committee budget approval
17 & 18	4.5 & 4.6; remove "One Call Office" since the Operating Committee does not maintain an office but a storage
20	5.4; Outline scheduling of Annual Meeting to provide flexibility. For example removing "third Friday in September" and stating "month of October"
Exhibit B	Remove specific rates so the agreement does not have to be updated when the rates change; (members are still notified in writing)
Exhibit D	Current list of Operating Committee members at this point in time and referencing website for current list of committee members for the future

AMENDED AND RESTATED
MASTER AGREEMENT
for
The
NORTHWEST ONE-CALL
SUBSURFACE WARNING SYSTEM

(a/k/a ~~Utilities Underground Location Center~~ and/or WA 811)

Original Date of Master Agreement: April 1, 1986
Amended and Restated: April 1, 1993
Amended: January 1, 2002
April 15, 2004
Amended and Restated: October 1, 2005
Amended and Restated January 5, 2012
Amended and Restated 2018

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**Amended and Restated
Master Agreement
for The
Northwest
One-Call Subsurface Warning System**

This Agreement, dated as of ~~January 5, 2012~~, ~~2018~~, amends and restates in its entirety the Master Agreement for the Northwest One-Call Subsurface Warning System, dated as of ~~August 1, 1986~~, ~~April 1, 1986~~ (as previously amended and/or amended and restated). The Parties on the date of this Agreement are identified in the list that is set forth (or obtained in the manner specified) in the attached *Exhibit A*.

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Recitals

A. Each Party owns, operates or conducts activities affecting subsurface utility facilities (including, but not necessarily limited to, any electric, gas, telephone, water, sewer, cable television or communications distribution system).

B. Each Party desires to protect its subsurface utility facilities from damage, interruption or interference by anyone who intends to dig, excavate, drill, blast or perform other work that might disturb the surface or subsurface of the earth.

C. In order to help protect their respective subsurface utility facilities, the Parties have established a one-call number locator service by which anyone who intends to dig, excavate, drill, blast or perform other work that might disturb the surface or subsurface of the earth where subsurface utility facilities are located may call a single telephone contact the one-number locator service to notify the Parties that may be affected by the proposed work and seek such Parties' assistance in locating their respective subsurface utility facilities.

D. The Parties desire to develop formal procedures for the creation of a committee to administer this Agreement and the contract between the committee and a third-party contractor who shall perform the one-call number locator service for the benefit of the Parties.

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Agreement

The Parties therefore agree as follows:

Section 1. Definitions

1.1 Specified Definitions

Whenever used in this Agreement with initial letters capitalized, the following terms shall have the following specified meanings, unless the context clearly requires a different meaning:

1.1.1 "Annual Meeting" means an annual meeting of the Parties pursuant to Section 5.4.

1.1.2 "Committee" means the committee described in Section 3 and **"Committee Chair"** shall mean the member of the Committee selected by a vote of the Committee to serve as the "Operating Committee Chair."

1.1.3 "Common Costs" means those costs reasonably incurred by the Parties or any one or more of them in connection with the Service, but only if and to the extent that such costs are included in a budget or otherwise authorized or approved by the Committee as "Common Costs" under this Agreement. Common Costs may include, but are not necessarily limited to, the following:

(a) payroll and related personnel costs to perform the Service (including: salaries; wages; costs of fringe benefits such as retirement benefits, employee insurance and allowances for sick leave, holidays and vacations; social security, unemployment and other employer taxes; and premiums for workers' compensation and employer's liability insurance);

(b) costs of office space, facilities, equipment, materials, services and other items used, consumed or incorporated in the performance of the Service;

(c) costs of consultants, contractors and suppliers furnishing goods, services and other items for performance of the Service (including, but not limited to, compensation payable to the Contractor);

(d) attorneys', accountants', and other professional fees incurred in connection with performance of the Service (including, but not limited to, the costs of any audit of the Common Costs performed pursuant to Section 4.5);

(e) sales, use, property and other taxes which are imposed by any governmental authority in connection with performance of the Service (other than any taxes imposed upon or measured by the income, revenues or receipts of any Party);

(f) costs of permits, licenses and other governmental authorizations required to perform the Service; and

(g) costs (including, but not limited to, attorneys' fees) incurred to defend, compromise, settle and satisfy claims of third parties against the Parties or any one or more of them arising out of the performance of the Service, if and to the extent not covered by insurance or the indemnity in Section 8.5(c).

1.1.4 "Contractor" means the Person engaged from time to time by the Committee pursuant to Section 2.2(a) to perform the Service. The Contractor on the date of this Agreement is One Call Concepts.

1.1.5 "Executive Administrator" means the Person engaged as an independent contractor from time to time by the Committee pursuant to Section 2.2(a) to serve as an "Executive Administrator" (or like title established by the Committee) of the cost-sharing organization established by this Agreement and to perform such leadership, business and administrative services as are specified by the Committee.

1.1.6 "Fiscal Period" means the fiscal period adopted from time to time by the Committee for budgeting, financial statement, accounting and other financial purposes with regard to the Service. On the date of this Agreement, the Fiscal Period is the twelve-month period commencing on August 1 of one year and ending on July 31 of the next year.

1.1.7 "Montana Representative" means the Person engaged as an independent contractor from time to time by the Committee pursuant to Section 2.2(a) to perform such roving customer service related services with respect to the Service in the State of Montana as are specified by the Committee.

1.1.8 "One-Call Office" means an office from which the Service is performed. On the date of this Agreement, the One-Call Office is located at ~~415 SE Ankeny Street~~, 305 N.E. 102nd Ave., #300, Portland, Oregon 97214-4471-97220. The Committee may at any time establish one or more additional One-Call Offices or change the location of any One-Call Office.

1.1.9 "Person" means any corporation, partnership, trust, governmental authority, individual or any other person or entity.

1.1.10 "Service" means a ~~one-call~~ number locator service by which a Person who intends to dig, excavate, drill, blast or perform other work that might disturb the surface or subsurface of the earth where the subsurface utility facilities of one or more of the Parties may be located may ~~call a single telephone contact the one-number locator service~~ to notify the Parties that may be affected by the proposed work and seek such Parties' assistance in locating their respective

subsurface utility facilities (e.g. by marking the surface above where the subsurface facilities are located). The Service includes, but is not necessarily limited to, the following:

- (a) the Contractor's receipt of a telephone call or electronic communication via the Contractor's established electronic notification system (e.g., ITIC) from a Person intending to dig, excavate, drill, blast or perform other work that might disturb the surface of the earth;
- (b) the Contractor's determining the location of the intended work (e.g., as being within or near the Service Area of any Party or Parties); and
- (c) the Contractor's notifying such Party or Parties of the location of the intended work;

all so that the Person intending to perform such work may seek the Parties' assistance in locating its subsurface utility facilities (e.g., by marking the surface above where the subsurface facilities are located).

