

JOINT USE OF WOOD POLES

GENERAL AGREEMENTS WITH POWER COMPANIES

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1. GENERAL . . . . .	1	1.01 The material contained in this section, with minor changes, is identical with that formerly contained in Section AF4.10 which it supersedes. The sample agreements, attached as Appendices 1 and 2, include changes to reflect nonreciprocal ownership percentages and rental rates. Changes from the superseded AF Section are indicated in this section by arrows.
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(c) Joint Ownership Form - Each party owns an interest in each jointly used pole.

(d) Permanent Rights Form - This is a modification of the joint ownership form wherein each of the parties retains sole ownership of certain poles and the other party purchases a permanent right of occupancy.

(e) Flat Rental Per Pole Form - The party owning the jointly used pole rents space to the other party on a flat rental basis. The objective under this type of agreement is that the ownership ratio will be the same as the ratio of the rental rates which will result in no net rentals to either party.

(f) Combination of Joint Ownership and Flat Rental - The parties mutually agree on which of the two types of arrangements will be established for each jointly used pole or group of poles.

1.06 Attachment and space rental agreements are satisfactory in specific situations where comparatively few attachments are involved or where there is relatively little change in the number of attachments from year to year. These forms of agreement are not generally suitable to cover cities or other large common operating areas as undue expense and difficulty are involved in keeping records and in making periodic joint inventories of attachments for billing purposes. This type of agreement does not promote cooperative advance planning. It also ordinarily provides that the attachment privileges may be revoked on short notice. Since demands for street lights and power ordinarily occur in advance of demands for telephone service in new housing developments, the proportion of jointly used poles owned by the Power Company is likely to increase continually under these forms of agreement in growing sections. Large disparities in joint pole ownership may increase the difficulty of establishing mutually satisfactory joint use arrangements.

1.07 Joint ownership and flat rental per pole agreements have been widely used in urban areas. Joint ownership agreements usually entail somewhat greater plant investment and higher administrative and accounting costs than the flat rental per pole type. However, very satisfactory joint use arrangements have been established and maintained over long periods on the basis of the joint ownership form. In many

localities, the flat rental per pole form is preferred and it also has provided a satisfactory basis for the joint use of poles. Where this latter type agreement is used, special attention must be given to the matter of securing and maintaining a ratio of pole ownership substantially the same as the rental ratio.

With this type of agreement, also, large disparities in joint pole ownership may increase the difficulty of establishing mutually satisfactory joint use arrangements. The combination joint ownership flat rental type of agreement, while requiring considerable administrative procedure, provides the flexibility to permit an equitable balance between each party's cost for joint pole structures.

1.08 Most general joint use agreement forms were originally prepared particularly to meet conditions in urban areas. Where a general agreement will cover rural as well as urban areas, special consideration should be given to the requirements and conditions in the rural sections. It will generally be desirable to execute a separate agreement with the Electric Companies to cover joint use of poles in the rural areas.

1.09 The purpose of a general joint use agreement is, of course, to promote and facilitate the joint use of poles through the establishment of convenient and equitable procedures and business arrangements in those cases where joint use of poles is the correct engineering solution to the service requirements. Experience indicates clearly that a willingness on the part of the Companies concerned to cooperate is essential to the success of any such agreement regardless of its terms. Assuming such a willingness to cooperate, it is usually better to cover only the more important contingencies in the agreement, leaving other matters to less formal treatment.

1.10 The form and wording of all joint use agreements should be considered by legal counsel familiar with the laws in the territory to be covered. However, many of the provisions must be based largely on engineering and operating considerations.

1.11 The following paragraphs discuss some of the engineering and operating aspects of the usual sections found in recent joint use agreements of the flat rental per pole type. Most of the discussion, however, is applicable to other forms of agreement.

### 2. PREAMBLE

2.01 The preamble usually states briefly and formally the parties at interest, their corporate standings, and the purpose of the

agreement. Sometimes a statement is included to the effect that the parties to the agreement desire to cooperate in accordance with the Principles and Practices for the Joint Use of Wood Poles recommended by the Joint General Committee of the National Electric Light Association and Bell Telephone System.

### 3. SCOPE OF AGREEMENT

3.01 This section generally defines the geographical limits of the territory which is to be covered by the proposed agreement.

3.02 It should generally include a provision which specifically gives each party the right to determine whether their circuits or structures should be included in, or continued in, joint use.

### 4. EXPLANATION OF TERMS

4.01 Most agreements contain a brief explanation of the meaning of any terms used in the agreement form concerning which questions might otherwise arise. It has been the general practice to specify in this section the dimensions of the normal joint pole to be used and the space on such pole allotted to each of the parties.

### 5. NORMAL JOINT POLE

5.01 The proper choice of the normal joint pole, or standard joint pole as it has also been termed, together with space allotments thereon, is fundamental in securing equitable joint pole arrangements. The 35-foot pole customarily specified is often used about as follows:

Supply space (if measured from roof of pole).

This is usually occupied by a cross-arm carrying primary wires and sometimes street lighting circuits and either another crossarm or a rack carrying secondary wires. 4 feet

Neutral space 3-1/3 feet

Telephone space 3 feet

This is usually ample to accommodate distribution cables, terminals and associated drop wires.

Required ground clearance (urban districts). 18 feet

Required depth of setting. 6 feet

Unallocated space, usually included in ground clearance. 2/3 foot

Total 35 feet

5.02 In some localities local conditions may be such that it is desirable or necessary to specify a shorter or taller pole than the 35-foot pole as the normal pole. For example, where the joint poles are on rear lot lines or private property easements a 30-foot pole will often meet the requirements. On the other hand, where there is street distribution along wide streets or in bungalow developments, or other special conditions it may be equitable to specify a 40-foot pole as the normal joint pole.

5.03 The agreements should specify the class of the normal joint pole as well as its height in order to provide a definite reference basis for determining excess pole costs. The class usually agreed upon is that which is just sufficient to meet the requirements of the Joint Use Specifications for the attachments ordinarily placed by both parties in their respective normal spaces. Pole class is, of course, expressed in terms of the pole classification tables of the American Standards Association. Prior to the Fifth Edition of the National Electrical Safety Code, a Class 5 pole was the minimum that would meet the code requirement. The Fifth Edition of the code permits the use of Class 7 poles under certain conditions.

