

## **TELECOMMUNICATIONS SERVICE AGREEMENT**

### **Agreement #: 500**

This Telecommunications Service Agreement (hereinafter "Agreement") is made by and between the Utility Commission of the City of Henderson, Kentucky, doing business as Henderson Municipal Power & Light (hereinafter "HMP&L") 100 Fifth Street Henderson, Kentucky, 42420 and Henderson County Schools (hereinafter "Customer") whose mailing address is 1805 Second Street, Henderson, Kentucky, 42420:

WITNESSETH:

That in consideration of the mutual covenants and agreements herein contained, it is stipulated, covenanted, and agreed by and between HMP&L and Customer as follows:

1. Customer hereby requests and HMP&L agrees, subject to the terms and conditions herein, to provide the facilities and services for the monthly and installation charges, as described in the Telecommunications Service Order which is attached hereto and incorporated herein by reference.

Any amendment or supplementation to this Telecommunications Service Agreement or the Telecommunications Service Order shall be in a writing and signed by both parties. The service period for telecommunication services provided by this Telecommunications Service Agreement shall be from the date of installation on the Telecommunications Service Order.

2. Customer shall pay HMP&L the total "Build Cost" for each location set forth in the Telecommunications Service Order. Payment shall occur within thirty (30) calendar days from the date service is available at each location.

Customer shall pay the recurring monthly costs as provided in the Telecommunications Service Order no later than the first business day of each month for which service is provided. The recurring monthly costs will be billed in advance of services provided to Customer each month. As provided in the Telecommunications Service Order, the monthly rates for the individual services provided to Customer shall be subject to change after the initial twenty-four (24) month service period.

When a service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which services were furnished will be calculated on a pro-rated basis with every month considered to have 30 days.

In the event the Customer fails to pay any amounts owed to HMP&L when due, HMP&L will provide Customer a notice of the amounts owed and in the event payment is not received within fifteen (15) calendar days HMP&L may discontinue or suspend services without incurring any liability to Customer.

The Monthly Cost shall be increased on the first anniversary of the Term Commencement Date and every anniversary of the Term Commencement Date thereafter by an amount equal to five percent (5%). HMP&L's failure to demand any such increase shall not be

construed as a waiver of any right thereto and Customer shall be obligated to remit all increases notwithstanding any lack of notice or demand thereof. The adjustment to the Monthly Cost shall be calculated by the following formula:

The adjusted Monthly Cost = Monthly Cost + (Monthly Cost x 0.05).

“Monthly Cost” shall mean the then-current Monthly Cost.

3. In the event the Customer cancels a service ordered pursuant to a Telecommunications Service Order prior to the completed installation of the service, but after the execution of the Telecommunications Service Order, Customer shall pay all actual costs incurred by HMP&L in the implementation of the service request included in the telecommunications Service Order prior to receipt by HMP&L of the required written notice of cancellation.
4. HMP&L shall use reasonable efforts to complete the installation of the services identified in the Telecommunications Service Order, subject to the completion of Customer's responsibilities set forth in Section 8 herein, or in the Telecommunications Service Order.
5. The initial twenty-four (24) months service period shall be as specified in the Telecommunications Service Order. The initial twenty-four (24) months service period and monthly billings shall commence on 7/1/2022 and will continue for twenty-four (24) months 6/30/2024.
6. At the expiration of the initial twenty-four (24) months an extension for an additional twenty-four (24) months is possible as long as both parties mutually agree. Final date for service with extensions would be 6/30/2026.
7. Services outlined in the Telecommunications Service Order shall include HMP&L facilities installed to a point where provision is made for termination of HMP&L's facilities at a suitable location inside the Customer's premises. The Customer shall provide and maintain the following to HMP&L at Customer's expense:
  - a) All internal building conduits necessary for HMP&L to install its wiring and facilities from the building service entrance to the point of termination within the building;
  - b) It is the intent of HMP&L to serve the Customer's premise with aerial facilities; however, if underground facilities are requested, the Customer will be responsible for installing all required underground conduit to a point to be determined by HMP&L;
  - c) Suitable space (i.e., a room, or area acceptable to HMP&L), for HMP&L facilities and equipment.
  - d) Sufficient electric power to operate HMP&L facilities and equipment. Surge protection or battery backup equipment for the Customer's equipment will be the responsibility of the Customer. The Customer shall be responsible for payment of all related electric service expenses.