1.1.11 "Service Area" means the geographical area to which the Service applies. The Service Area of a Party includes all areas in which such Party's subsurface utility facilities are located, as identified by such Party to the Contractor (e.g., in regularly updated maps showing the boundaries of the area in which a Party's subsurface utility facilities are located).

1.1.12 "Subscription Agreement" means the document, in such form and content as may be prescribed from time to time by the Committee, by which a Person becomes a "Party" under this Agreement. The form of Subscription Agreement prescribed by the Committee on the date of this Agreement is attached as *Exhibit B*.

1.1.13 "Term" means the period commencing with the date of this Agreement and ending upon the first of the following to occur:

- (a) July 31, ~~2025~~2030;
- (b) the date upon which the last of the Parties withdraws as a Party pursuant to Section 5.2.1; or
- (c) the effective date of any termination of this Agreement by the Committee pursuant to Sections 2.2(g) and 3.7.2(c).

1.1.14 "Uncontrollable Forces" means any cause or condition beyond the control of any Party delaying or failing to perform its obligations under this Agreement, which cause or condition such Party is unable to overcome or have

prevented by the exercise of reasonable diligence. Uncontrollable Forces may include, but are not necessarily limited to, acts of God, acts of the elements, fires, winds, floods, explosions, strikes, sabotage, insurrections, riots, acts of the public enemy, failures of equipment, inability to obtain or ship materials or equipment, acts of civil or military authority (including court orders, injunctions and orders of government authorities prohibiting performance as required by this Agreement or permitting such performance only subject to unreasonable conditions), and failures of governmental authorities to timely act (including any failures to issue permits, licenses or other required governmental authorizations).

1.1.15 "Utility Group" means a group of Parties recognized by the Committee as having unique, common and similar interests for purposes of nominating and electing one representative to serve on the Committee. The Committee may from time to time make changes in the number, nature or classification of Utility Groups by action taken in accordance with Section 7. The Utility Groups on the date of this Agreement are set forth in the attached *Exhibit C*.

1.2 Cross-References to Additional Definitions.

Whenever used in this Agreement with initial letters capitalized, the following terms shall have their respective meanings specified elsewhere in this Agreement:

Term	Reference
First Party	Section 8.5(c)
Party	Introduction
Participating Party	Section 6

Section 2. Performance of the Service

2.1 General

The Parties shall provide for the performance of the Service by the Contractor for the benefit of all Parties in their respective Service Areas throughout the Term. The Service shall be provided by the Contractor for the benefit of the Parties under the tradename "~~Washington 811~~" 811," "WA 811," "Utilities Underground Location Center," "UULC" and/or such other tradename(s) as may be adopted from time to time by the Committee for all or a given portion of the Service Area.

2.2 Authority of the Committee

The Committee shall have the power and authority to do the following as agent on behalf of the Parties:

(a) enter into, perform and administer one or more contracts with (i) the Contractor for the Contractor's performance of the Service, (ii) the Executive Administrator for the performance of the leadership, business and administrative services specified by the Committee, and (iii) the Montana Representative for the performance of the customer service related services specified by the Committee with respect to the Service in the State of Montana; provided that no such contract shall be for a period in excess of five (5) years;

(b) incur Common Costs;

(c) adopt and amend policies, procedures, guidelines, rules and requirements for the implementation of the Service and this Agreement;

(d) render interpretations, constructions and clarifications of this Agreement;

(e) establish procedures for the determination, billing, payment and collection of charges for use of the Service, any surcharge under Section 4.3 and any other amounts payable under this Agreement;

(f) establish, and delegate any authority of the Committee to, any subcommittee of the Committee;

(g) terminate the Term;

(h) remove a Committee member pursuant to Section 3.9.2; and

(i) take such other action (including, but not limited to, the execution, acknowledgment and delivery of documents) as the Committee may deem necessary or appropriate to provide for the Service, perform its obligations under this Agreement and otherwise implement the Service and this Agreement.

2.3 Contracts

Any contract with the Contractor or other Person entered into by the Committee as agent for the Parties shall be executed in the name of "One-Call Operating Committee" or a substantially similar name and shall be signed by at least two (2) Committee members authorized by the Committee to sign the applicable contract.

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2.4 Committee Policies, Etc.

Any policies, procedures, guidelines, rules, requirements, or amendments adopted by the Committee pursuant to Section 2.2(c), any interpretations, constructions, or clarifications of this Agreement rendered by the Committee pursuant to Section 2.2(d) and any procedures established by the Committee pursuant to

Section 2.2(e) shall be consistent with the provisions of this Agreement and applicable law and shall be binding upon each Party. Further, each Party shall:

(a) furnish, operate and maintain telephone, teleprinter, facsimile, computer (together with associated devices for transmitting and receiving e-mail, internet and other electronic communications) and other all equipment and software required to interface such Party with the Service;

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(b) cooperate and coordinate with, and furnish information to, the Committee and the Contractor as required for the implementation of the Service and this Agreement;

(c) promptly and courteously respond to any request, received by such Party through the Service, for location of such Party's subsurface utility facilities; and

(d) pay before delinquency all charges and other amounts payable by it for use of the Service when the validity of such charges or amounts have not been appealed pursuant to Section 6 or, if so appealed, when such charges or amounts have been finally determined payable by the Committee.

2.5 Equal Opportunity Compliance

Each Party shall comply with Executive Order No. 11246, the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Assistance Act of 1972 and all of the orders, rules and regulations promulgated thereunder (including, but not limited to, 41 C.F.R. Section 60-1, 41 C.F.R. Section 60-250 and 41 C.F.R. Section 60-741), all as the same may have been or may be amended. The "equal opportunity clause" of 41 C.F.R. Section 60-1.4, the "Affirmative Action Obligations for Disabled Veterans and Veterans of the Vietnam Era" clause of 41 C.F.R. Section 60-250.4 and the "Affirmative Action for Handicapped Workers" clause of 41 C.F.R. Section 60-741.4 are incorporated herein by this reference. Each Party certifies that segregated facilities (within the meaning of 41 C.F.R. Section 60-1.8) are not and will not be maintained or provided for its employees and that it will not permit its employees to work at any location under its control where segregated facilities are maintained. Each Party shall obtain a similar certification from other parties as required by 41 C.F.R. Section 60-1.8. This section shall apply only if and to the extent required by applicable law.

