

JOINT-USE POLE AGREEMENT
BETWEEN
ROCHELLE MUNICIPAL UTILITIES
AND
FRONTIER NORTH, INC.

TABLE OF CONTENTS

| ARTICLE | DESCRIPTION | PAGE# |
|----------------|---|--------------|
| I | DEFINITIONS | 4 |
| II | SCOPE OF AGREEMENT | 7 |
| III | SPACE ALLOCATIONS | 9 |
| IV | FEES | 9 |
| V | SPECIFICATIONS | 11 |
| VI | PRIVATE AND REGULATORY COMPLIANCE | 13 |
| VII | PERMIT APPLICATION PROCEDURES | 13 |
| VIII | ESTABLISHING JOINT USE OF NEW POLE | 14 |
| IX | PLACING AN ADDITIONAL ATTACHMENT ON AN EXISTING JOINT-USE POLE | 15 |
| X | ESTABLISHING JOINT USE OF EXISTING NON-JOINT USE POLES | 15 |
| XI | MAKE-READY WORK/INSTALLATION | 15 |
| XII | TRANSFERS | 16 |
| XIII | POLE PLACEMENT MODIFICATIONS AND /OR REPLACEMENTS | 17 |
| XIV | ABANDONMENT OR REMOVAL OF OWNER UTILITY FACILITIES | 19 |
| XV | TERMINATION OF PERMIT | 22 |
| XVI | INSPECTION OF ATTACHING UTILITY'S FACILITIES | 22 |
| XVII | INVENTORIES | 22 |
| XVIII | UNAUTHORIZED OCCUPANCY OR ACCESS | 23 |
| XIX | THIRD-PARTY ATTACHMENTS | 24 |
| XX | LIABILITY AND INDEMNIFICATION | 24 |
| XXI | DUTIES, RESPONSIBILITIES, AND EXCULPATION | 27 |
| XXII | INSURANCE | 28 |
| XXIII | ASSIGNMENT | 30 |
| XXIV | FAILURE TO ENFORCE | 31 |
| XXV | TERMINATION OF AGREEMENT | 31 |
| XXVI | TERM OF AGREEMENT | 32 |
| XXVII | DISPUTE RESOLUTION | 32 |
| XXVIII | AMENDING AGREEMENT | 33 |
| XXIX | NOTICES | 33 |
| XXX | ENTIRE AGREEMENT | 34 |
| XXXI | SEVERABILITY | 34 |
| XXXII | GOVERNING LAW | 34 |
| XXXIII | INCORPORATION OF RECITALS AND APPENDICES | 34 |

APPENDICES

- A ATTACHMENT FEES AND CHARGES
- B POLE ATTACHMENT PERMIT APPLICATION
PROCESS
- C PERMIT APPLICATION/REMOVAL NOTICE
- D SPECIFICATION FOR JOINT-USE POLE AGREEMENT

JOINT-USE POLE AGREEMENT

This Joint-Use Pole Agreement (the “Agreement”) dated this _____, 202~~6~~⁴ is made by and between the City of Rochelle, Illinois doing business as the Rochelle Municipal Utilities (hereinafter referred to as “Electric Utility”), and Frontier North, Inc., incorporated in the State of Wisconsin and authorized to do business in the State of Illinois (hereinafter referred to as “Communications Utility” or “Frontier”).

Purpose

Both parties to the Agreement recognize that there are a number of advantages to sharing their distribution supporting structures for the attachment of each party's aerial cables and associated equipment. These advantages include a reduction in the burden placed upon public and private rights- of-way, lower costs for real property development and highway alterations, and a more favorable aesthetic impact. Additionally, both parties agree that, wherever possible, there is an overall cost saving to both parties by eliminating the placement, maintenance and operation costs due to the addition of a second pole line.

Nothing in this agreement is intended to reduce the rights that each party would retain if it maintained its own separate pole line.

I. DEFINITIONS

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, have the meaning given in this Article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- A. Active Joint-Use Pole: means a pole which contains the Attachments of both parties as of the effective date of this Agreement.
- B. Applicable Standards: means all applicable engineering and safety standards governing the installation, maintenance and operation of Facilities and the performance of all work in or around Electric Facilities and includes the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), The Blue Book Manual of Construction Procedures (Telcordia Technologies SR-1421), and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of Utility or other federal, state or local authority with jurisdiction over Utility Facilities as set forth in Appendix D. In all instances of conflict between standards the stricter standard shall be applied unless specifically waived in writing by the Owner Utility.
- C. Assigned Space: means the space on an Active Joint-Use Pole typically used by the Communications Utility in the Communications Space or by the Electric Utility in

the Electrical Space that can be used, as defined by the Applicable Standards and the Agreement, for the attachment of Facilities for the provision of Electric Service or Communications Service.

- D. Attaching Entity: means any public or private entity, including Attaching Utility, that places an Attachment on Owner Utility's pole, in accordance with a joint use or licensing agreement, to provide Electric Service or Communications Service.
- E. Attaching Utility: means the party (either Communications Utility or Electric Utility) having the right under this Agreement to make Attachments to a pole owned by the Owner Utility. Each party is an Attaching Utility under this Agreement with respect to the poles owned by the other party.
- F. Attachment(s): means Facilities that are utilized to provide Electric Service or Communications Service that are placed directly on Owner Utility's poles or Overlashed onto an existing Attachment.
- G. Capacity: means the ability of a pole to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.
- H. Climbing Space: means that portion of a pole's surface and surrounding space that is free from encumbrances to enable either Utility's employees and contractors to safely climb, access and work on Facilities and equipment.
- I. Communications Facilities: means wire, or cable facilities, including but not limited to fiber optic, copper and/ or coaxial cables or wires owned by either Utility and utilized to provide Communications Service, including any and all associated equipment.
- J. Communications Service: means the delivery, transmission or receipt of voice, video, data, Internet or other forms of digital or analog signals over Communications Facilities, but does not include any such transmission or receipt by Electric Utility when utilized to provide internal, non-commercial communications related to the operation of the Electric Utility.
- K. Communications Space: means the space on a Standard Joint-Use Pole allotted for the attachment of Communications Facilities, which begins at the minimum distance above the ground specified under the Applicable Standards where Attachments can be made.
- L. Depreciated Value: means the life value of a 30-year pole.
- M. Electric Facilities: means a transformer or electric wire owned by Electric Utility utilized to provide Electric Service, or such Communications Facilities that are designed for installation within the Electric Space, together with all associated equipment necessary to physically attach such Facilities to poles.

- N. Electrical Space: means the allocated space on a Standard Joint-Use Pole for the attachment of Electrical Facilities, which extends from the top of the pole to the upper limit of the Safety Space.
- O. Electric Service: means the distribution or transmission of electricity over Electric Facilities.
- P. Encroachment: means one party using such space on a pole preventing the other party from making full use of its assigned space.
- Q. Facilities: means either Communications Facilities or Electric Facilities or both.
- R. Make-Ready Work: means all work, as reasonably determined by Owner Utility, required to accommodate Attaching Utility's Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement and/or transfer of existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for the installation of a pole or the Owner Utility's own Attachments as set out in Article II, Paragraph K), pole replacement or construction.
- S. NJUNS: means the National Joint Utilities Notification System, a web-based notification system that is a national organization of member utilities formed for the purpose of improving the coordination of joint ventures.
- T. Occupancy: means the use of Assigned Space for Attachments on the same pole.
- U. Overlash or Overlapping: means to place an additional wire or cable Facility onto an existing Attachment.
- V. Owner Utility: means the party (either Communications Utility or Electric Utility) that holds ownership to the pole on which the other party is making Attachments as an Attaching Utility.
- W. Permit: means written or electronic authorization by the Owner Utility for Attaching Utility to make Attachments, Overlash existing Attachments or perform Substantial Construction or Modification on specific poles pursuant to the requirements of this Agreement.
- X. Post-Installation Survey: means all work and inspections required by Owner Utility to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Permit.
- Y. Pre-Permit Survey: means all reasonable work or operations required by Applicable Standards and/or Owner Utility to determine the potential Make-Ready Work necessary to accommodate Attaching Utility's Facilities on a pole.
- Z. Riser: means metallic, fiberglass or plastic encasement materials placed vertically

to guide and protect wires and cables.

- AA. Safety Space: means the clearance space between the Communications Space and the Electric Space, defined in the NESC. For any calculations requiring the allocation of space, this space is assumed to be forty (40) inches.
- BB. Service Drop: means the cable or wire that runs from the serving terminal located on a pole to the network interface device located at a customer's premises.
- CC. Standard Joint-Use Pole: means a 40-foot tall, class 3 wood pole that meets the latest specifications of the American National Standards Association and has a preservative treatment in accordance with standard industry practice.
- DD. Substantial Construction or Modification: means construction activity on a pole that will have an appreciable impact on loading and/or tension and does not include routine maintenance activities.
- EE. Utility: means either the Electric Utility or the Communications Utility.