- e) Access to (a) and (b) above for installation, maintenance, operation, and removal of the HMP&L facilities; and

An operating environment specified by HMP&L for all HMP&L facilities and equipment installed on the Customer's premises.

8. HMP&L shall use reasonable efforts to maintain all fiber cable and its equipment installed on Customer's premises. HMP&L shall respond within a reasonable period of time to the Customer's notification of a service outage and will restore service as soon as practicable. A service is interrupted when it becomes unavailable to the Customer because of a failure of HMP&L telecommunication facilities or equipment. An interruption begins when an inoperable service is reported to HMP&L and ends when service has been restored by HMP&L.

In the event of fiber strand damage on a fiber cable, HMP&L personnel shall begin problem resolution within one (1) hour of initial call by the Customer during Normal Business Days. If necessary, HMP&L will dispatch within two (2) hours technicians to perform on-site repairs. HMP&L shall complete all problem resolutions and restore full connectivity as soon as practicable.

In the event of a network outage on a network segment due to failure of HMP&L electronic network equipment, HMP&L personnel shall begin problem resolution within one (1) hour of initial call by the Customer during Normal Business Days. If necessary, HMP&L will dispatch within two (2) hours technicians to perform on-site repairs. HMP&L shall complete all problem resolutions and restore full connectivity within four (4) hours.

Time allotted for all phases of problem resolution shall be doubled for non-Business Days. "Business Days" are defined as Monday through Friday 7:00 a.m. — 5:00 p.m., excepting generally accepted holidays.

Access to HMP&L equipment on Customer's property may be required to restore service and Customer shall not receive an interruption credit for service as provided herein for any delay caused by such lack of access caused by Customer. HMP&L shall not be responsible for a service interruption because of failure of Customer's facilities or equipment. Any repair services performed by HMP&L in connection with Customer's facilities or equipment, when performed at Customer's specific request shall be billed to and paid for by Customer. As provided herein, Customer shall not be entitled to a credit for any service interruption, if such interruption is due to an act or omission of the Customer, the failure of Customer's equipment or equipment of others, any Third Party occurrence outside HMP&L's control, or an event that directly results from the occurrence of natural causes, including but not limited to tornadoes, earthquakes, hurricanes, extraordinarily high tides, violent winds, ice damage and floods. When applicable, Customer will be provided service interruption credits as follows:

**Interruptions of 24 hours or less:**

Length of Interruption

Interruption Period Credit

Less than 4 hours	None
4 hours up to, but not including 5 hours	1/10 day
5 hours up to, but not including 8 hours	1/4 day
8 hours up to, but not including 12 hours	1/2 day
12 hours up to, including 24 hours	One day

**Interruptions over 24 hours:**

<u>Length of Interruption</u>	<u>Interruption Period Credit</u>
Each 24-hour period	One day
A fraction of a 24-hour period	See table above

9. The Customer will not and Customer will not permit anyone to rearrange, disconnect, move, remove, attempt to repair, install, reinstall, or otherwise interfere with any HMP&L facilities or equipment except upon HMP&L's prior written consent. It is understood that all facilities and equipment installed by HMP&L are the property of HMP&L and are to be returned to HMP&L upon termination of Customer's service. HMP&L shall not be responsible for installing, testing, operating, maintaining, repairing, or replacing of any Customer-provided equipment required for the Customer's interconnection with or use of the services described in the Telecommunications Service Order. Customer is responsible for ensuring that Customer-provided facilities and equipment are compatible with HMP&L facilities and equipment; however, HMP&L will offer Customer reasonable technical assistance to facilitate such compatibility. The responsibility of HMP&L shall be limited to the furnishing, operating, and maintaining HMP&L facilities and equipment. HMP&L may offer assistance beyond HMP&L owned facilities and equipment, but HMP&L is not required to do so and assumes no responsibility or liability for Customer's facilities or equipment.
10. Notices required to be given under this Agreement shall be given in writing, hand delivered or mailed postage prepaid, or sent by facsimile transmission addressed to the appropriate party at the addresses set forth below. Either party may change the name and address at any time by giving written notice to the other party.

