

AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2016, by and between the COMMONWEALTH OF KENTUCKY, for the use and benefit of the TRANSPORTATION CABINET, DEPARTMENT OF HIGHWAYS, 200 Mero Street, Frankfort, Kentucky 40622 (hereinafter, "the Cabinet") and the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, 200 E. Main Street, Lexington, KY 40507 (hereinafter, "LFUCG" or "Government").

WITNESSETH:

WHEREAS, the Cabinet is engaged in a project to construct and extend East Brannon Road in Jessamine County, from East Brannon Road Station 304 + 88.00 to Kentucky Highway 1974, Tates Creek Road (Program No. 8699701R, Item No. 07-0376.00, Function FD04, County ID No. 57), identified as the East Brannon Road Extension project, of record in the office of the Commonwealth of Kentucky, Transportation Cabinet, Frankfort, Kentucky; and

WHEREAS, LFUCG owns property located at 200 West Hickman Plant Road, Nicholasville, Kentucky 40356, by virtue of deeds recorded in Deed Book 267, Page 470 and Deed Book 103, Page 345, Plat Cabinet 267, Slide 470, of record in the Office of the Jessamine County Clerk at Nicholasville, Kentucky ("the property"); and

WHEREAS, the Cabinet desires to acquire from LFUCG, for purposes of constructing right-of-way and extending East Brannon Road, 9.242 acres of the property in fee simple absolute, as well as a 263-square foot permanent easement for purposes of constructing and perpetually maintaining an 18-inch storm water drainage pipe outlet, and temporary access easements consisting of 17,236 square feet for purposes of constructing entrance ways on the property; and

WHEREAS, LFUCG desires to retain, for purposes of constructing and maintaining sanitary sewer infrastructure, a permanent right-of-way encroachment, as depicted on Exhibits 1 and 2, attached hereto and incorporated herein by reference, for existing sanitary sewer infrastructure located within the proposed right-of-way extension area, as well as a permanent right of encroachment upon the proposed right-of-way extension area, for purposes of the future installation and maintenance of a sanitary sewer force main pipeline; and

WHEREAS, the Cabinet has agreed to construct and install, at its cost, for the use and benefit of LFUCG, a permanent underground Fiber Optic Pathway, approximately 23,000 feet long, beginning at the intersection of Versailles Road (U.S. 60) and Parkers Mill Road (Ky. 1968) and ending on New Circle Road (Ky. 4), approximately 3,000 feet west of Georgetown Road (U.S. 25), and at each interchange, said pathway to follow the off/on-ramps to the intersecting roadways of Old Frankfort Pike (Ky. 1681) and Leestown Road (U.S. 421), all in Fayette County, Kentucky, as depicted and described on Exhibit 3, attached hereto and incorporated herein by reference, for the installation of a fiber optic cable line by LFUCG; and

WHEREAS, the Cabinet and LFUCG have reached an agreement by which LFUCG agrees to exchange the property interests needed for the right-of-way project identified as the East Brannon Road Extension for permanent encroachment rights with regard to sanitary sewer infrastructure located in or to be constructed in the proposed right-of-way extension, including the future installation and maintenance of a sanitary sewer force main pipeline, and for the Cabinet's construction and installation, at its cost, of a permanent underground Fiber Optic Pathway, for the use and benefit of LFUCG, for the installation of a fiber optic cable line by LFUCG.

NOW, THEREFORE, in consideration of the recitals and of the mutual covenants and agreements as hereinafter set forth, the Cabinet and LFUCG, acting through their duly authorized agents, do hereby mutually agree and promise as follows:

1. Effective Date – This Agreement shall be effective from the date of its execution. The obligations expressed herein shall be considered as running with the land and shall extend to, bind and inure to the benefit of the parties hereto and their respective heirs, assigns or successors in interest.
2. Authority to Enter into Agreement – The parties represent and warrant, by the signatures of their duly appointed representatives, that to the best of their knowledge they are legally entitled to enter into this Agreement, and will not be violating, directly or indirectly, any statute of the Commonwealth of Kentucky by performance of any obligation imposed by this Agreement.
3. Obligations of the Cabinet – The Cabinet hereby agrees to the following terms and conditions:
 - a. The Cabinet hereby grants to LFUCG the permanent right of encroachment upon the proposed East Brannon Road right-of-way extension, for purposes of constructing and maintaining existing sanitary sewer infrastructure located within the right-of-way extension area, such encroachment being more specifically described as follows:
 - i. An existing 60-inch diameter sanitary sewer pipe with associated manholes located approximately 110 feet west of West Hickman Creek Abutment #1, as depicted on the accompanying Exhibit 1; and
 - ii. An existing 54-inch diameter sanitary sewer pipe with associated manholes located approximately 80 feet west of West Hickman Creek Abutment #1, as depicted on the accompanying Exhibit 1; and
 - iii. A relocated 21-inch diameter sanitary sewer pipe as shown on Exhibit 2, and generally located between Station 370+00 and Station 371+00 of the improvement plans submitted to LFUCG, as depicted on the accompanying Exhibit 2; and