II. SCOPE OF AGREEMENT

- A. Scope of Joint Use. Subject to the provisions of this Agreement, both parties agree to the joint use of poles within their overlapping service areas for the purpose of maintaining and installing Attachments to each other's poles.
- B. Exclusion of Poles from Joint Use. Each party reserves the right to exclude from joint use (1) those poles which, in the party's reasonable judgment, are necessary for its own sole use; and (2) poles which carry or are intended to carry circuits of such a character which, in the party's reasonable judgment, the proper rendering of its service now or in the future makes joint use of such poles undesirable.
- C. Permit Issuance Conditions. Owner Utility will issue a Permit to Attaching Utility only when Owner Utility determines, in its reasonable judgment, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Attaching Utility meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.
- D. No Interest in Property. Except as specifically set forth in Articles V and XN, no use, however lengthy, of any of Owner Utility's Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Attaching Utility any easement or other ownership or property right of any nature in any portion of such Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of Owner Utility's rights to its Facilities, and Attaching Utility shall, at all times, be and remain a joint user.
- E. Attaching Utility's Right to Attach. Excluding Attachments existing as of the

effective date of this Agreement, nothing in this Agreement, other than a Permit issued pursuant to Article VII, shall be construed as granting Attaching Utility any right to attach Attaching Utility's Facilities to any specific pole or to compel Owner Utility to grant Attaching Utility the right to make an Attachment to any specific pole.

- F. Owner Utility's Rights over Its Poles. The parties agree that this Agreement does not in any way limit Owner Utility's right to locate, operate and maintain its poles in the manner that will best enable it to fulfill its service requirements.
- G. Expansion of Capacity. Unless a pole is excluded from joint use, Owner Utility will expand pole Capacity when necessary to accommodate Attaching Utility's request for Attachment. At Owner Utility's reasonable discretion, Owner Utility may rearrange or reconfigure its Attachments on a pole in lieu of pole replacement as long as the Attaching Utility's Assigned Space can be accommodated. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require Owner Utility to install, retain, extend, or maintain any pole for use when such pole is not needed for Owner Utility's service requirements.
- H. Pre-Existing Attachments. For an Active Joint-Use Pole or an Attachment installed prior to this Agreement, if it complied with the Applicable Standards in effect at the time it was installed, it need not be replaced or rearranged solely to comply with any new Applicable Standards except when a law or regulation requires compliance. But if the parties agree in writing and use the compensation provisions in Paragraph XIII.A, they may replace the Active Joint-Use Pole or rearrange the pre-existing Attachment in order to conform with the new Applicable Standards.
- I. Overlapping. The following provisions apply to Overlapping:
 - 1. Overlapping is subject to the permitting requirements of Article VII. Absent such authorization, Overlapping constitutes an unauthorized Attachment and is subject to the unauthorized attachment penalty fee specified in Appendix A, Item 3
 - 2. Overlapping performed by or on behalf of the Attaching Utility shall not increase the pole rental fee paid by Attaching Utility pursuant to Appendix A, Item 1. Attaching Utility shall be responsible for all Make-Ready Work and other charges associated with the Overlapping but shall not be required to pay a separate annual pole rental fee for such Overlapped Attachment.
 - 3. Overlapping by a third party, including any entity that is affiliated with the Attaching Utility, is prohibited without prior authorization of the Owner Utility.
 - 4. Make-Ready Work procedures set forth in Article IX shall apply, as necessary, to all Overlapping.
- J. Guys and Anchors. A Utility placing an Attachment on a pole must install, when

necessary, a guy and anchor of sufficient size and strength to support the Attachment. If it is not practical to set a separate anchor, Attaching Utility will send Owner Utility or Attaching Entity, as appropriate, a Permit requesting to attach to that party's anchor and may attach after receiving written approval from the party owning the anchor. Where Owner Utility owns the anchor, it may not unreasonably withhold approval to attach to its anchor. When an existing anchor belonging to the Owner Utility is not of sufficient size and strength, Owner Utility will replace the anchor with an anchor of sufficient size and strength for use by both parties, and Attaching Utility will be responsible for the reasonable actual cost of the anchor.

- K. Tree Trimming. Owner Utility will perform at its own expense any tree trimming, brushing, and clearing necessary to install a pole. The Utility placing an Attachment on an existing pole will perform at its own expense any necessary tree trimming, brushing, and clearing. Each Utility will perform at its own expense any additional tree trimming, brushing, and clearing for its poles and Attachments.

III. SPACE ALLOCATIONS

- A. Electric Utility. On a Standard Joint-Use Pole, unless otherwise specified, and subject to proper Permitting, the Electric Utility may utilize 9.5 feet of vertical space measured downward from the top of a pole owned by Communications Utility.
- B. Communications Utility. On a Standard Joint-Use Pole, unless otherwise specified, and subject to proper Permitting, the Communications Utility may utilize 2 feet of vertical space measured upward from the lowest point that adequate ground clearance is achievable on a pole owned by Electric Utility.
- C. Lowest Attachment. The Communications Utility is entitled to have the lowest horizontally run line, wire or cable on a pole.
- D. Exceptions to Space Allocations. The space allocation for each Utility does not preclude a Utility from using vertical runs or mounting equipment such as pedestals, pole numbers, warning signs, multi-grounded neutral connections, terminals, or meters on the lower portions of the pole.

IV. FEES

- A. Payment of Fees. Attaching Utility shall pay to Owner Utility the fees specified in Appendix A and shall comply with the terms and conditions specified herein. The annual pole rental fee recognizes that a difference exists in usable pole space required by the Communications Utility and the Electric Utility and that the expenses of providing joint-use pole space should be equitably apportioned to each party.
- B. Rental Year. A rental year is a calendar year from January 1 to the succeeding December 31. Any pole that an Attaching Utility occupies, or has approval to

occupy, during any portion of a rental year irrespective of the date on which an Attachment is made, will be considered to have been occupied for the entire rental year.

- C. Number of Poles. Upon execution of this Agreement, the parties hereto will conduct an initial joint inventory to establish the baseline numbers of poles with Attachments. Therefore, on or before February 1st of each year, each Owner Utility will send the other Attaching Utility the total number of Active Joint-Use Poles and poles with Permits approved for the Attaching Utility as of December 31 of the preceding year. The total pole number will be used to determine the annual rents.
- D. Dispute on Pole Number. If a party hereto disagrees with the pole number sent by the other party, the disagreeing party will notify the other party within 45 days of receipt of the disputed number. If the disputed number cannot be resolved, either party may demand a joint field inspection and exchange of records for the disputed number. If the parties cannot resolve the disputed number by May 1st, the parties will use the number that was in effect prior to the dispute, and when resolved, the parties will adjust the billing if necessary.
- E. Billing. On or about May 1st each year, the party that is owed a net amount of annual rents for the preceding year will send the other party an itemized invoice for the net amount owing. The invoiced party will pay any undisputed portion of the net amount due within 60 days of receipt of the invoice. A party that sends an invoice payment within 20 days of receipt of the invoice is entitled to a two (2%) percent discount on the net amount due.
- F. Exceptions to Rents. Neither party hereto is entitled to invoice the other party for an annual rent solely as a result of a Service Drop, pedestal, pole number, warning sign, multi-grounded neutral (MGN) connection, terminal, meter, Overlapping or any combination of these facilities and no other use of the pole by the other party.
- G. Refunds. No fees specified in Appendix A and properly invoiced shall be refunded on account of any surrender of a Permit granted hereunder.
- H. Late Charge. If a party does not receive payment for any undisputed rent, fee or other amount owed within 60 days after it becomes due, the party owing the undisputed rent, fee or other amount, upon receipt of 15 days written notice, shall pay interest to the other party, at the rate of 1.5% per month, on the amount due.
- I. Determination of Charges. Wherever this Agreement requires Attaching Utility to pay for work authorized by Attaching Utility and done or contracted by Owner Utility, the charge for such work shall include all ~~actual~~ reasonable material, labor, engineering and administrative costs, including reasonable applicable overhead but exclude any costs that are for the sole benefit of the Owner Utility. Owner Utility shall bill its services based upon actual costs, and such costs will be determined in accordance with Owner Utility's cost accounting systems.

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- J. Work Performed by Owner Utility. Wherever this Agreement requires or allows Owner Utility to perform work on Attaching Utility's Facilities, Attaching Utility acknowledges and agrees that Owner Utility, at its sole discretion, may utilize its own qualified employees, contractors approved by Attaching Utility, or any combination of the two to perform such work.
- K. True Up. Wherever the actual cost of an Owner Utility's work exceeds the advance payment of estimated expenses, Attaching Utility agrees to pay Owner Utility for the difference in cost when that amount exceeds \$50.00. To the extent that the actual cost of the work is less than the estimated cost, Owner Utility agrees to refund to Attaching Utility the difference in cost where that amount exceeds \$50.00.
- L. Default for Nonpayment. Nonpayment of any non-disputed amount due under this Agreement beyond 90 days' written notice shall constitute a default of this Agreement.
- M. Governmental Regulation. If a federal or state legislative or regulatory authority having jurisdiction over the poles or Attachments subject to this Agreement adopts legislation or regulations setting forth a pole rental rate or rate formula, the parties will amend Exhibit A (Rents and Fees) to implement such rate, or rate formula, to the extent applicable in accordance with the legislation or regulations, including, if required, any provisions related to the treatment of existing Attachments. In addition, if pole rental rate legislation or regulations are adopted, either party may request the prospective amendment of the pole rental fee charged under this Agreement.