HMP&L  
Henderson Municipal Power & Light  
Attn: General Manager  
100 Fifth Street  
P.O. Box 8  
Henderson, KY 42420  
Fax: (866) 463-4874 Customer:

Henderson County Schools  
Attn: Bob Lawson  
1805 2nd St  
Henderson, KY 42420  
Fax: (270)-831-5183

11. Customer may not assign or otherwise transfer this Agreement to another party without the prior written consent of HMP&L. The Parties agree, however, that HMP&L may assign or otherwise transfer this Agreement to its successors and assigns without the prior written consent of Customer. Subject to the foregoing, this Agreement shall be fully binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns. Customer shall not resell, sublet, or provide to others any of the services, in whole or in part, provided by HMP&L under the Telecommunications Service Order.
12. Customer agrees not to use the services or facilities provided by HMP&L for any unlawful or illegal use or purpose and agrees to indemnify and hold HMP&L harmless from any loss or damage whatsoever arising from such unlawful or illegal use or purpose.
13. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, HMP&L MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, RELATED TO HMP&L SERVICES, EQUIPMENT, AND FACILITIES AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
14. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE REMEDIES SET FORTH HEREIN SHALL BE HMP&L'S SOLE OBLIGATIONS AND CUSTOMERS SOLE REMEDIES FOR ANY LOSS OR DAMAGE SUSTAINED AS A RESULT OF ANY INTERRUPTION OF THE SERVICES OR ANY FAILURE OF FACILITIES AND/OR EQUIPMENT USED IN PROVIDING THE SERVICES, HOWEVER LONG THE SERVICE INTERRUPTION SHALL LAST AND REGARDLESS OF THE CAUSE, UNLESS SUCH LOSS OR DAMAGE IS DUE TO HMP&L'S WILLFUL ACTS OR OMISSIONS.
15. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTIES FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES RELATED TO OR ARISING FROM THE PROVISIONS OF THE SERVICES TO BE PROVIDED HEREUNDER, OR OTHERWISE RELATED TO THE PERFORMANCE BY EITHER PARTY OF THE OBLIGATIONS HEREUNDER, INCLUDING, WITHOUT LIMITATION, DAMAGES BASED ON LOSS OF REVENUES, PROFITS, OR BUSINESS OPPORTUNITIES, WHETHER OR NOT HMP&L OR CUSTOMER HAS OR SHOULD HAVE HAD ANY KNOWLEDGE, ACTUAL OR CONSTRUCTIVE, THAT SUCH DAMAGES MIGHT BE INCURRED; PROVIDED, HOWEVER, THAT THE FOREGOING IS NOT INTENDED TO LIMIT ANY REMEDIES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT.
16. Customer agrees to pay all taxes, in-lieu-of tax payments, fees, or impositions which may be levied by any authority, public or private, on the services and facilities which may be provided hereunder, including taxes, in-lieu-of tax payments, fees, or impositions which may be imposed after the date of this Agreement and any taxes, in-lieu-of tax payments,

fees, or impositions which may be imposed on HMP&L (such as gross receipts taxes), and further agrees that HMP&L may include such or amounts equivalent to such in its periodic billings to Customer for services.

17. Customer and HMP&L shall not be considered to be in breach or default in the performance of any of their obligations under this Agreement when a failure of performance is due to an Uncontrollable Force, except as provided herein. The Party claiming failure or inability to perform shall promptly contact the other Party and provide written notice that an Uncontrollable Force has caused failure of performance. In the event either Party shall be unable, in whole or in part, by reason of an Uncontrollable Force to carry out its obligations, then the obligations of the Parties (other than obligations to make payments then due or becoming due with respect to performance prior to such period), to the extent that they are affected by such Uncontrollable Force, shall be suspended during the continuance of any inability so caused, but for no longer period. A Party shall not be relieved of liability for failing to perform if such failure is due to causes arising out of its own negligence or willful breaches (acts or omissions), or to removable or remediable causes which it fails to remove or remedy with reasonable dispatch.

