

AGREEMENT TO PERMIT ATTACHMENTS

THIS AGREEMENT, made this 8TH day of SEPTEMBER, 2015, by and between Commonwealth of Kentucky, Finance & Administration Cabinet, Office of The Secretary, whose address is 702 Capitol Ave., Room 383, Capitol Annex, Frankfort, KY. 40601, hereinafter called "Permittee," party of the first part, and **Inter County Energy Cooperative**, 1009 Hustonville Road, Danville, Kentucky 40422, hereinafter called "ICE," party of second part,

WITNESSETH:

WHEREAS, pursuant to the provisions of this Agreement and attached Schedules A and C, which are hereby made a part of this Agreement, Permittee desires to install or cause the installation of the facilities on the poles of ICE in the area all as shown on Schedule A, and,

WHEREAS, ICE is willing to permit, to the extent it may lawfully do so, the attachment of the described facilities to its poles where, in its judgment, such use will not interfere with its own use of the facilities and or with other licensees using ICE's poles,

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

1. **PERMITTED ATTACHMENTS.** ICE agrees to permit Permittee to attach and maintain the facilities described in the Schedule A to ICE's poles, in the manner set out and pursuant to the provisions of this Agreement. Any attachment other than to tangent poles must be properly braced with guys and anchors provided by Permittee to the satisfaction of ICE. The use of existing ICE anchors for this purpose will not ordinarily be permitted. Permittee agrees to pay ICE the fees set forth in Schedule B. All attachments made pursuant to this Agreement shall be at such points and in such manner as ICE or its employees may direct.

2. **CONSTRUCTION AND MAINTENANCE REQUIREMENTS AND SPECIFICATIONS.** All facilities attached pursuant to this Agreement shall be erected and

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maintained in compliance with the requirements and specifications of the current National Electrical Safety Code, ICE's construction practices, all as may be changed from time to time; with any rules, orders, or regulations now in effect or that hereinafter may be issued by the Public Service Commission of Kentucky; and with all existing applicable federal, state or local laws, rules, regulations, orders and ordinances issued by any federal, state or local authority and as may be changed from time to time. All facilities attached pursuant to this Agreement shall be identified as to the owner of said facilities at each attachment location. In the event any part of Permittee's construction does not meet any of the above requirements, Permittee will correct same in fifteen (15) work days after written notification. If Permittee fails to correct same within fifteen (15) days, ICE may make such corrections and charge Permittee for the total costs incurred, which may include attorney's fees and court costs. Permittee, at all times, warrants compliance with all the requirements as set out above and assumes the continuing responsibility for such compliance in the future and assumes all responsibility for any damages, fines or penalties resulting from any noncompliance. ICE undertakes no duty with respect to such compliance by requiring Permittee to meet any specifications or by requiring or failing to require any corrections, modifications, additions or deletions to any work or planned work by Permittee.

3. **MAINTENANCE OF ATTACHMENTS.** At all times, Permittee shall, at its own expense, make and maintain said attachments in safe condition and in good repair, and in a manner suitable to ICE and so as not to conflict with the use of said poles by ICE, or by any other parties, firms, corporations, governmental units, or entities using said poles pursuant to any license or permit by ICE. Permittee agrees not to interfere with the working use of facilities thereon or which may, from time to time in the future, be placed thereon. ICE in no way insures the continuance of Permittee's facilities at their original location or placement of ICE's poles or other facilities. If ICE determines, at its sole discretion to relocate, replace, enlarge, add to,

modify or in any manner alter its poles or other facilities, even for ICE's sole convenience, Permittee shall, at its expense, upon written notice from ICE, at ICE's sole discretion, relocate, replace or renew the facilities placed on said poles, and transfer them to substituted poles, or perform any other work in connection with said facilities that may be required by ICE. In case of emergency, ICE may arrange to relocated, replace or renew the facilities placed on said poles; transfer them to substituted poles or perform any other work in connection with said facilities that may be required in the maintenance, replacement, removal or relocation of said poles, the facilities thereon or which may be placed thereon, or for the service needs of ICE, or its other licensees, and Permittee shall, on demand, reimburse ICE for the expense thereby incurred. ICE undertakes no duty however to inspect or insure the repair of any facilities.

4. **MAINTENANCE AND OPERATION OF ICE'S FACILITIES.** ICE reserves to itself, its successors and assigns, the right to maintain its poles and to operate its facilities thereon in such manner as will, in its own judgment, best enable it to fulfill its own service requirements, but in accordance with the specifications hereinbefore listed. ICE shall not be liable to Permittee for any interference with the operation of Permittee's facilities, or loss of business arising in any manner out of the use of ICE's poles hereunder.

