

Pole Attachment Agreement

Between

Jackson Energy Cooperative Corporation

And

Commonwealth of Kentucky

POLE ATTACHMENT AGREEMENT BETWEEN JACKSON ENERGY COOPERATIVE CORPORATION AND COMMONWEALTH OF KENTUCKY

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INTRODUCTION

This Agreement for pole attachments dated Nov. 6, 2015 is established between Jackson Energy Cooperative, 115 Jackson Energy Lane, McKee, Kentucky 40447, hereinafter referred to as the "Cooperative", and Commonwealth of Kentucky, Office of Secretary, 702 Capitol Ave., Frankfort, Kentucky 40601, hereinafter referred to as "Commonwealth".

APPLICABILITY

Applicable to all pole attachments on all plant owned by the Cooperative.

TERM OF AGREEMENT

- A. This Agreement shall become effective as of the aforementioned date herein stated and shall remain in effect for a period of thirty (30) years (the "initial term").
- B. At the expiration of this Agreement, if both parties desire to continue their relationship, the parties agree to use their best efforts toward negotiating a reasonable subsequent Agreement. Cooperative will provide 180 days written notice to Commonwealth prior to the expiration of this Agreement to initiate negotiations for a reasonable subsequent agreement. If a subsequent agreement cannot be executed within the 180 day period, Commonwealth shall be required to remove its attachments from Cooperative's poles at the termination of this Agreement. This Agreement may be terminated by Cooperative or Commonwealth upon any Event of Default by the other party as provided herein.
- C. Commonwealth shall begin removal of all its pole attachments from the Cooperative's plant within a reasonable time upon termination of this Agreement.
- D. Commonwealth shall complete removal of all its attachments from the Cooperative's plant prior to the scheduled expiration or termination date of this Agreement as prescribed within Item (B) above, Required Plant Changes provisions and other pertinent provisions of this Agreement. If Commonwealth fails to remove its attachments as stated herein, Cooperative shall have the right to remove said attachments itself and charge Commonwealth its actual cost to do so.
- E. Commonwealth may remove any of its attachments from the Cooperative's plant at any time for any reason upon ten (10) days written notice to the Cooperative. Removal of any or all of its attachments from Cooperative's plant for any reason shall not require Cooperative to refund to Commonwealth any prepayments made for such attachments.

RIGHTS OF OTHER PARTIES

The Cooperative shall possess the right to confer upon others not a party to this Agreement, rights or privileges to attach to any of its facilities. Nothing contained herein shall be construed as affecting enforceable rights or privileges with respect to existing or future attachments of such outside parties; provided that such rights or privileges conferred to outside parties after the date of this Agreement shall not interfere with the rights and privileges conferred to Commonwealth herein.

ANNUAL ATTACHMENT FEES

- A. Attachment fees or rental charges for all Commonwealth attachments shall be \$12.21 per attachment per year for the term of this Agreement. In addition, Commonwealth shall pay all other fees, costs or charges as invoiced by Cooperative pursuant to the terms of this Agreement.
- B. Attachment fees shall be prepaid for the thirty (30) year term of this Agreement upon its execution. Commonwealth has estimated that it desires to attach its facilities to 2,923 poles of Cooperative for a total upfront fee of \$1,070,694.90 which shall be paid within ninety (90) days of execution of this Agreement. Upon completion of Commonwealth's initial attachments to Cooperative's poles, a physical inventory will be conducted to determine the actual number of attachments utilized. If the actual number of attachments exceeds the estimate by more than 2%, Commonwealth shall pay to Cooperative the pole attachment fee for all attachments more than the estimate. If the actual number of attachments is less than the estimate by more than 2%, Cooperative shall refund to Commonwealth the pole attachment fee for all attachments less than the estimate.
- C. In addition to the attachment fees, as further consideration for this Agreement, Commonwealth shall provide to Cooperative, free of charge, with the use of two (2) strands of fiber optic cable for Cooperative's exclusive use. The fiber strands will be made available on both the core backbone and on all laterals constructed by Commonwealth within Cooperative's service territory as a part of the Commonwealth project, Next Generation – Kentucky Information Highway ("NG-KIH"). Commonwealth shall maintain the two fiber strands in good working condition during the term of this Agreement and Commonwealth shall be responsible for all costs of maintaining said fiber strands. Commonwealth shall provide Cooperative with a number of slack loops a/k/a loop spools or some other method for interconnection with the two strands of fiber. The slack loops shall be provided at locations that follow the NG-KIH design practice (i.e. a slack loop every one thousand three hundred twenty (1,320) feet), and the Cooperative will have access to interconnect the two (2) fiber optic cables reserved for Cooperative's exclusive use at the splice points associated with the slack loops. In the event Commonwealth elects to lease existing fiber optics in Cooperative's service territory to facilitate completion of the NG-KIH project, such lease fiber optics shall provide for two (2) fiber strands for the exclusive use, at no cost, to Cooperative.