5.04 Experience has indicated that it is sometimes advisable to bring out clearly in this section that the use of shorter or lighter poles than the normal or standard pole is not precluded where conditions are such as to make the use of such poles feasible.

### 6. SPECIFICATIONS

6.01 A paragraph should be included in all agreements stating what specifications should be followed in joint construction. Provision is usually made for such changes as may be agreed upon from time to time by the Chief Engineers or equivalent officers of the companies concerned. The joint use specifications attached to Bell System Practices Section AG17.001 (E.E.I. Publication No. M12 or revisions thereof), which are based on the Fifth Edition of the National Electrical Safety Code, will ordinarily provide a satisfactory basis of agreement with the supply companies.

6.02 In instances where these specifications are considered unsatisfactory for inclusion in a joint use agreement, instead of including other specifications, it is generally preferable to state in the agreement that construction shall be in accordance with the then current edition of the National Electrical Safety Code.

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6.03 The formulation of complete joint use specifications to accompany individual joint use agreements is generally undesirable. Such undertakings involve a large amount of work and expense and do not seem to be worth while. Proposals for fundamental changes in existing practices have also sometimes been made in this connection. Departures from generally accepted practices in individual instances may, of course, in the aggregate seriously affect the important work of securing recognition of national standards.

### 7. ESTABLISHING JOINT USE OF EXISTING POLES

7.01 This section should describe in detail the procedure to be followed for entering into joint use on existing poles. The procedure agreed upon should be as convenient as possible to both parties and should require the keeping of as few records as practicable. Most agreements provide that proposals for joint use or for reserving space shall be made in writing and that the company receiving such proposals shall reply in writing within some specified time. This method of handling proposals has been established in order to assure adequate records of the authority for making attachments as well as proper supervision over their location and nature. Such supervision has been found to be generally desirable in order to assure safety and economy in the construction of the jointly used plant. However, provisions should generally be included such that service wire attachments or emergency construction can be placed in accordance with the specifications without written notice, subject, of course, to later approval and confirmation.

### 8. ESTABLISHING JOINT USE OF NEW POLES

8.01 Provision should be made in this section for advance notice and cooperative planning when either company proposes the erection of new poles or the reconstruction of existing lines. The agreement should generally require that joint use of new poles be offered to the other party in writing and replied to in like manner, as in the case of existing poles.

8.02 A statement should be included that the ownership of new joint pole lines shall be determined by mutual agreement so as to promote the equitable over-all division of ownership of jointly used poles. It is desirable that the statement specify further that where agreement as to ownership can not be reached the party then owning fewer than its proportionate share of joint poles should erect the new poles and become the owner thereof.

### 9. RIGHT-OF-WAY FOR LICENSEE'S ATTACHMENTS

9.01 In most rental forms of agreement, right-of-way for the licensee's attachments is not guaranteed by the owner. Where new poles for joint occupancy are being erected, however, this matter should be given careful consideration from the standpoint of local conditions and legal requirements.

### 10. MAINTENANCE OF POLES AND ATTACHMENTS

10.01 Under the rental form of contract the owner is required to maintain its jointly used poles in a safe and serviceable condition. If the contract does not stipulate the standards which should be followed in this connection, this matter should be covered by special arrangement.

10.02 Provision is usually included requiring poles which replace poles carrying cable terminals, underground connections, or transformers, to be set in the same holes which the replaced poles occupied, unless special conditions make it necessary to set them in different locations.

10.03 It is also customary to provide a procedure for handling those cases where, due to the requirements of parties other than those operating under the joint agreement, a joint pole must be relocated or the attachments rearranged. The owner of such pole should give advance notice of what is to be done in such cases and also the date when rearrangements will be necessary. Each party should be made responsible for rearranging its own wires and equipment.

10.04 Each party should be made responsible for the maintenance of its own attachments and also any tree trimming which may be necessary for the maintenance of its circuits.

### 11. DIVISION OF COSTS

11.01 This section should contain specific provisions covering the division of costs in connection with the replacement of existing poles and the construction of new poles. It is particularly important that usual contingencies be provided for fully and that both companies be in accord as to the intent of the various provisions.

11.02 Under some of the older flat rental per pole contracts, existing nonjoint poles which are unsuitable for joint occupancy are replaced at the sole expense of the owner where

joint use is agreed to (except in cases where the incoming party requires a pole taller or stronger than the normal joint pole, in which event the latter bears the cost of the extra length or strength required). Where one company initially has a large number of poles which are unsuitable for joint use, this arrangement may result in considerable loss to such company. On the other hand, if the agreement provides that the party desiring joint use shall pay the entire net loss involved in replacing nonjoint poles, the construction of separate lines may be unduly encouraged. Arrangements such that the parties will divide the loss entailed in replacing nonjoint poles to effect joint use, tend to minimize these difficulties.

11.03 It is desirable to include a provision in this section to bring out clearly that payments by the licensee to the owner for the erection of poles taller and/or of greater strength than the normal pole does not entitle the licensee to ownership of any part of said poles.

11.04 Provisions are also included such that each party will maintain, transfer and remove its own attachments from joint poles at its own expense.

#### 12. PROCEDURE WHERE CHARACTER OF CIRCUITS IS CHANGED

12.01 Joint use agreements should contain a section describing the procedure which should be followed when the character of the circuits of either party is changed on existing joint poles. Until satisfactory measures were developed to permit joint use with the higher voltages, this section was ordinarily written from the standpoint that where such circuits were involved, separate lines would usually be the best solution and in some agreements an effort was made to cover all of the contingencies involved. Such statements were lengthy and complicated and often indefinite in certain respects. Because of the somewhat different approach to the problem made by power and telephone representatives undue difficulties were often encountered in formulating this section of an agreement. Under present conditions a short statement along the lines of that included in the sample agreement forms herewith should be adequate and should obviate most of the former difficulties.

