

JOINT USE AGREEMENT
BETWEEN
STEUBEN COUNTY REMC
AND
FRONTIER NORTH INC.

DATED
JANUARY 1, 2010

Agreement for Joint Use of Poles

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AGREEMENT FOR JOINT USE OF POLES

THIS AGREEMENT FOR JOINT USE OF POLES, [the "Agreement"] effective on or about January 1, 2010 ("Effective Date"), is made and entered into by and between Steuben County REMC, a rural cooperative power company incorporated in the State of Indiana, having its principal office at 1385 South Old US 27, PO Box 359 Angola, Indiana 46703, (the "Power Company") and Frontier North Inc., a corporation of the State of Wisconsin, having its principal office at 8001 West Jefferson Blvd. Fort Wayne, Indiana 46804 (the "Telephone Company").

ARTICLE 1 SCOPE OF AGREEMENT

- 1.1 **Scope.** This Agreement shall be in effect in the areas in which both of the parties render service in the State of Indiana, and shall cover all poles now existing or hereafter erected in such areas when such poles are brought hereunder in accordance with this Agreement.
- 1.2 **Exclusion of Poles.** Each party reserves the right to exclude from joint use, poles which in Owner's sole discretion are necessary for its own sole use.

ARTICLE 2 DEFINITIONS

For the purpose of this Agreement, the following terms shall have the respective meanings set forth below:

- 2.1 **Actual Cost** – the cost actually and reasonably incurred by a party for material and labor associated with a project.
- 2.2 **Attachment** - any wire, cable, strand, material or apparatus, affixed to a Joint Use Pole now or hereafter used by either party in the construction, operation or maintenance of its plant, but excluding pedestals, pole numbers, warning signs and multi-neutral ground connections.
- 2.3 **Business Day** - A weekday which excludes Saturdays, Sundays and major holidays. A twenty-four hour period is considered one day.
- 2.4 **Design Specifications** – as defined in Section 3.1.
- 2.5 **Joint User** - the party having the right under this Agreement to make Attachments to a Joint Use Pole that the other party owns.
- 2.6 **Joint Use Pole** - a pole jointly used by both parties. However, a pole owned by one party which is used by the other party only for pedestals, pole numbers, warning signs or multi-neutral ground connections shall not constitute a Joint Use Pole.

- 2.7 **NESC** - the National Electrical Safety Code, as amended from time to time.
- 2.8 **Net Book Value** – the average, original, installed cost of all Owner's bare poles, excluding appurtenance costs, of the same height and installed in the same vintage year as the pole in question, less the accumulated depreciation amount according to Owner's financial reporting depreciation methodology.
- 2.9 **Operating Routine** – as defined in Section 22.1.
- 2.10 **Owner** - the party owning the Joint Use Pole.
- 2.11 **Pole Space Allocation** - the linear portion of a Standard Joint Use Pole parallel to its axis for the use of each party for the placement of its facilities as follows:
- 2.11.1 **For Power Company**, the exclusive use of eight (8) feet of space measured downward from the top of the pole.
- 2.11.2 **For Telephone Company**, the exclusive use of two (2) feet of space measured upward from a point for attachment on the pole that shall provide normal clearance to ground for the lowest horizontally run line wire or cable attached in such space and shall conform to the specifications referred to in this Article 2 and Article 3.
- 2.11.3 The allocation of space for each party is not intended to preclude the use of vertical runs or the mounting of equipment such as terminals or meters on the lower portions of the pole.
- 2.12 **Standard Joint Use Pole** - a pole, which is just tall enough to provide normal spaces for the parties, and just strong enough to meet the specifications set forth in Article 3 for the attachments ordinarily placed by the parties. Such pole for purposes of this Agreement shall be a 40-foot class 4 wood pole as classified by the pole classification tables of the American Standards Association.
- 2.13 **Third Party Attachment (Attacher)** - an Attachment made to a Joint Use Pole by a person not a party to this Agreement (Attacher) and who is not an affiliate of either party.
- 2.14 **Transfer of Attachments** - the removal of Attachments from one pole and placing them upon a replacing pole.

ARTICLE 3 SPECIFICATIONS

- 3.1 **Design Specifications.** Owner and Joint User shall comply with the NESC, generally accepted industry standards, and any other applicable laws, statutes, ordinances, codes, rules, and regulations promulgated by any federal, state, county, local or other governmental authority having jurisdiction regarding the installation, maintenance, removal and disposal of poles, attachments and equipment (collectively hereafter referred to as the "Design Specifications"). If differences in standards exist, the most stringent shall apply.

- 3.2 **Wood Poles.** Wood poles shall comply with American Standards Association specifications and have a preservative treatment in accordance with good modern practice at the time of installation.
- 3.3 **Pre-Existing Attachments.** Poles having Attachments prior to this Agreement, providing that their installation conformed to the specifications in effect at the time the original Attachment was made, shall not be replaced or Attachments rearranged solely to comply with any new Design Specifications, unless compliance with such new Design Specifications is required by law. The foregoing does not prohibit the replacement of a pole by mutual agreement if compensation is made in accordance with Article 11 – Division of Costs.
- 3.4 **Construction Specifications.** Representatives of each party shall agree to construction specifications for Joint Use Poles and Attachments within one hundred twenty (120) days of the Effective Date and such specifications (as amended from time to time by mutual agreement by the parties) shall be used as a guide for the parties' construction practices under this Agreement. Such specifications shall apply only to construction that occurs after promulgation of such specifications or any amendment thereto.
- 3.5 **Notice.** In the event Owner becomes aware of existing joint use construction of Joint User that does not conform to the Design Specifications, Owner shall send written notice to Joint User identifying each known non-conformity. Joint User shall bring such items into conformity within a reasonable time frame.
- 3.6 **Cost.** The Actual Cost of bringing existing joint use construction into conformity with the Design Specifications shall be borne by the parties in the manner provided in Article 11 – Division of Costs.

