

## AGREEMENT

This Agreement entered into this 25<sup>th</sup> day of August ,2015, by and between COMMONWEALTH OF KENTUCKY, Finance & Administration Cabinet, Office of the Secretary, 702 Capitol Ave. Room 383, Capitol Annex, Frankfort, KY 40601 and Grayson Rural Electric Cooperative Corporation (GRECC), 109 Bagby Park St. Grayson, KY 41143, a Kentucky Corporation.

### WITNESSETH:

WHEREAS, COMMONWEALTH OF KENTUCKY, intends to develop, construct, install and operate a fiber optic network upon Distribution Structures owned by GRECC and desires to utilize Distribution Structures in furtherance of same;

WHEREAS, GRECC desires to permit COMMONWEALTH OF KENTUCKY to utilize its Distribution Structures in consideration of the covenants and agreements between GRECC and the COMMONWEALTH OF KENTUCKY set forth in this Agreement and upon and subject to the terms and conditions provided herein;

NOW, THEREFORE, in consideration of the mutual covenants and terms and conditions contained herein, the parties hereto do mutually covenant and agree as follows:

### I. DEFINITIONS

"Affiliate" means a corporation, partnership, joint venture, or other entity controlled by, controlling or under common control of a party to this Agreement. For purposes of this definition, the "control" means direct or indirect ownership of more than 50% of the outstanding voting stock of a corporation entity or voting interest in a non-corporate entity.

"Agreement" means this Agreement and all extensions and modifications hereof, that govern attachments, appendices and schedules, terms and conditions.

"Billable Attachment" is defined as each conductor that is lashed to each messenger cable that is attached to a GRECC's Utility Pole.

"Electric Space" means, as follows: (i) for GRECC, the use of 8 feet of space on 40-foot Utility Poles or taller, measured downward from the top of the Utility Pole, and 40 inches below existing power distribution equipment, lines, or apparatuses on Utility Poles, and (ii) for COMMONWEALTH OF KENTUCKY, the use of 2 feet of space per attachment on Utility Poles, below the space of GRECC and/or below existing fiber optic conductor.

"FOG Wire" means fiber optic ground wire.

"COMMONWEALTH OF KENTUCKY Facilities" means the fiber optic strands, fiber optic cable and/or FOG wire and related splices, terminations or other equipment that constitutes a billable attachment to be installed by COMMONWEALTH OF KENTUCKY upon the Distribution Structures along the Route.

"NEC" means National Electric Code, as amended.

"NEC" means National Electric Safety Code, as amended.

"Plans" means detailed design and construction plans for the COMMONWEALTH OF KENTUCKY facilities to be installed along the Route on GRECC facilities.

"Right-of- Way" means the specified boundary defined in any Distribution Right-of-Way Easements held by GRECC and upon which the Distribution Structures are located. COMMONWEALTH OF KENTUCKY must obtain their own separate right-of-way easements.

"Route" means the specified route upon which the COMMONWEALTH OF KENTUCKY Facilities will be attached to the GRECC pole and facilities.

"Term" means the period specified in paragraph 6 hereof.

"Distribution Structures" means wood poles or any other related facilities owned by GRECC.

## II. GRANT OF SPECIFIC RIGHTS

1. **Grant of Permission to COMMONWEALTH OF KENTUCKY.** In consideration of the billable attachment fee described in paragraph 2 below and the other covenants, terms and conditions contained in this Agreement, Grayson RECC, throughout the Term, hereby grants to COMMONWEALTH OF KENTUCKY permission to install non-exclusive fiber optic and to install, construct, monitor, repair, maintain and operate the COMMONWEALTH OF KENTUCKY Facilities on GRECC's Distribution Structures. GRECC shall have the right to grant, by contract or otherwise, to others not parties to this Agreement, rights or privileges to use any of the Distribution Structures covered by this Agreement, and GRECC shall have the right to continue and extend any such rights or privileges here fore granted.
2. **Billable Attachment Fees.** In consideration of the covenants, terms, and conditions contained in this Agreement, COMMONWEALTH OF KENTUCKY agrees to pay an annual fee to GRECC for each billable attachment utilized by the Commonwealth of Kentucky along the Route. The annual billable fee will be \$22.03. Beyond 2015, fees will increase every year thereafter at the Consumer Price Index as reported by the UNM Bureau of Business & Economic Research United States.
3. **(a) Ownership of COMMONWEALTH OF KENTUCKY Facilities.** COMMONWEALTH OF KENTUCKY will retain ownership of the COMMONWEALTH OF KENTUCKY Facilities to be installed along the Route, and GRECC shall acquire no right, title or interest in or to the COMMONWEALTH OF KENTUCKY Facilities, unless by separate contract.  
  
