

POLE ATTACHMENT LICENSE AGREEMENT

BETWEEN

MADISONVILLE MUNICIPAL UTILITIES

AND

Commonwealth of Kentucky

THIS POLE ATTACHMENT LICENSE AGREEMENT, dated October 2, 2018 (hereinafter referred to as the "Agreement") between MADISONVILLE MUNICIPAL UTILITIES, with its offices located at 67 N Main Street, Madisonville, Kentucky 42431, hereinafter referred to as "LICENSOR," and COMMONWEALTH OF KENTUCKY, having offices located at Office of the Secretary, 702 Capitol Annex, Frankfort, KY 40601, hereinafter referred to as "LICENSEE."

WITNESSETH

WHEREAS, LICENSEE proposes to erect, maintain, and attach Facilities to Poles owned by LICENSOR; and

WHEREAS, LICENSOR, to the extent required by state and local law, agrees to permit the Attachment of such Facilities to Poles in strict accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises aforesaid and the mutual covenants and agreements hereinafter set forth, the parties hereby mutually agree as follows:

**ARTICLE I - SCOPE OF AGREEMENT**

*Section 1.0 Definitions*

For the purpose of this Agreement, the following terms shall have the following meanings:

1.1 "Attachment" means all LICENSOR authorized connections to its Poles, including cables, equipment and associated hardware, owned and utilized by LICENSEE, which are attached to a Pole. For purposes of this Agreement, LICENSOR does not authorize the Attachment of radios, small cell technology, antennae, communications cable, and mounting hardware used to accommodate a single wireless data or communications transmitter receiver to its Poles. The LICENSEE shall use a Strand and Lash method of Attachment.

1.2 "Authorization(s)" shall mean the permission and/or privilege granted to LICENSEE by the Commonwealth of Kentucky, or a competent local government or a political subdivision thereof to allow the attachment of LICENSEE's Facilities to Poles with approval of LICENSOR.

1.3 "Communication Space" shall mean the area above or below the Communication Worker Safety Zone to the limit of allowable NESC clearance codes and LICENSOR's internal construction standards.

1.4 "Communication Worker Safety Zone" is defined by the NESC and the LICENSOR's internal construction standards as that space between the facilities located in the Supply Space and facilities located in the Communication Space except for limited exceptions such

as brackets, conduits, or drip loops of luminaries. No Supply or Facilities shall be located in the Communication Worker Safety Zone.

1.5 "Direct Costs" means any cost or expenses related to the physical connection of LICENSEE'S cables, equipment and associated hardware to LICENSOR'S Pole(s), including, but not limited to, labor, equipment, materials, supplies and engineering fees.

1.6 "Effective Date" has the meaning set forth in *Section 1.1* of this Agreement.

1.7 "Facilities" means cables, equipment and associated hardware, owned and utilized by LICENSEE, which are attached to a Pole. For purposes of this Agreement, the term Facilities does not mean radios, small cell technology, antennae, communications cable, and mounting hardware used to accommodate a single wireless data or communications transmitter receiver.

1.8 "LICENSEE and its Contractors" means LICENSEE, and any LICENSOR approved and authorized persons or entities who provide labor, services or materials in connection with the attachment and maintenance of LICENSEE's Facilities to Poles, including, but not limited to, contractors, subcontractors, sub-subcontractors, materialmen, agents of any kind and their respective officers, supervisors, agents, and employees.

1.9 "Make-Ready or Make-Ready Work" shall mean all work, including but not limited to rearrangement and/or transfer of existing facilities, replacement of a Pole, and other changes, required to accommodate LICENSEE's Facilities on a Pole.

1.10 "Middle Mile Network" shall mean a physical system of fiber optic cable infrastructure that will allow the transmission of data communications. A middle mile network does not include providing retail broadband service or the last mile component of the network.

1.11 "National Electrical Safety Code" or "NESC" shall mean a publication of the Institute of Electrical and Electronic Engineers; as modified, amended, and/or supplemented from time to time.

1.121 "Overlash" means the practice whereby the LICENSEE physically ties or otherwise attaches new wiring to wiring that already has been affixed to a Pole.

1.13 "Permit" means each document which grants authority from the LICENSOR to the LICENSEE and its Contractors to attach Facilities to Poles. The Permit shall be in the form as set forth in *Exhibit A* to this Agreement.

1.14 "Pole(s)" shall mean a wood, concrete, fiberglass, or metal pole on which is supported supply conductors of less than 13KV owned by LICENSOR. Normally this pole will have a length of less than 60 feet. This includes lift (drop) poles which normally support only service drops to the customer.

1.15 "Qualified Contractor" means any worker who has been approved and passed through the LICENSOR's approval system, trained to perform the work assigned and has the knowledge and ability to recognize the safety hazards associated with such work including the local surrounding environment. Contractor's supervisors are responsible for determining if a worker is qualified.

1.16 "Right-Of-Way" means LICENSEE's acquisition of rights to pass over or under the land of another person or entity in order to secure an easement, supplemental easement or other necessary mandated acquisition necessary for LICENSEE's Facilities.

1.17 "Strand and Lash" means to use a metal supporting wire for the support of a single fiber optic/communication cable.

1.18 "Supply Space" shall mean the space above or below the Communications Worker Safety Zone reserved for the installation of electric supply lines. Specific clearances and exceptions are contained in the NESC and LICENSOR's internal construction standards.

*Section 1.1 Effective Date*

This Agreement shall not become effective and binding upon LICENSOR until it is approved and executed by an authorized representative of LICENSOR (hereinafter referred to as the "Effective Date") and until the date a fully executed copy hereof is delivered to LICENSEE.

*Section 1.2 Term*

This Agreement shall continue for an initial term of twenty (20) years from the Effective Date unless earlier terminated by either party in accordance with the provisions herein. This Agreement shall be renewed every five (5) years upon the same terms and conditions at the end of the initial term, unless sixty (60) calendar days prior written notice is given by one party to the other party that it desires for the Agreement to end at the expiration of the initial term or a subsequent term unless terminated pursuant to Article VII of this Agreement.

**ARTICLE II - AUTHORITY TO ATTACH**

*Section 2.1 Authority to Attach*

This Agreement shall be in effect in any area within Madisonville Municipal Utilities' service area for which LICENSEE hereby certifies that it is qualified to do business in the Commonwealth of Kentucky and has met all requirements of the area's local governments and has obtained all necessary rights-of-way to access Poles. LICENSEE further certifies that it has met all requirements of the local governments wherein it provides services; and LICENSEE further certifies that it has obtained any necessary Right-Of-Way to access Poles to install its proposed Facilities. Upon compliance with all relevant terms and provisions of said authorizations and this Agreement, LICENSEE shall be authorized to attach its Facilities to Poles owned by LICENSOR.

In so far as this Agreement is for the initial construction of the LICENSEE'S middle-mile network and related services to state governmental facilities, it is further agreed that:

- a. Subject to increase or decrease during the application review and final design, the LICENSEE'S initial Attachments count of one hundred and eighty (180) (plus/minus 3%) to LICENSOR owned poles will be the final count.

- b. The LICENSEE'S initial down-conduit count of five (5) as part of the initial Attachments to LICENSOR-owned poles will be the final count.

*Section 2.2 License*

Subject to the terms and conditions set forth herein, including payment of fees and consideration as may be set forth herein, as of the Effective Date, LICENSOR hereby grants to LICENSEE and LICENSEE hereby accepts from LICENSOR a non-exclusive, revocable license to make such Attachments to LICENSOR'S Poles, subject to the provisions of this Agreement.

*Section 2.3 Denial of Attachment*

LICENSOR reserves the right to deny attachment of Facilities to any of the Pole(s) for one or more of the following reasons:

- a. when, in the reasonable judgment of LICENSOR, the requested Poles are required for the immediate or planned use of LICENSOR;
- b. the requested Poles cannot accommodate LICENSEE's Facilities for reasons of safety considerations, applicable engineering standards, and compatibility with existing or committed Attachments of others within the available communication space on existing Poles. Attachments will be permitted by pole location to the authorized attaching entity that can meet all the qualifications of this Agreement on a first come first served basis.
- c. the requested Poles have been installed primarily for the use of a third party, however, LICENSEE will have the right to seek said third party's approval for Attachment to the requested Pole;
- d. LICENSEE's unauthorized attachment of its Facilities to the Attachments of third parties presently attached to LICENSOR's Poles;
- e. LICENSEE's request to attach more than one Facility per Pole; or
- f. any failure by LICENSEE to secure or maintain the Attachment Authority under *Section 2.1* of this Agreement. If LICENSOR denies an Attachment, it shall provide LICENSEE with a written statement providing the reason for denial.

