

POLE ATTACHMENT LICENSE AGREEMENT

THIS AGREEMENT (the "Agreement") made and entered into on the 18 day of July, 2018, by and between the **Electric Plant Board of the City of Paducah, d/b/a Paducah Power System**, a municipal electric corporation organized and operating pursuant to KRS 96.550-96.901 (hereinafter called "Licensor"), and the **Commonwealth of Kentucky, Finance and Administration Cabinet** (hereinafter called "Licensee").

WITNESSETH:

WHEREAS, Licensor owns, operates and maintains utility poles within the city of Paducah, Kentucky, and McCracken County, Kentucky, and

WHEREAS, Licensee desires to place or maintain certain fiber optic strands, coaxial cables, wires, fiber optic and related splices, terminations, conductors or other equipment on certain poles of Licensor, for the limited purpose of furnishing fiber optic communication and transmission services in compliance with any and all local, state or federal regulations; provided, that such equipment does not interfere with the utility purposes or other purposes of Licensor or interfere with the furnishing of service to consumers of Licensor, or the facilities, attachments, or operations of existing attachers under agreements with Licensor, and where in Licensor's sole judgment, safety will not be adversely affected, and

WHEREAS, Licensor is willing to permit Licensee, to the extent it may lawfully do so, to place said equipment on said poles on the Routes shown in Exhibit "A" attached hereto:

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

1. Scope of Agreement

A. This Agreement shall be non-exclusive and is subject to existing agreements by the Licensor for use of its poles. No use of Licensor's poles by the Licensee or payment of any rent or other charges required under this Agreement shall create or vest in Licensee any ownership or property rights of any nature in the poles other than the rights granted under this Agreement. Furthermore, this Agreement shall not constitute an assignment of any of Licensor's rights to use the public or private property upon which the poles are located.

B. Neither Licensor's right to maintain its poles nor its right to operate its facilities in such a manner as to best enable it to fulfill its own service requirements shall be in any manner limited by this Agreement.

C. Agreement does not entitle Licensee to attach antennas or other facilities to be used by Licensee in connection with a wireless system for the transmission and/or receipt of communication signals; nor does this Agreement entitle Licensee to access or attach to any of Licensor's underground duct spaces, conduits, manholes or passageways.

2. Definitions

A. The phrase “joint use pole” or “jointly used pole” shall mean a pole owned by Licensor that is used by one or more other entities for the attachment of utility, CATV or communication wires, facilities, or equipment or guy wires.

B. The term “attachment” is defined as any fiber optic strands, fiber optic cable and related splices, terminations, coaxial cables, wires, conductors, down guys, span guys, or other facilities affixed by Licensee to the pole of Licensor in connection with a wireline system used or to be used by Licensee to transmit and/or receive communication signals, whether for voice, data, CATV, video or other purposes.

C. The term “overlashing” refers to the practice by which a new cable or wire is wrapped around or tied to an existing cable or wire, rather than being strung separately. For purposes of this Agreement, overlashing by Licensee or a third party with Licensee’s consent shall be considered a separate attachment.

D. “Make Ready Work” means all work, as reasonably determined by Licensor, required to accommodate Licensee’s fiber optic, copper and/or coaxial cables or wires and all associated facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, a pre-construction survey (including field inspection and administrative processing), rearrangements and/or transfer of Licensor’s facilities or existing attachments, inspections, engineering work, permitting work, tree trimming, or pole replacement and installation or construction.

E. “Route” means the specific route or routes designated in the Application for New Attachments attached as Exhibit “A” hereto (as may be submitted by Licensee from time to time) upon which Licensee’s attachments and facilities will be located upon approval of such Application(s).

F. “Public Rights-of-Way” means any real estate or interest in real estate which is held by any municipal, county or state entity for the purposes of vehicular or pedestrian traffic or for construction or maintenance of utilities and includes easements publicly dedicated for utility purposes, including the unoccupied and unrestricted area above and below such real property interests.

G. “Applicable Standards” shall have the meaning set forth in Section 3.A.

H. “Engineer’s Certificate” means the certification of a licensed professional engineer that upon completion of all modifications, rearrangements, and relocations of Licensor’s poles and facilities, and the placement by Licensee of its attachments, all in accordance with the construction plans and drawings approved by Licensor, each pole of Licensor to which the Licensee’s attachments are to be made shall meet the Applicable Standards for support and clearance of the electric supply and communications conductors and facilities depicted in such plans and drawings.

3. Specifications

A. Licensee's attachments to all joint use poles covered by this Agreement shall be placed and maintained in accordance with the requirements, specifications, rules, and regulations of the latest edition of the National Electric Safety Code (NESC), the Occupational Safety and Health Administration (OSHA), any governmental authority having jurisdiction, and the Rules and Practices of Licensor as set forth in Exhibit "B" attached hereto, as the same may be modified by Licensor in the future (collectively referred to herein as the "Applicable Standards").

B. It is understood and agreed between the parties that the Rules and Practices set out in Exhibit "B" may be changed by Licensor, or new Rules and Practices may be adopted by Licensor without resort to the provisions of Section 17 relating to supplementing or amending this Agreement, and Licensee agrees to be bound by any such change or adoption. No changes will be instituted that do not follow the NESC, OSHA regulations, or sound engineering principles.

C. In the event that Licensor should change or adopt a rule or practice, or rules or practices, for the joint use of poles by Licensee, Licensor shall give Licensee written notice of such change or adoption in the manner contemplated by Section 20 and Licensee agrees to make such changes or alterations in its installations or maintenance of its facilities as may be required in order to fully comply with the provisions of such notice. In the absence of a contrary provision in said notice, Licensee agrees to make all required changes or alterations within thirty (30) days after receipt. Upon Licensee's written request, such period will be extended as reasonably necessary to permit Licensee to make said required changes or alterations so long as Licensee commences said changes or alterations within such 30-day period and thereafter continuously and diligently pursues completion of such changes or alterations.

