

FIBER ATTACHMENT CONTRACT

THIS AGREEMENT made as of April 5th 2017 between Meade County Rural Electric Cooperative Corporation (the "Cooperative"), Brandenburg, KY and Commonwealth of Kentucky ("Licensee"), having a postal address of 702 Capital Ave, Room 383, Capitol Annex, Frankfort, KY 40601.

Specifications:

- A. The attachment to poles covered by this contract shall at all times conform to the requirements of the National Electrical Safety Code, 2017 Edition, and subsequent revisions thereof, except where the lawful requirements of public authorities may be stringent, in which case the latter will govern.
- B. The strength of poles covered by the agreement shall be sufficient to withstand the transverse and vertical load imposed upon them under the storm loading of the National Electrical Safety Code assumed for the area in which they are located.

Establishing Pole Use:

- A. Before the Licensee shall make use of any of the poles of the Cooperative under this contract, they shall notify the Cooperative of their intent in writing and shall comply with the procedures established by the Cooperative. The Licensee shall furnish the Cooperative detailed construction plans and drawings for each pole line, together with necessary maps, indicating specifically the poles of the Cooperative, the number and character of the attachments to be placed on such poles, and rearrangements of the Cooperative's fixtures and equipment necessary for the attachment, any relocation or replacements of existing poles, and any additional poles that Licensee intends to install. Within sixty (60) business days after receipt of detailed construction plans and drawings for each pole line, Cooperative shall notify Licensee in writing whether Cooperative will permit the use by Licensee of the structures sought to be attached to.

The Cooperative shall, on the basis of such detailed construction plans and drawings, submit to the Licensee a cost estimate (including overhead and less salvage value of materials) of all changes that may be required in each such pole line. Upon sixty (60) business days' written notice by the Licensee to the Cooperative that the cost estimate is

approved, the Cooperative shall proceed with necessary changes in pole lines covered by cost estimate. Upon completion of all changes, the Licensee shall have the right hereunder to make attachments in accordance with the terms of the application of this contract. The Licensee shall, at its own expense, make attachments in such manner as not to interfere with the service of the Cooperative.

- B. In the event Cooperative has failed to perform the make-ready work within sixty (60) business day period, with the exception of Acts of God, labor dispute, terrorist attack or notifies Licensee in writing that it will not be able to perform such make-ready work (by Cooperative approved labor) within by such period, Licensee may perform such work at Licensee's expense. Provided that Licensee has paid Cooperative make ready fees for such work, Cooperative shall provide a refund of such make ready fees to Licensee within thirty (30) business days of Licensee notifying Cooperative in writing that Licensee has performed the work.

Where Licensee is permitted to self-perform make-ready work, Cooperative may, perform post-construction audit to ensure adherence to Cooperative's internal construction standards, and to NESC standards. If the post construction audit reveals any defects in attachment installation under such standards, Licensee, at its own cost and expense, will correct such defects within thirty (30) business days (unless deemed hazardous by the Cooperative in which immediate response is required) and Cooperative may audit construction until all defects have been cured.

- C. Upon completion of all changes, the Licensee shall pay to the Cooperative the actual cost (including overhead and less salvage value of materials) of making such changes. The obligation of the Licensee hereunder shall not be limited to amounts shown on estimates made by the Cooperative hereunder. An itemized statement of the actual cost of all such changes shall be submitted by the Cooperative to the Licensee in a form mutually agreed upon.
- D. Any reclearing of existing rights-of-way and any tree trimming necessary for the establishment of pole line attachments hereunder shall be performed by the Licensee.

