

## JOINT POLE USE AGREEMENT

**THIS AGREEMENT** made and entered into this 30<sup>th</sup> day of October, 2017, by and between **TAYLOR COUNTY RURAL ELECTRIC COOPERATIVE CORPORATION**, a corporation organized under the laws of the State of Kentucky, and having its offices in Taylor County, Kentucky, and providing service within the counties of Adair, Casey, Green and Taylor Counties in Kentucky, **FIRST PARTY**, and **COMMONWEALTH OF KENTUCKY** whose address is **Finance & Administration Cabinet**, Office of the Secretary 702 Capitol Ave., Room 383, Capitol Annex, Frankfort, KY 40601, **SECOND PARTY**;

### WITNESSETH:

That for and in consideration of the rental payments to be made by Second Party to First Party as provided for hereinafter, First Party does hereby covenant and agree that Second Party shall, during the term of this Agreement, be entitled to utilize certain of the wood poles maintained by First Party in its service area and as a part of its power distribution system, the use by Second Party of such wood poles being for the purpose of attaching thereto certain communications cables or lines consistent with Second Party's installation of a fiber optic distribution project which will be utilized as a part of its lawful business pursuits.

1. Those specific poles belonging to and maintained by First Party as a part of its distribution system which shall be the subject of this Agreement, and the concurrent right of the parties hereto to utilize same, are specifically listed and enumerated upon and as a part of the Hbd -page plans and specifications which are attached hereto and made a part hereof as Exhibit A hereto, and this Agreement shall be applicable only to such pole installations as are set forth upon that Exhibit A.

2. Second Party shall pay to First Party, as rental for the utilization of the subject poles of First Party, an annual rental charge of FOURTEEN DOLLARS and 96/100

(\$14.96) per pole per attachment. No more than one attachment shall be made to any single pole without the specific written consent of First Party, not to be unreasonably withheld. That rental charge shall remain fixed for a period of (3) three years from and after the date of this agreement, and after the expiration of that (3) three-year period First Party may, upon written notice to Second Party, revise and modify that annual rental charge which revised charge shall again remain applicable for a (3) three-year period thereafter. Annual pole rental for all poles which shall be the subject of this Agreement shall be payable, in advance, with the first of such annual payments to be due upon the execution of this Agreement, and all remaining payments during the term of this Agreement to be made on or within thirty (30) days of the subsequent anniversary dates of this Agreement. In the event Second Party shall be delinquent in the payment of pole rental charges provided for hereunder for as much as thirty (30) days, pursuant to KRS 45.454, the Second Party shall pay a penalty of one percent (1%). If the Second Party fails to make this penalty payment, the First Party may, at its option, notify the Second Party of its intent to immediately terminate this Agreement and remove the attachment of Second Party from its poles, with First Party being then entitled to reimbursement from Second Party for such expense of removal.

3. Second Party covenants and agrees that it will, in the utilization of the poles of First Party as provided for hereunder, observe and comply with all code requirements, statutes, regulations, and other directives which may be applicable to those installations made by Second Party and, in the event that Second Party shall fail to comply with all of such requirements with respect to its communications lines and cable, and the attachment thereof to the poles of First Party, then First Party may, at its option and upon timely notice to Second Party, correct such deficiencies as may be found to exist, and thereby become entitled to reimbursement from Second Party for the actual cost of correction, such cost to be paid by Second Party to First Party within thirty (30) days

from billing. Second Party's obligation for compliance hereunder shall include the following:

A. Second Party shall perform an engineering study, by a registered professional engineer of its choice, which will determine the actual scope of any project whereby attachments are made pursuant to the terms of this agreement. Second Party will provide to First Party the report/recommendations of its engineering firm, with the costs of such services to be borne by Second Party.

B. It is understood that code requirements applicable to projects contemplated hereunder include (40) forty inch clearance between the equipment of First Party and the equipment of Second Party. Thus, and in order to insure continuing code compliance, the plans and specifications to be supplied by Second Party's professional engineer as set forth in preceding paragraph 3-A, shall specify the uppermost location of any pole attachment and Second Party shall in no event make any attachment above that location. Generally, on single phase primary poles, this uppermost location will be defined as (12) twelve feet below the pole top or (40) forty inches below existing appurtenances, whichever condition results in the lower position relative to the pole top. Generally, on multiphase primary poles, the uppermost location will be defined as (12) twelve feet below the pole top, as long as this location results in a minimum (7) seven feet of separation from the primary neutral. Additionally, as noted on a single phase primary pole, (40) forty inches of separation will be required below any existing appurtenances which may result in a location lower than the above two requirements. First Party's engineering staff and the consulting engineers of Second Party will consult to identify various single-phase and multiphase poles which may become a part of any contemplated project, and in order to insure appropriate separation of services, given existing uses as may, from time to time, exist with respect to other joint users.