Section 3. The Committee

3.1 Composition

3.1.1 The Committee shall be composed of as many members as there are Utility Groups.

3.1.2 A Committee member shall ~~may~~ designate an alternate by giving written notice of such designation to the other Committee members and may, once designated, replace the alternate by giving written notice of the replacement to the other Committee members. Each alternate designated, either initially or as a replacement, must be approved by a vote of the Committee. The alternate designated by a Committee member and approved by the Committee may vote and otherwise act in the place of such Committee member in the Committee member's absence. The role of the alternate is to attend meetings and events regularly and work in coordination with her or his Committee member to ensure that the alternate is current on the matters then before the Committee and can act efficiently and expeditiously in the Committee member's absence. Each such alternate may, with the prior approval of the Committee Chair, participate in discussions at Committee meetings and serve on subcommittees of the Committee.

3.1.3 The names, addresses and telephone numbers of the Committee members on the date of this Agreement are listed in the attached *Exhibit D*.

3.2 Voting for Committee Members

The Parties included in each Utility Group shall be entitled to elect one Committee member to represent the Utility Group on the Committee. In any such election (i.e., pursuant to Section 3.3 or 3.4 below), each Party shall be entitled to cast one vote for each dollar paid by such Party pursuant to Section 4 for such Party's use of the Service during the prior Fiscal Year, excluding:

- (a) any interest, late payment charges, costs or other amounts paid by such Party on account of any failure to pay any other amount when due; and
- (b) any amount paid after the due date for nominations specified pursuant to Section 3.3.2 or 3.4.2, as the case may be.

3.3 Regular Elections of Committee Members

3.3.1 Prior to each Annual Meeting, the Committee shall conduct a regular election pursuant to this Section 3.3 to elect successors for those Committee members whose terms expire at that Annual Meeting.

3.3.2 At least sixty (60) days prior to any Annual Meeting when the term of any Committee member expires, the Committee shall send to the Parties included in each Utility Group represented by a Committee member to be elected a written solicitation of nominations for the Committee member to represent such Utility Group for the following term. Such solicitation shall specify the date determined by the Committee as the due date by which nominations must be received by the Committee. Any Party may nominate a candidate for election as the Utility Group's Committee member by giving the Committee written notice of the nomination prior to

the due date specified in the Committee's solicitation of nominations or by any other means approved by the Committee.

3.3.3 At least thirty (30) days prior to any Annual Meeting when the term of any Committee member expires, the Committee shall send to the Parties included in each Utility Group represented by a Committee member to be elected:

(a) a written ballot including all of the candidates nominated for such Committee member's position pursuant to Section 3.3.2;

(b) a copy of any resume, statement or other materials furnished by the nominating Party or the candidate regarding the qualifications of the candidate, provided that the Committee may exclude any materials that it deems to be inappropriate, unreasonable or too expensive to copy and send;

(c) a statement of the number of votes that each Party in the Utility Group is entitled to cast in the election; and

(d) a statement of the date determined by the Committee as the due date by which completed ballots must be received by the Committee.

3.3.4 The candidate receiving a majority of the votes cast by Parties in the Utility Group shall be elected as the Committee member for such Utility Group effective as of the Annual Meeting for which the election is held. If no candidate receives a majority of the votes cast, then the Committee shall conduct a special election for the applicable Committee member position, but only those two (2) candidates receiving the most votes in the regular election under this Section 3.3 shall be candidates in the special election.

3.4 Special Elections of Committee Members

3.4.1 The Committee shall conduct a special election upon the occurrence of any of the following events:

(a) in a regular election under Section 3.3 or a special election under this Section 3.4, no candidate receives a majority of the votes cast by the Parties in the applicable Utility Group;

(b) a Utility Group does not have a representative on the Committee;

(c) a Committee member's term terminates pursuant to Section 3.5.4(a) or (b);

(d) a written request for removal of a Committee member is submitted to the Committee by the required number of votes of the Parties in the Committee member's Utility Group pursuant to Section 3.9.1; or

(e) the Committee votes for removal of a Committee member for cause pursuant to Section 3.9.2.

3.4.2 Promptly after the occurrence of any event described in Section 3.4.1(b), (c), (d) or (e), the Committee shall send to the Parties included in the Utility Group represented by the Committee member in question a written solicitation of nominations for the Committee member to represent such Utility Group for the balance of such Committee member's remaining term. Such solicitation shall specify the date determined by the Committee as the due date by which nominations must be received by the Committee. Any Party may nominate a candidate for election as the Utility Group's Committee member by giving the Committee written notice of the nomination prior to the due date specified in the Committee's solicitation of nominations or by any other means approved by the Committee.

3.4.3 At least thirty (30) days prior to the due date specified pursuant to (d) below, the Committee shall send to the Parties included in the applicable Utility Group:

(a) a written ballot including all of the candidates nominated for the Committee member position pursuant to Section 3.4.2 or, in the case of a special election under Section 3.4.1(a), the two (2) candidates receiving the most votes in the prior regular or special election, as applicable;

(b) a copy of any resume, statement or other materials furnished by the nominating Party or the candidate regarding the qualifications of the candidate, provided that the Committee may exclude any materials that it deems to be inappropriate, unreasonable or too expensive to copy and send;

(c) a statement of the number of votes that each Party in the Utility Group is entitled to cast in the election; and

(d) a statement of the date determined by the Committee as the due date by which completed ballots must be received by the Committee.

3.4.4 The candidate receiving a majority of the votes cast by Parties in the Utility Group shall be elected as the Committee member for such Utility Group effective as of the date when the Committee notifies the applicable Utility Group of the results of the election. If no candidate receives a majority of the votes cast, then the Committee shall conduct another special election for the applicable Committee member position, but only those two (2) candidates receiving the most votes in the prior special election under this Section 3.4 shall be candidates in the special election.

3.5 Term of Committee Members

3.5.1 The term of any Committee member elected pursuant to Section 3.3 or 3.4 shall commence on the effective date of his or her election.

3.5.2 Subject to extension as provided for in Section 3.5.3 and to earlier termination pursuant to Section 3.5.4:

(a) the term of each Committee member listed in the attached *Exhibit D* shall expire on the date of the Annual Meeting in the year specified in the attached *Exhibit D*;

(b) the term of each Committee member elected pursuant to Section 3.3 that commences as of any given Annual Meeting shall expire at the third Annual Meeting after the commencement of his or her term; and

(c) the term of each Committee member elected pursuant to Section 3.4 (excluding any special election under Section 3.4.1(a) arising out of a regular election) shall expire upon the expiration of the remaining balance of the term of any such Committee member's predecessor.

3.5.3 In the event a special election is conducted pursuant to Section 3.3.4 to elect a successor for a Committee member whose term would otherwise expire under Section 3.5.2, the term of such Committee member shall be extended pending completion of the special election and shall expire on the commencement date of the term of his or her successor.