V. SPECIFICATIONS

- A. Attaching Utility's Attachments. Attaching Utility will install and maintain its Attachments at its own expense and according to the Applicable Standards. Attaching Utility shall not allow its Attachments to interfere with the ability of Owner Utility or any third party existing at the time of Attaching Utility's attachment to use Owner Utility's poles, nor shall Attaching Utility allow its Attachments to interfere with the operation of any of the Owner Utility's Facilities.
- B. Owner Utility's Poles. At its sole expense, Owner Utility must maintain its poles that are jointly used under this Agreement in a safe and serviceable condition according to the Applicable Standards and must repair, reinforce, or replace damaged or defective poles. If a third party damages a pole or Attachment, Owner Utility may recover damages from the third party for its pole and Attachment, and Attaching Utility may recover damages from the third party for its Attachment. Owner Utility provides no warranty regarding the use of its poles or the rights of any third parties.
- C. Interference. Neither party shall allow its Attachments to interfere with the other party's Attachments or any existing third-party Attachment. Nor shall either party allow its Attachments to interfere with the operation of any of the other party's Facilities.

- D. Owner Utility's Attachments. If Owner Utility's work will not interfere with Attaching Utility's service, Owner Utility is entitled to add to its equipment or to remove or replace its Attachments on its poles without Attaching Utility's knowledge or consent.
- E. Overbuild. Neither party may duplicate or overbuild the other party's pole line. If timely installation of a duplicate or overbuild pole is required to meet a party's customer service deadline, that party may install the pole. But within 30 days after installing the pole, the party will send written notice to the other party identifying the pole, stating that the other party is entitled to purchase the new pole, and itemizing the installing party's actual cost in-place. If the other party desires to purchase the pole, within 45 days of receipt of the written notice, it will return a proposal stating its purchase desire. Within 30 days of receipt of that returned proposal, the installing party will send the other party an invoice for its actual cost in-place. If the other party does not desire to purchase the pole, it will return the proposal declining the purchase or will not respond within the 45 days ~~and the installing party shall own the new pole.~~
- F. Protective Equipment. Attaching Utility, and its employees and contractors, shall utilize and install adequate protective equipment for the safety of people and facilities. Attaching Utility shall at its own expense install protective devices designed to handle the voltage and current impressed on its Facilities in the event of a contact with the supply conductor. Except as provided in Paragraph XX.A, Owner Utility shall not be liable for any actual or consequential damages to Attaching Utility's Facilities or Attaching Utility's customers' facilities.
- G. Violation of Specifications. If Attaching Utility's Facilities, or any part thereof, are installed, used, or maintained in violation of this Agreement, and Attaching Utility has not corrected the violation(s) within 90 days from receipt of written notice of the violation(s) from Owner Utility, Owner Utility, or a subcontractor at its option, may correct said conditions. Owner Utility will notify Attaching Utility in writing prior to performing such work. An exception to this requirement will apply only when Owner Utility reasonably believes that such violation(s) pose an immediate threat to the safety of any person or pose an immediate threat to the physical integrity of Facilities. Owner Utility may perform such work and/or take such action as it deems necessary without first giving written notice to Attaching Utility. As soon as practicable thereafter, Owner Utility will advise Attaching Utility of the work performed or the action taken. Attaching Utility shall be responsible for all reasonable costs incurred by the Owner Utility in taking action pursuant to this subsection.
- H. Restoration of Utility Service. Owner Utility and Attaching Utility agree to fully cooperate to ensure that reasonable service restoration requirements are met to the reasonable satisfaction of each party.
- I. Effect of Failure to Exercise Access Rights. If Attaching Utility does not exercise

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any access right to a particular pole or group of poles granted under a Permit within 180 days of the effective date of such right and any extension thereof, Owner Utility may use the space scheduled for Attaching Utility's Attachment(s), for its own needs and/or other Attaching Entities. In such instances, Owner Utility shall endeavor to make other space available to Attaching Utility, upon written application per Article IX, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions. If Owner Utility utilizes the previously permitted attachment space for itself or a third party pursuant to this provision, it shall refund Attaching Utility any applicable paid fees.

VI. PRIVATE AND REGULATORY COMPLIANCE

- A. Necessary Authorizations. Attaching Utility shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Facilities on public and/or private property before it occupies any portion of Owner Utility's poles. Attaching Utility's obligations under this Article include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith. Attaching Utility shall defend, indemnify to the extent permitted by law and reimburse Owner Utility for all actual loss and expense that Owner Utility may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Attaching Utility does not have sufficient rights or authority to attach Attaching Utility's Facilities on Owner Utility's poles.
- B. Lawful Purpose and Use. Attaching Utility's Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state and local laws.
- C. Forfeiture of Owner Utility's Rights. No Permit granted under this Agreement shall extend to any pole on which the Attachment of Attaching Utility's Facilities would result in a forfeiture of Owner Utility's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of Owner Utility's rights, is invalid. Further, if any of Attaching Utility's existing Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Attaching Utility shall promptly remove its Facilities upon receipt of written notice from Owner Utility. Owner Utility will perform such removal at Attaching Utility's expense not sooner than the expiration of 60 days from Attaching Utility's receipt of the written notice.

VII. PERMIT APPLICATION PROCEDURES

- A. Permit Required. Attaching Utility shall not install any new Attachments, Overlash existing Attachments or perform Substantial Construction or Modification on any pole without first applying for and obtaining a Permit pursuant to the applicable requirements of Appendix B. No Permit shall be required for prior existing

authorized Attachments or Service Drops on Active Joint-Use Poles, or for routine maintenance on such Facilities.

- B. Review of Permit Application. Upon receipt of a properly executed Application for Permit (Appendix C), including the Pre-Permit Survey, Owner Utility will review the Permit Application and discuss any issues with Attaching Utility, including engineering or Make-Ready Work requirements associated with the Permit Application.
- C. Review Period. Owner Utility shall review and respond to Permit Applications that involve less than 10 Attachments/poles within 30 days of receipt. Owner Utility shall review and respond to Permit Applications that involve 10 or more Attachments/poles - within 45 days of receipt. If within 45 days after receipt of a Permit Application, Owner Utility fails to respond to Attaching Utility, the Attaching Utility may perform the Attachment activity subject to the subsequent review by the Owner Utility; the Owner Utility will bear responsibility for any costs incurred by the Attaching Utility as a result of the subsequent review to the extent that the initial Attachment was made consistent with Applicable Standards.
- D. Expedited Review. In instances where Attaching Utility notifies Owner Utility of an immediate need to make new Attachments, Overlash existing Attachments or perform Substantial Construction or Modification on a pole, and provides information as to the need for an expedited review process, the Owner Utility shall use its best reasonable efforts to review and respond to Permit Applications within 15 days of receipt. Owner Utility reserves the rights to charge Attaching Utility for any overtime or other applicable costs that it incurs in meeting a request for an expedited review.
- E. Performance of Make-Ready Work. If Make-Ready Work is required to accommodate Attaching Utility's Attachments, Owner Utility or its contractors shall perform such work pursuant to Article XI.
- F. The parties may mutually elect to use an electronic notification system, such as the NJUNS, in preference to the above-mentioned paper process.

VIII. ESTABLISHING JOINT USE OF NEW POLE

- A. Both parties will, to the extent reasonable, exchange information related to the initial phases of planning of residential subdivisions and the construction of any new pole line of ten or more consecutive adjacent poles.
- B. Each party shall make its Attachments at such a level as to be within the Assigned Space for the respective Utility and in a manner consistent with Applicable Standards, and to the extent practical, in making such Attachments, shall provide the maximum possible unused space between the parties' Attachments.
- C. Whenever either party proposes to construct a new pole line of ten or more

consecutive adjacent poles in a new residential subdivision, it shall, to the extent practical, reasonably coordinate with the other party regarding interest in possible joint use of the new pole line, including, space requirements, and the character of its circuits.

IX. PLACING AN ADDITIONAL ATTACHMENT ON AN EXISTING JOINT-USE POLE

- A. In the event either party can rearrange or reconstruct its Attachments to avoid replacing an existing pole, it shall promptly do so, provided such actions meet the minimum clearances required by the specifications referred to in Article V. The party making the request shall reimburse the other party for this rearrangement or reconstruction cost as set forth in Article XIII.
- B. Except for a pole excluded in accordance with Article II, Paragraph B, whenever any existing pole is insufficient in height or strength for Attaching Utility's proposed Attachment, Owner Utility shall, upon written request from the Attaching Utility, promptly replace such pole with a new pole of the necessary height and strength and shall make such other changes in the existing pole line in which such pole is included as the conditions may then require. Attaching Utility shall reimburse Owner Utility all reasonable costs associated with said replacement as set forth in Article XIII.
- C. A party with an Encroachment shall rearrange or reconstruct its Facilities at its expense or request that the Owner Utility replace the pole in accordance with Article XIII.

X. ESTABLISHING JOINT USE OF EXISTING NON-JOINT USE POLES

- A. Existing poles of either party may be converted to joint use and used by the other party upon application and issuance of a Permit.
- B. Each party shall make its Attachments at such a level as to be within the Assigned Space for the respective Utility and in a manner consistent with Applicable Standards, and to the extent practical, in making such Attachments, shall provide the maximum possible unused space between the parties' Attachments.
- C. In the event either party can rearrange or reconstruct its Attachments to avoid replacing an existing pole so as to convert it to joint use, it shall promptly do so provided such actions meet the minimum clearances required by the specification referred to in Article V. The party making the request shall reimburse the other party for this rearrangement or reconstruction cost as set forth in Article XI.