**ARTICLE III - GUIDELINES FOR ATTACHMENTS**

*Section 3.1 Permitting of Attachment*

Before making any attachment of its Facilities to any Poles, LICENSEE shall make application to LICENSOR for a Permit in the form of an "Attachment Permit Request" (*Exhibit A* which is attached hereto and incorporated herein) and acquire Right-Of-Way for the proposed Attachment. LICENSEE shall make no attachment prior to providing LICENSOR written certification that necessary Right-Of-Way has been obtained and prior to receipt from LICENSOR

of an approved Permit, which shall be processed in the time frame not to exceed sixty (60) calendar days. Additional Attachments made during an emergency repair shall be reported as soon as practically possible. Such repairs shall be reported no later than seven (7) calendar days after they are attached. LICENSEE shall ensure that each Permitted Attachment is made in accordance with the terms of this Agreement as well as the specific provisions, if any, contained in the Permit. The failure of LICENSEE to provide written certification of Right-Of-Way and to obtain such Permit prior to making an Attachment for new and/or existing Attachments shall constitute a trespass and a willful violation of this Agreement. LICENSEE shall construct each Permitted project within one hundred eighty (180) calendar days of LICENSOR authorizing Permit. Failure to start Permitted project within the one hundred eighty (180) calendar day time frame will result in the cancellation of the Permit, and will result in the forfeiture of the fee.

### *Section 3.2 Permit Forms*

Beginning with the Effective Date of this Agreement, the submittal of an Attachment Permit Request (*Exhibit A* which is attached hereto and incorporated herein) and an Attachment Removal Request (*Exhibit B* which is attached hereto and incorporated herein) shall be the exclusive procedure to be used by LICENSEE in obtaining authorization to attach or remove its Facilities to/from Poles. These exhibits shall also adjust the inventory of Attachments from which rental billings shall be generated. All Attachment Permit Request and Attachment Removal Request forms must be submitted to:

Electric Department Superintendent  
Madisonville Municipal Utilities  
City of Madisonville  
609 McCoy Ave  
Madisonville, KY 42431

The maximum number of Attachments shall be limited to twenty (20) per Permit. The maximum number of Permits to be submitted and processed during a thirty (30) day period shall be limited to six (6). Before any attachment permits are granted a map showing the complete route with exact pole counts and down conduit counts shall be provided to LICENSOR.

### *Section 3.3 Installation Standards*

LICENSEE's Facilities shall be erected and maintained in accordance with the NESC and the internal construction standards of LICENSOR, as may be amended or revised from time to time. Where LICENSOR's internal construction standards and NESC standards diverge, LICENSEE must adhere to LICENSOR's more stringent internal construction standards. However, at its discretion, LICENSOR may provide written approval for an exception or exceptions to internal standards so long as construction meets or exceeds NESC standards. LICENSEE must submit construction drawings and design specifications to LICENSOR for review and approval prior to submittal of an Attachment Permit Request. Drawings of the build are attached to this Agreement as *Exhibit C* and incorporated herein and shall be representative of LICENSEE's attachment of its Facilities to Poles.

LICENSEE's Facilities will be installed and maintained either above or below the Communication Worker Safety Zone as approved by the LICENSOR's staff on Poles. LICENSEE is required to use either LICENSOR or contractors from LICENSOR's Qualified Contractors' List for installation, maintenance and removal of LICENSEE's Facilities above the Supply Space. Any attachments to LICENSOR's Poles will be reviewed by LICENSOR on a pole by pole basis and must be approved in writing or electronic format by LICENSOR before any attachments are made. During installation, LICENSOR may require an inspector to be on site to maintain communication between the installation site and LICENSOR's distribution control center. All costs associated with the inspector shall be borne or reimbursed by LICENSEE. Once notified by LICENSEE all work is complete, LICENSOR may perform a post- construction audit to ensure adherence to approved construction drawings, to LICENSOR's internal construction standards, and to NESC standards. If the post construction audit reveals any defects in the Attachment installation, LICENSEE, at its own cost and expense, will correct any defect as soon as reasonably possible, and LICENSOR may audit construction until all defects have been cured. All Direct Costs and expenses associated with post construction audits and any additional Direct Costs or expenses incurred by LICENSOR as a result of LICENSEE's failure to properly install attachments shall be borne or reimbursed by LICENSEE.

Any unbalanced loading of LICENSOR's Poles caused by the placement of LICENSEE's facilities shall be properly guyed and anchored by LICENSEE with a guy and anchor provided by LICENSEE, at no expense to LICENSOR. LICENSEE may not place new guy attachments on LICENSOR's anchors without LICENSOR's prior consent. LICENSEE shall install guys and anchors prior to installation of any lines and messengers.

Any necessary tree trimming for the LICENSEE's facilities shall be completed by the LICENSEE at the sole expense of the LICENSEE. LICENSEE's contractor must be approved by LICENSOR and tree trimming must be done in accordance with ANSI A300-2001 Standard. LICENSEE is required to contact any property owner for permission before tree trimming or removal is approved by LICENSOR.

#### *Section 3.4 Make-Ready Work*

In the event that any of the Poles to which LICENSEE desires Attachment are inadequate to support LICENSEE's Facilities, LICENSOR shall so notify LICENSEE in writing or in an electronic format, including a detailed description of the make-ready work necessary to allow such Attachment. This may include, but is not limited to, the increased cost of larger poles or increased support of existing Poles, cost of removal and the expense of transferring LICENSOR's facilities from the old to the new Poles, together with the cost of such make-ready work, to LICENSEE, and any other specifications with which the Attachment must comply as a condition(s) for approval of the Permit. Before LICENSOR or any approved and authorized Contractors shall proceed with any make-ready work, LICENSEE shall provide written or electronic confirmation that LICENSEE wishes LICENSOR to proceed with the required make-ready work. Such writing shall represent a binding obligation by LICENSEE to pay LICENSOR for estimated Supply Space make-ready costs up front before any work is initiated. LICENSOR shall complete make-ready work for LICENSEE as soon as reasonably possible, but not longer than one hundred and five (105) calendar days from receipt of payment by LICENSEE for make-ready work, unless otherwise agreed between LICENSOR and LICENSEE. Upon completion of the make-ready work, LICENSOR shall provide LICENSEE with written or electronic authorization to attach its Facilities to Poles. Where LICENSEE's desired

Attachments can be accommodated on LICENSOR's Poles by rearranging LICENSOR's facilities thereon, LICENSEE shall pay for the entire cost and expense of performing such rearrangement.

Within one hundred and five (105) calendar days of LICENSEE's attachment of its Facilities, LICENSEE shall also make arrangements with the third parties attached to Poles to reimburse any expense incurred by them in transferring or rearranging their facilities, and at all times advise LICENSOR of its progress and completion with the aforementioned third party notification.

In the event Licensor has failed to perform the Make Ready Work within the one hundred and five (105) calendar day period or notifies Licensee in writing that it will not be able to perform such Make Ready Work within such period, Licensee may perform such work at Licensee's expense using Licensor approved contractors. **Licensor shall provide supervision and oversight for all work performed by Licensee's Contractor. All work shall be completed to Licensor's specifications using Licensor provided material. The cost of Licensor supervision and material shall be the full responsibility of the Licensee. In the event that Licensee has paid Licensor make ready fees for such work, Licensor shall provide a refund of such remaining make ready fees, less Licensor supervision and material, to Licensee within sixty (60) calendar days of Licensee notifying Licensor that Licensee has completed the work.**

### *Section 3.5 Updated Location Maps*

LICENSEE shall maintain accurate, up-to-date location maps and records of all its Facilities on Poles, LICENSOR shall have the right to inspect, and upon request, obtain a copy of said location maps and records at any time during regular business hours with reasonable notice and at no cost to LICENSOR. A copy of the initial total fiber route shall be provided to LICENSOR before any work is begun.

