

**AGREEMENT TO PERMIT ATTACHMENT
OF BANNERS**

THIS AGREEMENT, made this _____ day of July, 2013, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an Urban County Government formed pursuant to KRS 67A.010, whose address is 200 East Main Street, Lexington, Kentucky 40507, hereinafter called "Permittee," party of the first part, and **KENTUCKY UTILITIES COMPANY**, a Kentucky corporation, 220 West Main Street, Louisville, Kentucky 40202, hereinafter called "KU," part of the second part,

WITNESSETH:

WHEREAS, pursuant to the provisions of this Agreement, Permittee desires to install or cause the installation of banners on the poles of KU in the area described on Schedule A which is hereby made a part of this agreement; and

WHEREAS, KU is willing to permit, to the extent that it may lawfully do so, the attachment of the described banners to its poles where, in its judgment, such use will not interfere with its own use of the facilities and/or with other licensees using KU's poles at no cost to Permittee,

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions herein contained, the parties hereto do hereby mutually covenant and agree as follows:

1. PERMITTED ATTACHMENTS.

KU agrees to permit Permittee to attach the banners in the area described in the Schedule A to KU's poles, in the manner set out and pursuant to the provisions of this agreement to the satisfaction of KU. All attachments made pursuant to this Agreement shall be at such points and in such manner as KU or its employees may direct.

2. INSTALLATION OF BANNERS AND MAINTENANCE REQUIREMENTS AND SPECIFICATIONS.

Permittee shall have the right to attach banners to KU's poles in accordance with the provisions of this Agreement. Permittee shall submit a written request for approval to KU to facilitate the attachment of any necessary or desired banners. The text and design of such banners shall be disclosed to KU prior to approval of any such request. To the extent that placement of banners will require modification of KU facilities, Permittee shall reimburse KU for the cost of such modifications. Banners will be allowed on KU structures in accordance with this Agreement in order to promote city, county, and city and county sponsored events and other civic and cultural events. Banners will not be used to advertise individual businesses, sell merchandise, products, or services, or to promote organizations or issues within the message. (The sponsoring agency may be recognized in the logo area of the banner.)

Banners shall normally be displayed on mid-block poles only. However, there may be exceptions, and Permittee may be allowed to hang banners on corner poles if such poles do not support traffic signal arms and the banner is located so as not to interfere with, or obstruct the view of, any traffic control device or sign. The banner may be displayed on either the sidewalk or road side of the pole so long as the Permittee maintains minimum ground clearances, as stated in this Agreement. When the banner is installed on the sidewalk side of the pole and subjected to pedestrian traffic only, the vertical clearance from the surface of the sidewalk to the bottom of the banner shall be maintained at a minimum of nine (9) feet. Banners being installed on the street side of poles that do not protrude over a driving or parking surface or lane, are allowed to meet the minimum nine (9) feet vertical clearance so long as a raised curb exists to restrict

vehicular traffic beneath the banner. In locations where the banner is to be installed on the road side of the pole and the banner could protrude over a driving or parking surface or lane, the vertical clearance from the pavement to the bottom of the banner shall be maintained at a minimum of sixteen (16) feet.

The banner shall be displayed in such a manner so as to not visually block any other signs or messages existing on the poles. No banners shall be allowed which are required to be hooked up to an electrical source in order to be seen. All banners must be designed on the top and bottom for proper hanging on two brackets. All banners attached pursuant to this Agreement shall be erected and maintained in compliance with the requirements and specifications of the current National Electric Safety Code, KU's construction practices, all as may be changed from time to time; with any rules, orders, or regulations now in effect or that hereinafter may be issued by the Public Service Commission of Kentucky; and with all existing applicable Federal, state, or local laws, rules, regulations, orders, and ordinances issued by any Federal, state, or local authority and as may be changed from time to time. Permittee shall maintain the banners and its attachment hardware in such condition that it does not interfere with or present a hazard to KU personnel accessing KU facilities. All facilities attached pursuant to this Agreement shall be identified as to the owner of said facilities at each attachment location. In the event any part of Permittee's construction does not meet any of the above requirements, Permittee will correct same in fifteen (15) work days after written notification of a failure to meet any specified requirements. If Permittee fails to correct same within fifteen (15) days, KU may make such corrections and charge Permittee for the total actual costs incurred, which may include attorney's fees and court costs.

During the installation phase of any build, Permittee shall be responsible for obtaining its own easements, rights of way, and permits from any necessary authorities. (See **Easements** herein.) Permittee shall also be responsible for determining which, if any such easements, rights of way, and permits are necessary to do such build. All construction methods, including but not limited to traffic control, shall comply with accepted industry standards and practices and must comply with all applicable codes, including but not limited to NESC, OSHA, and DOT. Such compliance shall include all bonding/grounding requirements, vertical clearance between conductors, vertical clearances over roadways, driveways, and ground.

