

AGREEMENT

This Agreement, made the 25th day of October, 2021 by and between the Lexington-Fayette Urban County Housing Authority (“Housing Authority”), whose address is 300 W. New Circle Road, Lexington, Kentucky, 40505, and the Lexington-Fayette Urban County Government (“LFUCG”), whose address is 200 East Main Street, Lexington, Kentucky, 40507.

RECITALS

WHEREAS, the Housing Authority redeveloped the Bluegrass-Aspendale Housing Development in Lexington, Kentucky in 2005 into a number of single family residential units and multi-family dwellings (Phases II and III) (“Development”); and

WHEREAS, the construction and dedication of public infrastructure (including, but not limited to, sanitary sewers, storm sewers, and storm water infrastructure) in connection with new development and redevelopment is required to comply with the Land Subdivision Regulations for Lexington-Fayette Urban County, Kentucky; the Zoning Ordinance of Lexington-Fayette County, Kentucky; the LFUCG Engineering Manuals; and LFUCG Standard Drawings (collectively, “LFUCG regulations”); and

WHEREAS, in accordance with LFUCG regulations, a developer is required to post a combination performance and warranty surety to ensure the completion of public infrastructure, as indicated by a punch list describing the work necessary for completion of the public infrastructure; and

WHEREAS, a developer may request final release of performance and warranty surety when LFUCG determines that public infrastructure has been constructed in fulfillment of the requirements of the LFUCG regulations; and

WHEREAS, LFUCG retains the right to call the surety and apply the surety to the cost of completing public infrastructure if the public infrastructure is not constructed in accordance with LFUCG regulations; and

WHEREAS, if a surety is called by LFUCG or forfeited by a developer, the developer is prohibited from submitting surety to LFUCG for a period of three (3) years from call or forfeiture of the surety; and

WHEREAS, with regard to the Development, the Housing Authority constructed public infrastructure, including but not limited to sanitary and storm sewer systems to be dedicated to LFUCG upon completion; and

WHEREAS, certain of the public infrastructure constructed by the Housing Authority requires remediation, for which a punch list has been prepared, a copy of which is attached hereto as Exhibit A; and

WHEREAS, in accordance with LFUCG regulations, cash and letters of credit in favor of the LFUCG were posted by the Housing Authority, as reflected on Exhibit B attached hereto; and

WHEREAS, the remediation work described in the punch list (Exhibit A) has not yet been performed; and

WHEREAS, public bids to complete the remediation items on Exhibit A were received by the Housing Authority on May 10, 2021 with the low bid being \$399,000.00 (“Bid Price”); and

WHEREAS, discussions have arisen between the Housing Authority and LFUCG as to the manner and timing of completion of the public infrastructure; and

WHEREAS, both the Housing Authority and LFUCG desire to provide for the completion of the public infrastructure as required by LFUCG regulations; and

WHEREAS, the Housing Authority and LFUCG acknowledge and agree that, upon consideration of the current value of the surety and the current condition of the public infrastructure, an agreement for completion of the public infrastructure is a more favorable outcome for both parties than the Housing Authority completing the remaining punch list items or LFUCG resorting to the surety; and

WHEREAS, the remaining work consists of sanitary sewer, storm sewer, and other miscellaneous items of such kind and character that LFUCG is willing to assume responsibility for the manner and timing of completion of the public infrastructure, as it may determine to be appropriate, now or in the future, provided that the Bid Price is paid to LFUCG; and

WHEREAS, in order to resolve the outstanding punch lists, the Housing Authority and LFUCG are willing to agree that, in lieu of the Housing Authority completing the remaining punch list items or LFUCG resorting to the surety, the Housing Authority shall pay to LFUCG the Bid Price of \$399,000.00, and, in exchange, LFUCG shall accept the dedication of all public infrastructure in its current condition and assume responsibility for any remaining work, as it may so determine to be appropriate, now or in the future, in the same manner and to the same extent as if the surety had been called or forfeited, as authorized by LFUCG regulations, and shall release the remaining surety reflected on Exhibit B to the Housing Authority.