### *Section 3.6 Maintenance of Attachments*

Before performing any maintenance to facilities located on a pole LICENSEE shall give notice to LICENSOR of its intent to perform that maintenance, and LICENSEE shall obtain LICENSOR's prior written or electronic format consent to perform such maintenance. LICENSEE shall, at its own expense, use a Qualified Contractor to make and maintain all Facilities attached to Poles in a safe and workmanlike manner in accordance with this Agreement, LICENSOR standards, industry standards, and all applicable state and local codes and laws, including the NESC. Violations of applicable state or local codes or laws or LICENSOR or NESC requirements, which are discovered by LICENSOR, shall within thirty (30) calendar days, or a mutually agreed upon time, be corrected by LICENSEE at LICENSEE's sole expense. Failure by LICENSEE to maintain its Facilities or correct any violations of applicable state or local codes of laws as herein set forth may result in termination of this Agreement pursuant to Article VII. Under emergency situations LICENSOR will have the right to prioritize electrical restoration efforts first and address the needs of the communication infrastructure once electric service is restored. LICENSOR may require LICENSEE, at its cost and expense, to pay for or reimburse costs associated with having an inspector on site during the performance of maintenance of attachments in order for the inspector to maintain communication between LICENSEE, LICENSOR, and the LICENSOR's distribution control center which monitors LICENSOR's electric distribution system.



*Section 3.7 Relocation of Attachments Due to Conflicts or Unreasonable Interference*

LICENSEE's Facilities shall not conflict with the primary use or operation of Poles by LICENSOR or by any prior third party with Attachments to Poles, including but not limited to, any conflicts restricting LICENSOR's ability to deliver safe, reliable, and high quality electric power to its customers and/or LICENSOR's ability to support its customers at consistently high and acceptable standards, and LICENSEE, at LICENSEE's expense, shall correct each conflict to LICENSOR's service standards. Furthermore, LICENSOR shall require each and every LICENSEE or third party, who executes a similar Agreement, to agree as follows:

(i) To comply with all applicable laws with respect to radio interference.

(ii) Not to attach a Facility that utilizes an unlicensed spectrum on Poles or that would create any physical or radio frequency interference with the use or operation of LICENSOR's facilities on Poles or the then current use or operation of any LICENSEE's Facility operating on Poles.

(iii) If LICENSEE or a third party believes the other's use of Poles creates any physical or radio frequency interference with the use or operation of its existing Facility then LICENSOR shall work with the appropriate agency or party to resolve the problem. If a party's use of Poles is creating any physical or radio frequency interference (the "Interfering Party"), the Interfering Party shall within five (5) business days and at its own expense, remove, relocate, replace or rebuild its Facility or perform any other work required in connection with its facilities to eliminate such interference.

(iv) In the event the Interfering Party does not take action described in *Section (iii)* herein to remedy the interference, then at any time after five (5) business days from the date of the notice, the non-Interfering Party may invoke the dispute resolution procedure set forth in *Section 3.8*.

*Section 3.8 Emergency Repairs*

LICENSOR shall have the right, but shall not be obligated, in the case of an emergency to, remove, relocate, replace LICENSEE's Facilities, or to perform any other necessary work that may be reasonably required to alleviate any such interference. LICENSEE shall immediately, on written demand, reimburse LICENSOR for all Direct Costs and expenses incurred by LICENSOR to remove, relocate, or replace LICENSEE's Facilities. Nothing in this Section shall be construed to relieve LICENSEE from maintaining adequate work forces readily available to promptly repair (within 48 hours), service, and maintain LICENSEE's Facilities as required.

*Section 3.9 Pole Maintenance and Facilities Operation*

LICENSOR reserves to itself, its successors and assigns, the right to maintain Poles and to operate its facilities thereon in such a manner as shall enable it to fulfill its own electric service and maintenance requirements. LICENSOR shall not be liable to LICENSEE, and LICENSEE hereby waives any claims, other than for gross negligence or willful misconduct, which may cause damage to or interruptions of communication service or for interference with the operation of the Facilities of LICENSEE. LICENSOR shall make reasonable efforts to give notice to LICENSEE of all work

to be performed that could affect LICENSEE'S equipment at least seven (7) calendar days in advance, except in the case of an emergency, to enable LICENSEE to monitor the work being performed.

If given written notice by LICENSOR, LICENSEE shall within sixty (60) business days of receipt of said written notice, complete any work requested by LICENSOR, including but not limited to rearrangement and/or transfer of existing Facilities, replacement of LICENSOR's pole, and other changes required to accommodate a third party's Facilities on a Pole. Should the LICENSEE fail to remove, relocate, replace or renew its Facilities, fail to transfer its Attachments to the new Pole or fail to perform any other work required as requested by the LICENSOR, the LICENSEE shall pay the LICENSOR \$100 per pole per month until the LICENSEE has performed the requested work and has notified LICENSOR in writing or electronic format that the requested work has been accomplished.

*Section 3.10 Identification of Attachments*

LICENSEE shall identify all of its Facilities, new and existing, on Poles by tagging or marking and said identification shall be subject to LICENSOR'S approval. The pole tag should include company name, 24/7 hotline telephone number and location ID.

LICENSEE shall establish and maintain a designated contact person or persons for ordinary maintenance and relocation requests of LICENSOR at all times. The designated contact person or persons for emergency maintenance and relocation requests shall be reasonably available to LICENSOR 24 hours per day, 7 days a week, throughout the year. As of the date of this Agreement, the designated contact persons are:

Normal Business Hours

LICENSEE:

Name: John Colder

Address: 2008 Mercer Road  
Lexington, KY 40511

Phone #: 859-699-9522

After Business Hours

LICENSEE:

Name: John Colder

Address: 2008 Mercer Road  
Lexington, KY 40511

Phone #: 859-699-9522

*Section 3.11 Voluntary Removal of Attachments*

LICENSEE shall have the right to request removal of its Facilities, in whole or in part, from Poles at any time upon written notice to LICENSOR of such removal with the submission

of a Removal Request in the form of *Exhibit B*, attached hereto and incorporated herein. No refund or proration of any prepaid attachment fee shall be given on account of such removal. LICENSEE shall continue to be responsible for payment of the applicable attachment fee for its Facilities through the end of the applicable billing period during which notice of removal of LICENSEE's Facilities is received by LICENSOR.

*Section 3.12 Overlapping*

- a. Any proposed Overlapping by LICENSEE shall constitute a separate Attachment subject to the Permitting process and all other provisions of this Agreement.
- b. LICENSEE shall not allow a third-party Overlapping without LICENSOR's prior approval.

*Section 3.13 Governmental or Third Party Challenge to Attachment*

Upon notice from LICENSOR to LICENSEE that any governmental authority has objected to or disputed the right of LICENSEE to use any Poles, or the method in which LICENSEE exercises such right, LICENSOR may, in its sole discretion, give LICENSEE permission to:

- a. Maintain such Facilities during the pendency of formal proceedings, and
- b. participate, at LICENSEE's own expense, in any such formal or informal proceeding. Should such governmental authority require the removal of LICENSEE's Facilities from Poles, the LICENSEE and its Contractors will effect such removal forthwith; adhering to any and all removal and safety guidelines established by LICENSOR including direct participation by LICENSOR, at its sole discretion, if LICENSOR deems such participation a safety necessity.

To the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, LICENSEE shall indemnify and hold LICENSOR, its respective officers, directors, employees, and agents harmless against any such claims or actions together with all reasonable attorneys' fees and expenses incurred by LICENSOR in the defense of any claim or action, including reasonable attorneys' fees and expenses related to appellate proceedings.