ARTICLE 4 ESTABLISHING JOINT USE OF EXISTING POLES

- 4.1 **Existing Poles.** Either party may make use of the poles of the other provided each pole to be so used is adequate to carry the existing Attachments and the Attachments which the other party plans to place on the pole.
- 4.2 **Service.** In the event customer service is involved, notice via verbal, facsimile, or other electronic means where mutually agreed upon, may be given between the parties and a response to the notice of construction shall be given to the other party and such other party shall respond to such notice within forty-eight (48) hours. If such other party requests space on the proposed pole facilities and if the character and number of its circuits and Attachments are such that the party proposing to construct the new pole facilities considers joint use desirable, and then it shall erect poles suitable for such joint use. Each party shall perform work required in this Article 4 promptly and in such manner as not to interfere with the service of the other party.
- 4.3 **Insufficient Pole Space.** Whenever any Joint Use Pole or any pole about to be so used is insufficient in height or strength for the existing Attachments and for the proposed additional Attachments, Owner shall promptly replace such pole with a new

pole of adequate height and strength to support the existing and proposed additional Attachments and shall make such other changes in the existing pole line of which such pole is a part as the conditions may then require.

- 4.4 **Loading and Trimming.** Each party shall place, transfer and rearrange its own Attachments, place guys and anchors to sustain any unbalanced loads caused by its Attachments, and perform any tree trimming or cutting incidental thereto. Anchors and guys shall be in place prior to the installation of any Attachments.
- 4.5 **Cost.** The Actual Cost of establishing joint use on existing poles, including any necessary pole replacements, shall be borne by the parties in the manner provided in Article 11 - Division of Costs.

ARTICLE 5 ESTABLISHING JOINT USE OF NEW POLES

- 5.1 **New Poles.** Whenever either party requires new pole facilities for an additional pole line, an extension of an existing pole line, or in connection with the reconstruction of an existing pole line, it shall notify the other party to that effect in writing (verbal notice subsequently confirmed in writing may be given in cases of emergency) stating the proposed location and character of the new poles and the character of the circuits it intends to use thereon and indicating whether or not such pole facilities shall be, in the estimation of the party proposing to construct the new pole facilities, susceptible of joint use. Within thirty (30) days of such notice, the other party shall reply in writing, stating whether it desires space on said poles and, if it does desire space, the character of the circuits it desires to place.
- 5.2 **Service.** In the event customer service is involved, notice via verbal, facsimile, or other electronic means where mutually agreed upon, may be given between the parties and a response to the notice of construction shall be given to the other party and such other party shall respond to such notice within forty-eight (48) hours. If such other party requests space on the proposed pole facilities and if the character and number of its circuits and Attachments are such that the party proposing to construct the new pole facilities considers joint use desirable, and then it shall erect poles suitable for such joint use. Each party shall perform work required in this Article 5 promptly and in such manner as not to interfere with the service of the other party.
- 5.3 **Loading and Trimming.** Each party shall place its own Attachments on the new Joint Use Poles and place guys and anchors to sustain any unbalanced loads caused by its Attachments, and perform any tree trimming or cutting incidental thereto. Anchors and guys shall be in place prior to the installation of any Attachments.
- 5.4 **Cost.** The Actual Cost of erecting poles suitable for joint use shall be borne by the parties in the manner provided in Article 11 - Division of Costs.

ARTICLE 6 RIGHTS-OF-WAY AND EASEMENTS

- 6.1 **Rights-of-Way and Easements.** Owner and Joint User shall endeavor to secure and shall cooperate insofar as may be practicable in obtaining rights-of-way or easements which will permit use of such easements for both parties and their licenses and assignees. The parties do not warrant or assure to each other any right-of-way privileges or easements and if a party shall at any time be prevented from placing or maintaining its Attachments, no liability on account thereof shall attach to the other party.
- 6.2 **Joint User's Obligation.** If such permission is not obtained and/or Joint User's right to attach to a pole is reasonably challenged, Joint User shall obtain authority on its own behalf from property owners, municipalities and other persons as necessary for its Attachments. If Joint User is unable to secure such permission within six (6) months of such challenge, Owner may upon thirty (30) days notice in writing to Joint User, require Joint User to remove its Attachments from the poles involved, and Joint User shall, within thirty (30) days after receipt of such notice, remove its Attachments at its sole expense.

ARTICLE 7 MAINTENANCE OF POLES AND ATTACHMENTS

- 7.1 **Maintenance.** Owner shall, at its sole expense, other than for Actual Costs provided for in this Article 7, maintain all its Joint Use Poles in a safe and serviceable condition and in accordance with the specifications set forth in Article 3 and shall replace, reinforce or repair any that become defective. In case of emergency, with the giving of verbal notice, Joint User may replace such Joint Use Poles, anchors and guys as may be considered necessary for public safety or the restoration of Joint User's service, in which case Owner shall reimburse Joint User's Actual Costs.
- 7.2 **In-Place Replacement.** When replacing a Joint Use Pole that is carrying one or more terminals of aerial cable, underground connection, or transformer equipment, consideration shall be given to the transfer of same in placement of the new pole, and the new pole shall normally be set adjacent to the replaced pole unless special conditions make it necessary or mutually desirable to set it in the same hole from which the old pole was removed. If one of the parties requires that the replacement pole be placed in a specific location so as to fit equipment on the existing poles, such details shall be in written notice to the other party. A joint field meeting may be required to work out details of such a request. The party requiring such specific location shall pay the other party's Actual Costs because of such requirement.
- 7.3 **Notice.** Whenever it is necessary to replace or relocate a Joint Use Pole, Owner shall give thirty (30) days written notice to Joint User specifying the time of such proposed replacement or relocation and the need for Joint User to transfer its Attachment. If Owner's customer service is involved, two (2) days notice shall be given. In case of emergency, verbal notice may be given and subsequently confirmed in writing.
- 7.4 **Change in Pole Ownership.** If the Joint Use Pole is not subject to a transfer and/or relocation agreement between the parties per Article 8 and if Joint User fails to transfer its Attachments within sixty (60) days after the later of the notice specified in Section 7.3 above or the removal of all Third Party Attachments, Owner may elect to

