

AGREEMENT FOR JOINT USE OF POLES

THIS AGREEMENT is made and effective this 23 day of April, 2020 by and between OTZ Telephone Cooperative, Inc., a corporation organized and existing under the laws of the State of Alaska, ("COMPANY"), and ALASKA ENERGY AUTHORITY, an instrumentality of the State of Alaska, (AEA)

WHEREAS, COMPANY and AEA desire to cooperate in the joint use of AEA poles erected or to be erected between Shungnak and Kobuk in the State of Alaska, where such joint use will be of mutual advantage and benefit to each.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the parties agree for themselves and their respective successors and assigns as follows:

ARTICLE I

SCOPE OF AGREEMENT

(a) This Agreement shall be effective on the Shungnak to Kobuk Inter Tie (the "Line") and shall cover all wood poles of the parties now existing or hereafter erected in the above territories when said poles are brought under this Agreement in accordance with the procedure set forth in this Agreement.

(b) AEA reserves the right to exclude any of its facilities from joint use if such poles, in AEA's judgment, are necessary for its sole use or if the poles will carry, or are intended by AEA to carry, circuits of such a character that in AEA's judgment the proper rendering of its service now or in the future makes joint use of such poles undesirable.

ARTICLE II

SPECIFICATIONS

(a) AEA does not warrant the condition or safety of any aspect of the Line, including poles or right of ways. Company will use the Line on an as-is, where-is basis, where AEA has no responsibility for the condition of any part of the line.

(b) Slack span tension shall not exceed 50 pounds under the heavy loading design condition

unless approved by AEA. Company shall provide separate guy anchors where and as required by AEA and shall not make attachments to any guy anchors placed by AEA.

ARTICLE III

DEFINITIONS

(a) For the purpose of this Agreement, the following terms shall have the following meanings:

(1) "JOINT POLE" is a pole jointly used by both parties.

(2) "NORMAL JOINT POLE" is a pole which is just tall enough to provide normal spaces, as normal space is defined in this Article, for the parties and just strong enough to meet the requirements of the specifications mentioned in Article II for the attachments ordinarily placed by the parties in their respective normal spaces. Such pole for the purpose of this Agreement shall be a 40-foot, Class 5 wood pole as classified by the pole classification tables of the American Standards Association.

(3) "SPACE" is the linear portion of the joint pole parallel to its axis reserved for the exclusive use of one of the parties (subject only to the exceptions provided for by the specifications mentioned in Article II which, in certain instances, permit the making of certain attachments by one party in the space reserved for the other party).

(4) "NORMAL SPACE" is the following-described space:

(i) For AEA, the uppermost eight (8) feet measured from the top of the pole.

(ii) For telephone and communication facilities, a space of five (5) feet at a sufficient distance below the space of AEA to provide at all times the minimum clearance required by the specifications mentioned in Article II and at a sufficient height above ground to provide the proper vertical clearance above roads or track rails for the lowest horizontally run lines wires or cables attached in such space.

(iii) For other non-telephone communications cables and facilities, a space of two (2) feet starting twelve (12) inches below the telephone and communication attachment(s), while maintaining proper clearance above roadways and other obstacles for the lowest horizontally run lines, wires, or cables attached in such space.

(5) "COST" as applied to new poles shall mean the cost in place. When this work is applied to existing poles, it shall mean the original cost less depreciation at the time cost becomes a

consideration; as in purchases, sales, net loss computations, etc.

(6) "NET LOSS" as applied to pole replacements shall mean the original costs less depreciations, plus the cost of removal minus the salvage value of the pole replaced.

(b) The assignment of space in this Article is not intended to preclude the use of vertical runs or the mounting of such equipment as terminals or meters on the lower portions of the pole where mutually acceptable.

ARTICLE IV

ESTABLISHING JOINT USE OF EXISTING POLES

(a) Before Company shall make use of any of the poles of AEA under this Agreement, it shall request permission therefore in writing and shall comply with the procedure set forth herein in this Article IV.

(b) If, in the judgment of AEA, joint use under the circumstances is undesirable, AEA shall have the right to reject the application.

(c) Any re-clearing of existing rights-of-way, and for the establishment of joint use hereunder, shall be performed by the parties as may be mutually agreed upon.

(d) All poles jointly used under this Agreement shall remain the property of AEA.

(e) In order that parties may effectively coordinate their efforts with respect to joint use of any pole lines to be constructed in the future, the parties shall, insofar as practicable, make known to each other its plans for future construction. The parties shall cooperate in planning such construction so that joint use may be accomplished in a manner mutually satisfactory to the parties within the objectives of the Agreement.