LICENSEE further agrees that should any judicial or regulatory body of jurisdiction find that LICENSOR's grant of a Permit to LICENSEE is invalid, this Agreement shall terminate and LICENSEE and its Contractors shall immediately remove all of its Facilities attached to Poles subject to the invalidated permits at LICENSEE's sole cost and expense and without any liability whatsoever to LICENSOR. LICENSEE further agrees that should any judicial or regulatory body of jurisdiction find that LICENSOR's grant of a Permit to LICENSEE is in any manner discriminatory or otherwise detrimental to a third party's rights and interests with respect to the third party's use of Poles, this Agreement shall be amended, if possible, to eliminate such discrimination or detrimental treatment; provided however, that should this Agreement not be amended within sixty (60) calendar days to eliminate such discrimination or detrimental treatment, this Agreement shall be terminated, and LICENSEE and its Contractors shall

immediately remove all of its Facilities attached to Poles at LICENSEE's sole cost and expense and without any liability whatsoever to LICENSOR. To the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, LICENSEE shall also be responsible for the entire cost and expense of any adverse ruling against LICENSOR, including third party reimbursement for lost revenues and punitive damages awarded.

*Section 3.14 Electricity Charges.*

For all electrical power obtained from LICENSOR or from third party providers, LICENSEE shall be solely responsible for the payment of all electrical utility charges to the applicable utility provider based upon LICENSEE's Facilities' usage of electricity and applicable tariffs.

**ARTICLE IV - LOCAL GOVERNMENT AUTHORIZATIONS AND EASEMENTS**

*Section 4.1 Legal Right to Attach*

By submission of an Attachment Permit Request (*Exhibit A*), LICENSEE affirmatively warrants and affirms that it has obtained all, necessary authorization to operate in the area of the requested Attachment. Such authorization may include, but is not limited to

- a. A valid Authorization issued by any local government having jurisdiction over the area within which Poles are located to the extent that such Permit or Authorization are required; and
- b. fulfillment of all requirements under *Section 2.1* of this Agreement. Upon request, LICENSEE shall make available to LICENSOR copies of all applicable Authorizations.

*Section 4.2 No Assignment of LICENSOR's Interests*

LICENSEE shall obtain and maintain such Right-Of-Way, easements, or Authorizations as may be appropriate for the placement and maintenance of its Facilities on Poles located on public or private property. LICENSEE shall maintain any municipal and county authorizations to do business for the duration of time it is on Poles. Nothing in the Agreement shall constitute or create an assignment to LICENSEE by LICENSOR of any easement, property right, or license held by LICENSOR or of any rights under any easement, property right, or license held by LICENSOR. To the extent required by state or local law, LICENSOR shall provide reasonable assistance to LICENSEE in identifying the owners of private property on which Poles are located. LICENSEE affirmatively warrants and represents to LICENSOR that it has the legal right to attach and maintain its Facilities on the property of all persons owning or claiming any interest in the property over which LICENSEE's Facilities will be located pursuant to the terms of this Agreement and any Permit issued hereunder.

## **ARTICLE V - INSPECTION**

### *Section 5.1 Pre-Attachment Inspections*

LICENSOR shall have the right, but not the obligation, to conduct a Pre-Attachment inspection and pole loading analysis of all proposed Attachment locations described in the Permit application. LICENSOR's inspections shall not excuse LICENSEE's non-compliance with this Agreement and applicable state and local law. LICENSEE shall reimburse LICENSOR upon written request for all costs of such inspections, permitting, field investigations, pole loading analysis, design costs, and other costs associated with the pole attachment permitting process pursuant to this Agreement.

Failure by LICENSOR to assess or collect such costs at the time of such inspection shall not constitute a Waiver of LICENSOR's right to assess or collect such costs.

### *Section 5.2 Post-Attachment Inspection*

Except otherwise set forth in Section 3.3, LICENSOR undertakes no duty to inspect or ensure the repair of any facilities, but LICENSOR reserves the right to inspect LICENSEE's installations on Poles at LICENSEE's cost and expense. LICENSOR may make periodic inspections, as conditions may warrant, for the purpose of determining compliance with this Agreement. Neither LICENSOR's right to make inspections nor any inspection made shall relieve LICENSEE of any responsibility, obligation or liability assumed under this Agreement.

LICENSOR may conduct a complete field inspection of its facilities at any time for the purpose of verifying the number, location, and character of all Attachments of LICENSEE on Poles in the area covered by this Agreement. LICENSOR may conduct one (1) inspection in any twelve (12) month period at LICENSEE's cost and expense, and any additional inspections would be conducted at LICENSOR's expense provided that LICENSEE is in good standing with respect to its obligations and covenants under this Agreement. LICENSOR shall give to LICENSEE at least thirty (30) calendar days' notice of such inspection and, not less than fourteen (14) calendar days before the scheduled date of such inspection, LICENSEE shall advise LICENSOR whether LICENSEE desires to make a joint inspection with LICENSOR.

## **ARTICLE VI - RENTAL AND PROCEDURE FOR PAYMENTS**

### *Section 6.1 Application and Engineering Survey Fee*

- a. The objective of the Survey Fee is to recover the costs incurred by LICENSOR for labor, equipment, and materials spent investigating facilities for feasibility of attachments, including the calculation of costs for those attachments. The Survey Fee shall be due upon the execution of this Agreement and the Permit request.
  - ① As an estimation only, the Survey Fee will be approximated by the following per Pole cost, and may be adjusted depending upon the

situation. Survey Fee is not part of the actual Make Ready Work and associated costs. Survey Fee must be paid at the submission of the Permit:

- Poles = \$35.00 per pole

Survey Fee may be escalated effective January 1, 2019, and annually thereafter, based upon the percentage increase, if any, in the Handy-Whitman Index (South Atlantic Region, FERC Account 364, Line 44, Poles, Towers and Fixtures) (“HWI”) between the two preceding July 1 index numbers.

*Section 6.2 Annual Fees*

- a. Pole--Horizontal Attachment  
Per Pole Attachment \$29.90

i. LICENSOR reserves the right to reevaluate the attachment fee every five (5) years on the contract renewal date. The LICENSOR must give the LICENSEE 60 days’ notice of the intent to change the attachment fees. The LICENSEE has the right to contest the change with a written notice submitted within thirty (30) calendar days of receipt of intent to change. If a negotiation is not completed by the due date of attachment fees, LICENSOR will invoice the LICENSEE the original attachment fee until new rate is established, at which time a second invoice will be sent with the balance due.

Attachment fees and all applicable sales or use taxes shall be payable in arrears and on an annual basis during the time for which this Agreement remains in effect. Invoices shall be rendered for the total number of approved Poles with Attachments or whose permits for Attachments have been approved as of December 31<sup>st</sup> of the current calendar year. LICENSOR will submit to LICENSEE an invoice for the annual lease period no later than March 31<sup>st</sup> of each year.

*Section 6.3 Other Charges*

- a. Charges for all work performed by LICENSOR or by LICENSOR’s contractor or authorized representative in connection with the furnishing of Pole accommodations covered by this Agreement shall be based upon the full cost to LICENSOR for performance of such work, in accordance with LICENSOR’s regular and customary

methods for determining such costs and Applicable Law. Such charges will apply for, but not be limited to, Survey Fee; Make-Ready Work; inspection of LICENSEE's Facilities; removal of LICENSEE's Facilities, where applicable; and supervision, at the option of LICENSOR, of LICENSEE-performed work on the Poles.

- b. In the event that it is determined that LICENSEE has made an Attachment to any Pole for which a License has not been executed, LICENSEE shall be obliged to
  - i. apply for such License immediately; and
  - ii. pay to LICENSOR fees for said Attachment for the entire period of time which can be reasonably established as the date of LICENSEE's Attachment, but in no case less than one year prior to date of discovery.
  - iii. Additionally, there shall be a penalty of \$250 per pole attached to illegally or without authorization.
- c. In any event, whether poles or other Facility, it will always be at LICENSOR's determination whether or not the attachment is a feasible and viable attachment for these unauthorized or illegal attachments. LICENSOR may seek termination of these illegal or unauthorized attachments based upon its investigation of the attached facility.

*Section 6.4 Invoice Accuracy*

LICENSEE's acceptance and payment of license fee invoices issued by LICENSOR shall constitute LICENSEE's verification that the invoice is correct as to the number of actual Attachments; however, LICENSEE shall have up to thirty (30) calendar days from receipt of invoice to notify LICENSOR of any invoice inaccuracies and provide proof of such inaccuracies to LICENSOR. LICENSOR will refund any fees due to LICENSEE as a result of such inaccuracies within thirty (30) calendar days.