DESIGN SPECIFICATIONS

- A. The Cooperative reserves the right to maintain, operate, upgrade, replace, relocate, retire and/or abandon any part of its plant at its discretion and expense at any time without compensation to Commonwealth.
- B. Commonwealth's attachments on Cooperative's plant shall at all times meet or exceed the requirements of the National Electric Safety Code (NESC), 2012 Edition, and subsequent revisions thereof, except where the requirements of the Rural Utilities Service (RUS), public authorities or Cooperative may be more stringent, in which case the latter will govern.
- C. Cooperative may review the adequacy of its plant to withstand additional vertical and transverse loads imposed by Commonwealth's attachments using NESC design criteria.
- D. Cooperative reserves the right to prohibit the use of anchors by Commonwealth where the strength and/or condition of the anchors cannot be verified.

EASEMENTS AND RIGHT-OF-WAYS

- A. Cooperative and Commonwealth shall be responsible for obtaining all easements or right-of-ways for their respective facilities. Cooperative does not warrant and/or assign easements or right-of-ways to Commonwealth.
- B. Upon the finality of all administrative and judicial actions, if applicable, the Commonwealth shall promptly remove any of Commonwealth's attachments when any public authority or landowner forbids the use of Cooperative's plant.

ESTABLISHING ATTACHMENTS

- A. For the purposes of this Agreement, an attachment shall be defined as a single point of wire line contact utilizing no more than one foot of vertical space on each pole and no more than fifteen percent (15%) of each pole's loading capacity.
- B. Commonwealth shall comply with all attachment application procedures established by Cooperative consistent with all provisions of this Agreement prior to installation of all new or proposed Commonwealth attachments.
- C. Commonwealth shall provide Cooperative with detailed construction plans, prints and/or drawings of all new or proposed attachments prior to their construction or installation. Said plans, prints and/or drawings shall include any maps necessary to illustrate the location of Cooperative's poles plus the number and character of the proposed attachments. Any anticipated adjustments, additions, relocations and/or replacements of Cooperative's facilities will be noted within Commonwealth's plans, prints, maps and/or drawings. Said plans shall be signed and stamped by a licensed engineer of the state of Kentucky specifying that proposed specifications shall meet or exceed design specifications as stipulated within the DESIGN SPECIFICATIONS section of this Agreement. Said plans shall take into consideration clearances and other relevant design factors of all parties attached to Cooperative's facilities at the time Commonwealth performs engineering studies for proposed attachments.
- D. Commonwealth shall perform and shall be responsible for all costs of any and all make ready work that may be necessary for Commonwealth's attachments to be placed on Cooperative's poles. All materials and construction methods used by Commonwealth or its contractor(s) in make ready construction shall be USDA Rural Utility Service approved and subject to final inspection and approval of Cooperative. Cooperative may inspect and approve Commonwealth's plans, prints, maps and/or drawings for any make ready work.
- E. Commonwealth shall have the right to employ the services of a contractor to perform any make ready work, however, Cooperative has the right to approve or reject the contractor chosen by Commonwealth.
- F. Commonwealth may install its attachments on Cooperative's plant after items (A) through (E) above of the Establishing Attachments provisions and all other pertinent provisions of this Agreement are satisfied. All Commonwealth's attachments shall be installed at the expense of Commonwealth and shall not interfere with the activities or service of Cooperative.
- G. Commonwealth is responsible for all construction, operation, maintenance, and engineering, make ready costs, drawings and any other costs and expenses that may be required or incurred to attach to Cooperative's poles.