3.5.4 The term of any Committee member shall terminate prior to the expiration of his or her term pursuant to Section 3.5.2 upon the occurrence of any of the following events:

(a) the death of the Committee member;

(b) the Committee member resigns by giving the Committee written notice of such resignation;

(c) a successor is elected pursuant to Section 3.4.1(d) following a written request submitted by the required number of votes of the Parties in the Committee member's Utility Group; or

(d) a successor is elected pursuant to Section 3.4.1(e) following a vote of the Committee to remove the Committee member for cause.

3.6 Committee Meetings

3.6.1 The Committee shall have regular meetings as determined by the Committee, but not less than once in each calendar quarter. The Committee shall give all Parties reasonable advance written notice of the time and place of its regular meetings (e.g., by publication of the schedule for regular meetings in a newsletter, on a website accessible to all Parties or in other materials distributed to all Parties).

3.6.2 The Committee shall have special meetings as determined by the Committee. Further, any two (2) or more Committee members may call a special meeting of the Committee by giving all other Committee members notice thereof at least five (5) business days in advance of the meeting. The Committee shall use reasonable efforts to give all Parties reasonable advance notice of any special meetings of the Committee (e.g., by publication of the notice of the special meeting on a website accessible to all Parties or in other materials distributed to all Parties) whenever practicable in the circumstances, taking into account the time permitted, costs of the notice, the agenda of the meeting and other pertinent factors.

3.6.3 The Committee shall, at the direction of the Committee Chair, schedule and hold an annual training meeting either separate from or in conjunction with one of the regular meetings of the Committee. The Committee shall give all Parties reasonable advance written notice of the time and place of its training meetings (e.g., by publication of the schedule for training meetings in a newsletter, on a website accessible to all Parties or in other materials distributed to all Parties). The training meetings may include, without limitation, required annual training and continuing education training for Committee members and their designated alternates.

3.6.4 All meetings of the Committee shall be held ~~at the One-Call Office or~~ at such other place as may be determined by the Committee. Presence at a meeting by the Committee member or such member's designated alternate shall constitute a waiver by that Committee member of notice of the meeting and any objection to the place of the meeting.

3.6.5 Members of the Committee may participate in a meeting of the Committee by, or conduct the meeting through the use of, any means of communication by which all members participating in the meeting can hear each other during the meeting, and participation in this manner shall constitute presence in person at a meeting.

3.6.6 A majority of the total number of Committee members shall constitute a quorum (a "**Quorum**") for the transaction of business at any meeting of the Committee but, if less than a Quorum are present at a meeting, a majority of the members present at the meeting may adjourn the meeting from time to time without further notice.

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3.6.7 Minutes shall be kept of each Committee meeting and provided to all Committee members. Each Party shall have access to the minutes of any Committee meeting and the right to examine and copy the same at its own expense during normal business hours at the One-Call Office upon reasonable advance notice to the Committee.

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~~3.6.6~~3.6.8 Any Party may attend and observe any Committee meeting.

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3.7 Manner of Acting by the Committee

3.7.1 The Committee may act by adoption pursuant to vote taken at a meeting of the Committee in accordance with Section 3.7.2 or by written instrument signed by all of the Committee members.

~~3.7.2~~ 3.7.2 an action approved without a meeting in accordance with Section 3.7.3. On each matter put to a vote of the Committee, each Committee member shall be entitled to cast one (1) vote. ~~Any~~

3.7.2 If a Quorum is present when a vote is taken at a meeting of the Committee, any matter put to a vote of the Committee shall be deemed adopted by the Committee upon receiving the affirmative vote of a majority of the total number of Committee members present, except as otherwise specified in this Agreement and except that at the meeting, unless the vote of a greater number is required under Section 3.7.4 or any other provision of this Agreement.

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3.7.3 Any action that could be approved at a meeting of the Committee may be approved without a meeting if one or more consents setting forth the action so approved are Executed by all Required Committee Members either before or after the action becomes effective, and delivered to the Committee Chair, each of which shall be set forth either (a) in an Executed written instrument or (b) if the Committee Chair has designated an address, location or system to which the consent may be electronically transmitted and the consent is electronically transmitted to the designated address, location or system, in an Electronic Transmission that has been Executed by each Required Committee Member, where:

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(i) the term "Electronic Transmission" means an electronic communication not directly involving the physical transfer of an instrument in a tangible medium that may be retained, retrieved and reviewed by the sender and the recipient and that may be directly reproduced in a tangible medium by the sender and recipient;

(ii) the term "Executed" means signed with respect to a written instrument or electronically transmitted along with sufficient information to determine the sender's identity with respect to an Electronic Transmission; and

(iii) the term "Required Committee Member" means (A) for any matter that has been raised and discussed at a meeting of the Committee at which a Quorum was present and is being decided and ratified by a vote of the Committee taken after the meeting, each Committee member who was present at the meeting that would have been required to have the number of affirmative votes needed to approve the matter had the vote been taken at the meeting under Section 3.7.2; and (B) for all other matters, all Committee members.

Any action approved by consent of the Required Committee Members without a meeting is effective when the last Required Committee Member has Executed the consent, unless the consent specifies a later effective date.

3.7.4 Notwithstanding any provision of this Agreement to the contrary, all of the following shall require the affirmative vote of at least two-thirds of the total number of Committee members for adoption:

- (a) any change in the Fiscal Period;
- (b) any change in the location of the any One-Call Office;
- (c) termination of the Term pursuant to Section 2.2(g);
- (d) any change in the number, nature or classification of Utility Groups under Section 1.1.15;
- (e) any change in the charges for use of the Service pursuant to Section 4.1;
- (f) the authorization or approval of any costs as Common Costs (including, but not limited to, the approval of any budget of the estimated Common Costs to be incurred to provide the Service during any Fiscal Period);
- (g) the imposition of any surcharge pursuant to Section 4.3(b);
- (h) the termination of any Party's participation in the Service pursuant to Section 5.2.2;
- (i) the selection of the Contractor, Executive Administrator and the Montana Representative, the terms of any contract between the Contractor, Executive Administrator, Montana Representative or any other Person and the Committee and any extension or amendment of any such contract;
- (j) the authorization of any Person, or the delegation of any authority (e.g., by appointment of an agent or otherwise), to enter into any contract on behalf of the Parties with regard to implementation of the Service or this Agreement;

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(k) the establishment, and delegation of any authority of the Committee to, any subcommittee of the Committee;

(l) the adoption or amendment of any policy, procedure, guideline, rule or requirement pursuant to Section 2.2(c);

(m) the rendering of any interpretation, construction or clarification of this Agreement pursuant to Section 2.2(d);

(n) the establishment of procedures for the determination, billing, payment and collection of charges for use of the Service, any surcharge under Section 4.3 and other amounts payable under this Agreement pursuant to Section 2.2(e);

(o) the establishment of any sinking funds or reserves (other than reasonable reserves for working capital in the ordinary course of performing the Service) for contingencies and other purposes in connection with performance of the Service;

(p) the adoption of any new or different tradename(s) for the Service for all or any given portion of the Service Area under Section 2.1;

(q) the removal of a Committee member by the Committee pursuant to Section 3.9.2; and

(r) any amendment of this Agreement pursuant to Section 9.4.

