



Job Order No. 16-0266670-00

## Pipeline Relocation Agreement

This Pipe Relocation Agreement (“Agreement”) is made as of the 13th of September, 2016, by and between Columbia Gas of Kentucky, Inc., a Kentucky corporation with offices at 2001 Mercer Rd. Lexington, Kentucky 40511-1018, hereinafter referred to as “Columbia,” and LFUCG Lexington-Fayette Urban County Government, whose address is 200 E. Main St. Lexington, KY 40507 hereinafter referred to as “Requestor.” Columbia and Requestor are each a “Party” and collectively referred to as “the Parties.”

### Witnesseth

WHEREAS, Columbia owns and operates a 6” inch pipeline, located in a private easement with property owner, Commonwealth of Kentucky, at 1100 Nicholasville Rd., in Lexington, Fayette County, Kentucky; and

WHEREAS, Requestor wishes to have a portion of the pipeline and any related pipeline facilities relocated in order to permit certain construction or other activity in the vicinity of said pipeline, and Columbia is willing to relocate a portion of the pipeline subject to the conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and intending to be legally bound, the Parties hereby agree as follows:

1. Requestor requests relocation of Columbia’s pipeline and any related pipeline facilities as follows: **Columbia Gas of Kentucky will relocate all gas main in conflict with the new storm sewer project near the end of Marquis Ave, on 1100 Nicholasville Rd., Lexington, KY. The relocation will consist of installing approximately 15’ of 6” plastic medium pressure gas main. The costs associated with relocating this gas main include company labor & overheads, contractor labor, material, and full restoration of any disturbed surfaces during construction.** Requestor shall pay one hundred percent (100%) of any and all direct and indirect costs associated with the pipeline relocation.

2. Requestor shall deposit the sum of **\$23,530** (the “Deposit”) with Columbia, which sum is an estimated cost of relocating Columbia’s pipeline. Said cost of relocation shall include any and all costs including, but not limited to, cost of right-of-way acquisition, permit fees, materials, contractor mobilization, and labor. Requestor acknowledges and agrees that the Deposit is based upon both the information available and circumstances known to Columbia as of the date of the execution of this Agreement. Requestor further agrees and acknowledges that the Deposit may be increased, pursuant to this Paragraph 2 and Paragraph 3 below. If Requestor cancels or postpones its contemplated construction project or other activity, Requestor shall reimburse Columbia for all costs (direct and indirect) expended or obligated at the time of cancellation or postponement, including costs which may have to be expended to restore the Requestor’s, Columbia’s or any third party’s premises to their original condition, all such amounts to be deducted from the Deposit. Any such costs which exceed the Deposit shall be payable by Requestor immediately upon notice

from Columbia. Notwithstanding any other provision of this Agreement, if the pipeline relocation is not completed within 90 days of the execution of this Agreement, Columbia reserves the right to increase the Deposit. Upon notice from Columbia, Requestor shall promptly pay such additional sum to Columbia. Columbia may retain the Deposit until the completion of the work contemplated under this Agreement. Unless otherwise required by law or order of any governmental body having jurisdiction over Columbia, Columbia shall not be required to pay interest, carrying charges, or any other amounts related to the Deposit.

3. Upon execution of this Agreement by both Parties and the receipt of the Deposit from Requestor, Columbia agrees to begin plans for said pipeline relocation. Columbia will physically relocate said pipeline and any related pipeline facilities as mutually agreed only when all necessary rights-of-way have been secured and all material is available. Columbia will not commence the relocation project until such time as such pipeline relocation work will not impair the operation of Columbia's gas distribution system or its service to its customers. Columbia is not responsible for any Requestor losses of any kind resulting from work delays or cancellation, or delay or refusal by a governmental entity to issue any necessary permit. This Agreement may be suspended, the Deposit amount may be increased by Columbia, or the terms of this Agreement renegotiated by Columbia, due to adverse digging or soil (e.g. ledge, hazardous materials, etc.) conditions, or delay or denial of necessary permits.

4. Upon Columbia's request, Requestor agrees to enter into a Right of Way Agreement with Columbia in which Requestor shall grant to Columbia all necessary easements or rights of way on property owned by Requestor at no cost to Columbia. Requestor agrees to hold Columbia harmless from any and all claims, liens or encumbrances upon the easements or rights of way granted pursuant to such Right of Way Agreement. Requestor shall also cooperate with and compensate Columbia for acquiring any necessary easements or rights of way on property owned by third parties that are not in a public street or way. Columbia shall not be obligated to undertake the pipeline relocation and this Agreement shall be terminated at the sole discretion of Columbia if: (i) Requestor fails to timely enter into the Right of Way Agreement with Columbia, referenced above; or (ii) Columbia is not able to obtain necessary third party easements or rights of way upon terms and conditions (including cost) agreeable to Columbia. In the event of such termination, Requestor shall be responsible for all costs expended by Columbia and/or which Columbia is obligated to expend in connection with the relocation project and the termination of such project. Any such costs which exceed the Deposit shall be payable by Requestor immediately upon notice from Columbia.