relinquish the ownership of the old pole from which it has removed its Attachments. If Owner so elects, Owner shall notify Joint User in writing of the ownership change and such old pole shall thereupon become the property of Joint User. Joint User shall save harmless and indemnify the former Owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything occurring prior to the time notice of the ownership transfer is given, because of, or arising out of, the presence or condition of such pole or of any Attachments thereon.

- 7.5 **Tree Trimming.** All tree and vegetation trimming required on account of a party's equipment and/or Attachments shall be done by that party at its expense and in a manner in accordance with that party's practices and specifications.
- 7.6 **Notice.** Owner shall send written notification to Joint User identifying existing joint use construction of Joint User that does not conform to the specifications set forth in Article 3. Joint User shall bring those items into conformity within a reasonable time frame. When the construction is brought into conformity with said specifications, it shall at all times be maintained in compliance with said specifications.
- 7.7 **Cost.** The Actual Cost of maintaining poles and Attachments and of bringing existing joint use construction into conformity with said specifications shall be borne by the parties hereto in the manner provided in Article 11 - Division of Costs.

ARTICLE 8 TRANSFERS AND RELOCATIONS OF TELEPHONE FACILITIES

- 8.1 **Power Company Election.** To provide maximum flexibility in meeting in-service requirements and to eliminate duplicative efforts, Power Company, subject to Telephone Company's agreement, may elect to provide labor and equipment for the transfer and/or relocation of Telephone Company's facilities located on Joint Use Poles. Power Company shall not provide any materials required for such relocations and/or transfer.
- 8.2 **Local Arrangements.** Power Company's assumption of transfer and/or relocation work is voluntary and shall be determined by agreement between Power Company's construction center and Telephone Company's corresponding unit manager location. Both parties shall provide written notification to ensure participation is agreeable. Power Company construction centers and Telephone Company unit manager locations shall coordinate specific geographic locations for each agreement. Participation shall be in accordance with the terms and conditions set forth in this Article 8.
- 8.3 **Notice.** If Telephone Company's Attachments on a Joint Use Pole are not relocated due to Power Company's inability or decision not to do so and Power Company desires Telephone Company to relocate those Attachments, Power Company shall so advise Telephone Company using the form attached as Appendix C.
- 8.4 **Payment.** Power Company shall submit quarterly to Telephone Company an itemized bill for all work completed during the prior month. Telephone Company shall pay the amount shown in Appendix A for the transfer or relocation of its

Attachments.

ARTICLE 9 ABANDONMENT OF JOINT USE POLES

- 9.1 **Abandonment by Owner.** If Owner intends to abandon a Joint Use Pole, it shall give Joint User notice, using the form attached as Appendix C, of such intent at least sixty (60) days prior to the date on which it intends to abandon such pole. If at the expiration of such period, Joint User has removed all of its Attachments, Owner may proceed with disposal of such pole. If at the expiration of said period, Owner has no Attachments thereon and Joint User has not removed its Attachments, the pole shall thereupon become the property of Joint User. Joint User shall save harmless and indemnify the former Owner of such pole from all obligation, liability, damages, Actual Costs, expenses or charges incurred thereafter, and not arising out of anything which occurred prior to the expiration of said period, because of, or arising out of, the presence or condition of such pole or of any Attachments. The new Owner shall be responsible for re-tagging the pole. Any Third Party Attachments on the pole shall come under the license agreement between new Owner of the pole and the third party as of the date of transfer to new Owner.
- 9.2 **Abandonment by Joint User.** Joint User may at any time abandon the use of a Joint Use Pole by removing all Attachments it may have on the pole and advising Owner of its abandonment and of the locations using the form attached as Appendix C.

ARTICLE 10 PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

- 10.1 **Notice.** If either party desires to change the character of its circuits on jointly used poles in such a manner as could reasonably be deemed to have an adverse effect on the other party's ability to render service, the party desiring to make such change shall give ninety (90) days' written notice to the other party prior to such contemplated change or sooner if possible. The parties shall then cooperate in determining (1) the conditions under which Joint Use may be continued on a mutually satisfactory basis, or (2) the most practical and economical method of providing for separate lines.
- 10.2 **Separate Lines.** In the event separate lines are required, the party whose circuits are to be removed from the joint poles shall promptly carry out the necessary work.