3.8 Duties of Committee Members

Each Committee member shall have an on-going duty and responsibility during the term of such Committee member's service to (a) actively participate in the work of the Committee (including, without limitation, as part of any subcommittee to which the Committee member is assigned), (b) act at all times in the best interests of the Committee and the Parties in the Committee member's Utility Group, and (c) show due care and attention to the work of the Committee. Without limiting the generality of the foregoing, each Committee member will comply with all training, participation and other requirements set forth in any applicable policy or procedure adopted by the Committee relating to participation by Committee members on the Committee.

3.9 Removal of Committee Members

3.9.1 The Parties entitled to cast twenty-five percent (25%) or more of the votes entitled to be cast by all of the Parties included in a Utility Group may sign and deliver to the Committee a written request for a special election to remove

their existing Committee member and elect a successor. Following receipt of such request, the Committee will conduct a special election pursuant to Section 3.4.1(d).

3.9.2 The Committee may remove a Committee member for cause, including, without limitation, based on any determination by the Committee that the Committee member has failed to perform his or her duties as described in Section 3.8 and/or has failed to comply with the requirements set forth in any applicable policy or procedure adopted by the Committee relating to participation by Committee members. Following a vote of the Committee for removal of a Committee member hereunder, the Committee will conduct a special election pursuant to Section 3.4.1(e).

3.9.3 The rights set forth in this Section 3.9 are not exclusive and are not intended to, and shall not, limit any other process, procedure or action to remove a Committee member that is permitted by contract or applicable law.

Section 4. Payment and Allocation of Common Costs

4.1 Establishment of Charges

The Committee shall establish charges for use of the Service. Such charges shall be fair, reasonable and nondiscriminatory. The Committee may establish different charges for different classes of users; provided that there is a reasonable basis for distinguishing different classes of users and for establishing different charges for different classes. Such charges are presently assessed only against the Parties; however, the Committee may, in its discretion, assess charges for use of the Service by others. Subject to the procedures outlined in Section 7, the Committee may at any time change the charges effective for the Service provided during any Fiscal Period.

4.2 Charges Based on Common Costs

All revenues received from charges for use of the Service shall be applied toward payment of the Common Costs. At least ~~ninety (90) days~~ a meeting of the Committee held prior to the commencement of each Fiscal Period, the Committee shall approve a budget of the estimated Common Costs to be incurred to provide the Service during such Fiscal Period. A draft of the budget shall be distributed to all members of the Committee at least thirty (30) days prior to the date of such meeting. For each Fiscal Period, the Committee shall endeavor to establish charges designed to produce revenues sufficient to pay all of the Common Costs for such Fiscal Period.

4.3 Common Costs in Excess of Revenues

If, at the close of any Fiscal Period, the Common Costs exceed the revenues received from charges for the Parties' use of the Service, the Committee may:

(a) pay the excess during the next or succeeding Fiscal Periods (e.g., through charges for use of the Service in such later Fiscal Periods);

(b) impose and collect from each Party a one-time surcharge equal to the total excess amount multiplied by a fraction, the numerator of which is the total charges properly payable by such Party for use of the Service during the relevant Fiscal Period and the denominator of which is the total charges properly payable by all Parties for use of the Service during the same Fiscal Period; or

(c) pay the excess out of any outstanding reserves or excess revenues from prior Fiscal Periods.

Any surcharge under (b) above shall not constitute or be deemed to constitute a change in the charges under Section 4.1 and shall not be subject to the procedures set forth in Section 7. Each Party shall pay such surcharge within sixty (60) days after the date of the invoice therefor or such larger period of time as may be specified by the Committee.

4.4 Bank Accounts

All revenues received on account of the Service shall be deposited in such bank account or accounts at such bank or banks as shall be selected from time to time by the Committee. All drafts, checks, bills and cash which may from time to time be received on account of the Service shall be deposited immediately in such account or accounts in the same form in which they are received.

4.5 Books and Records of Common Costs

The Committee shall provide for a complete and accurate set of books and records of the Common Costs. Such books and records shall be kept in accordance with generally accepted accounting practices applied in a consistent manner, correctly reflecting all transactions involving Common Costs. Unless otherwise directed by the Committee, such books and records shall be maintained on the cash basis. Such books and records shall be kept at the One-Call Office or such other location as may be specified by the Committee. Each Party shall have access to such books and records and the right to examine, copy and audit the same at its own expense during normal business hours upon reasonable advance notice to the Committee. The Committee shall cause such books and records to be audited not less frequently than annually by an independent certified public accountant selected by the Committee. The Committee shall provide each Party with certified financial statements for each Fiscal Period (including, but not necessarily limited to, a balance sheet and a statement of results for the Fiscal Period) promptly after the end of such Fiscal Period.

4.6 Other Committee Records

All other records of the Committee relating to this Agreement (including, but not limited to, copies of all written contracts with the Contractor or any other Person entered into by the Committee) shall be kept at ~~the One-Call Office or such other~~ location as may be specified by the Committee. Each Party shall have access to such records and the right to examine, copy and audit the same at its own expense during normal business hours upon reasonable advance notice to the Committee.

Section 5. The Parties

5.1 Additional Parties

Any Person that owns or operates subsurface utility facilities (including, but not necessarily limited to, any electric, gas, telephone, water, sewer, cable television or communications distribution system) within the Service Area may become a Party upon execution of a Subscription Agreement and acceptance of such Subscription Agreement by the Committee. The Committee shall not unreasonably withhold or delay its acceptance of any Subscription Agreement tendered for acceptance.

5.2 Termination of Participation

5.2.1 Voluntary Withdrawal

Any Party may withdraw as a Party:

(a) effective upon the expiration of not less than one hundred twenty (120) days after such Party gives the Committee written notice of such withdrawal;

(b) effective as of the effective date of any increase in the charges payable by such Party for use of the Service made by the Committee pursuant to Section 4.1 (e.g., excluding any increase or surcharge pursuant to Section 4.3), provided that such Party gives the Committee written notice of the withdrawal at least forty-five (45) days prior to the effective date of the increase; or

(c) effective as of the effective date of any amendment of this Agreement made by the Committee pursuant to Section 9.4, provided that such Party gives the Committee written notice of such withdrawal prior to the expiration of thirty (30) days after the effective date of the amendment.

No withdrawal pursuant to this section shall relieve or release any Party from any of its obligations with respect to charges accrued, Common Costs incurred or any other liability accrued or incurred prior to the effective date of such withdrawal.

