

AGREEMENT BETWEEN COUNTY COMMISSIONER'S ASSOCIATION OF WEST VIRGINIA AND COUNTRY ROADS LEASING

This Agreement made effective as of February 14, 2021 by and between County Commissioner's Association of West Virginia, Incorporated, 2007 Quarrier Street Charleston, WV, 25311 (hereinafter referred to as "CCAWV") and Country Roads Leasing, LLC, a West Virginia limited liability company with principle offices at Post Office Box 217, Bridgeport, WV 26330 (hereinafter referred to as "CRL").

CCAWV is a not-for-profit association whose membership includes local county commissions in West Virginia and CRL is a West Virginia based company providing innovative municipal equipment lease-purchase financing options for cities and towns throughout West Virginia (collectively, "Services"). Such projects might include, but not be limited to, police vehicles, garbage trucks, fire apparatus, utility trucks, office equipment, HVAC and energy performance contracts. CRL has been serving WV communities since 2010 and currently has several county clients.

In consideration of the mutual promises and obligations of the parties, all in accordance with the terms and conditions hereinafter set forth, the parties hereby covenant and agree as follows:

1. ENDORSEMENT.

CRL recognizes the value in the CCAWV's endorsement of the CRL program. CCAWV is willing to allow CRL to make its Services available to all CCAWV's members by CCAWV's endorsement of the CRL Services through various marketing, advertising, and promotional materials and otherwise, subject to the terms and conditions set forth in this Agreement.

2. RELATION OF PARTIES.

Each party expressly disclaims any intention to create a partnership or joint venture. Nothing in this Agreement shall constitute making either party the agent of the other. In all matters relating to this Agreement, CRL and CCAWV shall be acting as independent contractors. Neither party's employees are employees of the other under the meaning or application of any federal or state laws, unemployment or insurance laws, workers' compensation laws, or otherwise. Each party assumes all liabilities or obligations imposed by any one or more of such laws with respect to its own employees. CRL is and shall remain the sole owner and manager of its lease purchase program and Services. Accordingly, CCAWV shall not be liable to CRL or any third party, including member cities for consequential, exemplary, special, indirect, incidental or punitive damages, for loss of revenue or profits, for the procurement of substitute goods, loss of use, interruption of business or for loss of data, goodwill or any other damage to tangible or intangible personal property arising from the CRL lease purchase program. This limitation applies to all causes of action or claims, CRL's sole remedy for actions of any third party, including member cities, lies against the third party and not the CCAWV. CCAWV shall not be liable to any third party for actions or inactions by CRL under this agreement.

3. RESPONSIBILITIES OF CRL. With regards to CCAWV members and the financing program offered by CRL, CRL shall at its own expense:

- A.** Develop an overall marketing plan and design all marketing, advertising, and promotional materials for its Services to CCAWV members. The marketing plan may utilize social media. However, no use of the CCAWV logo is authorized without prior express approval

in its specific use and further provided that CRL is not authorized to use social media platforms that are owned, operated by, or registered to, CCAWV without express written consent and prior approval.

- B.** Offer each CCAWV member, without obligation, consultation, as CRL deems appropriate, on its Services.
- C.** CRL shall not offer other products or services to CCAWV's members without the prior written approval of CCAWV.
- D.** Promote its Services annually to CCAWV members with advertising as CRL deems appropriate. The expense of any marketing plan, design, advertising, promotional materials, general mailing or advertising will be borne by CRL.
- E.** Meet with CCAWV staff pertaining to CCAWV members periodically (as needed) to review the status and progress of the Services to CCAWV members and provide CCAWV with statistics and information that may be reasonably requested by CCAWV about the Services to CCAWV members including, but not limited to, number of participants, and statistics on promotional or marketing activities. CCAWV will have the option of receiving this data electronically from CRL. If requested by the Executive Director of CCAWV, CRL will meet with the CCAWV Program Services Board during the mid-winter meeting to provide a briefing about the Services.
- F.** Make clear on any and all CRL marketing materials that its Services is wholly and independently owned and managed by CRL, and CCAWV neither generally nor specifically administers the Services, and that CCAWV does not expressly or impliedly warrant the Services or is liable for actions of CRL, its owners, officers, operators, employees, or agents in any manner. CRL's marketing plan and all materials, including digital material, shall comply with all truth in advertising and applicable laws.