ARTICLE 11 DIVISION OF COSTS

- 11.1 New Joint Use Poles.** The Actual Cost of erecting new poles and pole lines for joint use and for making existing non-Joint Use Poles suitable for joint use shall be borne by the parties as follows:
- 11.1.1 Standard or Smaller Poles.** A Standard Joint Use Pole or Joint Use Pole shorter and/or weaker than a Standard Joint Use Pole shall be erected at the sole expense of Owner.
 - 11.1.2 Larger Pole - Owner Requirement.** A pole taller and/or stronger than the Standard Joint Use Pole, the extra height or strength of which is due solely to Owner's requirements, including to accommodate Third Party Attachments, and requirements associated with keeping Owner's wires clear of trees and/or vegetation, shall be erected at the sole expense of Owner.
 - 11.1.3 Larger Pole – Joint User Requirement.** In the case of a pole taller and/or stronger than the Standard Joint Use Pole, the extra height or strength of which is due solely to Joint User's requirements, including requirements as to keeping Joint User's wires clear of trees and/or vegetation, Joint User shall pay to Owner a sum equal to the difference between the Actual Cost in-place of the new pole and the Actual Cost in-place billing of a Standard Joint Use Pole.
 - 11.1.4 Larger Pole – Other.** In the case of a pole taller and/or stronger than the Standard Joint Use Pole, the extra height or strength of which is due to the requirements (1) of both parties, (2) for proper ground clearance, (3) of public authorities, (4) of property owner on whose land the pole is located, or (5) by law, the difference between the in place billing value of such replaced pole and the in place billing value of a Standard Joint Use Pole shall be shared equally by Joint User and Owner. The rest of the expense of erecting such pole shall be borne by Owner.
 - 11.1.5 Joint User Requirements.** A pole, including all appurtenances or fixtures, erected between existing poles to provide sufficient clearance and furnish adequate strength to support the circuits of both Owner and Joint User, which would have been unnecessary to erect if joint use had not been undertaken, shall be erected at the sole expense of Joint User.
- 11.2 Replacement of Existing Joint Use Poles.** The Actual Cost of replacing existing Joint Use Poles shall be borne by the parties as follows:
- 11.2.1 Joint User Requirements.** Where an existing Joint Use Pole, which had been found by Joint User satisfactory for joint use when Joint User attached to the pole, is replaced by a new pole solely for the benefit of Joint User, Joint User shall pay Owner the Actual Cost of said pole replacement, less the salvage value of the replaced pole. Joint User's available space on the replaced pole shall be as defined in Section 2.11. Owner shall remove and shall retain ownership of the replaced pole.

- 11.2.2 **Other Requirements.** Where an existing Joint Use Pole is replaced for any other reason, including maintenance requirements, the Actual Costs shall be borne by the parties as set forth in Section 11.1 and its Subsections.
- 11.3 **No Ownership.** Any payments for poles or anchors made by Joint User under any foregoing provision of this Article 11 are in lieu of increased rental payments and shall not entitle Joint User to the ownership of any part of said poles or anchors for which it has contributed in whole or in part.
- 11.4 **Joint User Costs.** Each party shall place, maintain, rearrange, transfer and remove its own Attachments at its own expense except as otherwise expressly provided in this Agreement.
- 11.5 **Pole Top Extensions.** The Actual Cost of any pole top extension fixture required shall be provided and installed at the sole expense of the party using it.

ARTICLE 12 RENTAL PAYMENTS

- 12.1 **Rental Year.** For purposes of this Agreement, a Rental Year shall be a calendar year from January 1 to the succeeding December 31.
- 12.2 **Rent Amount.** Joint User shall compensate Owner annually, for those poles on which space is occupied by Joint User as of December 1 of the current Rental Year and for which rent is payable, in an amount per pole as provided in Appendix A. The rent amounts are set in recognition that a differential exists in usable pole space and facilities required by Telephone Company and Power Company, and in agreement that the expenses of providing joint facilities should be equitably apportioned to each party.
- 12.3 **Pole Numbers.** Each party shall submit to the other, on or before December 31 of each year for the current Rental Year, a determination of the number of poles subject to this Agreement on which space was occupied by such other party as of the preceding December 1. If a party takes exception to the number of poles submitted by the other party, such party shall notify the other party within thirty (30) days of receipt. If any such exception cannot be otherwise resolved, either party may demand a joint inspection of the poles in dispute and records pertaining thereto. If the parties are not able to resolve any such exceptions by the next billing date, the number that was in effect prior to the dispute shall be used until such resolution is accomplished, at which time a retroactive adjustment shall be made if necessary.
- 12.4 **Billing.** The net rental due between the parties shall be set forth in an itemized bill rendered on or about February 15th of each year for the preceding Rental Year. All such bills shall be paid within forty-five (45) days of receipt.
- 12.5 **Review and Readjustment.** At the expiration of five (5) years from the Effective Date, and at the end of every five (5) year period thereafter, the annual rental per pole per annum shall be subject to readjustment upon notice by either party, not later than one hundred eighty (180) days before the end of any such five (5) year period.

The new annual rental amounts shall apply effective the next annual billing following the parties' mutual agreement as to the rental amount.

ARTICLE 13 INVENTORY REQUIREMENTS

- 13.1 **Inventory Frequency.** The parties shall participate in an inventory of Joint Use Poles, as mutually agreed by both parties, at their own expense, no more often than every five (5) years.
- 13.2 **Inventory Method.** Such inventory may be conducted either: (a) by joint physical inventory, utilizing employees or representatives of each party, (b) by a contractor that is mutually agreed upon in writing by the parties (referred to hereinafter as "Joint Contractor"), or (c) by another method, mutually agreed upon by the parties in writing.
- 13.3 **Joint Contractor.** When a Joint Contractor is to be used, the parties may require a bid process to determine the lowest price available. The parties shall have no obligation to use the contractor submitting the lowest bid to perform the inventory, but shall select the Joint Contractor who, in the parties' reasonable judgment, can best perform the inventory on accurately and cost-effectively. During the inventory, the parties shall, from time to time, review and/or sample the Joint Contractor's work to assess whether the inventory is being performed accurately.
- 13.4 **Support and Costs for Inventory.** Each party shall provide the necessary maps and any other documents and assistance necessary to efficiently and cost effectively conduct the inventory. Each party will bear its own internal expenses for a joint field inventory. Unless the parties otherwise agree in writing before any field work starts, if a joint contractor is used, the parties will split the joint contractor's inventory expenses in the same ratio as their respective use of the inventoried poles based on the results of that joint inventory in relation to the sum of the total number of inventoried poles used by each party. (For example, if the inventory results show that Party A is on X number of the inventoried poles and Party B is on Y number of the inventoried poles, Party A will pay $X/(X+Y)$ percent and Party B will pay $Y/(X+Y)$ percent of the joint contractor's expenses. Each party may seek reimbursement of its costs from third-party attachers on its poles.
- 13.5 **Audit.** Each party shall have the right to audit the results and determinations of the inventory count.

