

RECEIVED NOV 30 2011

AGREEMENT**BETWEEN****Lexington-Fayette Urban County Government****AND****Lexington-Fayette Urban County Airport Board**

THIS AGREEMENT is made and entered into at Lexington, Kentucky this ____ day of _____, 20¹¹~~10~~, between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government pursuant to authority of Kentucky Revised Statutes Chapter 67A (hereinafter referred to as "LFUCG") and the **LEXINGTON-FAYETTE URBAN COUNTY AIRPORT BOARD** (hereinafter referred to as "AIRPORT BOARD").

WHEREAS, the Urban County Government, the United States Environmental Protection Agency, and the Commonwealth of Kentucky have entered into a Consent Decree in a case styled *United States, et al. v. Lexington-Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Case No. 5:06-CV-00386, that requires the elimination of overflows in the LFUCG sanitary sewer system ; and

WHEREAS, AIRPORT BOARD and LFUCG wish to upgrade the existing sanitary sewer facilities, including capacity expansion of the existing Blue Grass Field Pump Station and elimination of overflows in LFUCG's sanitary sewer system; and

WHEREAS, AIRPORT BOARD and LFUCG have agreed to enter into a cost-sharing arrangement for providing sanitary sewer services the airport property and also to eliminate sanitary sewer overflows.

NOW, THEREFORE, in consideration of the foregoing premises and in consideration of the mutual undertakings and obligations hereinafter set forth, the parties agree to the following covenants and conditions:

1. Engineering and Construction of System. AIRPORT BOARD shall bid, contract for, and cause to be prosecuted to completion, the design and construction of sanitary sewer improvements located at the Blue Grass Field Pump Station, hereafter referred to as the "Project".

2. Description of Sanitary Sewer Facilities to be Constructed and Dedicated by Airport Board. Attached hereto as Exhibit __ is a description of all of the facilities which will be designed, constructed, and inspected by AIRPORT BOARD ("the Project"), together with the anticipated estimated actual cost, as agreed by the parties. AIRPORT BOARD agrees that the Project shall be designed, constructed, inspected, and surety shall be provided in accordance with the requirements of the appropriate LFUCG Division of Engineering manuals for a new development project. This project consists of approximately 130 linear feet of 8-inch PVC gravity sanitary sewers, lift station improvements including 2 new 425 GPM pumps and electrical upgrades, approximately 9,000 linear feet of 6-inch PVC force main pipe, and approximately 7,000 linear feet of removing, resetting and painting board fence along Man O' War Boulevard. The facilities shall be dedicated to the public use as part of the sanitary system of LFUCG and shall be located in Permanent Sanitary Sewer Easements showing the specific legal description of the location of such facilities. The dedication shall be done in a form acceptable to LFUCG, by Plat or Deed of Easement, as appropriate. AIRPORT BOARD agrees that LFUCG shall have the right to enter airport property to insure that sanitary sewer facilities that are replaced by the facilities constructed pursuant to this Agreement are properly abandoned.

3. Capacity Requirements. Design of the Project shall address the capacity requirements necessary to provide service to the Blue Grass Airport, its tenants and/or airport-related developments. Based on the ultimate (20 Years) flow projections provided by the airport, LFUCG agrees to accept and treat an average of 0.11 million gallons per day (MGD), calculated on a 12 month moving average of sanitary sewage generated from the Blue Grass Airport facilities. LFUCG agrees to accept into its sewer system and treat up to 100 gallons per minute, based on Ultimate (20 Years) flow projections of deicing basin flow from the Blue Grass Airport facilities, provided that pollutants discharged from the deicing basin meet applicable pretreatment standards, as described in LFUCG Code of Ordinances Chapter 16.

AIRPORT BOARD shall provide LFUCG completed plans, drawings and specifications for the Project. LFUCG shall notify AIRPORT BOARD in writing of any additional requirements for the Project within sixty (60) days of LFUCG's receipt of said plans, drawings and specifications.