**(b) Ownership of Distribution Structures.** All Distribution Structures covered by this Agreement shall be and remain the property of GRECC. The COMMONWEALTH OF KENTUCKY shall, except for the rights provided in this Agreement, acquire no right, title or interest in or to the Distribution Structures.

## III. GENERAL TERMS AND CONDITIONS

4. **Construction and Installation.** (a) COMMONWEALTH OF KENTUCKY shall submit Plans

to GRECC prior to construction and installation on the Distribution Structures along the Route. GRECC must approve the Plans before construction may begin. Once *COMMONWEALTH OF KENTUCKY's* Plans have been approved by GRECC, the construction and installation of the appropriate facilities upon the Distribution Structures along the Route may begin.

(b) Said Plans shall include as a minimum, the location of each Distribution Structure to be used, the character of the proposed facilities and the amount and location of space desired. Within 21 days after receipt of the Plans, GRECC shall notify *COMMONWEALTH OF KENTUCKY* of specific Distribution Structure contact requirements. *COMMONWEALTH OF KENTUCKY* shall thereupon have the right to use such Distribution Structures in accordance with the terms of this Agreement and any other terms as may be agreed by the Parties at such time.

(c) All *COMMONWEALTH OF KENTUCKY* Facilities shall be constructed in accordance with the approved Plans and installed in a manner, which is reasonable and customary in the industry. All such *COMMONWEALTH OF KENTUCKY* Facilities shall be constructed, installed and at all times maintained by *COMMONWEALTH OF KENTUCKY* so as to comply at least with the minimum requirements of all applicable governmental regulations and codes including, without limitation, the NEC and NESC. *COMMONWEALTH OF KENTUCKY* shall take any necessary precautions, by the installation of protective equipment or other means, to protect all persons and property of all kinds against injury or damage occurring by reason of *COMMONWEALTH OF KENTUCKY's* activities.

(d) *COMMONWEALTH OF KENTUCKY* shall follow all GRECC safety guidelines in addition to safety requirements promulgated by OSHA, KOSHA, NESC and any other regulatory body having jurisdiction over the work of constructing and installing the *COMMONWEALTH OF KENTUCKY* Facilities.

(e) *COMMONWEALTH OF KENTUCKY* may use personnel or contractors of *COMMONWEALTH OF KENTUCKY's* choice to perform work outside the Electrical Space.

(f) *COMMONWEALTH OF KENTUCKY*, at its own expense, shall promptly make repairs or adjustments as demanded by GRECC in writing if GRECC, in its sole judgment, finds substandard construction and/or installations performed by *COMMONWEALTH OF KENTUCKY* or its contractor.

(g) *COMMONWEALTH OF KENTUCKY* shall provide GRECC with complete "as-built" drawings upon completion of the construction of the Route.

(h) GRECC reserves the right to inspect each new and proposed *COMMONWEALTH OF KENTUCKY* installation on Distribution Structures. In addition, GRECC may make periodic inspections, as conditions may warrant, for the purpose of determining compliance with this Agreement.

(i) Whenever GRECC notifies *COMMONWEALTH OF KENTUCKY* in writing or orally with written confirmation that, in GRECC's reasonable judgment; any of the *COMMONWEALTH OF KENTUCKY* Facilities (a) interfere with the use of the Distribution Structures or the operation of GRECC facilities or equipment, (b) GRECC to use such Distributions

Structures, (c) cause a danger to employees of GRECC or other persons, or (d) fail to comply with applicable codes or regulations, COMMONWEALTH OF KENTUCKY shall, within ten (10) business days, rearrange, repair or change such COMMONWEALTH OF KENTUCKY Facilities as needed or as directed by GRECC. In the case of any immediate hazard or danger, such period shall not exceed six hours from receipt of such notice.

(j) GRECC reserves the right, without liability to COMMONWEALTH OF KENTUCKY or any person claiming through COMMONWEALTH OF KENTUCKY, to discontinue the use of, remove, replace or change the location of any and all of the Distribution Structures regardless of any occupancy of the Distribution Structures by COMMONWEALTH OF KENTUCKY. In the event a Distribution Structure is removed, replaced or relocated for any reason, each party to this Agreement must pay its own expenses in connection with such relocation, removal or replacement.