ARTICLE 14 TRANSFER OF OWNERSHIP

- 14.1 **Pole Sale & Purchase.** If one party purchases poles from the other party, the price to be paid shall be determined as described in Section 14.2. Each party shall obtain, at its expense, the approval of any governmental agency having jurisdiction over such party's part of the transaction.

- 14.2 **Proposal and Price.** When ownership of poles is to be transferred, a mutually approved proposal in accordance with Owner's normal selling policy shall be prepared to cover such transfer. Payments for such poles by the purchaser shall be made at the time of purchase. The purchaser shall pay Owner the Net Book Value of each pole.
- 14.3 **Bill of Sale.** A Bill of Sale in the form of Appendix D shall be required for the transfer of ownership of all poles. The transferring party shall also obtain any necessary mortgage releases if the poles to be transferred are subject to any mortgage, and shall submit such releases to the other party.

ARTICLE 15 PAYMENT OF TAXES

- 15.1 Each party shall pay all taxes and assessments lawfully levied on its own property upon Joint Use Poles. The taxes and the assessments, which are levied on Joint Use Poles shall be paid by Owner thereof. Any tax, fee, or charge levied on Owner's poles solely because of their use by Joint User shall be paid by Joint User.

ARTICLE 16 BILLS AND PAYMENT FOR WORK

- 16.1 Unless specifically provided for elsewhere in this Agreement, upon the completion of work performed under this Agreement by either party, the expense of which is to be borne wholly or in part by the other party, the party performing the work shall present to the other party within ninety (90) days after the completion of such work an itemized bill of the Actual Costs; and such other party shall pay within forty-five (45) days of receipt of the bill.

**ARTICLE 17
TERM OF AGREEMENT**

- 17.1 **Term.** This Agreement shall continue in full force and effect for a period of five (5) years from the Effective Date, and shall continue year to year thereafter until terminated by either party by giving written notice to the other party one (1) year before the effective termination date.
- 17.2 **Scope of Termination.** Termination of this Agreement shall affect only the granting of future joint use rights. Attachments existing at the effective termination date shall continue thereafter under the terms of this Agreement and this Agreement shall remain in full force and effect with respect to such Attachments.

**ARTICLE 18
DEFAULT**

- 18.1 **Suspension, Termination.** If either party is in substantial default in any of its obligations under this Agreement, excepting default in the payment of disputed charges, and such default continues sixty (60) days after notice thereof by the other party, the party not in default may suspend the granting of future joint use on non-joint poles. If such default continue for a period of ninety (90) days after such suspension, the party not in default may terminate this Agreement insofar as concerns the future granting of joint use on non-joint poles.
- 18.2 **Option to Perform Work in Default.** If the default is for the performance of work either party is obligated to do under this Agreement, and such default continues sixty (60) days after notice thereof by the other party, the other party may elect to do such work, and the party in default shall reimburse the other party for its Actual Costs.

**ARTICLE 19
THIRD PARTY ATTACHMENTS**

- 19.1 **Third Party Attachments.** Owner may grant to others, not parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by this Agreement, but any such rights or privileges, whether granted prior or subsequent to the execution of this Agreement, shall at all times and in all respects be subject and secondary to the primary rights of the Telephone Company and the Power Company.

- 19.2 **Third Party Reimbursement.** Owner shall require each Third Party Attacher to pay in advance to Joint User all costs incurred by Joint User due to such party's occupancy of the pole or to accommodate such party. In the event that such party fails to pay in advance to Joint User within ninety (90) days of Joint User's submission of its invoice to such party, Joint User may resubmit its invoice to Owner, and Owner shall have the affirmative obligation to make such reimbursement to Joint User. Joint User reserves the right to withhold performance of such work for the benefit of a third party until payment is made to Joint User. Such withholding of performance will not constitute breach of any of Joint User's duties under this Agreement.

ARTICLE 20 ASSIGNMENT OF RIGHTS

- 20.1 **No Assignment.** Except as otherwise provided in this Agreement, neither party shall assign or otherwise dispose of this Agreement or any of its rights or interests to any firm, corporation or individual, except to a party's own parent, affiliate or successor corporation, without the written consent of the other party. However, such consent shall not be unreasonably withheld.
- 20.2 **Exceptions.** Nothing herein shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges or franchises, or to lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation; and in case of the foreclosure of such mortgage, or in case of such lease, transfer, merger or consolidation, such parties rights and obligations hereunder shall pass to and be acquired and assumed by the purchaser on foreclosure, or the transferee, lessee, assignee, merging company, or consolidating company.
- 20.3 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives, whether by merger, consolidation or otherwise.

ARTICLE 21 NOTICES

- 21.1 **Notice.** Any notice required to be given pursuant to this Agreement shall be in writing and delivered, postage prepaid, by (a) deposit in the United States mail, (b) express or overnight mail, (c) certified or registered mail, return receipt requested, or (d) personal delivery. The addresses for such notice shall be:

21.1.1 To Power Company:

Steuben County REMC
Director of Operations & Engineering
1385 S Old 27
P.O. Box 359
Angola, IN 46703

21.1.2 To Telephone Company:

Frontier North Inc
Joint Use Administrator - INIFAOJ
8001 W. Jefferson Blvd
Fort Wayne, IN 46804

- 21.2 **Receipt.** Notice shall be deemed received five (5) days after deposit into the United States mail, one (1) day after deposit into express or overnight mail, on the day shown on the certified or registered mail receipt, or on the day of personal delivery.