XI. MAKE-READY WORK/INSTALLATION

- A. Estimate for Make-Ready Work. In the event Owner Utility determines that it can accommodate Attaching Utility's request for Attachment(s), including Overlapping

of an existing Attachment, it will, upon request, advise Attaching Utility of any estimated Make-Ready Work charges necessary to accommodate the Attachment.

- B. Payment of Make-Ready Work. Unless otherwise agreed, Owner Utility may require payment in advance for all Make-Ready Work based upon the estimated cost of such work if the estimate exceeds \$1,000.00. If Attaching Utility's advance payment exceeds Owner Utility's actual cost in performing the Make-Ready Work, Owner Utility will reimburse the excess amount of the advanced payment to the Attaching Utility within 45 days of the Make-Ready Work's completion. Upon completion Attaching Utility shall pay Owner Utility's cost of Make-Ready Work as determined by Article XI, Paragraph A. Attaching Utility will be responsible for payment to Owner Utility for all Make-Ready Work required to accommodate Attaching Utility's Facilities.
- C. Who May Perform Make-Ready Work. Make-Ready Work shall be performed only by Owner Utility and/or a contractor authorized by Owner Utility to perform such work. If Owner Utility cannot perform the Make-Ready Work to accommodate Attaching Utility's Facilities within 45 days of issuance of a Permit, Attaching Utility may seek permission from Owner Utility for Attaching Utility to perform such work itself or employ a qualified contractor to perform such work and Owner Utility shall not unreasonably withhold, delay or condition such permission.
- D. Scheduling of Make-Ready Work. In performing all Make-Ready Work to accommodate Attaching Utility's Facilities, Owner Utility will endeavor to include such work in its normal work schedule. In the event Attaching Utility requests that the Make-Ready Work be performed on a priority basis or outside of Owner Utility's normal work hours, Attaching Utility agrees to pay any resulting increased costs. Nothing herein shall be construed to require performance of Attaching Utility's work before other scheduled work or Owner Utility's own service restoration.
- E. Attaching Utility's Installation/Removal/Maintenance Work.
 - 1. All of Attaching Utility's installation, removal and maintenance work shall be performed at Attaching Utility's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of Owner Utility's poles or Facilities or any other Attaching Entity's facilities or equipment attached thereto.
 - 2. All of Attaching Utility's installation, removal and maintenance work performed on Owner Utility's poles or in the vicinity of other Owner Utility's Facilities, either by its employees or contractors, shall be in compliance with the Applicable Standards. Attaching Utility shall ensure that any person installing, maintaining, or removing its Facilities is fully qualified and familiar with all Applicable Standards, the provisions of Article XX, and the specifications contained in Appendix D.

XII. TRANSFERS

- A. Except as herein otherwise expressly provided, each party shall at its own expense transfer its own Attachments and shall at all times perform such work promptly and in such a manner as not to interfere with the service of the other party.

- B. Required Transfers of Attaching Utility's Facilities. Whenever it is necessary to replace and/ or relocate a joint-use pole, and Attaching Utility has not transferred its Attachments within 60 days of receipt of written notice from Owner Utility, or another mutually agreed upon timeframe, Owner Utility shall send a second written notice to Attaching Utility informing Attaching Utility of Owner Utility's necessity for Facilities transfer. Upon receipt of Owner Utility's request, Attaching Utility shall promptly transfer its Attachments and notify Owner Utility that its transfer work has been completed. In the event of Attaching Utility's failure to reply within 45 days of the Attaching Utility's receipt of the second transfer request from Owner Utility, Owner Utility may escalate their request to Attaching Utility's management hierarchy according to the list of contacts provided by Attaching Utility. Attaching Utility will ensure that its list of escalation contacts is updated bi-annually. Owner Utility will be responsible for initiating the request for Attaching Utility to update its information. In the event that Attaching Utility does not provide a response to Owner Utility, or otherwise commence corrective action within 15 days of the escalation of the request, the Owner Utility shall have the right to, but not the duty to, transfer Attaching Utility's Facilities using Attaching Utility's approved contractors at Attaching Utility's expense. All such contractors shall be selected from a list of contractors authorized to perform work under the Attaching Utility's collective bargaining agreements or other applicable labor agreements. All transfers by a contractor commissioned by Owner Utility shall be permanently installed. Attaching Utility shall, upon demand, reimburse Owner Utility for the actual reasonable costs incurred.

XIII. POLE PLACEMENT, MODIFICATIONS AND/OR REPLACEMENTS

- A. Allocation of Costs: The costs of new pole placement and any modification or replacement of Facilities performed by the parties shall be allocated to Owner Utility, Attaching Utility, or other Attaching Entity on the following basis:
 - 1. The cost of placing a new Standard Joint-Use Pole shall be borne by the Owner Utility.
 - 2. The cost of placing a new pole that is larger than a Standard Joint-Use Pole, the extra height or class of which is due wholly to the Owner Utility's requirements shall be borne by the Owner Utility.
 - 3. In the case of a new pole larger than a Standard Joint-Use Pole where the extra height or class is due wholly to the requirements of the Attaching Utility, the Attaching Utility shall pay to the Owner Utility actual reasonable costs in excess of those borne by the Owner Utility in Paragraph

A item 1 of this Article.

4. In the case of a new pole larger than a Standard Joint-Use Pole where the extra height or class is due in part to the requirements of the Owner Utility and in part to the requirements of the Attaching Utility, the Attaching Utility shall pay to the Owner Utility its proportionate share of actual reasonable costs in excess of those borne by the Owner Utility in Paragraph A item 1 of this Article.
5. In the case where pole replacement or Facility rearrangement is required on an existing joint-use pole or non-joint pole in order to accommodate a new Attachment, the requesting party will reimburse the other party the actual reasonable costs of said work.
6. In the case where a third-party requests space on a Standard Joint-Use Pole, the parties may enter into a separate agreement with the third party in order to recoup the costs of rearrangements or reconstruction needed to accommodate their request.
7. In the case where either party can reasonably rearrange or reconstruct its Attachments to avoid replacing an existing joint-use pole, upon written request from the other party, it shall promptly do so ~~within 60 days of receipt of such written request,~~ provided such actions meet the minimum clearances required by the specification referred to in Article V. The party making the request shall reimburse the other party for these rearrangement or reconstruction costs as set forth in Article XIII.

B. Intermediate Poles.

1. If a Utility, solely for its own benefit, needs an intermediate pole (a pole set between two existing poles to provide additional clearance or service) installed in the other Utility's lead, it will send the other Utility a Permit Application setting forth why the intermediate pole is necessary and requesting that the other Utility install the pole. Within 45 days of receipt of the Permit Application, the other Utility will either: (1) agree to install and assume ownership of the pole; or (2) reject the request or not respond within the 45-day notice period. If the other Utility rejects the request or does not respond within the 45-day notice period, the requesting Utility may install the intermediate pole in the other Utility's lead and assume ownership of the pole. The parties will then allocate the actual cost of installing the intermediate pole according to this Article; however, any placement-related costs incurred by the requesting Utility will not entitle that Utility to any ownership interest in the intermediate pole if the other Utility agrees to and does install the pole.
2. If the other Utility installs the intermediate pole, it will send a Permit to the requesting Utility upon the pole's installation which states that the

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requesting Utility should attach to the pole. Within 45 days after its receipt of the Permit, the requesting Utility will attach to the new pole and will return to Owner Utility the Permit stating that the Attachment was completed.

- C. Treatment of Multiple Requests for Same Pole. If Owner Utility receives Permit Applications for the same pole from two or more prospective Attaching Entities within 60 days of the initial request, and accommodating their respective requests would require modification or replacement of the pole, Owner Utility will allocate among such Attaching Entities the applicable costs associated with such modification or replacement.
- D. Action Required for Emergency Modification/Replacement. The Owner Utility shall be responsible for initiating emergency modification/replacement procedures following notification. The Attaching Utility shall reserve the right to perform the emergency modification/replacement in the event that the Owner Utility does not meet the emergency modification/replacement performance time requirement. Emergency work shall begin as soon as possible in order not to impose unsafe conditions on its surroundings. "Emergency work" shall only apply in a situation in which imminent danger or serious harm may come to the Owner Utility's real or personal property, personal property or any person if the modification/replacement does not occur promptly. Should the emergency modification/replacement work be performed by the Owner Utility, the Owner Utility shall submit an invoice to the Attaching Utility for the actual reasonable cost of work performed on Attaching Utility's Facilities within 90 calendar days. Should the emergency modification/replacement work be performed by the Attaching Utility, the Attaching Utility shall submit an invoice to the Owner Utility for the actual reasonable cost of work performed on Owner Utility's Facilities within 90 calendar days. The Owner Utility will retain ownership of the pole regardless of which Utility performs the replacement.
- E. No provision of this Agreement shall be construed to require Owner Utility to relocate its Attachments or modify /replace its poles for the benefit of Attaching Utility, provided, however, any denial by Owner Utility for modification of the pole is based on nondiscriminatory standards of general applicability.
- F. Special Equipment. When replacing a joint-use pole that has a terminal of aerial cable, an underground connection, a transformer, or other special equipment, Owner must install the new pole in a way that will minimize both parties' transfer costs.
- G. Underground. In a non-emergency, when a joint-use pole carrying underground conduit connections needs to be replaced, the parties will agree where to locate the new pole. Either party may request a field meeting of both parties.