5. To the extent any portion of the pipeline relocation occurs on Requestor's property or property it or an affiliate controls, the Requestor at its own expense, shall (i) respond to reasonable requests of Columbia, its representatives and any governmental authorities or administrative agencies to provide all necessary information describing the physical characteristics of the property, including surveys, site elevations, legal and other required investigations and the like which it may have now or in the future; (ii) mark and identify for Columbia, the correct locations of all underground facilities (e.g., septic systems, sprinkler systems, water lines electric lines, propane tanks and lines, etc.) owned by the Requestor and/or others at or about the property; (iii) notify Columbia of any condition on or about the property which could affect the work contemplated hereunder; and (iv) cooperate with Columbia to obtain all necessary approvals, site

plan reviews, permits, required for Columbia to carry out its work and obligations hereunder. Columbia shall not be obligated to undertake the pipeline relocation and this Agreement shall be terminated at the discretion of Columbia if Requestor fails to satisfy its obligations as set forth in this Section 5. In the event of such termination, Requestor shall be responsible for all costs expended by Columbia and/or which Columbia is obligated to expend in connection with the relocation project and the termination of such project. Any such costs which exceed the Deposit shall be payable by Requestor immediately upon notice from Columbia.

6. Upon completion of said pipeline relocation, Columbia shall, within a reasonable time, submit to Requestor a statement showing the actual cost thereof. If the actual (direct and indirect) cost of said pipeline relocation is more than the amount of the Deposit, Requestor shall promptly pay the difference between the actual costs and the Deposit, to Columbia. Requestor will make such reimbursement payment to Columbia within thirty (30) days of receipt of the invoice. Late payments will bear interest at a rate of 1.0% a month, which equals an annual percentage rate of 12%. If the actual cost is less than the amount of the Deposit, Columbia shall promptly return to Requestor the difference between the Deposit and the actual costs.

7. To the extent allowed by law, and except and to the extent of Columbia's gross negligence or willful misconduct, Requestor shall indemnify and hold harmless Columbia, its parent, subsidiary, affiliate corporations, its owner, agents, officers, directors and employees, contractors and subcontractors and each of them, from and against any and all losses, damages, and/or liability for claims, demands, suits or causes of action in law or in equity for damages and injury, including death, attorneys' fees, costs, expenses of every kind and nature whether to persons or property, arising out of or in any manner related to the relocation and/or replacements of the pipeline and any related pipeline facilities hereunder. Requestor further agrees to defend all such claims, demands, suits or causes of action at its own costs and expense without reimbursement from Columbia. In no event shall Columbia be liable to the Requestor or any other party for any indirect, consequential, punitive, or special damages, by reason of any services performed, or undertaken to be performed hereunder.

8. All questions with respect to the interpretation and construction of this Agreement and the rights and liabilities of the Parties hereunder shall be determined in accordance with the applicable laws of Kentucky without regard to the law of conflicts or any choice of law provisions that would direct the application of the laws of another jurisdiction. Any legal action or in any way related to or arising from this Agreement shall be brought and heard only in a court of competent jurisdiction located in the Lexington, Fayette County, Kentucky. This Agreement contains the entire agreement between the Parties concerning the relocation work, and no modification of this Agreement will be binding unless approved in writing by both Parties. Requestor may not assign this Agreement without express written consent from Columbia. Such consent may be withheld by Columbia in its sole discretion. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid such provision shall be deemed modified so as to be no longer invalid and, all of the remaining provisions of this Agreement shall remain in full force and effect. The recitals set forth in this Agreement are an integral part hereof and shall have the same contractual significance as any other language contained in this Agreement. No provision of this Agreement shall be interpreted more or less favorably towards either Party because its counsel drafted all or a portion hereof.



Requestor represents and warrants that it has requisite authority to enter into this Agreement and that its representative signing this Agreement is authorized to bind and obligate the Requestor to the terms of this Agreement. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one instrument. Facsimile and pdf signatures to this Agreement shall be legally binding and considered in all manner and respects as original signatures.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**WITNESS:**

**REQUESTOR**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

**WITNESS**

**COLUMBIA GAS OF KENTUCKY INC.**

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Authorized Signature

*Matthew Hughes*  
\_\_\_\_\_  
Print Name

*Associate Field Engineer II*  
\_\_\_\_\_  
Title