#### 13. ABANDONMENT OF JOINTLY USED POLES

13.01 A section covering what should be done with poles abandoned by the owner and who shall assume responsibility for such poles

should be included in all joint use agreements. Ordinarily provision is made such that all rights and responsibilities are assumed by the party continuing to use the poles. Provisions should be included to cover the routine handling of this matter, including notice of the intention of either party to remove its attachments from jointly used poles.

#### 14. RENTALS

14.01 All rental forms of contract should contain a definite statement concerning the rentals agreed upon, methods of determining balances due either company, and the time of payment. Rentals are, of course, customarily paid on an annual basis.

14.02 In determining what the pole rentals should be in any particular case, the comparative advantages which each company will secure from the joint use arrangement should be considered to the end that the agreement will be fair and equitable to both parties.

14.03 The total savings of joint use lines may be measured by the difference between the sum of the costs of two separate lines and the cost of a joint line. It seems equitable that each party should share in these savings in proportion to the cost of that party's separate line to the sum of the costs of both parties' separate lines. The actual rental to be paid by each party would then be that party's savings in annual charges, through not having to build a separate line, less that party's share of the total savings in annual charges. The method of calculating rental rates is illustrated by an example in Section AGL7.130.

14.04 The more the space or strength requirements of one party exceed those of the other party, the greater becomes the importance of recognizing this fact by a rental differential with the party having the lesser requirements paying the lower rental rate.

14.05 It is desirable to include a statement in this section to the effect that no rentals will be charged for clearance attachments. Clearance attachments are attachments, usually at crossings, placed by one party on the other party's poles, primarily for the purpose of obtaining standard clearance between the plant instrumentalities of the two companies such as wires, guys, transformers, cables, suspension strands, etc. Such attachments shall be considered as "clearance attachments" only when the party making the attachment would not have had to place a pole if the other party's pole line were not present. Conversely, if by

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→ attaching to the other party's pole, the requirement for a pole by the attaching party is eliminated; the attachment to such a pole is necessary for support and consequently should not be considered a "clearance attachment"; accordingly it would be subject to rental.

15. PERIODICAL READJUSTMENT OF RENTALS

15.01 This section should provide for the periodic readjustment of rentals at the request of either party at the expiration of certain stated periods. This is necessary in order that rentals may be adjusted to meet changes in cost levels.

16. DEFAULTS

16.01 Most agreements include a clause specifying what shall be done in case either party should default in any of its obligations under the contract. The exact terms of this section will depend upon local conditions and local legal considerations. However, the default sections in the sample agreements herewith have been found to be generally satisfactory.

17. LIABILITY AND DAMAGES

17.01 The subject of liability and damages in connection with joint use contracts has been under discussion by power and telephone companies for many years. Liability and damage clauses have been omitted in some joint use contracts and there have been no unsatisfactory results from such omissions. The formulation of sections covering liability and damages to be used in joint use contracts is based largely on legal considerations in each particular case.

18. EXISTING RIGHTS OF OTHER PARTIES

18.01 This section should be so worded as to affirm the existing rights of parties other than those entering into the joint use contract. For instance, the Bell Company may have existing contracts with certain telegraph

companies conferring upon them the right to use available facilities on telephone companies' poles or any space, rented or otherwise, which is reserved for the use of the telephone company. It is advisable to inform the power company of existing contracts of this kind in considering this section of a proposed joint use contract.

19. ASSIGNMENT OF RIGHTS

19.01 This section is designed to limit the assignment of the rights of either party to a third party without the consent of both parties to the agreement. Its exact form will depend upon legal considerations in the particular locality where the agreement is in force.

20. WAIVER OF TERMS OR CONDITIONS

20.01 Under this heading a short section is usually included which provides that the agreement shall remain in force as regards existing joint use regardless of the failure of either party to enforce or to insist upon compliance with any of its terms or conditions.

21. SERVICE OF NOTICES

21.01 A section is usually included stating clearly the titles and addresses of the officials who will represent the telephone company and the power company in administering the contract and to whom the notices provided for in the contract should be sent.

22. TERM OF AGREEMENT

22.01 This section usually gives the term of years during which the agreement will remain in force and also provides for proper notice by either party of its desire to terminate the agreement as affecting further joint use. Provision is specifically made such that notwithstanding such termination, the agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

Attached:

Appendix 1 - Sample Flat Rental per Pole Contract Form

Appendix 2 - Sample Joint Ownership Contract Form

SAMPLE FLAT RENTAL FER POLE CONTRACT FORM

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JOINT USE CONTRACT  
(FLAT RENTAL PER POLE)

This agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between the \_\_\_\_\_ a corporation of the State of \_\_\_\_\_, hereinafter called the "Electric Company," party of the first part, and the \_\_\_\_\_, a corporation of the State of \_\_\_\_\_, hereinafter called the "Telephone Company," party of the second part.

WITNESSETH:

WHEREAS, the Electric Company and the Telephone Company desire to provide for the joint use of their respective poles when and where such joint use will be of mutual advantage in meeting their service requirements.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

ARTICLE I

SCOPE OF AGREEMENT

(a) This agreement shall be in effect in the following described territory:

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and shall cover all wood poles of each of the parties now existing or hereafter erected in the above territory when said poles are brought hereunder in accordance with the procedure hereinafter provided.

(b) Each party reserves the right to exclude from joint use,

1. Poles which in the Owner's judgment are necessary for its own sole use; and
2. Poles which carry, or are intended by the Owner to carry, circuits of such a character that in the Owner's judgment the proper rendering of its service now or in the future makes joint use of such poles undesirable.

ARTICLE II

EXPLANATION OF TERMS

For the purpose of this agreement, the following terms shall have the following meanings:

NORMAL SPACE on a joint pole is the following described space for the exclusive use of each party, respectively, except that certain attachments of one party may in accordance with the specifications mentioned in Article III be located in space assigned to the other party:

- (1) For the Electric Company, the uppermost \_\_\_\_\_ feet, measured from top of pole.
- (2) For the Telephone Company, a space of \_\_\_\_\_ feet at such distance below the space of the Electric Company as to provide at all times the minimum clearance required by the specifications, mentioned in Article III.

