



OREGON FISHERMEN'S CABLE COMMITTEE

Established as Oregon Fishermen's Undersea Cable Committee July 9, 1998

2021 Marine Drive, Suite 102

Astoria, Oregon 97103

Phone (503) 325-2285

Fax (503) 325-7012

www.ofcc.com

February 24, 2021

RE HB 2603

Chair Marsh, Members of the House Committee on Energy and Environment

After thoughtful discussion and analysis, the OFCC has come to the conclusion that HB 2603 is a solution in search of a problem that doesn't exist. We believe that significant changes to Oregon's policies on the undersea cables should be done in a more thoughtful, deliberative way, with all stakeholders at the table to air concerns and find solutions. While we can support language to codify existing OR Dept. of State Lands policy on bonding of cable and pipeline projects, there are significant portions of the bill that we believe will do more harm than good for the state of Oregon. Additionally, this bill only applies to submarine cables, and ignores ocean outfall pipelines that currently fall under the same State rules. Why should submarine cables be treated differently than outfall pipes, which have the potential to have a much greater impact on the environment? If this legislation were truly needed, I would think the proponents would have it apply equally to both cables and pipelines.

OR Dept. of State Lands already has bonding requirements in existing and future permits as shown in the Oregon Department of State Lands ("DSL") cable and pipeline easement template. (Attached) This includes a reasonable process for bonding to address the removal of the cable, if needed, at the end of the easement period. The state already has authority to require bonds as this template is marked with Oregon DOJ approval.

We also fail to see why legislation, with a large fiscal impact, is needed to consider what could be done to improve the permitting process. In 2016 a delegation from Hawaii came to Oregon to study our permitting process because Oregon had earned a deserved reputation for an efficient, economical, and transparent process for permitting cables. During those meetings, the Hawaiian delegation met with members of Oregon DSL and Oregon Department of Land Conservation and Development ("DLCD") and some of us involved with the subsea cable industry. We never heard the Oregon representatives express a problem or concern with our permitting process. Oregon has a remarkable history of cable permitting that has resulted in multiple benefits for the entire state. We fear that making the permitting process more onerous will have a deleterious effect on the digital infrastructure of the State of Oregon.

We can assure you that the subsea cable industry is aware of the issues that prompted this legislation. We can also assure you that our cable members are looking at all ways to improve engagement, communication, and engineering to prevent future issues. More legislation is not needed for the cable industry or the state to analyze how these processes can be improved. **Please vote "NO" on HB 2603.**

/Scott McMullen

Scott McMullen, Chair

Oregon Fishermen's Cable Committee, Inc.

**STATE OF OREGON
DEPARTMENT OF STATE LANDS**

COMMUNICATION CABLE EASEMENT AGREEMENT

-EA

THIS COMMUNICATION CABLE EASEMENT AGREEMENT (this "Agreement") is made on this _____ day of _____, 20____ (the "Effective Date"), by and between the State of Oregon, by and through its Department of State Lands ("State"), and _____, a _____ ("Grantee"). State and Grantee are each a "Party" and together the "Parties."

1. Grant of Easement. Pursuant to ORS 758.010 and OARs 141-083 and 141-122 (as may be amended at any time and from time to time), State hereby grants to Grantee an easement (the "Easement") to construct, maintain, operate and replace a portion of a single submarine fiber optic cable known as the _____ cable system (the "Cable"), in, over, under and across State-owned submerged and submersible land of the Pacific Ocean, in or adjacent to _____ County, Oregon, being the Easement Parcel as defined in Section 2 below. This Agreement does not convey an estate in fee simple of the Easement Parcel. The grant contained herein is for an easement only, and title to the Easement Parcel remains in State.

2. Easement Parcel. The Easement runs in, over, under and cross a fifteen foot (15.00') wide swath of shore and seabed located seven and half feet (7.50') on either side of the following described proposed centerline described below (the "Easement Parcel"). The Easement Parcel includes the "Shore Area" (State's submersible land, i.e., from the ordinary high tide to the ordinary low tide, pursuant to ORS 390.615) and the "Territorial Sea Area" (State's submerged land, i.e., from the ordinary low tide to the three-mile limit of the Territorial Sea (as defined in ORS 196.405(5) and OAR 141-083-0280(11) and pursuant to ORS 274.710). The Easement Parcel is further described as follows:

Containing _____ acres, more or less, to the Three (3) Mile Limit, as shown on the attached Exhibit A.