ARTICLE 22 OPERATING ROUTINES AND PRACTICES

- 22.1 **Operating Routine.** The parties may prepare such supplemental operating routines and/or working practices ("Operating Routine") as they mutually agree in writing to be necessary or desirable for effective administration of this Agreement.
- 22.2 **Agreement Governs.** In the event of a conflict between the terms of the Operating Routine and this Agreement, the terms of this Agreement shall control.
- 22.3 **Joint Use Contacts.** Within ten (10) days of the Effective Date, each party shall provide the other with a list of persons who shall serve as joint use contacts for this Agreement. Each party shall endeavor to keep this list of contacts current and provide updated information if such information changes.

ARTICLE 23 INDEMNITY, LIABILITY and DAMAGES

- 23.1 **Liability for Damages.** Whenever any liabilities, losses, costs, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including all judgments rendered against, fines or penalties incurred by either or both of the

parties hereto, or their respective employees, agents, contractors or subcontractors, including without limitation, injuries to persons, including disease or death, or damage to property, arising out of the joint use of poles under this Agreement, including the location of said poles, the liability for such damages, as between the parties hereto, shall be as set forth in this Article 23.

23.2 Sole Negligence – Other Persons. Each party shall be liable for all damages for such injuries to persons other than employees of either party, or to property, caused by its sole negligence or by the sole negligence of its contractors or subcontractors or by its sole failure to comply at any time with the specifications referred to in Article 3 or solely by its contractor's or subcontractor's sole failure to comply at any time with the specifications referred to in Article 3, and shall indemnify, protect and hold harmless the other party in any such instance.

23.3 Concurrent Negligence – Other Persons. Each party shall be liable for its proportionate determined share of negligence or fault for all damages for such injuries to persons other than employees of either party, and its proportionate determined share of negligence or fault for all damages for such injuries to property that are caused by the concurrent negligence of both parties hereto, the concurrent negligence of both parties respective contractors or subcontractors, the concurrent negligence of a party and the other party's contractor or subcontractor, or that are due to causes which cannot be traced to the sole negligence of either party, and each party shall indemnify, protect and hold harmless the other party for such liability in any such instance.

23.4 Employees. In the case of damages for injuries to employees of either party, which are due to the sole negligence of one party or the concurrent negligence of both parties, including a party's or its contractor's or subcontractor's sole failure to comply at any time with the specifications referred to in Article 3, where a party cannot be joined in a trial of the cause because of the existing Workers' Compensation laws or similar plan for employees' disability and death benefits, each party shall be liable for that percentage of the damages attributable to its proportionate share of negligence or fault. Each party expressly agrees as the employer of the injured employee in such cases to indemnify the other party as the non-employer for such proportionate share of damages as is determined not to be attributable to such other party's negligence or fault, which shall include all negligence or fault attributable to the employer and its officers, agents, subcontractors and employees, including the injured employee. The other party as non-employer shall be liable only for the proportionate share of damages attributable to its own negligence or fault and that of its employees, agents, subcontractors and employees.

23.5 Damage Payments to Employees. Where, on account of injuries of the character described in this Article 23, either party shall make any payments to injured employees or their relatives or representatives in conformity with the provisions of any Workers' Compensation laws or similar plan for employees' disability and death benefits, whether based on negligence on the part of the employer or not, such payments shall be construed to be damages within the terms of this Article 23, and shall be paid by the parties accordingly.

23.6 Proportionate Share. The proportionate share of negligence or fault of each party, including a party's contractor or subcontractor, shall be established by agreement

between the parties, or failing agreement by Alternative Dispute resolution, or by a finding of a court of competent jurisdiction with a procedural mechanism for apportioning fault.

23.7 **Expenses.** In the adjustment between the parties of any claim for damages arising hereunder, the liability assumed hereunder by the parties shall include, in addition to the amounts paid to the claimant, all expenses incurred by the parties in connection therewith, which shall include Actual Costs, attorneys' fees, disbursements and other proper charges and expenditures.

23.8 **Severability and Indemnity.** To the extent any of the provisions of this Article 23 should be determined to be contrary to law or held to be invalid by any court of competent jurisdiction, this Article shall be construed and applied as if such invalid provisions were not contained herein, attempting at all times to conform, to the extent possible, to the intent of the parties as herein stated, and provide the maximum indemnity allowed by law.

ARTICLE 24 DISPUTE RESOLUTION

24.1 Unresolved Disputes. A dispute between the parties regarding any matter relating to the administration of this Agreement shall be resolved in accordance to this Article 24.

24.2 Initial Meeting. A meeting shall be held promptly between the parties to attempt in good faith to negotiate a resolution of the dispute.

24.3 Executive Conference. If within six (6) months after such initial meeting, the parties are unable to negotiate a resolution of the dispute to their mutual satisfaction, a director or vice-president from each party shall meet to attempt to resolve the matter.

24.4 Alternative Dispute Resolution.

24.4.1 Appointment of Mediator. If, within sixty (60) days after such executive meeting, the parties are not successful in negotiating a resolution to the dispute, they shall jointly appoint a mutually acceptable neutral person not affiliated with either of them (the Mediator). If they have been unable to agree upon such appointment within forty (40) days of their initial meeting, the parties shall seek assistance in such regard from the American Arbitration Association. The parties shall share the fees of the Mediator equally.