5.2.2 Other Termination

In the event of any material breach of or default under this Agreement (including, without limitation, any refusal or failure to pay when due any charges for use of the Service, any surcharge under Section 4.3 or any other amount payable under this Agreement) by any Party, the Committee may terminate such Party's participation in the Service and rights under this Agreement as follows:

(a) A Notice of Termination shall be sent to the Party by first-class mail, postage prepaid, and shall include (i) a statement outlining the reason(s) for such termination, (ii) the effective date of such termination, (iii) the action the Party must take to cure the stated breach or default, and (iv) notice of the Party's right to have the Committee review the Notice of Termination pursuant to Section 6.

(b) The actual termination of a Party's participation in the Service shall take place, if at all, not less than thirty (30) days after the Notice of Termination is placed in the mail addressed to such Party and only if the breach or default is not cured prior to the expiration of such thirty (30) day period.

(c) The Committee shall not be required to give the Party any warning or notice of the ordered termination other than the Notice of Termination.

(d) If the Party disputes any termination under this Section 5.2.2, the Party may submit the dispute for review and resolution under Section 6 by giving the Committee written notice thereof prior to the time and date termination is scheduled to occur, as specified in the Notice of Termination. If the Party timely disputes the termination, actual termination will be stayed pending completion of the procedures under Section 6.

Termination pursuant to this section shall not relieve or release any Party from any of its obligations with respect to charges accrued, Common Costs incurred or any other liability accrued or incurred prior to the effective date of such termination.

5.3 Utility Group Assignment

Each Party shall select and be assigned to one (1) Utility Group at the time of submittal and acceptance of its Subscription Agreement. *Exhibit A* lists (or specifies the means for obtaining a list of) the Parties on the date of this Agreement by Utility Group. Parties eligible to participate in multiple Utility Groups may be assigned to only one (1) Utility Group at any time. Such Parties may change their Utility Group assignment by giving written notice to the Committee; provided that such change shall be effective as of the next Annual Meeting falling at least forty-five (45) days after the Committee's receipt of the Party's written notice.

5.4 Annual Meeting

An annual meeting of the Parties shall be held ~~on during the third Friday in September~~ month of October of each year at 9:00 a.m. at the One-Call Office (or on such other month as the Committee may direct) on the specific date and at such other ~~time or place as the Committee may direct~~ time and place as the Committee may direct for the purpose of electing Committee members and transacting such other business as may properly come before the meeting. If the Committee directs a date, ~~time or place for the annual meeting that is different from that set forth above,~~ The Committee shall give all Parties at least ninety (90) days' advance notice of the date, time and place for the annual meeting (e.g., by publication of the date, time and place for the annual meeting in a newsletter, on a website accessible to all Parties or in other materials distributed to all Parties).

Section 6. Dispute Resolution and Committee Review

6.1 Procedure for Dispute Resolution

Except as otherwise provided in Section 6.2, any controversy or dispute between the Parties, or any one or more of them, or between a Party and the Contractor arising under this Agreement and any request for Committee review of an issue or dispute that is specifically authorized under any provision of this Agreement or document adopted pursuant to this Agreement shall be heard and resolved by the Committee as follows:

(a) A Party seeking Committee review shall send a written Notice of Request for Committee Review to the Committee and to each Party involved in the issue, controversy or dispute (a "Participating Party"). Unless a shorter period of time is specified elsewhere in this Agreement or in any document adopted pursuant to this Agreement, such notice must be received by the Committee within ninety (90) days after the occurrence of the event(s) giving rise to the issue, controversy or dispute in question.

(b) The Notice of Request for Committee Review shall set forth in reasonable detail (i) the reason(s) for the request, (ii) the identity of each Participating Party, and (iii) any demand for a formal hearing before the Committee.

(c) Within fifteen (15) days after the Notice of Request for Committee Review is sent, each Participating Party (including the Party who initiated the review process) shall set forth in writing a statement of its position and submit such statement to the Committee and to each of the other Participating Parties, if any.

(d) Within fifteen (15) days after receipt of a Participating Party's statement of position, any other Participating Party may submit to the Committee and to each other Participating Party a written response to that statement.

(e) If demanded by the requesting Party in its Notice of Request for Committee Review, demanded by any other Participating Party in its position statement, or on the Committee's own initiative, a hearing will be held within thirty (30) days after the end of the fifteen (15) day response period set forth in section (d) above. In that event, the Committee shall send a Notice of Hearing to each Participating Party at least fifteen (15) days prior to the date of the scheduled hearing.

(f) At the hearing before the Committee, if any, each Participating Party shall be entitled to (i) present all relevant evidence, (ii) question any witness called by the Committee or any other Participating Party, (iii) give an oral statement of its position, and (iv) require the attendance of the Contractor or any other Party having relevant evidence.

(g) Within fifteen (15) days after the end of the thirty (30) day period specified in section (e) above (whether or not a hearing is actually held), the Committee shall issue to each of the Participating Parties a written decision setting forth in reasonable detail its reasons and bases for the determination.

The written decision of the Committee shall be final and binding on the Parties. The failure of any Party to comply with the Committee's written decision may result in the action specified by the Committee (e.g., termination, suspension, etc.), if any, being taken on the date specified without further notice to the noncomplying Party. Under no circumstances shall a Party be entitled to seek Committee review of any issue, controversy or dispute more than once without the Committee's prior written consent.

6.2 Exception

Section 6.1 shall not apply to any dispute or controversy arising under Section 8.5.

Section 7. Administrative Procedures

7.1 Application

The procedures outlined in Section 7.2 shall apply only to proposals by the Committee to adopt:

(a) changes in the charges for use of the Service or any rate schedule related thereto pursuant to Section 4.1;

- (b) changes in the number, nature or classification of Utility Groups;
- (c) amendments to this Agreement pursuant to Section 9.4; and
- (d) such other proposals as the Committee may determine to make subject to the procedures outlined in Section 7.2.

7.2 Procedures

Committee proposals to which this section applies shall not be finally adopted by the Committee except as follows:

(a) The Committee shall send a written Notice of Proposal to each Party, which shall (i) describe the proposal in reasonable detail, (ii) notify the Party of its right to submit written comments on the proposal for a period of at least thirty (30) days from the date of the Notice of Proposal, (iii) notify the Party of its right to request a hearing on the proposal before the Committee, and (iv) notify the Party that the proposal will be adopted and take effect, if at all, ninety (90) days from the date of the Notice of Proposal.

(b) Each Party shall have the right to submit written comments on the Committee proposal within thirty (30) days after the date of the Notice of Proposal.

(c) If requested by a Party in its written comments submitted pursuant to section (b) or on the Committee's own initiative, a hearing on the proposal will be held not earlier than forty (40) and not later than sixty (60) days after the date of the Notice of Proposal. In that event, the Committee shall send each Party a written Notice of Hearing not later than fifteen (15) days prior to the date scheduled for such hearing.

