

**TOWN BRANCH COMMONS  
UTILITY RELOCATION AGREEMENT**

THIS **UTILITY RELOCATION AGREEMENT** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”) by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban-county government pursuant to KRS Chapter 67A, located at 200 East Main Street, Lexington, KY 40507 (hereinafter referred to as “LFUCG” or the “Government”), and **KENTUCKY UTILITIES COMPANY**, located at 1 Quality Street, Lexington, KY 40507 (hereinafter referred to as “KU”), collectively referred to as the “Parties.”

**WHEREAS**, LFUCG has plans to grade, regrade, construct, reconstruct, widen or otherwise alter the Midland Avenue right-of-way (“ROW”) in accordance with the design and engineering specifications of the Town Branch Commons Project (“Public Project”), a copy of which is attached hereto and incorporated herein as **Exhibit A**; and

**WHEREAS**, KU has submitted plans to LFUCG, a copy of which are attached hereto and incorporated herein as **Exhibit B**, for the relocation of its electrical distribution line(s), any facilities owned by KU on KU poles, and any associated equipment owned by KU (but excluding certain transmission poles, lines and associated equipment, which will remain in place) (hereinafter “Facilities”) from their current location in the Midland Avenue ROW to another location; and

**WHEREAS**, LFUCG has requested KU to relocate its Facilities pursuant to Lexington-Fayette County Code of Ordinances Section 17C-19(f)(1).

**NOW, THEREFORE**, in consideration of the premises and the foregoing mutually agreed upon promises, conditions, and covenants hereinafter set forth, LFUCG and KU covenant and agree as follows:

(1) The above recitals are incorporated herein as if fully set forth.

(2) Upon receipt of a Notice to Proceed issued by the LFUCG Director of Engineering issued before July 3, 2018, KU shall relocate the Facilities by March 1, 2019 (except for the following reasons: (1) the Notice to Proceed is not received on or before July 3, 2018, (2) delay is caused by the acts or omissions of LFUCG, (3) changes ordered by LFUCG, (4) unavoidable and unforeseen delays beyond KU’s reasonable control, which include force majeure events such as a war, riot, strike, acts of God, acts of the state or federal governmental that prohibit or impede KU from performing its obligations under this Agreement or the unavailability of materials, (5) delays resulting from the relocation of third party facilities located on the poles as a result of the acts or omissions of such third party, (6) delays resulting from obtaining easements from third parties or (7) delay in payment of the costs of relocation in accordance with the terms of this Agreement), subject to the requirements and standards set forth in Chapter 17C of the Lexington-Fayette County Code of Ordinances.

(3) The removal and relocation of the Facilities shall be done in a good, safe and workmanlike manner consistent with all applicable codes, ordinances, laws and regulations. Any and all relocation work performed pursuant to this Agreement has been approved by the LFUCG Division of Engineering. KU agrees to acquire any easements or property interests necessary for the relocation. LFUCG will cooperate in good faith with KU regarding the acquisition of necessary property interests, however, such cooperation will not require LFUCG to acquire any easements or property interests on KU's behalf.

(4) The Parties acknowledge that, as of the Effective Date, KU has submitted plans (Exhibit B) to LFUCG for the relocation of the Facilities and those plans have been reviewed and approved by LFUCG. Notwithstanding the above, KU hereby agrees to submit any changes or modifications to the plans to LFUCG for consideration and approval (which approval shall not be unreasonably withheld, conditioned, or delayed) before the commencement of any work.

(5) LFUCG shall pay \$200,000.00 of the costs of the relocation of the Facilities. On or before July 20, 2018, LFUCG shall make the payment of \$200,000.00 to KU, which is a condition precedent to the commencement of the relocation of the Facilities. LFUCG acknowledges and agrees that it shall have no right, title or interest in the relocated Facilities, including, but not limited to, any existing Facilities or new Facilities. Notwithstanding any implication to the contrary contained above or elsewhere in this Agreement, if the Project is terminated or does not go forward and, at the time of such termination or cancellation by LFUCG, the termination or cancellation of the relocation of the Facilities would not be economically feasible or physically practicable, LFUCG shall be responsible for completion of the relocation of the Facilities pursuant to the terms of this Agreement. Nothing in the Agreement shall be construed as a waiver of KU's right to require LFUCG to pay for any relocation pursuant to Code Section 17C-19(f)(4).

(6) KU represents to LFUCG that it is the owner of the Facilities, and that it has taken all necessary corporate, regulatory or other similar action to execute, deliver and perform this Agreement. KU shall act in good faith and with due diligence to obtain the relocation of third party facilities located on KU's poles.

(7) This Agreement will commence on the Effective Date. KU will commence the relocation work described herein on or about July 9, 2018 (but not before receipt of a Notice to Proceed issued by the LFUCG Director of Engineering and payment of the costs set forth above) and will continue to perform such work until completion or March 1, 2019. The relocation performance period shall be extended for a reasonable period beyond March 1, 2019 for the following reasons: if (1) the Notice to Proceed is not received on or before July 3, 2018, (2) delay is caused by the acts or omissions of LFUCG, (3) changes ordered by LFUCG, (4) unavoidable and unforeseen delays beyond KU's reasonable control, which include *force majeure* events such as a war, riot, strike, acts of God, acts of the state or federal governmental that prohibit or impede KU from performing its obligations under this Agreement or the unavailability of materials, (5) delays resulting from the relocation of third party facilities located on KU's poles as a result of the acts or omissions of such third party, (6) delays resulting from obtaining easements from third parties, or (7) delay in payment of the costs of relocation in accordance with the terms of this Agreement.

(8) Neither Party shall be in default under this Agreement unless and until the non-defaulting Party shall have given the defaulting Party written notice of such default and the defaulting Party shall have failed to cure the default within thirty (30) days after written receipt of such notice. Upon the failure by the defaulting Party to timely cure any default after notice thereof from the non-defaulting Party, the non-defaulting Party shall have the right to terminate the Agreement and pursue an appropriate remedy.

(9) The failure or delay on the part of LFUCG or KU to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

(10) This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter contained herein and supersedes all prior offers, negotiations and other agreements concerning the subject matter contained herein.

(11) No revision of this Agreement shall be valid unless made in writing and signed by an officer of KU and an authorized signatory on behalf of LFUCG.

(12) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original. In the event that any signature is delivered by facsimile or by email of a “.pdf” format data file, such signature shall create a valid and binding obligation of such Party with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

(13) The laws of the Commonwealth of Kentucky (excluding its conflicts of laws rules) shall govern this Agreement. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either Party, regardless of which Party may have drafted any of its provisions.

(14) In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement.

(15) Any notice or demand required or permitted to be given or made hereunder shall be sufficiently given or made by reliable overnight courier or by Certified Mail, return receipt, in a sealed envelope, postage prepaid, addressed to LFUCG or KU at the following address:

LFUCG: Director of Engineering  
Lexington-Fayette Urban County Government, 4th Floor  
Phoenix Building  
100 East Main Street  
Lexington, KY 40507

With  
copies to: Commissioner of Law  
Lexington-Fayette Urban County Government, 11th Floor  
200 East Main Street