- E. The Cooperative reserves the right to prohibit the use of any existing anchors by the Licensee where the strength or conditions of said anchors cannot be readily identified by visual inspection.
- F. All poles to which attachments have been made under this contract shall remain the property of the Cooperative and any payments made by the Licensee for changes in pole line under this contract shall not entitle the Licensee to the ownership of any said poles.
- G. Any charges necessary for correction of substandard installation made by the Licensee, where notice of intent had not been requested, shall be billed at rate equal to twice the charges that would have been imposed if the attachment had been properly authorized.
- H. Licensee shall have a twelve (12) month period to occupy the space that was assigned by Cooperative. If Licensee does not occupy the assigned space within the twelve (12) month period, the assignment will lapse and the space will be considered available for use by Cooperative. Cooperative shall have the right to bill Licensee at the attachment rate for the twelve (12) months of reserved space. Notwithstanding anything to the contrary, prior to the expiration of the twelve (12) month period, the Licensee may submit a request for an extension of time based on an explanation of delays. Cooperative shall carefully consider the circumstances of any specific request and will not unreasonably withhold or deny an extension.

Easements and Rights-of-Way:

Each Party shall be responsible for obtaining its necessary rights-of-way and easements. Cooperative agrees to share with Licensee, but only to the extent permitted by applicable law, such easements or similar rights as Cooperative may have on, over or under the property of third parties where the facilities of Cooperative that are the subject of this Agreement may be located ("Utility Easements"); provided, however, that Licensee's right to use such Utility Easements shall be at all times limited to such purposes and uses as such Utility Easements may permit and shall be subject and subordinate to Licensor's prior rights. Cooperative makes no representation or warranty of any kind or description with respect to any such Utility Easement or to any right Licensee may or may not have to share the use of such Utility Easements. Cooperative shall not be liable should Licensee at any time be prevented from placing or maintaining its Attachments on Cooperative's Distribution Poles because Licensee failed to obtain appropriate rights-of-way or easements. To the extent Licensee makes any use of such Utility Easements, Licensee assumes all risks associated with Licensee's right to

do so. To the maximum extent permitted by applicable law, including, without limitation, Section 177 of the Kentucky Constitution, Licensee waives and releases Cooperative from, and shall indemnify Cooperative for, any claims or liabilities of any kind or description associated with the grant made by Cooperative hereunder. Cooperative may require Licensee to demonstrate that it has secured any necessary rights-of-way or easements prior to authorizing any Attachments. If such a requirement is imposed, the time for Cooperative to respond to Licensee's Application shall be tolled pending Licensee's response.

Consistent with the terms and conditions of this Agreement, Cooperative shall permit Licensee access to Cooperative's Distribution Poles and the Utility Easements. Further, Licensee's use of the Utility Easements is contingent on, and may be prevented or otherwise constrained by, the extent to which such use is permissible under applicable contracts and instruments between Cooperative and other entities, and under federal, state and local laws and regulations. THIS AGREEMENT APPLIES ONLY TO DISTRIBUTION POLES AND THE UTILITY EASEMENTS, AND DOES NOT PERMIT ACCESS OR AFFIXING OF ATTACHMENTS TO OTHER PROPERTY OF COOPERATIVE.

Maintenance of Poles, Attachments and Operation:

- A. Whenever right-of-way considerations or public regulations make relocation of a pole, or poles necessary, such relocation shall be made by the Cooperative at its own expense, except that each party shall bear the cost of transferring its own attachments.
- B. Whenever it is necessary to replace or relocate an attachment, the Cooperative shall, before making such replacement or relocation, give forty-eight (48) business hours' notice (except in cases of emergency) to the Licensee, specifying in said 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. Should the Licensee fail to transfer its attachments to the new or relocated pole at the time specified for such transfer of attachments, the Cooperative may elect to do such work and the Licensee shall pay the Cooperative the cost thereof.

- C. Any existing attachment of Licensee which does not conform to the specifications as set out in this contract hereof shall be brought into conformity therewith as soon as practical. The Cooperative, because of the importance of its service, reserves the right to inspect each new installation of the Licensee on its poles and in the vicinity of its lines or appurtenances. Such inspection, made or not, shall not operate to relieve the Licensee of any responsibility, obligation or liability assumed under the contract.
- D. The Cooperative reserves to itself, its successor and assigns, the right to maintain its poles and to operate its facilities thereon in such manner as will, in its own judgement, best enable it to fulfill its own service requirements. The Cooperative shall not be liable to the Licensee for any interruption of service of Licensee or for interference with the operation of the cables, wire and appliances of the Licensee arising in any manner out of the use of the Cooperative's pole hereunder.