NOW THEREFORE, for good and valuable consideration set forth herein, IT IS HEREBY AGREED by and between the parties as follows:

1. The Housing Authority shall pay to LFUCG the Bid Price of \$399,000.00, representing the cost of the remaining punch list work for the Development. Such sum shall be held by LFUCG in escrow until such time as the remaining surety has been released, as set forth in this Agreement.

2. In exchange for payment, LFUCG shall return and release the remaining cash and letters of credit as set forth in Exhibit B to the Housing Authority in full recognition of the satisfaction of the remediation of the punch list by and through the provision made for the completion of public infrastructure in this Agreement.

3. By execution of this Agreement, LFUCG shall accept all of the public infrastructure in its current condition and will assume responsibility for whatever remediation and repairs may be necessary now or in the future, as it may so determine to be appropriate, in the same manner and to the same extent as if the surety had been called or forfeited, as authorized by LFUCG regulations.

4. Upon the execution of this agreement and payment of the Bid Price of \$399,000.00 by the Housing Authority to LFUCG, the Housing Authority shall request in writing a final release of the remaining surety, as required by LFUCG regulations, in reliance upon the provision made by this Agreement for completion of the public infrastructure.

5. Upon receipt of the written request for final release of the surety, LFUCG's Division of Engineering shall recognize that provision has been made for completion of public infrastructure by this Agreement in conformity with LFUCG regulations, and the Urban County Engineer shall, in writing, notify the Planning Commission to release the surety, in accordance with LFUCG regulations.

6. Nothing herein shall be construed as a forfeiture of the surety by the Housing Authority or a call of the surety by LFUCG.

7. This Agreement represents a settlement between the parties hereto and is made voluntarily and by mutual agreement in fulfillment of the purposes of LFUCG regulations for construction of public infrastructure, in order to ensure proper completion of public infrastructure and to avoid resort to the surety. Nothing herein is intended to operate nor shall it be construed to operate as a waiver of LFUCG regulations now or in the future, specifically including but not limited to the Land Subdivision Regulations for Lexington-Fayette Urban County, Kentucky or the LFUCG Engineering Manuals.

8. Miscellaneous.

a. Entire Agreement. This Agreement contains the entire agreement of the parties concerning the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and understandings of the parties with respect to the subject matter hereof.

b. Binding Effect. This Agreement shall be binding upon and enforceable by the Housing Authority, LFUCG, and their respective estates, personal representatives, heirs, successors and assigns.

c. No Third Party Rights. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give to any person other than the parties hereto any right, remedy, or claim under or by reason of such agreement or covenant, condition, or stipulation herein contained. Nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any person other

than the parties hereto any legal or equitable right, remedy, or claim under or in respect to this Agreement. Nothing expressed herein shall be construed or deemed to modify, supersede, or in any way alter or amend LFUCG regulations related to new development or redevelopment projects, the construction of public infrastructure, the requirement of surety, or LFUCG's rights relating thereto.

d. Amendment. This Agreement may not be modified except by a written document signed by the party or parties to be charged.

e. Governing Law. The laws of the Commonwealth of Kentucky shall govern the interpretation and enforcement of this Agreement, regardless of the conflict of law principals applied by Kentucky or any other jurisdiction.

f. Notices. Any notices to be given under this Agreement shall be deemed to have been validly and effectively given when delivered to the receiving parties by email, fax, certified, or registered U.S. mail or overnight courier at the addresses below their signatures to this Agreement, or to such other address as a party may designate in a written notice hereunder.

g. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which is an original but all of which together shall constitute one and the same instrument. However, in making proof hereof it will be necessary to produce only one copy hereof signed by the party to be charged. Facsimile or electronic (PDF) signatures on this Agreement shall have the same validity as an original hand signed instrument.

[Remainder of page intentionally left blank; signature page follows]

**LEXINGTON-FAYETTE URBAN COUNTY
HOUSING AUTHORITY**

BY: 
Austin Simms, Executive Director

**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT**

BY: 
Linda Gorton, Mayor