A NORMAL JOINT POLE under this agreement shall be a     foot, class     wood pole as covered by American Standards Association specifications. It is not intended to preclude the use of joint poles shorter or of less strength than the normal joint pole in locations where such poles will meet the requirements of the parties hereto and the specifications mentioned in Article III.

COST as applied to new poles shall mean the cost in place. As applied to existing poles "cost" shall mean the reproduction cost less depreciation.

NET LOSS as applied to pole replacements shall mean the reproduction cost less depreciation, plus the cost of removal minus the salvage value of the pole replaced.

### ARTICLE III SPECIFICATIONS

All construction in connection with the joint use of the poles covered by this agreement shall be in conformity with the specifications attached hereto and hereby made a part hereof, or such subsequent revisions thereto as may from time to time be agreed upon by representatives designated by the parties hereto.

### ARTICLE IV ESTABLISHING JOINT USE OF EXISTING POLES

(a) Whenever either party desires to reserve space for its attachments on any pole owned by the other party, either as initial space or additional space on said pole, it shall make written application therefor, specifying the location of the poles in question, the amount of space desired and the number and character of the circuits to be placed therein. Within 10 days after the receipt of such application the Owner shall notify the Applicant in writing whether or not said pole is among those excluded from joint use under the provisions of Article I - Scope. Upon receipt of notice from the Owner that the said pole is not among those excluded and after the completion of any transferring or rearranging which is then required in respect to attachments on said poles, including any necessary pole replacements, the Applicant shall have the right as Licensee hereunder to use said space for attachments and circuits of the character specified in said application in accordance with the terms of the application and of this agreement.

(b) Whenever any jointly used pole or any pole about to be so used under the provisions of this agreement, is insufficient in height or strength for the existing attachments and for the proposed immediate additional attachments

thereon, the Owner shall 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.

(c) On joint poles each party shall place, transfer and rearrange its own attachments, including any tree trimming or cutting incidental thereto, place guys to sustain unbalanced loads due to its equipment, and shall perform such work promptly and in such manner as not to interfere with the service of the other party.

ARTICLE V  
ESTABLISHING JOINT USE OF NEW POLES

(a) Whenever either party hereto requires new pole facilities within the territory covered by this agreement, either as an additional pole line, as an extension of an existing pole line, or in connection with the reconstruction of an existing pole line, and such pole facilities are not to be excluded from joint use under the provisions of Article I - Scope, it shall promptly 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 circuits it proposes to use thereon. Within 10 days after the receipt of such notice, the other party shall reply in writing, stating whether it does, or does not, desire space on the said poles and, if it does, the character of the circuits it desires to use and the amount of space it wishes to reserve.

(b) In any case where the parties hereto shall conclude arrangements for the joint use of any new poles to be erected, and the party proposing to construct the new pole facilities already owns more than its proportionate share of joint poles, the parties shall take into consideration the desirability of having the new pole facilities owned by the party owning less than its proportionate share of joint poles so as to work towards such a division of ownership of the joint poles that neither party shall be obligated to pay to the other any rentals because of their respective use of joint poles owned by the other.

(c) Each party shall place its own attachments on the new joint poles, including any tree trimming or cutting incidental thereto, place guys to sustain unbalanced loads due to its equipment, and shall perform such work promptly and in such manner as not to interfere with the service of the other party.

ARTICLE VI  
RIGHTS-OF-WAY FOR LICENSEE'S ATTACHMENTS

While the Owner and the Licensee will cooperate as far as may be practicable in obtaining rights-of-way for both parties on joint poles, no guaranty is given by the Owner of permission from property owners, municipalities, or others for the use of its poles by the Licensee, and if objection is made thereto and the Licensee is unable to satisfactorily adjust the matter within a reasonable time, the Owner may at any time upon \_\_\_\_\_ notice in writing to the Licensee, require the Licensee to remove its attachments from the poles involved, and the Licensee shall, within \_\_\_\_\_ days after receipt of said notice, remove its attachments from such poles at its sole expense.

ARTICLE VII  
MAINTENANCE OF POLES AND ATTACHMENTS

(a) The Owner shall maintain its joint poles in a safe and serviceable condition and in accordance with the specifications mentioned in Article III and shall replace, reinforce or repair such of said poles as become defective.

(b) When replacing a jointly used pole carrying terminals of aerial cable, underground connections, or transformer equipment, the new pole shall be set in the same hole which the replaced pole occupied unless special conditions make it necessary to set it in a different location.

(c) Whenever it is necessary to replace or relocate a jointly used pole, the Owner shall before making the change give notice thereof in writing (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed replacement or relocation and the Licensee shall at the time so specified transfer its attachments to the new or relocated pole.

(d) Each party shall maintain all of its attachments on jointly used poles in accordance with the specifications mentioned in Article III and shall keep them clear of trees, in safe condition and in thorough repair; provided, however, that neither party shall be required to rearrange any cable installed prior to the date of this agreement, and carried on the street side of any pole, so as to occupy the field side thereof.

ARTICLE VIII  
DIVISION OF COSTS

(a) The cost in place of new joint poles coming under this agreement, either in new pole lines, or in extensions of existing pole lines, or to replace existing poles, shall be borne by the parties as follows:

1. The cost in place of a normal joint pole or a joint pole smaller than normal shall be borne by the Owner.
2. The cost in place of a pole larger than normal, the extra height or class of which is due wholly to the Owner's requirements shall be borne by the Owner.
3. In the case of a pole larger than normal where the extra height or strength is due either wholly or in part to the requirements of the Licensee (including requirements as to keeping Licensee's wires clear of trees), the Licensee shall pay to the Owner costs in excess of those borne by the Owner under 1 or 2.

(b) The net loss entailed in the replacement of existing poles with new joint poles shall be borne as follows:

1. The net loss entailed in the replacement of a nonjoint pole by a joint pole shall be divided equally between the parties unless the Licensee had at the time the pole was erected pronounced it satisfactory, in which case the Licensee shall pay the entire net loss.
2. The net loss entailed in the replacement of joint poles shall be borne by the Owner unless the replacement is for the sole benefit of the Licensee in which case such loss shall be borne by the Licensee.