5. **EASEMENTS.** Permittee must secure its own easement rights from real property owners. ICE's permitting attachments shall not constitute any representation or warranty by ICE to Permittee regarding Permittee's right to occupy or use any public or private right-of-way.

6. **INSPECTION OF FACILITIES.** ICE reserves the right to inspect at any time, in its sole discretion, facilities described in the attached Schedule. Permittee shall, on demand, reimburse ICE for the expense of any such inspections at ICE's prevailing wage rate per man-hour plus associated expenses and applicable overheads. Such inspections, made or not, shall not operate to relieve Permittee of any responsibility, obligation or liability assumed under this Agreement.

ICE undertakes no duty to inspect such facilities or insure that no damage or loss occurs by reason of such facilities.

7. **PRECAUTIONS TO AVOID FACILITY DAMAGE.** Permittee shall not damage any facilities of ICE or of others supported on ICE's poles and facilities. Permittee shall not interfere with ICE's operation; and hereby assumes all responsibility for any and all loss for such damage and for interference. Permittee shall make an immediate report to ICE of any damage or interference and hereby agrees to reimburse ICE for the expense incurred in making repairs.

8. **INDEMNITIES.** To the extent permitted by law, including without limitation Section 177 of the Kentucky Constitution, Permittee agrees to protect, defend, indemnify and save harmless ICE from all damage, loss, claim, demand, suite, liability, penalty or forfeiture of every kind and nature, including but not limited to costs and expenses of defending against the same, payment of any settlement or judgment therefore and reasonable attorney's fees, by reason of (a) injuries or deaths to persons, (b) damages to or destructions of properties, (c) pollution, contaminations of or other adverse effects on the environment or (d) violations of governmental laws, regulations or orders whether suffered directly by ICE 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 Permittee, its employees, agents, or other representatives or from their presence on the premises of ICE or otherwise from performance of this Agreement, or from or in connection with the construction, installation, operations, maintenance, presence, replacement, enlargement, use or removal of any facilities of Permittee attached or in the process or being attached or removed from any poles of ICE. Notwithstanding the foregoing, Permittee shall not protect, defend, indemnify and save harmless ICE for any acts or omissions of ICE.

9. **ATTACHMENT REMOVAL AND NOTICES.** Permittee may voluntarily

remove its attachments from any pole or poles of ICE, but shall give ICE prior written notice of any such removal. Any such removal shall be undertaken in a manner consistent with Paragraph 7 of this Agreement. No refund of any rental will be due on account of such voluntary removal.

10. **NONCOMPLIANCE.** If either party fails to comply with any of the provisions of this Agreement or defaults in any of its obligations under this Agreement and fails to correct such default or noncompliance within thirty (30) days (except for the 15 day requirement in paragraph 2) after written notice from the non-defaulting party, the non-defaulting party may, at its option, forthwith terminate this Agreement by giving written notice to the defaulting party of said termination. No refund of any rental will be due on account of such termination.

11. **BILLING.** Bills for inspections, expenses and other charges under this Agreement shall be payable within thirty (30) days after presentation. Nonpayment of bills shall constitute a default of this Agreement.

12. **WAIVERS.** Failure 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.

13. **USE OF ICE'S FACILITIES BY OTHERS.** Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by ICE, by contract or otherwise, to others, not parties to this Agreement, to use any poles covered by this Agreement; and ICE shall have the right to continue and to extend such rights and privileges. The permitted attachment herein granted shall at all times be subject to such previously conferred privileges.

14. **ASSIGNMENT.** Permittee shall not assign, transfer or sublet the privileges hereby granted without the prior written consent of ICE. Any attempt to so assign without such written consent shall be void.

15. **PROPERTY RIGHTS.** No use, however extended, of ICE poles or other

facilities under this Agreement shall create or vest in Permittee any ownership or property rights in said poles; rights herein contained shall be and remain a mere permission. Nothing herein contained shall be construed to compel ICE to maintain any of said poles for a period longer than demanded by its own service requirements.