XIV. ABANDONMENT OR REMOVAL OF OWNER UTILITY'S FACILITIES

A. Removal of Attaching Utility's Attachments When Owner Utility Moves Facilities Underground or Otherwise.

1. Subject to Paragraph C below, if Owner Utility determines to place its Attachments underground or otherwise desires to remove affected poles from the ground for a reason other than the circumstances set forth in Subparagraph B(1) (meaning by reason of any federal, state, or county legal requirement or municipal ordinance (as qualified below) or the legal requirement of a property owner), Owner Utility shall give Attaching Utility at least 60 days advance written notice of the date on which Owner Utility intends to remove the affected poles from the ground ("Removal Notice"). Within that 60-day period, Attaching Utility shall remove its Attachments from the affected poles provided the poles are ready for removal of Attaching Utility's Attachments and other pole or underground alternatives are reasonably available to receive Attaching Utility's Attachments. Owner Utility shall not unreasonably deny any requested extension of the transfer period by Attaching Utility.
2. If Attaching Utility fails to remove its Attachments from the affected poles within the required time period, Attaching Utility shall be subject to the unauthorized attachment penalty fee as set forth in Appendix A.

B. Mandatory Removal of Owner Utility's Poles.

1. ~~Upon receipt of reasonable prior written notice of no less than 180~~~~60~~
2. Excluding Suspended Periods, if Attaching Utility fails to remove its Attachments from such pole(s) during the Notice Period, Owner Utility shall have the right, using its own personnel or a contractor, to remove Attaching Utility's Attachments at Attaching Utility's sole expense, except that Communications Utility shall not have the right to remove Electric Utility's Attachments used to provide electric service.
3. In the event Owner Utility knows of any rules, regulations, laws, orders or ordinances which would require the removal of poles upon which Attaching Utility has Attachments, Owner Utility shall so notify Attaching Utility in writing as soon as reasonably possible so as to allow Attaching Utility to initiate or participate in any legal/ regulatory proceedings to contest the removal.

C. Exceptions to Required Transfers or Removal of Attaching Utility's Attachments.

1. In response to a Removal Notice under Paragraph A, Attaching Utility may elect within the notice period to purchase any of the affected poles ("Purchase Request"). Any such purchase of a pole shall be at a rate equal to the depreciated value of said pole. The depreciation life of a Joint Use pole is 30 years. If a pole that is to be purchased is older than 30 years, then

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the rate to be charged is set at \$50 per pole.

2. Owner Utility may deny a Purchase Request only under any of the following circumstances:
 - i. The pole is no longer fit for service such that there is an imminent and serious health or safety justification for removal of the pole and Attaching Utility is unwilling to indemnify Owner Utility against claims arising out of Attaching Utility's purchase of the pole.
 - ii. Attaching Utility will be reimbursed by the property owner for the cost to transfer or remove its Attachments.
3. If the Purchase Request is denied for a permitted reason in section C(2) above, Attaching Utility shall have sixty (~~90~~60) days from the date of denial to remove its Attachments from the effected pole(s) or to request that Owner Utility transfer or remove the Attachments from the effected pole(s) at Attaching Utility's expense.
4. If Attaching Utility believes that a Purchase Request has been unreasonably denied, the matter, and the appropriate remedy to be awarded to the prevailing Party, may be submitted for dispute resolution in accordance with Article XXVII.

- D. Avoidance of Interruption in Service. In all removals pursuant to this Article, Owner Utility and Attaching Utility shall cooperate with each other in good faith regarding the disposition of the affected Attachments to avoid any interruption in service to customers of either party.
- F. Prior to a transfer of pole ownership under this Article, the original Owner Utility will notify any third party with an Attachment on the pole of the pending transfer of ownership, and such third party shall either remove its Attachments or inform Attaching Utility in writing that it intends to remain on the pole under a valid pole attachment agreement with Attaching Utility.
- G. When ownership transfers pursuant to Paragraph C, the original Owner Utility will not invoice Attaching Utility or any third party rent for the pole in the next rental year, and Attaching Utility will indemnify and hold harmless the original Owner Utility from any obligation, liability, cost, or charge incurred for the pole after such transfer.
- H. Special Disposal Costs. The parties acknowledge that a federal, state, or local government agency may classify chemicals used as a preservative or other treatment of wood poles as hazardous or toxic waste requiring special disposal procedures. The Owner Utility at time of its disposal will bear the full cost of any special disposal procedures.

XV. TERMINATION OF PERMIT

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- A. Automatic Termination of Permit. Any Permit issued pursuant to this Agreement shall automatically terminate when Attaching Utility ceases to have authority to construct and operate its Facilities on public or private property at the location of the particular pole(s) covered by the Permit.
- B. Surrender of Permit. Attaching Utility may at any time surrender any Permit for Attachment and remove its Facilities from the affected pole(s), provided, however, that Attaching Utility must provide Owner Utility with written notice of any such removal. Upon providing such notice, Attaching Utility will have no further obligations to pay any fees or charges with respect to the affected pole(s). When Attaching Utility removes all of its Attachments from a pole, Attaching Utility will remove all identifying tags, bolts, J hooks, and other equipment from the pole.
- C. If Owner Utility discovers a joint-use pole for which Attaching Utility pays rent but no longer has an Attachment that incurs annual rent, Owner Utility will provide Attaching Utility with a written notice, within 30 days of discovery, identifying the pole and adjusting the count for purposes of annual pole rental fee.

XVI INSPECTION OF ATTACHING UTILITY'S FACILITIES

- A. Inspection. Owner Utility shall have the right at any time to make periodic inspections of Attaching Utility's Facilities, utilizing its employees and/or contractors at the sole expense of Owner Utility, unless prior agreement has been reached between Owner Utility, Attaching Utility and any third parties attached to Owner Utility's poles.
- B. Notice. Owner Utility will give Attaching Utility at least sixty (60) days' advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.

XVII INVENTORIES

- A. Inventory Notice and Frequency. The parties will conduct a joint field inventory of poles no more often than once every five years, but only after one Utility sends the other Utility one year's written notice of its desire to perform a joint field inventory.
- B. Scope and Duties. Unless the parties otherwise agree in writing, a joint field inventory will be limited to identifying and verifying Attachments and pole ownership. Also, the joint inventory will be limited to the poles owned by the parties and located in their overlapping service areas. Each Utility will provide maps and other documents and assist as necessary to accurately and cost-effectively conduct a joint field inventory. No less frequently than quarterly, the parties will prepare and share interim reports on the progress and results of the inventory. Any joint field inventory may be performed by: (1) employees or representatives of each Utility, (2) a joint contractor that the parties agreed upon in writing, or (3) another

method that the parties agree upon in writing.

- C. Joint Contractor. When using a joint contractor, the parties will use a bid process to solicit contractors' prices to perform the field inventory. The parties need not select the contractor submitting the lowest bid. But the parties must select the contractor who, in their reasonable judgment, can best perform the inventory accurately and cost-effectively. Periodically during the inventory, the parties may review or sample the joint contractor's work to assess whether the work is being performed accurately and cost-effectively. Each Utility is entitled to accompany the joint contractor for any portion of or the entire inventory.
- D. Costs. Each Utility will bear its own internal expenses for a joint field inventory. If a joint contractor is used, unless the parties otherwise agree in writing before any field work starts, the parties will split the joint contractor's inventory expenses in the same ratio as their respective ownership of the joint-use poles based on the results of that joint inventory. (For example, if the inventory results show that Electric Utility owns 65% and Communications Utility owns 35% of the joint-use poles, Electric Utility will pay 65% and Communications Utility will pay 35% of the joint contractor's expenses.) If the joint inventory is not completed, the parties will split the joint contractor's expenses in the same ratio as their respective ownership of the joint-use poles before the inventory started. Each Utility may seek reimbursement of its costs from third-party attachers on its poles.
- E. Next Billing. Each Utility's total number of joint-use poles resulting from a joint field inventory will be used as a baseline to calculate the annual rents for the next annual billing.
- F. Audit. Each Utility is entitled to audit the results of an individual or joint field inventory.
- G. Individual Inventory. At its own expense, either Utility may conduct an individual field inventory without the other Utility's participation. The non-participating party is not obligated to accept the findings of an individual field inventory. Neither Utility may use an individual field inventory to adjust the annual rents or to true-up the billing.

XVIII. UNAUTHORIZED OCCUPANCY OR ACCESS

- A. Penalty Fee. If at any time any of Attaching Utility's Attachments are found occupying any pole for which no Permit has been issued, or for which an authorization has expired under Section XV.A, Owner Utility, without prejudice to its other rights or remedies under this Agreement, may assess an unauthorized attachment penalty fee as specified in Appendix A, Item 3. In the event Attaching Utility cannot demonstrate that the Attachment in question was properly Permitted and fails to pay such fee within ~~90~~⁶⁰ days of receiving notification thereof, Owner Utility may recover the amount of such fee, together with declaratory and injunctive relief, and costs, including reasonable attorney's fees. If Owner Utility makes an

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erroneous allegation of the existence or location of an unauthorized Attachment, it will reimburse to the Attaching Party any and all unauthorized attachment penalty fees actually collected with respect to the wrongly identified unauthorized Attachment.