(d) At the hearing on the proposal before the Committee, if any, each Party shall be entitled to submit all relevant evidence and make an oral statement of its position on the proposal.

(e) The Committee may take final action on a proposal at any time after the end of the thirty (30) day comment period or, if a hearing is held, after the close of the hearing. The Committee shall notify each Party of any final action within one hundred twenty (120) days after the date of the Notice of Proposal.

Action taken on a proposal by the Committee pursuant to section (e) above shall be final and binding on the Parties and, unless otherwise specified by the Committee, shall take effect ninety (90) days after the date of the Notice of Proposal. Any action taken

by the Committee pursuant to and in accordance with this Section 7 shall not be subject to review under Section 6.

Section 8. Relationship of the Parties

8.1 No Partnership

This Agreement shall not be interpreted or construed to create or evidence any partnership among the Parties or any one or more of them or to impose any partnership obligation or liability upon any Party. Except as specifically provided in Section 2.2, this Agreement does not authorize any Party to: act as an agent or other representative of any other Party, enter into any contract in the name or on behalf of any other Party, or incur any obligation or liability of any other Party.

8.2 The Contractor

The Contractor shall be and act as an independent contractor in the performance of the Service, not an agent or other representative of any Party.

8.3 No Third Party Beneficiaries

There are no third-party beneficiaries under this Agreement (other than the Committee members and alternates) or of the Service. This Agreement shall not be interpreted or construed to confer any right or remedy upon any Person (other than the Parties and the Committee members and alternates) or to relieve or release any Person (including, but not limited to, the Contractor) from any obligation or liability to any Party. Without limiting the generality of the foregoing, the Service is for the sole benefit of the Parties and not for the benefit of any other Person.

8.4 No Dedication of Facilities

This Agreement shall not be interpreted or construed to constitute or evidence any dedication of facilities owned or operated by any Party (or any portion thereof) to the public or to any other Party.

8.5 Several Obligations

The obligations and liabilities of each Party under this Agreement are several, not joint. No Party shall, by virtue of this Agreement, be responsible for the obligations, liabilities, acts or omissions of any other Party. Without limiting the generality of the foregoing:

- (a) No Party shall be responsible for the charges and other amounts payable with respect to the Service provided to any other Party (except to the extent that the failure to pay such amounts is taken into account in an increase in

the charges established by the Committee under Section 4.1 or the excess Common Costs allocated under Section 4.3).

(b) Each Party shall be solely responsible for its response to any request, received by such Party through the Service, for location of such Party's subsurface utility facilities.

(c) To the fullest extent permitted by applicable law, each Party ("First Party") shall defend, indemnify and hold harmless each other Party and each Committee member and alternate from any and all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) arising out of any actual or alleged negligence, act or, in the case of an actual or alleged duty to act, failure to act by the First Party in connection with the Service (including, but not limited to, the First Party's response or failure to respond to a request, received by the First Party through the Service, for the location of the First Party's subsurface utility facilities). However, the foregoing shall not require the First Party to defend, indemnify or hold harmless any Person from any claim, loss, harm, liability, damage, cost or expense to the extent caused by any actual negligence, act or, in the case of a duty to act, failure to act by such Person. Without limiting the generality of the foregoing, the obligations of the First Party under this section shall apply to any claim of an employee or former employee of the First Party against any other Party. In connection with any action to enforce the provisions of this section, the First Party expressly waives any defense, immunity or limitation (e.g., on the type or amount of damages, compensation, benefits or liability payable by the First Party) that might otherwise be afforded under any industrial insurance, workers' compensation, disability benefit or similar statute, regulation, rule or order of any governmental authority having jurisdiction (including, but not limited to, the Washington Industrial Insurance Act, Title 51 of the Revised Code of Washington). Although the foregoing waiver may apply to a claim of an employee or former employee of the First Party against any other Party, it shall not be interpreted or construed to apply to any claim of any employee or former employee against his or her own employer or former employer.

8.6 Tax Exempt Status

The Parties intend that any organization created or evidenced by this Agreement shall constitute an organization exempt from federal income taxes pursuant to Section 501 of the Internal Revenue Code of 1954, as amended, or any other statute, regulation, rule or order of similar import. The Committee is authorized to take any and all action (including, but not limited to, the preparation, filing and prosecution of an application of recognition of exemption under Section 501 of the Internal Revenue Code of 1954, as amended, or any other statute, regulation, rule or

order of similar import) which it deems appropriate or advisable to carry out or implement such intent.

Section 9. Miscellaneous

9.1 Excused Performance

No Party shall be considered to be in default in the performance of any of its obligations under this Agreement (other than any obligations to pay money) on account of any delay or failure to perform caused by Uncontrollable Forces. Any Party delaying or failing to perform any of its obligations under this Agreement on account of any Uncontrollable Forces shall use its best efforts to promptly cure such delay or failure. If any delay or failure to perform caused by Uncontrollable Forces affects any requirement of this Agreement, such requirement shall be equitably adjusted to reflect such delay or failure.

9.2 Communications

9.2.1 Directed to a Party

~~Any~~ Except as expressly provided otherwise elsewhere in this Agreement, any notice, request, designation, direction, statement or other communication directed to a Party under this Agreement shall be in writing and shall be delivered in person or mailed, properly addressed and stamped with the required postage, to such address as the intended recipient shall specify in its Subscription Agreement. Any Party may change its address for communications under this section by giving the Committee notice of such change in accordance with Section 9.2.2.

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9.2.2 Directed to the Committee

Any notice, request, designation, direction, statement or other communication directed to the Committee under this Agreement shall be in writing and shall be delivered in person or mailed, properly addressed and stamped with the required postage, to the attention of the "Operating Committee Chair" at the One-Call Office. The Committee may change its address for communications under this section by giving the Parties notice of such change in accordance with Section 9.2.1.

9.3 Entire Agreement

This Agreement sets forth the entire agreement among the Parties and supersedes any and all prior agreements with regard to the Service.

9.4 Amendment

This Agreement may be amended from time to time, in whole or in part, by the Committee in accordance with the procedures set forth in Section 7.

9.5 Implementation

Each Party shall take such reasonable action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may be requested by the Committee for the implementation or continuing performance of this Agreement.

9.6 Nonwaiver

The failure of any Party to insist upon or enforce strict performance of any provision of this Agreement or to exercise any right or remedy under this Agreement shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same shall be and remain in full force and effect.

9.7 Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

9.8 Headings

The headings of sections, subsections and sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections, subsections or sections.

9.9 Governing Law

This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington.