Permittee, at all times, warrants compliance with all the requirements as set out above and assumes the continuing responsibility for such compliance in the future and assumes all responsibility for any damages, fines or penalties resulting from any noncompliance. KU undertakes no duty with respect to such compliance by requiring Permittee to meet any specifications or by requiring or failing to require any corrections, modifications, additions, or deletions to any work or planned work by Permittee.

3. MAINTENANCE AND OPERATION OF KU'S FACILITIES.

KU reserves to itself, its successors and assigns, the right to maintain its poles and to operate its facilities thereon in such manner as will, in its own judgment, best enable it to fulfill its own service requirements, but in accordance with the specifications hereinbefore listed. KU shall not be liable to Permittee for any interference with the operation of Permittee's facilities, or loss of business arising in any manner out of the use of KU's poles hereunder.

4. EASEMENTS.

Permittee must secure its own easement rights from real property owners. KU's permitting attachments shall not constitute any representation or warranty by KU to Permittee regarding Permittee's right to occupy or use any public or private rights-of-way.

5. INSPECTION OF BANNERS.

KU reserves the right to inspect at any time, in its sole discretion, banners described in the attached Schedule. Banners found to be non-compliant with the provisions of this Agreement shall either be brought into compliance or removed. Failure to make timely corrections shall terminate this Agreement. Inspections conducted by KU, its agents, contractors, or employees shall not create a duty on the part of KU to conduct inspections at any time during the life of this Agreement. Permittee shall remain independently responsible for making sure its work is compliant with all applicable laws, rules, permitting requirements, regulations, and all KU standards set forth in this Agreement and any amendments hereto.

6. PRECAUTIONS TO AVOID FACILITY DAMAGE.

Permittee shall not damage any facilities of KU or of others supported on KU's poles and facilities. Permittee shall not interfere with KU's operations and hereby assumes all responsibility for any and all loss for such damage and for interference. Permittee shall make an immediate report to KU of any damage or interference it causes and hereby agrees to reimburse KU for the expenses incurred in making repairs.

7. INDEMNITIES.

To the extent allowed by law, Permittee agrees to protect, defend, indemnify, and save harmless KU from all damage, loss, claim, demand, suite, liability, penalty, or forfeiture of every kind and nature, including but not limited to costs and expenses of defending against the same, payment of any settlement or judgment therefore, and reasonable attorney's fees, by reason of (a) injuries or deaths to persons, (b) damages to or destructions of properties, (c) pollution, contaminations of, or other adverse effects on the environment, or (d) violations of governmental laws, regulations, or orders whether suffered directly by KU itself or indirectly by reason of claims, demands, or suits against it by third parties, resulting or alleged to have resulted from acts or omissions of Permittee, its employees, agents, or other representatives or from their presence on the premises of KU or otherwise from performance of this Agreement, or from or in connection with the construction, installation, operations, maintenance, presence, replacement, enlargement, use or removal of any facilities of Permittee attached or in the process of being attached or removed from any poles of KU. This is not deemed a waiver of sovereign immunity or any other third party defense available to Permittee; provided, however, that Permittee's use of such defenses shall be limited as set forth in rulings of the Courts of the Commonwealth of Kentucky.

8. ATTACHMENT REMOVAL AND NOTICES.

Permittee may voluntarily remove its banners from any pole or poles of KU, but shall give KU prior written notice of any such removal. Any such removal shall be undertaken in a manner consistent with Paragraph 7 of this Agreement.

Dated banners with a message for a specific event may be hung for a maximum of thirty days prior to the event date. Banners must be removed within one week following the event.

During periods of heavy booking, the maximum exposure time for generic banners may be limited to allow as many organizations as possible to participate in the program.

In the event of scheduling conflicts, the length of time for banner exposure and/or the quantity of banners displayed will be considered by KU on a case-by-case basis. In no case shall the display of the same set of generic banners be allowed for more than six (6) months without the prior written consent of KU.

9. NONCOMPLIANCE.

If Permittee fails to comply with any of the provisions of this Agreement or defaults in any of its obligations under this Agreement and fails to correct such default or noncompliance within thirty (30) days (except for the 15 day requirement in paragraph 1) after written notice from KU, KU may, at its option, forthwith terminate this Agreement by giving written notice to Permittee of said termination.

10. WAIVERS.

Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

11. USE OF KU'S FACILITIES BY OTHERS.

Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by KU, by contract or otherwise, to others, not parties to this

Agreement, to use any poles covered by this Agreement; and KU shall have the right to continue and to extend such rights and privileges. The permitted attachment herein granted shall at all times be subject to such previously conferred privileges.