- B. Exclusions. Any previously authorized Attachments on Active Joint-Use Poles and any Facilities excluded from rents under Article IV, Paragraph F, will not be considered unauthorized Attachments when discovered on Owner Utility's poles.
- C. No Ratification of Unlicensed Use. No act or failure to act by Owner Utility with regard to said unlicensed use shall be deemed as ratification of the unlicensed use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by Owner Utility of any of its rights or privileges under this Agreement or otherwise; provided, however, that Attaching Utility shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to said unauthorized use from its inception.

XIX. THIRD-PARTY ATTACHMENTS

- A. Rights of Third Parties. Neither Utility may construe this Agreement to affect any right that the other Utility granted to a third party prior to this Agreement's effective date. Either Utility may, consistent with the terms of this Agreement, continue or extend a pre-existing third-party right, or grant Attachment rights to a new third-party.
- B. Third-Party Agreements. Owner Utility shall be responsible for negotiating pole attachment agreements with any third parties for Attachments to the Owner Utility's poles. Owner Utility shall collect all rents from third-party Attaching Entities accruing from the use of the Owner Utility's poles.

XX. LIABILITY AND INDEMNIFICATION

- A. Liability. Owner Utility reserves to itself the right to maintain and operate its poles in such manner as will best enable it to fulfill its service requirements. Attaching Utility agrees to use Owner Utility's poles at Attaching Utility's sole risk. Notwithstanding the foregoing, Owner Utility shall report to Attaching Utility the occurrence of any such damage caused by its employees, agents or contractors. Owner Utility agrees to reimburse Attaching Utility for all reasonable actual costs incurred by Attaching Utility for the physical repair of such facilities damaged by the negligence or willful misconduct of Owner Utility, its employees, agents or contractors.
- B. Indemnification. Attaching Utility, and any agent, contractor or subcontractor of Attaching Utility, shall defend, indemnify and hold harmless Owner Utility and its officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors, against any and all liability, costs, damages, fines, taxes, special charges by other penalties, payments

(Including payments made by Owner Utility and all other reasonable costs and expenses of litigation) (“Covered Claims”) arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Attaching Utility or by Attaching Utility’s officers, directors, employees, agents, and contractors, of Attaching Utility’s Facilities, except to the extent of the negligence or willful misconduct of Owner Utility, its employees, agents or contractors, giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

1. Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;
2. Costs of work performed by Owner Utility that was necessitated by Attaching Utility’s failure or the failure of Attaching Utility’s officers, directors, employees, agents, or contractors, beyond applicable notice and cure periods, to install, maintain, present, use, transfer or remove Attaching Utility’s Facilities in accordance with the requirements and specifications of the Agreement or from any other work this Agreement authorizes Owner Utility to perform on Attaching Utility’s behalf;
3. Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Attaching Utility, or Attaching Utility’s officers, directors, employees, agents, and contractors, pursuant to this Agreement;
4. Liabilities incurred as a result of Attaching Utility’s violation, or a violation by Attaching Utility’s officers, directors, employees, agents, and contractors, of any law, rule or regulation of the United States, Illinois or any other governmental entity or administrative agency, whether such violation is the result of a violation of the statute by Owner Utility or Attaching Utility solely or any joint violation therefore;

C. Procedure for Indemnification.

1. Owner Utility shall give notice promptly to the Attaching Utility of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim related to any action, suit or proceeding filed by a third party against Owner Utility, the notice shall be given to Attaching Utility by Owner Utility no later than 10 days after written notice of the action, suit or proceeding was received by Owner Utility.

2. Failure to timely give the required notice will not relieve the Attaching Utility from its obligation to indemnify the Owner Utility unless the Attaching Utility is materially prejudiced by such failure.
 3. The Attaching Utility will have the right at any time, by notice to the Owner Utility, to participate in or assume control of the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to the Owner Utility. The Owner Utility agrees to cooperate fully with the Attaching Utility. If the Attaching Utility so assumes control of the defense of any third-party claim, the Owner Utility shall have the right to participate in the defense at its own expense. If the Attaching Utility does not so assume control or otherwise participate in the defense of any third-party claim, it shall be bound by the results obtained by the Owner Utility with respect to the claim.
 4. If the Attaching Utility assumed the defense of a third-party claim as described above, then in no event will Owner Utility admit any liability with the respect to, or settle, compromise or discharge, any third party claim without the Attaching Utility's prior written consent, and the Owner Utility will agree to any settlement, compromise or discharge of any third-party claim which the Attaching Utility may recommend with releases the Owner Utility completely from such claim.
- D. Environmental Hazards. Attaching Utility represents and warrants that its use of Owner Utility's poles will not generate any hazardous substances, that it will not store or dispose substances and that Attaching Utility's Facilities will not constitute or contain and will not generate any hazardous substance in violation of federal, state or local law now or hereafter in effect including any amendments. "Hazardous substance" shall be interpreted broadly to mean any substance or material designate or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local laws, regulations or rules now or hereafter in effect including any amendments. Attaching Utility further represents and warrants that in the event of breakage, leakage, incineration or other disaster, its Facilities would not release such hazardous wastes or substances. Attaching Utility, and its agents, contractors and subcontractors, shall defend indemnify and hold harmless Owner Utility and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any all liability, costs damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage or discovery of any such hazardous wastes or hazardous substances on, under adjacent to Owner Utility's poles attributable to Attaching Utility's use of Owner Utility's poles.

E. Municipal Liability Limits. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by either of any applicable State limits on municipal liability.

F. Limitation of Liability. Notwithstanding any other provision of this Agreement, neither party hereto, nor their agents, representatives, contractors or subcontractors shall be liable to the other for indirect, incidental or consequential loss or damages.

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XXI. DUTIES, RESPONSIBILITIES, AND EXCULPATION

- A. Duty to Inspect. Attaching Utility acknowledges and agrees that Owner Utility does not warrant the condition or safety of Owner Utility's poles, or the premises surrounding the poles, and Attaching Utility further acknowledges and agrees that it has an obligation to inspect Owners Utility's poles and/or premises surrounding the poles, prior to commencing any work on Owner Utility's poles or entering the premises surrounding the poles.
- B. Knowledge of Work Conditions. By executing this Agreement, Attaching Utility warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Attaching Utility will undertake under this Agreement and it fully understands or will acquaint itself with the facilities, difficulties, restrictions attending the execution of such work.
- C. Disclaimer. Owners Utility makes no express or implied warranties with regard to its poles, all of which are hereby disclaimed, and Owner Utility makes no other express or implied warranties, except to the extent expressly and unambiguously set forth in this Agreement. Owner Utility expressly disclaims any implied warranties of merchantability or fitness for a particular purpose.
- D. Duty to Competent Supervision and Performance. The parties further understand and agree that in the performance of work under this Agreement, Attaching Utility and its agents, servants, employees, contractors and subcontractors will work near electrically energized lines, transformers, or other Electric Utility Facilities, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except in an emergency endangering life, grave personal injury, or property. Attaching Utility shall ensure that its employees, servants, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of Owner Utility, and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Attaching Utility shall ensure employees, servants, agents, contractors and subcontractors with competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Attaching Utility agrees that in emergency situations

in which the Electric Utility must de-energize any part of its Electric Utility equipment, the Attaching Utility shall ensure that work has been suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

- E. Requests to De-energize. In the event Electric Utility de-energizes any equipment or line at Communications Utility's request and for the Communications Utility's benefit and convenience in performing a particular segment of any work, Communications Utility shall reimburse Electric Utility in full for all reasonable actual costs and expenses incurred, in order to comply with Communications Utility's request. Before Electric Utility de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Communications Utility's request.
- F. Interruption of Service. In the event that Attaching Utility shall cause an interruption of service by damaging or interfering with any equipment of Owner Utility, Attaching Utility, at its expense, shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify Owner Utility immediately.
- G. Duty to Inform. Communications Utility further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on Electric Utility's poles by Communications Utility's employees, servants, agents, contractors or subcontractors, and accepts as its duty and sole responsibility to notify and inform Communications Utility's employees, servants, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

XXII. INSURANCE

- A. Policies Required. At all times during the term of this Agreement, Attaching Utility shall keep in force and affect all insurance policies as described below:
 - 1. Worker's Compensation and Employers' Liability Insurance. Statutory worker's compensation benefits in compliance with Illinois Law and employers' liability insurance. Waiver of subrogation in favor of Owner Utility. Employer's Liability in the amount of \$1,000,000 each accident/ disease/policy limit. All subcontractors must obtain and maintain workers' compensation insurance (if applicable) in compliance with the statutory requirements of the State of Illinois.
 - 2. Commercial General Liability Insurance. Policy will be written to provide coverage for, but not limited to, the following: premises-operations, products/completed operations, bodily injury, and contractual liability coverage with

Limits of liability of \$1,000,000 per occurrence and \$3,000,000 in the aggregate. These limits of insurance may be achieved by a combination of primary and umbrella/excess insurance policies.

3. Automobile Liability Insurance. Commercial automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles used in connection with this Agreement, with a combined single limit of liability of \$1,000,000 each accident for bodily injury and property damage.
4. Umbrella/Excess Liability Insurance. Coverage is to be in excess of the employers' liability, commercial general liability, and automobile liability insurance policies required above with limits of liability ~~of~~ \$4,000,000 each occurrence/claim and aggregate.
5. Property Insurance. Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and utility structures, fencing, or support systems that may be placed on, within, or around Utility Facilities. Such coverage will protect against claims for hazards of fire, vandalism and malicious mischief, and such other perils as are covered by the policies of insurance commonly referred to and known as "extended coverage" insurance or "all risk" insurance. Each party is allowed to self-insure such exposures.