24.4.2 Selection of ADR Procedure. In consultation with the Mediator, the parties shall select or devise an Alternative Dispute Resolution ("ADR") to be held in Fort Wayne, Indiana by which they shall attempt to resolve the dispute. In consultation with the Mediator, the parties shall select a date and time for the ADR to be held and a date by which the ADR shall be completed. The Mediator shall make the decision as to the procedure, the date and time, and the date of completion if the parties have been unable to agree on any such matters within ten (10) days after initial consultation with the Mediator.

24.4.3 Unresolved Disputes. The parties involved in the dispute shall participate in

good faith in the ADR to its conclusion as designed by the Mediator. If the parties are not successful in resolving the dispute through ADR, then either party may elect to resolve the dispute by any other legal means available.

ARTICLE 25 MISCELLANEOUS

25.1 Headings. The headings in this Agreement are for reference only, and shall not affect the interpretation of this Agreement.

25.2 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or existing agreements, written or oral, between the parties for the joint use of poles within the areas covered by this Agreement. All such prior or existing agreements are hereby terminated, and poles covered by such agreements are brought under this Agreement as of its Effective Date, but such termination shall not extinguish any obligation arising prior to the Effective Date of this Agreement.

25.3 Force Majeure. Neither party shall be considered in default in the performance of its obligations herein, or any of them, to the extent that performance is delayed or prevented due to the following causes which are beyond the control of said party: Acts of God or the public enemy, war, revolution, terrorism, civil commotion, strike or labor dispute, blockade or embargo, fires, explosions, cyclones, floods, unavoidable casualties, quarantine, and restrictions.

25.4 Severability. If any term or provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable under any laws, rules or regulations of any governmental body or agency having jurisdiction, any such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been incorporated herein.

25.5 Modifications, Waivers. No amendments or modifications to this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the parties. The delay or failure of either party to exercise any right, power or privilege or to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general or partial waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

25.6 Applicable Law. This Agreement shall be governed by and interpreted under the laws of the State of Indiana.

25.7 Jurisdiction. Each of the parties agrees to submit to the exclusive jurisdiction of any state or federal court sitting in Indiana.

25.8 Preservation of Remedies. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

25.9 No Third Party Beneficiaries. Except as otherwise expressly set forth in any provision of this Agreement, nothing in this Agreement is intended or shall be construed to give any person, other than the parties, any legal or equitable right, remedy or claim under or in respect of this Agreement.

25.10 Counterparts. The Agreement may be executed by the parties in separate counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute one and the same agreement.

ARTICLE 26 EXECUTION

The parties have executed this Agreement in duplicate by their duly authorized representatives.

FRONTIER NORTH INC.

By: _____

Printed Name: _____

Title: _____

Date: _____

Approved as to form:
Legal Department

Attorney

STEBEN COUNTY REMC

By: Kevin D. Keiser

Printed Name: Kevin D Keiser

Title: LEO

Date: 11/29/10

APPENDIX A
FRONTIER NORTH INC. / STEUBEN COUNTY REMC
JOINT USE AGREEMENT – RENTS AND PAYMENTS

A-1 Transfers and Relocations.

Power Company's transfer or relocation of Telephone Company's Attachments and facilities:
\$ 20.83 per pole.

A-2 Rents.

Power Company shall bill an annual rent of \$9.00 per pole for each pole owned by the Power Company upon which the Telephone Company is attached. 1,929 contacts as of 1/1/2010

Telephone Company shall bill an annual rent of \$18.00 per pole for each pole owned by the Telephone Company upon which the Power Company is attached. 35 contacts as of 1/1/2010

APPENDIX B
FRONTIER NORTH INC. / STEUBEN COUNTY REMC
JOINT USE AGREEMENT- DEPRECIATION TABLE

TABLE 1

Standard 30 Year Straight Line Depreciation Chart

<u>Age</u>	<u>Percent Condition</u>
0	100
1	97
2	93
3	90
4	87
5	83
6	80
7	77
8	73
9	70
10	67
11	63
12	60
13	57
14	53
15	50
16	47
17	43
18	40
19	37
20	33
21	30
22	27
23	23
24	20
25	17
26	13
27	10
28	7
29	3
30	0

APPENDIX C
FRONTIER NORTH INC. / STEUBEN COUNTY REMC]
JOINT USE AGREEMENT- TRANSFER NOTIFICATION

**SERVICE
CENTER**

(Address)

(City, State, Zip)

(Fax Number)

DATE: _____

FAX TO:

FRONTIER: _____ FAX NO.: _____

ATTENTION: _____

SUBJECT: _____

LOCATION OF
CONSTRUCTION: _____

Including this cover information, you should receive a total of _____ sheets with this transmittal. If you do not receive the noted number of sheets, or should receive this transmittal in error, please contact:

POWER COMPANY Representative: _____ PHONE NO.: _____

POWER COMPANY HAS RECONSTRUCTED THE EXISTING FACILITIES AT THE LOCATION INDICATED (ABOVE). THE CONSTRUCTION WILL REQUIRE THE RELOCATION OF THE TELEPHONE COMPANY FACILITIES. A SKETCH IS BEING PROVIDED WITH THE AREA OF CONSTRUCTION CIRCLED.

TELEPHONE COMPANY FACILITIES WERE NOT TRANSFERRED DUE TO THE FOLLOWING:

- _____ COULD NOT TRANSFER
- _____ POLE HAD COMPLEX FACILITIES ATTACHED
- _____ FACILITIES WERE DAMAGED BY THE PUBLIC AND NEED IMMEDIATE ATTENTION

APPENDIX D
FRONTIER NORTH INC. / STEUBEN COUNTY REMC
JOINT USE AGREEMENT- BILL OF SALE

BILL OF SALE

In consideration of \$_____, [COMPANY NAME] (Seller) hereby sells and transfers to [COMPANY NAME] (Buyer) all of its interest in and to certain telephone poles located as follows:

Between _____ and _____ in _____, _____ along the _____ side of _____, Seller has removed its facilities and pole tags on _____ poles.

