

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into this ____ day of _____, 2019, by and between the Lexington-Fayette Urban County Government (“LFUCG”), an urban county government created pursuant to KRS 67A, located at 200 East Main Street, Lexington, Kentucky 40507, and _____ (“Business”), with its principal place of business located at _____, collectively the “Parties.”

RECITALS:

WHEREAS, Business seeks to install telecommunications equipment on Street Lights within Lexington-Fayette County;

WHEREAS, the relevant Street Lights are currently owned by Kentucky Utilities and leased by LFUCG;

WHEREAS, the Parties voluntarily agree that, in return for the ability to install small cell telecommunications equipment on Street Lights, Business will pay to remove the existing Street Light, construct an identical Street Light in its place, commence maintenance responsibilities, and become responsible for all related costs, including but not limited to electrical costs of the relevant Street Light and its Facilities, as further designated between Kentucky Utilities and the Business.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions hereinafter set forth, the Parties mutually acknowledge and agree as follows:

1. **INCORPORATION OF RECITALS:** The above recitals are incorporated by reference as if fully stated herein.
2. **BUSINESS’ RESPONSIBILITIES:** The Business shall have the following responsibilities relating to this MOU:
 - a. The Business shall submit an application to LFUCG containing each street light it requests to decommission and any other requirement provided by LFUCG.
 - b. If the Business’ application is approved by the LFUCG, the LFUCG Division of Traffic Engineering shall provide a Decommissioning Letter to the Business and Kentucky Utilities, requesting Kentucky Utilities remove the existing street light(s) referenced in the Decommissioning Letter (referred to hereinafter as “Street Light”) and the associated equipment or fixtures necessary to operate them (hereinafter the “Facilities”).

c. If the request is approved by Kentucky Utilities, the Business shall be responsible for all costs arising from or associated with the removal of the Street Light and Facilities.

d. The Business shall place a substantially-similar Street Light and related Facilities, as approved by the LFUCG, at each location where a Street Light was removed under this Agreement. The Business shall be responsible for all costs arising from or associated with the placement of the new Street Light.

e. All work performed by Business or its contractor relating to this MOU shall require any permits deemed necessary by the LFUCG in accordance with local law.

f. The Business shall be required to obtain or maintain a franchise agreement or similar agreement with the LFUCG prior to the installation or possession of any Street Lights or Facilities unless the LFUCG determines that the Business is exempt from this requirement.

g. The Business shall follow all federal, state, and local requirements pertaining to its operation in the public Right of Way, including, but not limited to Chapter 17-C of the Lexington-Fayette Urban County Government Code of Ordinances, including in future amended forms, and, if applicable, the Business's franchise or agreement.

h. The Business shall provide the contact information of the person(s) tasked with receiving maintenance requests on behalf of the Business to the LFUCG within one week of execution of this MOU. The Business shall also include this information on an identification marker of adequate size on the Street Light to allow the public to contact the Business in case of maintenance requests.

i. The Business shall maintain the Street Light and Facilities at all times in accordance with applicable building codes and national safety standards, and shall repair any deficiency within a reasonable time after being made aware of the deficiency. For the purposes of this subsection, "reasonable time" shall be three (3) calendar days for the replacement of one or more bulbs or seven (7) calendar days for any other repair.

j. Any telecommunications equipment placed on a Street Light shall be compliant with relevant FCC limits on radio frequency (RF) exposure levels and any aesthetic requirements implemented by LFUCG.

k. The Business may contract with another person or entity (the "Contractor") to maintain the Street Lights or Facilities, provided the Contractor is licensed to do business in Lexington-Fayette County and remains in good standing. However, using a

Contractor shall not limit any responsibility placed on the Business by this MOU. For example, failure by the Contractor to replace a bulb within the required time shall be a failure by the Business under this MOU. The Business shall provide the contact information for the Contractor to LFUCG within seven (7) calendar days after executing a contract with the Contractor.

l. In the event that Business (or the Contractor) fail to maintain any Street Light or Facilities in accordance with this MOU, LFUCG shall have the right to immediately maintain, repair, or remove the Street Light or Facility(s). The LFUCG shall provide the Business with a written Final Notice prior to removal. The Business shall repay all costs incurred by LFUCG, related to maintaining, repairing, removing, or replacing the Street Light and/or Facilities, plus a ten percent (10%) penalty within thirty (30) days of being provided an invoice.