*Section 6.5 Payment Due Date*

All invoices submitted by LICENSOR under this Agreement are due when rendered. If an invoice is not paid thirty (30) calendar days from the invoice date, LICENSEE will pay a penalty of 1% of the invoiced amount pursuant to Ky. Rev. Stat. 45.454. LICENSOR reserves the right to remove LICENSEE's Facilities from Poles after six (6) calendar months of non-payment of attachment fees at LICENSEE'S sole cost and expense, without any liability to LICENSOR.

**ARTICLE VII – TERMINATION**

*Section 7.1 Suspension of Rights for Default*

If LICENSEE shall:

- a. fail to comply with any of the following material provisions of this Agreement Articles III, IV, VI, VII, VIII and IX; or

If either party shall:

b. default in any of its material obligations hereunder, and such default or non-compliance shall continue for one hundred and twenty (120) calendar days after notice thereof in writing to the defaulting party from the non-defaulting party to correct such default or non-compliance, then the non-defaulting party may, without liability hereunder and without limiting any of its rights hereunder, at its option, terminate this Agreement in whole or in part, or may revoke the Permit to which such default or non-compliance is directed. In case of such termination, each party's obligations hereunder shall survive. In the case of termination due to default of LICENSEE, no refund of prepaid rentals shall be made. In the case of termination due to default of LICENSOR, LICENSOR shall refund prepaid rentals to LICENSEE on a prorated basis as of the effective date of termination.

*Section 7.2 Processing of Permits during Suspension*

During any period of suspension of LICENSEE's rights pursuant to *Section 7.1* above, LICENSOR shall not process or approve any application for a Permit for additional Attachments until LICENSEE has corrected such underlying default or non-compliance.

*Section 7.3 Termination by LICENSOR*

a. *Termination of Permit*

Throughout the term of this Agreement and in the event LICENSOR experiences:

(i) any system configuration changes (including but not limited to overhead to underground conversion changes); or

(ii) local or state governmental requests or mandates prohibiting Attachments to certain regions, then LICENSOR, in its sole discretion and upon providing sixty (60) calendar days or such other period as dictated by the local government, written notice to LICENSEE, may terminate the particular Permit authorizing any of LICENSEE's Attachments which are affected by the system configuration change. LICENSEE, at its own expense, shall thereafter immediately remove any affected Attachments or LICENSOR shall remove any affected Attachments at LICENSEE's expense.

b. *Termination of Agreement*

Upon termination of this Agreement, LICENSEE and its Contractors shall immediately commence the removal of its Facilities from Poles or coordinate such removal with LICENSOR. Completion of the removal of LICENSEE's Facilities shall be within one hundred eighty (180) calendar days or at a minimum rate of two hundred (200) Attachments per month, whichever would result in the fastest removal. LICENSEE shall be responsible for all removal costs and expenses. If not so removed, LICENSOR shall have the right to remove them at the sole cost and expense of LICENSEE and without any liability to LICENSOR. LICENSOR shall have the right to place mechanics and possessory liens upon any equipment of LICENSEE so removed sufficient to cover the reasonable cost of removal, transport, and storage, and any other amounts then due to LICENSOR under this Agreement, including the costs of enforcement of this Agreement and reasonable attorneys' fees. All such Facilities shall be released by



LICENSOR to LICENSEE at the site where it is being stored upon the payment by LICENSEE to LICENSOR of all amounts owed to LICENSOR hereunder:

*c. Termination for Illegality or Regulatory Violation*

LICENSOR may terminate this Agreement without liability to LICENSEE

(i) at such time as it is determined in the reasonable opinion of LICENSOR's legal counsel that LICENSOR's performance hereunder would be illegal under applicable law or regulation or any state or local agency having regulatory jurisdiction over LICENSOR and same cannot be cured by LICENSOR without unreasonable expense or without materially and substantially altering the terms and conditions of this Agreement; or

(ii) upon giving sixty (60) calendar days advance written notice (or such shorter period as LICENSOR shall deem reasonably necessary under the circumstances) if, in the reasonable opinion of LICENSOR's legal counsel, termination is required to preserve LICENSOR's rights under any franchise, Right-Of-Way, permit, easement, or other similar right which is material and substantial to LICENSOR's business or operations.

*Section 7.4 Termination by LICENSEE*

*a. Termination of Permit*

Throughout the term of this Agreement and in the event LICENSEE experiences:

(i) any system configuration changes; or

(ii) local or state governmental requests or mandates prohibiting Attachments to certain regions, then LICENSEE, in its sole discretion and upon providing sixty (60) calendar days written notice to LICENSOR, may terminate the particular Permit authorizing any of LICENSEE's Attachments which are affected by the system configuration change. LICENSEE, at its own expense, shall thereafter immediately remove any affected Attachments or LICENSOR shall remove any affected Attachments at LICENSEE's expense.

*b. Termination of Agreement*

Upon termination of this Agreement, LICENSEE and its Contractors shall immediately commence the removal of its Facilities from Poles or coordinate such removal with LICENSOR. Completion of the removal of LICENSEE's Facilities shall be within one hundred eighty (180) calendar days or at a minimum rate of two hundred (200) Attachments per month, whichever would result in the fastest removal. LICENSEE shall be responsible for all removal costs and expenses. If not so removed, LICENSOR shall have the right to remove them at the sole cost and expense of LICENSEE and without any liability to LICENSOR. LICENSOR shall have the right to place mechanics and possessory liens upon any equipment of LICENSEE so removed sufficient to cover the reasonable cost of removal, transport, and storage, and any other amounts then due to LICENSOR under this Agreement including the costs of enforcement of this Agreement and reasonable attorneys' fees. All such Facilities shall be released by

LICENSOR to LICENSEE at the site where it is being stored upon the payment by LICENSEE to LICENSOR of all amounts owed to LICENSOR hereunder.

## **ARTICLE VIII - INDEMNIFICATION, LIABILITY AND INSURANCE**

### *Section 8.1 Indemnification*

To the extent permitted by law, including without limitation Section 177 of the Kentucky Constitution, LICENSEE agrees to protect, defend, indemnify, and save harmless LICENSOR, its officers, directors, employees, and representatives (each an indemnitee hereunder) from and against all damage, loss, claim, demand, suit, Right-Of-Way challenge, 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. damage to or destruction of property including loss of use thereof;
- c. power or communications outage, interruption, or degradation;
- d. pollution, contamination of, or other adverse effects on the environment; or
- e. violation of governmental laws, regulations or orders, whether suffered directly by LICENSOR 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 LICENSEE, its employees, agents, or other representatives or from their presence on the Poles of LICENSOR or otherwise from LICENSEE's performance of this Agreement, or from or in connection with the construction, installation, operation, maintenance, presence, replacement, enlargement, use, or removal of any Attachment of LICENSEE attached or in the process of being attached or removed from any Poles of LICENSOR unless such actions were taken at the direction of or in a manner mandated by the LICENSOR.

### *Section 8.2 Damage by LICENSEE*

LICENSEE shall exercise proper precautions to avoid damage to facilities of LICENSOR and others supported on Poles, and to the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, LICENSEE hereby assumes all responsibility for any and all loss or damage caused by LICENSEE, its employees, Contractors or any other party working at its direction ("LICENSEE Damage") and LICENSEE will reimburse LICENSOR for any reasonable expense incurred in making repairs and/or responding to electrical outages due to damage by LICENSEE and its Contractors. LICENSEE shall make an immediate report to LICENSOR of the occurrence of any LICENSEE Damage. LICENSEE hereby assumes full responsibility for any and all damages to its own plant or facilities and damages to any appliances or equipment of any subscriber to LICENSEE's service, arising from contact with LICENSOR's energized conductors. To the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, LICENSEE shall indemnify, defend and hold LICENSOR harmless against any LICENSEE Damage,

together with all reasonable attorneys' fees and expenses incurred by LICENSOR in the defense of any claim for LICENSEE Damage, including all reasonable attorneys' fees and expenses related to appellate proceedings provided that the aforementioned damages were not caused by LICENSOR.