16. **TERM.** This Agreement shall become effective upon its execution and if not terminated in accordance with the provisions of Paragraph 10 shall continue in effect for a term of one (1) year and continuing thereafter until terminated as per this agreement. Either party may terminate the Agreement at the end of said year or at any time thereafter for any reason whatsoever by giving to the other party at least (60) sixty days written notice. Upon termination of the Agreement in accordance with any of its terms, Permittee shall immediately remove all its facilities attached to ICE's poles or other facilities pursuant to this contract. All costs of such removal will be borne by Permittee. Permittee shall exercise precautions to avoid damage to facilities of ICE in so removing and assumes all responsibility for any and all such damage. If Permittee's facilities attached to ICE's pole and other facilities pursuant to this contract are not promptly removed, ICE shall have the right to remove them to the cost and expense of Permittee and without any liability therefore.

17. **NOTICES.** Any notice or request required by this Agreement shall be deemed properly given if mailed, postage prepaid, to:

In the case of ICE:

Inter County Energy Cooperative
Vice President of Operations
1009 Hustonville Road
Danville, KY 40422

And to:

In the case of Permittee:

COMMONWEALTH OF KENTUCKY
Finance & Administration Cabinet
Office of the Secretary

LEDCOR TECHNICAL SERVICES
Attn: Ledcor Legal Department
1200-1067 West Cordova

702 Capitol Ave.
Room 383, Capitol Annex
Frankfort, KY 40601

Vancouver, BC
V6C-1C7
Canada

With a copy to

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

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

The designation of the person to be notified, and/or his address may be changed by ICE or Permittee at any time, or from time to time, by similar notice.

18. **ACCESS.** At all times, Permittee shall maintain, operate and construct all facilities in such manner to insure that ICE has full and free access to all of its facilities described in the Schedule attached to this Agreement for the purpose of repairing, rebuilding, replacing, maintaining and operating such facilities.

19. **ADJUSTMENTS.** Nothing contained herein shall be construed as affecting in any way the right of ICE, and ICE shall at all times have the right, to unilaterally make a change in the rental charge for attachment to poles, other charges as provided for, any rule, regulation, condition or any other change required. Such change or changes to become effective as provided for in this Agreement after written notifications or changes in applicable regulations or statutes.

20. **SUCCESSORS AND ASSIGNS.** All provisions of this Agreement shall extend to and bind the successors and assigns of the parties hereto, specifically including the provisions of paragraph 15.

21. **INSURANCE.** Unless otherwise specified in the attached Schedule C, Permittee shall maintain in force during the term of this Agreement at its expense public liability insurance, with deductible provisions and in a minimum amount satisfactory to ICE as provided in Schedule

C. Upon request, Permittee shall provide ICE with certificates or other evidence of any insurance coverage required herein. Every contract of insurance providing the coverage required herein shall contain the following or equivalent clause: "No reduction, cancellation, or expiration of the policy shall become effective until ten (10) days from the date written notice thereof is actually received by Permittee and ICE as appropriate."

22. ENTIRE AGREEMENT. This Agreement and attached Schedule constitute the entire Agreement between ICE and Permittee and all previous representations relative thereto, either written or oral, are hereby annulled and superseded. No modification shall be binding on ICE and Permittee unless it shall be in writing and signed by both parties. Nothing contained in this Agreement or attached Schedules shall be construed as having any effect in any future agreement or contemplated future agreement between the parties.

23. HEADINGS. Paragraph headings are for the convenience of the parties only and are not to be construed as part of Agreement.

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



CEO Inter County Energy Cooperative



Commonwealth of Kentucky
Finance and Administration Cabinet

SCHEDULE A

(Make ready request – left blank intentionally)

SCHEDULE B

A. The Permittee shall compensate Inter County Energy Cooperative for the attachment of Permittee's facilities at a base rate of \$20.30 per pole per year. This compensation will be due at the beginning of each year and will be calculated based on the number of attachments existing at the end of the preceding year. Permittee shall install anchoring and guying to support its attachments at Permittee's expense in accordance with Inter County Energy Cooperative's standards.

B. An engineering study shall be performed by a registered engineer at permittee's expense to determine the construction work needed to make attachments. The permittee shall compensate Inter County Energy Cooperative for any and all construction work needed that would allow for the installation of permittee's facilities on Inter County Energy Cooperative's poles at an estimated cost calculated by Inter County Energy Cooperative and is to be paid before attachments are made.

C. The base rate shall be in effect at the beginning of Jan. 2015 and shall be escalated at an annual rate of 3% per year effective in Jan. 2016.

D. An attachment shall be defined as one or more fiber optic strains encased by a covering forming one cable. No overlashing of additional cables will be allowed.