4. RESPONSIBILITIES OF CCAWV. CCAWV shall:

- A.** Recommend and promote CRL's Services to the CCAWV members as an endorsed program, provided that, CCAWV may solicit and receive corporate and foundation partners, sponsors, or vendors who may offer services and products competitive with or similar to CRL.
- B.** Only to the extent address, telephone and email information of members is available, CCAWV will provide CRL with a periodically updated CCAWV membership list, which CRL shall use only in connection with the promotion, sponsorship, and administration of the Services program authorized herein. CRL shall treat the membership list as Proprietary Information under Paragraph 8 below, regardless of whether such list is marked as "proprietary" or "confidential". The membership list shall remain the exclusive property of CCAWV.

- C. Meet with CRL periodically (as needed) to review the status and progress of CRL's Services or other matters requested by CRL.
- D. Provide for CRL or its representative to attend the CCAWV annual and mid-winter conferences held for members as follows:
 - i. CRL may attend and exhibit as a vendor at a minimum of one meeting per calendar year. This will typically be the annual summer conference, but is not limited to it.
 - ii. CRL can/may attend the mid-winter meeting and be visible through a small display table and through networking opportunities.
- E. Provide information about CRL's Services under the programs section on the CCAWV website.

5. ANNUAL PAYMENTS.

- A. In consideration of the endorsement and rights granted to CRL hereunder during the Term of this Agreement, CRL shall pay to the CCAWV fees ("Fees") as follows:
 - i. CRL agrees to pay CCAWV an annual Fee of \$1,200.00 for the Term of the Agreement. Any delay in payment or nonpayment will be considered a Breach of the Agreement, in accordance with Paragraph 9.
 - ii. DRL agrees to pay such Fee in equal installments semi-annually: \$600 due on the effective date of this Agreement (February, 14 2021) and then \$600 each February 14 and August 14, thereafter.

6. INDEMNIFICATION

- A. CRL shall indemnify and hold harmless CCAWV, its directors, officers, agents employees, volunteers, and all other representatives, from and against any and all loss, damage, liability, claims, costs, causes of action, or any other expense arising out of or in any way resulting from any acts, errors, or omissions of CRL or, officers, owners, agents, employees, or any other representative of CRL, in connection with or in any way related to the Services which are subject of this Agreement (to the extent of not attributable to any acts, errors, or omissions on the part of CCAWV). This indemnity shall include, but not be limited to, any loss, damage, liability, claims, costs, causes of action, or any other expense under any local, state, or federal law, unfair trade law, consumer protection law, or any other law or regulation applicable to the Services. This indemnity shall also include all actual damages and reasonable expenses incurred by CCAWV in defending itself, court costs, reasonable attorney's fees, and all other related expenses. CRL shall list CCAWV as an additional insured on CRL's insurance for the Term of this Agreement and for as long as any CCAWV member is using the Services of CRL negotiated during the period of this Agreement, and CRL will provide proof of this insurance coverage upon execution of this Agreement.

- B. CCAWV shall indemnify and hold harmless CRL, its trustees, directors, officers, agents, employees, volunteers, and all other representatives, from and against any and all loss, damage, liability, claims, costs, causes of action, or any other expense arising out of or in any way resulting from any acts, errors, or omissions of CCAWV or its directors, officers, agents, employees, or any other representative of CCAWV, in connection with or in any way related to its obligations under this Agreement (to the extent not attributable to any acts, errors, or omissions on the part of CRL). This indemnity shall include, but not be limited to, any loss, damage, liability, claims, costs, causes of action, or any other expense under any local, state, or federal law, unfair trade law, consumer protection law, or any other law or regulation applicable to the coverage program. This indemnity shall also include all actual damages and reasonable expenses incurred by CRL in defending itself, court costs, reasonable attorney's fees, and all other related expenses.
- C. CCAWV and CRL shall each notify the other within 30 days of any claim or potential claim asserted against them that they become aware of relating to the Services which are the subject of this Agreement.

7. TERM.

The Term of this Agreement shall be for a period of one (1) year beginning February 14, 2021 and ending February 14, 2022, unless terminated earlier as hereinafter provided (the "Term"). The Agreement shall automatically renew from year to year for 1 year unless either CCAWV or CRL gives written notice to the other within 30 days prior to the termination date of each ensuing year. Provided, further, that either party may terminate this Agreement upon Default as provided in Paragraph 9.