ARTICLE V

EASEMENTS AND RIGHTS-OF-WAY FOR COMPANY'S ATTACHMENTS

AEA shall be responsible for obtaining the easements and rights-of-way on the Shungnak to Kobuk Inter Tie. AEA does not warrant or assure Company any rights-of-way privileges or easements and if Company shall at any time be prevented from placing or maintaining its attachments on AEA's poles, no liability shall attach to AEA.

ARTICLE VI

MAINTENANCE OF POLES, ATTACHMENTS AND RIGHTS-OF-WAY

(a) As mentioned in Article II, AEA provides to Company the line on an as-is, where-is basis, and does not maintain the line in accordance with any specifications.

(b) The Company shall at all times maintain all of its attachments and shall keep them in safe conditions and in thorough repair.

ARTICLE VII

ABANDONMENT OF JOINTLY-USED POLES

(a) If AEA desired at any time to abandon any jointly-used pole, it shall give Company notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole. If at the expiration of said period, AEA shall have no attachments on such pole but Company shall not have removed all of the attachments therefrom, such pole shall thereupon become the property of Company, and Company shall save harmless as AEA from all obligations, liability damages, costs, expenses, or charges incurred thereafter, and not arising out of anything theretofore occurring, because of, or arising out of, the presence or condition of such pole or any attachments thereon; and shall pay AEA for such pole an amount as may be mutually agreeable to the parties, but in no case shall the payment exceed the net salvage value of the pole to AEA. AEA shall further evidence transfer to Company of title to the pole by means of a bill of sale.

(b) Company may at any time abandon the use of a joint pole by giving due notice thereof in writing to AEA and by removing therefrom any and all attachments it may have thereon. Company shall in such case pay to AEA the full rental for said pole for the then current year.

ARTICLE VIII

COMPENSATION

.No rental, fee or other compensation shall be paid by Company to AEA for the use of a pole of AEA.

ARTICLE IX
RIGHTS OF OTHER PARTIES

(a) If AEA, prior to the execution of this Agreement, has conferred, or hereafter confers, upon others not parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by this Agreement, nothing herein contained shall be construed as affecting such rights or privileges, and AEA shall have the right, by contract or otherwise, to continue to extend such existing rights or privileges.

(b) Where municipal regulations require AEA to allow the use of its poles for street lighting and fire alarm, police, or other like signal systems, such use shall be permitted under the terms of this Article, provided attachments of such parties are placed and maintained in accordance with the specifications mentioned in Article II.

ARTICLE X
ASSIGNMENT OF RIGHTS

Except as otherwise provided in this Agreement as to commonly controlled affiliates and subsidiaries, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the jointly-used poles, or the attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the other party, except to the United States of America or any agency thereof; provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, or privileges.

ARTICLE XI
WAIVER OF TERMS OR CONDITIONS

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

ARTICLE XII
PAYMENT OF TAXES

Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly-used poles. Any tax, fee or charge levied on AEA's poles solely because of its use by Company shall be

paid by Company.

ARTICLE XIII
ARTICLES AND PAYMENTS

Any amounts to be paid by one party to the other under this Agreement shall be due and payable within thirty (30) days after an itemized statement shall have been presented to the party required to make such payment.

ARTICLE XIV
SERVICE OF NOTICES

Whenever in this Agreement notice is provided to be given by either party to the other, such notice shall be in writing and given by a letter mailed or personally delivered to COMPANY at the offices of:

OTZ Telephone Cooperative
Attention: **Kelly Williams**
PO Box 324
Kotzebue, Alaska 99752

and addressed to AEA at:

ALASKA ENERGY AUTHORITY
Attention: Executive Director
813 W. Northern Lights Blvd.
Anchorage, Alaska 99503

or to such other address as either party may from time to time designate in writing for that purpose.

ARTICLE XV
LIABILITY AND DAMAGES

Whenever liability is incurred by either or both of the parties for damages or injuries to employees or for injury to the property of either party, or for damages or injuries to other persons or their property, and such damages or injuries arise out of the joint use of poles under this Agreement, which joint use is understood to include the wires and fixtures of the parties attached to the jointly-used poles covered by this Agreement, the

liability for such damages or injuries between the parties shall be as follows:

(a) Each party shall be liable for all damages for such injuries to persons or property caused by its negligence or by its failure to comply at any time with the specifications referred to in Article II.

(b) Each party shall be liable for its proper portion of damages for injuries to its own employees or its own property that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence or fault of any other party.