D. No tag, brand, or other device showing Licensee's name or insignia shall be placed on or attached to any pole of Licensor, except that tag or insignia which shows Licensee to be a licensee or lessee of such poles and not the owner thereof, and then only after obtaining the written consent of Licensor.

E. Any unbalanced loading of Licensor's poles caused by the addition or replacement of any line, attachment or apparatus of Licensee shall be properly guyed and anchored by Licensee, at no expense to Licensor. Licensee may attach its guy wires to Licensor's anchors if loading permits under sound engineering practices; however, use of Licensor's anchor shall constitute a separate attachment under this Agreement.

4. Application for Pole Attachment

A. Before the Licensee shall make any new attachments to any of the Licensor's poles under this Agreement, Licensee shall make application and receive a permit therefor in the form of Exhibit "A" attached hereto and shall comply with the procedures set forth in this section. A nonrefundable application fee shall be paid by Licensee at the time an application is

made under this Agreement. The application fee shall be \$55.00 for each pole of Licensor that Licensee proposes to contact along the Route or Routes described in the application.

B. With any application for pole attachment, the Licensee shall furnish the Licensor construction drawings for each pole line, together with necessary maps, indicating specifically the poles of the Licensor proposed to be used jointly, the number, location and character of the attachments to be placed on such poles, and the proposed installation schedule.

C. In the event Licensor determines that rearrangement of the existing facilities on the poles is required before Licensee's attachments can be accommodated, Licensor shall provide a written cost estimate within twenty (20) work days for all changes which may be required, and an estimated completion date for such changes. The Licensee shall be responsible for the actual costs of all Make Ready Work. Upon written notice by the Licensee of the acceptability of the referenced cost estimate and receipt by Licensor of the full estimated costs of the Make Ready Work and the Engineer's Certificate, the Licensor shall use its best efforts to complete the work at a mutually agreed upon completion date, provided the mutually agreed upon completion date does not exceed forty-five (45) work days. Nothing shall preclude the parties from making any mutually agreeable arrangement for contracting for or otherwise accomplishing the necessary changes. Should Licensor fail to complete rearrangement of existing facilities in the agreed upon time frame, in no case longer than 120 days, Licensor agrees to allow Licensee to perform the necessary Make Ready Work shown in the estimate. In such case, Licensee will use a contractor approved by Licensor, which approval will not be unreasonably withheld, delayed or conditioned. Licensor agrees to refund the funds advanced by Licensee for Make Ready Work within thirty (30) days of notification of completion of such Make Ready Work by Licensee and verification of the performance of such work conformity with Applicable Standards. The obligations of the Licensee shall not be limited to amounts shown on cost estimates made by the Licensor. "Costs" shall include, but not be limited to, materials less salvage value, labor (including wages, FICA and other similar direct employment costs), motor vehicles, engineering, supervision, overhead, and any necessary tree trimming. Licensor will submit to Licensee an itemized statement of the actual costs of all such Make Ready Work. If the actual costs exceed the estimated costs advanced by Licensee, Licensee shall pay Licensor the difference within thirty (30) days from its receipt of Licensor's invoice for such costs. If the actual costs are less the amount of estimated costs advanced by Licensee, Licensor will refund the difference within thirty (30) days.

D. Upon completion of all specified Make Ready Work, the Licensee shall have the right to use the poles on the Route jointly and to make attachments in accordance with the terms of the application and of this Agreement. The Licensee shall, at its own expense, make attachments in such manner as not to interfere with the service of the Licensor, and shall place guys and anchors in accordance with Applicable Standards and sound engineering principles to address any unbalanced or unstable loading caused by its attachments.

E. All poles jointly used under this Agreement shall remain the property of the Licensor, and any payments made by the Licensee for changes in pole lines under this Agreement shall not entitle the Licensee to ownership of any of said poles.

F. The Licensor reserves the right to exclude any of its facilities from joint use.

5. Easements and Rights-of-Way for Licensee's Attachments

The Licensor does not warrant or assure to the Licensee any right-of-way, privilege or easement. If the Licensee shall at any time be prevented from placing or maintaining its attachment on the Licensor's poles, no liability shall attach to the Licensor. Each party shall be responsible for obtaining its own easements and rights-of-way. Upon Licensor's request, Licensee shall submit evidence reasonably satisfactory to Licensor of Licensee's authority to erect and maintain facilities within any easement or the Public Rights-of-Way, and shall secure any necessary consent from state or municipal authorities or from the owners of property to construct and maintain facilities at the locations of Licensor's poles that Licensee desires to use.

6. Maintenance of Poles, Attachments and Rights of Way

A. Licensee expressly assumes responsibility for determining the condition of all poles on the Route to be accessed by its employees or contractors. No pole shall be climbed by Licensee or its contractor without prior approval from Licensor, unless such pole cannot be accessed by bucket truck or ladder. Licensor disclaims any warranty or representation regarding the condition and safety of the poles of the Licensor. Licensor agrees that, upon written notification, it will replace any pole that has become unfit for service as a utility pole.

B. Whenever right-of-way considerations or public regulations make relocation of a pole necessary, such relocation shall be made by the Licensor at its own expense, except each party shall bear the cost of transferring its own attachments.