(c) Any payments made by the Licensee under the foregoing provisions of this article shall not in any way affect the ownership of the joint poles concerned.

(d) Each party shall place, maintain, rearrange, transfer and remove its own attachments at its own expense, except as otherwise expressly provided elsewhere in this agreement.

(e) If in specific situations, the divisions of costs of joint poles in accordance with the foregoing provisions of this Article will result in inequities or otherwise make joint use unattractive to one of the parties hereto, even though such joint use may be desirable or economical from the over-all standpoint, nothing herein shall preclude the establishment of other arrangements for the division of costs of joint poles in such situations when approved in writing by designated representatives of the parties hereto.

## ARTICLE IX

## PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

When either party desires to change the voltage or character of its circuits on jointly used poles, such party shall give \_\_\_\_\_ days' notice in writing to the other party of such contemplated change.

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.

In the latter event the party whose circuits are to be removed from the joint poles shall promptly carry out the necessary work.

Unless otherwise agreed the Licensee shall bear the net costs of such removal.

## ARTICLE X

## TERMINATION OF JOINT USE

(a) If the Owner desires at any time to discontinue using any jointly used pole, it shall give the Licensee notice in writing to that effect at least \_\_\_\_\_ days prior to the date on which it intends to remove its attachments from such pole. If at the expiration of said period, the Owner shall have no attachments on such pole but the Licensee shall not have removed all of its attachments therefrom, such pole shall thereupon become the property of the Licensee, and the Licensee shall save harmless the former Owner of such pole from all obligations, liabilities, 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 of any attachments thereon; and shall pay the Owner a sum equal to the then value in place of such abandoned pole or such other equitable sum as may be agreed upon between the parties. Credit shall be allowed for any payments which the Licensee may have made under the provision of Article VIII - Division of Costs, when the pole was originally set.

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

ARTICLE XI  
RENTALS

(a) Except as provided in Sections (b) and (d) of this article, the rentals due from either party to the other shall be computed on the basis of \_\_\_ per annum to be paid by the Electric Company for each joint pole owned by the Telephone Company and \_\_\_ per annum to be paid by the Telephone Company for each joint pole owned by the Electric Company.

(b) No rental shall be paid by the Licensee for the use of any pole of the Owner where such use consists only in attaching thereto wires or cables of the Licensee for the purpose of providing clearance and not for the purpose of supporting the said wires or cables.

(c) Rental payments hereunder shall cover rentals accruing during the calendar year and shall be based on the number of poles on which space is occupied or reserved on the first day of July of the year in which the rentals accrue. Within \_\_\_ days following such date, each party shall submit a written statement to the other party giving the number of poles on which space was occupied by, or reserved for the other party, as of such date. Rental payments shall be made within \_\_\_ days of the receipt of such statement.

(d) In specific situations such as those referred to in Article VIII (e) rental rates shall be established on such equitable basis as may be agreed upon in writing by designated representatives of the parties hereto.

ARTICLE XII  
PERIODICAL READJUSTMENT OF RENTALS

At the expiration of \_\_\_ years from the date of this agreement, and at the end of every \_\_\_ year period thereafter, the rental per pole per annum thereafter payable hereunder shall be subject to readjustment at the request of either party made in writing to the other not later than \_\_\_ days before the end of any such \_\_\_ year period. In case of readjustment of rentals as herein provided, the new rentals shall be payable until again readjusted.

ARTICLE XIII  
DEFAULTS

(a) If either party shall default in any of its obligations under this contract and such default continue thirty (30) days after notice thereof in writing by the other party, the party not in default may suspend the rights of the party in default in so far as concerns the granting of further joint use. If such default shall continue for a period of \_\_\_ days after such suspension, the party not in default may forthwith terminate this agreement as far as concerns the further granting of joint use.

(b) If either party shall make default in the performance of any work which it is obligated to do under this contract 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 thereof. Failure on the part of the defaulting party to make such payment within \_\_\_ days upon presentation of bills therefor, shall at the election of the other party, constitute a default under Section (a) of this Article.

ARTICLE XIV  
LIABILITY AND DAMAGES

Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for injury to the property of either party, or for injuries to other persons or their property, arising out of the joint use of poles under this agreement, or due to the proximity of the wires and fixtures of the parties hereto attached to the jointly used poles covered by this agreement, the liability for such damages, as between the parties hereto, shall be as follows:

(a) Each party shall be liable for all damages for such injuries to persons or property caused solely by its negligence or solely by its failure to comply at any time with the specification herein provided for.

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

(c) In the case of damages for such injuries to persons other than employees of either party, and/or damages for such 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 of one party, the Electric Company shall be liable for \_\_\_% of said damages and the Telephone Company shall be liable for \_\_\_% of said damages.

(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 representatives in conformity with (1) the provision of any workmen's compensation act or any act creating a liability to the employer to pay compensation for personal injury to an employee

by accident arising out of and in the course of the employment, whether based on negligence on part of the employer or not, or (2) any plan for employees' disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them, such payment shall be construed to be damages within the terms of the preceding paragraphs numbered (a) and (b) and shall be paid by the parties hereto accordingly.

(e) All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case under the provisions of paragraph (c) of this article where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which said terms are acceptable may, at its election: if the Electric Company, pay to the Telephone Company \_\_\_% of the expense which such settlement would involve, or if the Telephone Company, pay to the Electric Company \_\_\_% of the expense which such settlement would involve and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

(f) In the adjustment between the parties hereto 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 comprise costs, attorneys' fees, disbursements and other proper charges and expenditures.

#### ARTICLE XV

#### EXISTING RIGHTS OF OTHER PARTIES

If either of the parties hereto has, prior to the execution of this agreement, conferred 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 either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights or privileges; it being expressly understood, however, that for the purpose of this agreement, the attachments of any such outside party, except those of a municipality or other public authority, shall be treated as attachments belonging to the grantor, and the rights, obligations, and liabilities hereunder of the grantor in respect to such attachments shall be the same as if it were the actual owner thereof.