(c) Each party shall be liable for the proper portion of all damages for injuries to persons other than employees of either party, and for the proper portion of all damages for injuries to property not belonging to either party that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence or fault of the other party.

(d) Where, on account of injuries of the character described in the preceding paragraphs of this Article, either party hereto shall make any payments to injured employees or to their relatives or representative in conformity with:

(1) the provisions of any Workers Compensation Act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of employment, whether based on negligence on the part of the employer or not, or

(2) any plan for employee's disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them; such payments shall be construed to be damages within the terms of paragraphs (a) and (b) shall be paid by the parties hereto accordingly.

(e) All claims for damages arising under this Agreement that are asserted against or affect both parties shall be jointly dealt with by the parties.

(f) In the adjustment between the parties hereto of any claim for damages arising under this Agreement, the liability assumed by the parties shall include, in addition to the amounts paid to the claimant, all expenses incurred by the parties including but not limited to costs, attorney's fees, disbursements and other charges and expenditures.

ARTICLE XVI
INDEMNIFICATION

To the extent not prohibited by law, the Company shall, and hereby agrees to, defend, indemnify and hold harmless AEA and each of its officers, directors, employees and agents (each, an "Indemnitee") against and in respect of any loss, liability, damage, claim, demand, or settlement or any nature or kind, including without limitation all reasonable costs and expenses incurred (legal, accounting or otherwise) (collectively, "Damages") arising out of, resulting from or based upon any pending or threatened claim or suit by any third party (a "Claim") based upon injuries or damage or death to any person or property or the environment arising out of or in connection with this agreement that are the result of or arising out of Company's actions or omissions, including negligence or willful acts, breach of applicable law, or breach of representations or covenants made in this agreement.

ARTICLE XVII

RESPONSIBILITY FOR ENVIRONMENTAL HAZARDS

AEA shall in no event be liable to Company for any costs whatsoever resulting from the presence or release of any environmental hazard that AEA did not cause or contribute to the work location. The Company hereby releases, and shall also indemnify, defend and hold harmless AEA and each of AEA's officers, directors and employees from and against any losses and expenses that arise out of or result from any environmental hazard that the Company, its contractors, or its agents introduce to the work locations. An environmental hazard means any substance the presence, use, transport, abandonment or disposal of which requires investigation or remediation under any applicable law or poses risks to human health or the environment and is regulated under any applicable law.

ARTICLE XVIII

DEFAULTS

(a) If either party shall default in any of its obligations under this Agreement and such default continues for thirty (30) days after notice in writing by the other party, the party not in default may suspend the rights of the party in default set forth in this Agreement. If such default shall continue for a period of sixty (60) days after such suspension, the party not in default may terminate this Agreement.

(b) If either party shall default in the performance of any work which it is obligated to do under this Agreement at its sole expense, the other party may elect to do such work and the party in default shall reimburse the other party for the cost of such work. Failure on the part of the defaulting party to make such

payment within thirty (30) days after presentation of bills for such work shall, at the election of the other party, constitute a default under Section (a) of this Article.

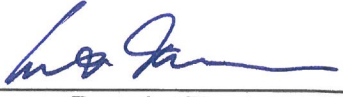
ARTICLE XIX
TERMINATION

Subject to the provisions of Article XVIII herein, this Agreement shall continue in full force and effect until terminated by either party on or at any time after the first day of the effective date of this Agreement, upon not less than one year's notice in writing to the other party, provided that notwithstanding such termination, this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

Dated: 4/23/2020

OTZ TELEPHONE COOPERATIVE
By: 
Its: **Mark Iten**
Network Admin

Dated: 5/4/20

ALASKA ENERGY AUTHORITY
By: 
Its: **Executive Director**
Carter W. Thayer

STATE OF ALASKA)
3rd JUDICIAL DISTRICT) : ss

THIS IS TO CERTIFY that on this 23rd day of April, 2020 before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Mark Allen, to me known to be the Network Admin of OTZ Telephone Cooperative and he executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said entity, along with its commonly controlled affiliates and subsidiaries, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Asanya Lloyd
Notary Public for the State of Alaska
My Commission Expires: 11/18/2020

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) : ss

THIS IS TO CERTIFY that on this 4th day of May, 2020, before me, the undersigned, a notary public in and for the state of Alaska, duly commissioned and sworn as such, personally appeared Curtis W. Thayer, to me known to be the Executive Director of ALASKA ENERGY AUTHORITY and (s)he executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that (s)he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Krin M. Kemppainen
Notary Public for the State of Alaska
My Commission Expires: with office