C. Whenever it is necessary to replace or relocate a jointly used pole, the Licensor shall, except in case of an emergency, before making such replacement or relocation, give twenty (20) days notice in writing to the Licensee, specifying in such notice the time of such proposed replacement or relocation. Licensee shall, at the time so specified, transfer its attachments to the new relocated joint pole. Should the Licensee fail to transfer its attachments to the new or relocated joint pole at the time specified for such transfer of attachments, the Licensor may elect to do such work, and the Licensee shall pay the Licensor the costs of making such transfer. In the event the Licensee fails to transfer its attachments in a timely manner and Licensor elects to perform work, the Licensor shall not be liable for any loss or damage to the Licensee's facilities, for any service interference experienced by Licensee's customers, or for any business losses which may result.

D. Except as otherwise provided in (C) of this section, each party shall at all times maintain all of its attachments in accordance with Applicable Standards and shall keep them in thorough repair. Licensee shall perform all right-of-way maintenance, including tree trimming or cutting, necessary to maintain its facilities in good repair and in a condition so as not to constitute a safety hazard to the general public or other parties using the joint poles.

E. In cases of emergency, verbal notice will be given as soon as practicable whenever it is necessary to replace or relocate a jointly used pole. Licensee shall, at the time so notified, transfer its attachments to the new relocated joint pole. The Licensee shall respond within a two-hour period 24 hours a day, seven days a week. Should the Licensee fail to transfer

its attachments to the new or relocated joint pole at the time specified for such transfer of attachments, the Licensor may elect to remove or disconnect the attachment by whatever means necessary. In the event the Licensee fails to transfer its attachments and Licensor removes or disconnects the attachments, the Licensor shall not be liable for any loss or damage to the Licensee's facilities, for any service interference experienced by Licensee's customers, or for any business losses which may result.

7. Rearrangement, Relocation or Removal of Facilities

A. The reasonable costs for any modification, rearrangement, relocation or removal necessary to allow Licensee to make or maintain a desired attachment shall be allocated to Licensee, Licensor, or other entity on the following basis:

(i) If the modification, rearrangement, relocation or removal of Licensee's facilities is the result of an additional attachment or the modification of an existing attachment sought solely by an entity other than Licensor or Licensee, the entity requesting the additional or modified attachment shall bear the entire cost of modification, rearrangement, relocation or removal of Licensee's facilities.

(ii) If the modification, rearrangement, relocation or removal is necessitated by a request of Licensee, Licensee shall bear the cost of such work. Licensee may be required to pay to Licensor the full estimated cost of any such modification, rearrangement, relocation or removal prior to Licensor performing such work and the work shall be scheduled upon receipt of this payment. Any cost above the estimated cost shall be paid to Licensor within thirty (30) days of completion of such work. Licensee shall be refunded the difference between the actual cost and the estimated cost of the work if such actual cost is less than the estimated cost. Licensee will receive said refund from Licensor within thirty (30) days of the completion of the work.

B. Licensee agrees that Licensor has the right to reserve space on its poles for Licensor's core utility space. Should Licensor, at any time, require any space reserved for Licensor's core utility space (as shown in Exhibit "B"), but occupied by Licensee's attachments, Licensor shall give, except in the case of an emergency, thirty (30) days notice to Licensee and Licensee shall either vacate the space by removing its attachments or authorize Licensor to modify said poles at the expense of Licensee and other parties participating.

C. In the event it is necessary for Licensor to use the space on poles occupied, or contracted for, by the Licensee, and providing the pole does not meet spacing specifications for a standard pole configuration as diagramed in Exhibit "B", the Licensee shall, upon receipt of thirty (30) days written notice, either vacate the space by the removal of its attachments, or shall authorize Licensor to replace the poles at the expense of Licensee. Licensee shall pay the total costs incurred by Licensor in rearranging such facilities if Licensee has not paid for the replacement of such poles.

8. Abandonment of Joint Use Poles

A. If Licensor desires at any time to abandon any joint use pole, it shall give Licensee notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole. Licensee shall be responsible for removal of its attachments from such pole(s) within said thirty (30) day time period or as may otherwise be established by written Agreement signed by Licensor. If Licensee does not remove its attachment within said time period, Licensee shall either be responsible for all costs by Licensor associated with removal of Licensee's attachments or for the purchase cost of the pole, as determined by the Licensor.

B. Licensee may at any time abandon the use of a joint use pole by giving Licensor written notice of such abandonment in the form of Exhibit "C" attached to this Agreement, as provided in Section 20, and removing from such pole all attachments that Licensee may have. In case of such abandonment of the use of any such pole, Licensee shall pay to Licensor the full rental for the current year for the space on said pole set aside for the use of Licensee.

9. Rentals, Charges and Rates

A. Upon execution of this Agreement, Licensee shall pay to Licensor an initial rental fee calculated by multiplying the applicable "Attachment Rate" (as set forth below) times the total number of poles and anchors to which Licensee is at that time attached by a fraction the denominator of which is 365 and the numerator of which is the number of days from the date of execution of this Agreement up to and including the next following December 31. Licensee shall also pay an additional rental fee for all new attachments approved by Licensor during the remainder of the initial calendar year of this Agreement which rental fee shall be calculated by multiplying the applicable "Attachment Rate" (as set forth below) times the total number of new poles and anchors to which Licensee has been approved to attach by a fraction the denominator of which is 365 and the numerator of which is the number of days from the date of Licensor's approval of the new attachments up to and including the next following December 31. The rental fee for such new attachments shall be paid within thirty (30) days of the date on which Licensor approves the new attachments. Beginning with the first full calendar year of this Agreement, an annual rental fee shall be due and payable on the first day of January of each year, which fee shall be calculated by multiplying the number of Licensor's poles and anchors to which Licensee is attached or approved for attachment as of the first day of December of the preceding year by the applicable Attachment Rate as set forth below. The annual rent shall not be prorated and no refund shall be made for attachments removed during a given calendar year or for approved attachments that are never made during the year.