- H. All telecommunications and broadband related attachments to Cooperative's poles shall be located in the telecommunications section of the poles and not in the electrical section of the poles. All attachments must have proper clearance as required by all applicable laws and regulations and as required by Cooperative's specifications.
- I. Commonwealth shall provide notice to Cooperative of any modification or work effort to be performed on any pole of Cooperative within a reasonable amount of advance notice prior to beginning any modifications or work.
- J. Commonwealth shall not adjust, modify, replace and/or remove any plant of Cooperative during the construction or installation of Commonwealth's attachments except as preapproved by Cooperative
- K. Commonwealth shall provide any clearing of existing right-of-ways and/or trimming necessary to install Commonwealth's attachments at its own expense. All clearing debris shall be disposed of by Commonwealth in a manner agreeable to landowners and in no case create inconvenient access to the Cooperative's plant.
- L. Commonwealth shall incur the cost of any walk-through and/or review inspection that is required by the Cooperative after the installation of Commonwealth's attachments is completed. Any walk-through inspection shall review as-built attachments consistent with the Design Specification provisions of this Agreement and verify the quantity of as-built attachments. Commonwealth shall pay Cooperative's invoiced cost of expenses and overhead associated with any walk-through and/or review inspections of as-built attachments.
- M. Any remedial changes required of Cooperative's plant identified during item (J) above shall be administered per the Required Plant Changes provisions of this Agreement.

OPERATIONS AND MAINTENANCE OF COMMONWEALTH'S ATTACHMENTS

- A. Commonwealth acknowledges that the poles licensed hereunder have energized facilities installed upon them and that working in the vicinity of energized facilities poses serious potential dangers. At all times Commonwealth shall consider the electric wires of Cooperative to be energized and shall take all necessary precautions to protect all persons and property from injury or damages occurring by reason of Commonwealth's attachments and activities involving Cooperative's facilities.
- B. Cooperative has no duty to provide any type of training to the employees and/or agents of Commonwealth with regard to safety or with regard to any other issues that may arise as at the performance of Commonwealth's duties under this contract. Commonwealth is solely responsible for providing such training as may be necessary and reasonable to its employees and/or agents.
- C. Commonwealth shall have the right to operate and maintain its attachments on Cooperative's plant after satisfying the "Establishing Attachments" provisions and all other pertinent provisions of this Agreement.
- D. Commonwealth shall provide any clearing of existing right-of-ways and/or trimming incidental to the operations and maintenance of Commonwealth's attachments on Cooperative's plant. All clearing debris shall be disposed of by Commonwealth in a manner agreeable to landowners and in no case create inconvenient access to Cooperative's plant.
- E. Commonwealth shall not adjust, modify, relocate and/or remove any plant of Cooperative during the course of operations and maintenance of Commonwealth's attachments.

- F. Any attachments determined by Cooperative not to be operated or maintained as prescribed by the Design Specifications provisions and all other pertinent provisions of this Agreement shall be brought into conformity by Commonwealth at its expense.
- G. Any attachments requiring remedial correction as prescribed by item (E) above of the Operations and Maintenance of Attachments provisions shall be administered per the Required Plant Changes provisions of this Agreement.
- H. Within 10 days after the execution of this Agreement and at least 30 days before Commonwealth shall make an attachment, Commonwealth shall furnish Cooperative with a document listing names, telephone numbers, pager numbers, e-mail addresses, and mailing address of all personnel who Cooperative may contact for emergency, billing, operating, and other purposes associated with the activities agreed to herein. For emergency and operational purposes, Commonwealth shall have qualified, competent, and equipped personnel available by telephone, which are able to respond in a reasonable period of time. Commonwealth shall be responsible for providing Cooperative with an updated document in the event of any changes that would affect Cooperative's ability to make necessary contact with appropriate personnel. The updated document shall be furnished in a timely manner and as soon as reasonably practicable.