- b. The Cabinet hereby agrees to construct and install, at its cost, for the use and benefit of LFUCG, a permanent underground Fiber Optic Pathway, approximately 23,000 feet long, beginning at the intersection of Versailles Road (U.S. 60) and Parkers Mill Road (Ky. 1968) and ending on New Circle Road (Ky. 4), approximately 3,000 feet west of Georgetown Road (U.S. 25), and at each interchange, said pathway to follow the off/on-ramps to the intersecting roadways of Old Frankfort Pike (Ky. 1681) and Leestown Road (U.S. 421), all in Fayette County, Kentucky, as depicted and described on Exhibit 3, attached hereto and incorporated herein by reference, for the installation of a fiber optic cable line by LFUCG; and
 - c. The Cabinet hereby grants to LFUCG the permanent right of encroachment upon the proposed right-of-way extension known as the East Brannon Road extension for the future construction and maintenance of sanitary sewer infrastructure, including the future installation of a sanitary sewer force main pipeline by LFUCG; and
 - d. The Cabinet hereby agrees that the granting of a permanent encroachment for sanitary sewer infrastructure in the proposed right-of-way identified as the East Brannon Road Extension, the Cabinet's construction and installation of a Fiber Optic Pathway for the use and benefit of LFUCG, for the installation of a fiber optic cable line by LFUCG, and the granting of a permanent encroachment on the proposed right-of-way identified as the East Brannon Road Extension, for the future construction and maintenance of sanitary sewer infrastructure, including the future installation of a sanitary sewer force main pipeline, constitutes the consideration for the conveyance of real property in fee simple absolute and a grant of a permanent easement and temporary easements by LFUCG upon property located at 200 West Hickman Plant Road, Nicholasville, Kentucky 40356, Deed Book 267, Page 470 and Deed Book 103, Page 345, Plat Cabinet 267, Slide 470, of record in the Office of the Jessamine County Clerk.
4. Obligations of LFUCG – LFUCG hereby agrees to the following terms and conditions:
- a. LFUCG hereby agrees to convey 9.242 acres, in fee simple absolute, of the property located at 200 West Hickman Plant Road, Nicholasville, Kentucky, 40356, and of record in Deed Book 267, Page 470 and Deed Book 103, Page 345, Plat Cabinet 267, Slide 470 in the Office of the Jessamine County Clerk, to the Cabinet, for purposes of constructing right-of-way and extending East Brannon Road. Such conveyance shall be comprised of two (2) tracts: an irregular-shaped 5.505 acre tract along the western and northern property lines, identified as Parcel No. 6 Tract A and described in Exhibit 4 and as depicted in Exhibit 5, which are attached hereto and incorporated

herein by reference; and a 3.737-acre rectangular-shaped tract along the northern and eastern property lines, identified as Parcel No. 6 Tract B and described in Exhibit 6 and as depicted on Exhibit 7, which are attached hereto and incorporated herein by reference; and

- b. LFUCG hereby grants a 263-square-foot rectangular-shaped permanent easement on the aforementioned property to the Cabinet, for purposes of constructing and perpetually maintaining an 18-inch storm water drainage pipe outlet, identified as Parcel No. 6 Tract C as described and depicted in Exhibit 8, which is attached hereto and incorporated herein by reference; and
 - c. LFUCG hereby grants a temporary easement on the aforementioned property, comprised of two (2) temporary easement areas and consisting of 17,236 square feet, to the Cabinet, identified as Parcel No. 6 Tracts D and E as described and depicted on Exhibit 9, which is attached hereto and incorporated herein by reference, for purposes of constructing entrance ways, which easements shall terminate and revert to LFUCG upon completion of the entrance ways; and
 - d. LFUCG hereby agrees that the conveyance of real property in fee simple absolute and the granting of permanent and temporary easements to the Cabinet constitute the consideration for the granting of a permanent encroachment for existing sanitary sewer infrastructure in the proposed right-of-way identified as the East Brannon Road Extension, for the Cabinet's construction and installation of a Fiber Optic Pathway, at its cost, for the use and benefit of LFUCG, for the installation of a fiber optic cable line by LFUCG, and for a permanent encroachment by LFUCG for the future installation of a sanitary sewer force main pipeline in the proposed right-of-way identified as the East Brannon Road Extension.
5. Mutuality of Obligations – The parties agree that the obligations imposed upon them are for the mutual benefits of the parties. Time is of the essence. The parties will exercise their best efforts to conclude this transaction expeditiously.
 6. Modifications – No modification or change of any provision of this Agreement shall be made or construed to have been made unless mutually agreed to in writing by the parties.
 7. LFUCG shall retain rights conferred upon landowners pursuant to KRS 416.670 as if this property were acquired through condemnation. The parties agree that if and only if said statute becomes applicable, the repurchase price of said property as to LFUCG shall be measured by the actual costs borne by the Cabinet to fulfill the terms of this Agreement as that amount reflects the price the Cabinet paid for said property.

The acquisition of the right of way of this project was authorized by the Kentucky Department of Highways Official Order No. 109222. The control of access on this project and access to the remaining property shall be by permit, as required to be set forth in Section 6 of the Kentucky Administrative Regulations (603 KAR 5:120).

The proposed public road project is to construct and extend East Brannon Road from East Brannon Road Station 304 + 88.00 to Kentucky Highway 1974, Tates Creek Road (Program No. 8699701R, Item No. 07-376.00, Function FD04, County ID No. 057), the plans for which are on file in the office of the Transportation Cabinet in Frankfort, Kentucky.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

APPROVED AS TO FORM
AND LEGALITY

COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS

BY: _____

BY: _____
Greg Thomas, Secretary

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

BY: _____
Jim Gray, Mayor

ACKNOWLEDGEMENT

STATE OF KENTUCKY

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Greg Thomas, the Secretary of the Commonwealth of Kentucky, Transportation Cabinet, on behalf of the Commonwealth.

My commission expires on the ____ day of _____, 201__.

Notary Public, State At Large, KY

STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Jim Gray, the Mayor of the Lexington Fayette Urban County Government, on behalf of the Government.

My commission expires on the ____ day of _____, 201__.

Notary Public, State At Large, KY

This instrument prepared by:

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