B. The Attachment Rate shall be \$25.98 for 2018. The Attachment Rate for each subsequent calendar year during the term of this Agreement, beginning January 1, 2019, shall be determined by adjusting the Attachment Rate in effect for the previous calendar year by three (3.0%) percent. Licensor shall invoice Licensee for the annual pole attachment rent on or around January 1st each year. All invoices submitted by Licensor shall be paid within thirty (30) calendar days of the date of invoice. Interest on the unpaid balance of any delinquent invoice shall accrue and be charged at the rate of one (1.0%) percent per month until paid in full. Notwithstanding the foregoing, the parties agree and understand that, no more frequently than

once during each five-year period of the term of this Agreement. Licensor shall have the right to make a good faith determination of the fully-allocated cost of providing attachment space on its jointly used poles. Upon approval of such fully-allocated attachment cost by the Licensor's governing body for use in all pole attachment agreements in which Licensor has the right to employ such cost as the attachment rate, said fully-allocated cost shall become the Attachment Rate under this Agreement for the calendar year immediately following the year in which such approval was provided by Licensor's governing body. In such event, the Attachment Rate for subsequent calendar years shall be determined by adjusting the Attachment Rate in effect for the previous calendar year by any change upward in the index known as the "Consumer Price Index for All Urban Consumers (CPI-U), US City Average, All Items, 1982-84=100, not seasonally adjusted." Licensee hereby waives and releases any right to challenge the determination of said fully-allocated cost for attachment space unless the methodology employed by Licensor in making such determination clearly lacks a rational basis.

C. In the event that Licensee requires a source of electrical energy for power supply to Licensee's system which constitutes a part of Licensee's attachments and apparatus, such energy will be supplied by Licensor in accordance with the provisions of its standard service extension policies, approved rates and Rules and Regulations.

D. All other amounts payable under this Agreement, such as for installation, modification, rearrangement, relocation or removal, shall be due and payable within thirty (30) days of the date of the invoice submitted by Licensor.

10. Indemnification

A. To the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, Licensee shall indemnify, protect, save harmless and insure Licensor, its agents, contractors and employees, from and against any and all claims and demands for damages to property and injury to or death of persons, including payments made under any Workers' Compensation Law or under any plan for employees' disability and death benefits, and including all expenses (including attorneys fees) incurred in defending against any such claims or demands, which may arise out of or be caused by the erection, maintenance, presence, use, rearrangement or removal of Licensee's cables, wires, fibers, equipment and facilities or by the proximity of Licensee's cables, wires, fibers, equipment and facilities to those of Licensor or its other licensees, or by any act of Licensee on or in the vicinity of Licensor's poles and anchors, or licensee's breach of any part of this Agreement, regardless of whether or not any such damage to property or injury to or death of persons results from Licensee's negligence. To the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, Licensee shall also indemnify, protect and save harmless Licensor, its agents, contractors and employees, from any and all claims and demands of whatever kind which arise directly or indirectly from the operation of Licensee's facilities including taxes, special charges by others, claims and demands for damages or loss from infringement of copyright, for libel and slander, for unauthorized use of broadcast programs, and for unauthorized use of other program material, and from and against all claims and demands for infringement of patents with respect to the manufacture, use and operation of Licensee's equipment whether arising from the use of Licensee's equipment in combination with Licensor's poles, anchors or otherwise.

B. Licensee acknowledges that in performing the work contemplated by this Agreement, Licensee and its agents, servants, employees, and contractors will work near electrically energized lines, transformers, and other electrical equipment, and it is the intention that the power flowing through such facilities will not be interrupted except by Licensor. Licensee shall ensure that its employees, servants, agents, and contractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of Licensor, and the general public, from harm or injury while performing work permitted by this Agreement. In addition, Licensee shall furnish its employees, and shall require its agents and contractors to furnish their employees, with competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee further warrants that it is apprised of, conscious of, and understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on Licensor's poles by Licensee's employees, servants, agents, and contractors, and accepts it as its duty and sole responsibility to notify and inform Licensee's employees, and to require its agents, and contractors to inform their employees of such dangers, and to keep them informed regarding same.

C. Licensor reserves to itself the right to maintain and operate its poles, lines and other facilities in such manner as will best enable it to fulfill its own service requirements. Licensor shall not be liable for any damages incurred by Licensee for damage or interruption to Licensee's cables, wires, attachments, or other facilities except for actual repair costs caused by the negligence of Licensor; provided, however, that Licensor shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's attachments. **LICENSOR SHALL NOT BE LIABLE TO LICENSEE FOR ANY SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH DAMAGE TO LICENSEE'S FACILITIES.**

D. Licensee is expected to inspect the Poles on which its facilities will be placed and shall rely solely on such inspection to determine the suitability of the poles for its purposes. **LICENSOR DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTIES CONCERNING ANY POLE, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACCEPTS THE USE OF ALL POLES AS IS, WHERE IS, AND WITH ALL FAULTS.**

E. Licensee acknowledges and agrees that Licensor does not warrant the condition or safety of Licensor's Poles, or the premises surrounding the poles, and LICENSEE HEREBY ASSUMES ALL RISKS OF AND, to the extent permitted by law including but not limited to Section 177 of the Kentucky Constitution, INDEMNIFIES LICENSOR FROM ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH LICENSEE'S OR LICENSEE'S CONTRACTORS' USE OF THE POLES AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN, OR SURROUNDING THE POLES. Licensee expressly agrees that it will undertake responsibility for inspecting and evaluating the condition of any pole before allowing any workers, whether those of Licensee or Licensee's contractors, to climb or otherwise work on such pole. If

Licensee discovers any poles that are rotten or otherwise unsafe for climbing or installation of facilities, Licensee shall immediately report such unsafe condition to Licensor.

F. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by Licensor of the provisions of any law limiting the liability of municipal corporations.

G. This Section 10 shall survive the termination of this Agreement.

11. Insurance

A. At its option, the Licensee shall secure and maintain or cause its contractors to secure and maintain, throughout the term of this Agreement, insurance of such types and in such amounts as hereinafter specified.

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

All insurance coverage furnished under this Agreement, with the exception of Worker's Compensation, shall name the Licensor as an additional insured with respect to the activities of the Licensee and its contractors. In addition to the coverage described above, the insurance shall protect the parties hereto as named insured from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly, from or by reason of any loss, injury or damage described in Section 10 above. Failure of the Licensee to maintain adequate coverage or to require its contractors to maintain the coverage provided for herein shall not relieve Licensee of any contractual responsibility or obligation.

Each policy required hereunder shall contain a contractual endorsement written as follows: "The insurance provided herein shall also be for the benefit of the Electric Plant Board of the City of Paducah, Kentucky d/b/a Paducah Power System so as to guarantee, within the policy limits, the performance by the named insured of the indemnity provisions of the Pole Attachment License Agreement between the Commonwealth of Kentucky and the Electric Plant Board of the City of

Paducah, Kentucky. Electric Plant Board of the City of Paducah, Kentucky is an additional insured on a primary and non-contributory basis. This insurance may not be changed or canceled for any cause without thirty (30) days advance written notice being first given to Electric Plant Board of the City of Paducah, Kentucky.”

B. Satisfactory certificates of insurance shall be filed with Licensor prior to commencement of any construction work under this Agreement. The certificates shall state that thirty (30) days written notice will be given to the Licensor before any policy covered thereby is changed or cancelled. If an insurance carrier shall at any time notify Licensor that the policy or policies of insurance will be cancelled or changed so that the insurance requirements of this Agreement will no longer be satisfied, Licensee shall forthwith provide satisfactory replacement coverage.

C. Licensor shall have the right to review and adjust the above insurance coverage limits every three years during the term of this Agreement beginning with the calendar year following the conclusion of the first three calendar years of this Agreement. The coverage limit of each type of insurance listed above may not be increased by more than five (5%) percent at any one adjustment period. If Licensor elects to implement an adjustment as provided above, Licensor shall give Licensee notice of the adjustment as provided in Section 20 below by the December 1 immediately preceding the calendar year in which the adjustment is to be implemented. Licensee shall within thirty (30) days provide Licensor with satisfactory certificates of insurance evidencing that the new insurance coverage limits are in place.

12. Defaults

A. If Licensee or Licensor shall fail to comply with any of the provisions of this Agreement or should default in any of its obligations under this Agreement, and shall fail within thirty (30) days after written notice from the other party (the “Non-Defaulting Party”) to correct such noncompliance or default, the Non-Defaulting Party may, at its option, and without further notice, declare this Agreement to be terminated in its entirety, or may terminate the permit covering the pole or poles in respect to which such default or noncompliance shall have occurred. In case of such termination, no refund of accrued rental shall be made.

B. If Licensee shall default in the performance of any work which it is obligated to do under this Agreement, the Licensor may elect to do such work, and the Licensee shall reimburse the Licensor for the costs.

C. If the Licensee or Licensor shall default in any of its obligations under this Agreement and it becomes necessary for the non-defaulting party to obtain the services of an attorney, who is not a salaried employee of the non-defaulting party, to enforce such obligations, to the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, the Licensee and Licensor, as applicable, agrees to pay the non-defaulting party’s reasonable attorney fees, court costs and other costs of litigation associated with the enforcement of such obligations.

D. Licensee may terminate this Agreement in accordance with 200 Ky. Admin. Reg. Sec. 512.

13. Unauthorized Attachment

A. If any Licensee facility for which no permit or license has been issued shall be found attached to Licensor's poles, Licensor may assess a \$50.00 Unauthorized Use Fee per year for each unauthorized Licensee attachment to Licensor's facilities, and, without prejudice to its other rights or remedies under this Agreement, including termination, require Licensee to submit, within fifteen (15) days after the date of written notification from Licensor of the unauthorized attachment, a Pole Attachment License Application. If such application is not received by Licensor within the specified time period, Licensee shall immediately remove its unauthorized attachment, or Licensor may remove such Licensee facility, and the expense of such removal shall be borne by Licensee. The Unauthorized Use Fee is a separate fee from the pole rental fee provided for by Section 9 of this Agreement.

B. No act or failure to act by Licensor with regard to any unauthorized attachment shall be deemed a ratification or the licensing of the unauthorized attachment. If any license should be subsequently issued, said license shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement from its inception in regard to said unauthorized attachment.

14. Rights of Other Parties

Nothing herein shall be construed to limit the right of Licensor, by contract or otherwise, to confer upon others, not parties to this Agreement, rights or privileges to use the joint use poles covered by this Agreement.

15. Term of Agreement and Termination

A. This Agreement shall be deemed effective as of the date first above written and shall continue in force and effect for an initial term running fifteen (15) years from the January 1 next following the date first above written, subject to the successive, automatic renewal terms as provided below, or earlier termination in the event of default as provided in this Agreement. If not earlier terminated as provided herein, either party may terminate this Agreement at the end of said term by giving to the other party written notice of an intention to terminate the Agreement at least six (6) months prior to the end of the said term; but, upon failure to give such notice, this Agreement shall continue in force upon the same terms and conditions for a further term of one (1) year, and for one (1) year periods thereafter, until terminated by either party at the end of any current term by giving to the other party written notice of an intention to so terminate the Agreement at least six (6) months prior to the end of such term.