ARTICLE XVI  
ASSIGNMENT OF RIGHTS

Except as otherwise provided in this agreement, neither party hereto shall assign nor otherwise dispose of this agreement or any of its rights or interest 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; provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, right, privileges, and franchises, or 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, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser on foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be; and provided, further, that subject to all of the terms and conditions of this agreement, either party may permit any corporation conducting a business of the same general character as that of such party, and owned, operated, leased and controlled by it, or associated or affiliated with it in interest, or connecting with it, the use of all or any part of the space reserved hereunder on any pole covered by this agreement for the attachments used by such party in the conduct of its said business; and for the purpose of this agreement, all such attachments maintained on any such pole by the permission as aforesaid of either party hereto shall be considered as the attachments of the party granting such permission, and the rights, obligations and liabilities of such party under this agreement, in respect to such attachments, shall be the same as if it were the actual owner thereof.

ARTICLE XVII  
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 at all times in full force and effect.

ARTICLE XVIII  
PAYMENT OF TAXES

Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly used poles, and the taxes and the assessments which are levied on said jointly used poles shall be paid by the Owner thereof, except that any tax, fee or charge levied on Owner's poles solely because of their use by the Licensee, shall be paid by the Licensee.

ARTICLE XIX  
BILLS AND PAYMENT FOR WORK

Upon the completion of work performed hereunder 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 \_\_\_ days after the completion of such work an itemized statement of the costs and such other party shall within \_\_\_ days after such statement is presented pay to the party doing the work such other party's proportion of the cost of said work.

ARTICLE XX  
SERVICE OF NOTICES

Whenever in this agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed, or by personal delivery, to the Electric Company at its office at \_\_\_\_\_, or to the Telephone Company at its office at \_\_\_\_\_, as the case may be, or to such other address as either party may from time to time designate in writing for that purpose.

ARTICLE XXI  
TERM OF AGREEMENT

Subject to the provisions of Article XIII - Defaults, herein, this agreement may be terminated, so far as concerns further granting of joint use by either party, after the first day of \_\_\_\_, 19\_\_, upon one (1) year's notice in writing to the other party provided, that if not so terminated it shall continue in force thereafter until terminated by either party at any time upon one year's notice in writing to the other party as aforesaid, and provided further 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.

ARTICLE XXII  
EXISTING CONTRACTS

All existing agreements between the parties hereto for the joint use of poles upon a joint ownership basis within the territory covered by this agreement are, by mutual consent, hereby abrogated and annulled.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, on the day and year first above written.

(Seal)  
Attest

\_\_\_\_\_  
By \_\_\_\_\_

(Seal)  
Attest

\_\_\_\_\_  
By \_\_\_\_\_

**SAMPLE JOINT OWNERSHIP CONTRACT FORM**

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JOINT USE CONTRACT  
(JOINT OWNERSHIP)

This agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ ,  
by and between the \_\_\_\_\_ a corporation  
of the State of \_\_\_\_\_, hereinafter called the "Electric  
Company," party of the first part, and the \_\_\_\_\_,  
a corporation of the State of \_\_\_\_\_, hereinafter called  
the "Telephone Company," party of the second part.

WITNESSETH:

WHEREAS, the Electric Company and the Telephone Company desire to provide for the joint use of poles when and where joint use will be of mutual advantage in meeting their service requirements,

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

ARTICLE I  
SCOPE

(a) This agreement shall be in effect in the following described territory: \_\_\_\_\_

\_\_\_\_\_ and shall cover all poles brought hereunder in accordance with the procedures hereinafter provided.

(b) Each party reserves the right to exclude from joint use:

- (1) poles which, in the Owner's judgment are necessary for its own sole use; and
- (2) poles which carry, or are intended by the Owner to carry, circuits of such a character that in the Owner's judgment the proper rendering of its service now or in the future makes joint ownership of such poles undesirable.

ARTICLE II

EXPLANATION OF TERMS

For the purpose of this agreement, the following terms shall have the following meanings:

NORMAL SPACE on a joint pole is the following described space for the exclusive use of each party, respectively, except that certain attachments of one party may be located in space reserved for the other party in accordance with the specifications mentioned in Article III:

- 1. For the Electric Company the uppermost \_\_\_\_\_ feet, measured from top of pole.
- 2. For the Telephone Company, a space of \_\_\_\_\_ feet, at such distance below the space of the Electric Company to provide at all times the minimum clearances required by the specifications mentioned in Article III.

A NORMAL JOINT POLE under this agreement shall be a \_\_\_\_\_ foot, class \_\_\_\_\_ wood pole as covered by the American Standards Association specifications except in specific situations where poles of some other height or class are necessary or adequate to provide normal space for the respective parties and meet the requirements of the specifications mentioned in Article III.

The foregoing is not intended to preclude the use of joint poles shorter or of less strength than the normal joint pole in locations where such poles will meet the requirements of the parties hereto and of the specifications mentioned in Article III.

#### ARTICLE III SPECIFICATIONS

All construction in connection with the joint use of the poles covered by this agreement shall be in conformity with the specifications attached hereto and made a part hereof, or such subsequent revisions thereof as may from time to time be agreed upon by representatives designated by the parties hereto.

#### ARTICLE IV ESTABLISHING JOINT OWNERSHIP AND USE OF EXISTING POLES

(a) Whenever either party desires to acquire joint ownership in an existing pole owned by the other party, it shall make written application therefor, specifying the location of the pole in question, the amount of space desired, and the number and character of the circuits to be placed therein. Within ten (10) days after the receipt of such application, the Owner shall notify the Applicant in writing whether or not said pole is among those excluded from joint ownership under the provisions of Article I. Upon receipt of notice from the Owner that said pole is not among those excluded, joint ownership thereof shall be established in accordance with the terms of the application and of this agreement.

(b) If said pole is not suitable for joint use hereunder, the Owner shall promptly replace it by a new pole which is suitable for joint use and shall make such other changes in the line in which such pole is included as the conditions require.