*Section 8.3 Minimum Insurance Requirements*

a For the entire duration of this Agreement (and thereafter until the completion of this Agreement) on a per occurrence basis with respect to this Agreement, LICENSEE or contractor shall provide and maintain, and shall require any of its subcontractors to provide and maintain, the following insurance (and, except with regard to workers' compensation and professional liability, naming LICENSOR as additional insured and waiving rights of subrogation against LICENSOR and its insurance carrier(s)), and LICENSEE or contractor shall submit evidence of such coverage(s) of LICENSEE or contractor to LICENSOR prior to the start of the work and, furthermore, LICENSEE or contractor shall notify LICENSOR, prior to the commencement of any work pursuant to any statement of work and/or purchase order, of any threatened, pending and/or paid off claims to third parties, individually or in the aggregate, which otherwise affects the availability of the limits of such coverage(s) inuring to the benefit of LICENSOR as hereinafter specified:

- (i) Workers' Compensation and Employer's Liability Policy, which shall include:
  - A) Workers' Compensation (Coverage A), with statutory limits, and in accordance with the laws of the Commonwealth of Kentucky;
  - B) Employer's Liability (Coverage B) with minimum limits of One Million Dollars (\$1,000,000) Bodily Injury by Accident, each Accident, \$1,000,000 Bodily Injury by Disease, each Employee;
  - C) Thirty (30) Calendar Day Cancellation Clause; and
  
- (ii) Commercial General Liability Policy, which shall have minimum limits of One Million Dollars (\$1,000,000) each occurrence; One Million Dollars (\$1,000,000) Products/Completed Operations Aggregate each occurrence; One Million Dollars (\$1,000,000) Personal and Advertising Injury each occurrence, in all cases subject to Two Million Dollars (\$2,000,000) in the General Aggregate for all such claims, and including:
  - A) Thirty (30) Calendar Day Cancellation Clause;
  - B) Blanket Written Contractual Liability to the extent covered by the policy against liability assumed by Contractor under this Agreement;
  - C) Broad Form Property Damage; and
  - D) Insurance for liability arising out of blasting, collapse, and underground damage (deletion of X, C, U Exclusions).
  
- (iii) Commercial Automobile Liability Insurance covering the use of all owned, non-owned, and hired automobiles, with a bodily injury, including death, and property damage combined single minimum limit of One Million Dollars (\$1,000,000) each occurrence with respect to LICENSEE'S and contractor's vehicles assigned to or used in performance of Work under this Agreement.

- (iv) Umbrella/Excess Liability Insurance with minimum limits of Two Million Dollars (\$2,000,000) per occurrence; Two Million Dollars (\$2,000,000) aggregate, to apply to employer's liability, commercial general liability, and automobile liability.
- (v) To the extent applicable, if any fixed wing or rotor craft aircraft will be used by LICENSEE and contractors in performing the Work, Aircraft Public Liability Insurance covering such 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.
- (vi) To the extent applicable, if engineering or other professional services will be separately provided by LICENSEE and contractors as specified in the statements of work, then Professional Liability Insurance with limits of Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, which insurance shall be either on an occurrence basis or on a claims made basis (with a retroactive date satisfactory to Madisonville Municipal Utilities).

b. Quality of Insurance Coverage: The above policies to be provided by LICENSEE or contractors shall be written by insurance companies which are both licensed to do business in the Commonwealth of Kentucky and either satisfactory to LICENSOR or having a Best Rating of not less than "A-". These policies shall be endorsed to provide at least thirty (30) calendar days written notice of cancellation, except for non-payment of premium to LICENSOR from LICENSEE or contractors and the insurance carrier. Evidence of coverage, notification of cancellation, or other changes shall be mailed to:

Electric Department Superintendent  
Madisonville Municipal Utilities  
609 McCoy Ave  
Madisonville, KY 42431

c. Implication of Insurance: LICENSOR reserves the right to request and receive a summary of coverage of any of the above policies or endorsements; however, LICENSOR shall not be obligated to review any of LICENSEE's or contractor's certificates of insurance, insurance policies, or endorsements, or to advise LICENSEE or contractor of any deficiencies in such documents. Any receipt of such documents or their review by LICENSOR shall not relieve LICENSEE or contractor from or be deemed a waiver of LICENSOR's rights to insist on strict fulfillment of LICENSEE's or contractor's obligations under this Agreement.

d. Other Notices: LICENSEE or contractor shall provide notice of any accidents or claims at the Work site to:

Electric Department Superintendent  
Madisonville Municipal Utilities  
609 McCoy Ave  
Madisonville, KY 42431

e Policy limits shall not be deemed to be the limit of LICENSEE'S liability to LICENSOR under this Agreement.

## **ARTICLE IX - PROTECTION OF PERSONS AND PROPERTY**

### *Section 9.1 Electricity is a Natural Hazard*

LICENSEE and its Contractors are hereby advised that the generation, transmission, and/or distribution of electrical energy involves the handling of a natural force which, when uncontrolled, is inherently hazardous to life and property. LICENSEE and its Contractors are further hereby advised that, due to the nature of the work of attaching its Facilities to Poles hereunder, other hazardous or dangerous conditions (not necessarily related to the inherent danger of electricity) may also be involved in the work. LICENSEE shall require its Contractors to be fully Qualified Contractors. Accordingly, prior to the commencement of the Attachment of any LICENSEE Facilities to Poles, LICENSEE and its Contractors shall inspect the work area on or near Poles specifically to ascertain the actual and potential existence and extent of any hazardous or dangerous conditions. LICENSEE and its Contractors shall instruct its supervisors and employees with respect to any such conditions and the safety measures to be taken in connection therewith; and during the course of the work, LICENSEE and its Contractors shall take all such measures as may be deemed necessary or prudent to protect and safeguard the person and property of their employees and of the general public against all hazardous or dangerous conditions as the same may arise.

### *Section 9.2 Precautions before Commencing Work*

LICENSEE and its Contractors shall, before working on Poles or structures, exercise their best efforts to make certain that Poles or structures are strong enough to safely sustain the performance of the required work on said Poles or structures. LICENSEE and its Contractors shall identify and comply with pole marking procedures undertaken by LICENSOR (or its Contractors) in the ordinary course of business, which procedures may indicate a hazardous pole condition prohibiting any work on such Poles. All work designated in any application and Permit under this Agreement to be performed near energized electrical conductors shall be performed under the conditions and at the place as stated, but only with the specific understanding that if LICENSEE and its Contractors, in their sole discretion, regard the location where such work is to be performed, or where such work is being performed, as an unsafe place to work, LICENSEE and its Contractors shall immediately cease and desist from performing all work in such hazardous area. LICENSEE shall then request, in writing or electronic format, that LICENSOR make such change or changes as LICENSEE may deem necessary or desirable before LICENSEE and its Contractors proceed with the work. Any foregoing changes requested by LICENSEE shall be made at LICENSEE's sole cost and expense.

## **ARTICLE X - OWNERSHIP AND ASSIGNMENT**

*Section 10.1 Assignment*

This Agreement shall not be assigned or transferred by LICENSEE without the prior written permission of LICENSOR, which permission shall not be unreasonably withheld, conditioned, or delayed. As a condition to assignment of the Agreement and release of LICENSOR from all obligations under this Agreement, LICENSOR may require the assignee to execute a new, replacement Pole Attachment License Agreement (except in the case of an assignment to an entity controlled by, controlling or under common control with LICENSEE).

*Section 10.2 No Ownership Right Created*

Use of Poles under this Agreement shall not create or vest in LICENSEE or its Contractors any ownership or property rights in Poles or any ownership, property, or other right to use Poles except in accordance with the terms and conditions of this Agreement. LICENSEE's rights herein shall be and remain limited to attaching its Facilities to Poles in strict compliance with the terms and conditions set forth herein. Nothing herein contained shall be construed to compel LICENSOR to maintain in operation any of the Poles for LICENSEE's use if change in LICENSOR's own service requirements deems it necessary to do otherwise.

**ARTICLE XI - GROUNDING REQUIREMENTS**

*Section 11.1 Definitions*

For Section 11.1 to 11.4, inclusive, the following terms when used herein shall have the following meaning:

- a. "Vertical Ground Wire" shall mean a wire conductor of LICENSOR attached vertically to the pole and extended from LICENSOR's pole ground through LICENSEE's space to the base of the pole where it shall be attached to a grounded electrode.
- b. "Bonding Wire" shall mean a number 6 AWG copper wire conductor connecting equipment of LICENSEE and LICENSOR to the "Vertical Ground Wire."