B. Notwithstanding the foregoing, if the Licensee shall fail within 180 days of the effective date of this Agreement to submit complete applications for permits for all joint use poles to which it reasonably expects to attach within the initial three (3) years of the term of this

Agreement, or thereafter, shall fail to commence construction on the poles of Licensor within the period of three hundred and sixty-five (365) days after the effective date of this Agreement, then this Agreement shall be null and void, and of no further force and effect.

C. Upon termination of this Agreement, voluntarily or involuntarily, Licensee shall remove its attachments from the poles of Licensor within one hundred eight (180) days after the effective date of such termination. Should the Licensee fail to comply, the Licensor may elect to do such work and the Licensee shall pay the Licensor the full cost of performing the work.

16. Waiver of Terms and Conditions

The failure of either party 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 and conditions, but such conditions and terms shall be and remain at all times in full force and effect.

17. Supplemental Agreements

A. This Agreement may be amended or supplemented at any time upon written Agreement by the parties hereto. Should either an amendment or supplement become necessary, the party desiring such amendment or supplement shall give thirty (30) days written notice to the other party setting out in detail the changes or additions desired.

B. In the event that Licensee desires to add to the number of pole attachments licensed under this Agreement, Section 17.A. shall not apply, but in each case Licensee shall make application and receive a permit therefor in the form of Exhibit "A" attached hereto and shall comply with the procedures set forth in Section 4. In the event that Licensee desires to reduce the number of pole attachments licensed under this Agreement, Section 17.A. shall not apply, but in each case Licensee shall give notice to Licensor in the form of Exhibit "C" attached hereto.

18. Payment of Taxes

Licensor shall pay all taxes and assessments lawfully levied on its property attached to the jointly used poles, and any taxes and assessments which are levied on said joint use poles themselves shall be paid by the Licensor. To the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, any tax, fee or charge levied on the Licensor or its poles because of their use by Licensee will be paid by Licensor; however, an amount equal to the total of all such amounts paid by Licensor in a given calendar year shall be added to the Attachment Rate to be paid by Licensee for the next calendar year.

19. Interest and Payments

All amounts to be paid by Licensee to Licensor under this Agreement shall be due and payable by the due date provided herein. Any payment not made by the due date shall bear interest until paid at one (1%) percent per month.

20. Notices

Any notice, request, consent, demand, statement or other communication 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 transmission by telephonic facsimile transmission, in each case addressed as follows, or to such other addresses or facsimile numbers as shall be designated from time to time by the parties pursuant to this Section 20:

IF TO LICENSOR:

General Manager
Paducah Power System
P.O. Box 180
1500 Broadway
Paducah, KY 42002-0180
For courier delivery use 42001
Telecopier (270) 575-4027

IF TO LICENSEE:

Ledcor Technical Services
14400 The Lakes Blvd, Building C
Suite 100
Pflugerville, Texas 78660
lts.ky.accountspayable@ledcor.com

21. Supplying Information and Inspection

A. After completion of the initial installation of facilities and the installation of any attachments subsequently licensed hereunder, Licensee shall furnish to Licensor a sketch or map showing the precise location of each power supply, pole contact, and other attachment of Licensee which is actually installed on poles of the Licensor. Such revised sketch or map may be verified by Licensor and shall be the basis for determining the number of pole contacts made by Licensee. For changes in existing attachments, Licensee shall promptly report to Licensor any changes made in the number of attachments to poles of the Licensor.

B. Licensor reserves the right to inspect each new installation made on its poles by Licensee and to make periodic inspections of all facilities of Licensee attached to Licensor's poles. Licensee shall reimburse Licensor for its reasonable expenses of inspection for no more than one such inspection every five (5) years. However, if twenty percent (20%) of Licensee's attachments are discovered to be out of compliance with Applicable Standards on any such inspection, Licensor shall have the right to conduct such fully reimbursable inspections during the next five (5) year period as may reasonably be necessary to assure reasonable compliance of Licensee's plant with Applicable Standards. In calculating the amount of the reimbursement, the parties shall allocate costs among users of the pole in proportion to the number of parties on the pole, including the actual, direct cost of labor and equipment involved. Such inspections do not constitute approval by Licensor of any work or maintenance of Licensee, and shall not operate to relieve Licensee of any responsibility, obligation or liability assumed under this Agreement, nor shall such inspection constitute an assumption by Licensor of any liability therefor.

C. If, as a result of any field check or inspection, it is found that the Licensee is occupying any pole of the Licensor without having advised the Licensor as provided in Section 17.B., the Licensee shall pay to the Licensor the rental for such poles from the date that Licensee's attachment was installed on such pole, or if the date of installation cannot be determined to the satisfaction of both parties, the installation shall be presumed to have occurred at the same date of those reported throughout the entire period since the last field check was made.

D. Licensee shall promptly take appropriate action to bring into compliance any attachments found to be out of compliance with Applicable Standards. Should Licensee fail to bring such attachments into compliance within sixty (60) days of receiving notice of noncompliance, Licensor may, but is not required to, take whatever steps are deemed by it appropriate to bring the attachments into compliance and Licensee shall be responsible for all costs of such remedial actions by Licensor.

22. Construction of Agreement

This Agreement is deemed executed in the State of Kentucky and shall be governed by and construed and enforced in accordance with the laws of the State of Kentucky applicable to contracts made and to be performed entirely in that state, without regard to the conflicts of laws rules of that state.

23. Resolution of Disputes

A. If any dispute or claim arises out of the interpretation, performance, or breach of this Agreement, the parties agree that upon written demand of either party, they will meet within two (2) weeks of such demand to attempt in good faith to resolve the dispute. Representatives of both parties having the authority to resolve the dispute shall attend this meeting.

