

PAVEMENT RESTORATION AGREEMENT

This **Pavement Restoration Agreement** (this "Agreement") is entered into effective this 29th day of JUNE, 2018 (the "Effective Date") by **KENTUCKY UTILITIES COMPANY**, a Kentucky and Virginia corporation ("KU") and **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, a _____ ("LFUCG").

WHEREAS, KU has planned to replace the underground 69 kV electric transmission facilities ("Facilities") depicted in areas highlighted in purple on pages A-2, A-3 and A-4 of Exhibit 'A' and incorporated herein by reference (the "Plan");

WHEREAS, LFUCG desires to perform curb-to-curb replacement of paving on the affected streets following completion of KU's replacement project; and

WHEREAS, LFUCG and KU desire to have such curb-to-curb replacement take the place of repaving of excavated areas by KU.

NOW THEREFORE, LFUCG and KU agree as follows:

1. Trench Restoration by KU. Upon completion of replacement of Facilities within the areas highlighted in purple on the Plan (the "KU Areas"), KU will restore the trench with flowable fill backfill, a six-inch concrete cap (to extend a minimum of one foot onto undisturbed earth on each side of the trench) and two inches of asphalt; as well as any temporary pavement markings. Trenches in the KU Areas must be saw cut.
2. Paving by LFUCG. Following trench restoration by KU as described above, LFUCG shall repave the KU Areas. Upon LFUCG's completion of such paving, LFUCG shall invoice KU for the cost of paving work in the KU Areas without any markup. The cost of all sidewalk ramp restoration, pavement markers and pavement striping invoiced to KU shall be determined using the unit prices in the KU Quantity Estimates table on page A-1 of Exhibit 'A.' (Quantities may vary.) Cost of pavement restoration shall be invoiced at actual cost incurred by LFUCG in accordance with the existing LFUCG paving contract. KU shall pay the invoiced amount to LFUCG within 30 days of KU's receipt of the invoice. Specifically, the work invoiced to KU shall consist of labor and materials for (1) milling the entire KU Area, (2) resurfacing the entire KU Area, (3) painting of permanent pavement markings inside the KU Area, and (4) any sidewalk ramp upgrades required under applicable ordinances or the Americans with Disabilities Act as a result of paving in the KU Area.

3. Two Year Performance Period. KU shall have responsibility for the two-year performance warranty provided for in Section 17C of the LFUCG Code of Ordinances within the portions of the KU Areas directly above trenches excavated by KU. KU shall not have responsibility under such warranty for areas not directly above such trenches.
4. Satisfaction of KU Obligations. Completion of the work described in Section 1 above, KU's payment for work performed by or on behalf of LFUCG as provided in Section 2 above, and KU's warranty obligations described in Section 3 above shall fully satisfy KU's repaving and street restoration obligations under applicable LFUCG ordinances and policies and the applicable franchise.
5. Indemnity by KU. KU shall indemnify, hold harmless, and defend LFUCG from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from KU's negligence or willful misconduct occurring at a location before the curing of the concrete cap at such location as described in Section 1 above, provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property of a third party, including the loss of use resulting therefrom and (2) is not caused by the negligent act or omission or willful misconduct of LFUCG or its elected and appointed officials and employees acting within the scope of their employment. This Section 5 shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.
6. Indemnity by LFUCG. LFUCG agrees to indemnify KU, to the extent LFUCG is liable under Kentucky law for injuries, damages, losses or expenses, including attorneys' fees, arising out of or resulting, directly or indirectly, from LFUCG's negligence or willful misconduct, or breach of contract occurring at a location after the curing of the concrete cap at such location as described in Section 1 above, provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property of a third party, including the loss of use resulting therefrom and (2) is not caused by the negligent act or omission or willful misconduct of KU. Section 6 shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.
7. Miscellaneous. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

If any provision of this Agreement shall be held invalid under law, such invalidity shall not affect any other provision or provisions hereof, which are otherwise valid. This Agreement and the terms and provisions hereof shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky without regard to the conflicts of laws principles of such state.

KU and LFUCG agree that any legal action or proceeding under or with respect to this Agreement may be brought in the courts of the Commonwealth of Kentucky or the United States located in Fayette County, Kentucky

This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof.

This Agreement may not be amended or changed in any respect except by written instrument signed by all parties hereto.

No waiver of any provision herein or of a breach of any provision shall constitute a waiver of any other breach or of any other provision.

LFUCG AND KU EXPRESSLY AGREE THAT NEITHER PARTY WILL UNDER ANY CIRCUMSTANCES BE LIABLE TO THE OTHER PARTY UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF THE OTHER PARTY WHATSOEVER.

IN WITNESS WHEREOF, the parties hereto caused this Agreement to be executed by their duly authorized officers or representatives effective on the date first written above.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

By: _____

Name: _____

Title: _____

KENTUCKY UTILITIES COMPANY

By: Adam Smith

Name: ADAM SMITH

Title: MGR. TRANSMISSION LINES