m. The Business shall assume all risks instant to or in connection with each Street Light and its Facilities and shall be solely responsible for all accidents or injuries whatsoever of any nature or kind to persons or property caused by the Street Lights or Facilities, original or replacement, or their use. The Business further agrees to indemnify the LFUCG against any and all claims or liability for personal injuries or other damages to any person, including injuries resulting in the death of any person, which injury or death is occasioned by or in connection with the Business' property or failure to maintain its property at the locations of the Facilities, including, but not limited to claims arising from the Street Lights, the replacement Street Lights, or any associated telecommunications equipment placed on or near the Street Lights.

n. If the Business abandons a Street Light, the business shall timely remove the unneeded Street Light and any related Facilities requested by LFUCG, and return the ROW to its pre-existing condition, or as may be reasonably required, and provide written notice to LFUCG. All costs, including any costs associated with replacing the Street Light, shall be the sole responsibility of the Business. The Business shall remain the owner of the unneeded Street Light, and continue to bear all costs associated with the Street Light, until such time Kentucky Utilities or LFUCG has retained ownership. In the event that the Business fails to timely remove the Street Light, LFUCG may invoke the procedure in paragraph l. above.

3. LFUCG'S RESPONSIBILITIES: The LFUCG shall have the following responsibilities relating to this MOU:

a. Upon approval of an application from the Business that meets the requirements and criteria as set by the LFUCG Divisions of Engineering and Traffic Engineering, the LFUCG Division of Traffic Engineering shall provide a

Decommissioning Letter to the Business and Kentucky Utilities requesting the removal of the Street Light, and its Facilities, identified in the Decommissioning Letter.

b. LFUCG shall, at all times, remain the owner of the public right-of-way.

c. From the date Kentucky Utilities removes the existing Street Light, the LFUCG shall no longer be responsible for paying the applicable tariff related to the Street Light.

d. LFUCG shall not be responsible for any costs, including but not limited to, those associated with the removal or installation of any Street Light or Facilities, or their related maintenance or utility costs.

e. LFUCG shall not be responsible for any legal costs or legal damages of any kind associated with any claims or injuries in connection with the Street Lights or their Facilities. If LFUCG is named in a lawsuit or otherwise requested to pay damages of any kind associated with the Street Lights or their Facilities, LFUCG shall provide notice and a demand for indemnity under this MOU to the Business within a reasonable time after being served or otherwise being made aware of the request for damages.

f. LFUCG shall notify the Business as soon as practical after it is notified of any maintenance required on any Street Light to the contact person provided by the Business.

4. **ASSIGNABILITY.** This MOU and the rights provided hereunder are personal to the Business. Business acknowledges and agrees that this MOU will not be transferred, conveyed, delegated, or assigned, whether voluntarily or involuntarily. Any assignment or delegation in violation of this section shall be void, unless agreed to in writing by LFUCG. However, maintenance of the relevant pole(s) may be delegated to another party in accordance with the requirements of this MOU.

5. **ENTIRE AGREEMENT.** This MOU and the attachments hereto constitute the entire MOU between the parties concerning the ownership, maintenance, and costs associated with, the relevant Street Lights.

There are no warranties, representations, covenants or agreements, expressed or implied, between the parties except those expressly set forth in this MOU. Any amendments or modifications of this MOU shall be in writing and executed by the parties.

6. **NON-WAIVER.** A Party's failure to exercise its rights after a breach of this MOU or to insist on the strict performance of any term of this MOU shall not be a waiver of its rights under the MOU.

7. APPLICABLE LAW. This MOU will be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky without regard to its conflict of laws rules. The Parties submit to the exclusive jurisdiction of the courts of the Commonwealth of Kentucky in Fayette County or to the federal court of the United States for the Eastern District of Kentucky.

8. HEADINGS AND SECTION REFERENCES. Section headings or captions contained in this MOU are inserted only as a matter of convenience and reference and in no way define, limit, extend or describe the scope of this MOU or the intent of any provision hereof.

9. COUNTERPARTS. This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

10. VALIDITY AND ENFORCEABILITY. If any provision of this MOU is found to be invalid or unenforceable, said invalid or unenforceable provision shall be disregarded and the balance of this MOU shall be enforced as the integrated written agreement of the Parties.

11. NOTICES. Any notices or communications required or permitted to be given by this MOU must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by facsimile or electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows, unless specifically directed to another individual in accordance with this MOU:

To Business:

To LFUCG:

12. SERVICE. A party may, for purposes of this MOU, change his, her or its address, fax number, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section of the MOU.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives as of the date set forth in the first paragraph of this Agreement.