B. With the exception of actions for injunctive relief or which must be filed to preserve a party's rights, the parties agree to conduct the meeting described above before either party may commence an action in any court of law concerning disputes or claims arising out of this Agreement.

C. If, after this meeting takes place, either party commences an action against the other in a court of law based on the terms and conditions contained in this Agreement or arising out of the subject matter of this Agreement, then the prevailing party shall be entitled to recover, as part of the court's judgment, its reasonable attorneys' fees, legal expenses and costs incurred by reason of the lawsuit. The Licensee's obligation herein is to the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution. Any such action and any action permitted by subsection B of this Section 23 shall be brought in the Circuit Court of Franklin County, Kentucky, which court shall be the exclusive venue of such actions.

24. Liens and Encumbrances

Licensor shall keep Licensee's property free from any and all liens and claims and shall not grant any other rights or licenses in or to such property of Licensee.

25. Severability

A. In the event that any one or more of the clauses, covenants or provisions contained in this Agreement should be held to be unenforceable under any federal, state or local law, statute, code, administrative or regulatory rule, such invalidity or unenforceability shall not affect the remainder of this Agreement, which shall remain in full force and effect.

B. 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.

26. Prior Agreements Superseded

This Agreement, including the attachments, embodies the entire agreement between the parties hereto and supersedes and replaces any and all previous agreements entered into by and between Licensor and Licensee with respect to the subject matter of this Agreement.

27. Assignment of Agreement

This Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the parties hereto and their successors and permitted assigns. Licensee shall not assign or otherwise transfer this Agreement or any of its rights, privileges and interests to any firm, corporation, entity or individual, without the prior written consent of Licensor. In the event that consent is granted to assign this Agreement to a proposed assignee, such assignee shall at the time of such assignment expressly acknowledge in writing that said assignee is bound by the terms of this Agreement and shall comply with the provisions hereof, including the posting of the bond required by Section 28 below.

28. Performance Bond

THE PROVISIONS OF THIS SECTION 28 SHALL APPLY ONLY IN THE EVENT THAT LICENSEE (WITH THE REQUIRED PERMISSION OF LICENSOR) ASSIGNS THIS AGREEMENT TO A THIRD PARTY. THE ASSIGNEE OF LICENSEE IS REFERRED TO IN THE REMAINDER OF THIS SECTION 28 AS "LICENSEE." Should Licensee fail to pay as and when due any rental fee or other charge provided for in this Agreement for a period of sixty (60) days from the date of Licensor's invoice for same, Licensor shall have the option to require Licensee to furnish within ten (10) days thereafter a bond as described in this Section 28. In such case, Licensee shall furnish a bond or satisfactory evidence of contractual insurance coverage for the purposes hereinafter specified in the amount of Ten Thousand Dollars (\$10,000), plus an additional amount of Two Thousand Dollars (\$2,000) for each one hundred (100) of Licensor's poles and anchors to which Licensee's facilities are or will be attached under

this Agreement. Such bond or insurance shall contain the provision that it shall not be terminated prior to six (6) months after receipt by Licensor of written notice of the desire of the bonding or insurance company to terminate such bond or insurance. Upon receipt of such notice Licensor shall request in writing that Licensee immediately remove its cables, wires, fibers and all other facilities from Licensor's poles and anchors. If Licensee should fail to complete the removal of all of its facilities from the poles and other property of Licensor within thirty (30) days after receipt of such written request from Licensor, Licensor shall have the right to remove them at the cost and expense of Licensee and without being liable for any damage to Licensee's wires, cables, fibers, fixtures, conductors or appurtenances. Such bond or insurance shall guarantee the payment of any sums which may become due to Licensor for rentals, inspections or work performed by Licensor for the benefit of Licensee under this Agreement, including the removal of attachments upon termination of this Agreement by any of its provisions.

29. Time of the Essence

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of Licensee or Licensor, such time shall be deemed of the essence.


IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed.

**ELECTRIC PLANT BOARD OF
THE CITY OF PADUCAH**

COMMONWEALTH OF KENTUCKY

By: 
DAVID C. CARROLL
GENERAL MANAGER

By: 

ATTEST: 
Date: 05/29/2018

ATTEST: _____
Date: 7/18/2018

EXHIBIT "A"

Application for New Attachments

Application for Pole Attachment Permit

Application is hereby made for permission to make attachments to _____ (number) poles as indicated on the Route map and list of pole numbers and addresses provided on the reverse of this sheet or attached hereto. This application includes the information specified in Section 4.B. of this Agreement, including detailed construction plans and drawings for each pole line, necessary maps, indicating specifically the poles of the Licensor to be used jointly, the number and character of the attachments to be placed on such poles, any rearrangement of the Licensor's fixtures and equipment necessary for joint use, relocations or replacements of existing poles, and any additional poles which may be required. A nonrefundable application fee calculated under the provisions of Section 4 of the Agreement in the amount of \$_____ is included with this application.

Number of cables _____;
Cable Diameter _____;
Design maximum tension _____

Licensor: Commonwealth of Kentucky, Finance and Administration Cabinet
(print name)
By: William M. Landrum III
Title: Secretary
Date: 7/18/2018
Print Name: William M. Landrum III

Cost Estimate

Paducah Power System has reviewed your Application for Pole Attachment Permit Number _____. The Application is _____ Accepted _____ Rejected
The estimated cost of changes required to accommodate this request is _____.

Paducah Power System

By: _____
Title: _____
Date: _____
Print Name: _____

Acceptance of Cost Estimate

We agree to pay the above costs and hereby request the Authorization of Permit for the Route described above.