REQUIRED PLANT CHANGES

- A. Except in an emergency, unusual, or special situation, Cooperative shall provide Commonwealth thirty (30) days' prior written notification of required plant changes as prescribed within the Design Specifications, Operations and Maintenance of Attachments, Term of Agreement or any other pertinent provisions of this Agreement. Said notification will specify when Commonwealth must adjust, replace, relocate and/or remove existing attachments.
- B. Commonwealth shall incur the cost to adjust, replace, relocate and/or remove any of Commonwealth's attachments as prescribed within item (A) above of the Required Plant Changes provisions.
- C. Cooperative may elect to perform any work required, as prescribed within item (A) above of the Required Plant Changes provisions, if Commonwealth is unwilling or unable to perform said work within a time specified by Cooperative. Commonwealth, in such cases, shall reimburse Cooperative's expenses inclusive of overhead and material salvage costs.
- D. Any work performed by Cooperative, as prescribed within the Required Plant Changes provisions, involving unauthorized and/or unreported attachments, the repair of any damages to Cooperative's plant caused by the installation, operation, maintenance and/or removal of Commonwealth's attachments will be invoiced to Commonwealth at double the total cost calculated in item (C) above of the Required Plant Changes provisions. Cooperative, at its discretion, may elect to remove any unauthorized and/or unreported attachments from Cooperative's plant at the expense of Commonwealth.

LIABILITY

- A. Cooperative shall not incur liability for any damages or costs associated with any service interruption and/or interference of Commonwealth's fiber, equipment and/or appurtenances arising in any manner out of Commonwealth's use of Cooperative's plant, except to the extent such damages or costs are the result of Cooperative's negligence or willful misconduct.

- B. Cooperative shall not incur liability for any damages or costs involving Commonwealth's facilities or operations arising in any manner from any work performed by Cooperative as prescribed within the Establishing Attachments, Operations and Maintenance of Attachments, Required Plant Changes, and/or Liability Insurance provisions of this Agreement, except to the extent such damages or costs are the result of Cooperative's negligence or willful misconduct.
- C. Cooperative shall not incur liability for any damages or costs should Commonwealth be prevented at any time from establishing or maintaining Commonwealth's attachments as prescribed within the Easements and Right-of-Ways provisions of this Agreement.
- D. Inspections by Cooperative of Commonwealth's attachments as prescribed in the "Establishing Attachments" provisions and other pertinent provisions of this Agreement, made or not, shall not operate to relieve Commonwealth of any responsibility, obligation and/or liability assumed under this Agreement.

To the extent permitted by law, including but not limited to Section 177 of the Kentucky constitution, Commonwealth agrees to defend, indemnify and save harmless Cooperative from any damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature including, but not limited to, costs of defending Cooperative, including attorney fees, and payment of any settlement or judgment therefrom, by reason of (1) injuries to or the deaths of persons, (2) damages to or destruction of property, (3) contamination, pollution and/or other adverse environmental effects or (4) violations of governmental laws, regulations and/or orders whether suffered directly by Cooperative itself or indirectly by reason of claims, demands and/or suits against Cooperative by third parties, resulting or alleged to have resulted from acts and/or omissions of Commonwealth, its employees, agents or other representative or from their presence on the premises of Cooperative.

LIABILITY INSURANCE

- A. Commonwealth, or its contractors, will provide and maintain insurance coverage for the protection of its employees to the extent required by the workers compensation laws of the Commonwealth of Kentucky.
- B. Commonwealth, or its contractors, will provide and maintain public liability insurance coverage with a minimum aggregate amount of \$2,000,000 (\$2 Million) and \$1,000,000 (\$1 Million) for each occurrence involving injury or death of persons and/or damage or destruction of property.
- C. Commonwealth, or its contractors, shall provide Cooperative a certificate of insurance evidencing insurance coverage for items (A) and (B) above of the Insurance provisions, naming Jackson Energy as the Additional Insured. This insurance or bond may not be cancelled for any cause without 30 days advance notice being first given to Cooperative.
- D. All insurance coverage prescribed within items (A) through (C) above of the Insurance provisions shall specify that said coverage shall not be terminated within 30 days after receipt by Cooperative of a written notice from the insurance company of the intent to terminate said coverage.
- E. Upon receipt of a notice to terminate insurance coverage prescribed within items (A) through (C) above of the Liability Insurance provisions, Cooperative shall provide Commonwealth with written notice that it will require Commonwealth to remove its attachments from Cooperative's plant unless Commonwealth provides satisfactory evidence of renewed insurance coverage within fifteen (15) days. If Commonwealth fails to complete removal of its attachments from

Cooperative's plant within six (6) months after receipt of such request from Cooperative, then Cooperative shall have the right to remove all of Commonwealth's attachments at the expense of Commonwealth.