*Section 11.2 Absolute Grounding Requirement*

Under no circumstances may LICENSOR's "Vertical Ground Wire" be broken, cut, disconnected, severed, removed, un-bonded, tampered, or damaged by LICENSEE. If LICENSOR's "Vertical Ground Wire" is broken, cut, disconnected, severed, removed, un-bonded, tampered, or damaged, no work shall be allowed on LICENSOR's Poles until LICENSOR is notified in writing, and the condition is corrected. LICENSEE and its Contractors shall assure that LICENSEE's Facilities constantly remain properly grounded. Proper grounding includes the use of a Vertical Ground Wire and ground rod electrode. If no such Vertical Ground Wire and ground rod electrode exists, one shall be installed at LICENSEE's expense, prior to the attachment of

LICENSEE's Facilities. Failure to maintain the integrity of the vertical ground wire may result in the removal of LICENSEE's Facilities from the Pole.

*Section 11.3 Additional Bonding Precautions*

LICENSOR reserves the right, but is not obligated, to install at LICENSEE's expense a "Bonding Wire" to any LICENSEE Facility where, in the opinion of LICENSOR, a safety hazard exists or may exist in the future.

*Section 11.4 LICENSEE's Duty to Warn*

LICENSEE and its Contractors shall warn and instruct its personnel working on Poles of the dangers associated with ungrounded and un-bonded facilities and to furnish adequate protective equipment to protect its personnel from bodily harm during work on its Facilities. LICENSOR assumes no responsibility for warning, for instructing, for furnishing equipment, or for training or job qualifications of LICENSEE and its Contractors or their personnel, including supervisors or employees working on Poles.

**ARTICLE XII - MISCELLANEOUS PROVISIONS**

*Section 12.1 Court Jurisdiction*

Unless otherwise provided by law, any and all litigation between the parties hereto arising out of this Agreement which does not arise under the jurisdiction of the Federal Court for the Western District of Kentucky shall be instituted and maintained in the Franklin County, Kentucky, Circuit Court for adjudication.

*Section 12.2 Governing Law*

This Agreement and the rights and obligations of the parties to this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky without giving effect to any principles of conflicts of laws where the giving of effect to any such principles would result in the laws of any other state or jurisdiction being applied to this Agreement.

*Section 12.3 Headings*

The headings contained in this Agreement are for convenience only and not for purposes of interpreting this Agreement.

*Section 12.4 Rights of Other Parties*

Notwithstanding *Section 4.1* which states that LICENSOR shall not permit more than one (1) Facility on any Poles, nothing herein contained shall be construed to confer on

LICENSEE an exclusive right to make attachments to Poles or confer any rights to any third party not specifically identified herein by name.

*Section 12.5 Non-Waiver*

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.

*Section 12.6 Dispute Resolution*

The Parties shall settle any dispute arising out of or relating to this Agreement through the step negotiation set forth herein prior to the initiation of any litigation. Good faith participation in these procedures shall be a condition precedent to any litigation. All negotiations hereunder shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and State Rules of Evidence.

All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this provision are pending. The Parties shall take such action, if any, required to effectuate such tolling.

Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties shall meet, at a mutually acceptable time and place within ten (10) business days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

If the Parties are unable to resolve the disputes and litigation proves necessary, either Party may initiate such litigation. The Parties regard the aforesaid obligation to negotiate as an essential and material provision of this Agreement and one that is legally binding upon them. In case of a violation of such obligation by either Party, the other may seek specific enforcement of such obligation in the court having jurisdiction hereunder.

*Section 12.7 Notices:*

Unless otherwise directed, all notices required to be given by either party to the other party under this Agreement shall be in writing and shall be deemed sufficiently given in any of the following ways: (a) delivery by a messenger service or private delivery service providing same or next day delivery with documentation of such delivery signed by the party receiving the package, (b) sent by United States Certified Mail, return receipt requested, postage prepaid, or (c) UPS overnight or Federal Express overnight with a signed receipt by receiving party, to the parties at the addresses set forth below for each party to this Agreement. With respect to notification of completion of Make-Ready work (Section 3.4), notice of interference or endangerment (Section 3.7), or such other notice requirements as LICENSOR or LICENSEE may agree from time to time to treat as follows, notice may first be made by telephone call or email as specified below, to be followed within a reasonable time by a confirmation notice in writing as directed above. The contacts and the addresses set forth herein below may be changed by either party by giving written notice to the other party as provided herein:

If to LICENSOR:

Electric Department Superintendent  
Madisonville Municipal Utilities



609 McCoy Ave  
Madisonville, KY 42431

If to LICENSEE:

*Section 12.8 Entire Agreement*

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

*Section 12.9 Severability*

Should any part of this Agreement be deemed invalid, illegal, or unenforceable, such part shall be removed from this Agreement and the Agreement shall otherwise remain in full force and effect and shall be applied by the parties hereto in such manner as most nearly accomplishes the expressed purposes of the parties in executing this Agreement.

*Section 12.10 Injunctive Relief*

The parties acknowledge that they may not be adequately compensated by money damages in the event of a breach by any other party of any of its covenants or agreements contained herein and that they shall be entitled to specific performance and injunctive relief of such covenants and agreements, in addition to all other remedies.

*Section 12.11 Previous Agreements*

This Agreement supersedes all previous agreements, whether written or oral, between LICENSOR and LICENSEE and its predecessors for attachment and maintenance of LICENSEE's Facilities within the geographical area covered by this Agreement: and there are no other provisions, terms, or conditions to this Agreement except as expressed herein. All currently effective licenses heretofore granted pursuant to such previous agreements shall be subject to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized on the dates indicated below.

LICENSOR:

MADISONVILLE MUNICIPAL  
UTILITIES

BY: Christopher L. Melto

Title: Electric Superintendant

Date: September 18, 2018

Witness: Brad Porter

LICENSEE:

William M. Landrum III

BY: William M. Landrum III

Title: Secretary

Date: October 02, 2018

Witness: Julie Shinkw #591360  
Exp: 12/7/2021

**APPROVED AS TO  
FORM & LEGALITY**

Patrick M. De

**APPROVED  
FINANCE & ADMINISTRATION CABINET**

William M. Anderson

APPROVED AS TO  
FORM & LEGALITY

---

APPROVED  
FINANCE & ADMINISTRATION OFFICER

**Exhibit A**

**Attachment Permit Request**

In accordance with the terms and conditions of the Agreement, LICENSEE hereby requests permission from LICENSOR for the following Pole Attachments:

	Pole #	Location	Type of Attachment	Make Ready
1	If Available			
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				

Enclosed is a check in the amount of \$\_\_\_\_\_ to cover the cost of the pre-license survey.

LICENSEE: \_\_\_\_\_

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

Tel. No: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Billing Address:**

Name: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Permission is hereby granted to attach Facilities to \_\_\_\_\_ poles as indicated on this Attachment Permit Request.

Madisonville Municipal Utilities

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

**Exhibit B**

In accordance with the terms and conditions of the Agreement, LICENSEE hereby requests permission from LICENSOR for removal of the following Pole Attachments:

	Pole #	Location	Type of Attachment
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			

SUBMITTED:

APPROVED:

\_\_\_\_\_  
LICENSEE

\_\_\_\_\_  
LICENSOR

Signed: \_\_\_\_\_  
Dated: \_\_\_\_\_

Signed: \_\_\_\_\_  
Dated: \_\_\_\_\_

**Exhibit C**

**Construction Drawings and Design Specifications  
(including PDF construction drawings)**

## **MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING (“MOU”)**, made and entered into this 18th day of September 2018 (“Effective Date”), by and between the Commonwealth of Kentucky, Finance and Administration Cabinet, 702 Capitol Avenue, Room 383, Frankfort, Kentucky 40601 (“the Commonwealth”) and the City of Madisonville, Ky. 42431(city).