8. PROPRIETARY INFORMATION

CRL agrees that, upon five (5) business days prior to notice, all Proprietary Information and records relating to the Services shall be available during normal business hours to the representatives and designees of CCAWV and that copies of any records requested by CCAWV shall be promptly delivered to CCAWV or its designates for the actual cost of production.

- A. It's acknowledged and agreed that CRL will receive from CCAWV a list of membership and other information of a confidential business nature, and that CRL, by the endorsement of CCAWV, will obtain the use of further information of a confidential business nature from CCAWV's members who supply such information based on their special relationship to CCAWV (all such information is hereinafter deemed "Proprietary Information"). CRL recognizes the confidential nature of this Proprietary Information and hereby agrees that it will not utilize this Proprietary Information, or allow any other person, company, firm, or corporation to utilize such Proprietary Information in any manner contrary to or outside the scope of this Agreement unless such utilization is approved in advance in writing by CCAWV.
- B. Nothing herein shall preclude CRL or CCAWV from establishing and maintaining any records required by law. Access to all information under this Agreement shall be subject to all applicable laws and regulations.

- C. After the termination of this Agreement the CRL shall return all Proprietary Information within 60 days.
- D. The parties hereby agree that, due to the unique nature of the Proprietary Information and the inadequate remedies at law to enforce this paragraph, CCAWV shall be entitled to all available equitable remedies, including but not limited to temporary, preliminary, and permanent injunctions restraining the breach or threatened breach of any provision of this Agreement. Such remedies shall be in addition to all other remedies available at law or in equity.
- E. This Paragraph shall survive termination of this Agreement.

9. DEFAULT.

In the event either party is in breach of this Agreement, whether by nonpayment or otherwise, and shall fail or refuse to remedy such default within thirty (30) days after notice of such default, the other party may terminate this Agreement on thirty days' (30) notice and may seek any other appropriate remedy as provided by law.

10. TERMINATION.

- A. Upon termination of this Agreement for any reason, the rights and license granted to CRL hereunder shall cease.
- B. Upon termination of this Agreement, CRL will provide
 - i. the payment described in Paragraph 5 for the current year and any past-due amounts not later than the last day of the Month following the termination; and
 - ii. other information and reports described in this Agreement for the years of termination within sixty (60) days after termination. Furthermore, CRL shall return all Proprietary Information within sixty (60) days of termination.

11. NONASSIGNMENT.

Except as provided in this paragraph, CRL shall not assign, sublicense, or otherwise transfer its rights or obligations under this Agreement without the express written permission of CCAWV.

12. NOTICE.

Any notice required to be given under this Agreement shall be in writing and shall be sent by registered or certified mail, return receipt requested, with postage prepaid, to the parties at their respective addresses.

If to CRL:
Country Roads Leasing, LLC
Post Office Box 217 Bridgeport, WV 26330

if to CCAWV:

CCAWV
2007 Quarrier Street Charleston, WV 25311

13. ENTIRE AGREEMENT.

The entire agreement between the parties set forth herein. All prior contemporaneous written or oral agreements are superseded by this document. This Agreement may be amended or modified only by written instrument executed by CCAWV and CRL.

14. APPLICABLE LAW.

This Agreement shall be construed and enforced in accordance with the laws of West Virginia.

15. SEVERABILITY.

If any court of competent jurisdiction holds any provision or any combination of provisions in this Agreement unlawful, invalid, or unenforceable, such provision shall be deemed amended, consistent with the original intent of the parties, to the extent necessary to render such provisions not unlawful, invalid, or unenforceable and valid.

16. COMPLIANCE WITH LAWS.

The parties hereby agree to comply with all local, state, and/or federal laws, statutes, orders, decrees, decisions, regulations or any other governmental authority of whatever sort applicable to their particular responsibilities under this Agreement.

17. NON-COMPETE.

During the term of this Agreement and for a period of eighteen (18) months following its Term, CRL shall not, directly or indirectly, in any manner whatsoever, engage in any capacity, including marketing and promoting, or otherwise offer a product or service in West Virginia that is competitive to any other CCAWV endorsed or offered program.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written.

COUNTY COMMISSIONER'S ASSOCIATION OF WEST VIRGINIA INCORPORATED

By: _____

Jennifer Piercy, Executive Director

COUNTRY ROADS LEASING LLC

By: _____

Jeffrey W. Smell, Sole Member