B. Qualification; Priority; Contractors' Coverage. The insurer must be authorized or permitted to do business under the laws of Illinois and have an "A-VII" or better rating in Best's Guide. Such insurance where Owner Utility is named as additional insured will be primary. Attaching Utility shall require all contractors and all of their subcontractors who perform work on behalf of Attaching Utility as part of this Agreement to carry, in force and effect, worker's compensation and employer's liability ~~(if applicable)~~, commercial general liability and automobile liability insurance coverage's of the type that Attaching Utility is required to obtain under this Article XVIII, with ~~the same~~ limits that are appropriate for the type and level of services being provided.

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C. Certificate of Insurance; Other Requirements. Within 5 business days of the execution of this Agreement and within ~~10~~ business days after each insurance policy renewal date during the term of this Agreement, Attaching Utility will furnish Owner Utility with a Certificate of Insurance. The Certificate shall reference this Agreement and worker's compensation waivers of subrogation required by this Agreement. The certificate of insurance shall contain language indicating that the insurer shall provide 30 days' advance written notice of cancellation of the general liability, auto liability, and workers compensation insurance policies to Owner ~~utility~~Utility, and 10 days' advance written notice for nonpayment of premium. Owner Utility, its council members, board members,

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Commented [MM22R21]: Frontier does not share copies of its entire policies, as they are proprietary.

commissioners, agencies, officers, officials, employees and representatives (collectively, “Additional Insureds”) shall be included as Additional Insured as their interest may appear, except ~~property~~, worker's compensation and employer's liability, which shall be so evidenced on the Certificate of Insurance. All policies, other than excess liability, worker's compensation and employer's liability, shall be written on an occurrence and not on a claims-made basis. Attaching Utility shall ~~not not~~ hold Owner Utility and Additional Insureds responsible for payment of any deductible and payment of any premium on any policy required under this Article XVIII. Attaching Utility shall obtain Certificates of Insurance from its subcontractors (if applicable) and provide a copy of such Certificates to Owner Utility upon request.

- D. Deductible/Self-insurance Retention Amounts. Attaching Utility shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

XXIII. ASSIGNMENT

- A. Limitations on Assignment. Neither party shall assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of the other party, which consent shall not be unreasonably withheld. ~~Notwithstanding the foregoing, either party may assign or transfer its interest in this Agreement to an affiliate, successor or parent corporation of that party without the other party's prior consent, provided that the other party is given written notice of such transfer.~~
- B. Obligations of Assignee/Transferee and Attaching Utility. No assignment or transfer under this Article shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Attaching Utility arising under this Agreement. Attaching Utility shall furnish Owner Utility with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Attaching Utility shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants or conditions of this Agreement without the express written consent, which shall not be unreasonably withheld, , to the release of Attaching Utility by Owner Utility.
- C. Sub-licensing. Without Owner Utility's prior written consent, which shall not be unreasonably withheld, ~~Attaching Utility shall not sub-license to a third party, including but not limited to allowing third parties to place Attachments on Owner Utility's poles, including Overlapping, or to place Attachments for the benefit of such third parties on Owner Utility's poles. Any such action shall constitute a material breach of this Agreement. The use of Attaching Utility's Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlapping is not subject to the provisions of this Article.~~

Commented [DL23]: This indemnification provision must remain and cannot be limited by Frontier.

Commented [DL24]: This indemnification provision must remain and cannot be limited by Frontier.r

Commented [AC25R24]: Frontier Risk Management: The named insured on the insurance policy (in this case, Attaching Utility) is the only party that the insurance carrier will hold responsible for paying the premium and the deductible. So, the edits are meant to clarify that the Attaching Utility shall not hold Owner Utility and Additional Insureds responsible for paying the deductible or premium because that is the Attaching Utility's responsibility. Also, Section D. below makes clear that Attaching Utility is responsible for the deductible. And per Section I (Definitions) Item E. on page 5 of 44, "Attaching Utility" could either be Frontier or Rochelle, depending on who is attaching to the pole, which is owned by the other party.

XXIV. FAILURE TO ENFORCE

Failure of Owner Utility or Attaching Utility to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with the Agreement.

XXV. TERMINATION OF AGREEMENT

- A. If Attaching Utility shall be in default in any of its obligations stipulated herein, and such default continues for a period of 90 days subsequent to written notice given by Owner Utility, Owner Utility may, if it so elects, suspend or terminate Attaching Utility's right to place additional attachments and terminate any Permits that are subject to the cited conditions. Such termination shall not be construed as a waiver of the right to enforce any liabilities for costs incurred or to be incurred for the collection of any sums theretofore or thereafter due.
- B. If Owner Utility shall be in default in any obligations stipulated herein, and such default continues for a period of 90 days subsequent to written notice thereof given by Attaching Utility, Owner Utility agrees to pay in connection with such default, all reasonable costs and expenses reasonably incurred by Attaching Utility as a result of such default in assuring the safety and adequacy of its service, including reasonable attorney's fees.
- C. Either party shall have the right, pursuant to the procedure set out in Paragraph D, to terminate any Permit issued hereunder, whenever the other Utility is in default in any of the following circumstances:
 - 1. Construction, operation or maintenance of Attaching Utility's Facilities in violation of applicable laws regarding the construction, operation or maintenance of such facilities;
 - 2. Construction, operation or maintenance of Attaching Utility's Facilities after any authorization required for said construction, operation or maintenance of Attaching Utility's Facilities has lawfully been denied or revoked by an applicable governmental or private authority; or
 - 3. Construction, operation or maintenance of Attaching Utility's Facilities without the insurance coverage required under this Agreement.

- D. The non-defaulting party will notify the defaulting party in writing within 15 calendar days, or as soon as reasonably practical, of the existence of any of the conditions identified in Paragraph C, above. Defaulting party shall take action to eliminate any such conditions within 30 days from the date of receipt of said notice or shall be allowed a longer period if the parties mutually agree on such period of time. The defaulting party shall thereafter confirm in writing to non-defaulting party that said conditions have been corrected. If the defaulting party fails to correct the cited conditions in accordance with this procedure, the non-defaulting party shall have the right to terminate any permits that are subject to the cited conditions.
- E. Notwithstanding the termination of this Agreement or individual Permits, this Agreement shall remain in full force and effect, including all fees, charges and liabilities, with respect to all prior authorized Attachments to poles jointly used by the parties at the time of such termination. On the date of expiration, this Agreement shall cease to be in force and effect for any poles set, replaced or relocated after such date.

XXVI. TERM OF AGREEMENT

- A. This Agreement shall become effective on the date set out above, and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for 10 years. Either party may terminate this Agreement at the end of the 10-year term by giving to the other party written notice of an intention to terminate the Agreement at least 1 year prior to the end of the said term. Upon failure to give such notice of intent to terminate either during the last 1-year notification period or after the 10-year term, this Agreement shall automatically continue in force until terminated by either party after 1 year's written notice.
- B. The above provision notwithstanding, the parties agree that the effect of the termination of this Agreement shall be suspended with respect to all joint-use poles jointly used by the parties at the time of such termination pending any on-going negotiations to renew, extend or otherwise enter into a new joint use agreement. Both parties agree to enter into good faith negotiations regarding renewals or extension of the Agreement upon request of the other party.
- C. Even after the termination of this Agreement, Attaching Utility's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Attaching Utility's Facilities, and Attaching Utility shall continue to be responsible for all fees and charges owed to Owner Utility that Attaching Utility authorized per Article IV.

XXVII. DISPUTE RESOLUTION

- A. Resolving a Dispute. Except for an action seeking a temporary restraining order or an injunction or to compel compliance with this dispute resolution procedure, to

resolve a controversy, claim, or breach arising under this Agreement, the parties will follow the procedures in this Article. Each Utility will bear its own costs for dispute resolution activity.

- B. Initial Meeting. At a Utility's written request, each Utility will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The parties will conduct any in-person meeting in Illinois.
- C. Executive Meeting. If 90 days after the first in-person meeting of the senior representatives, the parties have not resolved the dispute to their mutual satisfaction, each Utility will designate executive representatives at the director level or above to meet and negotiate in good faith to resolve the dispute. To facilitate the negotiations, the parties may agree in writing to use mediation or another alternative dispute resolution procedure.

Unresolved Dispute/Arbitration. If after 60 days from the first executive-level, in-person meeting, the parties have not resolved the dispute to their mutual satisfaction,

- D. Confidential Settlement. Unless the parties otherwise agree in writing communication between the parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery, and inadmissible in litigation, to the extent allowed by law, including and subject to all applicable Freedom of Information Act requirements.
- E. Business as Usual. During any alternative dispute resolution procedure or lawsuit, the parties will continue providing services to each other and performing their obligations under this Agreement.

XXVIII. AMENDING AGREEMENT

Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.

XXIX. NOTICES

- A. Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective upon personal delivery or receipt by certified mail, return receipt requested, with postage prepaid at the following addresses:

If to Electric Utility, at:

City Manager
City of Rochelle
420 N. 6th Street
Rochelle, IL 61068

If to FRONTIER, at

Frontier North, Inc.
C/O Centralized Joint Use Team
8001 W Jefferson Blvd
Ft Wayne, IN 46804

Or to such other address as either party, from time to time, may give the other party in writing.