18. Special Provisions.

- a) This Agreement may be terminated at any time by the agreement of both parties.
- b) This Agreement shall be terminated at any time by HMP&L or the Customer if it is determined that termination will be in HMP&L's or the Customer's best interests. HMP&L or the Customer shall provide HMP&L or the Customer, as appropriate, thirty (30) calendar days written notice of termination of the contract.

If the Agreement is terminated for the convenience of the Customer, HMP&L shall have the burden of establishing the amount of compensation to which it believes it is entitled by the submission of complete and accurate cost data employed in submitting his bid or proposal for the contract, and evidence of expenses paid or incurred in performance of the contract from the date of award through the date of termination. Customer may request HMP&L submit additional documents and data, and may request appropriate accounting, investigations and audits. After issuing a notice of termination for convenience, Customer may negotiate a settlement with HMP&L according to terms deemed just and equitable by the parties.

- c) Customer may terminate this Agreement if funds are not appropriated to the Customer or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the Agreement. Customer shall provide HMP&L thirty (30) calendar days written notice of termination of the contract.
- d) In the event that Customer determines, during the term of this Agreement, that the quality of telecommunications services being provided by HMP&L does not meet the standard of service quality as established by the telecommunications industry in

Henderson, Kentucky, Customer may give written notice to HMP&L of its dissatisfaction with the quality of HMP&L services. If, within a period of thirty (30) calendar days thereafter HMP&L has not established the quality of its services to Customer that equals the standards of the service being provided by the telecommunications industry in Henderson, Kentucky, Customer may thereupon at the end of the then calendar month. In the event of such termination by Customer, the Parties shall be relieved from the duties and obligations under this Agreement.

- e) If Customer should breach any material provision of this Agreement and fail to cure said breach within thirty (30) calendar days after receipt of notice of default for such breach, then HMP&L, at its option, may immediately terminate this Agreement. Customer shall be responsible for any actual expenses incurred as a direct result of the breach and any past-due monies owed.

20. This Agreement shall be interpreted, construed, and enforced in all respects under the laws of the Commonwealth of Kentucky and may only be amended in writing signed by both Parties.

IN WITNESS WHEREOF, the parties hereto have caused this Telecommunications Service Agreement to be executed by their duly authorized representatives on July 1, 2022.

**Customer**

**Henderson Municipal Power & Light**

**Henderson County Schools**

Signed: \_\_\_\_\_

Signed:  \_\_\_\_\_

Name: \_\_\_\_\_

Name: Brian J. Hardesty

Title: \_\_\_\_\_

Title: Chief Technology Officer

Date: \_\_\_\_\_

Date: 03/14/2022

## TELECOMMUNICATIONS SERVICE ORDER

**TERM: 24 MONTHS  
FROM DATE OF  
EXECUTION**

Date : 3/14/2022  
Agreement # : 500  
Service Install Date : 7/1/2022

Henderson County Board of Education  
Attn: Kris Gordon  
1805 Second Street  
Henderson, KY 42420



Henderson Municipal Power & Light  
Attn: General Office  
100 Fifth Street  
Henderson, KY 42420

Service Type	(Note No.1) Monthly Charge	Build Cost per Location	Installation Charge per Circuit	Total Installation and Build Charges
<b>Dark Fiber Service</b>				
New Jefferson Elementary	\$1,595.35	\$8,000	\$0	\$8,000
	<b>Total Monthly Charges</b>		<b>Installation and Build Charges</b>	<b>\$8,000</b>
	<b>\$1,595.35</b>			

Circuit Location A	Circuit Location Z
<b>New Jefferson Elementary School 1000 South Alves St Henderson, KY 42420</b>	<b>Technology Support Center 1715 2<sup>nd</sup> Street Henderson, KY 42420</b>

Please refer all inquiries to: Henderson Municipal Power & Light  
Communications Department  
PO Box 8  
Henderson, KY 42419

Phone: 270.826.2726  
Fax: 866.463.4874

IN WITNESS WHEREOF, the parties hereto have recognized under the Telecommunications Service Agreement that installation of services has been completed and accepted by their duly authorized representatives on the service install date above.

HMP&L Representative: \_\_\_\_\_

Customer  
Representative: \_\_\_\_\_