5. **Maintenance of Facilities.** (a) COMMONWEALTH OF KENTUCKY shall, at its own expense, at all times maintain all of the COMMONWEALTH OF KENTUCKY Facilities in a safe condition in thorough repair and in accordance with NESC and NEC requirements and any other applicable standards or requirements.

(b) COMMONWEALTH OF KENTUCKY shall give at least ten (10) days' notice to GRECC before performing any nonemergency maintenance on any of the COMMONWEALTH OF KENTUCKY Facilities. For any emergency maintenance, COMMONWEALTH OF KENTUCKY shall give GRECC the right to commence and complete any such electric maintenance or restoration work prior to allowing COMMONWEALTH OF KENTUCKY access to repair or maintain its facilities. If requested by GRECC personnel, COMMONWEALTH OF KENTUCKY shall cease repair work and vacate the repair site until GRECC's maintenance and restoration procedures are complete.

6. **Term.** This Agreement shall become effective upon its execution and shall continue in effect for a term of five (5) years ("Initial Term"). The Agreement shall automatically be renewed from year to year ("Renewal Term"), unless terminated by the COMMONWEALTH OF KENTUCKY or GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION by giving notice of its intention to terminate at least sixty (60) days prior to the end of the Initial Term or at least sixty (60) days at any time during any applicable Renewal Term.

The COMMONWEALTH OF KENTUCKY may remove any of its facilities at any time for any reason upon ten (10) days written notice to GRECC.

7. **Easements.** (a) COMMONWEALTH OF KENTUCKY shall be responsible for obtaining any rights, licenses, permits, easements, rights-of-way, approvals or franchises. COMMONWEALTH OF KENTUCKY shall determine the extent, applicability and adequacy of such Rights for its purposes or proposed uses, and will be responsible for renewing or otherwise obtaining any additional Rights from private landowners, governmental or regulatory authorities or other persons or entities as may be necessary.

(b) Notwithstanding the forgoing, it is GRECC's intention that COMMONWEALTH OF KENTUCKY be allowed to benefit from any of GRECC's Rights which by law may extend to COMMONWEALTH OF KENTUCKY, by reason of this Agreement. However, GRECC does not convey or guarantee the adequacy or applicability of any Rights for the construction, operation or maintenance of facilities.

8. **Insurance.** (a) **Generally.** COMMONWEALTH OF KENTUCKY shall, at its sole expense, cause to be issued and maintained during the Term of this Agreement insurance coverage of the types and in the amounts set forth below, each naming GRECC as an additional insured or loss payee thereon, as applicable (other than under the workers' compensation and employer's liability coverage described below):

<u>Type of Insurance</u>		<u>Limit</u>
General Liability (including Contractual liability) written on an occurrence basis	General Aggregate	\$2,000,000
Automobile, Liability, Including any auto, Hired auto and non-Owned autos Excess Liability	Prod. Comp. Op. Ag.	\$1,000,000
Umbrella Form Workers' Compensation	Personal & Adv. Injury	\$1,000,000
	Each Occurrence Combines	\$1,000,000
	Single Limit	\$1,000,000
	Each Occurrence Aggregate	\$2,000,000
	Each Accident	\$2,000,000
		\$ 500,000

(b) **Certificates: Notices of Cancellation.** Within 10 days following a written request by GRECC, certificates of insurance in form satisfactory to GRECC and signed by COMMONWEALTH OF KENTUCKY's insurer(s), shall be supplied by COMMONWEALTH OF KENTUCKY to GRECC evidencing that the above insurance coverage's are in full force and effect, that no less than thirty (30) days' written notice will be given to GRECC prior to any cancellation or restrictive modification of such policies, and that GRECC is an additional insured or loss payee, as applicable, under each such policy.

9. **Liens.** In the event any construction lien or other encumbrance shall be placed on the Distribution Structures because of the actions of COMMONWEALTH OF KENTUCKY, COMMONWEALTH OF KENTUCKY shall promptly discharge the lien or release the encumbrance without cost or expense to GRECC, and hereby agrees to indemnify GRECC for any and all damages that may be suffered or incurred by GRECC as a result of the lien, discharging the lien or releasing the encumbrance. In the event any construction lien or other encumbrance shall be placed on the COMMONWEALTH OF KENTUCKY Facilities because of the actions of GRECC, GRECC shall promptly discharge the lien or release the encumbrance without cost or expense to COMMONWEALTH OF KENTUCKY and hereby agrees to indemnify COMMONWEALTH OF KENTUCKY for any and all damages that may be suffered or incurred by COMMONWEALTH OF KENTUCKY as a result of the lien, discharging the lien, or releasing the encumbrance.
10. **Relationship or Parties and Independent Contractor Status.** Neither GRECC nor COMMONWEALTH OF KENTUCKY shall be deemed to be a partner, agent or joint coventure with or of the other by reason of this Agreement or the consummation of the transaction contemplated hereby. All parties shall perform their duties under this Agreement as independent contractors, and at their own risk. Neither GRECC nor COMMONWEALTH OF KENTUCKY shall at any time hold itself out as being a partner, co-venture or agent of the other.
11. **Notices.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, and shall be deemed to have been duly given (a) on the date of personal delivery, (b) on the date of delivery to a nationally recognized overnight delivery service, (c) on the date of deposit