- B. Both the Owner Utility and Attaching Utility shall provide one another with a comprehensive and periodically updated list of names and telephone numbers that will enable each Utility to reach the other in cases of emergency or to report damage to either Utility's Facilities.

XXX. ENTIRE AGREEMENT

This Agreement supersedes all previous agreements, whether written or oral, between the parties for placement and maintenance of the Utility's Facilities within the Utility's geographical service areas covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein.

XXXI. SEVERABILITY

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of the Agreement to either party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the parties that the Agreement be administered as if not containing the invalid provision.

XXXII. GOVERNING LAW

The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Illinois.

XXXIII. INCORPORATION OF RECITALS AND APENDICES

The Recitals stated above and all appendices to the Agreement are incorporated into and constitute part of this Agreement.

XXXIV. FORCE MAJEURE

If performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake, or like acts of God, wars, revolution, civil commotion, explosion, acts of a public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by a customer, or any other circumstances beyond the reasonable control and without the fault or negligence of the affected party, the affected party, upon giving prompt notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction, or interference has ceased); provided however, that the party so affected shall use diligent efforts to avoid or remove such causes of nonperformance and both parties shall proceed whenever such causes are removed or cease.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first written above.

City of Rochelle
(ELECTRIC UTILITY)

Frontier North, Inc.
(COMMUNICATIONS UTILITY)

By: _____
Jeff Fiegenschuh

By: _____

TITLE: City Manager

TITLE:

ELECTRIC UTILITY

STATE OF ILLINOIS)
) SS.
COUNTY OF OGLE)

I, the undersigned, a Notary Public in and for the State of Illinois, hereby certify that on the _____ day of _____, 202~~5~~⁴, personally appeared before me Jeff Fiegenschuh, City Manager for the City of Rochelle, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

Notary Public in and for the State of Illinois,
residing at _____, Illinois.

COMMUNICATION UTILITY

STATE OF ILLINOIS)
) SS.
COUNTY OF Mc CLEAN)

I, the undersigned, a Notary Public in and for the State of Illinois, hereby certify that on the _____ day of _____, 202~~5~~4, personally appeared before me [INSERT NAME], [TITLE] to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

Notary Public in and for the State of Illinois,
residing at _____, Illinois.

APPENDIX A
ATTACHMEN FEES AND CHARGES

Effective Date September 1, 2022

1. Annual Pole Rental Fee:

The annual pole rental fee for Attachments by Frontier to Electric Utility-owned poles is ~~\$36.05~~ \$25.00 per pole. The annual pole rental fee for Attachments by Frontier to Electric Utility-owned poles shall increase by 5% per pole each subsequent year of this Agreement starting September 1, 2023. The pole space utilized by Frontier is typically 2 feet or a portion therefore, measured from above the lowest point on the pole on which attachments can be made. The attachment fee is based on the average space, and Frontier will not be subject to additional fees for the isolated occurrences where Frontier attachments exceed the 2 feet of space.

The annual pole rental fee for Attachments by Electric Utility to Frontier-owned poles shall be \$23.55 per pole. The pole space utilized by the Electric Utility is typically 9.5 feet or a portion thereof, measured down from the top of the pole. The attachment fee is based on the average space and the Electric Utility will not be subject to additional fees for the isolated occurrences where Electric Utility attachments exceed the 9.5 feet of space.

2. Periodic Rental Fee Review/Adjustment

After this Agreement's initial ten-year term, and at the end of every subsequent five-year period, the annual rental fee per pole may be adjusted. To request rental adjustment, a party must send notice under Article XXIX to the other party 180 days before the end of the applicable five-year period. The new annual rental fee will apply effective the annual billing after the parties mutually agree to the new rental fee amount.

3. Unauthorized Attachment Penalty Fee, per pole:

Three (3) times the annual pole rental fee.

APPENDIX B

POLE ATTACHMENT PERMIT APPLICATION PROCESS

The following procedure is to be followed by each Attaching Utility seeking to make or remove Attachments on or from Owner Utility's Poles. Note that no entity may make any Attachments to Utility's Poles without having first entered into a binding Pole Attachment Agreement.

1. Attaching Utility shall submit a properly executed Application for Permit (Appendix C), including the Pre-Permit Survey.
2. Following the Pre-Permit Survey, Owner Utility will review the Permit Application and discuss any issues with Attaching Utility, including engineering or Make-Ready Work requirements associated with the Permit Application.
3. Upon receipt of written authorization, Owner Utility will proceed with Make-Ready Work according to the specific agreed upon installation plans and the terms of the Agreement, including if necessary, payment for the Make-Ready Work charges as set out by Owner Utility and agreed to by the Attaching Utility.
4. Owner Utility will sign and return the Application for Permit authorizing the Attaching Utility to make its Attachments(s) in accordance with agreed upon installation plans.

**APPENDIX C
PERMIT APPLICATION/REMOVAL NOTICE**

Application Date: ___/___/___

Sheet 1 of ___

To: [**Insert Address of Utility Permitting Department**]

Desire to: Attach to Utility Pole(s) Remove Attachment from Utility Pole(s)

Permit No. _____ Superseded Permit No. _____

No. of Poles this permit: RMU _____ VZ: _____ Total Poles in Use: RMU _____ VZ: _____

.....

Attaching Utility Name: _____

Address: _____

Contact Person: _____ Title: _____ Phone No.: _____

Utility Contact Person: _____ Title: _____ Phone No.: _____

Narrative Description of proposed activity:

In accordance with the terms and conditions of the Joint-Use Pole Agreement dated application is hereby made for a Permit to attach to Pole(s) in the locations detailed on the attached Route Map(s) and/or Notice is hereby given to vacate Pole(s) in the locations detailed on the attached Route Map(s).

Permission is hereby granted to Attaching Utility to attach to pole(s) listed on the attached Field Data Summary Sheets, subject to payment of the necessary Make-Ready Work charges as set out by Owner Utility and agreed to by the Attaching Utility, and/or acknowledgement is hereby made of the vacating of pole(s) listed on the attached Field Data Summary Sheets.

SUBMITTED:

APPROVED:

Attaching Utility _____
Utility _____
By _____
Name _____
Title _____
Date _____

Owner
By _____
Name _____
Title _____
Date _____

APPENDIX D

SPECIFICATIONS FOR JOINT-USE POLE AGREEMENT

- A. Applicable Standards. Each party will comply with all applicable engineering and safety standards governing the installation, maintenance and operation of Facilities and the performance of all work in or around Electric Facilities, including the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), The Blue Book Manual of Construction Procedures (Telcordia Technologies SR-1421), and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of Utility or other federal, state or local authority with jurisdiction over Utility Facilities. In all instances of conflict between standards the stricter standard shall be applied unless specifically waived in writing by the Owner Utility.
- B. Pre-Existing Attachments. For an Active Joint-Use Pole or an Attachment installed prior to this Agreement, if it complied with the Applicable Standards in effect at the time it was installed, it need not be replaced or rearranged solely to comply with any new Applicable Standards except when law requires compliance.
- C. Clearances
1. Attachment and Cable Clearances: Attachments on poles, including metal attachment clamps and bolts, metal cross arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the NESC.
 2. Service Drop Clearance: The parallel minimum separation between Electric Utility Service Drops and Communications Utility Service Drops shall be twelve (12) inches, and the crossover separation between the drops shall be twenty-four (24) inches.
 3. Sag and Mid-Span Clearances: Attaching Utilities will leave proper sag in its lines and cables and shall observe the established sag of power line conductors and other cables so that minimum clearances are (a) achieved at poles located on both ends of the span; and (b) retained throughout the span.
 4. Vertical Risers: All Risers, including those for power feed for equipment enclosure, shall be placed on the quarter faces of the pole and must be installed in conduit with weatherhead attached to the pole. A two-inch (2”) clearance in any direction from cable, bolts clamps, metal supports and other equipment shall be maintained.

5. Climbing Space: A clear Climbing Space must be maintained at all times on the quarter face of the pole. All Attachments must be placed so as to allow and maintain a clear and proper Climbing Space on the quarter face of the pole. Attachments shall be placed on the same side of the Pole as those of other Attaching Entities. In general, all other Attachments and Risers should be placed on Pole quarter faces.
- D. Tagging Attachments. For an Attachment placed after this Agreement's effective date, a party will place an identification tag on the pole or Attachment. The parties acknowledge that an Attachment placed prior to this Agreement's effective date may not have an identifying pole tag. But if a party performs work on a joint-use pole or Attachment, it will tag the pole or Attachment. If Attaching Utility removes all of its Attachments from a joint-use pole, it also will remove all of its identifying tags.
- E. Tagging Poles. Owner Utility will place an ownership identification tag on its pole placed after this Agreement's effective date. The parties acknowledge that a pole placed prior to this Agreement's effective date may not have an identifying pole tag. If a party performs work on a pole or Attachment, it will tag the pole.
- F. Notice. If either party becomes aware that the other party is not complying with the specifications in this Appendix, that party must send notice under Article XXIX to the other party identifying each known noncompliance. The other party must remedy the noncompliance within 90 days of its receipt of the notice or within the time mutually agreed by the parties in writing.
- G. Joint Use Contacts. Within ten days of the effective date of this Agreement, each party will provide the other with a list of persons who will serve as joint use contacts for this Agreement. Each party will endeavor to keep this list of contacts current by sending the other party updated information promptly after a contact changes.