PAYMENT OF TAXES

Cooperative and Commonwealth shall pay all taxes, fees and assessments lawfully levied on their respective properties or plant. Any taxes, fees and assessments levied on Cooperative's plant solely because of Commonwealth's use of Cooperative's plant for Commonwealth's attachments shall be reimbursed to Cooperative by Commonwealth.

PAYMENT OF FEES AND CHARGES

- A. Payments by Commonwealth to Cooperative for any invoice of expenses, costs and/or fees as prescribed within any provisions of this Agreement shall not entitle Commonwealth to ownership of any part of Cooperative's plant to which Commonwealth has contributed in whole or in part.
- B. All fees and charges invoiced by Cooperative to Commonwealth are net and payable within ten (10) days from the date of the bill or invoice. An amount equal to one percent (1%) per month of the past-due amount shall be added to all invoices, bills and/or accounts that are in a past-due condition. Late payment fees shall apply to the net bill, exclusive of special charges, taxes and other assessments.

CONDITIONS OF DEFAULT

- A. Commonwealth or Cooperative shall be in default of this Agreement should the Commonwealth or the Cooperative fail to fulfill its obligations and responsibilities with respect to any of the provisions of this Agreement.
- B. Cooperative may suspend and terminate the rights of Commonwealth with respect to any of the provisions of this Agreement should Commonwealth continue to remain in default thirty (30) days after due notice thereof in writing by Cooperative to Commonwealth.
- C. Upon suspension and termination of the rights of Commonwealth by Cooperative as prescribed within item (B) above of the Conditions of Default provisions, Commonwealth shall have 6 months to remove its attachments from Cooperative's facilities. If Commonwealth fails to remove its attachments within this time period, Cooperative shall have the right to remove Commonwealth attachments at the expense of Commonwealth.
- D. Any failure of Cooperative or Commonwealth to enforce or insist on compliance with all provisions of this Agreement shall not constitute a relinquishment or general waiver of any Agreement terms and/or conditions. All provisions of this Agreement shall be and remain in full force and effect.

ASSIGNMENT OF RIGHTS

Commonwealth and Cooperative shall not assign or otherwise dispose of this Agreement or any of its rights or interests herein to any firm, corporation, or individual without the written consent of Commonwealth or Cooperative, as applicable, which shall not be unreasonably withheld.

SUPPLEMENTAL ROUTINES AND PRACTICES

Nothing in the foregoing shall preclude Cooperative and Commonwealth from preparing supplemental operating routines, working practices, or amendments to this Agreement as mutually agreed to be necessary or desirable to effectively administer the provisions of this Agreement. This agreement may be amended by request of Commonwealth and consent of Cooperative, which will not be unreasonably withheld, to permit NG-KIH infrastructure to be built in the Cooperative power space using All Di-electric Self Supporting (ADSS) fiber cable for additional consideration to the Cooperative, the terms of which shall be negotiated by the parties at the time of the amendment.

GOVERNING LAW

The laws of the Commonwealth of Kentucky shall govern and control all the respective rights and duties of the parties to this agreement.

VENUE

Any disputes arising between the parties to this agreement shall be adjudicated by the Courts of Franklin County, Commonwealth of Kentucky.

In witness whereof, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, on the day and year first above stated.

Commonwealth of Kentucky

Jackson Energy Cooperative Corporation

Lori Hudson Flanery
Printed Name

Carol Wright
Printed Name

Lori Hudson Flanery
Signature

Carol Wright
Signature

Secretary, Finance Cabinet
Title

President + CEO
Title

This 28th day of October, 202015
28th October 2015

This 6th day of November, 2015

Brandy G. Bill 490386
Notary Public State County
Franklin, Kentucky

Lisa Baker 503556
Notary Public State County
Jackson Co., Kentucky

My Commission Expires May 31, 2017

My Commission Expires 1/19/18

APPROVED AS TO
FORM & LEGALITY



APPROVED
FINANCE & ADMINISTRATION CABINET