C. It is understood by Second Party that attachments made hereunder upon any pole other than a tangent (straight line) pole will require guying / anchoring, separate

and apart from the installations of First Party, and that guying and anchoring on the part of Second Party shall be carried out in consultation with, and to the satisfaction of, First Party.

D. Utility Easements. Second Party shall be responsible for securing/obtaining its own easements necessary for the installations contemplated hereby; and Second Party shall not be entitled to rely upon any easement, whether written or by implication, obtained or secured by First Party as a part of the installation and maintenance of its system.

E. All pole attachments placed as the result of this agreement shall be marked in such a way as to clearly identify Second Party as the owner thereof. With respect to each of First Party's poles upon which an attachment of Second Party is placed, Second Party will affix its identifying emblem at eye level upon that pole so that the same may be observed without the climbing of poles, the use of elevating equipment, etc.

F. Second Party covenants that it has, through its representatives, or contractors, examined each of First Party's poles which are to become the subject of this agreement pursuant to Exhibit A and, that Second Party is thus aware of such other joint users as may currently have in place attachments to those poles. Second Party's installation will thus be done consistent with those existing conditions of joint use, and to the extent that Second Party's installation shall require accommodations from other existing joint users then Second Party shall be responsible for negotiating those accommodations from other joint users, and Second Party shall further be responsible for the expense associated with achieving any such accommodations of other joint users, including any attachment relocations as may be required thereby.

4. Second Party or its Contractors shall, during the term of this Agreement, maintain public liability insurance providing aggregate coverage in an amount of not less than \$1,000,000.00, and shall provide, upon request, proof of such insurance coverage

to First Party. To the extent permitted by law, including but not limited to Section 177 of the Kentucky constitution, Second Party further agrees to indemnify, defend and hold harmless First Party from and with respect to any claim made against First Party and arising out of or related to the utilization by Second Party of the poles of First Party as provided for hereunder, and the installation from and upon such poles of communications lines, cables and the like, except that Second Party shall not be responsible for any claim arising out of or related to the acts of First Party or the acts of Second Party taken at the direction of or in a manner mandated by the First Party.

5. It is understood and agreed that this Agreement is made with respect to those poles listed upon Exhibit A as they presently exist, and that First Party shall be under no duty with respect to the maintenance of such poles other than to properly maintain same in a condition substantially similar to that which now exists. In the event that Second Party hereafter proposes to make installations upon any such poles which will require replacement or modification of those poles, then First Party will, upon request, provide the estimated costs of such replacement or modification in order that Second Party may determine whether it wishes to proceed to have First Party effectuate such replacement or modification. The actual cost of such replacement or modification of any such pole shall be borne by Second Party, with payment therefor to be made within thirty (30) days from billing.

6. Second Party will maintain its attachments in a safe condition and good repair, and in conformity with all compliance standards. It is understood that First Party will, from time to time, and as necessary, replace poles within its system, including those poles to which there may be affixed the attachment(s) of Second Party and other joint users. Upon such pole replacement, it shall be the continuing responsibility of Second Party to reattach to the replacement pole. Recognizing that it will impractical to expect immediate reattachment by Second Party upon a particular replacement pole, the parties agree to adopt the following protocol for reattachment:

A. Upon installation by First Party of a new pole adjacent to the pole being removed, First Party will saw off or “top” the pole being replaced just above the uppermost joint use attachment in place at that time, and will leave in place the old pole to which an attachment has been made;

B. Upon installation of the replacement pole, and the topping of the old pole, First Party will notify Second Party, as well as any other joint users, of the need to transfer attachments to the replacement pole. Upon such notification, ownership of the “topped” pole shall be considered to have been transferred to the joint users, who will then become responsible, upon reattachment to the replacement pole, for removal of that topped pole;

C. The joint users who have been notified by First Party of the replacement of a pole shall then, pursuant to agreement, provide for reattachment to the replacement pole and removal of the topped pole. In the absence of any agreement regarding removal of the topped pole, it shall be considered the responsibility of the last joint user to reattach to the replacement pole to remove the topped pole, fill the old pole hole, and properly restore the site;

D. When the joint users, or the last among them to reattach, discharge their responsibility for removal of the topped pole as set forth hereinabove, such joint user(s) shall indemnify, defend, and hold harmless First Party with respect to any claim arising out of that process;

E. Only in emergency situations will First Party make the transfer of Second Party’s attachment(s) between replaced and replacement poles, and any joint user whose reattachment to a replacement pole is made under emergency circumstances will, to the extent permitted by law, including but not limited to Section 177 of the Kentucky constitution, indemnify, defend, and hold harmless First Party from and with respect to any claim arising from First Party’s undertaking of those emergency measures. First Party may, at its discretion, require reimbursement from any joint user

for the actual cost of such emergency measures as may be undertaken by First Party, and the joint user(s) shall remain responsible for removal of the replaced pole in accordance with the foregoing protocol, and shall further remain responsible for identification measures as are required under numerical paragraph 3E of this Agreement. After First Party has, on an emergency basis, reattached to the replacement pole upon behalf of the joint user, that joint user shall remain responsible for examining such reattachment and insuring that it will henceforth conform to all applicable compliance standards.