The Cooperative shall exercise reasonable care to avoid damaging the facilities of the Licensee, make an immediate report to the Licensee of the occurrence of any such damage caused by its employees, agents or contractors, and except for removal for nonpayment or for failure to post or maintain the required "Performance Bond," agrees to reimburse the Licensee for all reasonable cost incurred by the Licensee for the physical repair of facilities damaged by the negligence of the Cooperative.

Inspections:

- A. **Periodic Inspections:** Any unauthorized or unreported attachment by Licensee will be billed at a rate of two times the amount equal to the rate that would have been due annually for that pole annually for that pole, had the installation been made the day after the last previously required inspection.
- B. **Make-Ready Inspection:** Any "make-ready" inspection or "walk-through" inspection required of the Cooperative will be paid for by the Licensee at a rate equal to the Cooperative's actual expenses, plus appropriate overhead charges.

Insurance or Bond:

- A. To the extent permitted by law, including without limitation Section 177 of the Kentucky Constitution, the Licensee agrees to defend, indemnify and save harmless the Cooperative from any and all damage, loss, claim, demand, suit, liability, penalty or

forfeiture of every kind and nature, including, but not limited to, costs and expenses of defending against the same and payment of any settlement or judgment therefore, by reason of (a) injuries or deaths to persons, (b) damages to or destruction of properties, (c) pollutions, contaminations of or other adverse effects on the environment or (d) violations of governmental laws, regulations or orders whether suffered directly by the Cooperative itself or indirectly by reason of claims, demands or suits against it by third parties, resulting or alleged to have resulted from acts or omissions of the Licensee, its employees, agents, or other representatives or from their presence on the premises of the Cooperative, either solely or in concurrence with any alleged joint negligence of the Cooperative. The Cooperative shall be solely liable for its and its employees', agents' and other representatives' acts or omissions sole active negligence.

- B. The Licensee or its Contractors will provide coverage from a company authorized to do business in the Commonwealth of Kentucky:
1. *Protection for its employees to the extent required by Workmen's Compensation Law of Kentucky.*
 2. *Public Liability coverage under this contract to a minimum amount of \$1,000,000.00 for each person and \$1,000,000.00 for each occurrence, and \$2,000,000.00 total aggregate amount.*

Before beginning operations under this contract, the Licensee or its Contractors shall cause to be furnished to the Cooperative a certificate for such coverage, evidencing the existence of such coverage. Each policy required hereunder shall contain a contractual endorsement written as follows:

"The insurance or bond provided herein shall also be for the benefit of Meade County Rural Electric Cooperative Corporation, so as to guarantee, within the coverage limits, the performance by the insured of any indemnity agreement set forth in this contract. This insurance or bond may not be canceled for any cause without thirty (30) days advance notice being first given to Meade County Rural Electric Cooperative Corporation."

Change of Use Provision:

When the Cooperative subsequently requires a change in its poles or attachment for reasons unrelated to the Licensee, the Licensee operator shall be given forty-eight (48) business hours' notice of the proposed change (except in case of emergency). If the Licensee is unable or unwilling to meet the Cooperative's time schedule for such changes, the Cooperative may do the work and charge the Licensee its reasonable cost for performing the change attachment(s).

Abandonment:

- A. If the Cooperative desires at any time to abandon any pole to which Licensee has attachments, it shall give the Licensee notice in writing to that effect at least thirty (30) business days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, the Cooperative 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 Cooperative from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and shall pay the Cooperative for such pole an amount equal to the Cooperative's depreciated cost thereof. The Cooperative shall further evidence transfer to the Licensee of title to the pole by means of a bill of sale.

- B. The Licensee may at any time abandon the use of the attached pole by giving sixty (60) day notice thereof in writing to the Cooperative and by removing therefrom any and all attachments it may have thereon. The Licensee shall in such case pay to the Cooperative the full rental for said pole for the then current billing period.