Licensee: Commonwealth of Kentucky, Finance and Administration Cabinet
(print name)

By: William M. Landrum III

Title: Secretary

Date: 7/18/2018

Print Name: William M. Landrum III

Authorization of Permit

Permission is granted to make attachments described in the above application.

Paducah Power System

By: _____

Title: _____

Date: _____

Print Name: _____

Status of Pole Attachments

Previous Total _____

Added by this Permit _____

New Total _____

Approved:

**ELECTRIC PLANT BOARD OF
THE CITY OF PADUCAH**

By: _____

Title: _____

By: _____

Title: _____

EXHIBIT B
Rules and Practices for Pole Attachments

1. All facilities attached to Licensor's poles shall be installed in a manner to ensure compliance with the requirements of the National Electrical Safety Code (NESC) in effect at the time of the installation and Licensor's Service Rules and Regulations.

2. The location of all lines, attachments, apparatus or power supplies affixed to Licensor's poles shall be approved in writing by the Licensor. No attachments shall be made without prior approval of Licensor. Licensee shall provide the following information to help determine whether the poles have sufficient strength for the proposed attachments: type of cable and strand, eight per foot of cable and strand, diameter of cable and strand, breaking strength of strand, self-supporting or lashed cable, and existing attachments.

3. The diagram of the Licensor's standard pole configuration is included as an attachment to this Exhibit "B".

4. All lines, attachments, apparatuses and power supplies shall be located on the same side of each pole as any existing attachment, or as designated by the Licensor.

5. On joint use poles where Licensor has secondary conductors, all attachments and power supplies shall be as designated by the Licensor.

6. Power supply may be installed on any of Licensor's poles subject to approval by Licensor.

7. No bolt used by Licensee to attach its facilities shall extend or project more than two (2) inches beyond its nut. Licensor may require banding to certain designated poles to support attachments.

8. All attachments or facilities of Licensee shall have at least two (2) inches clearance from unbounded hardware.

9. All attachments shall have at least forty (40) inches clearance under the effectively grounded parts of transformers, transformer platforms, capacitor banks, sectionalizing equipment and electric conductors. In all cases, the Licensor shall be able to require a standard configuration as included with this Exhibit B. Clearances not specified in this rule shall be determined by reference to the most current edition of the NESC.

10. The Licensee may, with the prior written approval of the Licensor, install crossarms, alley arms, or line extension arms for the support of any of its facilities. However, Licensee shall not use any crossarm or alley arm brace above the arm which it supports.

11. Licensee shall install and maintain any and all of its facilities in a neat and workmanlike manner consistent with the maintenance of the overall appearance of the joint use poles, and all subject to the approval of Licensor, provided that Licensee shall be solely responsible for compliance with the specifications referred to in Section 3 of this License Agreement.

12. All down guys, head guys or messenger dead ends installed by Licensee shall be attached to joint use poles by the use of "thru" bolts. Under no circumstances shall Licensee install down guys, head guys or messenger dead ends by means of encircling joint use poles with such attachments. All guys and anchors shall be installed prior to installation of any cables

13. In the event that any of the Licensee's proposed facilities are to be installed upon poles already jointly used by Licensor and other parties, without in any way modifying the clearance requirements set forth in these Rules and Practices, Licensee shall negotiate with such other parties, as to clearances between its facilities and the spans of Licensee and such other parties.

14. In the event Licensee desires to request a change in the number of pole contacts, it shall do so by submitting to Licensor the standard form suitable for that purpose.

15. The Licensee agrees to plug any unused or abandoned holes drilled in Licensor's poles with approved plugging methods.

16. Licensee is not permitted to increase the number of wires or attachments to a pole without first receiving approval from Licensor. Licensee shall be required to comply with all terms of the Agreement.

17. The Licensee shall provide a written statement (see Certification at the end of Exhibit B) that its facilities, including protection devices, as installed are fully in compliance with the applicable rules of the NESC, other codes and requirements, and good engineering design. This certification shall be made within thirty (30) days after installation has been completed. Failure to comply with this provision shall result in termination of the Agreement as provided therein.

18. The application fee that is required with the Licensee's application for pole attachment under Section 4 of the Agreement is nonrefundable, regardless of whether the attachments are approved or not.

19. Attachment height must be no less than ten (10) feet from the top of the pole, plus the forty (40) inch safety zone required by the NESC, to allow installation of future transformers and electrical underbuilds. Attachment above this level will only be allowed by special Licensor exemption, subject to further relocation as outlined in Section 7(b).

Certification to be Completed by Licensee

I hereby certify that upon final inspection (which will be made within thirty (30) days after construction is complete) the attachments fully comply with the National Electrical Safety Code, latest edition, and none of Licensor's poles or facilities will be in violation of the National Electrical Safety Code as a result of said attachments.

Licensee: William M. Landrum III

By: Commonwealth of Kentucky,

Title: Secretary

Date: 7/18/2018

Finance and Administration Cabinet

EXHIBIT "C"

Removal of Facilities

Notice of Removal of Pole Attachments

Notice is hereby given that attachments have been removed from _____ (number) poles as indicated on the Route map and list of pole numbers and addresses provided on the reverse of this sheet or attached hereto.

Licensee: Commonwealth of Kentucky, Finance and Administration Cabinet
(print name)

By: William M. Landrum III

Title: Secretary

Date: 7/18/2018

Print Name: William M. Landrum III

Notice of Acknowledgment

Paducah Power System

By: _____

Title: _____

Date: _____

Print Name: _____

Status of Pole Attachments

Previous Total _____

Removed by this Permit _____

New Total _____

Approved:

**ELECTRIC PLANT BOARD OF
THE CITY OF PADUCAH**

By: _____
Title: _____

By: _____
Title: _____