(c) Each party shall place, transfer and rearrange its own attachments, perform any tree trimming or cutting incidental thereto, place guys to sustain any unbalanced loads due to its equipment, and shall perform such work promptly and in such manner as not to interfere with the service of the other party.

(d) Unless otherwise agreed, the Owner of the existing pole shall become the custodian of the jointly owned pole.

ARTICLE V

ESTABLISHING JOINT OWNERSHIP AND USE OF NEW POLES

(a) Whenever either party hereto requires new pole facilities within the territory covered by this agreement, either as an additional pole line, as an extension of an existing pole line, or in connection with the reconstruction of an existing pole line, and such pole facilities are not to be excluded under the provisions of Article I, such party shall promptly notify the other party to that effect in writing (verbal notice subsequently confirmed in writing, may be given in cases of emergency) stating the location and character of the proposed new poles, and the character of circuits it proposes to use thereon. Within ten (10) days after the receipt of such notice, the other party shall reply in writing, stating whether it does, or does not, desire joint ownership in the said poles, and if it does the amount of space it desires and the number and character of the circuits to be placed therein.

(b) Custodianship of new joint poles shall be determined by mutual agreement, with due regard to the location of the poles with respect to the location of maintenance forces and the general desirability of dividing the custodianship of joint poles equally between the parties.

(c) Each party shall place its own attachments on the new joint poles, perform any tree trimming or cutting incidental thereto, place guys to sustain unbalanced loads due to its equipment, and shall perform such work promptly and in such manner as not to interfere with the service of the other party.

ARTICLE VI  
RIGHTS-OF-WAY

The party erecting new joint poles shall, unless otherwise agreed secure necessary rights-of-way from property owners and public authorities. However, each party shall be solely responsible for necessary rights-of-way for its wires, cables, guys, anchors, guy stubs and other equipment on, or used in connection with joint poles.

ARTICLE VII  
MAINTENANCE OF POLES AND ATTACHMENTS

(a) The custodian shall maintain jointly owned poles in its custody in safe and serviceable condition in accordance with the specifications mentioned in Article III and shall replace, reinforce or repair such of said poles as become defective.

(b) All work done on any jointly owned pole or on any attachment thereon shall be performed in a manner which will not unduly interfere with the service, wires, fixtures and appurtenances of the other party hereto.

(c) Each party shall maintain all of its attachments on jointly owned poles in accordance with the specifications mentioned in Article III and shall keep them clear of trees, in safe condition and in thorough repair; provided, however, that neither party shall be required to rearrange any cable, installed prior to the date of this agreement, from the street side to the field side of any pole.

(d) Whenever it is necessary to replace or relocate a jointly owned pole, the custodian shall, before making the change, give notice thereof in writing (except in case of emergency, when verbal notice may be given and subsequently confirmed in writing) to the other party, specifying in such notice the time of such proposed replacement or relocation, and such other party shall at the time so specified, transfer its attachments to the new or relocated pole.

(e) When replacing a jointly owned pole carrying terminals of aerial cable, underground connections, or transformer equipment, the new pole shall be set in the same hole which the replaced pole occupied unless special conditions make it necessary to set it in a different location.

ARTICLE VIII  
DIVISION OF COSTS

(a) The cost of joint poles brought under this agreement shall be borne by the parties hereto as follows:

- ➔ 1. The cost of a normal joint pole or a pole smaller than the normal shall be borne in the proportion of \_\_\_% by the Electric Company and \_\_\_% by the Telephone Company.
- ➔ 2. The excess of a pole larger than normal, above the cost of a normal pole, shall be borne by the parties in proportion to their respective requirements for pole length or strength in excess of normal requirements by Article II. The remainder of the cost shall be borne by the parties as provided in paragraph (a) 1 of this article.

(b) The net loss entailed in the replacement of existing poles with new joint poles shall be borne as follows:

- ➔ 1. The net loss entailed in the replacement of a non-joint pole by a joint pole shall be borne in the proportion of \_\_\_% by the Electric Company and \_\_\_% by the Telephone Company.
- ➔ 2. The net loss entailed in the replacement of joint poles shall be borne in the proportion of \_\_\_% by the Electric Company and \_\_\_% by the Telephone Company unless the replacement is for the sole benefit of one of the parties in which case the entire net loss shall be borne by that party.

➔ (c) Cost and expense entailed in reinforcing or repairing joint poles as provided for in Article VII, paragraph (a), shall be divided between the parties in proportion to their ownership in the pole.

➔ (d) Each party shall place, maintain, rearrange, transfer and remove its own attachments at its own expense except as otherwise expressly provided elsewhere in this agreement.

(e) If in specific situations the division of costs of joint poles in accordance with the foregoing provisions of this Article will result in inequities or otherwise make joint use unattractive to one of the parties hereto, even though joint use may be desirable or economical from the over-all standpoint, nothing shall preclude the establishment of joint use in such situations on such terms or on such basis (including a rental basis in lieu of joint ownership) as may be agreed upon in writing by designated representatives of the parties hereto.

ARTICLE IX

PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

When either party desires to change the character of its circuits on jointly owned poles, such party shall give \_\_\_\_\_ days' notice in writing to the other party of such contemplated change.

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.

In the latter event, the party whose circuits are to be removed from the joint poles shall promptly carry out the necessary work. Unless otherwise agreed, the net costs of such removal shall be divided equally.

ARTICLE X

TERMINATION OF JOINT OWNERSHIP AND USE OF A POLE

(a) If either party desires, at any time, to abandon a jointly owned pole, it shall give the other party notice in writing to that effect, at least \_\_\_\_\_ days prior to the date on which it intends to abandon such pole. If the other party desires to continue its use and ownership of such pole it shall, upon the removal of all the attachments of the party abandoning the pole, assume sole ownership of such pole, and shall thereafter save harmless the party abandoning the pole from all obligations, liabilities, damages, costs, expenses or charges incurred thereafter, and not growing out of anything theretofore occurring because of or arising out of the presence or condition of such pole or of any attachments thereon. Such other party shall pay to the abandoning party such equitable sum for its interest in said pole or poles as shall at the time of such abandonment be agreed upon.