**THAT, WHEREAS**, the Commonwealth is interested in providing modern, high capacity fiber in order to allow businesses to compete globally, to enable educators to expand their resources, and to provide consumers with high-speed Internet access (hereinafter collectively called “Objective”); and

**WHEREAS**, to advance the Objective, the Commonwealth will be constructing an open access fiber optic network (“Kentucky Wired Network” or “Network”) as described in Attachment A and provided digitally, which is attached hereto and incorporated by reference, throughout the Commonwealth of Kentucky; and

**WHEREAS**, the Commonwealth will be required to encroach upon the City’s public rights-of-way for the purpose of constructing portions of the Kentucky Wired Network that will be located within the jurisdiction of the City; and

**WHEREAS**, to accommodate the Commonwealth in the advancement of its Objective, the City agrees that the Commonwealth may encroach upon its public rights-of-way for the limited purposes and under the terms and conditions set forth herein; and

**WHEREAS**, the Commonwealth and the City mutually desire to set forth each party’s rights and responsibilities regarding the Commonwealth’s encroachment upon City’s public rights-of-way.

**NOW, THEREFORE**, in consideration of the mutual covenants expressed herein, the Commonwealth and City, acting through their duly authorized agents, hereby agree as follows:

1. Recitals - The Recitals set forth above are hereby incorporated in and made part of this MOU by reference.

2. Term - This MOU shall be effective from the date of its execution. The repair and maintenance obligations expressed herein shall be considered as running with the land and shall extend to, bind and inure to the benefit of the parties hereto and their respective heirs, assigns or successors in interest. Unless otherwise terminated in accordance with this MOU, this MOU shall be effective for ten (10) years from the Effective Date of this MOU.

3. Scope – The terms of this MOU shall only apply to construction by the Commonwealth and its agents and contractors of the Kentucky Wired Network serving non-commercial locations within the City. This MOU shall not be construed to convey any rights to any other entities connecting to the Kentucky Wired Network. The Commonwealth



acknowledges that pursuant to Sections 163 and 164 of the Kentucky Constitution, any entity, other than the Commonwealth must be awarded a franchise from the City before entering the City's rights of way. In other words, the rights and privileges granted by the MOU extend only to the Commonwealth and its agents and contractors of the Kentucky Wired Network and no one else. Any private entity or commercial endeavor seeking to utilize the City's rights-of-ways, or seeking to offer high-speed Internet access through the infrastructure constructed by the Commonwealth and its agents and contractors are not authorized to do so under this MOU and must seek and obtain a franchise from the City.

4. Authorization to Encroach – Subsequent to the execution of this Agreement, the City authorizes the Commonwealth and its agents or contractors to encroach upon its public rights-of-way for the construction of the Kentucky Wired Network. The Commonwealth and its agents and contractors shall keep the City fully informed throughout the construction process and, in so doing, shall provide the City with sufficient advance notice of the various phases of construction so that the public rights-of-way will not be unduly congested or burdened and so that the Commonwealth's encroachment can be minimized as much as possible.

5. Agreement to Abide by Ordinances and Policies - The Commonwealth, its agents and contractors shall abide by (1) the City's Code of Ordinances ("Code") in its entirety, as theretofore amended, including, (2) the City's written policies, including, but not limited to, those written policies administered by the City's Electric Department in their entirety.

6. Utility Poles & Conduit– Subject to the design and construction plan of Kentucky Wired, it is the Commonwealth's intent to use existing utility poles and conduit existing at the time of permitting in installing its facilities. The Commonwealth and the City agree that the Commonwealth may request to replace existing poles to comply with safety requirements. Replacement shall be at the Commonwealth's sole expense and work performed shall be by the city or a city approved contractor. All poles or wire holding structures are subject to any applicable, duly adopted regulations regarding location, height, type, or other pertinent aspect. All lines installed by the Commonwealth under this MOU shall be located so as to minimize any interference with the proper use of the right-of-way with the rights and reasonable convenience of property owners whose property adjoins or abuts any affected right-of-way. Subject to applicable codes, overhead drops shall be as close as possible to other utility drops in order to concentrate the drops in as small an area as possible to minimize visual clutter and interference with the use of private property. Should the City or other utilities using the poles and rights-of-way notify the Commonwealth or its agents and contractors of any reasonable and articulable objection to the means or methods of installing the Network, then the Commonwealth agrees to address the concerns with an alternate solution.

7. Storage of Flammable Substances - The Commonwealth shall not store gasoline, coal fuel, or any other flammable substances within or adjacent to the City's public rights-of-way.

8. Responsibility for Maintenance – The Commonwealth and its contractors assume all responsibility for maintenance and repair of facilities constructed as described in Attachment A, in accordance with the requirements of Code.

9. Abandonment of the Commonwealth's Facilities – Upon permanent discontinuance of the use of all or a portion of the Kentucky Wired Network located in the City, the Commonwealth shall, upon written notice to the City: (1) abandon all or a portion of such facilities in place or (2) remove all or a portion of such facilities within ninety (90) days. Such notice shall describe in specific detail the facilities desired to be abandoned or removed, and shall also describe with reasonable accuracy the physical condition of such facilities. Failure by the Commonwealth to remove all or a portion of such facilities within the ninety (90) days shall constitute abandonment by the Commonwealth of the Network facilities and such Network facilities shall be deemed the sole property of the City. The City shall have the right of first refusal to purchase, at the appraised price, all or any part of the Network which is not otherwise abandoned.

10. Notification – The Commonwealth agrees to notify the City when any entity intends to connect to the Kentucky Wired Network in the City and the Commonwealth shall not permit any entity to connect without first requiring the entity to communicate with the City for purposes of obtaining a franchise from the City.

11. Indemnity – To the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, the Commonwealth agrees to indemnify, hold harmless, and defend the City, including its elected and appointed officials, employees, agents and successors in interest, from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting directly or indirectly from the Commonwealth's (or its subcontractors) construction of or defective operation, repair, or maintenance of the Kentucky Wired Network, provided that such claim, damage, loss, or expense is (1) attributable to personal injury, bodily injury, sickness, death, or to injury or to destruction of property, including the loss of use resulting therefrom, or from negligent acts, errors or omissions and (2) not caused by the negligent act, omission, or willful misconduct of the City, including its elected and appointed officials, agents and successors in interests, and its employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall survive the termination of this MOU.

12. Disputes – The parties mutually agree to cooperate during construction of the Kentucky Wired Network and to negotiate in good faith in an effort to resolve any disputes that may arise.

13. Cancellation clause - Either party may cancel the contract on 30 days' written notice if

- i. the other is in breach of any material obligation contained in this Agreement, which is not remedied (if the same is capable of being remedied) within 30 days of written notice from the other party so to do; or
- ii. a voluntary arrangement is approved by the parties.

14. Access to Records – The City agrees that the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly

authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this MOU for the purpose of financial audit or program review. The City also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. The City retains the discretion to decide whether or not any requested record is "directly pertinent to this MOU" and reserves the right to decline access if the City can provide the Commonwealth with justifiable cause.

15. This MOU contains the entire agreement of the parties hereto and cannot be changed, altered, amended or modified, except by written instrument subsequently executed by the parties.

16. This MOU and all questions of interpretation, construction and enforcement hereof, and all controversies arising hereunder, shall be governed by the laws of the Commonwealth of Kentucky. The venue for any cause of action relating to this MOU shall be Franklin County, Kentucky.

17. The terms and conditions of this MOU shall be binding upon and shall inure to the benefit of the successors and assigns of the parties. This provision shall not be construed to permit assignment by any party of its rights and duties under this MOU, which assignment shall be prohibited except with the prior consent of all parties hereto.

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18. Notices - Any notices required or permitted to be given hereunder shall be delivered, in writing (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by facsimile, addressed as follows:

To City:

City Electric Superintendent  
City of Madisonville, KY  
609 McCoy Ave.  
Madisonville, KY 42431

To the Commonwealth:  
Michael Hayden  
Chief Operating Officer  
Kentucky Communications Network Authority  
209 St. Clair Street  
4<sup>th</sup> Floor  
Frankfort, KY 40601  
Fax: (502) 564-0883

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding on the date first above written.

COMMONWEALTH OF KENTUCKY

Approved as to Form and Legality:

BY: William M. Randaum  
Secretary

BY: Patrick McDevitt  
Attorney

CITY OF MADISONVILLE

Approved as to Form and Legality:

BY: Christopher L. Melts  
Electric Superintendent

BY: Joe Evans  
City Attorney