in the U.S. mails, postage prepaid, by certified mail, return receipt requested, or (d) on the date of Distribution by telephonic facsimile and/or electronic communication.

If to COMMONWEALTH OF KENTUCKY to: COMMONWEALTH OF KENTUCKY  
LEDCOR TECHNICAL SERVICES

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

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.  
40165  
Room 383, Capitol Annex  
Frankfort, KY 40601

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

If to GRECC to: Grayson Rural Electric Cooperative Corporation  
109 Bagby Park St  
Grayson, KY 41143  
Attn: Carol Fraley  
606-474-5136  
606-474-2130 Fax

12. **Successors and Assigns.** This Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the parties hereto and their respective successors and permitted assigns. None of the parties may assign, delegate, sublease or transfer any rights, interests or obligations which it any have under or pursuant to this Agreement to any other person or entity without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the parties may assign this Agreement without the consent of the other party to any Affiliate of such party, to the surviving entity into which such party may merge or consolidate, or to any entity to which the party transfers all, or substantially all, of its business and assets. All successors and assigns shall be made subject to this Agreement.
13. **Force Majeure.** In the event COMMONWEALTH OF KENTUCKY or GRECC is delayed in or prevented from performing any of its respective obligations under this Agreement due to acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, acts of insurrection, acts or civil or military authority, fires, floods or earthquakes beyond the reasonable control of the party delayed, then such delay or nonperformance shall be excused. If any such delay or nonperformance due to the forgoing causes or events occurs or is anticipated, the party affected shall promptly notify the other party in writing of such event or expected event and the cause and estimated duration of such event. The party affected by such event shall, at no cost to the other party, exercise due

diligence to shorten or avoid the delay or nonperformance and shall keep the other party advised as to the continuance of the delay and steps taken to shorten or terminate the delay or nonperformance. Neither party of this AGREEMENT shall, in any event be entitled to additional or extra compensation by reason of having been delayed in performance of its obligations due to the foregoing causes or events.

14. (a) **Limitation of Liability.** Neither party shall have any responsibility, liability or obligation to the other or the other's affiliates, directors, officers, agents, employees, representatives, successors or permitted assigns for any special, incidental consequential punitive damages including, but not limited to, loss of profits, cost of replacement services, loss of customers or agents, loss of use, or penalties imposed by others, regardless of any act of omission or commission in connection with or under this agreement, including, but not limited to, any defect in, delay in or loss of availability, or failure of the COMMONWEALTH OF KENTUCKY Facilities.

(b) **Disclaimer of Warranties.** None of the parties hereto make any warranties, express or implied, including, but not limited to, any warranties of merchantability, fitness for a particular purpose of any warranties concerning the accuracy, adequacy, or timeliness of any information provided hereunder; all of which warranties are hereby expressly disclaimed.

(c) **Indemnification.** To the extent not due to negligence or intentional misconduct of Grayson RECC and their respective directors officers, agents, employees, representatives, successors and permitted assigns and to the extent permitted by law, including without limitation section 177 of the Kentucky Constitution COMMONWEALTH OF KENTUCKY agrees to indemnify, defend, release and hold harmless each of them from and against any and all claims, liabilities, damages, losses, actions, causes of action, proceedings, obligations, judgments, costs and expenses of any nature of kind whatsoever (including without limitation, reasonable attorney's fee) which may be suffered or incurred by them, directly or indirectly, resulting from, arising out of or in any manner relating to: (a) any injuries to persons (including death) or damages to property, or both, arising directly or indirectly out of COMMONWEALTH OF KENTUCKY's design, construction, installation, use, maintenance, removal or repair of the fiber optic cables or any equipment or facilities relating thereto, or any actions by or on the part of COMMONWEALTH OF KENTUCKY's agents, employees or representatives in connection with the same, except for any actions by or on the part of the COMMONWEALTH OF KENTUCKY taken at the direction of or in a manner mandated by GRECC and (b) any misrepresentation, breach of warranty or non-fulfillment of any covenant or agreement of COMMONWEALTH OF KENTUCKY contained in this Agreement.