7. The parties recognize that there may in the future exist circumstances under which First Party is required to install and maintain upon a pole an unusual appurtenance, which installation may require the relocation of pole attachments in order to meet clearance minimums. In that event, and so long as the attachment of Second Party may be relocated upon that pole, and without the installation of a new pole, then Second Party will, at the request of First Party, make such relocation at its cost. Should First Party nonetheless be required to modify the attachment of Second Party under these circumstances, then Second Party shall reimburse First Party for the actual cost thereof.

8. Subject to the Second Party's rights to terminate this Agreement for default or convenience pursuant to 200 KAR 5:312, and except as provided for herein with respect to the modification of annual rental charges at (3) three-year intervals, the term of this agreement shall be perpetual provided, however, that either party may, by giving notice not less than thirty (30) days from any anniversary date of this Agreement, terminate the Agreement on that forthcoming anniversary date. In the event of termination pursuant to the provisions of this paragraph, Second Party shall, within sixty (60) days from that anniversary date of this Agreement upon which termination is accomplished, remove its attachments from First Party's poles; and in the event that such removal has not been achieved consistent herewith, then First Party may itself remove such attachments and

shall then be entitled to reimbursement from Second Party for the expense of such removal, such expense to be paid by Second Party to First Party within thirty (30) days of billing. Notwithstanding the foregoing, the Second Party may remove any of its attachments at any time for any reason upon ten (10) days written notice to the First Party.

9. If and to the extent that, subsequent to the date of execution of this Agreement, Second Party shall be desirous of expanding its subject project so as to require attachments upon the poles of First Party other than those specifically enumerated under attached Exhibit A, then the parties shall attempt in good faith to negotiate a separate agreement with respect to such an expanded use. The parties presently contemplate that such separate agreement shall be memorialized in a form substantially similar to the agreement evidenced hereby. However, it is understood that no expanded or additional use of the system of the First Party by the Second Party shall be either implied or inferred from the execution of this Agreement and in the absence of the actual execution of a separate agreement thereupon.

10. The privileges and duties granted hereunder shall not be transferred or assigned by either of the parties without the specific written consent of the other, which consent shall not be unreasonably withheld.

11. The liability of the Commonwealth of Kentucky related to contractual damages is set forth in KRS 45A.245.

12. This Agreement embodies the entire agreement between the parties hereto and supersedes any prior or contemporaneous oral or written agreements between the parties, and once this Agreement has been executed, any amendments hereto must be made in writing and signed by both parties.

13. Notices to be provided hereunder shall be sufficient if given:

As to First Party:      Engineering/Operations Manager  
Taylor County RECC  
P.O. Box 100



Campbellsville, Kentucky 42719

As to Second Party:

COMMONWEALTH OF KENTUCKY  
Finance & Administration Cabinet  
Office of the Secretary  
702 Capitol Ave.  
Room 383, Capitol Annex  
Frankfort, KY 40601

LEDCOR TECHNICAL SERVICES  
Attn: Ledcor Legal Department  
1200-1067 West Cordova  
Vancouver, BC  
V6C-1C7  
Canada

With a copy to


COMMONWEALTH OF KENTUCKY  
Finance & Administration Cabinet  
Office of General Counsel  
702 Capitol Ave.  
Room 392, Capitol Annex  
Frankfort, KY 40601

LEDCOR TECHNICAL SERVICES  
Attn: Jan Summarell  
188 Columbia Lane E.  
Shepherdsville, KY 40165

IN WITNESS WHEREOF, the parties hereto have affixed their signatures, this the day and year first hereinabove written.

ATTEST:

TAYLOR COUNTY RURAL ELECTRIC  
COOPERATIVE CORPORATION

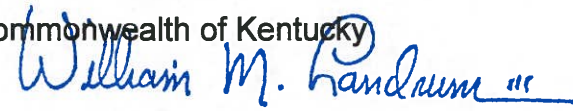
  
\_\_\_\_\_  
SECRETARY

By:   
\_\_\_\_\_  
BARRY MYERS,  
MANAGER

ATTEST:

Commonwealth of Kentucky

  
\_\_\_\_\_  
SECRETARY

By:   
\_\_\_\_\_  
(Name) WILLIAM M. LANDRUM III  
Title: Secretary

APPROVED AS TO  
FORM & LEGALITY

  
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APPROVED

FINANCE & ADMINISTRATION CABINET