3. Payment. Grantee understands and acknowledges that the Easement may be granted at no charge, pursuant to current Oregon state law and State's administrative rules, but that, if Oregon state law changes during the Term of this Agreement (as defined in Section 4 below), Grantee may be subject to future imposition, by State, of a consideration payment and/or usage fee that would be established by the Oregon State Land Board as authorized by law. In order to avoid the potential future imposition of a

consideration payment and/or usage fee, Grantee has paid to State, concurrently with the execution of this Agreement, a one-time payment of Three Hundred Thousand Dollars (\$300,000.00), the receipt and sufficiency of which is acknowledged by State. No additional consideration, payments, usage fees and/or rents shall be due or may be imposed as consideration for the rights granted in this Agreement, regardless of any amendment to statutes or administrative rules governing this Agreement that may be enacted during the original Term of this Agreement. Notwithstanding the foregoing, Grantee acknowledges and agrees that it shall not be entitled to any rebate or reimbursement of all or any portion of the consideration paid for the Easement if for any reason this Agreement is not renewed or is terminated pursuant to the provisions herein.

4. Term. The "Term" of this Agreement is twenty (20) years.

5. Renewal. Grantee, subject to continued compliance with the terms and conditions of this Agreement, shall have the right to renew this Agreement for an additional twenty (20) -year term, in accordance with the governing law and applicable rules of State at the time of renewal.

6. Construction of Cable.

6.1 Construction of the Cable shall conform to standards and specifications set by the U.S. Army Corps of Engineers and the U.S. Coast Guard.

6.2 Any blasting which may be necessary for the construction of the Cable shall be performed according to the laws of the State of Oregon and the rules of its agencies, including, without limitation, Oregon Department of Fish and Wildlife's in-water work windows.

6.3 Grantee shall supply to State an as-laid survey for the Cable within ninety (90) days after completion of construction.

7. Financial Assurance.

7.1 *For Construction*. Grantee shall furnish to State a surety bond in the amount of \$20,000.00 (or, in lieu of the surety bond, an equivalent cash deposit or certificate of deposit), that names the State of Oregon as co-owner, to ensure that Grantee performs construction of the Cable in accordance with all terms and conditions of this Agreement, to be held until construction of the Cable is completed.

7.2 *For Decommissioning*.

7.2.1 If Grantee does not intend to renew the Term of this Easement pursuant to Section 5 above, then within one hundred eighty (180) days before the last day of the Term of this Agreement, Grantee shall submit to State a plan for

decommissioning the Cable and restoring the Easement Parcel (the “Decommissioning Plan”) that includes:

- (a) a detailed cost estimate (the “Decommissioning Cost Estimate”) for decommissioning the Cable and restoring the Easement Parcel back to its previous, natural condition as set forth in Section 10 below (the “Decommissioning Work”). The Decommissioning Cost Estimate for the Decommissioning Work shall be prepared by a qualified independent third party, acceptable to State in its reasonable discretion;
- (b) a detailed proposed schedule for the Decommissioning Work;
- (c) a detailed description of the Decommissioning Work, including any corrective or remedial actions that may be required pursuant to this Agreement; and
- (d) Grantee’s proposed form of financial assurance for the completion of the Decommissioning Work, which shall be either a surety bond, a cash deposit or a certificate of deposit as described in OAR 141-083-0850(2), in the amount of the Decommissioning Cost Estimate.

7.2.3 Within thirty (30) days after Grantee’s delivery of the Decommissioning Plan, State shall, in State’s sole discretion, either notify Grantee that State approves the Decommissioning Plan, or request revisions thereto or additional information, in which case Grantee shall promptly deliver to State a revised Decommissioning Plan or additional information. If State does not, in State’s sole discretion, approve the revised Decommissioning Plan, then Grantee shall, within ninety (90) days after Grantee’s rejection of the Decommissioning Plan, submit to State a completed application for an encroachment easement under OAR 141-123-0030(19), to address that the Cable will, after the Term of this Agreement, be an encroachment on State property.

7.2.4 Grantee shall not undertake any Decommissioning Work until State has approved the Decommissioning Plan, and until the financial assurance required by State is in place. Additionally, Grantee shall notify State at least sixty (60) days before undertaking the Decommissioning Work.

8. Maintenance and Repair in Shore Area. If maintenance or repair is required within the Shore Area, Grantee shall follow and adhere to the Oregon Parks and Recreation Department OARs 736-020 – Beach Construction/Alteration Standards (as may be amended at any time and from time to time).