(d) To the extent not due to the negligence or intentional misconduct of COMMONWEALTH OF KENTUCKY, its parent and its Affiliates, and their respective directors, officers, agents, employees, representatives, successors and permitted assigns, GRECC agrees to indemnify, defend, release and hold harmless each of them from and against any and all claims, liabilities, damages, losses, actions, causes of action, proceeding, obligations, judgments, costs and expenses of any nature or kind whatsoever (including without limitation reasonable attorney's fees) which may be suffered or incurred by them, directly or indirectly, resulting from, arising out of or in any manner relating to:

(a) any injuries to persons (including death) or damages to property, or both arising directly or indirectly out of GRECC, construction, installation, use, maintenance, removal or repair of the fiber optic cables or any equipment or facilities relating thereto, or any actions by or on the part of GRECC's agents, employees or representatives in connection with the same, (b) any misrepresentation, breach of warranty or non-fulfillment of any covenant or agreement of GRECC contained in this Agreement, and (c) any of the services which may be rendered by COMMONWEALTH OF KENTUCKY (or its personal) to GRECC pursuant to this Agreement.

15. **Confidentiality and Publicity.** Each party acknowledges that, in the course of the performance of this Agreement, it may have access to privileged and proprietary information claimed to be unique, secret and confidential and which constitutes the exclusive property or trade secrets of the other party. This information may be presented in documents marked trade secrets of the other party. This information may be presented in documents marked with a restrictive notice or otherwise tangibly designated as proprietary. Unless jointly agreed to in writing, neither Grayson RECC nor COMMONWEALTH OF KENTUCKY shall knowingly disclose to third parties any proprietary information received from the other party in connection with this Agreement, nor shall they disclose the terms of this Agreement to any other person or entity (other than to their respective Affiliates, directors, officers, employees, agents and contractors who have a need to know the same, and to persons or entities of the type described in (b) below), unless required in order to prosecute or defend any claim in an action involving any of the parties hereto, or unless required by any court or governmental or regulatory body having competent jurisdiction. In the case of disclosure for such prosecution or defense, or as required by any such judicial or quasi-judicial body, the non-disclosing party shall be given sufficient notice so as to allow it to seek a protective order with respect to such disclosure. The parties shall each protect proprietary information received from the other with the same degree of care that they would take to protect their own proprietary information, and each party shall be responsible for ensuring that its directors, officers, employees, agents and contractors who have access to the confidential or proprietary information of the other party, maintain the same confidentiality of such information. However, the parties shall have no obligation to keep confidential any information that is in or becomes part of the public domain through no fault of their own. No party shall issue news releases or publicize, or issue advertising, which references the other party, this Agreement, or any provision hereof, without first obtaining the prior written approval of the other party, provided, that the foregoing restriction shall not prevent the disclosure by a party of any proprietary information to the extent (a) in the opinion of the party's legal counsel, such disclosure is required by any law, regulation or rule of any securities exchange, or (b) such disclosure is made to a person or other entity that is itself bound to maintain the confidentiality of the same pursuant to a written confidentiality agreement with the disclosing party. The obligations of either party shall survive without any expiration or termination for a period of five (5) years.

The Licensee's obligations under this subsection are expressly limited by the Licensee's legal obligations under the Kentucky Open Records Act ("ORA") set forth in KRS 61.870 to 61.884. No breach of this Agreement shall be deemed to occur should the Licensee be required to disclose this Agreement under the Kentucky Open Records Act.

16. **Make-ready Costs.** COMMONWEALTH OF KENTUCKY shall reimburse GRECC for all



expenses incurred for "make-ready" costs. Make ready costs shall be invoiced to COMMONWEALTH OF KENTUCKY on a monthly basis. COMMONWEALTH OF KENTUCKY shall be responsible for all materials, labor, transportation and any other costs associated with all make-ready work.

17. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Kentucky, applicable to contracts made and to be performed entirely in that state.
18. **Binding Agreement.** 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 amends hereto must be made in writing and signed by both parties.

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

GRAYSON RURAL ELECTRIC  
COOPERATIVE CORPORATION  
109 Bagby Park St  
Grayson, KY 41143

BY: Joni H. Flanery  
Title: Secretary, Finance

Date: 8/25/15

BY: Carol Frelley  
Title: Carol Frelley  
President and CEO

Date: August 25, 2015