SCHEDULE C - INSURANCE

Permittee shall provide and maintain, and shall require subcontractor(s) to provide and maintain, with an Insurance Company(s) authorized to do business in the Commonwealth of Kentucky and otherwise acceptable to Company, the following insurance:

- (a) **Workers Compensation and Employer's Liability Policy:** Prior to the start of the Work, Permittee shall submit evidence of Permittee's Workers' Compensation and Employer's Liability Insurance Policy, and each such policy shall include:
 - 1) Workers Compensation and Workers' Occupational Disease Insurance in accordance with the laws of the Commonwealth of Kentucky
 - 2) Employer's Liability with a minimum limit of One Million Dollars(\$1,000,000) each loss with respect to each accident
 - 3) Thirty (30) Day Cancellation Clause
 - 4) Broad Form All States Endorsement
 - 5) United States Longshoremen and Harbor Workers Act Endorsement
 - 6) Maritime Endorsement
 - 7) Jones Act Endorsement

- (b) **Commercial General Liability Policy:** Prior to the start of Work, Permittee shall provide evidence of Permittee's Policy providing Commercial General Liability Insurance, with combined single minimum limit for bodily injury and property damage of One Million Dollars (\$1,000,000) each occurrence/aggregate and the following:
 - 1) Coverage for premises, operations, elevators and Work let or sublet
 - 2) Thirty (30) Day Cancellation Clause
 - 3) Blanket Written Contractual Liability to the extent covered by the policy against liability assumed by Contractor under this Contract
 - 4) Broad Form Property Damage
 - 5) Insurance for liability arising out of blasting, collapse and underground damage (deletion of X, C, U Exclusions)
 - 6) Products Liability and Completed Operations, including coverage for occurrences within two (2) years from the Acceptance of Work
 - 7) Personal Injury Liability Hazards A, B, & C with Employee and Contractual Exclusions eliminated
 - 8) Said policy shall name Inter County Energy Cooperative as an additional insured to the extent necessary to fulfill Permittee's indemnity obligations under Article 21 -Indemnity By Contractor

- 9) Said policy shall include an endorsement providing that the underwriter(s) have waived their rights of subrogation against Inter County Energy Cooperative and Inter County Energy Cooperative's insurance carrier(s)
- (c) **Commercial Automobile Liability Insurance:** Prior to the start of Work, Permittee shall provide evidence of Contractor's Commercial Automobile Liability Insurance covering the use of all owned, non-owned and hired automobiles, with bodily injury and death with combined single minimum limit for bodily injury and property damage of One Million Dollars (\$1,000,000) each occurrence/aggregate with respect to Permittee's vehicles assigned to or used in performance of Work under this Contract. Said policy shall name Inter County Energy Cooperative as an additional insured to the extent necessary to fulfill Permittee's indemnity obligations under Article 21 - Indemnity By Contractor, Said policy shall include an endorsement providing that the underwriter(s) have waived their rights of subrogation against Inter County Energy Cooperative and Inter County Energy Cooperative's insurance carrier(s)
- (d) **Aircraft Public Liability Insurance:** If applicable, Permittee shall provide prior to the start of the Work, evidence of Permittee's Aircraft Public Liability Insurance covering fixed wing and rotor craft aircraft whether owned, non-owned, leased, hired or assigned with a combined single minimum limit for bodily injury and property damage of Five Million Dollars (\$5,000,000) including passenger liability coverage. Said policy shall include an endorsement providing that the underwriter(s) have waived their rights of subrogation against Inter County Energy Cooperative and Inter County Energy Cooperative's insurance carrier(s)

The above policies to be provided by Permittee shall be written by companies satisfactory to Company or having a Best Rating of not less than A+. These policies shall not be materially changed or canceled except with thirty (30) days written notice to Company from the Permittee and the Insurance Carrier. Evidence of coverage, notification of cancellation or other changes shall be mailed to:

Attn: Vice President of Operations
Inter County Energy Cooperative
1009 Hustonville Road
Danville, KY 40422

Company shall not be obligated to review any of Permittee's Certificates of Insurance, insurance policies, or endorsements, or to advise Permittee of any deficiencies in such documents. Any receipts of such documents or their review by Company shall not relieve Permittee from or be deemed a waiver of Company's rights to insist on strict fulfillment of Permittee's obligations under the Contract. Company reserves the right to request and receive a summary of coverage of any of the above policies or endorsements. Contractor shall provide notice of any accidents or claims at the Work site to Inter County Energy Cooperative's Vice President of Operations.