4. Cost Estimates, Cost Allocation, and Reimbursement. AIRPORT BOARD and LFUCG shall share cost on the design and construction of the Project. AIRPORT BOARD shall provide LFUCG with detailed itemization estimate of all costs associated with the design and construction of the Project as set forth in Exhibit ____.

A. AIRPORT BOARD Costs. AIRPORT BOARD shall be solely responsible for initial payment of all costs incurred which are associated with the Project.

B. LFUCG Costs. LFUCG shall be responsible for fifty percent (50%) of all costs associated with the Project up to a maximum amount of Six Hundred Thousand Dollars (\$600,000). Subject to the maximum amount just before stated, LFUCG agrees to reimburse

AIRPORT BOARD in cash, certified check, or other collected funds 50% of all costs incurred by AIRPORT BOARD associated with the Project. The estimated reimbursement amount is set forth in Exhibit ____ to this Agreement. The final reimbursement amount shall be based on the actual final costs of design and construction of the Project. Reimbursement shall be due in full upon acceptance of the Project facilities by LFUCG, such acceptance not to be unreasonably withheld, and payment made no later than forty-five (45) days after such acceptance date.

6. Discharge into Facilities. Upon completion of the Project, and approval of LFUCG, AIRPORT BOARD shall have the right to discharge sewage into the Project facilities at all times (24 hours per day, 7 days per week). .

7. Change Orders. AIRPORT BOARD shall notify LFUCG in writing, and obtain the approval of LFUCG, prior to any change orders to the construction plans for the Site or the Service Area that will affect the LFUCG shared Project Costs.

8. Erosion Prevention and Sedimentation Control. The BLUE GRASS AIRPORT BOARD shall insure that all contractors utilized in the construction of the Project, follow all applicable erosion prevention and sediment control guidelines. Plans have been submitted to LFUCG for review and approval.

9. Insurance. AIRPORT BOARD shall require its contractors to procure and maintain during the life of this Agreement insurance coverage and limits at levels no lower than those set forth in the Bid Documents and Specifications Manual.

10. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of the executors, heirs, successors and assigns of the parties hereto, however neither party

shall assign, sublet or transfer its interests in this contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer, director, employee or agent or any public body which may be a party hereto.

11. Entire Agreement. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, among the parties and no part of this agreement may be altered, modified, or changed in any way except in writing signed by the parties hereto or signed by the duly authorized representatives of said parties.

12. Severance. If any section, clause or provision of this Agreement shall be held invalid, such holding of invalidity shall not affect the validity of any remaining section, clause, paragraph, portion or provision of this Agreement.

13. Third Party Beneficiaries. 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 any right, remedy or claim under or by reason of any such agreement or any covenant, condition or stipulation herein or therein contained.

14. Amendments. This Agreement may only be amended by written agreement of all the parties hereto.

15. Governing Law. This laws of the Commonwealth of Kentucky shall govern the validity, construction, and performance of this Agreement.

16. Notices. All notices, consents, or other communications required or permitted hereunder shall be deemed sufficiently given or serviced if given in writing, mailed by first class mail, postage prepaid and addressed as follows:

(i) If to LFUCG:

Director, Division of Water Quality
301 Lisle Industrial Road
Lexington, KY 40511

(ii) If to BLUE GRASS AIRPORT BOARD:

Mark J. Day, P.E., A.A.E.
Deputy Director of Engineering and Maintenance
4000 Terminal Drive, Suite 206
Lexington, KY 40510

17. Limitation of Rights. With the exception of rights herein expressly conferred, 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.

IN WITNESS WHEREOF, the parties hereto executed this Contract on the day and year first above written.

WITNESS:



LEXINGTON-FAYETTE URBAN COUNTY
AIRPORT BOARD

BY: 

TITLE: Executive Director

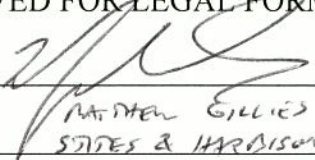
WITNESS:

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

BY: _____

TITLE:

APPROVED FOR LEGAL FORM:

BY:  _____
MATTHEW GILLIES
SIDES & HARRISON

Date 11/21/11