Rights of Others:

Upon notice from the Cooperative to the Licensee that the use of any pole or poles is forbidden by municipal or other public authorities or by property owners, the permit governing the use of such pole or poles shall immediately terminate and the Licensee shall remove its facilities from the affected pole or poles at once. No refund of any rental will be due on account of any removal resulting from such forbidden use.

Payment of Taxes:

Each party shall pay all taxes and assessments lawfully levied on its own property upon said attached poles, and the taxes and the assessments which are levied on said property shall be paid by the owner thereof, but any tax fee, or charge levied on the Cooperative's pole solely because of their use by the Licensee shall be paid by the Licensee.

Pole Attachment Fee:

- A. **Rental Fee:** \$27.45 per Attachment per year. The annual rental period covered by this Agreement shall be the twelve-month period beginning on January 1st each year and continuing for each twelve-month period thereafter. Cooperative shall invoice Licensee for the Pole Attachment Rental Fee on December 1st each year for the annual rental period. The Pole Attachment Rental Fee for each period shall be based on the number of Attachments on Cooperative's Distribution Poles as of the day proceeding the annual rental period. For Attachments that are authorized during any part of the first six (6) months of the annual rental period, the Pole Attachment Rental Fee will be assessed for the entire annual rental period. For Attachments authorized during any part of the second six (6) months of the annual rental period, the Pole Attachment Rental Fee shall be reduced by fifty percent (50%) for that first annual rental period.
- B. **Payment Period:** All amounts payable under this Agreement shall be due within thirty (30) days of the date of invoice. Interest shall be charged at the rate of [1%] or the maximum amount allowed by law on the unpaid balance of delinquent bills for each month or part thereof that any bill remains unpaid.
- C. **CPI Increase:** Cooperative in its sole discretion may increase all fees that are due and payable under this Agreement effective on each annual anniversary date of the Effective Date to reflect increases in the Consumer Price Index that have occurred since the Effective Date. Cooperative shall provide at least thirty (30) days' notice to Licensee before the effective date of any such increase in fees.

- D. Unauthorized Attachment Fee: \$30 per Unauthorized Attachment per year to be adjusted with the CPI increases for the duration of the unauthorized attachment.

- E. Billing Address: Kentucky Wired Project, Attn.: Pole Attachments Coordinator, Ledcor Technical Services, 2008 Mercer Rd., Lexington, KY 40511.

Governing Law and Venue:

This agreement and all rights related thereto shall be governed by the laws of the Commonwealth of Kentucky. The venue for all litigation relating to this agreement shall be held in the circuit court of Franklin County, Kentucky.

Discontinuance of Service:

The Cooperative may refuse or discontinue serving an applicant or customer under the conditions set out in 807 KAR 5:006, Section 12.

Subject to the Licensee's authority to terminate a contract for convenience pursuant to 200 Ky. Admin. Reg. Sec. 5:312, either party may terminate this Agreement if the other party is in default or breach of this Agreement and has failed to correct or cure such default or breach within thirty (30) days of receipt of written notice from the non-defaulting party. Upon termination, Licensee will be responsible for removing its attachments from the Cooperative's poles within ninety (90) days.

Term of Contract:

The term of the Contract shall be 30 years as of the last date signed on Contract (if not lawfully terminated sooner), and thereafter from year to year, unless terminated by either Cooperative or Licensee by giving notice of its intention to terminate at least six (6) months prior to the end of any period.

M.W.L

Area Covered:

Applies to Meade County Rural Electric Cooperative Corporation property in Kentucky.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first written above.

Attest:

Meade County Rural Electric Cooperative Corporation

(Corporate Seal)

By: Martha W. Litzner

Attest:

Commonwealth of Kentucky

(Corporate Seal)

William M. Randsome
By _____

**APPROVED AS TO
FORM & LEGALITY**

Patrick M. De
**APPROVED
FINANCE & ADMINISTRATION CABINET**