It is understood, acknowledged and agreed by the Buyer that the _____ poles are being sold in an "AS IS" condition and with "ALL FAULTS." BUYER ACKNOWLEDGES AND AGREES THAT THE SALE IS BEING MADE WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Moreover, Buyer agrees to indemnify and hold Seller harmless from and against any and all claims, losses, damages, suits, and liability of every kind, including all expenses of litigation, court Actual Costs and attorney fees, arising from accidents occurring after the execution of this Bill of Sale that involve the _____ poles being sold hereunder.

FRONTIER NORTH INC.

By: _____

Printed Name: _____

Title: _____

Date: _____

Approved as to form:
Legal Department

Attorney

STEUBEN COUNTY REMC

By: _____

Printed Name: _____

Title: _____

Date: _____

STEUBEN COUNTY REMC

1385 S. Old 27
PO Box 359
Angola, IN 46703

260-665-3563
888-233-9088

www.remcsteuben.com
remcsteuben@remcsteuben.com

A Touchstone Energy® Cooperative 
The Power of Human Connections

INVOICE

Account	13589689
Invoice Number	14135
Order Number	1975
Billing Date	11/29/2010
Due Date	11/29/2010

Remit To:
STEUBEN COUNTY REMC
1212 S Wayne St
PO Box 359
ANGOLA, IN 46703

FRONTIER
C/O Larry Morris
8001 W Jefferson Blvd
NC: INIFADG
FORT WAYNE, IN 46804

Total Due: \$ 10,873.25

RETURN TOP PORTION WITH PAYMENT

FRONTIER
Account 13589689
Frontier - 2009 Pole contacts

Invoice: 14135
Terms: Net Due
Due Date: 11/29/2010
Purchase Order:
Page: 1

PRODUCT	DESCRIPTION	QUANTITY	UOM	UNIT PRICE	AMOUNT	TAX
misc	2009 Pole Contacts	2,120.000		9.0000	19,080.00	
misc	minus 2009 payment recd Jan 2010	-1.000		8,206.7500	-8,206.75	

MESSAGES

Balance due upon receipt.

Total Amount: \$ 10,873.25
Amount Paid: \$ 0.00
Total Due: \$ 10,873.25

Steuben County REMC

A Touchstone Energy Cooperative

PO Box 359 • Angola, IN 46703

INVOICE: 18806

Invoice Date: 03/01/2022
Terms: Net Due
Due Date: 03/01/2022
Amount Due: \$ 0.00

FRONTIER
ATTN: BOB HOEPPNER
NC:INIFADG
8001 W JEFFERSON BLVD
FORT WAYNE IN 46804-4141

Account: 13589689
Description: Pole Top Contacts

Page 1 of 1

DESCRIPTION	QUANTITY	UOM	UNIT PRICE	AMOUNT	TAX
CATALOG ITEM: MISC 2021 Pole Top Contacts	1,929.000	EA	9.0000	17,361.00	

MESSAGES

Balance due upon receipt.

Subtotal: \$ 17,361.00
Tax: \$ 0.00
Total: \$ 17,361.00
Amount Paid: \$ -17,361.00
Amount Due: \$ 0.00

RETURN BOTTOM PORTION WITH PAYMENT

Steuben County REMC

A Touchstone Energy Cooperative

PO Box 359 • Angola, IN 46703

Account: 13589689
Invoice: 18806
Due Date: 03/01/2022
Amount Due: \$ 0.00

Amount Of Payment: _____

Remit To:

FRONTIER
ATTN: BOB HOEPPNER
NC:INIFADG
8001 W JEFFERSON BLVD
FORT WAYNE IN 46804-4141

STEBEN COUNTY REMC
1212 S WAYNE ST
PO BOX 359
ANGOLA IN 46703

Steuben County REMC

A Touchstone Energy Cooperative

PO Box 359 • Angola, IN 46703

INVOICE: 19186

Invoice Date: 03/27/2023
Terms: Net Due
Due Date: 03/27/2023
Amount Due: \$ 20,871.78

FRONTIER
ATTN: BOB HOEPPNER
NC:INIFADG
8001 W JEFFERSON BLVD
FORT WAYNE IN 46804-4141

Account: 13589689		Page 1 of 1			
Description: 2023 Pole Contacts					
DESCRIPTION	QUANTITY	UOM	UNIT PRICE	AMOUNT	TAX
CATALOG ITEM: MISC Pole Top Contacts	1,929.000	EA	10.8200	20,871.78	
MESSAGES					
Balance due upon receipt.		Subtotal:		\$ 20,871.78	
		Tax:		\$ 0.00	
		Total:		\$ 20,871.78	
		Amount Paid:		\$ 0.00	
		Amount Due:		\$ 20,871.78	

RETURN BOTTOM PORTION WITH PAYMENT

Steuben County REMC

A Touchstone Energy Cooperative

PO Box 359 • Angola, IN 46703

Account: 13589689
Invoice: 19186
Due Date: 03/27/2023
Amount Due: \$ 20,871.78

Amount Of Payment: _____

Remit To:

FRONTIER
ATTN: BOB HOEPPNER
NC:INIFADG
8001 W JEFFERSON BLVD
FORT WAYNE IN 46804-4141

STEBEN COUNTY REMC
1212 S WAYNE ST
PO BOX 359
ANGOLA IN 46703