(b) If both parties, at the same time, abandon any jointly owned and used pole, each party shall, at its own expense, remove its attachments therefrom and the custodian of such pole shall thereupon remove the pole and the net expense incurred in removing said pole or the net proceeds derived therefrom shall thereupon be divided between the parties in proportion to their ownership therein.

ARTICLE XI

ACKNOWLEDGEMENT OF JOINT OWNERSHIP

Upon establishing joint ownership in any pole or poles, the joint ownership thereof shall be consummated within \_\_\_ days by the execution of a suitable written instrument or instruments signed by both parties hereto giving the number of each pole and its location. In addition, each party may stencil its name on such poles or otherwise suitably mark them for identification.

ARTICLE XII

PERIODICAL REVIEW

At the expiration of \_\_\_ years from the date of this agreement and at the end of any \_\_\_ year period thereafter, the division of costs provisions of Article VIII shall be subject to review and readjustment at the request of either party made in writing to the other party not later than \_\_\_ days before the end of any such \_\_\_ year period. In case of readjustment following such review, the new arrangements mutually agreed upon shall remain in effect until again readjusted.

ARTICLE XIII

DEFAULTS

If either party shall make default in any of its obligations under this contract and such default continue thirty (30) days after notice thereof in writing by the other party, the party not in default may suspend the rights of the party in default in so far as concerns the granting of further joint use. If such default shall continue for a period of \_\_\_ days after such suspension, the party not in default may forthwith terminate this agreement as far as concerns the further granting of joint ownership and use.

If either party shall make default in the performance of any work which it is obligated to do under this contract 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 thereof. Failure on the part of the defaulting party to make such payment within \_\_\_ days upon presentation of bills therefor shall, at the election of the other party, constitute a default under the first clause of this article.

ARTICLE XIV  
LIABILITY AND DAMAGES

Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for injury to the property of either party, or for injuries to other persons on their property, arising out of the joint use of poles under this agreement, or due to the proximity of the wires and fixtures of the parties hereto attached to the jointly used poles covered by this agreement, the liability for such damages, as between the parties hereto, shall be as follows:

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

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

(c) Each party shall be liable in proportion to its ownership of jointly used poles covered under this agreement for: all damages for such injuries to persons other than employees of either party, and all damages for such 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 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 representatives in conformity with (1) the provision of any workmen's compensation act or any act creating a liability to the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, or (2) any plan for employees' 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 the preceding paragraphs numbered (a) and (b) and shall be paid by the parties hereto accordingly.

(e) All claims for damages arising hereunder that are asserted against or effect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case under the provision of paragraph (c) of this Article where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which said terms are acceptable may, at its election: if the Electric Company, pay to the other party         % of the expense which such settlement would involve, or if the Telephone Company, pay to the other party         % of the expense which such a settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

(f) In the adjustment between the parties hereto 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 comprise costs, attorneys' fees, disbursements and other proper charges and expenditures.

ARTICLE XV  
EXISTING RIGHTS OF OTHER PARTIES

If either of the parties hereto has, prior to the execution of this agreement, conferred upon others, not parties to this agreement, by contract or otherwise, rights in or privileges to use any poles covered by this agreement, nothing herein contained shall be construed as affecting said rights or privileges, and either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights, or privileges; it being expressly understood, however, that for the purpose of this agreement, the attachments of any such outside party, except those of a municipality or other public authority shall be treated as attachments belonging to the grantor, and the rights, obligations and liabilities hereunder of the grantor in respect to such attachments shall be the same as if it were the actual owner thereof.

ARTICLE XVI  
ASSIGNMENT OF RIGHTS

Except as otherwise provided in this agreement, neither party hereto shall assign nor 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; provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges and franchises, or 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, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser on foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be; and provided, further, that subject to all of the terms and conditions of this agreement, either party may permit any corporation conducting a business of the same general character as that of such party, and owned, operated, leased and controlled by it, or associated or affiliated with it in interest, or connecting with it, the use of all or any part of the space reserved hereunder on any pole covered by this agreement for the attachments used by such party in the conduct of its said business; and for the purpose of this agreement, all such attachments maintained on any such pole by the permission as aforesaid of either party hereto shall be considered as the attachments of the party granting such permission, and the rights, obligations and liabilities of such party under this agreement, in respect to such attachments, shall be the same as if it were the actual owner thereof.

#### ARTICLE XVII

##### 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 at all time in full force and effect.

#### ARTICLE XVIII

##### PAYMENT OF TAXES

Each of the parties hereto shall be liable for taxes, fees and Governmental charges levied or assessed upon the jointly owned property covered by this agreement, in accordance with its ownership therein, and

shall make such reports to Governmental authorities as may be required for the proper listing of its said ownership and for the determination of the taxes, fees and charges thereon but any tax, fee or charge imposed on such jointly owned property solely because of the use thereof of one of the parties shall be paid by that party.

ARTICLE XIX

BILLS AND PAYMENT FOR WORK

Upon the completion of work performed hereunder 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 \_\_\_\_\_ days after the completion of such work an itemized statement of the charges. As of March 1 of each year these statements shall be summarized and the net balance, if any, due one of the parties shall within \_\_\_\_\_ days be paid to it by the other party.

ARTICLE XX

SERVICE OF NOTICES

Wherever, in this agreement, notice is provided to be given by either party hereto to the other such notice shall be in writing and given, by letter mailed or by personal delivery, to the Electric Company at its office at \_\_\_\_\_, or to the Telephone Company at its office at \_\_\_\_\_, as the case may be, or to such other address as either party may, from time to time, designate in writing for that purpose.

ARTICLE XXI

TERM OF AGREEMENT

Subject to the provisions of Article XIII - Defaults, herein, this agreement may be terminated, so far as concerns further granting of joint use by either party, after the first day of \_\_\_\_\_, 19\_\_\_\_, upon one (1) year's notice in writing to the other party, provided that if not so terminated it shall continue in force thereafter until terminated by either party at any time upon one (1) year's notice in writing to the other party as aforesaid, and provided further that notwithstanding such termination, this agreement shall remain in full force and effect with respect to all poles jointly owned and used by the parties at the time of such termination.