9. Inspection. Grantee shall inspect the Cable and related fixtures at least every five (5) years and after any major geologic event, such as subduction-zone earthquakes, to ensure continued burial (from the entry of the Cable on the Shore Area to the end of HDD) and location integrity of non-buried cable (from the end of the HDD

to the remainder of the Cable on the Easement Parcel). Grantee shall promptly perform any maintenance or repair shown to be necessary after such inspections, to ensure continued burial or location integrity of the Cable.

10. Restoration. The Easement Parcel shall be restored back to its previous, natural condition as soon as construction or maintenance is completed.

11. Vegetation and Mineral Resources.

11.1 Except as expressly authorized by State, Grantee shall not:

11.1.1 cut, destroy or remove, or permit to be cut, destroyed or removed, any vegetation from the Easement Parcel (provided, however, that routine right-of-way maintenance, including vegetation trimming, is allowed without State's express authorization); or

11.1.2 remove from the Easement Parcel any sand and gravel, or other mineral resources, for commercial use or sale.

11.2 Grantee shall compensate State for the fair market value of any commercially valuable timber or sand and gravel, or other mineral resources, in the Easement Parcel that must be removed during or after construction or maintenance of the Cable, or which cannot be developed because of Grantee's use of the Easement Parcel.

12. Damage; Fines.

12.1 Grantee shall pay to State the current market value, as determined by State, for any unnecessary and non-approved damages to the Easement Parcel or surrounding seabed or shoreline caused by construction or maintenance of the Cable.

12.2 Grantee shall be responsible for the payment of any fines or penalties charged against the Easement Parcel resulting from Grantee's failure to comply with laws or regulations affecting the Easement Parcel.

13. Conservation. Grantee shall conduct all operations within the Easement Parcel in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests.

14. Compliance with Other Agreement and Grantee's Applications. In all of its activities related to the Easement, including construction, maintenance and repair, Grantee shall strictly comply with the following:

14.1 "Agreement between the Oregon Fishermen's Cable Committee, Inc. and _____", dated _____, attached as Exhibit B;

14.2 All of the information provided by or on behalf of Grantee in Grantee's "Easement Application Form for 'Territorial Sea' Fiber Optic Cable," dated _____ ;

14.3 All of the information provided by or on behalf of Grantee in Grantee's "Joint Permit Application," dated _____ ; and

14.4 ***[any other document State needs to include]***

15. Prior Notification to State. Grantee shall notify State at least ninety (90) days:

15.1 prior to any pre-planned change in the location of the Cable;

15.2 prior to any change in ownership of the Cable;

15.3 after discovery of any change in the location of the Cable resulting from accidental contact or geologic or other natural causes; or

15.4 prior to an abandonment or termination of the use of the Cable.

16. Notification to State of Breakage or Failure. Grantee shall notify State within forty-eight (48) hours after Grantee learns of any break or malfunctioning of the Cable, related equipment or any part thereof, whether arising from the regular use of the Cable or the Decommissioning Work.

17. Prior Consent from State. Grantee may not, without prior consent from State:

17.1 change the type of use authorized by this Agreement;

17.2 expand the number of authorized developments or uses of the Easement;

17.3 change the location of the Easement Parcel; or

17.4 permit other persons to utilize the Easement Parcel for uses and developments requiring separate authorization by State pursuant to the administrative rules governing the granting of easements or other State requirements.

18. No Interference. Nothing in this Agreement may be construed as permission, except during construction or maintenance periods, to Grantee to interfere with navigation or fisheries, or reduce the public's rights to the free and unimpeded use of the navigable waters of the State of Oregon within the area of the Easement Parcel; provided, however, that to the extent necessary to facilitate construction and maintenance of the Cable, Grantee may so interfere, but shall keep such interference to an absolute minimum. Grantee shall perform and complete all such construction and maintenance of the Cable as promptly as is reasonable.

19. Requirements of Regulatory Agencies. In its activities related to the Easement, Grantee shall comply with all applicable requirements of the regulatory agencies of the State of Oregon, including, without limitation, the Oregon Department of Fish and Wildlife.
20. Assessments. Grantee shall pay all assessments that may be legally charged on public lands which are levied against the Easement Parcel, whether or not such assessments have been levied against the Easement Parcel or State by the assessing agency.
21. Nondiscrimination. Grantee shall use the Easement Parcel only in a manner, or for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.
22. Permits. Grantee shall ensure that all state, federal and local permits are consistent and compatible with this authorization prior to work commencing.
23. Nonuse. If the Easement Parcel is not used for a period of five (5) consecutive years, this Agreement may be terminated by notice from State to Grantee at its last known address. Upon expiration or earlier termination of this Agreement, Grantee shall have one (1) year to remove the Cable and appurtenances from the Easement Parcel. However, if Grantee demonstrates to State's satisfaction that removal of the Cable will be more detrimental to the Easement Parcel than leaving it in place, Grantee shall be permitted to abandon the Cable in place.
24. Hold Harmless. Grantee shall indemnify, defend and hold State harmless from any and all claims suffered or alleged to be suffered as a result of Grantee's use of the Easement.
25. Open to Public. The Easement Parcel shall remain open to the public for recreational and other non-proprietary uses unless restricted or closed to public entry by State.
26. State's Reservation of Rights.
- 26.1 State reserves the right to lease or otherwise utilize the Easement Parcel in a manner and for uses that will not be incompatible with the primary use for which the Easement is granted.
- 26.2 State has the right to grant additional easements within the Easement Parcel, subject to the provisions of the administrative rules governing the granting of easements.

