

AGREEMENT – VEGETATION MANAGEMENT

THIS AGREEMENT, made this _____ day of _____, 2021, 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 “LFUCG” 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, the parties agree that preserving existing tree canopy provides a significant benefit to the community; and

WHEREAS, in some instances KU has clear cut or removed trees from underneath its transmission lines in Lexington-Fayette County, which has resulted in a concern among impacted residents; and

WHEREAS, LFUCG does not currently regulate in a significant manner the trimming, clear cutting or removal of trees other than in public rights-of-way or pursuant to Chapter 17C of the Lexington-Fayette Urban County Government Code of Ordinances; and

WHEREAS, as a result of KU’s clear cutting and tree removal practices in certain areas of Lexington-Fayette County, the Urban County Council of the Lexington-Fayette Urban County Government is considering adopting significant regulations related to eliminating or reducing these practices; and

WHEREAS, the parties believe this issue can instead be amicably resolved by KU modifying some of its existing practices on the limited basis provided in this agreement;

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. This agreement is not intended to alter, amend, or modify any rights, duties, or obligations that either party may have pursuant to Chapter 17C of the Code of Ordinances or KU's franchise agreement.

2. This agreement is limited to the locations in Lexington-Fayette County as specifically provided herein. KU is under no obligation or duty to implement the practices required herein in other locations, but is not prohibited from doing so should it so choose.

3. This agreement is not intended to impact to reduce or eliminate any existing regulatory practice related to the trimming, clear cutting or removal of trees imposed on KU pursuant to any other regulatory body, including but not limited to the Kentucky Public Service Commission or FERC.

4. KU agrees to continue to comply with the requirements of its Vegetation Management Plan or similar plans, policies, or guidelines pertaining to vegetation located in the vicinity of transmission lines. This agreement is intended to create additional requirements in the limited instances provided herein

5. LFUCG acknowledges and agrees that in some instances due to legitimate safety concerns certain trees that are located within the locations provided herein will

need to be clear cut or removed. It is not the intent of the parties that this agreement in any way infringe on KU's ability to continue to operate in this manner when necessary.

6. This agreement shall apply to all of the following types of property locations within Lexington-Fayette County (the "Locations") in which KU has existing above ground transmission lines: street medians and parks.

7. The parties agree to work in good faith towards a goal of zero net canopy loss in Lexington-Fayette County in the Locations.

8. With respect to all such Locations, KU agrees to the following with respect to the clear cutting or removal of any trees:

a. Providing the LFUCG Arborist with an inventory of all trees within the area of work, identified by species and diameter at least thirty (30) days prior to the commencement of work related to the clear cutting or removal of any trees, in order to provide sufficient time to reach an agreement on the clear cutting and removal of any trees;

b. Meeting with LFUCG's arborist at least thirty (30) days prior to the clear cutting or removal of any trees to discuss the necessity of such action, lesser alternative actions, and potential tree replacement;

c. Working with the LFUCG Arborist to create a zero net canopy loss plan, utilizing the National Tree Benefit Calculator, ensuring all benefits are located within the same Urban County Council District, or in a location determined by the arborist with the understanding that an agreement is to be reached prior to undertaking the work.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. The laws of the Commonwealth of Kentucky 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.

15. 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.

16. 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: _____
Lexington-Fayette Urban County Government, 4th Floor
Phoenix Building
100 East Main Street
Lexington, KY 40507

With
copies to: Commissioner of Public Works
Lexington-Fayette Urban County Government, 11th Floor
200 East Main Street
Lexington, KY 40507

KU: Kentucky Utilities Company
1 Quality Street
Lexington, KY 40507
Attn: _____

Any such notice or demand shall be deemed to have been given or made three (3) business days following the date it is deposited in the United States Post Office or on the day following delivery to the overnight courier. LFUCG or KU may from time to time designate any other address for this purpose by written notice to the other Party.

17. The execution, delivery and performance of this Agreement and any documents relating hereto have been duly authorized by all necessary parties, and this Agreement is enforceable in accordance with its terms. LFUCG and KU have full power and authority to enter into this Agreement, to execute and deliver all instruments and documents referred to herein and to consummate the transactions contemplated hereby.

Neither the execution of this Agreement, nor the consummation of any transaction contemplated herein, violates any laws, rules, regulations or ordinances.

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: _____
Linda Gorton
Mayor

Kentucky Utilities Company

By: _____
Name: _____
Title: _____

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