

AGREEMENT

BETWEEN

Lexington – Fayette Urban County Government

AND

University of Kentucky

THIS AGREEMENT is made and entered into at Lexington, Kentucky this 24th day of July, 2012, between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government pursuant to the authority of Kentucky Revised Statutes Chapter 67A (hereinafter referred to as “LFUCG”) and the Commonwealth of Kentucky, by and through the **UNIVERSITY OF KENTUCKY** (hereinafter referred to as “UNIVERSITY”).

WHEREAS, the Lexington-Fayette 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, UNIVERSITY and LFUCG wish to relocate sanitary sewer facilities in LFUCG’s sanitary sewer system; and

WHEREAS, UNIVERSITY and LFUCG have agreed to enter into a cost-sharing arrangement for providing sanitary sewer services to the 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. UNIVERSITY shall bid, contract for, and cause to be prosecuted to the completion, the design and construction of sanitary sewer improvements located at the Rose Lane Properties, (hereafter referred to as the "Project"). UNIVERSITY shall provide LFUCG completed plans, drawings and specifications for the Project. LFUCG shall notify UNIVERSITY in writing of any additional requirements for the Project within sixty (60) days of LFUCG's receipt of said plans, drawings and specifications. UNIVERSITY shall be responsible for all local, state and federal permits necessary to construct a sanitary sewer line in Fayette County.
2. Description of Sanitary Facilities to be Constructed and Dedicated by UNIVERSITY. Attached hereto as Exhibit A is a description of all the facilities which will be designed, constructed, and inspected by UNIVERSITY ("the Project"), together with the anticipated estimated actual cost, as agreed by the parties. UNIVERSITY 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 manual for a new development project. This Project consists of construction approximately 490 linear feet of 12-inch PVC gravity sanitary sewers, 6 sanitary sewer manholes and related tie-ins and

connections to the existing sanitary sewer system. 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 the LFUCG, by Plat or Deed of Easement, as appropriate. UNIVERSITY agrees that LFUCG shall have the right to enter UNIVERSITY property to insure that sanitary sewer facilities that are replaced by the facilities constructed pursuant to the Agreement are properly abandoned.

3. Cost Estimates, Cost Allocation, and Reimbursement. UNIVERSITY and LFUCG shall share cost of the design and construction of the Project. UNIVERSITY shall provide LFUCG with detailed itemization estimate of all costs associated with the design and construction of the Project as set forth in Exhibit B.
 - a. UNIVERSITY Costs. UNIVERSITY 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 forty-three percent (43%) of all costs associated with the Project up to a maximum amount of ONE HUNDRED THREE THOUSAND DOLLARS and ZERO CENTS (\$103,000.00). Subject to the maximum amount just before stated, LFUCG agrees to reimburse UNIVERSITY in cash, certified check, or other collected funds forty-three percent (43%) of

all costs incurred by UNIVERSITY associated with the project. The estimated reimbursement amount is set forth in Exhibit C 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 shall not to be unreasonably withheld, and payment made no later than forty-five (45) days after such acceptance.

4. Change Orders. UNIVERSITY 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 LFUCG shared costs.
5. Erosion Prevention and Sedimentation Control. UNIVERSITY shall insure that all contractors utilized in the construction of the Project, follow all applicable erosion prevention and sediment control guidelines. Erosion and Sedimentation Control Plans shall be submitted to LFUCG for review and approval along with construction plans, drawings and specifications as noted in Item 1 of this Agreement.
6. Insurance. UNIVERSITY 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.
7. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of the successors and assigns of the parties hereto; however,

neither party shall assign, 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.

8. 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, ether verbal or written, among the parties and no part of the agreement may be altered, modified, or changed in any way except in writing signed by the parties hereto or signed by the duly authorized representative of said parties.
9. Severance. If any section, clause or provision of this Agreement shall be held invalid, such holding of invalidity shall not affect the validity or any remaining section, clause, paragraph, portion or provision of this Agreement.
10. Third Party Beneficiaries. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon or give any person other than the parties any right, remedy or claim under or by reasons of any such agreement or any covenant, condition or stipulation herein or therein contained.
11. Amendments. This Agreement may only be amended by written agreement of all the parties hereto.

12. Governing Law. The laws of the Commonwealth of Kentucky shall govern the validity, construction, and performance of this Agreement.
13. 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 paid and addressed as follows:
- a. If to LFUCG:
- Director, Division of Water Quality
125 Lisle Industrial Avenue
Lexington, KY 40511
- b. If to University of Kentucky
- Dall Clark
Director, Capital Project Management Division
University of Kentucky
222 Peterson Service Building
Lexington, KY 40503
15. 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 any person other than the parties hereto, any legal or equitable right, remedy or claim under or in respect to this Agreement.

(The Remainder of This Page is Intentionally Left Blank. Signature Page to Follow.)

IN WITNESS WHEREOF, the parties hereto execute this Agreement on the day
and year first written above

WITNESS

COMMONWEALTH OF KENTUCKY,
UNIVERSITY OF KENTUCKY

BY:

TITLE: Vice President for Financial
Operations and Treasurer

WITNESS

LEXINGTON – FAYETTE URBAN
COUNTY GOVERNMENT

BY: _____

TITLE: _____

APPROVED FOR LEGAL FORM

BY:

Associate General Counsel

DATE: July 24, 2012