12. ASSIGNMENT.

Permittee shall not assign, transfer, or sublet the privileges hereby granted without the prior written consent of KU. Any attempt to so assign without such written consent shall be void.

13. PROPERTY RIGHTS.

No use, however extended, of KU poles or other facilities under this Agreement shall create or vest in Permittee any ownership or property rights in said poles; rights herein contained shall be and remain a mere permission. Nothing herein contained shall be construed to compel KU to maintain any of said poles for a period longer than demanded by its own service requirements.

14. TERM.

This Agreement shall become effective upon its execution and if not terminated in accordance with the provisions of Paragraph 9 shall expire on June 30, 2014 (“Agreement Expiration Date”). With respect to individual banners or signs, this Agreement shall be effective for the term agreed upon with KU at the time of installation of the banner or sign; provided that no such term shall extend beyond the Agreement Expiration Date. Permittee agrees to remove the banner and/or sign at the agreed-upon time. Either party may terminate this Agreement at the attachment period for any reason whatsoever by giving to the other party at least twenty-four (24) hours written notice. Upon termination of the Agreement in accordance with any of its terms, Permittee shall immediately

remove its banners attached to KU's poles or other facilities pursuant to this Agreement. All costs of such removal will be borne by Permittee. Permittee shall exercise precautions to avoid damage to facilities of KU in so removing and assumes all responsibility for any and all such damage. If Permittee's facilities attached to KU's pole and other facilities pursuant to this contract are not promptly removed, KU shall have the right to remove them to the cost and expense of Permittee and without any liability therefore.

15. NOTICES.

Any notice or request required by this Agreement shall be deemed property given if mailed, postage prepaid, to:

KU Mr. Robert Trimble
 Director, Distribution Operations
 One Quality Street
 Lexington, Kentucky 40507

And

Permittee Lexington-Fayette Urban County Government
 200 E. Main Street
 Lexington, Kentucky 40507

The designation of the person to be notified, and/or his address, may be changed by KU or Permittee at any time, or from time to time, by similar notice.

16. ACCESS.

At all times, Permittee shall maintain and install and/or construct its banner in such manner to insure that KU has full and free access to all of its facilities described in the Schedule attached to this Agreement for the purpose of repairing, rebuilding, replacing, maintaining, and operating such facilities.

17. ADJUSTMENTS.

Nothing contained herein shall be construed as affecting in any way the right of KU, and KU shall at all times have the right to unilaterally make a change in the rental charge for attachment to poles, or other charges as provided for, as any rule, regulation, condition, or any change requires. Any such change or changes shall become effective as provided for in this Agreement after written notifications or changes in applicable regulations or statutes.

18. SUCCESSORS AND ASSIGNS.

All provisions of this Agreement shall extend to and bind the successors and assigns of the parties hereto, specifically including the provisions of paragraph 15.

19. INSURANCE.

Unless otherwise specified in the attached Schedule B, Permittee shall maintain in force during the term of this Agreement at its expense public liability insurance, with deductible provisions and in a minimum amount satisfactory to KU as provided in Schedule B. Upon request, Permittee shall provide KU with certificates or other evidence of any insurance coverage required herein. Every contract of insurance providing the coverages required herein shall contain the following or equivalent clause: "No reduction, cancellation, or expiration of the policy shall become effective until ten (10) days from the date written notice thereof is actually received by Permittee and KU as appropriate."

20. ENTIRE AGREEMENT.

This Agreement does not amend or modify the existing Franchise Agreement between KU and Permittee. This Agreement and the attached Schedule constitute the

entire Agreement between KU and Permittee and all previous representations relative thereto, either written or oral, are hereby annulled and superseded. No modification shall be binding on KU and Permittee unless it shall be in writing and signed by both parties. Nothing contained in this Agreement or attached Schedules shall be construed as having any effect in any future agreement or contemplated future agreement between the parties.

21. HEADINGS.

Paragraph headings are for the convenience of the parties only and are not to be construed as part of this Agreement.

22. REPRESENTATIONS AND WARRANTIES OF PERMITTEE.

Permittee hereby represents and warrants that it will attach its banners to KU's facilities pursuant to this Agreement in order to promote civic and cultural events as well as to promote civic/non-profit organizations, in accordance with applicable laws and regulations.

WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

Lexington-Fayette Urban County Government

By: _____
Jim Gray
Mayor

Kentucky Utilities Company

By: Robby Trimble

Name: ROBBY TRIMBLE

Title: DIRECTOR DISTRIBUTION OPERATIONS

SCHEDULE A – AREA COVERED BY AGREEMENT

Versailles Road Viaduct

SCHEDULE B – INSURANCE

Permittee shall provide and maintain, and shall require subcontractor(s) to provide and maintain, the following insurance or equivalent self-insurance:

- (a) Workers' Compensation and Employer's Liability Policy: Prior to the start of work, Permittee shall submit evidence of Permittee's Workers' Compensation and Employer's Liability Insurance Policy, and each such policy shall include:
 - (1) Workers' Compensation and Workers' Occupational Disease Insurance in accordance with the laws of the state where the work is performed;
 - (2) Employer's Liability with a minimum limit of One Million Dollars (\$1,000,000) each loss with respect to each accident;
 - (3) Thirty (30) Day Cancellation Clause;
 - (4) Broad Form All States Endorsement;
 - (5) United States Longshoremen and Harbor Workers Act Endorsement;
 - (6) Maritime Endorsement; and
 - (7) Jones Act Endorsement

- (b) Commercial General Liability Policy: Prior to the start of work, Permittee shall provide evidence of Permittee's Policy providing Commercial General Liability Insurance, with combined single minimum limit for bodily injury and property damage of One Million Dollars (\$1,000,000) each occurrence/aggregate and the following:
 - (1) Coverage for premises, operations, elevators, and work let or sublet;
 - (2) Thirty (30) Day Cancellation Clause;
 - (3) Blanket Written Contractual Liability to the extent covered by the policy against liability assumed by Contractor under this Contract;
 - (4) Broad Form Property Damage;
 - (5) Insurance for liability arising out of blasting, collapse, and underground damage (deletion of X, C, U Exclusions)
 - (6) Products Liability and Completed Operations, including coverage for occurrences within two (2) years from the acceptance of work;
 - (7) Personal Injury Liability Hazards A, B, & C with Employee and Contractual exclusions eliminated;
 - (8) Said policy shall name Kentucky Utilities Company as an additional insured to the extent necessary to fulfill Permittee's indemnity obligations under Article 14 – Indemnity by Contractor;

- (9) Said policy shall include an endorsement providing that the underwriter(s) have waived their rights of subrogation against the Company and Company's insurance carrier(s)
- (c) Commercial Automobile Liability Insurance: Prior to the start of work, Permittee shall provide evidence of Contractor's Commercial Automobile Liability Insurance covering the use of all owned, non-owned, and hired automobiles, with bodily injury and death with combined single minimum limit for bodily injury and property damage of One Million Dollars (\$1,000,000) each occurrence/aggregate with respect to Permittee's vehicles assigned to or used in the performance of work under this Contract. Said policy shall name Kentucky Utilities Company as an additional insured to the extent necessary to fulfill Permittee's indemnity obligations under Article 14 – Indemnity by Contractor. Said policy shall include an endorsement providing that the underwriter(s) have waived their rights of subrogation against the Company and the Company's insurance carrier(s).
- (d) Aircraft Public Liability Insurance: If applicable, Permittee shall provide prior to the start of the work, evidence of Permittee's Aircraft Public Liability Insurance covering fixed wing and rotor craft aircraft whether owned, non-owned, leased, hired, or assigned with a combined single minimum limit for bodily injury and property damage of Five Million Dollars (\$5,000,000) including passenger liability coverage. Said policy shall include an endorsement providing that the underwriter(s) have waived their rights of subrogation against the Company and Company's insurance carrier(s).

Unless provided under a self-insurance arrangement, the above policies to be provided by Permittee shall be written by Insurance Company(s) authorized to do business in the Commonwealth of Kentucky and satisfactory to Company or having a Best Rating of not less than A+. These policies shall not be materially changed or canceled except within thirty (30) days written notice to Company from the Permittee and the Insurance Carrier. Evidence of coverage, notification of cancellation, or other changes shall be mailed to:

Attn: Law Department
Kentucky Utilities Company
220 West Main Street
11th Floor
Louisville, KY 40202

Company shall not be obligated to review any of Permittee's Certificates of Insurance, insurance policies, or endorsements, or to advise Permittee of any deficiencies in such documents. Any receipts of such documents or their review by Company shall not relieve Permittee from or be deemed a waiver of Company's rights to insist upon strict

fulfillment of Permittee's obligations under the Contract. Company reserves the right to request and receive a summary of coverage of any of the above policies or endorsements. Contractor shall provide notice of any accidents or claims at the work site to Company's Manager Risk Management at the above address, Manager Employee Relations at the above address, and Company's site authorized representative.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an Urban County Government formed pursuant to KRS 67A.010, who address is 200 E. Main Street, Lexington, Kentucky 40507.