9.10 Forum Selection

No Party shall commence or prosecute any claim, proceeding, suit or legal action to enforce this Agreement, to recover damages for breach of or default under this Agreement or otherwise arising under or by virtue of this Agreement, other than in the courts of the State of Washington or the District Court of the United States, Western District, State of Washington. Each Party hereby irrevocably consents to the jurisdiction of the courts of the State of Washington with venue laid in King County and of the District Court of the United States, Western Division, State of Washington.

9.11 Successors and Assigns

This Agreement shall be fully binding upon, inure to the benefit of and be enforceable by each Party and its successors and assigns. No assignment of any right

or interest in this Agreement (whether by contract, operation of law or otherwise) shall release or relieve any Party of any of its obligations or liabilities under this Agreement.

9.12 Disposition of Assets at the End of the Term

Any and all funds or other assets in the control of the Committee at the end of the Term shall be applied:

- (a) first, to the payment of Common Costs;
- (b) second, to the establishment of such reserves, the purchase of such insurance and the making of such other provisions as the Committee may specify for the protection against obligations, liabilities or contingencies that may arise under or by virtue of this Agreement; and
- (c) finally, as the Committee may direct, provided that the Committee shall not direct any such application that may jeopardize the tax exempt status of the organization of the Parties under this Agreement pursuant to Section 501 of the Internal Revenue Code of 1954, as amended, or any other statute, regulation, rule or order of similar import.

9.13 Effective Date

This Amended and Restated Master Agreement for the Northwest One-Call Subsurface Warning System shall be effective as of January 5, 2012, 2018.

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LIST OF EXHIBITS

Exhibit		Reference
A	List of Parties	Introduction, Section 5.3
B	Form of Subscription Agreement	Section 1.1.12
C	List of Utility Groups	Sections 1.1.15, 3.5.2(b)
D	List of Committee Members	Sections 3.1.1, 3.1.3, 3.5.2(a)

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Exhibit A

PARTIES

A list of the Parties as of the date of this Agreement, identified by Utility Group, may be obtained from the Committee by written request of any Party.

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Exhibit B

**SUBSCRIPTION AGREEMENT FORM
TO
MASTER AGREEMENT
FOR THE
NORTHWEST
ONE CALL SUBSURFACE WARNING SYSTEM**

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The undersigned hereby subscribes and agrees to the Amended and Restated Master Agreement for The Northwest One Call Subsurface Warning System, dated as of _____, 2011-2018 (the "Master Agreement"). All terms defined in the Master Agreement shall have the same meaning when used in this Subscription Agreement.

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By execution of this Subscription Agreement, the undersigned agrees to become a "Party" under and to be bound by the provisions of the Master Agreement.

The undersigned owns or operates the following type(s) of subsurface utility facilities:

Electric Water
 Gas Cable Television
 Telephone Communications
 Streets and Roadways Transmission Pipelines
 Other _____

The undersigned elects membership in the (choose from Exhibit C to the Master Agreement) _____ Utility Group pending further notice to the Committee.

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The undersigned elects to be charged for its use of the Service under the prevailing rate:

Currently = \$1.20 _____ (\$1.48 _____ for MT mbrs) per notice, billed monthly

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Unless specified otherwise above, the undersigned agrees to be charged for its use of the Service under the Rate Schedule No. 1 pending further notice to the Committee.

The undersigned elects to receive locate request notifications by the following means pending further notice to the Committee.

Automated Printer/Computer

____ Facsimile (FAX)
____ Voice (Phone)
____ Email (Computer)

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This subscription agreement shall apply to the undersigned's subsurface utility facilities located in the areas identified on the map attached as Appendix A hereto. Any notice, request, designation, direction, statement or other communication under the Agreement may be delivered or mailed to the undersigned at the following address:

Attn: _____

The undersigned acknowledges its receipt and examination of a copy of the Master Agreement and related documentation and has fully satisfied itself as to the nature and extent of its rights and obligations there under.

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Dated: _____

By: _____
Title: _____

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 20 ____, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____, the corporation that executed within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath stated that _____ was duly elected, qualified and acting as said officer of the corporation, that _____ was authorized to execute said and acting as said officer of the corporation, that _____ was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

GIVEN UNDER my hand and official seal hereto affixed the day and year in this certificate above written.

NOTARY PUBLIC in and for the State of _____
_____ residing at _____

My Appointment Expires: _____

|

|

Exhibit C

UTILITY GROUPS

Utility Group

1. Counties/State DOT
2. Cities
3. Cable TV
4. Electric
5. Natural Gas
6. Corridor (e.g., Irrigation, Pipelines and Longline Telephone)
7. Water & Sewer Districts
8. Telephone
9. State of Montana

Exhibit D

LIST OF COMMITTEE MEMBERS

The list of the Committee members as of the date of this Agreement is set forth below. A current list of the Committee members at any point in time, identified by Utility Group, may be obtained from the Committee by written request of any Party and/or from the website maintained by the Committee at www.washington811.com.

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Operating Committee – 2012

Water/Sewer

Gary Hajek, Chairman
 Cross Valley Water District
 8802 180th Street SE
 Snohomish, WA 98296-4804
 425-485-8461 ext. 102
gary@crossvalleywater.net

Dave Christensen – Vice Chair

City of Renton
1055 S. Grady Way
Renton, WA 98057-3232
tel-425-430-7212
dchristensen@rentonwa.gov Term expires
:Sept 2020

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Counties/State DOT

Jon Cornelius, Vice-Chairman
 WSDOT
 3700 Ninth Ave S
 Seattle, WA 98134
 206-442-2110
corneje@wsdot.wa.gov

Natural Gas

Scott Sammons
 Erika Hunter
 Puget Sound Energy
 355 110th Ave NE, EST-07 W
 Bellevue, WA 98004
 425-457-5816
 tel-425-456-2854
scott.sammons@pse.com
Erika.Hunter@pse.com
 Term expires: Sept 2018

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Electric

Cheryl Paras, Treasurer, - Chair
 Puget Sound Energy
 3130 S. 38th Street
 Tacoma, WA 98409
 tel-(253) 476-6315/300
cCheryl.paras@pse.com
 Term expires: Sept 2019

Telephone

Stan Choate
 Century Link
 tel-253-329-6523
Stan.Choate@centurylink.com
 Term expires: Sept 2019

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Cities/Towns

Ferry Jurgens
 WSDOT
 3700 Ninth Ave S
 Seattle, WA 98134
 206-510-1537
jurgent@wsdot.wa.gov

Corridor

Jim Fraley
 BP Pipe Line Company
 2201 Lind Ave SW - Ste. #270
 Renton, WA 98055
 360-705-4879
fraleyjh@bp
 tel-425-235-7736
fraleyjh@bp.com Term expires: Sept 2018

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Cable TV

Al Hernandez
 Comcast-Cable
 410 Valley Ave NW, Suite 12-Bldg C
 Puyallup, WA 98371
 253-864-4387
Al_Hernandez@cable.comcast.com

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