26.3 State and its employees, agents and contractors shall have the right to enter into and upon the Easement Parcel at any time for the purposes of inspection or management.

27. Assignment of Agreement. This Agreement may be assigned, pursuant to the provisions of OAR 141-122-0080.

28. Default. A “Grantee Default” shall occur upon any of the following events:

28.1 Grantee fails to comply with or fulfill any term, condition or obligation of this Agreement (except with regard to Section 18 above), within thirty (30) days after notice from State specifying the nature of the failure with reasonable particularity or, in the event such failure cannot reasonably be cured within such thirty (30) -day period, then within such time as the failure can be cured with reasonable good faith and diligence; provided, however, that such cure period shall not exceed one hundred eighty (180) days.

28.2 Grantee fails to comply with Section 18 above within ten (10) days after notice from State specifying the nature of the failure with reasonable particularity; or, in the event such failure cannot reasonably be cured within such 10-day period, then within such time as the failure can be cured with reasonable good faith and diligence; provided, however, that such cure period shall not exceed thirty (30) days.

29. Remedies. Upon any Grantee Default, State may exercise any one or more of the following remedies:

29.1 At Grantee’s cost and expense, State may perform Grantee’s unperformed obligations that gave rise to the Grantee Default, and charge all such costs and expenses to Grantee pursuant to this Agreement, which Grantee shall pay within thirty (30) days after State delivers an invoice therefor, together with reasonable supporting documentation of such costs and expenses.

29.2 State may terminate this Agreement.

29.3 State may sue periodically to recover damages as they accrue without barring a later action for further damages.

29.4 State shall be entitled to recover from Grantee any and all damages arising from a Grantee Default, including all costs and expenses of curing Grantee Default, with any amounts due and owing to accrue interest at the rate of eight percent (8%) per annum.

29.5 The foregoing remedies in this Section 29 shall be in addition to and shall not exclude any other remedy available to State in law or equity.

30. Notices.

30.1 *Addresses.* A Party's address means the address set forth below that Party's signature on this Agreement. State may notify User of a different address for payments of any amounts due to State under this Agreement. Any notices, demands, deliveries or other communications required under this Agreement shall be made in writing and delivered by one of the methods set forth in Section 30.2 below to a Party's address, unless one Party modifies its Address by notice to the other Party, given in accordance with Section 30.2 below.

30.2 *Delivery.*

Method of delivery	When notice deemed delivered
In person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email or Fax	the day sent (unless sent after 5:00 p.m., P.T., in which case the email or fax shall be deemed sent the following business day)
US Mail (postage prepaid, registered or certified, return receipt requested)	the day received, as evidenced by signed return receipt
Courier delivery (by reputable commercial courier)	the day received, as evidenced by signed receipt

If the deadline under this Agreement for delivery of a notice is a Saturday, Sunday or federal or State of Oregon holiday, such deadline shall be deemed extended to the next business day.

31. Governing Law; Consent to Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, suit action or proceeding ("Claim") between State (or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon. In no event shall this Section 31 be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. State and Grantee each hereby consents to the exclusive jurisdiction of such court, waives any objection to venue and waives any claim that such forum is an inconvenient forum.

[remainder of page intentionally left blank]

GRANTEE:

BUSINESS NAME, a BUSINESS ENTITY TYPE

Name: _____

Title: _____

Signature: _____

STATE OF _____)
County of _____) ss
_____)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____, the _____ of

Signature
My Commission Expires _____, 20____.



STATE:

STATE OF OREGON,
acting by and through its Department of State Lands

Name: _____

Title: _____

Signature: _____

STATE OF OREGON)
) ss
County of Marion)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____, the _____ of
the Department of State Lands.

Signature
My Commission Expires _____, 20_____.

DOJ approved 8/11/2020 #10231413v5